



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No: 3976/2021

In the matter between:

JANINE DOLORES ALEXANDER

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BESHE J:

[1] Plaintiff instituted an action against the defendant for damages in respect of bodily injuries she sustained in a motor vehicle accident on the 10 November 2017. The action was instituted out of the KwaZulu-Natal division of High Court, Durban in February 2020. It was subsequently transferred to this court by order of the KwaZulu-Natal High Court at the instance of the plaintiff, on the 15 September 2021.

[2] Before I deal with the merits of the action I will briefly sketch the history of the matter. Before the transfer of the matter to this court in September 2021, a notice of intention had been entered by Hughes-Madondo Inc attorneys on 16 March 2020. No plea was filed by the defendant until the matter was transferred to this court on 15 September 2021.

[3] Once the matter was transferred to this court, plaintiff sought judgment by default against the defendant. A copy of the application for default judgment was sent to defendant's claims handler. This did not elicit any response from the defendant. The matter was placed on the case flow management roll on 18 March 2022. Still, there was no response from the defendant. The matter was certified trial ready. By then, the date for the hearing of the default judgment application had been scheduled for the 2 August 2022. It was only on the date of trial that the State Attorney's office filed a notice of acting. The parties agreed that the matter should stand down until the 5 August 2022. On the 5 August 2022 *Ms Jeram* appeared on behalf of the defendant. *Mr Miller* appeared for the plaintiff. A pre-trial conference minute was handed in. It recorded that the defendant conceded liability for 90% of plaintiff's damages. Further, that parties had reached an agreement in settlement of the following heads of damages:

Past loss of earnings : R44 897.00

Future loss of earnings : R623.20

The defendant agrees to furnish plaintiff with an undertaking in terms of *Section 17 (4) (a) of the Road Accident Fund Act, Act 56 of 1996*, for payment of 90% of such future hospital and / or medical costs and expenses. Defendant accepted some of plaintiff's injuries but did not admit the fracture of the 5th metatarsal and the compression fracture of T12 vertebra and multiple level disk space narrowing of the lumber spine and required the plaintiff to prove same. Further that the court should make a finding in respect of fractures to the 5th metatarsal and T12 vertebra as well as the claim for general damages.

[4] This agreement was confirmed by both parties.

[5] In his opening address *Mr Miller* pointed out that the defendant did not file a plea. Therefore, there was no basis for impugning plaintiff's injuries also

because defendant has not filed any expert reports in this regard. He intimated that he will call the plaintiff as well as an orthopaedic surgeon in respect of plaintiff's injuries and sequelae thereof.

[6] *Ms Jeram* for the defendant addressed court and sought a postponement of the matter so as to get proper instructions, having recently been allocated be matter. Further that, the defendant would like to have the plaintiff assessed by experts that the defendant will appoint. There was no substantive application for postponement serving before me. Not satisfied that there was full and frank disclosure or good cause shown why the defendant requires a postponement, why the defendant is not ready to proceed with the matter, I refused the application.

Plaintiff's evidence

[7] I will deal mainly with evidence in support of plaintiff's claim for general damages which is for an amount of R880 000.00. This is in view of the fact that the damages for past and future loss of earnings as well as the liability for 90% of plaintiff's damages has been conceded by the defendant. Plaintiff was born on 28 March 1956. She resides in Extension 10, Makhanda. She is a pensioner, although had it not been for the accident in question, she would still be working. She is drawing a government old age pension. She also gets financial assistance from her relatives. She used to work as a general worker before the accident. The accident occurred on 10 November 2017. She was visiting her daughter at Malvern in KwaZulu-Natal at the time. On the day in question, she had visited the offices of the Department of Home Affairs. She boarded a taxi back to her daughter's home, which dropped her off next to the gate of her daughter's house. In the process of making a U-turn, the taxi reversed into her, causing her to fall on her back. She screamed to attract the taxi driver's attention. The driver merely looked at her with his eyes wide open and drove off. She does not know what happened thereafter. When she woke up, she realised she was at R K Khan Hospital in Chatsworths and her knee

was extremely painful. After being X-rayed, she was fitted with a plaster of paris (POP) from her toe to the hip. The POP was only removed after a month. Even though she was provided with crutches, she still could not walk her left leg was numb and her back was sore. She later travelled back to Makhanda hoping to continue working. She however could not stand on her leg but could ambulate using crutches. When she walked to the witness stand she was mobilizing with the help of crutches. She no longer has a social life which involved going to church everyday where they had a variety of activities on a daily basis. She cannot walk to church anymore. Even though she can wash herself, she needs help with cleaning her house. She has been robbed of her independence and privacy as she requires someone to help her with day to day activities. Her life revolves around sitting down which she can only do for a short time, lying down which also becomes painful after a short while, and walking a bit. The last seven years since the accident are characterised by pain. She is no longer the happy person she used to be before the accident.

[8] The second witness to testify in support of plaintiff's claim was **Doctor P. R. De Bruin**, an orthopaedic surgeon who examined the plaintiff on 1 October 2019 in Makhanda. From the documentation available to him, namely:

RAF 1 document;

Clinical records;

Medico-legal note;

Radiology reports; etc.

