

IN THE HIGH COURT OF SOUTH AFRICA  
**DURBAN AND COAST LOCAL DIVISION**

**CASE NO: 10811/2005**

In the matter between:

**JAGRANI BALGOBIND**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

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**JUDGMENT**

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**MOKGOHLOA J**

**Introduction**

1. The Plaintiff, Jagrani Balgobind, instituted action against the Defendant, the Road Accident Fund ("RAF"), for damages suffered by her as a result of a collision involving motor vehicles with registration letters and numbers BLV264B driven by a certain Manoojkumar Sheosunker, ND 23198 driven by a certain Michael Olmesdahl, and ND 45983 driven by the Plaintiff. The said collision occurred on 6 August 2002 at 11h15 along Wakesleigh Road, Bellair. The Plaintiff based her claim on the sole negligence of Manoojkumar Sheosunker.

2. The Plaintiff claimed the following amounts:

<b>2.1</b>	Past hospital expenses	R 65
		596.52
<b>2.2</b>	Past medical expenses	R 58
		317.34

2.3 Estimated future medical expenses R 50  
000.00

2.4 General damages R275 000.00

3. At the commencement of the trial, I was informed that the merits of the Plaintiff's claim had been settled and that the Defendant is liable to compensate the Plaintiff for 50% of her proven or agreed damages. I was further informed that the Plaintiff's past hospital and medical expenses has been agreed between the parties. Furthermore, the Defendant has tendered an undertaking as provided for in Section 17(4)(a) of Act 56 of 1996 in respect of the Plaintiff's estimated future and related medical expenses. The Plaintiff has accepted this tender. Consequently, the issues for determination are the Plaintiff's general damages and costs on such determination.

4. In support of their contentions on the agreed issues, the parties agreed to submit written and oral argument on the admitted Medico Legal documents of the Plaintiff's Orthopaedic and Plastic and Reconstructive Surgeons. This rendered the oral evidence of the Plaintiff and other experts unnecessary.

### **Background**

5. The Plaintiff, a 66 year old woman sustained serious injuries as a result of the collision. She was admitted to the Trauma Unit at Entabeni Hospital where she was treated by Dr Dorfling. Dr Dorfling diagnosed her as having contusions of the forehead and nose, muscle strain of the neck and back, contusion of the anterior chest walls and compound fractures of the right patella. Her extensive facial fractures and injuries on her nose and underlying orthopaedic injuries required subsequent special treatment by a Plastic and Reconstructive Surgeon.

6. Dr Dumas, a Plastic and Reconstructive Surgeon, consulted with the Plaintiff. According to Dr Dumas, the Plaintiff presented the following primary injuries on admission to Entabeni Hospital: major bilateral Le Fort III fractures; extensive injury to the left and right media orbital walls with transection of the canthal tendons; extensive injury to the nasal skeleton and cartilaginous skeleton of the nose with major lacerations to the underlying soft tissue and multiple facial lacerations.
7. On 7 August 2002, Dr Dumas performed a major reconstructive maxilla facial surgery on the Plaintiff. This was done at Entabeni Hospital. The operation involved degloving approaches to both the left and right side of the face with the plating of multiple comminuted fractures using a titanium micro plating system. According to Dr Dumas' report, during the same operation, attention was given to reconstruction of the medial walls of the orbit with repair of the medial canthal tendons. Initial stages of reconstructive surgery to the nasal skeleton were also undertaken with simultaneous debridement and suturing of the extensive soft tissue lacerations to the face and nose. Dr Dumas states that the Plaintiff progressed well after the operation but a further reconstructive surgery was required due to the extensive nature of the facial injury.
8. On 25 February 2003 the Plaintiff underwent a formal total nasal reconstruction. This operation involved the repair of the nasal skeleton with the introduction of a medpor nasal strut to correct the collapsed nasal dorsum. Dr Dumas reported that no major complications were experienced before this operation and the Plaintiff progressed well.

9. Clinically, Dr Dumas found on the 31 July 2008, that the Plaintiff progressed well and that she presented with reasonably good facial symmetry considering the extensive nature of the original injury. The nasal reconstruction and other reconstructive operations were satisfactory and appeared good according to Dr Dumas. However, the Plaintiff had two problems i.e. ongoing sinus pathology and continuous pain and sensitivity of the face in the region where titanium micro plating were used. Dr Dumas recommended further surgery to reduce the ongoing pain and sensitivity. The Plaintiff was referred to Dr Peter de Marais (Ear, Nose and Throat Specialist) to attend to her sinusitis.
10. Dr B B Garach, an Orthopaedic Surgeon, consulted with the Plaintiff on the date of the accident. He noted that her right knee had a jagged inverted V shaped laceration with the bone and joint being exposed. X-rays showed that the Plaintiff has suffered a commuted fracture. He also noted that the Plaintiff had fractured her right distal radius and a metacarpal on her left little finger.
11. On 6 August 2002, the Plaintiff underwent surgery during which Dr Garach performed a patellectomy, (removal of the patella). This, according to Dr Garach, was done due to the fact that the Plaintiff's patella was fragmented and could not be reconstructed. A plaster case was applied to the Plaintiff's right wrist for the fracture of distal radius. The drain from the right knee was removed on 10 August 2002. A brace was applied to the right knee and mobilised with physiotherapy and the Plaintiff was discharged home with a walking cane and a wheelchair.

