

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

- (1) REPORTABLE
- (2) OF INTEREST TO OTHER JUDGES
- (3) REVISED

CASE NO: 2120/2014

13/6/2018

In the matter between:

TSEPILE THAPELO MASHIGO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Coram: Davis J

Motor Vehicle Accident - Claims against Road Accident Fund - Unmeritorious defences of merits prejudicing Court's civil rolls - such also impacting negatively on plaintiffs' claims for general damages when causing delays - claims handlers particulars to be disclosed.

Motor Vehicle Accident - Compensation - Claim against Road Accident Fund - General damages - assessment and comparable cases involving scarring considered.

Motor Vehicle Accident - Compensation - Claim against Road Accident Fund -

General principles and approach restated in view of perceived upward trend in awards for general damages.

JUDGMENT

DAVIS. J

[1] In this trial which came before me- last week, the plaintiff had instituted action against the Road accident fund (the Fund), claiming damages for injuries sustained in a motor vehicle accident.

[2] Merits

2.1 At the commencement of the trial both the issues of merits and quantum were in dispute.

2.2 Counsel for the Fund, advocate A M Smit, immediately however conceded that the affidavits which form part of the discovered documents, including affidavits from police officers, indicate that the accident occurred in the following manner: the plaintiff was a pedestrian at the time, travelling alongside the White River/Hazyview road. A vehicle travelling along the same road was struck from the side by a vehicle entering the road via a T junction. The first vehicle left the road, overturned and landed on the plaintiff. It was then that she sustained injuries including bum wounds as a result of the hot exhaust of the vehicle pressing against her. Advocate Smit conceded that, on this construction, there is no indication of any negligence, either contributory or at all on the part of the plaintiff. The facts contained in these affidavits were also not placed in dispute by the defendant but advocate Smit had no instructions at the time to concede the issue of merits.

2.3 It was only later, near the conclusion of argument in the matter, that

I was informed that the Fund had subsequently conceded the merits. Either way, be it by concession or otherwise, on the preponderance of probabilities on the admitted facts, the Fund should be held 100% liable for whatever damages the plaintiff may prove or the parties may agree upon.

- 2.4 The issue of merits should not, however, end of there. As will be seen in the determination of quantum hereunder, the plaintiff was since the date of the accident in need of medical treatment and she is still in need of such treatment. This, as a result of the Fund' s belated concession and the finding of this court, will be covered by an undertaking in terms of section 17 of the Road Accident Fund Act 56 of 1996. Had such a concession been made earlier , there is no reason why such an undertaking could also not have been given at the time. There is no explanation for the time delay nor why, in circumstances where all the facts relating to the accident had either been established or were common cause, the merits had not earlier been dealt with or conceded by the Fund.
- 2.5 Had the issue of merits previously been conceded, the plaintiff could not only have insisted on the aforementioned undertaking but could also have proceeded to claim interim payments in terms of rule 34A of the Superior Court rules.
- 2.6 During court terms this division of the High Court entertains no less than between 45 and 60 pre-trial conferences per week dealing with claims against the Fund. In addition the daily civil trial roll of this division carries on average no less than 100 trials relating to actions against the Fund. There is a disconcerting number of these trials where the facts pertaining to the merits are either common cause or undisputed but in any event would in all probability result in 100% liability of the Fund, yet the merits remain contested until the last moment. Many of these include claims on behalf of minor pedestrians or passengers. In an equally disconcerting number of these cases the answer to the question by the court as to why merits had not been settled or conceded is given by counsel or

attorneys representing the Fund as being a lack of instructions from the Fund. Often, if a pre-trial is postponed for a week or two for the securing or obtaining of such instructions, merits are suddenly conceded, again routinely without explanation for why it had not been done earlier. I dealt with eight trials against the Fund in the same week as this trial and in one of them merits were only conceded a month prior to trial but some six years after the accident, again without explanation why this could not have taken place earlier. As in many of these trials, the present trial is an example of the prejudice suffered by a plaintiff/claimant as a consequence hereof.

