



THE REPUBLIC OF SOUTH AFRICA  
**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**Case No.: 18349/2017**

**In the matter between:**

**ADV F.A. DE LANGE N.O. obo ADELE ROODE ('the patient')**

**Plaintiff**

**and**

**THE ROAD ACCIDENT FUND**

**Defendant**

**Coram: Bozalek J**

**Heard: 23 & 24 February, 23 March, 12 April 2021**

**Delivered: 21 April 2021**

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**JUDGMENT**

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**BOZALEK J**

[1] The plaintiff sues as *curator ad litem* on behalf of Ms Adele Roode ('Ms Roode') seeking special and general damages from the Road Accident Fund for injuries sustained by her following a catastrophic motor cycle accident on 17 January 2016.

[2] The merits of the claim were conceded in full by the defendant and the quantum was to be determined in a trial commencing on 23 February 2021. On that day counsel advised that they had reached agreement on the quantum of the claim and were simply

awaiting a mandate from the defendant's head office. The matter was postponed to 23 March 2021 for the necessary mandate to be obtained but this was not forthcoming. In the interim parties reduced their informal agreement to writing as follows:

1. The defendant admitted the plaintiff's expert reports and a joint minute of the industrial psychologists and agreed that no oral evidence needed to be led;
2. Past medical expenses were agreed as per the Road Accident Fund bill reviewers' approval in the amount of R1 022 280.00;
3. Future medical and related expenses would be covered by means of an Undertaking in terms of sec 17(4)(a) of the Road Accident Fund, 56 of 1996;
4. Future loss of earnings were agreed in the amount of R4 910 750.00 and;
5. General damages were agreed at R1 700 000.00.

[3] The defendant's legal representatives were unable to obtain the necessary mandate by a deadline on 26 March 2021 and accordingly a further hearing was arranged for 12 April 2021. On that occasion counsel simply made submissions and no evidence was heard.

[4] In the absence of a mandate from the defendant to accept the informal agreement arrived at it is necessary for this Court to satisfy itself that any damages award is fair, and to give a judgment.

[5] Ms Roode is presently 36 years of age and was 31 years old when she was involved in an accident as a pillion rider on a motorcycle driven by her husband. No collision occurred but the motorcycle rolled. The patient sustained a severe closed head injury which has left her wheelchair bound and unable to stand or walk unaided. She also sustained a comminuted supracondylar and intercondylar fracture of the left humerus.

She was admitted to hospital for approximately four months. The management included intubation, ventilation, sedation, analgesics the insertion of an extra ventricular drain, a left elbow open reduction and internal fixation reconstruction, a tracheotomy, reinsertion of the extra ventricular shunt, the insertion of a permanent VP shunt due to refractory obstructive hydrocephalus and the insertion of a gastrostomy (PEG). In a supplementary report made a year after the accident Dr J Reid, a neurologist, found the following upon examination:

1. Profound neurocognitive compromise;
2. Incontinence
3. Profound changes in the patient's personality, behaviour and emotion;
4. No insight into her problems and irrationality.
5. Inappropriate joking;
6. Substantial lack of insight;

[6] Other sequelae are:

1. Moria
2. Pathological reflexes in all four limbs;
3. Absence of dexterity in both hands, worse on the left;
4. Flexion contracture of the left elbow;
5. Spasticity of both lower limbs;
6. Hopeless short-term memory;
7. Prominent dysgraphia, dyslexia and sensory and motor dysphasia;
8. Impaired visuospatial functioning;

9. Limited problem solving and
10. Atrocious general knowledge

[7] Dr Reid's opinion was that the patient had reached maximum medical improvement and that even if mild improvement materialised it would make no difference to her functional impairment.

[8] Ms Celeste Jordaan, an occupational therapist, reported on the significant impact of the head injury suffered by the patient and confirmed the following:

1. She suffered a severe head injury resulting in neurological and neurocognitive deficits. Additionally, she suffered cervical spondylosis with disc pathology at C6 and multiple fractures;
2. The patient still wears nappies due to bladder incontinence and has regained bowel sensation but relies on assistance to transfer onto toilet;
3. In general, the patient is dependent on support with personal care as she is unable to groom herself or dress independently or cut food;
4. The patient is fully dependent in respect of all home management tasks.

[9] The patient underwent a personality change which has profoundly affected her relationship with her family.

[10] The patient's husband has filed for a divorce and her two minor children are no longer living with her.

