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

CASE NO: 27753/2022

**REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED.**

7 November 2022

In the matter between:

MABLE GOODENOUGH NTOMBI PHANGWA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DATE OF JUDGMENT: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be 10h00 on **07 November 2022**.

JUDGMENT

KHASHANE MANAMELA, AJ

Introduction

[1] The plaintiff, Ms Mable Goodenough Ntombi Phangwa, was born on 09 July 1997. At about midnight on 16 November 2019 and at or near Paul Kruger Road, Dersley Park, Springs, the plaintiff was involved in a motor vehicle accident. She was a passenger in the motor vehicle. The driver of the motor vehicle (“the insured driver”) is said to have lost control and hit a bridge. The plaintiff sustained severe bodily injuries from the accident, including the following: mild traumatic brain injury; right radius fracture; blunt abdominal injury; kidney and liver injury, and soft tissue injuries of the spine. She suffered loss or damages as a result of the accident. She blamed the negligent driving of the insured driver to have caused the accident.

[2] On 20 May 2022, the plaintiff caused summons to be issued against the defendant, the Road Accident Fund, for compensation in respect of damages she had suffered in terms of the provisions of the Road Accident Fund Act 56 of 1996 (“the Act”). Her claim for compensation is for her past and future medical and hospital expenses; future loss of earnings or loss of earning capacity and general damages. The claim was initially in the amount of R3 550 000.00. The defendant failed to deliver a notice of intention to defend the claim or action proceedings in terms of the Uniform Rules of this Court, and, therefore, the matter proceeded towards default judgment.

[3] The matter came before me on 05 October 2022 for purposes of default judgment. Advocate K Mhlanga appeared on behalf of the plaintiff. There was no appearance on behalf of the defendant. Counsel for the plaintiff informed the Court that the parties were discussing the possibility of settlement of the matter and, therefore, that the matter be stood down to the following day on 06 October 2022. The request was acceded to. When counsel appeared on the following day the Court

was told that the defendant had fully (i.e. 100%) conceded issues relating to liability or merits in favour of the plaintiff. Further, counsel informed the Court that the issues relating to loss of earnings and future medical, hospital and related expenses were amicably resolved or settled between the parties. Therefore, what remained for determination by the Court were only issues relating to general damages. This judgment was reserved after I listened to oral submissions by counsel. I have also gratefully had regard to the written submissions filed by counsel in terms of the practice directives of this Division for purposes of this judgment.

Evidence and submissions on behalf of the plaintiff

General

[4] The plaintiff had obtained medicolegal reports by experts who had assessed her injuries and their *sequelae*. The experts had subsequently filed affidavits to confirm their respective opinions and other contents of their reports as envisaged by practice directives of this Division and to qualify for an order in terms of Rule 38(2)¹ of the Uniform Rules of this Court. I allowed for the evidence to be adduced or given on the basis of the affidavits.

[5] Dr AJ Dybala, an orthopaedic surgeon, had qualified the plaintiff for general damages through his assessment of the plaintiff as having had 35% whole-person impairment or WPI due to the injuries from the accident and/or their *sequelae*. Also, the defendant's settlement offer towards the plaintiff included an amount for general damages, albeit that the latter part of the settlement was rejected by the plaintiff.

[6] The plaintiff was in grade 12 at the time of accident in 2019. She failed this grade and repeated same in 2020. There was no improvement. She subsequently quit school and abandoned her aspiration of becoming an engineer. She has never attained any form of employment.

¹ Uniform Rule 38(2) reads as follows: "The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit."

Plaintiff's injuries and/or sequelae

[7] The injuries sustained by the plaintiff were reported by the neurosurgeon as the following: mild diffuse brain injury; laceration on the right side of forehead; right eye swollen, haematoma, and book CTB- soft tissue swelling. The plaintiff's current complaints were stated as including the following: headache (experiences of right frontal headaches on a daily basis, not capable of relief by analgesics); painful eye, and memory problems (the plaintiff reportedly easily forgets tasks and events). She had no previous medical history of note. She still presented with disfiguring scar with hyperpigmentation on the right side of forehead.

[8] Further, the plaintiff complained about, among others, the following when she was assessed by the clinical psychologist: chronic headache associated with dizziness; slight forgetfulness; fluctuating concentration; difficulty following conversation and staying with one idea; eye sensitivity to bright light; pain on the right side of the neck; nervousness and anxiety as a passenger; short temper; sleep difficulty, and enduring lethargy.

[9] It is also submitted that the plaintiff's quality of life has been negatively affected by the chronic headache. The plaintiff suffers from weakness on the right leg and has significant residual neurocognitive *sequelae*.

[10] Again, when assessed by the clinical psychologist, the plaintiff displayed symptoms relating to depression. She also reported mild symptoms including the following: feeling of worthlessness; appetite changes; sadness; pessimism and loss of interest in sex. It is submitted that, apart from the physical trauma of the accident, the plaintiff also suffered psychological trauma due to the accident.

General damages and comparable cases

[11] In order to establish the plaintiff's claim for general damages, the plaintiff's counsel accompanied submissions made with some case law.

[12] The Court was urged to observe principles from the decision in *De Jongh v Du*

Pisane,² including that the Court ought to ensure that the award made is fair to both parties in that it provides compensation to the plaintiff, but do 'not pour out largesse from the horn of plenty at the defendant's expense'.³

[13] Further, counsel made submissions which included the following comparable cases in support of the plaintiff's claim for general damages:

[13.1] the decision in *Tlou v Road Accident Fund*,⁴ which involved a female plaintiff who had sustained a head injury with loss of consciousness; laceration above her right eye; right shoulder injury, and soft tissue injury to the right knee and ankle. The award made in this case for general damages on 25 January 2016 was in the amount of R600 000.00 currently equating to the amount of R805 000.00.