- 2.7 As will also become more clear hereinlater, a substantial portion of the plaintiff's damages related to the scarring and disfigurement suffered by her as a result of the bum wounds which she has sustained. The extended period which the plaintiff had to endure without the scarring receiving treatment or remedial medical intervention such as reconstructive surgery has increased her pain and suffering. This increase will also lead to an increase in the award for general damages for which the fund will be liable. By its own inaction the fund has therefore not only increased the pain and suffering of an innocent plaintiff but also increased the amount of public funds to be paid in respect thereof. In all probability this will be the same consequence in the other cases where similar delays occur. The unsatisfactory manner in which the Fund conducts its litigation in this court therefore has a public interest element. Where this court is overburdened by the total number of Road Accident Fund trials on its rolls, meritorious claims by plaintiffs and trials where merits are genuinely and on reasonable grounds in dispute or issues of apportionment or locus standi cannot be resolved other than by trial and a decision by a court should not be delayed or prejudiced by actions which could (and should) be resolved by responsible litigation and timeous consideration of the issues of merits. In order to prevent the latter prejudicing the former, the court

has the authority to regulate the process of such litigation. This authority stems from section 173 of the Constitution. See also S v Lubisi; In re S v Lubisi and others 2004 (3) SA 520 T.

- 2.8 The large number of applications to compel activity on the part of the Fund which also regularly feature in this division in unopposed motion court rolls is a further testimony of the difficulties experienced by Plaintiffs in having procedural matters timeously attended to. In many instances, it is only after the delivery of applications to compel that the Fund is spurred into action resulting in yet further unnecessary costs, fruitless expenditure and waste of court time.
- 2.9 It is a matter of public record that the Fund's liquidity is under constant threat and any attempts at curtailment of expenses should hardly expect opposition. In many if not all of the instances referred to above, the plaintiffs are fighting a faceless foe and an unidentified cause of their frustration and delay as their opposing counsel and attorneys are often equally embarrassed or find their hands bound by the lack of instructions from "the Fund". In each of the actions against the Fund the individual matter is handled by a "claims handler". It is either from or via him or her that the Fund's attorneys obtain their instructions. Exasperated plaintiffs and the court rarely know the identity of such a person who in fact either controls or exerts influence not only over the individual matter but, due to the large volume of similar matters, also over the court's processes and its rolls in so far as Fund matters are concerned. I can therefore see no cogent reason why the identity of each individual claims handler in respect of each action against the fund which it defends in this court should not be disclosed in similar fashion as the attorneys for the fund discloses the individual attorney dealing with the matter or at least gives an attorney's reference. These claims handler particulars, if not furnished by the Fund's attorneys, can be requested either by way of a request for particulars in terms of rule 21 or at a pre-trial conference in terms of

rule 37 (6). At least then, when issues regarding compliance with court rules, applications to compel or the oft raised exculpatory excuse of "no instructions" are raised, litigants and the court will know the source thereof and can take the necessary action.

[3] Quantum

On behalf of the plaintiff various expert reports were filed. These included reports by an orthopaedic surgeon, a plastic and reconstructive surgeon, an occupational therapist, a neuropsychologist, a clinical psychologist, a neurologist, an industrial psychologist and calculations by an actuary. The defendant had not filed any reports. The parties proceeded on the basis that, save for the industrial psychologist's report (the contents of which were in dispute) , the reports were accepted as what they purported to be and the parties agreed that they could be relied on as evidence by the mere production thereof. During the course of the morning the issue of loss of earnings and earnings capacity became settled between the parties. The only outstanding issue for determination was therefore the quantum of general damages.

[4] The plaintiffs injuries:

The plaintiff sustained the following injuries:

- 4.1 a soft tissue injury to the left wrist
- 4.2 a soft tissue injury of the left knee
- 4.3 burn wounds to her arms and breasts.

[5] The injuries to the wrist and the knee were, orthopaedically speaking, relatively minor and the scarring in particular of the plaintiffs breasts constituted the primary source of the claim for damages. The plastic and reconstructive surgeon described the scarring as follows: A disfiguring scar measuring 180 mm x 20 mm on the anterior aspect of the left breast covering the lower medial and upper quadrants and extending onto the outer quadrant of the breast. It has a hypertrophic margin and the centre of the scar is depigmented. There is a similar scar measuring 100mm by 25 mm running transversely across the surface of the

right breast. It also has a hypertrophic margin with a depigmented centre. The scars to the arms are similarly 10 cm or longer each and are hypertrophic or post abrasion in nature but they are hyper-pigmented. The scars on the breasts were large and unsightly as could be seen from photographs produced. As stated before and, due to the lack of expert reports from the Fund, the nature and extent of the scarring were undisputed.

