




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

Case no: 3547/17

(1)	REPORTABLE: NO/ YES
(2)	OF INTEREST TO OTHER JUDGES: NO/ YES
(3)	REVISED. NO/ YES
<u>31</u> MARCH 2022	
DATE	 SIGNATURE

In the matter between:

STHABILE PRECAUTIONS NALA

Plaintiff

AND

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MAKHOB A J

1. The plaintiff instituted an action against the defendant for damages suffered as a result of injuries she sustained in a motor vehicle accident on the 27th July 2015. The plaintiff was a passenger in a taxi.
2. The merits of the matter were settled between the parties 100% (one hundred percent) in favour of the plaintiff. The defendant was not represented on the date of trial and an attempt to settle the matter did not yield any results, counsel for the plaintiff requested that the matter proceed on a default judgment basis *via* video link. Counsel addressed the court and referred the court to his heads of argument. I was asked to decide the matter on the basis of the papers, and no oral evidence was led.
3. In order to establish the case pertaining to quantum, the plaintiff filed the following expert reports:
 - 3.1 Dr. P Kumbirai (Orthopaedic surgeon)
 - 3.2 Dr MEC Kalane (Neurosurgeon)
 - 3.3 MEC Kalane (Clinical Psychologist)
 - 3.4 Ms A Tau (Educational Psychologist)
 - 3.5 Oscar Sehudi Consulting (Industrial Psychologist)
 - 3.6 Munro Acturies

There were no reports filed on behalf of the defendant.

4. According to the expert reports filed, the plaintiff sustained the following injuries:

4.1 Left foot tissue injury

4.2 Mild traumatic brain injury (concussion)

5. Dr T.P Kalane (neurosurgeon) opined that the plaintiff has memory loss and needs to be evaluated by a neuropsychologist. The doctor further stated the following¹

“prognosis and expected future complications

- *No acute deterioration expected or serious complications expected at this stage. Her neurosurgical prognosis is good.*
- *She does not need further neurosurgical care or follow up. I believe he has reached maximum medical improvement(MMI)*
- *...the injury is more than 2 years ago and she is unlikely to develop seizures.*

CONCLUSIONS

- *The patient most likely sustained concussion with no residual physical deficits.*
- *She has a good prognosis because she has fewer residual symptoms and shown signs of improvement.”*

6. Dr Solani Mukansi (Orthopaedic surgeon) states the following²

“16. Conclusion

¹ Vide caselines 005-130

² Vide- Caselines 005-9

The patient suffered only soft tissue injury to the left foot which was conservatively managed at the hospital. She has fully recovered. No further treatment is required."

7. In the *Road Accident Fund vs Marunga*³ the court said that there was no hard and fast rule of general application requiring the court or a court of appeal to consider past awards. The court further said that awards on decided cases might be of some use and guidance. Further, in *Sandler vs Wholesale Coal Supplier Ltd 1941 AD* the court held that the amount to be awarded as compensation and the figure arrived at compensation depends on the Judge's view of what is fair in all circumstances see also *AA Mutual Insurance Association Ltd v Maqula*⁴, *Road Accident Fund v Guedes*⁵ at para 8. Thus therefore the award of general damages must be fair to both the plaintiff and the defendant.⁶
8. The plaintiff contended that a fair amount to be awarded for the injuries sustained should be R650 000(six hundred and fifty thousand). In support of this argument the plaintiff referred me to a number of decided cases. It is submitted by counsel for the plaintiff that the sequelae of the injuries in those cases are said to be analogous to those of the plaintiff in this matter.
9. It is trite law that a court must consider and have regard to previous comparable cases when seeking appropriate compensation for general damages. An award made will be fair if it is consistent with previous cases of similar facts and law.⁷ However, comparable cases offer some guidance

³ 2003 (5) SA 164 (SCA)

⁴ 1978 (1) SA 805 (A)

⁵ 2006 (5) SA 583 (SCA) at par 8

⁶ Pitt v Economic Insurance Company Limited 1975 (3) SA 284 (N)

⁷ See De Jongh v Du Plesses NO 2005 (5) SA 457 (SCA)

in assisting a court to arrive at its award and should not be viewed as an absolute standard.⁸

10. I will now refer to a few comparable cases in this matter before me.
11. In *Modan NO v Road Accident Fund*⁹ the plaintiff suffered a mild brain injury as well as a fractured nasal bone which resulted in the plaintiff suffering neurocognitive and neuropsychological deficits. The plaintiff was awarded R350 000 (three hundred and fifty thousand rand) which presently amount to R535 000 (five hundred and thirty-five thousand rand).
12. *Makupula v Road Accident Fund*¹⁰ the plaintiff, a (5) five year old boy with a mild to moderate disuse axonal concussive brain injury with neurocognitive deficits associated with attention deficits, hyperactivity poor concentration, poor executive functioning and poor scholastic performance. The court awarded an amount of R300 000(three hundred thousand rand).
13. *Vuyeka v Road Accident Fund*¹¹ the plaintiff , a 43 (forty three year) old female cleaner suffered mild to moderate front lobe brain injury as well as orthopaedic injuries such as whiplash injury of the neck, lower back injury, fracture of the second metacarpal bone on the left hand and soft tissue injury of the left leg. She as a result, suffered from chronic headaches and depression. The court awarded her R330 000 (three hundred and thirty thousand rand).

