

**IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG  
REPUBLIC OF SOUTH AFRICA**

**CASE NO. 6501/07**

In the matter between:

**JUDITH ZANDILE MPHANZA**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**RESPONDENT**

**JUDGMENT**      Delivered on 17 March 2011

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**SWAIN J**

[1] In this matter I am asked to determine by way of a stated case, the general damages of the plaintiff as a consequence of injuries the plaintiff suffered in a motor vehicle collision.

[2] I have been furnished with a document entitled “Facts Agreed On” which details the injuries sustained by the plaintiff and the consequences of these injuries for the plaintiff. I find it unnecessary to repeat the contents of this document in this Judgment.

[3] I have also been furnished by Mr. Singh, who appeared for the plaintiff, and by Mr. Ori, who appeared for the defendant, with heads of

argument in which they refer to various authorities where awards were made which they submit are comparable to the agreed facts in the present case. Again, for the purposes of the present Judgment I find it unnecessary to enumerate and deal with these authorities. Suffice to say, that I have given careful consideration to each of these authorities in reaching the conclusion I have.

[4] I am of the view that the general damages of the plaintiff are an amount of R90,000.00.

[5] In order to quantify the plaintiff's total damages, to this amount has to be added an amount of R12,828.89, being the plaintiff's agreed medical expenses, producing a total of R102,828.89.

[6] A further issue to be determined is whether plaintiff's costs are to be on the High Court scale, or the Magistrates' Court scale. It is common cause that when the plaintiff instituted her claim in 2007, the jurisdictional limit of the Magistrates' Court was R100,000.00, which however with the introduction of the Civil Regional Court was increased to R300,000.00, with effect from 09 August 2010. However, in the light of the fact that any increases in the Magistrates' Court civil jurisdiction in terms of Section 29 (1) (g) of the Magistrates' Court Act No. 32 of 1944, are not retrospective and do not affect pending proceedings, the fact remains that as at 09 August 2010, the plaintiff's claim was pending before this Court. The plaintiff is consequently

entitled to her costs on the applicable High Court scale.

[7] As regards the issue of costs, Mr. Ori in his heads of argument, submits that the plaintiff was not ready to proceed on the first day, being 14 March 2011 and should therefore bear the wasted costs of that day. However, when Mr. Ori and Mr. Singh, appeared before me in Chambers when the trial was allocated to me, they both told me that they wished me to decide the issue of the plaintiff's general damages, by way of a stated case. I then pointed out to them both, that they would have to present me with an agreed statement of facts for this purpose. They both then agreed they would need until the following day to accomplish this. However, on the following day they each presented me with what were essentially heads of argument, with their own contentions of what the relevant facts were. When I pointed this out to them they conceded the shortcoming and went away to produce the document headed "Facts Agreed On". This document was produced shortly before lunch on 15 March 2011. In the light of the foregoing, I am not satisfied that the blame for the matter taking up two days, can be laid squarely at the door of the plaintiff.

[8] The terms of the order to be granted by me, once I had determined the plaintiff's general damages and the applicable costs scale, were agreed upon between the parties.

The order I make is the following:

1. The defendant is ordered to pay the plaintiff the sum of

R102,828.89 within fourteen days of the granting of this order, failing which the defendant will be liable for interest on the aforesaid sum, at the rate of 15.5 percent per annum.

2. An undertaking in terms of the provisions of Section 17 (4) (a) to pay the costs of the plaintiff's future accommodation in a hospital or nursing home, or treatment of or rendering of a service to her, or supplying of goods to the plaintiff arising out of the injuries sustained by her in the motor collision, after such costs have been incurred and proof thereof, is to be furnished by the defendant.
3. The defendant is ordered to pay the plaintiff's legal costs on the High Court Scale, as between party and party including:
  - a) The plaintiff's legal representative, acting as Counsel.
  - (b) The reasonable qualifying, consultation and reservation fees (if any), and expenses of the following expert witnesses, the quantum of which will be determined by the taxing Master or as agreed between the parties.
    - i) Dr. Domingo
    - ii) Dr. P. Gongal

- iii) Dr. W.G. Reitz
  - iv) Dr. J.N. Smith
- (c) The reasonable costs for the drafting of the expert's reports and consultation with the plaintiff and/or plaintiff's representatives by the experts, referred to in paragraph 3 (b) *supra*.
- (d) The reasonable consultation costs, such costs to include travelling time and travelling expenses incurred by the plaintiff's legal representatives with the expert witnesses, referred to in paragraph 3 (b) above, such costs to include the costs incurred in respect of the inspection *in loco* held with Inspector S.M. Roberts, plaintiff and plaintiff's legal representative.
- (e) All necessary and reasonable consultation costs incurred by the plaintiff's legal representatives with:
- i) Plaintiff
  - ii) Sayed Cassim
  - iii) The Manager of Discovery Health
  - iv) Investigating Officer
  - v) Superintendent of St. Anne's Hospital
  - vi) Inspector B.H. Mhlongo
  - vii) Inspector N.E. Monakali

- viii) Inspector N.P. Mhlongo
- ix) Inspector Jali
- x) Inspector S.M. Roberts

(f) The reasonable costs of the inspection *in loco* by plaintiff's representative, such costs to include the consultation with plaintiff and plaintiff's witnesses, travelling time to scene of collision and travelling expenses.

(g) Costs in respect of preparation for trial.

(h) The following witnesses are declared as necessary witnesses:

- i) Plaintiff
- ii) Sayed Cassim
- iii) The Manager of Discovery Health
- iv) Investigating Officer
- v) Superintendant of St. Anne's Hospital
- vi) Inspector B.H. Mhlongo
- vii) Inspector N.E. Monakali
- viii) Inspector N.P. Mhlongo
- ix) Inspector Jali
- x) Inspector S.M. Roberts

i) The reasonable costs of the consultation incurred by the plaintiff and her legal representatives to

consider the offer, costs incurred to accept the offer, as well as all costs incurred to obtain payment of the claim and costs.

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**K SWAIN J**

***Appearances /***

***Appearances (In Chambers)***

For the Appellant	:	M.S. Singh
Instructed by	:	Sundeeep Singh & Associates Pietermaritzburg
For the Respondents	:	M.K. Ori
Instructed by	:	Mastross Incorporated Pietermaritzburg
Date of Hearing (In Chambers)	:	14/15 March 2011
Date of Filing of Judgment	:	17 March 2011