[13.2] further, the decision in *Hall v Road Accident Fund*⁵ was cited. It concerned a 39-year-old male sales manager with the following injuries: fractured left humerus; fractured left side ribs; moderate concussive head injury; left 6th cranial nerve lesion; soft tissue spinal injuries on the neck and back, and various abrasions. Following the accident he spent five days in intensive-care unit or ICU of the hospital whilst being treated for his injuries. Prior to the accident, he had been an exceptional world class cyclist and a highly motivated, successful businessperson. After the accident, the plaintiff had ongoing symptoms of an organic brain syndrome with features of depressive illness which requires long term intermittent psychiatric treatment as well as psychotherapy. He also lacked motivation to perform his duties and ability to tackle any stressful situation. He was to have several medical procedures performed on his left shoulder, including a total shoulder replacement. On 28 May 2012, he was awarded the amount of R700 000.00 as general damages, which equates to an amount of R1 093 000.00 in current terms.

[13.3] also cited was the matter of *Mngomezulu v Road Accident Fund*.⁶ This matter concerned a 27 year old plaintiff with the following injuries: compound right tibia-

² De Jongh v Du Pisane 2005 (5) SA 434 (SCA).

³ De Jongh v Du Pisane 2005 (5) SA 434 (SCA) at par 60, citing with approval from Pitt v Economic Insurance Co Ltd 1957 (3) SA C 284 (D) at 287E F.

⁴ Tlou v Road Accident Fund (17225/2011) [2016] ZAGPPHC 31 (25 January 2016).

⁵ Hall v Road Accident Fund 2013 (6J2) QOD 126 (SGJ) (28 May 2012).

⁶ Mngomezulu v Road Accident Fund (04643/2010) [2010] ZAGPJHC (08 September 2011).

fibula fracture; closed chest injury with lung contusion; 30 cm laceration on the right thigh, and a moderate head injury. Further, the plaintiff experienced pain and weakness in the right leg when walking or standing for prolonged periods, including walking with a right leg limb. On 8 September 2011, an award of general damages was made by the court in the amount of R600 000.00 currently amounting to R1 003 000.00.

[14] Counsel for the plaintiff urged the Court that an amount between R700 000.00 and R900 000.00 was an appropriate or a fair and reasonable amount to grant as an award for general damages. This, it is submitted, is on the basis of the comparable cases including those appearing above, and, particularly, on consideration of the injuries sustained by the plaintiff and their *sequelae*.

Conclusion

[15] I have considered the plaintiff's injuries and/or their *sequelae* and the comparable cases applicable to this matter, including those cited by counsel in this matter. It is an incontrovertible fact that no two cases are similar, but previous decided cases offer some guidance.

[16] I consider a fair and reasonable amount to award to the plaintiff for her general damages to be in the amount of R800 000.00. Costs will also follow this outcome as guided by the draft order provided by counsel in this matter. The order will also include terms of settlement agreed between the plaintiff and the defendant.

Order

[17] In the premises, I make the following order:

- a) that, as agreed between the parties, the defendant is fully (100%) liable for the plaintiff's proven or agreed damages relating to the accident which occurred on 16 November 2019;
- b) that, as agreed between the parties, the defendant shall pay to the plaintiff, the total amount of R1 790 041.35 (one million seven hundred and

ninety thousand and forty one rand and thirty five cents) in full and final settlement of the plaintiff's claim, which amount is calculated as follows:

- i. R990 041. 35 (nine hundred and ninety thousand and forty one rand and thirty five cents) in respect of loss of earnings/earning capacity, and
 - ii. R800 000.00 (eight hundred thousand rand) for general damages;
- c) that, the defendant shall be liable for interest at the prevailing interest rate from 15 days after the date of this order as envisaged in section 17(3)a of the Act;
- d) that, the amount in b) and c) hereof shall be paid into the trust account of the plaintiff's attorneys with the following details:

Account Holder: Mamogobo Attorneys

Bank: First National Bank

Account Number: [...]

Account Type: Trust Account

Branch Code: 250 742

e) that, as agreed between the parties, the defendant shall furnish the plaintiff with an undertaking in terms of section 17(4) of the Road Accident Fund Act 56 of 1996 to compensate the plaintiff for the costs of future accommodation in hospital or nursing home, treatment for service or of supplying of goods to the plaintiff from the injuries sustained by her as a result of the accident which occurred on 16 November 2019;

f) that, the defendant shall pay the plaintiff's taxed or agreed party and

party costs on a High Court scale; in the event that the costs are not agreed:

- i. that, the plaintiff shall serve a notice of taxation on the defendant's attorney of record;
- ii. that, the plaintiff shall allow the defendant 180 Court days from date of *allocatur* to make payment of the taxed costs;
- iii. that, should payment not be effected timeously, the plaintiff will be entitled to recover interest at the rate of 7% per annum on the taxed or agreed costs from date of *allocatur* to date of final payment.

g) that, such costs shall include;

- i. reasonable counsel's fees and appearance for the 05th and 06th October 2022, and
- ii. reasonable costs of taking the plaintiff to attend medico-legal assessments inclusive of all reports filed; and

h) that, there is contingency fee agreement in the matter.

Khashane La M. Manamela
Acting Judge of the High Court

Date of Hearing:

05 & 06 October 2022

Date of Judgment:

07 November 2022

Appearances:

For the Plaintiff:

Adv K Mhlanga

Instructed by:

Mamogobo Attorneys, Johannesburg

For the Defendant:

No appearance