

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

CASE NO: 33835/2012

DATE: 27 JUNE 2014

In the matter between:

MADITABA LYDIA MOHALE

PLAINTIFF

AND

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

TEFFO. J

[1] The plaintiff, Ms Maditaba Lydia Mohale, born on [...], sustained multiple injuries in a motor vehicle collision which occurred on 16 November 1997 at an unknown street in Sebokeng when a motor vehicle with registration letters and numbers [...] there and then driven by Mr Andrew Rampa (the insured vehicle) collided with her while she was a pedestrian at the time.

[2] The defendant conceded merits at 80/20% in favour of the plaintiff. It is therefore liable to pay 80% of the plaintiffs proven or agreed damages. The defendant has agreed to pay the plaintiff an amount of R2 222 037,62 (two million two hundred and twenty two thousand and thirty seven rand and sixty two cents) for loss of income and past medical expenses. The head of damages that remains for determination is the claim for general damages.

[3] Medico-legal reports by experts on behalf of both parties were filed and admitted by consent into the record as evidence.

[4] The joint minutes by the following experts were admitted into evidence by consent:

4.1 Neurologists - Drs J A Smuts and A P Rossouw;

4.2 Neurologists - Drs S Wolberg and A P Rossouw.

4.3 Occupational therapists - Ms Abida Adroos and Ms E Bester;

4.4 Orthopaedic surgeons - Drs J L L Heymans and Bloem;

4.5 Industrial psychologists - Mr Bernard Oosthuizen and C Nel;

4.6 Educational psychologists - Alet Mattheus and Madelien Mills;

[5] Dr Wolberg was the only expert who tendered *viva voce* evidence.

[6] The injuries sustained by the plaintiff in the aforesaid accident are summarised as follows: an injury to her neck, an injury to her back, an injury to her head. The clinical notes from Sebokeng hospital indicated that the plaintiff had bruising to the scalp and face. On initial examination she had a Glasgow Coma Scale (GCS) score of 10/15. A head injury due to a motor vehicle accident was noted, a plan to process skull, chest and cervical X-rays was recorded; she was referred to Chris Hani Baragwanath hospital neurosurgery. On discharge from hospital her GCS score was 15/15. The clinical report from Chris Hani Baragwanath hospital indicated that on initial examination the GCS score was 7/15. The plaintiff was unconscious but breathing well. Her right pupil was larger than the left, but both were reactive, A left hemiparesis was recorded; a CT brain scan showed a right temporo-parietal extradural haematoma; a craniotomy for drainage of the extradural haematoma had been performed. Following surgery the plaintiff was awake, talking and moving all limbs. Her pupils were equal and reactive to light and a GCS score of 15/15 was recorded.

[7] The psychiatrist, Dr F Colin, did a psychiatric diagnosis of other Bipolar Disorder and Associated Conditions related to a previous head injury in addition to cognitive disorder after a head injury.

[8] In his report dated 20 March 2012 the neurologist, Dr Smuts, stated the following:

"The following neurological and other sequelae were noted: headache, neck and back pain, memory problems and personality changes. In my opinion the patient sustained a moderately severe head injury and an associated moderately severe brain injury."

[9] In his second or addendum report dated 7 May 2013 Dr Smuts stated the following:

"In my opinion the patient sustained a moderately severe head injury and an associated moderately severe brain injury. The most significant problems are at a cognitive and behavioural level My impression is that this could be a frontal type of brain injury."

[10] In their joint minute the neurologists, Drs Smuts and Rossouw, agree that the plaintiff sustained a concussive head injury. The severity of the head and brain injury is graded as minor by Dr Rossouw and moderate by Dr Smuts. The doctors agree that the plaintiff suffers from post-traumatic headaches and generalised pain related to her neck and back injuries.

