

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case number: 69242/2015

12/10/2017

**In the matter between:**

**MM SCHOEMAN**

**Plaintiff**

**and**

**THE ROAD ACCIDENT FUND**

**Defendant**

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**JUDGMENT**

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**BRAND AJ**

- [1] The Plaintiff, a 60 year old woman, claims from the Defendant general damages and past and future medical expenses arising from injuries she sustained in a motor vehicle accident on 23 February 2014.
- [2] The merits had before trial been settled 100% in favor of the Plaintiff. The Defendant had with respect to future medical expenses agreed to furnish an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 1996 (Act 56 of 1996). I was further informed from the bar by counsel that the parties had agreed to postpone the issue of past medical expenses *sine die*. Accordingly, the only issue remaining for decision was the *quantum* of general damages.
- [3] On this neither party called witnesses, and counsel instead addressed me on the papers.

- [4] The Appellate Division confirmed in *Southern Insurance Association Ltd v Bailey* NO 1984 (1) SA 98 (AD) at 119G-H that the flexible approach to determining general damages as articulated in *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 at 199 still applies: 'The amount to be awarded as a compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain depending upon the Judge's view of what is fair in all the circumstances of the case'. The circumstances referred to here include the extent and severity of the pain and suffering, disfigurement, permanent disability and loss of amenities of life caused by a plaintiff's injuries and 'the function to be served by an award of damages' (*Southern Insurance Association Ltd* above, at 99H).
- [5] In argument before me Mr Marx for the Plaintiff referred extensively to the expert report of the Plaintiff's orthopaedic surgeon, Dr HB Enslin.
- [6] In his report Dr Enslin listed the following orthopaedic injuries sustained by the plaintiff in the accident: soft tissue injuries to the cervical spine, the thoracic spine, the lumbar spine and the left knee.
- [7] Subsequent to the accident she was treated for her injuries in hospital, receiving anti-inflammatories and analgesics. After follow up consultations with her general practitioner, she was referred to a neurosurgeon, who performed a four level cervical fusion on her.
- [8] Dr Enslin further reports that the Plaintiff complains post-accident of almost constant cervical, thoracic and lumbar spinal pain, headaches, paraesthesia in both hands, spasms in the right trapezius muscle with occasional referred pain and interscapular and back pain. The injury to her left knee has resulted in pain over the suprapatellar region of the knee. She is also unable to run and the pain in the knee is exacerbated by cold weather and certain movements. He also notes that the Plaintiff acquired an unsightly scar in the accident across her neck.
- [9] These injuries and their consequences lead Dr Enslin to conclude that the Plaintiff has post-accident been left with a permanent serious long term

impairment due to the four level fusion of her cervical spine and that her general enjoyment and quality of life have been affected by the consequences of her injuries.

- [10] Mr Marx further referred me to the report of the Plaintiffs plastic and reconstructive surgeon, Dr CC Patel, who concludes that the Plaintiff 'has sustained moderate residual scarring' on her neck and throat, which might improve slightly with further treatment, but with respect to which residual scarring will remain.
- [11] Against this background, Mr Marx then referred me to three previous cases in which similar spinal injuries to the present case were involved so that I may have regard to the amounts for general damages awarded there.
- [12] In *Janse van Ransburg v Road Accident Fund* (unreported) [2014] ZAGPJHC 71 (4 April 2014) the Plaintiff -17 years old at the time of the accident - sustained a whiplash soft tissue injury to the neck and a soft tissue injury to the lower back; abrasions and bruises; a laceration on her forehead; an injuries to her wrist and right knee; leaving her with similar physical consequences to those experienced by the Plaintiff in the present matter. An amount of R450 000.00 was awarded for general damages. This amount was awarded in 2011 and Mr Marx unfortunately did not provide me with an inflation adjusted amount in current terms.
- [13] In *Ramolobeng v Lowveld Bus Service (Pty) Ltd & Another* 2015 (7C5) QOD 29 (GNP) the Plaintiff sustained spinal injuries of similar severity to those of the Plaintiff in this matter that resulted in him undergoing two spinal surgeries to insert artificial discs. The Plaintiff in that matter experienced similar consequences from these injuries to the Plaintiff in this matter although more severe and also experienced severe erectile dysfunction. An amount of R550 000.00 was awarded, which if inflation adjusted amounts to R621 000.00 in current terms.
- [14] In *Mogoshane v Road Accident Fund* unreported [2005] ZANWHC 55 (18 August 2005) the Plaintiff sustained injuries to the lower back that were

treated symptomatically, in addition to a head, shoulder and knee injury. He experienced similar consequences from these injuries to those experienced by the Plaintiff in the present matter. An amount of R82 500.00 was awarded, which Mr Marx informed me from the bar is R391 300.00 in updated terms.

[15] Against this background Mr Marx submitted that an amount of R500 000.00 would be fair under the circumstances in the present case.

