

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

**CASE NO.:1663/2015**

9/9/2016

Not reportable

Not of interest to other judges

Revised.

In the matter between:

**OOSTHIZEN, KJ**

Plaintiff

and

**THE ROAD ACCIDENT FUND**

Defendant

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**JUDGMENT**

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**HUGHES J:**

[1] In this matter the aspect of liability has been conceded by the defendant granting 100% in favour of the plaintiff's proven damages. The defendant has provided an undertaking in terms of section 17(4) of the Road Accident Fund Act 56 of 1996 allowing for 100% of this head of the future medical expenses. By agreement the issue of past and future loss of earnings is adjourned sine die. The issue for determination by this court is that of general damages.

[2] This trial was initially scheduled for Tuesday 9 August 2016 however no allocation was made until 12 August 2016. The parties advised that their argument would be based solely on the medical reports which were filed in respect of general damages.

[3] The plaintiff was 24 years of age when he was injured as a result of a motor vehicle collision on 16 February 2014. The parties have agreed that the injuries sustained by the plaintiff and the sequelae are as set out below:

- 3.1. Compression fracture of the L3 vertebra. Resultant in pain in the lumbar spinal area. Chance of surgical treatment is a 60% to 70%. The plaintiff will have to undergo a lumbar spinal fusion.
- 3.2. Soft tissue injury to the right ankle with scarring and equinus deformity of the ankle. The Plaintiff would benefit from surgery to correct the scarring and equinus.
- 3.3. Post concussive syndrome, post-traumatic stress disorder, avoidant personality disorder.

[4] From the outset Adv Granova, for the plaintiff, pointed out that she was instructed to persist with a claim of R700 000 for compensation in respect of general damages. To this end she proceeded to make reference to a host of cases dealing with each individual injury.

[5] Adv Phahlamohlaka for the Defendant stressed that was not the correct procedure to be adopted when one assesses a claimant with various injuries. He argued that the injuries should be looked at cumulatively taking into account the cumulative effect of the sequelae on the individual claimant.

[6] The assessment of general damages is one that is reliant on looking at awards in comparable cases and assessing the pattern of such awards over time. It was said in *Mpondo v The Road Accident Fund 2011 JDR 0708 (ECG)*:

"It is not enough to compare the general nature of the injuries; all factors affecting the assessment of damages must be taken into account. Once it is established that the circumstances are sufficiently comparable, then such cases are to be used to provide a general

yardstick to assist the court in arriving at an award 'not substantially out of general accord with previous awards in broadly similar cases'."

[7] On my assessment of the reports the orthopaedic surgeons, Dr Kumbirai and Dr Tshitake, both document that the plaintiff suffered acute severe pain as a result of his injuries for about at least four weeks after the accident then moderate pain thereafter. They concur that the back pain experienced by the plaintiff is as a result of the compression fracture sustained and that he will in all likelihood experience such pain for the remainder of his life. The orthopaedic surgeons further concur that it would be beneficial for the Plaintiff to have conservative treatment in the form of analgesic and non-steroidal anti-inflammatory medication. The eventuality was that he would require a lumbar spinal fusion to correct and prevent kyphotic deformity progression, relieve pain and improve his quality of life. The soft tissue injury of the right ankle is not so eventful as it has healed satisfactory and there was an unlikelihood of future surgical procedures, but for, the scarring and the equinus. The benefit would be bracing of the right ankle to improve the bio - mechanics of the lower limb and correcting the deformity.

[8] Dr. Mabaso, the clinical psychologist makes a finding that the plaintiff's headaches are as a result of the mild brain injury which he suffered, (difficulty thinking, memory problems and frustration). The good doctor typifies this as post concussive syndrome, with post-traumatic stress disorder and avoidant personality disorder.

[9] I am mindful of the fact that the only dispute between the parties lies with the amount to be awarded to the plaintiff for general damages. I take heed of the warning provided by Holmes R in *Pitt v Economic Insurance Co Ltd 1957 (3) SA 284 at C*, where he stated:

"The Court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense".

