

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

CASE NO.: 51326/2012

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED

27/05/2016

In the matter between:

Adv MVAN ROOYEN N.O. obo A OPPERMAN

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

VANDERWESTHUIZEN, AJ

1. This is an action for damages in respect of bodily injuries suffered by Ms A Opperman, the initial plaintiff, due to a motor collision. The defendant has conceded the merits and negligence is no longer in issue.
2. When the matter was called, counsel for the plaintiff advised that a *curator ad litem* has been appointed for the plaintiff who has been consulted on some of the damages issues still to be decided. An application for substitution in respect of the *curator ad litem* for Ms Opperman was moved by agreement, and granted.

3. An amendment to the plaintiff's particulars of claim was also moved, which was unopposed by the defendant. The amendment was granted.
4. I was further advised that issues under the rubrics of estimated future medical hospital and related expenditure and past medical expenses had previously been settled between the parties and that the issues under the rubric past and future loss of earnings and earning capacity became settled prior to the matter being heard today.
5. In this regard, the parties are agreed on:
 - (a) Estimated future medical hospital and related expenditure - Article 17(4)(a) undertaking;
 - (b) Past medical expenses - R69 352.41;
 - (c) Past and Future loss of earnings and earning capacity - R513 670.00
6. That left only issue of general damages to be determined today. In this respect, counsel for the plaintiff and the defendant indicated that no *viva voce* evidence would be led and that the parties agreed to argue that issue with reference to the reports of expert evidence by various medical experts and the joint minutes by Drs J L Flemming, G Marus, Ms E Tromp, Mr Mallinson, Ms Hudson and Ms M Beukes.
7. There was no disagreement between the aforementioned experts in their respective joint minutes. All were agreed as to the injuries and the subsequent *sequelae* suffered by Ms Opperman.
8. In respect of authorities relating to the *quantum* in respect of general damages, counsel for plaintiff relied upon an unreported judgment in the matter *Corinne Nicola Scholtz v Road Accident Fund* delivered under case no. 2001/21401 in the Witwatersrand Local Division by van Oosten, J., during 2006. Counsel for the defendant in addition to

the aforementioned judgment, relied upon the unreported judgment in the matter *Bhekisisa Simon Dlamini v Road Accident Fund* under case no. 59188/13 in this Division, by Mali, AJ on 3 September 2015. There is an apparent dearth of authority in respect of the particular injuries and *sequelae* thereof relevant to this matter.

9. Before dealing with the issue of *quantum*, it would be prudent to summarise the injuries and *sequelae* thereof suffered by Ms Opperman.
10. In terms of the joint minutes, Ms Opperman suffered, as a result of the collision:
 - (a) Soft tissue hyperextension injury cervical spine;
 - (b) Left carotid occlusion with left middle cerebral artery infarct;
 - (c) Vertebral artery injury with right occipital lobe infarct; and
 - (d) Bilateral foot drop.
11. It is common cause that Ms Opperman prior to the collision was an Insulin Dependent Diabetic. This pre-condition was *inter alia* the diverging cause between the parties in respect of the *quantum* under the rubric: general damages. I shall deal with this issue later in this judgment.
12. Drs Flemming (on behalf of the defendant) and Marus (on behalf of the plaintiff) are agreed that the neurological disabilities suffered by Ms Opperman and that are accident related are:
 - (a) Cognitive Disability - with cognitive limitations, speech impediment and also appears to have limited insight into her current condition;
 - (b) Risk of Epilepsy – although no seizure has occurred, there is potential risk in future;

- (c) Visual impairment – from the cerebral stroke, it would be expected that Ms Opperman to have a left homonymous hemianopia;
 - (d) Motor Impairment - Ms Opperman has bilateral foot drop.
- 13. In addition, it was found that Ms Opperman suffered impairment in her hearing. Counsel for the defendant did not dispute this *sequela*.
- 14. Counsel for the defendant did not dispute any of the foregoing, but premised his submissions in respect of the *quantum* upon the pre-existing condition of Insulin Dependent Diabetes from which Ms Opperman suffered.
- 15. In this regard, counsel for the defendant submitted that according to the reports, the diabetes was not properly controlled prior to the collision and thus contributed to the *sequelae* that have presented and further submitted that the diabetes could have been the trigger to the two strokes that Ms Opperman suffered.
- 16. However, these submissions are not supported by any of the experts that filed reports on behalf of the defendant. In this regard, the joint minutes by Drs Flemming and Marus are clear and unequivocal. I have already dealt with that above. Furthermore, Dr Flemming on behalf of the defendant states in his report, when dealing with the pre-existing diabetes, the following:

"Further questioning, which is perhaps academic, is to what extent her underlying diabetes could have contributed to this end (the strokes). This may well be but I do not believe that this has any practical effect on the merits of the case."
- 17. In my view, the joint minutes of Drs Flemming and Marus and the abovementioned comment by Dr Flemming clearly gainsays the above submissions by counsel for the defendant.