12. On 16 October 2002, the Plaintiff's knee was found to be stiff with flexion of 45°. She was taken to theatre on 18 October 2002 for a manipulation of the knee under general anaesthetic. After manipulation, the Plaintiff had physiotherapy and continuous passive movement in the ward. On 12 February 2003, the flexion in the Plaintiff's knee was found to have improved to 110°.
13. Regarding the Plaintiff's present conditions, Dr Garach recorded that the Plaintiff has constant pain in her right knee. She cannot run or jump. She cannot walk upstairs without assistance as the knee is painful and feels weak. She is unable to kneel on the right side and the flexion in the right knee is reduced. She is unable to sit in a low chair or bend at prayer. Dr Garach also noted that the Plaintiff experience pains on her right hand and wrist accompanied by weakness of grip in the right hand. She also has facial pains associated with facial asymmetry and numbness of the lips.
14. On physical examination, Dr Garach found that the Plaintiff has an asymmetry of the nose – V shaped nasal scar. Her right wrist exhibits mild deformity of the radius and prominent ulna head. There is crepitus palpable in radioulna joint on movements. There is wasting of the thenar eminence and opposition of the thumb is weak. Dr Garach found that the sensation in the median nerve distribution is reduced and so is the movement of the wrist.
15. Regarding the Plaintiff's right knee, Dr Garach noted that the thigh circumference of her right leg had a 1cm reduction associated with the muscle wasting. Over the anterior aspect of the knee there is a 14cm traverse scar and 9cm vertical scar. The absence of the patella is

noticed with a flattened anterior aspect of the knee compared to the left knee. The sensation around the scar was diminished. The power of the right quadriceps muscle is reduced by one grade.

**16.** Dr Garach expressed an opinion that the Plaintiff has sustained severe injuries to her face and right knee. The facial injuries have left the Plaintiff with permanent disfigurement and facial pain. Her right knee has a typical dashboard injury. There was a commuted fracture of the right patella which was not reconstructable. She had debridement and patellectomy done of all the fracture fragments and primary repair of the patella tendon. The repair had healed but she developed knee stiffness associated with prolonged immobilisation of the knee in a brace which was essential for the repair of the tendon. The stiffness was treated with intense physiotherapy. She eventually regained 90° of the flexion in the knee after about a year. The power of the quadriceps muscle is reduced following a patellectomy and the Plaintiff has about 20% reduction in the power of the right knee extension. According to Dr Garach the Plaintiff's fractured right distal radius was treated with a below elbow cast. The fracture has healed but there is a mild loss of movement and reduction in power grip. These according to Garach, appears to be of a permanent nature.

**17.** Dr Garach noted that the Plaintiff's injuries were associated with blood loss and compensated shock. She was treated with intravenous fluids and blood transfusion and would have experienced severe psychological shock from the injuries and hospitalisation. According to Garach, the Plaintiff's facial injuries are associated with severe pain and swelling. She would have experienced severe pain relating to the injuries of the face and right knee for about 2 weeks following the injury and surgery. She experienced moderate pain for 3 months and will continue to experience pain in the face, right knee and right wrist which

are of a permanent nature. The Plaintiff experienced suffering associated with hospitalisation, multiple surgery, the use of crutches, wheelchair and brace.

### **Disability, Loss of Amenities of Life, and Disfigurement**

18. The Plaintiff was hospitalised for 2 weeks and confined to use of crutches and wheelchair for 6 weeks. This, according to Dr Garach, would have caused her to experience total temporal disability. She will continue to experience disability relating to certain activities pertaining to the right knee and right wrist. The Plaintiff experienced partial loss with regard to her ability to walk and certain leisure activities, which will be of a permanent nature. The Plaintiff has a scar on her nose with asymmetry of the nose. She has a scar over the right knee with loss of contour of the knee associated with an absent patella. These contribute to disfigurement.

19. Mr Steward, for the Plaintiff, submitted that an amount of R275 000.00 represents a fair quantification of the Plaintiff's claim for general damages. He submitted an award of this amount would be in keeping with awards made in similar cases where Plaintiffs sustained similar injuries to those sustained by the Plaintiff herein. On the other hand Mr Bedderson, for the Defendant, submitted that an award of R150 000.00 would be more appropriate. The parties referred me to a number of decided cases. I found the following comparable case more illuminating and helpful in my assessment of Plaintiff's general damages.

