

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 2905/2021

In the matter between:

MOETI GREGORY NKONOANE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

HEARD ON: AMENDED ORDER BY KHOOE AJ

This amended order handed down electronically by circulation to the parties' representatives by email. The date and time for the hand-down are deemed to be 09:30 on 1 June 2023.

INTRODUCTION

[1] On 25 November 2022, I heard arguments in this matter and reserved judgment. Following my reservation, the parties approached me in chambers informing me of an offer on merits by the defendant which the plaintiff had accepted. The parties informed that they had unfortunately only been aware

of the settlement after the court had adjourned. According to the agreement between the parties, the merits were settled at 90%.

[2] On the 23 May 2023 at 11:00, I handed down judgment in this matter and granted the following order:

[3] In the result, I make the following order:

27.1 The defendant is liable for 70% of plaintiff's proven or agreed damages.

27.2 The issue of future medical and hospital expenses and general damages are separated from other issues in terms of Rule 33(4), with the issue of loss of earning / earning capacity postponed.

27.3 The defendant shall pay the plaintiff an amount of R 455 000.00 (four hundred and fifty-five thousand rand) in full and final settlement of the plaintiff's claim for general damages which amount is made up as follows:

General damages	:	R 650 000.00
Less 30% apportionment:		R 195 000.00
TOTAL	:	R 455 000.00

27.4 The defendant to pay the plaintiff's taxed or agreed party and party costs on High Court scale, until date of this court order, including but not limited to the costs set out hereunder:

27.4.1 The preparation, reservation and / or attendance fees of Counsel to attend the matter on 22, 23 and 25 November 2022;

27.4.2 The reasonable preparation/ qualifying and reservation fees and expenses (if any) of the following experts:

27.4.2.1 Dr Bogatsu (Orthopaedic surgeon);

27.4.2.2 Ms Moagi Occupational Therapists.

27.5 The payment provisions in respect of the foregoing are ordered as follows:

27.5.1 All payments in terms of this order are to be paid directly into the account of the plaintiff's attorneys of record by means of electronic transfer, the details of which are the following:

Gcasamba Attorneys Inc

Bank	-	ABSA
Branch Code	-	630 572
Account No.	-	[...]

27.5.2 Payment of the taxed or agreed costs shall be made within 180 (hundred and eighty) days of taxation, and shall likewise be effected into the account of the plaintiff's attorney.

27.6 Interest shall accrue at the statutory rate per annum, compounded, in respect of:

27.6.1 The taxed or agreed costs, calculated from 14 (fourteen) days from date of taxation, alternatively date of settlement of such costs.

27.6.2 The plaintiff's claim for past hospital and medical expenses is hereby separated in terms of Rule 33(4) and postponed to the pre-trial.

[3] This was an error on my part and no prejudice will be suffered by the parties. In the light of the settlement between the parties, I vary my judgment of 23 May 2023 as follows:

3.1 Paragraph 3 “The defendant accepted liability for 90% of the plaintiff’s proven or agreed damages.”

3.2 Paragraph 26 “I have considered both arguments for the parties and the case law they referred to, for which I am grateful for. Taking into consideration that an award for damages need not paralyse the defendant, I believe a fair amount for general damages is R650 000.00 less 10% in the circumstances.”

3.3 Paragraph 27.3 “The defendant shall pay the plaintiff an amount of R 585 000.00 (five hundred and eighty-five thousand rand) in full and final settlement of the plaintiff’s claim for general damages which amount is made up as follows:”

General damages	:	R 650 000.00
Less 10% apportionment:		R 65 000.00
TOTAL	:	R 585 000.00.

Herewith my amended order:

AMENDED ORDER

27.7 The defendant is liable for 90% of plaintiff’s proven or agreed damages.

27.8 The issue of future medical and hospital expenses and general damages are separated from other issues in terms of Rule 33(4), with the issue of loss of earning / earning capacity postponed.

27.9 The defendant shall pay the plaintiff an amount of R 585 000.00(Five hundred and eighty five thousand rand)) in full and final settlement of the plaintiff's claim for general damages which amount is made up as follows:

General damages	:	R 650 000.00
Less 10% apportionment:		R 65 000.00
TOTAL	:	R 585 000.00

27.10 The defendant to pay the plaintiff's taxed or agreed party and party costs on High Court scale, until date of this court order, including but not limited to the costs set out hereunder:

27.10.1 The preparation, reservation and / or attendance fees of Counsel to attend the matter on 22, 23 and 25 November 2022;

27.10.2 The reasonable preparation/ qualifying and reservation fees and expenses (if any) of the following experts:

27.10.2.1 Dr Bogatsu (Orthopaedic surgeon);

27.10.2.2 Ms Moagi Occupational Therapists.

27.11 The payment provisions in respect of the foregoing are ordered as follows:

27.11.1 All payments in terms of this order are to be paid directly into the account of the plaintiff's attorneys of record by means of electronic transfer, the details of which are the following:

Gcasamba Attorneys Inc

Bank : ABSA

Branch Code : 630 572
Account No. : [...]

27.11.2 Payment of the taxed or agreed costs shall be made within 180 (hundred and eighty) days of taxation, and shall likewise be effected into the account of the plaintiff's attorney.

27.12 Interest shall accrue at the statutory rate per annum, compounded, in respect of:

27.12.1 The taxed or agreed costs, calculated from 14 (fourteen) days from date of taxation, alternatively date of settlement of such costs.

N.J. KHOOE, AJ

On behalf of the Plaintiff: Adv. D.R Thompson
Instructed by:
Gcasamba Inc Attorneys
Bloemfontein

On behalf of the Defendant: Ms. K Mkwanzazi
Instructed by:
State Attorney
Bloemfontein