

**IN THE HIGH COURT OF
GAUTENG DIVISION,**



**SOUTH AFRICA
JOHANNESBURG**

CASE NO: 2021/53692

1. Reportable: No
2. Of interest to other judges: No
3. Revised

Wright J
6 October 2023

In the matter between:

MACWELE, SIBUSISO NASHI

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

WRIGHT J

1. The plaintiff, Mr Macwele is 41 years old. He was injured in a road accident in 2017 when he was 35 years old. He has sued the Fund for damages. The Fund pleaded and the matter comes before me on trial. The Fund conceded the merits 100% in favour of Mr Macwele. His counsel, Mr MH Mokale and the Fund's counsel, Ms P Nziyanziya are agreed that the Fund has already given the plaintiff a certificate to cover future hospital and related expenses.
2. A small claim for past medical expenses was not proceeded with. By agreement, claims for past and future loss of earnings are to be postponed.
3. The only issue before me is that of general damages. The Fund accepts liability. The question is the amount. The legal team for Mr Macwele filed a number of expert reports, including one for an orthopaedic surgeon, one for a neurosurgeon and one for an occupational therapist. It was agreed between counsel that I should proceed on these expert reports as confirmed by affidavits by the experts.
4. The following facts are either common cause or not seriously disputed:
 - 4.1 Before the accident Mr Macwele was normal. He used to play soccer.
 - 4.2 In the accident Mr Macwele was reportedly rendered unconscious, although there is a note by the neurosurgeon that on admission to hospital the GCS reading was 15/15, indicating consciousness. He was taken to hospital with an open neck wound, operated on and remained in intensive care for three months, suffering acute pain.
 - 4.3 Mr Macwele was rendered quadriplegic. He can stand but not for long periods. According to the neurosurgeon, Mr Macwele's "*hands are better than the legs*" but Mr Macwele can't walk or use his hands to take care of himself.

- 4.4 Mr Macwele has muscle atrophy and spasticity in his arms and legs and he can't grasp with his hands. He is wheelchair bound.**
- 4.5 Mr Macwele suffered a mild traumatic head injury.**
- 4.6 Mr Macwele suffers headaches about twice a week.**
- 4.7 Mr Macwele has reduced memory.**
- 4.8 Mr Macwele suffers bladder and bowel incontinence.**
- 4.9 Mr Macwele is in constant pain and is dependent on others for daily life tasks.**
- 4.10 Mr Macwele is at risk of developing bedsores and septicemia.**
- 4.11 Mr Macwele is depressed and suicidal.**
- 4.12 Mr Macwele has scars on the left side of his head in the parietal area and he has scars as a result of the use of cone callipers.**
- 5. The injuries and their consequences are severe and the amount to be awarded for general damages needs to be fair to compensate Mr Macwele.**
- 6. In Mertz v Road Accident Fund 2022 JDR 3771 (GP), a judgment given by a Full Court of the High Court in Pretoria on 2 December 2022 an award of R3.5m was made in favour of a plaintiff in similar circumstances to Mr Macwele.**
- 7. In Mertz, the plaintiff, a woman was left with a prominent tracheotomy scar 6cm long and a well healed anterior neck scar about 6cm long. Ms Mertz suffered acute respiratory failure. She can use her left hand to operate a computer and to hold a spoon. In the present case, Mr Mokale, for Mr Macwele conceded that Mr Macwele was not reported to have specific respiratory problems. However, Mr Macwele can't grasp with either hand.**

8. In my view, Mertz being a recent Full Court decision, I should follow it, allowing for two of the more important differences between the two cases, namely that Ms Mertz but not Mr Macwele suffered respiratory problems and Ms Mertz can use her left hand for limited tasks while Mr Macwele can't use either hand.
9. A fair award in the present case for general damages is R3.5 million.
10. Counsel handed up a draft order dealing with various matters. I am to make it an order having decided only the question of general damages.

ORDER

X as amended.

GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 5 to 6 October 2023

DELIVERED : 6 October 2023

APPEARANCES :

APPLICANT Adv Morari Mokale

morarimok@gmail.com

082 563 0262

Instructed by Mkwanazi M.I & Associates Attorneys Inc

sibusiso@mkwanaziandassociates.co.za

083292 6996

RESPONDENTS Adv Pumza Nziyanziya

Instructed by State Attorneys

Mr Tshepo Ngomana

073 102 9764

tshepon1@raf.co.za