



**IN THE NORTH WEST HIGH COURT
(MAFIKENG)**

CASE NO.: 1285/2011

In the matter between:

TLOTLEGO TLAMELO MABALE

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

LANDMAN J:

[1] The plaintiff is Tlotlego Tlamelo Mabale, who sues the Road Accident Fund for damages sustained as a result of a motor collision which took place on 30 May 2008 when the plaintiff was 16 years of age. The defendant did not enter appearance to defend.

Background

[2] The plaintiff testified that she was a pedestrian who was knocked by a car. She lost consciousness on impact. She regained her senses when she was at Montana Hospital in Pretoria. She felt pain all over the body.

[3] Dr R A Morule, an orthopaedic surgeon, was informed by the plaintiff that she was initially taken from the accident scene to Jubilee Hospital at Hammanskraal from where, after assessment, she was transferred to Montana Private Hospital in Pretoria on 30 May 2008.

Injuries sustained

[4] The plaintiff presented at Montana Hospital with:

- (a) Multiple fractures of the right ribs involving the 1st to the 9th ribs posteriorly close to the spine.
- (b) An undisplaced fracture of the right clavicle.
- (c) A laceration at the back of the head over the occiput.
- (d) A contusion of the back.

Treatment at Montana Hospital

[5] The plaintiff was assessed. X-rays were taken. She was admitted to the Intensive Care Unit for close monitoring and analgesics as well as bed rest and sedation under the care of thoracic surgeon, Dr Roos.

[6] No operative procedures were undertaken. She settled well and was transferred to a general ward after a few days. She was discharged from hospital after a week,

according to the patient.

[7] When the plaintiff attended at Dr Morule's consulting rooms on 4 December 2010 she complained of:

- (a) Recurrent pain at the injury site on the right collar bone. The pain is felt with activity as well as with changes in weather. The pain is recurrent but non progressive.
- (b) Right chest pain. This is also occasional. It is unassociated with breathlessness.
- (c) Left knee pain. She has had recurrent pain at the left knee. She sustained a knee ligament injury in January 2010. She was hospitalised at Victoria Hospital for one day. No splint was applied.

[8] Dr Morule also noted that she has no backache. She has no pain at the right knee. She also had no notable impairments.

Examination by Dr Morule

[9] Dr Morule noted, *inter alia*, that:

- (a) Her head and neck were normal with no observable deformities. The scar at the back of the head was hardly noticeable. She had the full range of neck movements noted without pain. No tenderness elicited.
- (b) She would incur future medical expenses in respect of:
 - the neck injury which causes her to suffer mild occasional pain.
 - The fracture of the right clavicle. The fragments are solidly united. There is no residual deformity. She suffers

occasional activity related pain as well as pain during inclement weather.

- Fractures of the right ribs. She experiences occasional pain. She requires symptomatic treatment of ongoing pain arising from the right collar bone and right chest cage for the rest of the patient's lifespan. The prognosis is good.

Disabilities and career prospects

[10] Dr Morule notes that the plaintiff was unable to attend school for three months following the accident. She ended up changing schools and dropping a class. She has suffered a setback in her schooling which requires compensation. She is doing well academically as well in sport, according to her mother. Her future career prospects are unlikely to be hampered by the accident in question.

Loss of amenities

[11] The plaintiff played basketball, hockey as well as athletics and has resumed her activities.

[12] Mr Chwaro referred me to two judgments regarding the plaintiff with more or less similar injuries, namely **Nkosi v Road Accident Fund** 2010 Gauteng South High Court CB vol VI J2-16 and **Fortune v Road Accident Fund** 2004 CB vol V J2-139, where, at today's rates, R250 000 and R240 000 was awarded. Mr Chwaro submitted that damages in the range of R400 000 and R450 000 should be awarded for general damages.

[13] The injuries and relevant circumstances of the plaintiff in **Nkosi** are set out in the headnote which reads:

“Synopsis of injuries and after-effects: Plaintiff sustained chest injuries involving fractures to five of his ribs, fractures of the third and fifth metacarpals of the right hand, concussion and a laceration of the head. He was hospitalised for seven days during which period he had difficulty breathing and was placed on breathing equipment. He experienced severe chest pain several months after the accident when laughing, coughing, sneezing or engaging in exercise such as jogging. He suffered from post-fracture syndrome following the fractures to his metacarpals which caused a shortening of his right hand. He has to be submitted for future surgery by way of a corrective osteotomy to straighten the third metacarpal and plating of the fracture. He suffered a weakness in his right hand and could not make a fist properly. He was found to be moderately disabled mainly as a result of the dysfunctional right hand.”

