

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

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

CASE NO: 88979/2015

22/5/2019

In the matter between:

AMANDA BOSTELMANN

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

KUBUSHI J

[1] The plaintiff, Amanda Bostelmann, an adult female, who was the driver of one of the motor vehicles that were involved in a motor vehicle collision, was seriously injured in that collision. She is now claiming compensation for damages for such injuries from the Road Accident Fund. The plaintiff was 43 years old at the time of the accident.

[2] The merits part of the claim was settled at 100% in favour of the plaintiff. What remains to be decided is *quantum*, that is, damages for: past medical and

hospital expenses, future medical and hospital expenses, general damages and future loss of earnings/earning capacity.

[3] The parties agreed to argue the matter on the reports of the experts. No witnesses are to be called. Some of the expert witnesses have joint minutes (Exhibit "A"): the orthopaedic surgeons, psychologists and industrial psychologists. The defendant admits any of the uncontested medical reports of the plaintiff's experts (Exhibit "B"): the psychiatrist's report, plastic reconstructive surgeon's report and ophthalmologist's report. The photographs depicting the plaintiff's scarring are also admitted (Exhibit "C").

INJURIES SUSTAINED

[4] The parties are agreed about the injuries the plaintiff suffered as a result of the collision and the *sequelae* thereof. The injuries suffered by the plaintiff at the time are: injuries to the sternum, right patella and right ankle, whiplash injury to the neck, injury to the left eye which required an operation and mild concussion. She still requires surgery in the future for: the removal of the internal fixation from the right ankle and a synovectomy; synovectomy and arthroscopic debridement of the right knee, surgical stabilisation of the cervical spine and plastic and reconstructive surgery.

[5] Over and above the plaintiffs physical injuries she also suffered psychogenic shock. In terms of the joint minutes between the three psychologists mandated to assess the plaintiff, there is agreement that the plaintiff sustained a mild concussion which resulted in chronic severe major depressive mood disorder due to a combination of the following factors: her grief about the tragic loss of her daughter (the daughter was travelling with her at the time of the accident and the daughter suffered fatal head injuries) and associated guilt; her distress about her deteriorated physical condition and chronic pain symptoms; her requirements to give up recreational activity and job opportunities because of physical limitations; her self-consciousness about the cosmetic changes and psychological vulnerability at the time of the accident due to her father's suicide a month before.

OCCUPATION

[6] The occupational therapists are agreed that the plaintiff had a work history of administrative/secretarial/supervisory work and farming work. Her work history included sedentary to very heavy demand, ranging from semi-skilled to skilled work from an assistant level to a management level. She was a motivated high-performing individual with strong physical capability and good managerial qualities that could be applied in various industries. Functional Capacity Evaluation now indicates residual physical limitations related to her spine and right leg. She now meets the physical demands of work in the light category, as well as aspects of medium work. But, in order to preserve the cervical spine, right knee and right ankle she must refrain from doing work that exceeds light physical demands and from long static posturing. Her physical ability is said to be no longer in keeping with the pre-accident work history. She is no longer suited to farm work or manual labour work. The work she can now do must not put strain to her neck, upper limbs or her right knee and ankle. Even following successful interventions, she will no longer return to her pre-accident level of physical ability.

[7] The plaintiff is presently employed in a sympathetic position working for Claassen Makelaars doing general administrative duties, including booking of appointments, loading claims onto the system and responding to emails and telephone calls. She works flexi hours - 3 to 4 hours intermittently *per* day and most of her work is computer based/telephonic communication. She has to take frequent brakes, due to excessive neck pain, right shoulder pain and right leg pain. She cannot work more than 30 to 40 minutes at a time. She did not report anticipated changes to her work situation and seems to be coping as best she can in her current situation given her level of pain and discomfort. One of the findings of the occupational therapist is that the plaintiff may be best suited to working flexi-time from home as she is currently doing.

[8] The industrial psychologists in their joint minutes opine that the plaintiff would have continued working until the age of 65 years. But for the accident she would have continued working as an assistant at First Potato Dynamics and by 2014 would have secured a position as a manager, as the work was in line with her passion and experience.

[9] The industrial psychologists are, however, not agreed as to whether, post-morbid, the plaintiff would be able to continue work until the age of 65 years taking her compromised situation into account. In the opinion of her industrial psychologist, the plaintiff will only be able to work until the age of 60 years and that is if she continues working at Claassen Makelaars because the compulsory age of retirement at this place is 60 years. The contention is that due to her compromised situation she can only now be employed sympathetically in order to accommodate her limited capabilities.