[11] In their joint minute the neurologists, Drs Wolberg and Rossouw, state the following: Dr Rossouw's view is that the plaintiff had a minor head injury with a GCS of 15/15 which was complicated by an extradural haematoma resulting in a GCS of 7/15 before it was evacuated (severe head injury). Dr Wolberg diagnosed a severe head injury. They both agree that the head injury was severe in nature. The neurologists also agree that the accident resulted in the plaintiff having headaches as discussed in their respective reports, slightly increased risk of the plaintiff developing epilepsy. Whereas Dr Rossouw is of the opinion that the plaintiff is capable of working, Dr Wolberg is of the opinion that the plaintiff will have great difficulty in obtaining employment. They then deferred to the opinion of a neuropsychologist the evaluation of her cognitive ability and emotional state.

[12] Ms Adroos and Ms Bester, the occupational therapists, in their joint minute noted that the plaintiff presented with behavioural problems when she was assessed by Ms Adroos on two occasions but did not present with significant behavioural problems at the time of her assessment by Ms Bester although she seemed to be somewhat distracted and disinterested at times. Both agree that the plaintiff will be able to perform sedentary to light work. Ms Bester notes that the plaintiff's assessment results on basic administrative tasks indicated that she will be trainable in such tasks, she defers to the relevant experts regarding the influence of her emotional status and cognitive complaints and the prognosis of these on future employment prospects. Ms Adroos on the other hand opined that the plaintiff would find it difficult to obtain and maintain employment in the open labour market given her limited physical endurance and deficits with the cognitive and behavioural functions. I find the opinion of Ms Adroos more realistic as against that of Ms Bester as it is in line with the plaintiff's evidence and the injuries she sustained.

[13] In his evidence Dr Wolberg testified that the plaintiff had no knowledge of the accident which happened when she was 10 years old. He stated that what the plaintiff told him about the accident is what she was told. She reported to him that she was unconscious for two days after the accident. She also reported that she has headaches, pains, poor concentration as she performed poorly at school and has psychological changes, eg since the accident she has difficulty in mixing with other people. He explained that he did not do a formal assessment of the plaintiff as this fell outside the scope of general neurological examination. His assessment

revealed that the plaintiff was responding slowly and her level of functioning was weak and limited.

[14] Under cross-examination he was asked whether he was aware that the plaintiff failed matric twice long after the accident and that the year of the accident she did not complete the grade she was in. His response was that all these fell outside his area of expertise and that the plaintiff was assessed by an educational psychologist and a neuropsychologist who are the relevant experts to deal with the issues raised. When asked as to why he disagrees with Dr Rossouw about the plaintiff's work ability he explained that he mentioned in his report that the plaintiff should be assessed by a neurosurgeon and an industrial psychologist. He maintained that the plaintiff is not paralysed and that her hands are working but cannot say what work is she suited for. His view is that the plaintiff has an impaired capability to work. I find the opinion of Dr Wolberg more probable as against that of Dr Rossouw in that given the nature of the injuries the plaintiff sustained, it lies within the competence of the neurosurgeon, neuropsychologist and the industrial psychologists to comment on the severity of the *sequelae* of the injuries she sustained and their impact on her ability to work. To say that she is capable of working without the opinion of the other experts, eg neuropsychologist or the industrial psychologist, is misleading as this does not fall within the area of expertise of Dr Rossouw who is only a neurologist.

[15] Alet Mattheus and Madelien Mills (the educational psychologists) agree that the plaintiff has given birth to two children whilst in high school and that her absence from school could further have impacted on her academic performance. They also agree that the plaintiff presents with emotional difficulties which may be related to the *sequelae* of her injuries and that this could have added to her poor academic progress. Ms Mills notes that the plaintiff's emotional problems are probably partially due to the head injury, and partially to other non-accident related hardships in her life, such as being a mother in high school, limited finances and repeated scholastic failures (which are related to multiple causes including possibly some degree of brain damage). I find this opinion of Ms Mills sound and realistic as it tallies with the evidence on record. While Mr Mattheus noted the opinion of Prof Vorster who concluded that the plaintiff presents with an Organic Brain Syndrome which has an impact on her decisionmaking abilities, he opined that the plaintiff would no longer be in a position to complete her schooling or any form of training. According to him the plaintiff would most probably have to settle for sheltered employment. Ms Mills' view is that the plaintiff still has the potential to obtain matric and a post-school qualification. She opined that the plaintiff will benefit from psychological and possibly psychiatric intervention to assist her with her low mood and career guidance to assist her in finding the appropriate route to complete her education and be able to work in the field she is qualified for. I find this opinion unrealistic given the nature of plaintiff's injuries, the *sequelae* thereof, the fact that she had already failed grades 10,11 and 12 post accident, her age and the fact that she is already a mother.

