

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

**Case Number: 30977/2016**

(1) REPORTABLE: ~~YES~~/NO  
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO  
(3) REVISED: YES/~~YES~~  
6 December 2018 *[Signature]*  
DATE SIGNATURE

**SANELE PRETTY MATHE**

**Plaintiff**

**and**

**ROAD ACCIDENT FUND**

**Defendant**

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**JUDGMENT**

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**MOLEFE J**

[1] The plaintiff instituted an action against the defendant for damages resulting from significant bodily injuries sustained from a collision between two motor vehicles that occurred on 12 January 2011 in Kwa-Zulu Natal. The plaintiff was a passenger in one of the motor vehicles.

[2] At the commencement of the trial, the defendant had conceded that it is liable for the plaintiff's proven and/or agreed damages. The parties had also settled the damages in respect of the plaintiff's loss of earnings in the amount of R5 975 130.00, and the damages in respect of the plaintiff's future medical and hospital expenses. It was agreed that the defendant shall provide the plaintiff with a certificate of undertaking in terms of section 17(4) of the *Road Accident Fund Act 56 of 1996*.

[3] Consequently, the only issue for determination is the plaintiff's general damages. There was no oral evidence led and the determination is based on the contents of the various expert medico-legal reports and the joint minutes based on such reports.

[4] After the accident the plaintiff was admitted at Nkosi Albert Luthuli Hospital where she underwent a number of operations as indicated by various medical experts in their respective fields of specialities. She was in hospital for a total period of five (5) months. According to the expert reports by both the plaintiff and the defendant, the plaintiff sustained the following injuries in the accident:

4.1 Head injury with loss of consciousness (open wound of scalp and chin);

4.2 Vertebral/spine injury;

4.3 Serious crush injuries to her genital area and abdomen;

4.4 An open pelvic injury;

4.5 Fractured pelvis;

4.6 Femoral/groin laceration.

## **Plaintiff's medico-legal reports**

### **Dr R Naiker – General Practitioner**

[5] During consultation it was indicated that the plaintiff is still undergoing psychotherapy, and the following complaints were noted:

- 5.1 Decreased range of motion of the left ankle;
- 5.2 Decreased range of motion of the left and right hips;
- 5.3 Severe deforming scars.

She also presents with a serious skin disorder assessed at 15% and 23% by the Plastic and Reconstruction experts. The scars around her genital areas affect toileting.

### **Dr Zulu Mtshali – Specialist General Surgeon**

[6] Dr Mtshali confirmed that the plaintiff was unconscious after the accident and was in ICU for three (3) months and received the following treatments:

- 6.1 Laparotomy and diverting sigmoid colostomy;
- 6.2 External fixators for fractured pelvis;
- 6.3 Re-laparotomy for closure of colostomy;
- 6.4 Debridement for blunt trauma to perineal region, right thigh and right leg;
- 6.5 Skin graft to buttocks, right thigh, pelvic region and right leg.

### **Dr Leon Rajah – Orthopedic Surgeons**

[7] Dr Rajah confirmed that in terms of the orthopedic injuries, the plaintiff sustained open wounds and pelvic fracture as well as major injury to the abdomen. She has a decreased sensation and loss of movement of the left ankle and foot. She walks with a limp, limited walking distance and is unable to run.

[8] She now experiences the following limitations: pain over the back, very tender over the sacroiliac joints bilaterally and paresis left lower limb. Her whole person impairment is assessed at 23%.

**Dr Jeremy Kriel – Orthoptist and Prosthetist**

[9] It was noted that the plaintiff walks with a limp on the left leg and Dr Kriel recommended that she will need a raised shoes as she has a 1cm leg shortening. The raised shoes will reduce the risk of developing osteoarthritis in her hip joint and lower spine.

**Dr M R Mudau (Neurologist)**

[10] Dr Mudau indicated that the plaintiff sustained a moderate head injury as evidence by a low GCS, a deep laceration in the head and post traumatic amnesia, which reveals signs of post-traumatic stress disorder. This is confirmed by the clinical psychologist. Plaintiff's prognosis is poor and recovery is unlikely 5 years after the accident. She has a deformity of the lower back of the soft tissue and deformity of the missing muscle of the left thigh, with an increased risk of epilepsy at  $\pm 5\%$ .

**Dr M R Songabau – Gynecologist & Obstetrician**



[11] Dr Songabau's examination of the plaintiff's valva and perineum showed that the region is deformed with an ugly scar, leaving a gaping vagina and deficient perineum. The examination was painful and uncomfortable. There was a feeling of irregular bumping under the symphysis, pubis like the bone was easily reachable. The cervix was 3cm long, close and there was no cervical excitation motion tenderness. It was difficult to ascertain the uterus and adnexa because of increasing discomfort during the examination.

