

✓✓

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO:2799/2015

(1)	REPORTABLE: YES / <input checked="" type="radio"/> NO
(2)	OF INTEREST TO OTHER JUDGES: YES / <input checked="" type="radio"/> NO
(3)	REVISED.
07-12-2017	

7/12/17

In the matter between:-

ADV J KAHN OBO MASIBI , MOTHEO KETUMELE

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

---

JUDGMENT

---

NKOSI AJ

INTRODUCTION

- (1) The matter is partially settled and the Curator Ad Litem still has to consider the settlement and prepare the report. The only aspect requiring adjudication is the question of the Plaintiff's general damages suffered as a consequence of the motor vehicle collision on 12 February 2012. The plaintiff was 23 years old at that time.

### **COMMON CAUSE**

- (2) It is common cause between the parties that the Plaintiff sustained the following :

- 2.1 A sever concussive brain injury with depressed level of consciousness which was assessed at 6/15 and a period of post / traumatic amnesia of greater than 24 hours.
- 2.2 Chest injury with pneumothorax;
- 2.3 Right-sided hemiparesis;
- 2.4 Fracture of the right ankle in the form of the medial malleolus ;
- 2.5 Fracture of the fingers of the left hand.

- (3) The Whole Person Impairment (WPI) has been assessed at 71% which is an indication of the seriousness of the injuries sustained by the Plaintiff.

- (4) The Plaintiff now suffers from the following sequelae;

- 4.1 the left hand is now deformed;

4.2 a depressive and mood disorder ;

4.3 an organic brain syndrome ; and

4.4 a neurocognitive, neuropsychological and neurophysical deficits.

### **ISSUE FOR DETERMINATION**

- (5) The Plaintiff is claiming payment of R1 200 000, 00 in respect of general damages as indicated in his particulars of claim. He submits that the said amount must be awarded by the court less 20% agreed apportionment. The Plaintiff further submits that the said amount is fair and reasonable in light of the nature and the extent of Plaintiff's injuries and the sequelae thereto.
- (6) The Defendant holds a different view. It proposes that an amount of R450 000, 00 less 20% apportionment would be fair and reasonable award for general damages.
- (7) The court is therefore asked to determine what would be the fair and reasonable amount in respect of the Plaintiff's claim for general damages.

### **DISCUSSION**

- (8) It is not in dispute that the Plaintiff has suffered severe pain and loss of amenities of life. He also suffers from disfigurement and permanent

disability. All of these are components of what is termed, general damages. The question whether he suffered general damages therefore does not arise.

- (9) In *Mosupi v Road Accident Fund*<sup>1</sup>, NF Kgomo J referred with approval to the passage in *Wright v Multilateral Motor Vehicle Accident Fund* as reported in *Corbett and Honey*, Vol 4 at E3-31 and in particular , the passage at E3-36 per Broom DJP, and it reads :

*"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 in the changes of society, the recognition of greater individual freedom and opportunity, rising standards of living and a recognition that our awards in the past have been significantly lower than those in most other countries."*

- (10) Counsel for the plaintiff referred the court to the decision in *Mosupi v Road Accident Fund* wherein the court awarded an amount of R1 000 000, 00 for general damages and to the case of *Webb v Road Accident Fund*<sup>2</sup> where the award for general damages was R1 500 000, 00.

---

<sup>1</sup> *Mosupi v Road Accident Fund* (11/23686 ZAGPJHC 108 (10 May 2013)

<sup>2</sup> *Webb v Road Accident Fund* 2203/14 [2016] ZAGPPHC 15 (14 January 2016)