[16] Mr Maluleka for the Defendant in response motivated for an amount of R350 000.00 to R400 000.00. He referred me to the matter of *Nhantumbo v Road Accident Fund* 2014 (7C5) QOD 12 (GSJ) in which an amount of R200 000.00 (R265 000.00 if updated) was awarded; and *De Bruin v Road Accident Fund* 2010 (6) QOD C5-1 (ECM) in which an amount of R70 000.00 (R128 000.00 adjusted) was awarded.

[17] In considering the matter at hand in light of these previous cases I am mindful of the warning issued in in *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) at 325B that '[t]he assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty' and that, although previous cases 'are a useful guide to what other courts have considered to be appropriate, they have no higher value than that'.

[18] The Plaintiff in this matter sustained spinal injuries that required her to undergo very serious spinal surgery, resulting in a four level fusion of her cervical spine. This left her with a permanent serious long term impairment. In addition she sustained a knee injury and permanent scarring on her throat. The consequences of these injuries (pain and stiffness) seriously affected her general enjoyment and quality of life. The Plaintiff is distinguished from all the previous matters I was referred to in the seriousness of her spinal injuries, that resulted in invasive surgery (the four level fusion). The consequences she experiences, however, seem less serious than those experienced by the Plaintiff in *Ramolobeng* (above), in which the highest amount was awarded (R550 000.00).

[19] In this light I am of the view that a fair amount to award under the circumstances is R480 000.00.

[20] The parties handed up a draft order with the amount for general damages left blank, which I have marked "B" and append to this judgment as the order of this court, with the amount of R480 000.00 inserted.

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**JFD BRAND**

**Acting Judge of the High Court**

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**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**ON 11/10/2017**

**BEFORE HIS HONOURABLE BRANDT A J**

**CASE NUMBER: 69242/2015**

In the matter between:

**M M SCHOEMAN**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

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**DRAFT COURT ORDER**

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AFTER hearing the representatives of the parties, the court hereby orders as follows:

1. Merits are conceded 100 % in favour of the plaintiff.
2. The defendant shall pay to the plaintiff the following:  
General Damages  
R 480 000.00  
(Four hundred and eighty thousand Rand)
3. The plaintiff's claim for past medical expenses is postponed *sine die*.

3. The defendant will furnish the plaintiff with a statutory undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 1996 (Act 56 of 1996) to compensate the claimant for loss of future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the claimant after the costs have been incurred and on proof thereof, arising out of the injuries sustained by her in a motor vehicle collision on 23/02/2014.
4. The total amount in 2 above is payable on or before 28/11/17 into the bank account of P A S ATIORNEYS with banking details as follows:  
PAS ATTORNEYS  
FNB, ERMELO  
ACCOUNT: [...]  
CODE: 270 344 REF:  
**DER226/31**
5. The defendant will not be liable for any interest on the instalment payment if payment is made as stipulated in 4 above. If no payment is received on or before 28/11/17 interest shall be calculated at 10.25% (at the mora rate of 3.5% above the repo rate on the date of this order, as per the Prescribe Rate of Interest Act, 55 of 1975, as amended) from date of court order up until date of full and final payment.
6. The defendant will pay the plaintiff's taxed or agreed party and party cost on the applicable high court scale subject to the following conditions:
  - a) The plaintiff shall in the event that the cost are not agreed serve a notice of taxation on the defendant's attorneys of record; and
  - b) The plaintiff shall allow the defendant 14 court days to make payment of the taxed or agreed cost;

The cost shall include the cost to the date of this order, which cost shall further include the cost of the attorney and correspondent attorney which include necessary travelling costs and expenses, attendance at Court, costs for pre-trial conferences and formulation of the pre-trial minutes and

costs of actual attendances to pre-trial conferences, cost previously reserved, if any, the reasonable cost on consulting with plaintiff to consider this offer, the cost incurred to accept this offer, and make the offer an order of court. The cost shall also further include:

- 6.1 The cost of all medico-legal, radiological, actuarial, addendum and joint reports obtained by the plaintiff, as well as such reports furnished to the defendant and/or to the knowledge of the defendant and/or its attorneys, as well as all reports in their possession and all reports contained in the plaintiff's bundles.
- 6.2 Travelling cost and expenses for plaintiff to attend all the medical legal specialist appointments.
- 6.3 Travelling cost and expenses for the plaintiff to attend the court as necessary witness.
- 6.4 The costs of holding all pre-trial conferences, as well as round table meetings between the legal representatives for both the plaintiff and the defendant, including counsel's charges in respect thereof.
- 6.5 The cost of preparation of 2 (TWO) trial bundles as agreed upon in the pre-trial minutes.
- 6.6 The reasonable cost associated with inspections in loco, if any.
- 6.7 The cost of Mr DJ Marx, in his capacity as senior attorney with right of appearance in the high court which cost also includes his reasonable preparation and full day fee for 11/10/2017.

- 7. In the event of default on the above payment, interest shall accrue on such outstanding amount at the above mentioned mora rate, calculated from due date until the date of payment.

Counsel for plaintiff: Mr D J Marx - 082 828 0629

Counsel for defendant:



THE REGISTRAR OF THE HIGH COURT

PRETORIA