

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 56098/2010

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

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SIGNATURE

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DATE

In the matter between:

SCHEFFER, NADIA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MATOJANE, J

[1] On 18 December 2008 the Plaintiff was involved in a motor vehicle collision. She instituted action against the Defendant on 30 September 2010. On 7 June 2012 the matter came before Van Der Merwe DJP and by

agreement between the parties he gave judgment and ordered the Defendant to pay the Plaintiff's damages as proved or agreed. The quantum portion was postponed *sine die* with costs in the cause. Costs were also awarded to the Plaintiff. The Plaintiff and the Defendant could not agree on the quantum of damages suffered by the Plaintiff. The case before me was therefore only on the question of damages.

[2] At the trial on quantum of damages, no oral evidence was led before me on behalf of the parties. The Defendant admitted the factual allegations and opinions contained in the expert notices of the Plaintiff filed in terms of Rule 36(9)b. The parties further agreed on the expertise of the expert witnesses and that it will not have to be proved. The Defendant indicated that it would rely on its own expert reports, the facts and opinions that are common cause in the joint-minutes and any reports of the Plaintiff that have been admitted. The contents of the various reports are accepted as evidence before court.

[3] It is common cause that the collision occurred on the 18th December 2008, Plaintiff then 27 years was sideswiped by a car while she was riding on a scooter. She lost consciousness and had a seizure at the accident scene she had left her employ at The Wedding Warehouse where she was working as a graphic designer two days before the accident. Due to the accident, she was admitted to hospital for 2 days; thereafter she recuperated for 2 weeks. She secured work approximately a month after the accident. She is currently employed as a freelance journalist.

[4] Plaintiff claimed for past medical expenses an amount of R2 593.50, she was treated in a government hospital and this amount is awarded.

[5] The Plaintiff also claims an amount of R200 000.00 for future medical expenses. The Defendant, however, undertook to furnish the Plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act to cover future hospital and medical expenses which Plaintiff may incur.

[6] The claim for general damages is disputed. The Defendant rejected the serious injury assessment report (RAF 4) completed by Prof Fritz in terms of regulation 3 of the regulations promulgated under the Road Accident Fund Act, Act 56 of 1996. The court set the rejection aside on the 1 August 2012. Before me, the Defendant again rejected the Plaintiff's Serious Injury Assessment Report on the ground that there was no objective evidence that the injury suffered by the Plaintiff has resulted in serious long term impairment or that the injury constitutes permanent serious disfigurement. The difficulty with this argument is that Defendant has accepted the reports of Prof Fritz and Dr Birrell that Plaintiff's orthopaedic injuries and her mental disability as outlined by Dr Mazabow in his report, qualifies as a serious injury under the Narrative Test. In any event, the order of Hiemstra J setting aside the objection still stands.

[7] It was not contested that as a consequence of the collision the Plaintiff sustained the following injuries (a) A head injury with general brain oedema, a

subarachnoidal haemorrhage but no structural brain injury (b) A seizure on the scene (c) Multiple rib fractures of the left posterior to ribs 5, 6, 7, 8 and 9 (d) neck injury. Prior to the accident, the Plaintiff had spinal muscular atrophy, which causes progressive muscular weakness and wasting. As result of this spinal muscular atrophy she will not be able to undertake any career, which required physical activity or climbing stairs. Any sedentary occupation she undertakes will depend on her intellect not being damaged and her mood and emotions being intact. Now as a result of the cognitive damage caused by the brain injury and also the precipitation of deterioration of the spinal muscular atrophy, she has been put at a disadvantage. According to Dr DA Birrell, an orthopaedic surgeon, her muscular atrophy does not limit her from normal everyday functions but she does not have strong musculature and her posture is not that good due to this problem which increases her symptoms. He estimate her overall loss of work capacity as a result of the accident to be around 8% or 9%. Prof Vivian Fritz, a neurologist reports that plaintiff sustained a diffuse concussive brain injury. She had a subarachnoid haemorrhage and cerebral oedema on scan and a fairly prolonged post traumatic amnesia. She had fairly severe dizziness for six months after the accident and this has since become worse.

