

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

25/01/2016

CASE NO: 17225/2011

In the matter between:

PRETTY KHABO TLOU

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

NONYANE, AJ:

[1] This is an action for damages in terms of the Road Accident Fund Act 56 of 1996 as amended (the Act), pursuant to a motor vehicle collision that occurred on 26 March 2006 at Witbank.. Ms Pretty Khabo Tlou, who was a passenger when the collision occurred, sustained a head injury with loss of consciousness, laceration above her right eye, injury to her right shoulder and soft tissue injury to her right knee and ankle.

[2] At the time of the accident Ms Pretty Khabo Tlou was 25 years old. Advocate APJ Bouwer, was appointed as her curator ad litem.

[3] In his amended particulars of claim the plaintiff claimed R1 000 000.00 for past and future loss of earnings and earning capacity, and R960 00.00 for general damages.

[4] The defendant has conceded the merits in full and the plaintiff is entitled to 100% of his proven damages.

[5] At the commencement of the trial, the parties indicated that the plaintiff's claim with regard to loss of earnings or earning capacity has become settled and the parties have agreed on an amount of R375 448.00.

[6] The parties have also agreed that the defendant will furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Act.

[7] What I have to determine is the issue of general damages. The parties further agreed, which agreement I have endorsed, that no viva voce evidence would be led in respect of this claim and that the evidence and opinions in the bundles of expert reports be placed on record as evidence. The agreed bundles of documents were handed in and accordingly admitted into the records.

[8] The plaintiff's counsel contends that the plaintiff sustained a moderate to severe head injury which resulted in severe cognitive and social sequelae. The plaintiff counsel's argument was mainly based on the expert report of Ms SC Strijdom (the clinical psychologist).

[9] With regard to the quantum to be awarded counsel referred to the cases of:

Torres v Road Accident Fund 2010 (6A4) QOD 1 (GSJ)

Myhill obo RC Penga v RAF 2008 (5b4 QOD 271 (T)

Smith v RAF 2013 (6A4) QOD 188 (GNP)

Matthys v RAF 2013 (6A4) QOD 272 (GNP)

[10] In his closing arguments, the plaintiff's counsel contended that it is common cause that the claimant suffered a head injury of which the *sequelae* are similar to that of a moderate to severe head injury and in the circumstance a fair and reasonable award for general damages would be in the region of R800 000.00.

[11] The defendant's counsel contended that the severity of the claimant's head injury as argued by her counsel is not supported by any medical evidence except for the report of the clinical psychologist. He further argued that the sequelae cannot only be accident related as the plaintiff experienced a learning difficulty prior to the accident.

[12] The defendant's counsel further challenged the comparable case law referred to by the plaintiff's counsel on the basis that the facts are not similar to the present case. He contended that it is only in the *Matthys* case where the sequelae are more or less similar to the present case discounting the brain injury and the GCS scale. He concluded that an amount of R300 000.00 to R350 000.00 should be able to meet the plaintiff's claim.

[13] According to the neurosurgeon's report, Ms Tlou sustained a mild head injury. However, the clinical psychologist is of the view that based on the sequelae Ms Tlou sustained a moderate to severe head injury.

[14] In as far as the severity of the head injury is concerned I will defer to the report of the neurosurgeon who is an expert in that field.

[15] It is important to note from the outset that although the plaintiff complains of epistaxis, Dr Landman (the neurologist) concluded that the epistaxis is not accident related.

[16] It is also worth mentioning that there is no medical basis supporting epileptic symptoms that Ms Tlou complains about. Neither the neurosurgeon nor the neurologist reports made mention of the epileptic symptoms.

[17] It is however evident from Ms SC Strijdom (the clinical psychologist) and Dr TAS Melapi (the psychiatrist) reports that the plaintiff suffers and will continue to suffer from

severe cognitive impairment.

[18] Although it cannot be said with certainty that the cognitive impairment that the plaintiff demonstrates is wholly as a result of the accident, it is probable if one considers the clinical psychologist's report that the accident has aggravated the plaintiff's pre-morbid cognitive impairment.

[19] The determination of general damage has never been an easy task as there is neither mathematical nor scientific formula or formulation to compute the monetary value on pain and sufferings, loss of amenities of life and disability. See *A A Mutual Insurance Association Ltd v Maqula* 1978 (1) SA 805 (A); *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA) at para [8].