[6] The occupational therapist described the injuries sustained by the plaintiff and the consequences thereof as follows:

4.3.1 Complaints reported by the client

- a. She cannot stand for long due to the back pain;*
- b. She cannot carry her baby for long due to the arm pain and lower back discomfort;*
- c. Her sleep is sometimes interrupted by pain around the ribs;*
- d. Her walking distance is limited due to general tiredness and lower back discomfort;*
- e. When involved in general house work, she needs to take regular rest breaks due to tiredness and pain around the shoulders, back and left arm;*
- f. The scar tissue on the breasts is painful and gets irritated in cold weather and also when she spends a lot of time in the sun;*
- g. Her style of clothing has had to change to cover all the scars on her arms and breasts.*

4.3.2 Additional information reported with guidance

- a. She still experiences anxiety to travel and she gets startled by sudden noises;*
- b. She still suffers from the emotional trauma related to the accident and the effects of the severe scars she has as a result of the injuries;*
- c. She has lost some friends since the accident, but still has a few close friends;*
- d. She reports to have breastfed her first child that was born prior*

to the accident in question. She was unable to breastfeed her youngest child, born in 2016, due to pain of the scar tissue on both breasts.

[7] The clinical psychologist has described the consequences and impact of the scarring on the plaintiff as follows:

Ms Mashigo 's mood was deemed low in the current assessment. It is evidence that she experienced the accident as extremely traumatic and continues to struggle with emotional trauma related to the accident. Furthermore, the extensive scarring on her breast and chest area would serve to provide a constant reminder of the accident. The disfigurement has resulted in significant feelings of shame and has impacted on her tendency to withdraw and isolate herself from others. The pain she experiences has impacted her quality of life and also contributes to her depressed mood. She reported that she is no longer as physically able as what she was premorbidly and she has also been unable to breastfeed her baby. These factors have been experienced as losses, and contribute to her described feelings of sadness and anger.

[8] The plaintiff's counsel argued that the plaintiff's case was unique and that her scarring and disfigurement required an exemplary measure of general damages. She relied on two unreported judgments, the first being Tobi v RAF by Zilwa, AJ in case no 868/2010 in the High Court of South Africa (Eastern Cape, Grahamstown) delivered on 20 September 2013 and on Anthony v RAF by Msimeki, J in case 27454/2013 in this division delivered on 15 February 2017. In Tobi's case general damages of R 450 000 were awarded which translated to a current value of R 650 000. In Anthony's case general damages of R 1, 6m were awarded. Tobi's case was relied on because the plaintiff there sustained some scarring to his legs which were unsightly. With reliance on this case, plaintiff's counsel argued for general damages of no less than R 600 000. However, in

Tobi's case the plaintiff was left, not only with scarring to his legs, but with a disfigured and swollen left leg which interfered with various and lymphatic functions as well as scarring to his right knees. He had received skin grafts. The general damages awarded to him also took into account that his ambulation was restricted and he could no longer operate as a heavy vehicle driver and on some days the swelling was so bad that he cannot even put on or take off his pants. In Anthony's case which was only presented as a possible example of how high an award for general damages can go, the plaintiff had suffered numerous of other injuries for which he also needed to be compensated, such as a bilateral medical orbital fracture, multiple facial lacerations and open wounds, broken and lost teeth and a moderately severe head injury together with his scarring and disfigurement. The cases relied on are of some assistance but can clearly be distinguished on their facts.

[9] For the Fund, Mr Smit relied on the case of Gumede v Minister of Correctional Services 2015 (7G2) QOD 1 (KZD). In that matter the plaintiff was a prisoner assigned with the duty of petrol attendant. He sustained 28% burns to his right axilla, chest, thorax, both forearms and hands as a result of the negligence of the defendant's employees. He was left with a painful contracture of the central chest, the functions of his right arm were permanently curtailed and intense physical and mental pains were experienced over a prolonged period of time with permanent scarring. The current value of the general damages awarded was R360 000.