[8] According to Dr M Mazabow, a clinical and Neuro Psychologist the plaintiff sustained a significant head injury which has given rise to a deterioration in her neurocognitive functions in comparison with her pre-accident estimated level of functioning. Her ability to tolerate frustration within the workplace has been undermined by the presence of brain injury, which will

render her more prone to 'work stress' and to interpersonal conflict. Ms BL Purchase, an educational psychologist reports that the accident has aggravated her pre-existing condition and resulted in deterioration in many of her cognitive functions.

[9] The speech and language therapists in their joint minute agree about the extent of Plaintiff's communication difficulties, they report that despite intervention, residual difficulties will remain and this will continue to have a negative impact on her ability to cope with all activities of daily living. She will experience on-going difficulties in the workplace as a result of her language and communication difficulties. They agree that she will have difficulties with social communication at home and at work.

[10] In their joint minute the psychiatrists agree that Plaintiff has sustained a head injury that requires psychiatric treatment. Prof. Vorster is of opinion that Plaintiff has made a good recovery from the head injury and that there do not seem to be any on-going sequelae as a result of the head injury, his opinion is that her depressive illness is largely due to her spinal condition and there are no long lasting limitations on her employment potential. Dr Shevel on the other hand is of the opinion that Plaintiff is suffering from mild post –traumatic Organic Brain Syndrome that will adversely affect plaintiff's long term occupational potential.

[11] Both counsel referred me to various awards made by various courts over a period of time where victims of motor vehicle accidents sustained

similar injuries, some less serious and others more serious. Each case however, is determined on its own facts. I have considered the Plaintiff's case in the light of the differing expert opinions; I have also had regard to cases referred to by counsel, which I need not quote in this judgment. I have also considered the fact that as a person with spinal muscular atrophy she was already naturally limited in terms of the work that she was able to do and that the accident has aggravated her pre-existing condition. I am of the view that Plaintiff should be awarded an amount of R500 000.00 for general damages as she is already compensated in terms of future loss of earnings.

[12] At the pre-trial conference held on 7 March 2014 the Defendant requested that the Plaintiff's actuary should prepare a report based on the joint minute between the parties' respective Industrial Psychologists and the Defendant confirmed that it would abide by the calculations. The actuary, Mr G W Whittacker, has prepared such actuarial calculations. The only difference between the parties is the contingency to be applied. In their joint minute the industrial psychologists agreed that a higher pre-accident contingency deduction should be applied due to Plaintiff's vulnerability as an employee as a result of pre-existing spinal muscular atrophy and indicated depression. They also agreed, correctly in my view, that as a result of the significant brain injury she sustained as well as the orthopaedic injuries she sustained during the collision, a higher post-accident contingency deduction should be applied.

[13] I agree with counsel for the Plaintiff that having regard to all the factors to be taken into account in determining the appropriate pre-accident and post-accident contingency deductions, the pre-accident 20% and post-accident 50% deductions should be applied under the circumstances. The actuary has prepared four different scenarios with different contingencies applied; I agree with the parties that the average of the four figures should be used. The plaintiff is therefore entitled to an award of damages in respect of past and future loss of earnings and/or earning capacity as calculated by Mr Whittacker, based on the joint minute by the parties' industrial psychologists in the total sum of R2 081 658.00.

[14] The total amount to be awarded to the plaintiff as damages is R2 588 882.50 calculated as follows:

Past hospital, medical and related expenses:	R2 593.50
Past and future loss of earnings:	
Past loss:	R4 631.00
Future loss:	<u>R2 081 658.00</u>
General damages:	<u>R 500 000</u>
	R2 588 882.50

[15] In their joint minute Dr O Guy and Ms I Hattingh, (Speech Language and Audiologists) agree that given the communication deficits evident during their assessment of the Plaintiff, the funds awarded would need to be protected. To this end, counsel for the Plaintiff prepared a draft order that

made provision for the establishment of a trust that will have as its main objective to control and administer the capital amount on behalf of the Plaintiff. The Defendant did not have any objection to the draft order being made an order of court.

[16] In the result, I give judgment in favour of the Plaintiff in terms of the draft order which is attached marked “X”

KE MATOJANE J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH GAUTENG HIGH COURT, PRETORIA