

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

- (1) NOT REPORTABLE
- (2) NOT OF INTEREST TO OTHER JUDGES
- (3) NOT REVISED.

Case No. 22517/2012

4/2/2019

In the matter between:

ADV. A PJ BOUWER N.O

PLAINTIFF

(N W S)

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MILLAR, AJ

1. The plaintiff is the *curator ad litem* of N W S, a minor child who suffered severe injuries at the age of 5 when a motor vehicle crashed into his home on 18 September 2010 and injured him where he was playing next to the house.
2. A claim for damages arising out of the injuries suffered was submitted to the defendant, the statutory body responsible for such claims in terms of

The Road accident Fund Act¹. Liability was conceded on 18 October 2017.

3. The matter came before me for the determination of the quantum of general damages, it was agreed between the parties that the defendant would furnish an undertaking to compensate the minor for his future hospital, medical and associated expenses in terms of section 17(4)(a) of the Act. It was also agreed that a trust should be established for the benefit of the minor child for the reasons set out in the application for the appointment of the plaintiff and that due to his present age of 14, that the determination of loss of income should be postponed *sine die*.
4. It was agreed by the parties that the matter would be argued on the reports before the court. Both counsel submitted that since the experts were in agreement as to the injuries, their sequelae and the any future treatment and having regard to those injuries, although the minor and his grandmother were present at court and available to testify, that the issue could be determined without oral evidence so as to spare, in particular the minor, the ordeal of having to relive the collision and the ordeal that has become his life. In the interests of the minor I agreed and the matter was argued on the papers in chambers.
5. The minor was examined by 13 different medical experts. The experts are largely in agreement as to the injuries suffered, the treatment envisaged and the sequelae of those injuries. The minor sustained:
 - 5.1 a chronic subdural haematoma with resulting increased intercranial pressure caused by a large arachnoid cyst placing pressure on the brain;
 - 5.2 a mild traumatic brain injury;
 - 5.3 an open book pelvis fracture;
 - 5.4 a subluxation of the left sacro-iliac joint with left leg shortening, a widened symphysis pubis and soft tissue injuries;
 - 5.5 a urethral rupture/bladder neck rupture resulting in urine extravasation and a complete stricture of the urethra;
 - 5.6 a left femur fracture; and

¹ 56 of 1996

6. The minor was seriously injured in the collision and transported initially to the Barberton Hospital where he was resuscitated. The initial diagnosis of the injury was an open book fracture of the pelvis with displacement of the sacroiliac joints. A fracture of the inferior pubic rami, a fracture of the left femur and a rupture of the posterior urethra were also made. He ended up with a supra-public catheterization which has now become septic, pus draining and painful. His right leg is 45° externally rotated and he has severe cystopyelonephritis which needs urgent urological attention.
7. The rupture of the posterior urethra results in a urine leak into the perineum. He also developed a peroneal abscess which had to be drained. Originally he had also sustained a laceration to his scrotum which was sutured. Due to the fact that he could not pass urine, a supra-pubic cystostomy was done with an indwelling catheter. Presently the patient's psycho-social status is seriously compromised. He has no bladder or rectal control and has a severe infection present for which he needs urgent admission and attention in hospital.
8. The minor's current medical situation is complicated and he will first need radiological examination to determine the extent of the injury and whether or not anything can ever be done to improve his condition. His fertility has been affected due to the fact that he has a urethral stricture and he will not be able to ejaculate and will probably have to resort to assisted reproduction techniques for fertility purposes when he is older.
9. Currently he is totally incontinent of urine and smells of urine all the time. It is difficult for him to go to school and future employment will also be difficult in his current situation.
10. Furthermore an MRI (magnetic resonance imaging) scan of the brain was done on 27 November 2018 which showed a large arachnoid cyst with evidence of pressure on the brain. It was said that this has been present for a long time and is collision related.
11. He also presents with significant symptoms of depression that can be

attributed to a combination of factors including his ongoing pain and discomfort, sequelae arising from his injuries as a result of which he is forced to wear nappies, and the teasing from his peers in this regard.

12. *"From a social and emotional point of view, going to school is a complete and utter nightmare for the patient. He is called names like Mr. Pampers and on more than one occasion his grandmother had to go to school to deal with the children that are teasing him. When the patient had an accident, he will just sit in the dirty diaper until he gets home or his family will be called to fetch him if it gets too bad. Nobody in the class wants to sit next to him or play with him²."*

and

"At the time of the assessment, the patient grandmother informed Ms Swart that the patient had not been at school for two weeks due to a phone call received from the teacher who told the grandmother that the patient was ill and needed to get better first before he could go back to school."³

13. It is trite that while awards for general damages made in previous cases provide guidance, each case must be decided on its own facts.⁴
14. In my opinion, it is neither appropriate nor practical to attempt to break down either the individual heads of general damages or for that matter the individual injuries suffered and to make an award piecemeal. The minor suffered the damages that he did in an indivisible fashion and the award should take account of this. Counsel referred me to a number of cases where awards were made in respect of similar injuries - although there is no case that can be said to be on all fours with the present one. See for

² The current situation as described in the report of the curator after having interviewed the minor child and his grandmother.

³ At the time of the examination with the educational psychologist.

⁴ See *Minister of Safety & Security v Seymour* 2006 (6) SA 320 (SCA) at paragraphs 16 to 18

example Bay Passenger Transport v Franzen⁵ where a 21-year-old male with similar urological injuries was awarded R30 000,00 in 1974-having a present value of R1 850 000,00 and Kgomo v Road Accident Fund⁶ where an award of R800 000,00 for similar head injuries was made in 2011 - the present value being R1 222 532.

15. I have considered the injuries sustained and when they were sustained together with all their sequelae over the lifetime of the minor. The consequences of the collision have deprived him of the life he would otherwise have had. Any treatment or interventions that will be undertaken to ameliorate the sequelae will only ever be palliative and not curative. For this reason, in the exercise of my discretion I awarded the sum of R1 600 000,00 in respect of the claim for general damages.
16. In the circumstances I made the draft marked "X" with the amendments to paragraphs 7.15 and 10 to annexure "A" of that draft an order of court.

A MILLAR

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

HEARD ON:	31 JANUARY 2019
JUDGMENT DELIVERED ON:	31 JANUARY 2019
REASONS FOR JUDGMENT:	4 FEBRUARY 2019

COUNSEL FOR THE PLAINTIFF:	ADV I DELPORT
INSTRUCTED BY:	FRANS SCHUTTE MATHEWS PHOSA INC.
REFERENCE:	MS D DE JONG

⁵ 1974 (2J2) QOD 419 (A); see also Pillai and Another v New India Assurance Co Ltd 1961 (1H5) QOD 213 (N); Richter and Another v Estate Hammann 1976 (2H2) QOD 550 (C);

⁶ (25846 /1 0) (2011) ZAGPHC 103 (2 September 2011); Mohale v Road Accident Fund

COUNSEL FOR THE DEFENDANT: ADV M MAGAGANE

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INSTRUCTED BY: MALULEKE MSIMANG & ASSOCIATES

REFERENCE: MR H MSIMANG