[11] I deal now with the various heads of damages.

**Past medical/hospital expenses**

[12] The defendant has by means of the Road Accident Bill reviewers' approval tendered an amount of R1 022 280.00 which amount has been accepted by the plaintiff. In the circumstances there is no need to query this amount.

**Future hospital, medical and related expenses**

[13] The defendant has proposed an Undertaking in terms of sec 17(4)(a) of the Road Accident Fund, 56 of 1996 which likewise has been accepted by the plaintiff and requires no further comment.

**Loss of earnings/earning capacities**

[14] It is common cause that the patient's injuries have rendered her permanently unemployable. Prior to the accident the patient had, after completing her matric, worked as a debt collector and then qualified as a beautician having earned a diploma in Somatology from the Cape Peninsula University of Technology.

[15] At the time of the accident she had not been in formal employment for several years but instead was a homemaker and had raised her children with the intention of returning to formal employment when they were a little older.

[16] Based on a joint minute of the respective parties' industrial psychologists agreement was reached on a pre-morbid career path. An actuary was instructed to calculate her loss of earnings with an agreed contingency of 35% to be applied. This relatively high figure was utilised given inter alia the lack of certainty as to precisely when the patient would have returned to formal employment. Her future loss of earnings,

based on the scenario as agreed upon and having applied the proposed contingency amounted to R4 910 750.00. This sum represents her full loss given that there is no possibility of her ever being gainfully employed again in future.

[17] Having regard inter alia to the joint minute of the parties' respective industrial psychologists, I am satisfied that the sum which the legal representatives have agreed to in principle represents a fair award under this head of damages and that the contingency deduction for the uninjured income is realistic and appropriate.

### **General damages**

[18] The principle agreement reached between the parties in respect of this head of damages was the sum of R1 700 000.00. The above recitation of the injuries suffered by the patient, the hospitalisation and medical treatment which she underwent as well as the accompanying pain, suffering, shock and discomfort underline the profound nature of her injuries and their consequences.

[19] The patient has been left with extensive permanent disabilities and deficits. The course of her entire life has changed. From being an independent mother and wife bringing up two children she is now a ward of her parents, for the time being at least, and will never again enjoy the pleasures of a full family and married life and the ongoing company of her growing children. Neither will the patient ever enjoy the satisfaction of working again or being able to care for herself or be independently mobile.

[20] The plaintiff sought to justify the in principle agreed amount of R1 700 000.00 as general damages on the basis of three authorities. The first, *Benade NO obo AR v Road*

***Accident Fund***<sup>1</sup>, concerns a 32 year old woman involved in a cycling accident who sustained severe injuries including multiple maxillo-facial, oral and dental injuries and a moderately severe closed head injury. As a result, she became mentally slow with a general cognitive decline and her concentration and attention became poor. She suffered from depression, anxiety episodes, panic attacks whereas previously she had been employed as a sales manager and had taught mathematics and technology. She was now no longer able to perform such work. Her entire personality had changed for the worst and her extensive sporting activities were no longer possible. She also sustained extensive lacerations over the right breast and chest wall and a severe degloving of the left lower leg involving the Achilles tendon. As the Court put it the '*collision deprived (A) of everything she was before*'. The Court awarded an amount of R1 300 000.00 as general damages in 2018 which equates in present terms to an amount of approximately R1 470 000.00.

[21] In ***Khokho obo MG v RAF***<sup>2</sup> the patient was run over by a motor vehicle and sustained severe bodily injuries which included a severe traumatic brain injury, a skull fracture, multiple lacerations and abrasions on the forehead, arm, elbow and lower leg. He was hospitalised for more than two weeks and readmitted due to the development of a subdural haematoma. Overall he suffered severe organic brain damage being left with a greatly impaired walking gait, was unable to ambulate without assistance and had cerebral signs and tremors in his right arm. He was partially paralysed in the lower limbs and his speech was severely impaired. He suffered from severe neuropsychological

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<sup>1</sup> Judgement delivered on 16 November 2018.

<sup>2</sup> Corbett and Honey 'The quantum of damages and orally and fatal injury cases' Vol 3 A4125.

deficiencies in particular severe impaired attention, working memory, information process and mental tracking deficiencies. He too sustained a personality change after the collision and suffered from bouts of rage. He was left with impaired insight and reasoning ability and suffered depression. He struggled to wash and groom himself, was unable to clothe himself and required his mother's assistance with that and other daily needs.