[14] The injuries suffered by the plaintiff in the case before me bear no resemblance to those mentioned in **Nkosi’s** case. I find it of no assistance in calculating the plaintiff’s general damages.

[15] The injuries and the circumstance suffered by the plaintiff mentioned in the **Fortune** judgment differ so much from those in this case that there is no need to even summarise them. But the **Fortune** judgment does contain a reference to **Mulaudzi v Mutual and Federal Versekeringsmaatskappy Beperk** 1995 C and B vol IV J2-121. The facts in **Mulaudzi** bear, a better but not exact resemblance, to those in the case before me. There R18 000 was awarded for general damages. In Mulaudzi the facts were that:

“Synopsis of injuries and after-effects: Multiple injuries consisting of lacerations of the face, fractures of several ribs and soft-tissue injury of the neck. 1. *Facial lacerations:* Sutured wounds becoming infected and requiring drainage, and leaving permanent scars on the forehead and over the eye-brow, and on the right cheek, the latter being especially unsightly. 2. *Ribs:* Fractures of ribs 1-6 on the left and 2-3 on the right. These fractures healed in a matter of weeks. 3. *Neck:* Soft-tissue damage demonstrated by X-rays. Pain present for almost three years in back, between shoulder-blades and at the back of the head. Such symptoms still intermittently present but expected to clear in near future, i e after about three years. Physiotherapy, analgesics and visits to general practitioner foreseen.”

This translates to R 51 480 in today’s terms.

[16] In my view general damages in the amount of R50 000 will constitute a fair compensation for the injuries suffered.

[17] The defendant should be ordered to provide an undertaking envisaged in section 17 of the Road Accident Fund Act 56 of 1996.

[18] In the premises I make the following order:

1. The defendant is ordered to pay the plaintiff R50 000 for the general damages she has suffered.
2. The capital amount shall be paid into the above-mentioned trust account of Kgomo Mokhetle and Tlou Attorneys within 14 (fourteen) days from the date of this order.
3. Should the defendant fail to make payment of the capital within 14 (fourteen) days from the date hereof, the defendant will be liable for interest on the amount due to the plaintiff at a rate of 15,5% per annum, from the 15th (fifteenth) day from the date of this order, to the date of final payment.
4. The defendant is to deliver to the plaintiff an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act No 56 of 1996, to pay the plaintiff's costs of future accommodation in a hospital or nursing home, or treatment of, or rendering of a service or supplying of goods to her, arising out of the above-mentioned injuries sustained by him/her in the motor vehicle collision on 30 May 2008 and to pay after such costs have been incurred and upon proof thereof.
5. The undertaking in terms of Section 17(4)(a) shall be delivered to Kgomo Mokhetle and Tlou Attorneys within 14 (fourteen) days from the date of this order.
6. The defendant is to pay the plaintiff's taxed or agreed party-and-party costs,

up to and including the date of this order on High Court Scale, which costs will include, but not be limited to the reasonable costs of transporting the plaintiff to the defendant's medico-legal examinations and the qualifying fees of Dr Morule.

7. The plaintiff's taxed and/or agreed party-and-party costs will be paid within 14 (fourteen) days from the date upon which same are taxed by the Taxing Master and/or agreed between the parties.
8. Should the defendant fail to make payment of the plaintiff's taxed and/or agreed party-and-party costs within 14 (fourteen) days as indicated in paragraph 5 above, the defendant shall be liable to pay interest at the rate of 15.5% per annum as from and including the date of taxation of the party-and-party costs, alternatively settlement of the party-and-party costs, up to and including the date of final payment thereof.

A A LANDMAN

JUDGE OF THE HIGH COURT

APPEARANCES:

DATE OF HEARING : 9 JULY 2012

DATE OF JUDGMENT : 19 JULY 2012

COUNSEL FOR PLAINTIFF : ADV CHWARO

ATTORNEYS FOR PLAINTIFF : KGOMO MOKHETLE & TLOU