REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(SOUTH GAUTENG, JOHANNESBURG)

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED.

16/08/2013
DATE

SIGNATURE

CASE NO: 11385/2011

In the matter between:

ARNOLD NELSON NHANTUMBO **Plaintiff**

and

ROAD ACCIDENT FUND **Defendant**

JUDGMENT

MASHILE AJ:

[1] Following a motor vehicle collision in which the Plaintiff was involved on 30 June 2007, the Plaintiff lodged a claim with the Defendant on 16 January 2008 for damages occasioned by the personal injuries that he sustained.

[2] The parties could not resolve the claim one way or the other within the 120 day statutory period stipulated in the Road Accident Fund Act No. 56 of 1996. The Plaintiff, as he was entitled to do, caused summons to be issued out of this court against the Defendant on 17 March 2011.

[3] The Defendant resisted the action and the parties came before court however having successfully resolved that the Defendant would be liable for all the proven damages of the Plaintiff and all the headings under quantum except for general damages. Their agreement will be incorporated under the order of this court later in this judgment.

[4] According to the doctor who completed the statutory medical report section of the MMF1 Form the Plaintiff sustained a 4 X 4 laceration on the hip. Dr E Shnaid however records them as follows:

[4.1] Soft tissue injury of the lumber spine;

[4.2] Soft tissue injury of the cervical spine; and

[4.3] Lacerations on the left hip.

[5] Dr E Shnaids adds that the soft tissue injury of the lumber spine was not documented and treated at the time of the accident. The injuries as captured by Dr E Shnaid appear to be common cause as the settlement of the other quantum headings must have been based on them.

[6] In his amended particulars of claim the Plaintiff contends that payment of the sum of R300 000.00will be commensurate with the injuries sustained and the sequelae flowing therefrom.

[7] Referring me to the case of Van de Berg v Coopers and Lybrand Trust (Pty) Ltd 2001 (2) SA 242 (SCA) at 260, the Defendant argues that the assistance that one may derive from a comparison with previous cases is often limited in its significance because no two cases are exactly the same.

[8] It is important to remark that only the general award and not a comparison of every detail is taken into account to determine an appropriate amount and that comparison to previous awards is not the technique of evaluating non-patrimonial damage and only serves as a trend.

[9] While the Defendant is right, contrasting previous cases will always play a vital role to courts when making awards. A court however will be prepared to depart from this means of arriving at amounts to be compensated when the facts in a particular case call for such deviation.

[10] It is correct that in so far as an award under general damages is concerned fairness and reasonableness on how much should be awarded always play a significant role. In considering what could be regarded as reasonable and fair in any given set of circumstances, the paragraph below from **Law of Third Party Compensation by H.B. Klopper is important**:

> ***"Fairness and reasonableness mean that the claimant must be sufficiently compensated for the injuries suffered, but conversely also mean that the inordinately high award should not necessarily burden the defendant. Stated differently, fairness and reasonableness also mean that the award for non-pecuniary damage is made with compassion for the plaintiff but, with reference to the particular circumstances of every case, with a tendency to err in favour of the defendant."***

[11] The paragraph above however has been superseded by recent developments especially the last bit where it says "with a tendency to err in favour of the defendant". In this regard the statement of Broome DJP in **Wright v Multilateral Motor Vehicle Accident Fund 1997 (N)** cited in Corbett & Honey Vol. 4 E3-31 is pertinent:

> "I consider that when having regard to previous awards one must recognise that there is a tendency for awards now to be higher than they were in the past. I believe this to be a natural reflection of the changes in society, the recognition of greater individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significantly lower than those in most other countries." ***See also*** **Road Accident Fund v Marunga 2003 (5) SA 164 (SCA)** where the above paragraph was mentioned.

[12] The parties seem to be agreed on the injuries and their sequelae. The Plaintiff was 49 years old at the time of the accident and running his own business as a panel beater and spray painter of motor vehicles. His work involves standing and bending, which he is said to be unable to do as a direct result of the accident. He cannot sit for long or walk for long distances since the accident.

