



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 36822/2014

(1)	REPORTABLE: <input checked="" type="checkbox"/> YES / NO
(2)	OF INTEREST TO OTHER JUDGES: <input checked="" type="checkbox"/> YES / NO
(3)	REVISED:
SIGNATURE	DATE

In the matter between:

GUMEDE SIBONGISENI JOSHUA

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

SENYATSI J:

- [1] This is a claim for damages suffered in a motor vehicle accident which occurred on 8 December 2010 on the N3 north highway in Germiston.
- [2] The plaintiff sustained the following injuries:
 - (a) fracture of the right femur
 - (b) fracture and dislocation of left radius and ulna
 - (c) chest contusion
 - (d) laceration of the left calf; and
 - (e) laceration of the lip
- [3] The plaintiff was represented by Ms. N Sobekwa and there was no appearance on behalf of the defendant. Upon proper consideration of the papers uploaded on Case Lines, it became clear to me that the Road Accident Fund was aware of the trial date. Ms Sobekwa also submitted that there was communication sent to the claim handler Mr Zulu at the RAF.
- [4] Ms Sobekwa also submitted that all previous attempts to get the claim settled were unsuccessful as the defendant made an offer which was not acceptable to the plaintiff.
- [5] The only issue that this Court was required to consider was loss of earnings, earning capacity, and general damages.
- [6] The plaintiff appointed the following six experts to quantify his claim;
 - (a) Dr Schaid- Orthopedic surgeon
 - (b) Dr S Bram- Plastic surgeon

- (c) Dr N September- Occupational therapist
- (d) Dr T Tsiu- Industrial psychologist
- (e) Algorithm Consultants and Actuaries

[7] The defendant appointed the following experts:

- (a) Dr R Geoffrey- Orthopedic surgeon
- (b) Dr E Hlatshwayo- Occupational therapist
- (c) Dr T Gama- Industrial Psychologist

[8] The merits of the case were settled at 100% and the defendant gave an undertaking to issue a certificate for the plaintiff's future medical costs. The past medical expenses were also settled.

[9] The issues that remain to be determined as already stated are past and future loss of earnings as well as general damages.

[10] At the hearing of the matter, Counsel for the plaintiff referred the court to Dr Schaid's affidavit regarding the quantification of general damages. The court was also referred to case law in this regard.

[11] In regard to past and future loss of earnings, the plaintiff's Counsel submitted that the Plaintiff earned R450 to R500 per week as a relief taxi driver. She further made submissions that the plaintiff earned an additional R450 to R500 per month for long distance travel between Johannesburg, Pietermaritzburg. In addition, Counsel also submitted that the plaintiff earned between R3000 and R5000 per month as a traditional healer. The industrial psychologist reported that the loss was over R1 million. He claimed to have made contact with the

taxi operator who allegedly employed the plaintiff. The submission on earnings could not be supported by any evidence such as salary slips or bank statements as proof of the deposits.

- [12] When confronted with the fact that there was no evidence to sustain or support proof of loss of earnings and that the expert report was based on hearsay, Counsel correctly conceded that it was in fact inadmissible hearsay. As a consequence, no award can be made under this heading. I do not agree with the experts about the quantification of the claim.
- [13] The only issue that remains is an award under general damages. On perusal of the expert's reports, it is evident that the Plaintiff suffered unimagined pain as a result of the accident. This is confirmed by all experts from both sides.
- [14] In the case of general damages, it is trite that the court has a wide discretion to make a determination of the award. In doing so, it is guided by the previous awards.
- [15] In *AA Mutual Insurance Association Ltd v Maqula*¹, it was held that the determination of general damages has never been an easy task as no mathematical or scientific formula exists to compute the monetary value on pain and suffering, loss of amenities of life and disability.
- [16] It is trite that the award of general damages must be fair to both parties. Ms Sobekwa submitted to this court that in her view and based on the previous awards of similar injuries the court should consider awarding R900 000 for general damages.

¹ 1978 (1) SA 805 (A)

[17] I have considered the evidence by experts and the submission made on behalf of the plaintiff as well as the pain and suffering endured by the plaintiff.

ORDER:

[18] The following award is made:

- (a) The defendant is ordered to pay the sum of R800 000(eight hundred thousand rand) for general damages to the plaintiff within 120 days into the trust account of the plaintiff's attorneys details of which must be provided to the defendant by the plaintiff within 30 days from the date of this order to Mr Zulu, the defendants claim handler.
- (b) The defendant is also ordered to pay the taxed costs on a party and party scale as well as the costs of all six experts within 90 days from the date of taxation thereof.



ML SENTATSI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Appearances:

Date of Hearing: 02 February 2021

Date of Judgment: 02 February 2021

Attorneys for the Plaintiff: Ndlebe Msutu Inc.

Counsel for the Plaintiff: Adv N. Sobekwa

Attorneys for the Defendant: No appearance

Counsel for the Defendant: No appearance