[20] The court has a wide discretion to award what it considers to be a fair and adequate compensation to the injured. Such discretion may be exercised with the guidance of previous awards made in comparable cases. See *Van Dyk v Road Accident Fund* 2003 (5E8) QOD 1 (AF).

[21] It should be noted that the use of comparable cases is not a hard and fast rule that should be strictly applied. Two cases can never be the same, hence the need for judicial adjudication in cases for general damages. See *Road Accident Fund v Marunga* 2003 (5) SA 165 (SCA) 169G-H.

[22] It is trite to mention that the award of general damages must be fair to both the plaintiff and the defendant. See *Pitt v Economic Insurance Company Limited* 1975 (3) SA 284 (N); *Dikoko v Mokhatla* 2007 (1) BCLR 1 (CC).

[23] I have, in addition to the comparable case law stated above, also considered the following case law:

Combrinck v Padongelukkefonds 2001 (5b4) QOD 81 (W)

Madan NO v Road Accident Fund 2012 (6A4) QOD 123 (GSJ)

[24] In the aforementioned cases, the plaintiffs sustained severe brain injuries with neurocognitive and neuropsychological sequelae which are almost similar to the

sequelae of the plaintiff.

[25] In the case of *Combrinck* an amount of R180 000.00 was awarded as general damages of which the current monetary value is R413 000.00. In the case of *Madan*, an amount of R350 000.00 was awarded and the current monetary value is R435 000.00.

[26] Taking into consideration the injuries sustained and *sequelae* thereof, the expert reports filed of record, the comparable case law and arguments, I am satisfied that a fair and just amount for general damages suffered by the plaintiff is R600 000.00.

[27] Counsel for both parties agreed on a draft order, subject to my determination of the quantum on general damages. The awarded amount is inserted in the amended draft order with the rectification of the minor typo relating to the amount awarded for loss of income and/or earning capacity.

[28] Accordingly the amended draft order attached hereto, dated, initialled and marked "X" is made an order of this court.



NONYANE AJ

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

Counsel for the Plaintiff Adv KT Bokaba
Instructed by: Gildenhuys Malatji Incorporated
Counsel for the Defendant : Adv R Rafedile
Instructed by Morare Thobejane Incorporated
Date of trial 5 October 2015
Date of Judgement _ January 2016

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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)
BEFORE THE HONOURABLE MADAM. R NONYANE AJ
HEARD ON THE 05 OCTOBER 2015**

CASE NUMBER: 17225/2011

In the matter of:

ADV. APJ BOUWER N.O

PLAINTIFF

o.b.o PREITY KHABO TLOU

(a major female individual with id number: [...])

and

ROAD ACCIDENT FUND

DEFENDANT

DRAFT COURT ORDER

AFTER HEARING COUNSEL, and by agreement the following order is made:

1.

It is recorded that the Defendant is ordered to be liable for 100 % of the agreed or proven damages of the Plaintiff;

2.

- 2.1. The Defendant is to pay the Plaintiff a Capital Amount of R600 000,00 (Six hundred thousand rand only), in respect of the Plaintiff's claim with regards to general damages, which amount shall be paid into the trust account of Gildenhuis Malatji Incorporated, ABSA Bank, Brooklyn Branch, Account Number [...], Branch Code 335345 under Reference: GERIS MAELANE/01721461;
- 2.2. The Defendant is to pay the Plaintiff a Capital Amount of R375'446.00 (Three-hundred and seventy-five thousand, four-hundred and forty-six Rand), in respect of the Plaintiff's claim with regards to loss of income and/or earning capacity, which amount shall be paid into the trust account of Gildenhuis Malatji Incorporated, ABSA Bank, Brooklyn Branch, Account Number [...], Branch Code 335345 under Reference: GERIS MAELANE/01721461;
- 2.3. The Plaintiff's attorney is ordered to pay the abovementioned amount into an interest-bearing account, pending the appointment of a *curator bonis* for and on behalf of the patient. The Plaintiff's attorney has the right to invest the capital amount and/or utilize the capital amount to pay the necessary expenses and costs on behalf of the patient.
- 2.4. The capital amount shall be paid into the above-mentioned trust account of Gildenhuis Malatji Incorporated within 14 (FOURTEEN) days from the date of this order;
- 2.5. Should the Defendant fail to make payment of the capital within 14 (FOURTEEN) days from the date hereof, the Defendant will be liable for interest on the amount due to the Plaintiff at a rate of 9% per annum, from the 15th (FIFTEENTH) day from the date of this order, to the date of final payment;
- 2.6. The Defendant is to deliver to the Plaintiff an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act No 56 of 1996 , to pay 100% of the Plaintiff's costs of future accommodation in a hospital or nursing home, or treatment of, or rendering of a service or supplying of goods to him, arising out of the injuries sustained by him on 26 March 2006 in the motor vehicle collision aforesaid motor vehicle accident, and to pay after such costs have been incurred and upon proof thereof;