20. 20.1 *In Jones v Santam Insurance 1976* fully reported in *Corbett & Buchanan, The Quantum of Damage in Bodily and Fatal*

***Injury Cases Vol. 1 at p 602.*** In this case, the Plaintiff, a woman 53 years of age, sustained a serious knee injury and was in persistent and constant pain for three and half years. Her patella was finally removed and this resulted in loss of amenities of life. The court awarded her R70 060.00 (in 2008 terms).

**20.2** In ***The Government v Marine & Trade Insurance 1973*** reported in ***Corbett & Buchanan supra at 334***, the Plaintiff had a knee injury which resulted in the removal of the patella. He was awarded general damages of R40 000.00 (today's value).

**20.3** In ***Morris v SA Railways and Harbours 1961 Vol. 1 Corbett & Buchanan at p 296***, the Plaintiff a 53 year old female, suffered a permanent disfigurement of the face and considerable pain. She also suffered a disability of the right hand and wrist. The court awarded her general damages of R76 000.00 (in today's terms).

**21.** The courts have repeatedly stated that the exercise of assessing and awarding damages for fatal and bodily injuries is less exact and *in arbitrio iudicis*. See ***Passenger Transport v Franzen*** reported in ***Corbett & Honey Vol. 2 at 426***. As Watermeyer JA (as he then was) aptly put it in ***Sandler v Wholesale Coal Supplies Ltd 1941 AD 194 at 199***:

*"It must be recognized that though the law attempts to repair the wrong done to a sufferer who has received personal injuries in an accident by compensating him in money, yet there are no*



*scales by which pain and suffering can be measured, and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty. The amount to be awarded as compensation can be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending on the judge's view of what is fair, in all circumstances of the case".*

I am in respectful agreement with this dictum.

22. In determining a fair compensation, the courts have regard to a number of factors, such as, awards in comparable cases, inflation and changes in the value of money and problems arising from collateral benefits. It is abundantly clear from the abovementioned cases that all the Plaintiffs suffered serious injuries to varying degrees. The *sequelae* and aftermaths of their injuries, also differ in a marked degree. Of equal importance are the differences in their ages, qualifications and chosen professions. However all of them suffered disability, loss of amenities of life, enduring pain and suffering and discomfort although to varying degrees.
23. I cannot confirm that the present case is more tragic and far reaching than these comparable cases. Admittedly, the *sequelae* of the injuries by Ms Balgobind are, in some respects, more serious than in some of the comparable cases but less in other respects. It cannot be gainsaid that Ms Balgobind's injuries are very serious and far-reaching. Although she has 90% recovery of the orthopaedic injuries, it is clear that she is left with some disability and scars which are of a permanent nature. The removal of the titanium plates on her face, and other further treatments will only alleviate pains but not take it away

altogether. It is however unclear whether the sinus problem was caused by the accident or whether the accident made it worse. No conclusive medical evidence has been tendered herein. I have also taken into consideration the age of Ms Balgobind in assessing the appropriate and fair amount to be awarded to her as compensation for general damages and compared it to comparable cases above. In the premises I am of the view that general damages of R200 000.00 should be awarded in this case.

### **Conclusion**

- 24.** It is not in dispute that the plaintiff has sustained severe orthopaedic injuries as well as severe facial injuries as stated in the medico-legal reports of Drs Dumas and Garach. Furthermore it is not in dispute that the plaintiff will continue to suffer pains.
- 25.** Having taken all relevant facts and the various factors referred to above in account, I am satisfied that the amount of R200 000.00 constitute a fair and reasonable compensation for the plaintiff.
- 26.** It has to be borne in mind that the parties have agreed on a 50/50% apportionment. It follows logically that 50% has to be deducted from the amount of R200 000.00 as representing her contribution to her own damages.

**I therefore make the following order:**

1. The defendant is to make payment in the amount of **R100 000.00**, together with interest thereon at the legal rate of **15.5%** per annum from **14 (fourteen)** days from date of judgment to date of payment.
2. The defendant is to pay the plaintiff's costs of suit, including:  
  
the Medico Legal Reports of **Messrs Garach and Dumas**, and various **Radiologists and other Doctors who treated the plaintiff and who gave Medico Legal Reports.**
3. The defendant is to pay interest on the plaintiff's costs at the legal rate of **15.5%** per annum, from **14 (fourteen)** days after taxation to date of payment.

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MOKGOHLOA J

#### **COUNSEL**

Counsel for the Plaintiff	:	M E Stewart
Instructed by	:	Berkowitz Cohen Wartski Attorneys
Counsel for the Defendant	:	B S M Bedderson
Instructed by	:	Zubeda K Seedat & Company
Date of hearing	:	26 February 2009
Date of Judgment	:	17 April 2009

