

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2013/33246

- (1) REPORTABLE: YES / NO  
(2) OF INTEREST TO OTHER JUDGES: YES/NO  
(3) REVISED.

.....  
DATE

.....  
SIGNATURE

In the matter between:

**NGWENYA, STONY**

**PLAINTIFF**

**And**

**MALETE, TOKOLOGO**

**DEFENDANT**

---

**J U D G M E N T**

---

**TWALA AJ**

- [1] The plaintiff, a 46 year old man, sues the defendant for damages arising out of a motor vehicle accident that occurred on the 18 October 2008 in Crystal Park, Benoni. The plaintiff was a passenger in a motor vehicle that collided with another in a robot controlled intersection.
- [2] This matter came before Court on the 6 May 2015 and the defendant failed to appear in Court. Default judgment was entered against the defendant and the Court made the following order:
- The issues of liability and quantum of damages are separated in terms of Rule 33(4);
  - The defendant is liable for the damages of the plaintiff;
  - The issue of the quantum of damages is postponed sine die;
  - The defendant is ordered to pay the plaintiff's taxed or agreed costs of the action to date.
- [3] It is apposite for me to mention at this stage that there was no appearance for the defendant. On enquiry from the plaintiff's counsel about the whereabouts of the defendant or its counsel, it appeared that the defendant had lost interest in defending the matter.
- [4] On the 10 June 2015 the defendant was served with the notice of set down for hearing of the matter on the 17 March 2016. On the 20 November 2015 the plaintiff served the defendant with the Rule 37 notice calling for a pre- trial conference on the 2 December 2015. The defendant failed to attend the pre-trial conference scheduled for the

2 December 2015. On the 25 February 2016 this matter came before the Judge for certification and it was certified ready for trial. The defendant did not attend the certification and it today still persists with its non-appearance.

[5] The issue that remains for determination by this Court is the quantum of damages suffered by the plaintiff. At the start of the hearing of this case, Counsel for the plaintiff made an application for the admission as evidence the expert medical legal report of Dr C. Barlin, an orthopaedic surgeon, who examined and prepared a report on the injuries sustained by the plaintiff and the sequelae thereof. An affidavit by Dr Barlin was handed up confirming the contents of his report on the plaintiff.

[6] The plaintiff testified that he was a passenger in a motor vehicle that collided with another at a robot controlled intersection. He sustained fractures on both his legs. He suffered multiple abrasions and contusions. He was taken from the scene of the accident to Tembisa Hospital by an ambulance. He was hospitalised for a period of three (3) months. Both his legs were immobilised in a below- knee plaster casts. On his discharge from hospital, he was using a wheel chair for some time and was later given crutches which he used for almost a year. He cannot walk or stand for long periods as he is still enduring pain especially on his right leg and foot. He used to play soccer almost every week and now he cannot play soccer because of his injuries. He

uses some pain killer tablets when the pain is unbearable and elevates his leg and foot at night.

[7] At the time of the accident he was employed by Group 5 as an assistant to the electrician earning a salary of R5000 per month. He worked for two years after he returned to work from the accident and was retrenched. However, he was paid whilst he was off duty due to the accident. He is presently employed in the same position by a company known as Athol and earns a salary of R3000 per month. He does not perform as much at work as he did but for the accident. He has now been working for Athol for the past 3 years.

[8] According to Dr Barlin's report the plaintiff suffered bilateral grade 1 tibial fractures on both legs and multiple abrasions and contusions. The fracture of the middle and distal thirds of the right tibia was internally fixed with an intramedullary locking nail and proximal and distal screws and has united fully in an anatomical position. The midshaft fracture of the left tibia and fibula was treated by internal fixation of tibial fracture with an intramedullary locking nail and proximal and distal screws. This fracture has likewise united in an anatomical position. The plaintiff continues to experience severe shin pain aggravated by activity. He has unsightly 10 cm long longitudinal scars over the patellar tendons bilaterally. He has a 10 cm long inverted hockey stick-shaped scar over the anteromedial aspect of the right distal shin. He has 5 X 1 cm

unsightly cross-hatched transverse scar over the anterior aspect of the left shin.

