

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO LOCAL DIVISION, THOHOYANDOU)

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED

CASE NO: 681/2021

Signature

Date...2024/01/24

In the matter between:

SITHOLIMELA AVHAPFANI SHARON

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MONENE AJ

- [1] The plaintiff instituted action proceedings against the defendant for damages arising from a motor vehicle accident which occurred on 03 November 2019. The plaintiff was a pedestrian at the time of the accident.
- [2] The merits in this matter were settled between the parties with the defendant accepting 100 percent liability for the plaintiff's proven damages.
- [3] What stands before me for determination are general damages and loss of earnings. Ancillary thereto is a standard prayer for future medical expenses in terms of section 17(4)(a) of the Road accident Fund Act.
- [4] This is yet another matter where the defendant has not bothered to file expert reports to assist the court in arriving at a just compensation amount. Hence the matter served before this court as a default judgement application on general damages and loss of earnings.
- [5] In brief and for context the evidence available is to the effect that the plaintiff, who was a pedestrian at the time of the accident, suffered the following physical injuries from the motor vehicle accident:

5.1 Head Injury

5.2 Left acetabulum fracture

5.3 Left pubic ramus fracture

[6] It being so that the defendant has characteristically not filed any expert reports the plaintiff sought and was granted leave by this court to proceed in terms of Uniform rules 38(2) and 39(1) the trite effect of which was the admission of the plaintiff's expert witnesses' evidence under cover of affidavit and the plaintiff permitted to prove her case, in the defendant's absence so far as the burden lies on her.

[7] Pursuant to discharging her onus regarding her loss of earnings the plaintiff led evidence which can best be stated as follows in sum:

7.1. Dr T A Mudau, an orthopaedic surgeon confirmed the physical injuries as relating to the head injury, the left acetabulum fracture and the left pubic ramus fracture. The doctor's evidence is furthermore to the effect that the plaintiff experiences pain on the left hip and that the plaintiff will need a total hip replacement in future as well as continued mild treatment.

7.2 Dr N D Chula , a neuro surgeon's evidence was that the plaintiff suffered a moderate head injury whose sequelae is chronic headaches, chronic neck, thoracic spine and lower back pains, impaired memory problems, anxiety and post traumatic stress disorder. The doctor further corroborated the opinion that the plaintiff will be in need of future medical care.

7.3 Dr M B Koko, an clinical psychologist confirmed the plaintiff's memory loss resulting from the accident and testified further that the plaintiff has a compromised complex visual attention, compromised social reasoning, a

neurocognitive disorder caused by a traumatic brain injury and will no longer be able to generate an income in any manner.

7.4 L Langa, an industrial psychologist testified per affidavit that the plaintiff cannot return to her pre-accident income generation abilities, cannot drive a car for extended periods according to the demands of her pre-accident self-employment as a gardening landscaper. In general this witness' evidence was that the income generation capacity of the plaintiff has been compromised beyond the moderate.

7.5 R S Mathegu, an occupational therapist's testimony was that owing to the accident and its sequelae the plaintiff has difficulty sitting, standing and walking and that her physical limitations prevent her from returning to any of her self-employment hustles. The conclusion was that because the plaintiff struggles with lifting, carrying, bending and standing she would be suited for strictly seated sedentary type of work which itself will still be a tall order given the pain she still suffers when seated for a long time.

7.6 Taking counsel from the expert opinions of the above expert opinion evidence Tsebo Actuaries provided expert evidence on the computation of loss of earnings postulating a total loss of R3 027 915.00 made out of the sum of past loss of earnings at R114 031.00 and future loss of earnings at R2 913 884.00. The actuaries factored here 5% contingencies for past loss and 15 % for future loss of income.

[8] In his very helpful heads of argument counsel for the plaintiff, Mr Mpe, prayed for a total loss of income of R2 330 291.00 apparently having opted for higher than normal contingencies of 15% and 35% for past and future loss respectively. I am unable to fault his approach and reasoning.

[9] The approach for assessing loss of earnings can be put no better than it was stated in **Southern Insurance Association v Bailie v NO 1984(1) SA 98(A) at 112E-114F** where the following was said:

“ Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augururs or oracles. All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss...”

[10] I may be without the benefit of soothsayers and prophets as I make a prediction of a future loss in the present day but at least I have the benefit of experts' opinions to assist me in that speculation and make it one guided by education. To deviate therefrom I need something better or a counterview, which as I said, is lacking in casu.