[10] The defendant's industrial psychologist is, however, of the opinion that even given her compromised position, the plaintiff can still work until the age of 65 years.

[11] By agreement between the parties the following heads of damages are not in dispute:

- 11.1 Past medical and hospital expenses in the amount of R180 535, 48;
- 11.2 Future medical and hospital expenses: an undertaking in terms of section 17 (4) of the Road Accident Fund Act, is to be furnished to the plaintiff; and
- 11.3 General Damages in the amount of R870 000.

What remain in dispute are only damages for loss of earnings/earning capacity.

[12] In conceding that the amount of R870 000 for general damages is fair and reasonable, the defendant's counsel referred me to a number of judgments in support of her argument. The said judgments are: *Siwayi v MEC of Health*¹ where a female claimant was awarded R250 000 in 2018 which translates presently to R253 923; *Walter v Minister of Safety and Security*² where in 2012 an amount of R185 000 which today translates to R263 269 was awarded and *Mart v Minister of Police*³ where in 2013 an amount of R200 000 which translates to R269 019 in the present, was awarded.

¹ QOD 7 K3-26.

² QOD 6 K3-11 .

³ 4/2013 QOD 16 K3-24.

[13] Counsel's contention was that it is trite that when looking at cases courts look at the totality of facts and do not award piecemeal. As such, the totality of the injuries and *sequelae* are taken as a whole and a global amount awarded. Therefore, the injuries sustained by the plaintiff, future possibility of surgery, the constant pain and the continued psychotherapy that she must undergo to treat the psychogenic shock should be taken as a whole in awarding the damages.

LOSS OF EARNINGS

[14] The actuary has made calculation based on the opinion of the industrial psychologists. The calculations are on two bases. The calculations in Base 1 are in the event the plaintiff retires at the age of 60 years whereas Base 2 is in case she retires at the age of 65 years. The parties are in dispute in this regard. The contingencies applied to the calculations both pre-morbid and post-morbid are uncontested and accepted as reasonable in the circumstances.

[15] The basis of the calculation, which is also uncontested, is founded on the fact that but for the accident the plaintiff should have been appointed a farm manager and earned more than what she is presently earning and that she is no longer able to be employed on a full time basis.

[16] The argument by the plaintiff's counsel is that Base1 is more reasonable between the two and if not the average between the two Bases should be applied. The contention being that the plaintiff is employed where the compulsory age of retirement is 60 years and there are no indications that she might find employment elsewhere given her compromised status. To the contrary, the defendant's counsel argues that it is probable that the plaintiff can be employed until she retires at the age of 65 years. I am more inclined to accept the argument that the plaintiff will work until the age of 60 years. Like the plaintiff's counsel notes, the plaintiff is presently employed where she will be forced to retire at the age of 60 years and from the available evidence, there is no indication that she will find alternative work somewhere where she can be sympathetically employed and work until she retires at the age of 65 years. The defendant's counsel, on a

question from the bench, was unable to advance any argument which could indicate the probability of the plaintiff being employed elsewhere other than where she is currently sympathetically employed.

[17] I am, therefore, satisfied that the plaintiff is entitled to the amount stated in Base 1 of the actuarial calculations. But, on consideration that the calculations are broadly speculative, it is my view that the average amount between the two base calculations ought to be awarded to compensate the plaintiff for loss of earnings. The plaintiff is, thus, entitled to the following award in total:

General Damages	R 870 000
Past medical and hospital expenses	180 535, 48
Loss of earnings/earning capacity	<u>4 290 782, 50</u>
Total	5 341 317, 98

In addition, and as offered, the defendant must furnish the plaintiff with a section 17 (4) certificate for all future medical and hospital related expenses.