[12] The prognosis is that she will be able to conceive but will encounter major problems during her pregnancy in the following manner:

12.1 Pelvis arthropathy may be aggravated with ever increasing pregnancy weeks associated with increasing weight, pressure on the bony pelvis and relaxation of the joints;

12.2 During the late second and third trimesters, she will experience severe discomfort, pain and difficulties even in certain instances impossible to walk;

12.3 She is at risk of post-traumatic pelvis osteoarthritis which will aggravate pregnancy pelvic arthropathy;

12.4 The best way for her to deliver will be by elective C-section due to the deformed pelvis.

[13] Deficient perineum and deformed vulvar with a gaping vagina affect her aesthetic wise and poor self-esteem. This deformity may potentially lead to recurrent vaginal soiling from the anus that may impair negatively on her personal hygiene, recurrent infection and infertility.

**Dr E Moshokoa – Specialist Urologist**

[14] Dr Moshokoa indicated that the plaintiff is getting irregular periods from the multiple injuries she sustained. She currently has a lower urinary tract symptoms and has flatus incontinence. She also experiences difficulties cleaning up perineum after passing urine and faeces.

**Dr S S Selahle – Plastic and Reconstructive Surgeon**

[15] The assessment by the plastic and reconstruction surgeon indicates that the plaintiff represents scarring and deformities on the occipital scalp, the trunk, right and left lower limbs. The above scars have no features of scars hypertrophy but they are however cosmetically unsightly and disfiguring. The above scarring were assessed at 23% whole person impairment.

***Defendant's medico-legal reports***

**Dr GJH Swartz – Orthopedic Surgeon**

[16] Dr Swartz examined the plaintiff on 30 November 2017 and noted the healed laparotomy scar with healed stoma sites on the right side. The lumbar spine had a large healed devolving injury, posterior lower and posterior pelvis with part covered by muscle flap, covered with a 13x5cm skin graft. There was a large healed traumatic wounds to the genital area and a mal-aligned and posture of the right pelvis.

**Marius Prinsloo – Orthotic and Prosthetic**

[17] An ankle foot orthosis and crutches from time to time were recommended. The aim is to keep the foot neutral, absorb shock and distribute pressure evenly.

This also helps to store and release energy at the desired times and to stabilize the knee during gait cycle.

**Dr D M Manyane – Neurologist**

[18] Dr Manyane indicated that the plaintiff presented with the following clinical *sequelae* of injuries sustained: mild concussive head injury, post-traumatic amnesia and neuropsychological and neurocognitive impairments.

**Dr Ehren Eksteen – Plastic and Reconstructive Surgeon**

[19] Dr Eksteen examined the plaintiff on 23 July 2018 and noted the following obvious scars:

19.1 scar of scalp with alopecia 1cm x 1cm;

19.2 scar of chin, hypertrophic and hyperpigmented 1cm x 1cm;

19.3 midline laparotomy scar, hypertrophic 30cm x 1cm;

19.4 skin grafted scar with contour deformity (R) medial thigh 20cm x 10cm;

19.5 skin grafted area lumbosacral, hypertrophic with meshed skin appearance, 20cm x 10cm;

19.6 multiple smaller scars, hypertrophic 2cm x 1cm of (R) hip area (at least four);

19.7 scar left upper thigh, hypertrophic 4cm x 2cm;

19.8 scar (R) calf 6cm x 1cm flat;



19.9 scar (R) medial leg 4cm x 1cm hypertrophic.

[20] Counsel for the plaintiff<sup>1</sup> submitted that in light of the plaintiff's serious injuries and *sequelae*, an amount of R1 900 000.00 in respect of general damages should be awarded to the plaintiff. Counsel relied on the following cases with almost similar injuries to the plaintiff:

20.1 *Anthony M v Road Accident Fund* case no 27454/2013 a judgment delivered on 15 February 2017 by Msimeki J. In this case the plaintiff sustained a bilateral medial orbital fracture, inferior blow out fracture, multiple facial lacerations and open wounds, bruising of upper arm, broken teeth, a moderately severe head injury and severe scarring and disfigurement. In 2017 the plaintiff was awarded R1,6 million.

20.2 *Dlamini v Road Accident Fund*<sup>2</sup> wherein the plaintiff sustained brain injury, fractured mandible, loss of teeth, soft tissue injuries to the cervical and lumbar spine. He was hospitalized for three months and left with neuropsychological *sequelae* because of the head injury. The current monetary value awarded for general damages is R1 188 000.00.