⁸ See *Protea Assurance Co Ltd vs Lamb* 1971 (1) SA 530 (A) at 536

⁹ 2010 (6) QOD B4-65 (GNP)

¹⁰ 2010 (6) QOD B4-48 (ECM)

¹¹ 2014 (7) B4 QOD 1(ENP)

14. As I have already indicated when considering general damages a court has a wide discretion to award what it considers to be fair and adequate for the injured party¹² even though I may have to consider the cases provided by the plaintiff as a guide. It is however clear that all the cases that I was referred to by counsel for the plaintiff cannot in my view be compared with the matter before me. The reason thereof is that that the cases I am referred to cannot be compared to the matter before me. I, therefore have to arrive at a fair and appropriate award using my discretion in the light of all the facts before me.
15. The neurosurgeon indicated that she sustained a concussion and has reached maximum medical improvement.
16. The orthopaedic surgeon states she sustained only soft tissue injury to the left foot and has fully recovered.
17. In the circumstances it is my view that a fair and reasonable award compensation for general damages to the plaintiff is an amount of R200 000 (two hundred thousand rand).
18. The general approach of the actuary is to posit the plaintiff, as he is proven to have been in his uninjured state and then to apply assumptions (generally obtained from the industrial psychologist) as to his state with the proven injuries and their sequela. The deficits which arise between the scenarios (if, any) are then translated with reference to the various baseline means and norms used. These exercises are designed with the aim of suggesting the various types of employment which would hypothetically be available

¹² RAF v Marunga supra at 169 E-F

to the plaintiff both pre and post morbidity. The loss is calculated as the difference in earnings derived between the pre-accident or pre-morbid state and post-accident or post morbid state.

19. The other outstanding issue to be determined by the court is whether there is future loss of earnings.
20. The issue of loss of earnings is intrinsically linked with the merits of the matter. The court must first determine whether there was injury and the extent of such injury.
21. It is not sufficient to place calculations before the court and ask the court to determine the loss of earnings without any reference to the merits of the matter.
22. The duty is therefore on the plaintiff to prove the future loss of income due to the injuries sustained during the accident¹³
23. Dr S.S Mukansi (Orthopaedic surgeon) says the following about the plaintiff's injuries on future employment:¹⁴

"she was a scholar at the time of the accident and now she is a university student. The injury did not affect employment."

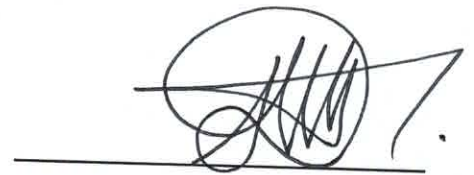
¹³ Rudman v Road Accident Fund 2003 (2) SA 234 (SCA)

¹⁴ Vide- Caseline paragraph 14 (005-9)

24. Dr T.P Kalane (Neurosurgeon) ¹⁵ indicated that she had “*memory loss of short term variety.*” The neurosurgeon further says in conclusion that “*she has fewer residual symptoms and shown signs of improvement.*”
25. The plaintiff was unemployed at the time of the accident.
26. It is trite that the onus rests on the plaintiff to prove his case on the balance of probabilities.¹⁶
27. In my view the plaintiff did not sustain serious injuries. She has fully recovered from the injuries she sustained.
28. Furthermore, it is my view that the plaintiff has failed in her duty to satisfy the court that she stands to lose any earnings as a consequence of the motor vehicle accident in question. Thus the plaintiff has failed to discharge the onus of proving on the balance of probabilities that she is entitled to loss of earnings.
29. I therefore make the following order:
- 29.1 The defendant shall pay plaintiff in respect of general damages the sum of R200 000(two hundred thousand rand only).
- 29.2 The plaintiff’s claim for loss of earnings is dismissed with costs.

¹⁵ Vide- Caseline 005-127 to

¹⁶ Pillay v Krishna 1946 SA 946



D MAKHOB

JUDGE OF THE GAUTENG DIVISION PRETORIA

APPEARANCES:

For the applicant: Advocate M G Senyatsi

Instructed by: Ndweleni Mphenemene

For the respondent: Non- appearance

Instructed by:

Date heard: 17 February 2022

Date of Judgment: 31 March 2022