[16] Relying on the opinion of Prof Vorster (the psychiatrist) that the plaintiff is apathetic, presents poorly, she is not likely to stand out in a group of unskilled applicants for work, she sustained a loss of employment potential as a result of her head injury and that she is unlikely to secure employment unless that of sympathetic nature, the industrial psychologists, Bernard Oosthuizen and Cecile Nel, agree that for all intents and purposes the plaintiff will probably remain unemployed as sympathetic employment is not regarded as gainful employment.

[17] In his uncontested report, the clinical psychologist, Mr Leon Roper, stated the following:

"Occupational/Educational functioning: After the accident the plaintiff had reportedly failed grades 10, 11 and 12 and had never been formally employed From a neuropsychological perspective, the following accident related factors are considered to have the potential to impact negatively on her future occupational or educational functioning and career progression:

17.1 The increased levels of irritability may have a negative influence on her relationships with colleagues, peers and superiors and may render her prone to conflict and subsequent disciplinary action.

17.2 Her concentration and memory difficulties are expected to render her more prone to error or negligent mistakes, which may decrease her effectiveness in terms of any position that she might hold in the future.

17.3 Her lack of motivation and depressed mood are likely to render her less productive and effective within a working environment and she is likely to be less driven and ambitious.

17.4 The plaintiff and her sister indicated that she has been experiencing difficulties with regard to reading."

[18] According to him the plaintiffs neuropsychological profile is considered to be in keeping with that of an individual who had sustained a severe head injury which has resulted in permanent behavioural, cognitive and psychiatric changes. He opined that these difficulties are expected to impact on the plaintiffs ability to function within interpersonal relationships as well as in an occupational capacity. His further opinion is that as more than fifteen years have lapsed since the plaintiff sustained the head injury, her neuropsychological profile is considered to be permanent and irreversible and no further spontaneous improvement can be expected.

[19] Given the opinion of the plaintiffs clinical psychologist, Mr Leon Roper, whose report remain uncontested, with regard to the severity of the neuropsychological *sequelae* of the head and brain injury that

the plaintiff has sustained, behavioural and neuro-cognitive changes that the plaintiff has suffered, together with the psychiatric changes the plaintiff has suffered as indicated by Prof Vorster in his report, the headaches, back and neck pains, poor progress at school and the industrial psychologists' opinion that the plaintiff is unemployable, I am satisfied that the accident has had a tremendous impact on the ability of the plaintiff to work. She sustained a severe head injury with significant neuropsychological *sequelae*.

[20] The plaintiffs counsel after referring me to a number of cases, submitted that the plaintiff should be compensated an amount of between R900 000,00 and R1 100 000,00 for general damages. He also submitted that it is common cause between the parties that the plaintiff could have obtained matric pre-accident but having regard to the accident she only managed to pass Grade 11. In support of his view he relied on the evidence that plaintiffs siblings have gone beyond matric and obtained other certificates. Counsel for the defendant relying on the fact that the plaintiff left school for two years when she gave birth to her children in 2005 and 2007, submitted that this fact also had an impact on her poor academic progress. He proposed an amount of between R480 000,00 and R500 000,00 for general damages. He further submitted that the court should look at what the plaintiff has been offered for loss of earnings as this will have an impact on general damages.