[9] It is Dr Barlin's evidence that the removal of the locking screws on both legs would be beneficial to the plaintiff. There is no need for removal of the intramedullary nails. Following the proposed surgery, the plaintiff is likely to be off work and on crutches for approximately three weeks. He may require analgesics and anti-inflammatories, intermittently. The costs for the conservative treatment will approximately amount to R10 000 and for the surgery it will be a sum of R35 000. With adequate treatment, he is likely to be able to continue working in his current capacity until retirement age.

[10] That was the case for the plaintiff. As indicated above, the defendant was not in court and therefore the matter proceeded in his absence.

[11] In the case of Siffman vs Kriel 1909 TS 538 the court said:

*"It does not follow, because evidence is not contradicted, that therefore it is true. Otherwise the court, in cases where the defendant is in default, would be bound to accept any evidence the plaintiff might tender. The story told by the person on whom the onus rests may be so improbable as not to discharge it."*

In the case of McDonald vs Young 2012 (3) SA 1 (SCA) the court stated the following:

*“It is settled that uncontradicted evidence is not necessarily acceptable or sufficient to discharge an onus.”*

[12] Counsel for the plaintiff contended that the plaintiff has proven its damages for the injuries it sustained in the accident. Plaintiff's evidence is corroborated by the medical legal report compiled by Dr Barlin in that it list the injuries sustained by the plaintiff and the sequelae thereof.

[13] I agree with Counsel for the plaintiff that the plaintiff has proven its damages in this case. Although there are differences in the evidence of the plaintiff and that of its expert, it only relates to the sequelae of the injuries sustained by the plaintiff in the accident and the future employability of the plaintiff.

[14] I am inclined to accept the evidence of Dr Barlin since his report is clear and unambiguous. He stated in his report that there is likelihood that, once the surgery is done to remove the screws on the fixatives in the legs of the plaintiff and with adequate treatment given, he will be able to continue working in his current position until retirement age. However, this will necessitate the plaintiff to be off work for at least three weeks.

- [15] It is my view therefore, that the plaintiff is entitled to be compensated for future medical expenses for the surgery to remove the screws in his legs and for the conservative treatment thereafter.
- [16] Further, Counsel for the plaintiff contended that plaintiff will lose his three weeks earnings after undergoing the surgery as stated by Dr Barlin and provision should be made therefore. I agree with Counsel that plaintiff is entitled to be compensated for the three weeks he will be off work after surgery.
- [17] Counsel for the plaintiff has referred to various authorities which were helpful but none of which specifically dealt with the injuries sustained by the plaintiff, or the sequelae thereof which is specific to the plaintiff. I accept that there are no two cases that are similar in all respects.
- [18] Having regard to the injuries sustained by the plaintiff, the sequelae thereof, the loss of amenities suffered by the plaintiff in that he is unable to play soccer again, the pain and suffering he had to endure as a result of the accident and the pain, discomfort and inconvenience he is still to endure when undergoing further surgery, I am of the view that an amount of R320 000.00 is just and equitable to be awarded to the plaintiff in respect of general damages in this case.

[19] In the circumstances, I make the following order:

A. The defendant is liable to pay to the plaintiff damages in the sum of

R365 000.00 made up as follows:

I. General damages R320 000.00

II. Future medical expenses R45 000.00

B. Interest on the said sum of R365 000.00 at the rate of 15.5% per annum from date of issue of summons to date of payment, both days inclusive

C. The defendant to pay the costs of this action including the costs of the experts of the plaintiff

---

**TWALA  
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Counsel for the Plaintiff: **ADV. BLOCK**

Instructed by: **NORMAN BURGER & PARTNERS INC  
TEL: 011 786 3096**

Counsel for the Defendant: **NO APPEARANCE**

Instructed by:

Date of Hearing: **17 MARCH 2016**

Date of Judgment: **30 MARCH 2016**