[11] I do not have to unnecessarily burden this judgement with long erudite sounding phrases about the sequelae of the injuries in the context of the plaintiff's age and employment history. The summary of expert evidence led before me above, which evidence I have no reason nor inclination to deviate from is, in my view, sufficient determinant of the quantum opined on loss of earnings.

[12] Accordingly, I am persuaded to award the plaintiff general loss of earnings in accordance with what the plaintiff has prayed for in the heads of argument. She had prayed for R12,5 million on just this head of damages in the particulars of claim, an amount which is clearly not borne out by evidence led.

[13] Regarding general damages I have to exercise my discretion in that regard guided by the following:

13.1 The severity of the injuries and permanency thereof which in casu I find, on the basis of the expert evidence adduced in this matter, to be far above the average.

13.2 The effect of those injuries on a plaintiff's loss of amenities of life which I also find, as per the reports summed supra, to be extremely grave in casu.

13.3 Comparative awards in broadly similar types of matters which I reflect briefly on infra alive to the trite law that they serve merely as guidelines as no two matters can ever be the same.

[14] Almost on all fours with this matter is **Kruger v Road Accident Fund(27383/2009)[2022] ZAGPPHC 73(14 February 2022)** where for moderate to severe traumatic brain injury the court awarded general damages to the tune of R1 400 000.00. Distinguishing that matter from the one in casu was that the plaintiff in that matter had additional to the head injury suffered some spinal injuries whereas in casu all that the plaintiff experiences in the spinal area are some pains without an indication of there being an injury in that area. This, in my view, would tilt the general damages in casu a bit lower although not by a long margin.

[15] In **Claassens v Road Accident Fund (35716/2017){2019} ZAGPPHC 471(24 July 2019)** a moderate to severe brain injury with rib fractures, memory loss and spinal aches attracted an award of R1 200 000.00 equivalent to R1 412 000.00 in 2023.

[16] The plaintiff in **MM v Road Accident Fund(4119/2015) [2019] ZAFSHC 5 (4 March 2019)** had suffered a moderate brain injury together a fracture of the pubic rami and ischium and fractured tibia comparing almost the same with the plaintiff in casu. She was compensated R850 000.00 in 2015 equivalent to R1 014 000.00 in 2023.

[17] What this comparative authorities say to this court is that general damages of the kind of injuries are definitely worthy of an amount above a million rands but definitely not up to the R1 600 000.00 prayed for in the plaintiff's highly helpful heads of argument.

[18] Guided by precedence and applying my discretionary powers in this regard I find that a fair compensation in the circumstances, give and take the differences and similarities in comparable case law, would be R1 300 000.00.

[19] I hasten to point out that I make this award on general damages alive to the fact that, save for having agreed to settle the merits there is on file no indication per se that the defendant has accepted the seriousness of the injury suffered by the plaintiff and consequently made an offer which was rejected by the plaintiff. I was also not addressed along those lines. I do not imagine that it would be up to a litigant as recalcitrant as the defendant to dictate the pace of how and when a plaintiff is

compensated by deciding whether it accepts the seriousness of the injuries suffered or makes an offer or not. It is the court which must determine seriousness of an injury and make an order regardless of whether the defendant has made an offer or not.

[20] In all the above premises the following order is made:

20.1. The defendant shall pay the plaintiff a total amount of R3 630 291.00 being damages suffered by the plaintiff arising from a motor vehicle accident which occurred on 3 November 2019. The amount is computed out of R13 00000. 00.for general damages and R 2 330 291.00 for loss of earnings.

20.2. The amount mentioned in order 18.1 above shall, within 180 days of this order, be paid into the trust account of NKP Manamela Attorneys Inc with the following details:

Bank: FIRST NATIONAL BANK

Account No: 6266 428 5634

REF: MVA/15/20

Link No: 505 0740

20.3 In the event of the aforesaid amount not being paid beyond the 180 days referred to in order 18.2 above, interest at the prescribed rate of interest shall immediately begin to run until date of final payment.

20.4 The defendant is ordered to within 14 days of this order furnish the plaintiff with an undertaking in terms of section 17 of the Road Accident Fund Act in respect of which all future medical expenses arising from the injuries and sequelae of the accident of 3 November 2019 shall upon proof be paid by the defendant.

20.5 The defendant is ordered to pay all the plaintiff's costs on a High Court scale which costs shall include the costs attendant to securing expert reports and their evidence and the costs of counsel.



M/S MONENE

**ACTING JUDGE OF THE HIGH
COURT, LIMPOPO LOCAL
DIVISION, THOHOYANDOU**

APPEARANCES

Heard on : 19 October 2023

Judgment delivered on 29..January 2024

For the Plaintiff : Adv.

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