



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

Case No: 3976/2021

In the matter between:

JANINE DOLORES ALEXANDER

Applicant / Plaintiff

And

ROAD ACCIDENT FUND

Respondent / Defendant

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

BESHE J:

[1] On the 13 September 2022 I rendered a judgment in favour of the applicant and awarded her R360 000.00 as and for general damages. The award was for R400 000.00 minus 10% in view of the fact that the defendant conceded liability for 90% of plaintiff's damages. The parties also reached an agreement in settlement of damages in respect of past loss of earnings and future loss of earnings.

[2] The plaintiff is now applying for leave to appeal against my judgment pertaining to her claim for general damages. The application was opposed by the defendant on the basis that I was in a better position to assess plaintiff's general damages having heard extensive evidence in this regard.

[3] The application is premised on the ground that based on the totality of the injuries suffered by the applicant and their sequelae, and awards granted

in comparable cases, another court might reasonably find that plaintiff's claim should have been assessed to be in the sum of R880 000.00. And that therefore this would constitute a striking disparity between the award I made and the one the appeal court might find I should have made and that interference by the appellate court with my decision is warranted.

[4] *Mr Miller* for the applicant once again drew my attention to awards in cases where the plaintiffs had sustained injuries similar to those that applicant sustained.

[5] I am mindful of the fact that as a trial court I had a wide discretion as to what in the particular circumstances would constitute a fair and reasonable award as and for damages. Be that as it may, I am unable to say that there are no reasonable prospects of another court finding that the applicant was deserving of an award for damages for a much higher amount that I awarded her.

[6] Accordingly, leave to appeal is granted to the Full Bench of this division. Costs to be costs in the appeal.

**N G BESHE
JUDGE OF THE HIGH COURT**

APPEARANCES

For the Plaintiff : Adv: T Miller
Instructed by : DULLABH ATTORNEYS
5 Betram Street
MAKHANDA
Ref: Mr N Dullabh
Tel.: 046 – 622 6611

For the Defendant : Adv: V Jeram
Instructed by : STATE ATTORNEYS
17 Fleet Street
Old Spornet Building
EAST LONDON
Ref: Alexander, JD/Z04/VJ
Tel.: 066 – 586 7244 / 043 – 706 5100

Date Heard : 4 November 2022
Date Reserved : 4 November 2022
Date Delivered : 1 December 2022