[18] In the circumstances I make the following order-

1. The Draft Order marked 'xx' is made an order of court.

E.M KUBUSHI

JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for Plaintiff	: Adv. M. Fourie
Instructed by	: Jaco Roos Inc

Attorney for Defendant : Adv. J. Rabaji
Instructed by : Maluleke Mslmang & Associates

Date heard : 10 May 2019
Date of judgment : 22 May 2019

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

Case Number: **88979/2015**

22ND OF MAY 2019

Before: Honourable Ms. Kubushi J

In the matter between:

AMANDA BOSTELMANN

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

ORDER

After hearing the legal representatives of the parties, an order is hereby granted in the following terms:

1. The Defendant is ordered to pay the capital amount of **R5 341 217,98** **(Five Million Three Hundred and Forty One Thousand Three Hundred and Seventeen Rand Ninety Eight Cents)** to the Plaintiff's Attorneys of record (Jaco Roos Inc.) on or before the **5TH OF JUNE 2019** the details of which are as follows :-

Account holder:	Jaco Roos Incorporated
Bank:	ABSA Bank
Branch:	Menlyn Pretoria
Branch Number:	632 005

Account Number: [....]
VENDOR NUMBER: **6031055**
Type of account: **Trust account**
Reference No.: **Ms M Labuschagne/81536**

2. Should the Defendant fail to pay the said amount to the Plaintiff as ordered above, the Defendant will be liable to pay interest to the Plaintiff on the said amount at a rate of 10.00% per annum, calculated from the date of the Order to the date of payment thereof;
3. The Defendant is ordered to, on or before the **28TH OF JULY 2019**, provide the Plaintiff with a written undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, for **100%** for the costs of the future accommodation of the Plaintiff, in a hospital or nursing home or treatment of or rendering of a service to her or supplying of goods to her arising out of the injuries sustained by her in the motor vehicle collision that occurred on the 19th of April 2013, in terms of which undertaking the Defendant is obliged to compensate the Plaintiff in respect of the said costs after the costs have been incurred and upon proof thereof;
4. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, which costs shall *inter alia* include but not limited to and subjected to the discretion of the Taxing Master: -
 - 4.1 The costs consequent upon obtaining all the medico legal reports and addendum medico legal reports of the Plaintiff's experts, namely:
 - 4.1.1 Dr T Enslin (Serious Injury Assessor);
 - 4.1.2 Dr HB Enslin (Orthopaedic Surgeon);
 - 4.1.3 Alison Crosbie (Occupational Therapist);
 - 4.1.4 Dr M Mazabow (Neuro Psychologist);
 - 4.1.5 Dr DA Shevel (Psychiatrist);
 - 4.1.6 Dr L Berkowitz (Plastic and Reconstructive Surgeon);
 - 4.1.7 Anthony Townsend (Clinical Psychologist);
 - 4.1.8 Dr R Blumenfeld (Ophthalmologist);

4.1.9 Louis Linde (Industrial Psychologist);

4.1.10 Algorithm (Actuary);

4.2. The reasonable and necessary preparation, qualifying, and reservation fees **(if any)**, which will *inter alia* include:

4.2.1 fees in respect of consultations between Plaintiff's experts and Defendant's experts in respect of preparing joint minutes as well as addendum joint minutes **(if any)**;

4.3 The necessary costs for drafting and attending to the PAJA application(s) inclusive of Counsel's costs relating thereto;

4.4 The necessary costs for drafting the RAF 5 Affidavit and compiling of bundles and submission thereof in triplicate to the HPCSA, irrespective of the outcome of the General damages claim;

4.5 The Plaintiff is declared a necessary witness to the trial;

4.6 The reasonable taxable costs of transportation, calculated at the AA rate, of the Plaintiff to attend the consultation with Plaintiff's attorney and Advocate for preparation of trial and for the trial date;

4.7 The reasonable taxable costs of transportation, calculated at the AA rate, and accommodation **(if any)** of the Plaintiff to attend all medico legal examinations (Plaintiff's and Defendant's experts);

4.8 The costs of and consequent to the holding of all pre-trial conferences, including counsel's fees in respect thereof;

4.9 The costs of and consequent to the Plaintiff's trial bundles (with all annexures to Notices) and witness bundles (with all annexures to bundles), including the costs of FIVE (5) copies thereof;

4.10 The costs attendant upon the obtaining of payment of the amounts and undertaking referred to in this order;

4.11 The fees of Senior-junior Counsel ;

5. It is noted that there exists no contingency fee agreement between the Plaintiff and her Attorney of Record (Jaco Roos Inc).

BY ORDER

REGISTRAR

ADV FOR PLAINTIFF	:	ADV M FOURIE - 082 5658088
ATTORNEY FOR PLAINTIFF	:	ME LABUSCHAGNE - 082 376 2545
ADV FOR DEFENDANT	:	ADV J RABAJI - 081 222 3344
ATTORNEY FOR DEFENDANT	:	MALULEKE MSIMANG & ASS (012) 323 3832/4