



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

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED
DATE 19-11-2019 SIGNATURE [Signature]

Case no.: A828/2016

In the matter between: -

COUTRIERS, FRANCIS DEBRA

Appellant

And

ROAD ACCIDENT FUND

Respondent

JUDGMENT

NE NKOSI AJ

[1] This is an appeal against the part of the judgment and order granted by the Court *a quo*. The appeal emanates from the action instituted by the Appellant against the Road Accident Fund ("the Respondent"). The Appellant was awarded R400 000.00 in general damages and the purpose of this appeal is to increase that amount¹. The appeal is unopposed.

[2] The Appellant, a 58 year old woman was a passenger in a motor vehicle which was involved in a collision on the 11th of April 2009. Her injuries are well documented in Dr Theo Enslin's detailed report dated 3 November 2010 and are as follows:

- a) a minor head injury;
- b) a closed fracture of the left tibia and fibula;
- c) an open fracture of right tibia and fibula;
- d) a closed bimalleolar fracture of the left ankle;
- e) a fracture of the medial malleolus of the right ankle;
- f) a fracture of the head of the second metatarsal bone of the left foot (Lisfranc type fracture); and
- g) a fracture of the right ankle.

[3] She was taken by ambulance to the Steve Biko Academic Hospital where she was admitted on the 12th of April 2009. Bilateral external fixators were applied to the lower limbs and a debridement of the right tibia fracture was performed. A Steinman pin was inserted through the left calcaneus for skelton traction. An intermedullary nail was inserted into the right tibia, an open reduction and internal fixation on the right medial malleolus was performed and the open wound on the medial distal right tibia was debrided and sutured on the 15th of April 2009. She attended physiotherapy and was discharged on the 17th of April 2009.

[4] She attended a follow up consultation on the 14th of May 2009 for replacement of the right plaster of paris while the plaster of paris on the left leg was left in situ. She was readmitted to the Steve Biko Academic Hospital due to sepsis in the left tibia. The calcaneal pin on the left foot was removed and a debridement of the left ankle and left foot was performed. A drug resistant staphylococcus was found and treated with intravenous antibiotic. She was in hospital for approximately five weeks.

¹ To an amount of between R500 000.00 and R600 000.00

[5] The medical treatment as set out supra, was followed by several consultations at the same hospital where the external fixator on her left leg was removed on the 19th of December 2009 and debridement of the left leg was performed on the 25th of January 2010. Since then, she has been using an ankle brace and two crutches to aid her with walking. She is unable to walk without the crutches.

[6] There appears to be very little, if any, disagreement between the parties' respective expert witnesses regarding the nature, extent and sequelae of the injuries sustained by the Appellant.

[7] She remains with a severe and painful deformity of the left leg and ankle making it unable to bear weight on the lower extremity. She is therefore compelled to use crutches to walk. She has a marked *equinovarus* deformity of the left lower ankle with a fixed *equinos* position at 35 degrees celsius and a very stiff mid tarsal joint on the left foot, loss of sensation on the 4th and 5th toes of the left foot, chronic infection in the left foot, leg length discrepancy which has resulted in a loss of ability to work. She also suffered from severe depression.

[8] The Appellant initially claimed R400 000.00 for general damages in her particulars of claim. She subsequently effected an amendment to increase her claim to R600 000.00 for general damages. It would seem, the Honourable Khumalo AJ (as she then was) was not aware of the amendment when the judgement was handed down. This appears from the following extract:

"Counsel argued that if Plaintiff's case is compared to these cases her injuries were serious and severe as in these cases and she experienced nearly the same kind of pain and suffering that it would be appropriate if an amount between R500 000.00 and R600 000.00 can be awarded. This was submitted notwithstanding that the particulars of claim refer to an amount of R400 000.00 and no amendment has been delivered or applied for to amend the amount to an amount being proposed by Plaintiff's counsel"². (my emphasis)

[9] It is common cause that an amendment was indeed effected before judgment, but for some reason, was not before Khumalo AJ at that time. The only material

² Page 11 para 20 of the Judgement.

question thus to be determined in this appeal is whether the amount of R400 000.00 should be increased in the circumstances of this case.

[10] I am of the view that the Khumalo AJ would in all likelihood have awarded an amount higher than R400 000.00 had she been aware of the amendment. This is clear from the circumstances of the matter and the judgment read as a whole.

[11] The Court *a quo* was referred to the decision of **Rademeyer v Rondalia Assurance Corporation of South Africa Ltd**³, **Keuning NO v London and South Scottish Assurance Corporation Ltd**⁴ and **Legal and General Assurance Society Ltd v Liberum**⁵. I agree with Khumalo AJ that Plaintiff suffered as much pain as plaintiffs in the authorities referred to above. She still endures pain and suffering. The extent of her injuries is elevated into the same status as the above cases mainly because she is left with severe depression resulting in multiple personality changes, an inability to work, permanent disablement and disfigurement.

[12] In **Rademeyer NO** (supra) an amount of R583 000.00 in 2013 monetary value was awarded, whereas in **Keuning** (supra) and **Legal and General Assurance Society Ltd** (supra), R538 000.00 and R537 000.00 respectively was awarded⁶. Given these guidelines I have come to the conclusion that an amount of R550 000.00 is a reasonable and just compensation for Appellant's claim for general damages.

[13] I therefore order that:

1. The appeal is upheld.
2. The order of the Court *a quo* awarding the Appellant R400 000.00 for general damages is set aside and replaced with the following:

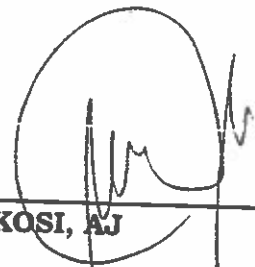
³ **Rademeyer v Rondalia Assurance Corporation of South Africa Ltd** 1968(2E4) QOD 46 (E).

⁴ **Keuning NO v London and South Scottish Assurance Corporation Ltd** 1963(1EA) QOD 464 (D).

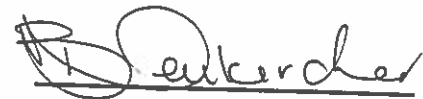
⁵ **Legal and General Assurance Society Ltd v Liberum** 1967(1E6) QOD 773 (A).

⁶ Reflected in 2013 monetary terms.

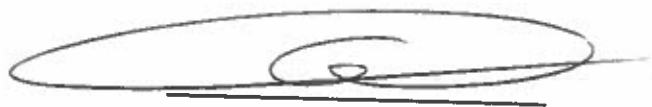
- a) Plaintiff is awarded the sum of R550 000.00 in respect of her claim for general damages; and
- b) The Defendant is ordered to pay the costs of the appeal.


NKOSI, AJ
Acting judge of the
High Court

I agree


NEUKIRCHER, J
Judge of the High Court

I agree


WANLESS, AJ
Acting Judge of the
High Court

Date of Hearing	: 30 October 2019
Date of Judgement	: November 2019
For the Appellant	: Advocate L Schreuder
Instructed by	: Jacobus Attorneys
For the Respondent	: Mr. G.T. Selepe
Instructed by	: Matabane Incorporated (RAF)