

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

CASE NO: 28777/2017

REPORTABLE: NO  
OF INTEREST TO OTHER JUDGES: NO  
REVISED: YES  
DATE: 17 May 2022

In the matter between:

**RAMOTSOELA: DIANA DIPOLELE**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

**JUDGMENT**

**ALLY AJ**

**INTRODUCTION**

[1] The Plaintiff instituted action against the Defendant arising out of a motor vehicle collision that occurred on 31 January 2016 in which the Plaintiff was a passenger.

[2] The action was initially defended by the Defendant but due to no communication regarding the further conduct of the case from the Defendant, the Plaintiff applied for leave to have the Defendant's defence struck out and further

relief. My sister, Mokose J granted an Order striking out the defence of the Defendant as well as granting Plaintiff leave to proceed to trial by way of default judgment<sup>1</sup>. This matter therefore served before this Court as a default judgment matter.

[3] However, although this case is proceeding by way of default, it is still incumbent on the Plaintiff to prove its case. In this regard the Plaintiff filed affidavits in respect of liability and the quantum of damages suffered. The Court is grateful for the detailed Heads of Argument filed by Counsel for the Plaintiff.

## **BACKGROUND FACTS AND EVALUATION**

[4] The Plaintiff was a passenger in a Toyota Corolla with registration letters and number [...] when a certain Toyota motor vehicle with registration letters and number [...] collided with the said Toyota Corolla head on.

[5] In order to succeed on the merits, the Plaintiff need only prove the proverbial 1% negligence on the part of any of the drivers of the abovementioned insured motor vehicles.

[6] On the totality of the evidence contained in the affidavits of the Plaintiff and a witness, a certain Mongezi Patrick Ngalo, a passenger in the abovementioned Toyota Corolla motor vehicle as the Plaintiff, the Defendant is liable for 100% of the proven damages of the Plaintiff.

[7] As a result of the abovementioned collision, the Plaintiff was seriously injured as evidenced from the hospital records and qualified as serious by Dr GA Versfeld. The injuries sustained are the following<sup>2</sup>:

- 7.1. a laceration on the left cheek;
- 7.2. an injury to the left shoulder;
- 7.3. a left wrist injury;
- 7.4. an ulna nerve injury;

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<sup>1</sup> Caselines: 021-1 – 021-2

<sup>2</sup> Caselines: 008-3 – 008-33

7.5. an undefined head injury.

[8] The Plaintiff was initially admitted to Parys Hospital and then transferred to Kroonstad Hospital for a period of approximately 6 days. She received the following treatment as contained in the expert medical reports of Dr GA Versfeld, Dr L Berkowitz.

[9] The Plaintiff filed expert medico-legal reports<sup>3</sup> of Mrs E Kruger, the Occupational Therapist, Dr W Pretorius, the Industrial Psychologist and the Actuarial report of Munro Actuaries<sup>4</sup> in support of the amounts claimed for general damages, loss of earnings.

[10] Having read and considered the abovementioned expert reports filed of record, this Court is satisfied that the Plaintiff has proven the injuries sustained in the abovementioned collision and that such injuries were serious. Furthermore the Plaintiff has also proven her case to be entitled to a certificate in respect of future hospital expenses in accordance with Section 17 (4) (a) of the Road Accident Fund Act<sup>5</sup>, as amended.

[11] In respect of general damages, Counsel for the Plaintiff referred the Court to comparative case law<sup>6</sup>. Now it is true that not all cases can be compared to each other in determining the amount in respect of general damages, this Court is of the view that a fair reasonable amount for general damages in the circumstances of this case is an amount of R650 000-00 (six hundred and fifty thousand rand) as suggested by Counsel for the Plaintiff.

[12] In respect of loss of earnings Counsel referred this Court to the principles laid down in certain cases<sup>7</sup> which guide a Court in determining the amount to be awarded in this circumstances of this case. I have read and considered the said cases and agree with the principles set out therein. I am further satisfied that the Plaintiff has

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<sup>3</sup> Caselines: 008-1 – 008-109

<sup>4</sup> Caselines: 008-110

<sup>5</sup> Act 56 of 1996 as amended by Act 19 of 2005

<sup>6</sup> Caselines: 019-26 – 019 - 28

<sup>7</sup> Caselines: 019-19 – 019- 25

proven her case for the entitlement to loss of earnings and that the conservative contingency applied by Counsel for the Plaintiff is fair and reasonable in the circumstances.

[13] Accordingly a contingency of 5% for past loss of earnings and 13% for future loss of earnings will be applied to the actuarial calculation of Munro:

13.1. past loss of earnings	= R92 075 – 00
13.2. future loss of earnings	= R506 340 – 00
<b>Total loss of earnings</b>	<b>= R598 415 – 00</b>

## **CONCLUSION**

[14] Accordingly this Court is satisfied that the Plaintiff has proven her case in respect of liability, that is, that Defendant is liable for the proven damages she suffered as a result of the abovementioned collision.

**In the result**, the following Order shall issue:

- a). The Defendant is liable for 100% of the proven damages;
- b). Defendant is to pay the Plaintiff the amount of **R1 248 415 – 00 (one million two-hundred and forty-eight thousand and four-hundred and fifteen rand)** as and for general damages and loss of earnings;
- c). The Defendant is to provide the Plaintiff with an undertaking in terms of Section 17 (4) (a) of the Act;
- d). The amount in paragraph (b) above is to be paid within 180 days from date of judgment failing which the Defendant shall become liable to pay interest *a tempore morae* on the amount in paragraph (b) above at the prescribed rate from 14 days after date of this Order to date of payment;
- e). Defendant is to pay the costs of the Plaintiff which costs shall include the preparation and reservation fees for all the experts of the Plaintiff.

**G ALLY**

**ACTING JUDGE OF THE HIGH COURT**

**GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG**

***Electronically submitted therefore unsigned***

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 18 May 2022.

**Date of virtual hearing: 21 April 2022**

**Date of judgment: 17 May 2022**

**Appearances:**

Plaintiff : **Adv. J.C. Prinsloo**  
**Mills & Groenewald**  
[dalene@mgp.co.za](mailto:dalene@mgp.co.za)

Defendant : **No representation**