[21] I have looked at all the cases referred to by both parties. In *Raupert v Road Accident Fund* 2011 1 SA 452 (E) the plaintiff, a 20 year old female photography student, who was also studying architectural draughting part-time and a casual employee as a shop assistant, sustained a very significant head injury consisting of extensive fracturing of skull with bi-frontal lobe contusions involving the left frontal region with bi-frontal traumatic subarachnoid haemorrhage, generalised brain oedema with some compression of the right lateral ventricle caused by a developing right intratemporal haematoma. A craniotomy was performed to drain right temporal lobe haematoma. She demonstrated the direct effects of the brain injury mainly in terms of executive difficulties which prevented the effective use of her measured intellect, resulting in anxiety and depression with a marked reduction in self-confidence. She experienced memory problems, especially short term memory loss, severe headaches at times and lost her sense of smell and her sense of taste was limited. She was unlikely to achieve anything near her pre-morbid potential in the workplace and likely to have problems in the interpersonal domain and perhaps in independent functioning. She was awarded R750 000,00 in 2011 which is R889 000,00 in today's terms.

[22] I find the injuries in the above matter more serious than those of the plaintiff in the present matter. I also do not find the above matter comparable to the present matter as the plaintiff in this matter was ten years old and at primary school in Grade 4 when she was involved in the accident while in the above matter the plaintiff was 20 years old at the time and had already passed matric and was at a tertiary institution.

[23] In *Dlamini v Road Accident Fund* 2012 (6A4) QOD 68 (GSJ) a 37 year old male corporal in the

technical department of the South African National Defence Force ("SANDF") sustained a brain injury, fractured mandible, loss of teeth and soft tissue injuries to cervical and lumbar spine, and was hospitalised for approximately three months after the accident. He was left with neuropsychological *sequelae* because of the head injury. His personality has undergone changes. He was no longer suitable for employment in the open labour market. The plaintiff was awarded R850 000,00 for general damages in 2012. The amount is R955 000,00 in today's terms. This case is also not comparable to the present matter for the reasons advanced *supra* in para 22.

[24] In *Stephenson, NO v General Accident Fire and Life Assurance Corporation Ltd* (2) QOD 376 a boy of 10 years at the time, had, as a result of a motor vehicle accident, sustained permanent brain damage which has reduced his intelligence quotient to about 77 or 78, and his potential earning power in the future to something like 25% of what he could have been expected to have earned. He had been in a class at school which was in the low "C" stream and was an accomplished athlete. He had headaches for about six months after he came out of coma. He had sustained pain during that six months. He was awarded \$37 500 which is an equivalent of R1 556 000,00 in today's terms. It was unlikely that he would ever be able to take part effectively in any games. The injuries in this matter are more severe than that in the present matter. In the present matter the *sequelae* are also of a permanent nature and this renders the plaintiff unemployable.

[25] The severity of head and brain injury sustained by the plaintiff and the *sequelae* thereof have been discussed *supra*. Taking into account all the evidence before me as contained in the different medico-legal reports, I am of the view that the amount of R650 000,00 will fairly and appropriately compensate the plaintiff for the general damages she has suffered as a result of the accident. The plaintiff is therefore entitled to 80% of the amount of R650 000,00 which is R520 000,00.

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

26.1 The defendant is ordered to pay the plaintiff an amount of R520 000,00 for general damages in full and final settlement within 14 days of this order in one interest free instalment.

26.2 The defendant is further ordered to pay the plaintiffs costs on the High Court's scale either as taxed or agreed to date hereof such costs to include the costs of senior junior counsel and the quantifying and reservation fees, if any, of the following experts:

26.2.1 Dr JJJ Heymans (Orthopaedic Surgeon);

26.2.2 Dr JA Smuts (Neurologist);

26.2.3 Dr S Wolberg (Neurologist);

26.2.4 Dr Franco Colin (Psychiatrist);

26.2.5 Dr Harold Konig (Ophthalmologist);

26.2.6 Alet Mattheus (Educational Psychologist);

26.2.7 Abida Adroos (Occupational Therapist);

26.2.8 Bernard Oosthuizen (Industrial Psychologist);

26.2.9 Munro Consulting (Actuary).

M.J. TEFFO (Ms)

JUDGE OF THE GAUTENG DIVISION, PRETORIA

COUNSEL FOR PLAINTIFF:

INSTRUCTED BY: BEN SMITH INC COUNSEL FOR DEFENDANT:

INSTRUCTED BY: MOTHLE JOOMA SABDIA

DATE OF HEARING: 27 MARCH 2014

DATE OF JUDGMENT: 27 JUNE 2014