The Defendant is ordered to pay all the Plaintiffs attorneys costs of suit in respect of the determination of merits and quantum on the High Court party and party scale up to date hereof, which costs include (but not be limited to):

- 3.1. The costs of attending to the examinations and obtaining all the medico-legal-, and actuarial reports, addendum reports, as well as the qualifying- and reservation fees and court attendances (if any), of specifically (but not limited to) the following experts:
 - 3.1.1. Report by Ms S C Strijdom, Clinical Psychologist;
 - 3.1.2. Report by Dr. S Richards, Educational Psychologist;
 - 3.1.3. Report by Dr. Nadir Kana, Ear, nose and throat specialist;
 - 3.1.4. Report by Nomsa Sibanyoni, Occupational Therapist;
 - 3.1.5. Report by Dr. Jaffar A Azhar, Neurosurgeon;
 - 3.1.6. Report by Dr. A Landman, Neurologist;
 - 3.1.7. Report by Dr. T Mann, Ophthalmologist;
 - 3.1.8. Report by David De Vlamingh, Industrial Psychologist;
 - 3.1.9. Report by Dr. TAS Melapi, Psychiatrist;
 - 3.1.10. Report by Dr. M Haffejee, Urologist;
 - 3.1.11. Report by Mr J Potgieter, Actuary;
 - 3.1.12. Report by Dr F Peters, Orthopaedic Expert.
 - 3.1.13. The costs of any radiologists used by the aforementioned experts.
- 3.2. The costs of the preparation of 6 trial bundles as per the Directive issued by DJP W van der Merwe and as agreed upon in the Pre-Trial Minutes;
- 3.3. The costs of counsel;
- 3.4. The costs and fees of and consequent to the appointment of the *curator ad item*, which costs and fees shall include, but not be limited to, perusal, preparation of his report and for trial, consultation(s) and his full day fee for 05 October 2015;

4.

Should the Defendant fail to pay the Plaintiff's party & party costs as taxed or agreed with 14 (fourteen) days from the date of taxation, alternatively date of settlement of such

costs, the Defendant shall be liable to pay interest at a rate of 9% per annum, such costs as from and including the date of taxation, alternatively the date of settlement of such costs up to and including the date of final payment thereof.

5.

The Plaintiff shall, in the event that the parties are not in agreement as to the costs referred to in paragraph 4 above, serve the notice of taxation on the Defendant's attorneys and shall allow the Defendant seven court days to make payment of the taxed costs.

6.

The Defendant shall pay the agreed or taxed party & party costs, within the period of 14 (fourteen) days from taxation along with all interest incurred, into the trust account of the Plaintiff's Attorneys of Record, Messrs Gildenhuys Malatji Inc, ABSA Bank, Brooklyn Branch, Account Number [...], Branch Code 335345 under Reference: GERIS MAELANE/01721461;

BY ORDER OF THE COURT

REGISTRAR OF THE HIGH COURT PRETORIA

Obo Plaintiff

Adv. KT Bokaba (Pretoria Bar)

Adv. APJ Boucher (*curator ad item*)

TEL: 012 424 4000

Obo Defendant

Adv. R Rafedile

TEL: 012 424 4000

W: 925

“X”

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(GAUTENG DIVISION, PRETORIA)
BEFORE THE HONOURABLE MADAM. R NONYANE AJ
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(a major female individual with i d number: [...])
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REGISTRAR OF THE HIGH COURT PRETORIA

Obo Plaintiff

Adv. KT Bokaba (Pretoria Bar)

Adv. APJ Boucher (*curator ad item*)

TEL: 012 424 4000

Obo Defendant

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