[22] The plaintiff was awarded R1 500 000.00 as general damages in September 2009 which equates to R1 630 000.00 in present terms.

[23] Finally, in *Dlamini v RAF*<sup>3</sup> the plaintiff was awarded R1 350 000.00 in general damages which has a present value of approximately R1 786 000.00. The plaintiff suffered a severe brain injury with intracranial bleeding and multiple contusions, a fractured mandible and facial injuries. As a result of the brain injury he suffered from ataxia, a diminution in his cognitive capacity and was rendered unemployable and unable to fulfil the roles of husband to his wife or father to his children. He could no longer cope with household duties or take part in sport and was dependent on others and in need of care and supervision. His inability to follow conversations left him socially isolated.

[24] It is trite that a Court enjoys a wide discretion to award what it considers to be fair and adequate compensation to an injured party. Similarly, it is generally accepted that awards in comparable case are no more than a guide, not least because cases are seldom alike in all material respects.

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<sup>3</sup> Case number 59188/13 Gauteng Division 3 September 2015



[25] The patient in the present matter was a comparatively young woman when she suffered severe and life changing injuries. In many respects her life has been blighted and she will spend the rest of her life in the care of others, unable to live with any substantial degree of independence.

[26] Having regard to the pain, suffering, shock, discomfort, including the lengthy period of hospitalisation she underwent and the permanent deficits and disability with which she has been left, I consider that the amount of R1 7000.000.00 is a fair and reasonable sum by way of general damages.

### **Costs**

[27] The parties were agreed in principle that the plaintiff be entitled to the costs of the action as between party and party. However, the plaintiff sought also the wasted costs caused by the postponement of the matter to 12 April 2021 together with the further costs of arguing the matter, such costs to be awarded on an attorney and client scale. In this regard it was contended that the defendant's failure to furnish a mandate to its legal representatives to accept the in principle agreement reached between the legal representatives reflected unacceptable incompetence or a dereliction of duty on the part of the defendant and that the patient should in effect be indemnified from any legal costs arising therefrom.

[28] The background to the defendant failing to furnish its legal representatives with a legal mandate appears to be that any settlement in excess of R5mil has to be approved by the defendant's head office in Tshwane. Although the defendant's senior counsel had

submitted a memorandum furnishing advice and motivating for the proposed settlement the only response received was on 7 April 2021 to the effect that no documentation would be signed by the executive pending the receipt of certain information. It would appear however that that information was furnished to it and had in fact been furnished on an earlier occasion.

[29] There appears to be a degree of miscommunication or poor communication between the defendant's executive and its legal representatives. Having regard to the circumstances of the matter as a whole however I can see no sound basis for an order for costs on a punitive scale. The incident in question comes at the tail end of the litigation. Plaintiffs' counsel was on brief on two trial days when the matter did not proceed and will presumably be reimbursed as part of the costs order in respect of those days. The hearing on 12 April 2021 was a brief one. Although the defendants' failure to furnish a mandate to its legal representatives is regrettable, ultimately there were no serious consequences for the plaintiff. Another important factor is the current state of the Road Accident Fund which by all counts lurches from one crisis to the next, is functionally insolvent and is making desperate attempts to reduce the incredibly high level of legal costs for which it has become liable either by way of its own legal representatives or the legal representatives of claimants. All such legal costs and the concomitant awards are in effect financed by the tax payer by way of the Road Accident Fund levy included in the fuel price. Any punitive costs awards are therefore met by the taxpayer and in that sense sends no message to the Road Accident Fund or its executives or at best a message which is unlikely to have any effect whatsoever. In the result I decline to award any part of the

costs on an attorney and client basis.

[30] For these reasons it is ordered that the defendant shall pay the sum of R7 633 030.00 as damages to the plaintiff, shall provide an Undertaking in terms of sec 17(4)(a) of the Act in respect of future medical costs and shall award the plaintiff the party and party costs including the costs of counsel and the qualifying and other expenses of the expert witnesses utilised. The defendant shall also pay the costs of the *curator ad litem* and the costs relating to the future appointment of a *curator bonis* and incidental costs in that regard.

[31] The court's full award is contained in the annexure A hereto.

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**BOZALEK J**

For the Plaintiff : Adv E Benade  
As instructed by DSC Attorneys

For the Defendant : Adv M Salie SC  
As instructed by Mohulatsi Attorneys