[21] Defendant's counsel<sup>3</sup> referred me to the following comparable cases:

21.1 *Ramcharan and Another v Southern Insurance Association Ltd*<sup>4</sup>, a 1971 case wherein an 18 year old boy, as a result of a motor vehicle accident, sustained a fracture at the base of the skull and concussion, a broken right maxilla and a fracture of the right orbit, fractures of the mandible and loss of

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<sup>1</sup> Advocate T C Maphelela

<sup>2</sup> 2012 (6A4) QOD 68 (GSJ)

<sup>3</sup> Advocate JHP Hatting

<sup>4</sup> 1971 (2B3) (QOD 175 (D))



teeth. The right side of his face had been crushed in and his nose seriously displaced. As a result, he had to undergo twelve operations over a period of 21 months, of which eight months were spent in hospital. The current monetary value awarded for general damages is R592 000.00;

21.2 *Gibson v Berkowitz and Another*<sup>5</sup> wherein a 28 year old woman sustained severe burns to her vagina, vulva, perineum, peroneal region, sacrum and buttock area, covering about 15% of the body. The court awarded general damages in the current monetary value of R250 000.00.

21.3 *Pretty Khabo Tlou v Road Accident Fund* case number 17225/2011, a judgment delivered by Nonyane AJ on 25 January 2016. The plaintiff sustained a moderate to severe head injury which resulted in severe cognitive and social *sequelae*, laceration above her right eye, injury to her right shoulder and soft tissue injury to her right knee and ankle. An award in the current monetary value of R800 000.00 was awarded to the plaintiff.

[22] Defendant's counsel contends that a fair and just amount of between R700 000.00 to R800 000.00 should be awarded to the plaintiff for general damages.

[23] It is trite that when considering general damages comprising pain and suffering, disfigurement, permanent disability and loss of amenities of life, a trial court has a wide discretion to award what it considers to be fair and adequate compensation to the injured party<sup>6</sup>.

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<sup>5</sup> 1996 (4) QOD G2-16 (W)

<sup>6</sup> *RAF v Marunga* 2003 (5) SA 16 (SCA) at 169 E-F

[24] In *Protea Insurance Co Ltd v Lamb*<sup>7</sup> Potgieter JA emphasized that a comparison of plaintiff's general damages with previous awards, need not take the form of a meticulous examination of awards made in other cases in order to fix an amount of compensation, nor should the process be allowed to dominate the enquiry, so as to fetter the general discretion of the court. Comparable cases should rather be used to afford some guidance in a general way towards assisting the court to arrive at an award, which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all factors which are considered to be relevant in the assessment of general damages.

[25] I am therefore called upon to exercise a wide discretion to award what I consider to be a fair, reasonable and adequate compensation to the plaintiff for general damages. The plaintiff was born on 23 April 1996 and when the accident occurred she was 15 years old. She sustained major injuries to her abdomen and pelvis, with extensive scars over the abdomen and pelvis, causing significant disfigurement. She walks with a limp and her ambulatory status is compromised. The region around her vulva and perineum is deformed with an ugly scar, leaving a gaping vagina and deficient perineum. The stream of urine mal-deviates and the scarring and deformity interferes with the free passage of faeces during defecation.

[26] Taking into account that the plaintiff, is a young 22 year old woman, she has massive scarring, which has diminished her self-esteem as her appearance is very important. Her genital injury as well as the head injury has resulted in her depression and post-traumatic stress disorder.

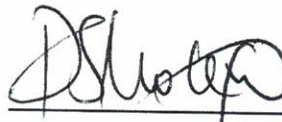
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<sup>7</sup> 1971 (1) SA 530 (A) at 535 H-536 A

[27] Having taken into account the plaintiff's injuries, *sequelae*, her age, comparable cases and all the factors and circumstances relevant to the assessment of damages, I am satisfied that the amount for damages must be substantial. No money payment can ever make up for what her life might have been and what it will be. I conclude that an appropriate, fair and reasonable award for damages is R1 600 000.00.

[28] Counsel for both parties agreed on a draft order, subject to my determination of the quantum of damages.

[29] Accordingly, the amended draft order marked "X" is made an order of Court.



**D S MOLEFE**

**JUDGE OF THE HIGH COURT**

**APPEARANCES:**

**Counsel on behalf of Plaintiff** : **Adv. Advocate T C Mapholela**

**Instructed by** : **HC Madike Attorneys**

**Counsel on behalf of Defendant** : **Adv. Advocate JHP Hatting**

**Instructed by** : **Lekhu Pilson Attorneys**

**Date of Hearing** : **9 October 2018**

**Date of Judgment** : **6 December 2018**