18. I find that the injuries and the subsequent *sequelae* suffered by Ms Opperman are related to the collision and not to the pre-existing diabetes.
19. It follows that the pre-existing condition of Insulin Dependant Diabetes is not a factor to be considered when deciding the issue of the *quantum* in respect of the rubric: general damages.
20. Counsel are agreed that the injuries and *sequelae* have a severe impact upon the post-collision life of Ms Opperman. Further in this regard the experts are agreed that Ms Opperman will not be able to be employed, attend to her own affairs and her person and that a *curator* should be appointed to assist. It is also common cause between all the experts that Ms Opperman would not be able to live independently on her own. Further in this regard, Ms van Rooyen, who is the presently appointed *curator ad litem*, has indicated that she would independently investigate these issues and advise accordingly in respect of such appointment. I need not consider that issue further.
21. There remains the vexed issue of *quantum* in respect of general damages. I am mindful to the caution expressed in *De Jong v Du Pisani N.O.*¹ where it was said that the award is to be fair to both parties and that it must give just compensation to the plaintiff, in all fairness to the defendant.
22. Mr van Jaarsveld on behalf of the plaintiff submitted with reference to the judgment in *Scholtz v RAF* referred to above, that an amount of R1, 4 million would be fair and just compensation. In that matter, an amount of R800 000.00 was awarded in 2006 and would translate today to an amount of R 1 465 000.00.

¹ 2005(5) SA 457 (SCA) at [60]

23. On behalf of the defendant, Mr Rangata submitted that an amount of R1 000 000.00 would suffice and such amount was tendered. In this regard, Mr Rangata relied upon the judgments in *Dlamini v RAF* referred to above and on the judgments in *Adlem v RAF* 2003(5) C & BJ 2-41 and *Radebe v RAF* (2013).
24. In the matter of *Dlamini* an amount of R1 350 000.00 was awarded. In *Adlem*, an amount of R400 000.00 was awarded that would translate into an amount of R600 000.00 today.
25. Mr Rangata further submitted that the injuries and *sequelae* in the abovementioned cases were more severe than in the present case, bearing in mind the pre-existing condition of Ms Opperman. I have already found that that pre-existing condition is not a factor to be taken into consideration when determining the *quantum in casu*.
26. I am of the view that due to the common cause facts that Ms Opperman could not be employed, attend to her own affairs and her person and that in all probability a *curator* would be appointed to assist in that regard, and further that she had suffered two strokes due to the injuries sustained in the collision, there is no distinguishing to be applied *vis-a-vis* the cases relied upon by Mr Rangata.
27. It follows that an amount of R1 300 000.00 would be fair and reasonable in respect general damages.
28. I grant the following order:
 - (a) Defendant shall pay to Plaintiff (on behalf of AMANDA OPPERMAN — with Identity number: [...]
- hereinafter referred to as "the patient") the amount of R1 883 022.41 (One million eight hundred and eighty three thousand and twenty 22 rand and forty one cents) into the

trust account of the Plaintiff's attorneys, Gerhard Von Wielligh Attorney, First National Bank - Ermelo, Branch Code: 270 344, Account Number: [...];

- (b) Defendant shall provide an undertaking in terms of section 17(4)(a) of Act 56 of 1996 for the costs of the future accommodation of the patient in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to her after such costs have been incurred and upon proof thereof and where such costs relate to the injuries sustained by the patient in the collision of 28 July 2011;
- (c) Defendant shall pay Plaintiff's party and party costs, inclusive of both trial dates 11 May 2016 and 20 May 2016, on the High Court scale such costs to include:
 - (i) Costs of senior-junior counsel;
 - (ii) The qualifying and preparation fees (if any, and as determined by the Taxing Master) and the costs of the reports of those experts of which the Plaintiff has given notice and/or whose reports are in the Defendant's possession;
 - (iii) Travelling costs and expenses for the patient to attend all the medico-legal specialist appointments;
 - (iv) Travelling costs and expenses for the patient to attend the Court as necessary witness;
 - (v) The costs of the *curatrix ad litem*, Adv M van Rooyen, including court attendances, travelling and preparation of her report.

- (d) The Plaintiff shall, in the event that costs are not agreed between the Defendant and the Plaintiff's attorneys, serve a notice of taxation on the Defendant's attorney of record and shall allow the Defendant 14 (FOURTEEN) court days within which to make payment of such costs.
- (e) Following agreement on or taxation of the party and party costs, the Plaintiff shall allow the Defendant 14 (FOURTEEN) court days after allocator has been made available to the Defendant, to make payment of the taxed or agreed party and party costs.


C J VAN DER WESTHUIZEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION

On behalf of Plaintiff:
Instructed by:

C van Jaarsveld
Gerhard von Wielligh Attorneys

On behalf of Defendant:
Instructed by:

M S Rangata
Brian Ramaboa Inc.