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**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**Case Number 10405/2018**

**In the matter between**

**RS M[....]**

**Plaintiff**

**And**

**ROAD ACCIDENT FUND**

**Defendant**

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**JUDGMENT**

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This is an application for leave to appeal against an order I made on 15 December 2020 for general damages. On the trial date the matter proceeded on a default basis, there was no appearance for the defendant.

1. In making an award for general damages the Court has a wide discretion to award a sum that is fair and reasonable compensation to the applicant/plaintiff.
2. A court is also to ensure that the defendant is not unreasonable burdened.
3. The purpose of non-pecuniary awards is to put the claimant, as far as is reasonably possible, back in a position she would have been in had the accident not occurred.
4. In this matter the defendant has tendered an undertaking for 100% of all future medical expenses which the applicant/plaintiff is likely to incur.

5. The experts report that the applicant/plaintiff is to undergo several further surgeries and procedures. I noted the estimated costs thereof.
6. I noted further that the applicant/plaintiff who unfortunately lost her right leg because of the accident, was provided with a walker frame and a wheelchair on discharge from the hospital. I also noted that she attended several occupational therapy sessions where she was able to ambulate with the help of a prosthetic leg and a frame walker.
7. Having considered the usual factors of age, gender and occupation as vendor, my view is that R900 000 would be adequate compensation in the circumstances.

### **The Injuries**

7. Advocate Matika appeared for the plaintiff and he presented the court with a set of heads of argument. He agreed that the plaintiff suffered the following injuries:
  - 7.1 an above knee amputation of the right leg
  - 7.2 left humerus shaft fracture
  - 7.3 left distal tibial shaft fracture.
  - 7.4 left tibial plateau fracture.
  - 7.5 right distal femur fracture associated with femoral injury.
  - 7.6 mild traumatic brain injury, which in my view was doubtful given that the reports of the neurosurgeon record a mild head injury and in the RAF 4 form a moderate head injury, whilst the clinical psychologist recorded that the plaintiff denied having suffered a head injury. The hospital records do not reflect any treatment for this injury. Although I noted that the applicant sustained a 3cm scar on her upper lip.
- 7.2 She was scarred on:
  - 7.2.1 left arm (between 1 and 2cm).
  - 7.2.2 upper lip 3cm
  - 7.2.3 right lower limb (the amputated leg)
  - 7.2.4 left leg operation scars

- 7.3 The plaintiff suffered trauma, emotional shock, disfigurement and was rendered permanently disabled. Her whole person impairment score was assessed at 67% by medical doctors.
- 7.4 She in any event qualifies for compensation for general damages, on the narrative test as per the requirements of the Act and regulations, due to the loss of a limb.
8. Advocate Matika submitted that my reference to the case **Msiza v RAF 2014 (7E 20 QOD 1 (GNP))**, is distinguishable in that the whole person impairment scores differed, and that this applicant's injuries were assessed as more serious.
  - 8.1 Counsel further pointed out that in that case the court awarded a higher amount for general damages.
9. Counsel's further submissions were that:
  - 9.1 the applicant's left leg and ankle is severely compromised, as it needed further surgery and that she is at risk of suffering osteoarthritis in the future. He submitted the court must bear in mind the "once and for all rule" if she should no longer be able to use the left leg as well in the future.
  - 9.2 the applicant/plaintiff is an "ordinary/unsophisticated" claimant, who in her response to the clinical psychologist regarding her head injury, may in all probability have misunderstood him at the time. He directed me the reports of other experts who confirm that she suffered a mild injury to her head.
  - 9.3 the reference to HIV status contributing to her depressive state should be viewed against the "thin skull principle" i.e., you take your claimant as you find him".
  - 9.4 the court was also alerted to the fact that in practise, claimants have a difficult time accessing services of medical doctors by way of the undertaking since the defendant delays payments of invoices.

9.5 comparative cases, albeit must serve as guides, do award more for similar injuries.

10. Advocate Matika submitted that in terms of s 17(1)(a)(ii) where there are conflicting judgments on a matter, a court may allow leave to appeal.
11. This matter is of importance to the applicant and her access to proper health care. Another court may apply its discretion differently, on the facts of this matter.

Accordingly, the application for leave to appeal to the Full Bench, is granted.

I order, as follows:

1. Leave to appeal is granted to the Full Bench.
2. Costs to be costs in the cause.

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**MAHOMED, AJ**

**Heard on 22 April 2021**

**Delivered on 25 April 2021**

Appearances:

For applicant: Advocate Matika

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