[13] The soft tissue injuries to the Plaintiff's cervical and lumber spine are permanent according to Dr E Shnaid albeit that the x-ray findings detected nothing abnormal at all. The injuries of the Plaintiff, depending on the further investigations that Dr Shnaid has recommended, may require further treatment as outlined by him in his report.

[14] The Defendant appears to have placed undue reliance on the last portion of the statement that I have uplifted from the Law of Compensation by H B Klopper, which as I have demonstrated, is not supported by recent pronouncements especially the Wright case above. The awards are in some

instances rather conservative and some unrealistic in the extreme such that no reliance can be placed on them to determine the outcome of this case.

[15] For some unknown and strange reasons Mr Shumba representing the Defendant in this matter referred me to the case of **Nokemane v RAF 2010 6 QOD A3-1 (ECG)**. I am completely surprised that he referred this court to this matter as being comparable to the present. The injuries in the Nokemane case are far severe than the case at hand. It must have been clear that the Nokemane case deals with paraplegia and other orthopaedic injuries. This is obviously not the case here.

[16] Mr Shumba then stated that the Plaintiff in 2010 was awarded an amount equivalent to R94 000.00. This is completely incorrect. The Plaintiff in the Nokemane case was awarded an amount of R800 000.00 for general damages. It is disquieting when a Counsel deliberately misleads a court to persuade it to find in his or her favour. This is for the simple reason that courts place significant weight to information that counsel present.

[17] The other cases to which Mr Shumba referred this court are equally not particularly relevant in that the amounts awarded are far below what courts would generally order defendants in these kind of matters to pay. For example, **Maswanganyi v SA Eagle Insurance Co Ltd 1984 3 QOD 430 (W)** awarded 12 000.00 at today's value for a cervical, lumber spinal and other orthopaedic injuries.

[18] **Graham and Another v General Accident Fire and Life Assurance Corporation and Another 1972 2 QOD 249 (R)** awarded R48 000.00 for a spinal injury. The amount represents the present value. **De Beer v Todd NO 1955 1 QOD 379 (SR)** gave R78 000 at the 2013 value (spinal Injuries). The *Graham and the De Beer* cases were in my opinion certainly conservative in their approach to

the award of general damages. The tendency these days, as I have stated above, is to make awards that are generally higher without necessarily placing too heavy a burden on the defendant.

[19] The plaintiff in Meyer v Road Accident Fund 2002 5 QOD C4-25 (CAF) was awarded 35 000.00 and the value of the amount is as at 2002. This is more realistic and somewhat closer to recent trend. R35 000.00 may look like a small amount but the value of our currency has since deteriorated such that R35 000.00 is probably worth far more than it was then.

[20] The fact that the Plaintiff suffered severe pain for approximately two to three weeks subsequent to the collision, obvious discomfort and loss of amenities immediately after the collision and that he will not be free of pain throughout his life treatment notwithstanding has persuaded me to consider an amount of R200 000.00 as being fair and reasonable for general damages.

[21] In the result I make the following order:

1. The Defendant will pay to the Plaintiff the following:

   1.1 R200 000.00 for general damages; and

   1.2 R1 930 648.13 for loss of earnings.

2. The Defendant is to furnish the Plaintiff with an Undertaking in terms of Section 17(4)(a)of the Road accident Fund Act No. 56 of 1996 for future medical expenses.
3. Costs as between party and party.

B A MASHILE
JUDGE OF THE GAUTENG HIGH COURT, JOHANNESBURG

DATE OF HEARING	: 20 MAY 2013
DATE OF DELIVERY	: 15 AUGUST 2013
FOR THE PLAINTIFF	: ADV U JORDAAN
INSTRUCTED BY	: McMILLAN ATTORNEYS, JOHANNESBURG
FOR THE DEFENDANT	: G SHUMBA
INSTRUCTED BY	: KEKANA HLATSHWAYO RADEBE INCORPORATED, JOHANNESBURG