Together with that stated by Eksteen J in *Ambrose v Road Accident Fund 2011(6C4) QOD 13 (ECP) at [48]*:

"General damages: In assessing an award for general damages the court has a broad discretion to award what it considers to be fair and adequate compensation. The court will generally be guided by awards previously made in comparable cases and will be alive to the tendency for awards to be higher in recent years than was previously the case. (Compare *De Jongh v Du Pisanie NO 2005 (5) SA 457 (SCA) 457D-E*). In considering previous awards it is appropriate to have regard to the depreciating value of money due to the ravages of inflation. It would however be inappropriate to escalate such awards by a slavish application of the consumer price index. (See *AA Onderlinge Assuransie Assosiasie Bpk v Sodoms 1980 (3) SA 134 (A).*) "

[10] As I indicated above I was referred to a host of cases by both counsel, especially so by Ms Granova who painstakingly attributed a number of cases for each of the three injuries and their sequelae. I do not intend to go through an analysis of all these cases save to say that I have had regard to the facts of these cases, the awards made then and the award in current terms. In fairness to both plaintiff and defendant I do not intend to go contra to that suggested in *Pitt supra*. In my assessment a fair amount to be allocated for the injuries of the plaintiff is an amount of R550 000.00.

[11] Consequently the following order is made:

11.1. The defendant, the Road Accident Fund, shall pay the plaintiff, Kegan Jermaine Oosthuizen, the sum of R550 000.00 in respect of general damages.

11.2. The order annexed as "X" is made an order of court.

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W. Hughes

Judge of the High Court

**Appearances:**

For the Plaintiff: Adv. A. Granova

Instructed by: Jacobus Attorneys

For the Defendant: Adv. K. Phahlamohlaka

Instructed by: Mathipe Tsebane Attorneys

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

On this the 9 September 2016

Before the Honourable Justice Hughes

**CASE NO.: 1663/2015**

In the matter between:

**OOSTHUIZEN, KJ**

Plaintiff

-&-

**THE ROAD ACCIDENT FUND**

Defendant

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**ORDER**

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By agreement between the parties, it is ordered that:

- 1.1. The Defendant is to pay to the Plaintiff the sum of R550 000.00 (five hundred and fifty thousand rands only) in respect of general damages only ("the capital sum") within 14 days from date of this order. ("the payment date") into the Plaintiff's attorney's trust banking account (Jacobus Attorneys Trust Account) of the Plaintiff's attorney (account number ...) with branch no (branch code 010045) of the Standard Bank of South Africa, Reference number: AB Jacobus/A01170;
- 1.2. Interest on the capital sum at the prescribed rate of 10.25% per annum, calculated:

- 1.2.1. from the date following the payment date;
  - 1.2.2. to the date of final payment,  
in the event of the Defendant failing to effect payment of the capital sum by the payment date;
- 1.3. The Plaintiff's taxed (or agreed) party and party costs for both trial dates being on 2 and 12 August 2016:
  - 1.3.1. Including (but not limited to) the costs of all the Plaintiff's expert reports (and addendums thereto, if any), joint minutes as well as reservation and/or preparation fees, if any;
  - 1.3.2. The Plaintiff's experts included but not limited to:
    - 1.3.2.1. Dr LF Mabasa;
    - 1.3.2.2. Dr PT Kumbirai;
    - 1.3.2.3. Ms Frizelna Steyn;
    - 1.3.2.4. Dr K Ramjee;
    - 1.3.2.5. Frizelna Steyn;
    - 1.3.2.6. Prof PL Lekgwara;
    - 1.3.2.7. GRS Actuaries.
- 1.4. Costs of Plaintiff's Senior-Junior Counsel at full rate as well as reasonable costs for plaintiff's attorney in respect of settlement negotiations for both trial dates on 02 & 12 August 2016 as well as copies and preparation for defendant's trial bundle.
- 1.5. The travel costs and time for conveying plaintiff to defendant's expert assessments in terms of defendant's Rule 36 notices.
- 1.6. Plaintiff's costs for preparing and copies of the trial bundles.
- 1.7. The Plaintiff shall:
  - 1.7.1. serve the Notice of Taxation on the Defendant's attorneys of record, in the event that such costs are not agreed;
  - 1.7.2. allow the Defendant ten (10) court days to make payment of the taxed costs, by electronic fund transfer into the trust banking account (Jacobus

Attorneys Trust Account) of the Plaintiff's attorney (account number ...) with branch no (branch code 010045) of the Standard Bank of South Africa, Reference number: Jacobus/AOII70;

2. The Defendant is to furnish the Plaintiff with an undertaking as envisaged in Section 17(4)(a) of the Road Accident Fund Act, No. 56 of 1996, as amended, to the effect that the Defendant shall compensate the Plaintiff in respect of 100% of the costs of:

- 2.1. the future accommodation of the Plaintiff in a hospital or nursing home;
- 2.2. the treatment of the Plaintiff;
- 2.3. the rendering of a service to the Plaintiff; and
- 2.4. the supplying of goods to the Plaintiff,

after such costs have been incurred and on proof thereof, arising from the injuries sustained by the Plaintiff, which forms the subject matter of this action.

3. The issue of quantum to be postponed *sine die*.

BY ORDER

REGISTRAR