- (11) Plaintiff's counsel correctly conceded that the injuries in Mosupi's case were more severe than the present case. In that case, the plaintiff was wheelchair bound whereas in the present case, the Plaintiff has a right sided hemiparesis and a severe brain concussion. The same can be said about the injuries in Webb's case. In that case Webb sustained an L1 burst fracture with T12/L 1 dislocation resulting in paraplegia.
- (12) The Defendant's counsel referred court to the case of Ndlovu v Road Accident Fund<sup>3</sup>. In that case the Plaintiff sustained a head injury with some loss of consciousness which was not clearly assessed, a lower back and chest injuries. These injuries resulted in mild to moderate symptoms of depression and anxiety. An amount of R300 000, 00 was awarded for general damages. The Ndlovu case is not helpful in quantifying the general damages in the present case. The same can be said about the other authorities which defendant's counsel referred to in his argument.
- (13) The amount of R1 000 000, 00 awarded in Mosupi case translates to R1 253 000, 00 according to Robert J Koch in the quantum year book, 2017. In my view this court should not award an amount which exceeds what was awarded in Mosupi's case because the circumstances in Mosupi's case are more severe than in the present case.

---

<sup>3</sup> Ndlovu v Road Accident Fund (39302/10) [2013] ZAGPJHC 201; 2014 (1) SA 415 (GSJ) (8 August 2013)

- (14) Plaintiff's counsel further referred court to the matter of *Adlem v Road Accident Fund*<sup>4</sup>. The injuries sustained by the plaintiff in that case are to a large extent similar to those in the present case. There is also not much difference in the sequelae. In *Adlem's* case the Plaintiff sustained a severe head injury causing both focal and diffuse brain damage to the temporal and frontal lobes leading to cognitive impairment, memory difficulties, lack of concentration and attention, language and speech deficit. He also sustained multiple orthopaedic injuries comprising compound fracture of right tibia and fibula, fractures of the superior and inferior pubic rami of the pelvis, fracture of the neck of the femur, blunt injury to the spine and loss of front teeth. The Plaintiff, a 17 year old girl was severely disfigured. An amount of R400 000, 00 was awarded for general damages. This amount is now R860 000, 00 in 2017.
- (15) I have also considered the matter of *Pietersen v RAF*<sup>5</sup> where a 5 year old sustained what appeared to be a moderate brain injury with permanent significant Neuropsychological deficits. The court awarded R750 000, 00 which is currently valued at R1 049 000, 00. In *Dlamini v Road Accident Fund*<sup>6</sup>, a 37 year old with a severe brain injury, fracture of the mandible and permanent neuropsychological deficit was awarded R850 000,00 which is currently R1 126 000,00.

---

<sup>4</sup> *Adlem v Road Accident Fund* 2003 5 C&B J2-41

<sup>5</sup> *Pietersen v Road Accident Fund* (08/19299) [2011] ZAGPJHC 73 (11 August 2011)

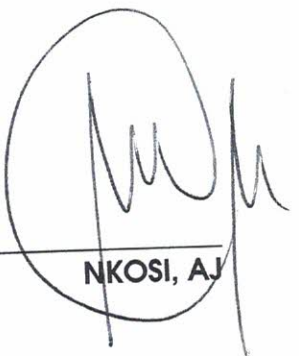
<sup>6</sup> *Dlamini v Road Accident Fund* 2012 (6) QOD 68 (GSJ)

(16) The injuries sustained by the Plaintiff in the Pietersen and Dlamini cases are slightly less severe than the injuries of the case at hand. The amount of R1 200 000, 00 less 20% apportionment equals to R960 000, 00 and in my considered view the said amount is fair and reasonable in respect of Plaintiff's claim for the general damages.

### **Order**

(17) I therefore make the following order :

- i. The Defendant is ordered to pay the plaintiff an amount of R960 000, 00 in respect of Plaintiff's claim for general damages.
- ii. The defendant is to pay the costs of suit.
- iii. The matter is postponed sine die in respect of the remaining heads of damages claimed by Plaintiff.



NKOSI, AJ

## **APPEARANCE**

For Plaintiff	: Advocate C Ascar
Instructed by	: Taitz Skikne Attorneys
For Defendant	: Advocate Marumo
Instructed by	: Morare Thobjane Inc
Date of Hearing	: 05 December 2017
Date of Judgment	: 08 December 2017