It emerged that plaintiff sustained the following injuries:

- Fracture left tibial plato;

- Fracture left foot;
- Compression fracture of the thoracic spine;
- Contused lumber spine with numbness in the right lower leg.

Doctor De Bruin noted that plaintiff's ambulation was slow and painful. She suffered from prominent mechanical pain and tenderness at the lower thoracic spine. Pain on the left knee. Left foot is tender with palpation and pain in the lateral part of the foot. Malalignment of the 5th metatarsophalangeal joint. Radiology examination detected the following:

Post-traumatic arthritis in the left knee.

Previous fracture of the 5th metatarsal, slight malalignment of the metatarsal.

Compression fracture of the T12 vertebra.

Multiple level disc space narrowing in the lumber spine.

These x-rays were done on 1 October 2019. According to **Doctor De Bruin**, plaintiff will use crutches permanently. She may need a knee replacement in future. Her spine injury will lead to severe pain. He concluded that plaintiff sustained serious injuries and that has led to permanent impairment and resulted in a significant life changing sequelae. Plaintiff's injuries are associated with being hit by the taxi and her connecting with the ground when she fell. That the injuries are consistent with the accident she described in her testimony. He opined that plaintiff may not have been aware of the injury to her toes because of the plaster of paris that kept them in place. Hence she did not complain of same at the hospital where she was admitted after the accident. It was only upon the plaster of paris being removed that she became aware of the pain. There is no possibility of her post traumatic arthritis improving. Pain killers will not take all the pain away. The back pain is going to last for the rest of her life.

[9] Understandably, the defendant did not lead any evidence.

Discussion

[10] Based on the evidence presented in support of plaintiff's case, *Mr Miller* argued that the evidence shows that there is a causal link between all the plaintiff's injuries and motor vehicle collision in question.

[11] It is trite that the standard of proof in civil case is that of proof on a balance of probabilities. Based on the evidence of plaintiff and **Doctor De Bruin**, I am of the view that there is a causal link between plaintiff's injuries and the collision that took place on the 10 November 2017 when the taxi she had disembarked from, reversed into her. She testified that she fell on her back. **Doctor De Bruin** testified that no major impact was required for the spine to be injured. It is easily injured. He also explained how the injury to plaintiff's toes could have been missed immediately after the accident. In her testimony, plaintiff also alluded to what appears to have been some confusion regarding her x-rays. She was required to go back to the x-ray for another set of x-rays. She even complained that she had to wait in the queue for her turn the second time around.

[12] I am satisfied that the probabilities are such that, on a preponderance, it is probable that the injuries sustained by the plaintiff are as a result of the collision, including the impugned injuries. Those being: fracture to the 5th metatarsal, the compression fracture of the 12th vertebra and the multiple level disk space narrowing of the lumbar spine.

Quantum of damages

[13] There is no doubt that the plaintiff's life has changed for the worse if not the worst. She is in constant pain. She has lost her independence. She no longer has social life. She is no longer a happy person. She clearly no longer enjoys the amenities of life as a result of the accident. As *Mr Miller* rightly

pointed out, her quality of life has been severely impacted. As indicated earlier, plaintiff's claim for general damages is for a sum of R880 000.00. *Mr Miller* drew my attention to awards that were made previously in cases where the injuries sought to be compensated for were similar to those of the plaintiff. I will have regard to those awards. I will however be alive of the fact that "*The assessment of awards for general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable*".¹ Further that, I have a wide discretion based on the facts of the case, to consider what will fairly and adequately compensate the plaintiff.

[14] Having considered the facts relating to plaintiff's injuries and their life changing sequelae, guidance from previous awards in similar cases, I am of the view that an amount of R400 000.00 as general damages is fair and reasonable. With 90% thereof translating to R360 000.00. As indicated, the parties have reached an agreement in respect of past and future loss of earnings as well as the undertaking in terms of *Section 17 (4) of Road Accident Fund Act 56 of 1996*.

[15] Accordingly, the following order will issue:

Defendant is liable to pay plaintiff as follows:

Past loss of earnings	R44 897.00
Future loss of earnings	R623.00
General damages	R360 000.00
Total	R405 520.00

Interest on the sum of R405 520.00 at the prescribed rate of interest from date of judgment to date of payment.

¹ Minister of Safety and Security v Seymour 2006 (6) SA 320 SCA.

Defendant is directed to furnish the plaintiff with an undertaking in terms of *Section 17 (4) (a) of the Road Accident Fund Act* for payment of 90% of such future hospital and/or medical costs and expenses as may in the future be incurred by the plaintiff in respect of the treatment of or rendering of a service or supplying of goods to the plaintiff, as a result of injuries which the plaintiff sustained in the collision of the 10th of November 2017, after such costs have been incurred and upon proof thereof.

Costs of suit, such costs to include reasonable preparation fees / qualifying expenses, if any, of Doctor P. R. De Bruin.

N G BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

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Date Heard : 5 August 2022
Date Reserved : 5 August 2022
Date Delivered : 13 September 2022