[10] A claim for general or non-patrimonial damages requires an assessment of the plaintiff's pain and suffering, disfigurement, permanent disability and loss of amenities of life and attaching a monetary value thereto. The exercise is, by its very nature; both difficult and discretionary with wide-ranging permutations. As will be illustrated hereinlater, it is very difficult if not impossible to find a case on all four with the one to be decided. The oft-quoted case of Southern Insurance Association v Bailey NO 1984 (1) SA 98 AD confirmed that even the Supreme Court of Appeal had difficulties in laying down rules as to the way in which the problem of an award for general damages should be approached. The accepted approach is the "flexible one" described in Sandler v Whole ale Coal Suppliers

Ltd 1941 AD 194 at 199, namely:

"The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending on the Judge's view of what is fair in all the circumstances of the case".

[11] Of course, awards in cases which show at least some similarities or comparisons are useful guides, taking into account the current value of such awards to accommodate the decreasing value of money. See inter alia: SA Eagle Insurance Co v Hartley 1990 (4) SA 833 (A) at 841 D and the practical work of The Quantum Yearbook by Robert J Koch which includes tables of general damages awards annually updated to cater for inflation.

[12] In respect of the issue of comparable cases and the guidance provided thereby, the Supreme Court of Appeal has stated in Protea Assurance co Ltd v Lamb 1971 SA 530 at 536 A - B:

"Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration".

[13] Counsel for plaintiffs also often rely on De Jongh v Du Pisanie NO [2004] 2 All SA 565 (SCA) as authority that the modern tendency is to award higher

amounts than in the past for general damages. A careful reading of the case however, indicate that, although there appeared at the time of the judgment an upward tendency of such awards, the moving away from an over- conservative approach is but one of the considerations a court should consider and that the case of RAF v Marunga 2003 (5) SA 164 (SCA), relied on by the plaintiff in the court a quo as a " watershed" for the increase of general damages was not a licence to continue increasing awards without cogent reasons (other than the inflationary adjustment referred to in paragraph 11 above).

[14] A too conservative approach to awards for general damages which would not adequately attempt to recompense a plaintiff in monetary terms for the loss suffered would not be fair in the circumstances but the following principle stated by Holmes, J (as then was) in Pitt v Economic Insurance Co. Ltd 1957 (3) SA 284 (D) at 287E - F was in De Jongh v Du Pisanie NO supra at 582 a - c found to be still applicable:

"The court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense".

[15] A more graphic description appears from the classic phrase by Justice Greenberg in Innes v Visser 1936 WLD 44 at 45 that the figure of Justice carries a pair of scales, not a cornucopia.

[16] Returning to the issue of comparable cases, the range of cases where scarring and disfigurement played a role are legion. What one gleans from a reading of these cases are, broadly speaking:

- 16.1 the extent of scarring and disfigurement varies from mild to extensive or gross, from mere cosmetic to actual disfigurement;
- 16.2 scarring, more often than not, is coupled with other injuries such as fractures or lacerations (in the last mentioned, to state the obvious);
- 16.3 the causes for scarring can be found both in the mechanism how the injuries were inflicted or as a result of necessary and often emergency medical procedures;

- 16.4 the diminishing or repair of scarring may be more or less successful but involve further pain and suffering when reconstructive procedures and skin grafts are performed.

[17] Illustrations of the types of cases referred to in paragraph 16.1 are the following:

- 17.1 Muravha Justice v Road Accident Fund 2016 JDR 2150 (GJ). In this case the plaintiff suffered extensive scarring to his face and neck, chest and abdomen as well as around his reconstructed ear. Notwithstanding improvements by further surgery, he was left with serious disfigurement in these regions. The court noted that the plaintiff's injuries are obvious to whomsoever just looks at him or attempts to engage with him. He was obviously disfigured and disempowered in a manner which rendered him "unlovely to behold and hampered in communication". Unfortunately the issue of general damages had been settled between the parties and the amount is not reflected in the judgement.
- 17.2 Peter v Road Accident Fund 2003 (5F5) QOD 9 (BHC). In this case the plaintiff suffered major injuries including a fracture of the pelvis and acetabulum. He also suffered two scalp lacerations and what were described as multiple deep abrasions to the right shoulder and upper arm and over the lumbar spine. This left him with some marked scarring of the right arm for which plastic surgery could achieve a 50% improvement. The R 180 000 general damages translates to some R 408 000 in current terms.
- 17.2 Heynecke v Visagie 1980 (3G4) QOD 102 (W). In this matter the plaintiff was bitten by a dog in the area of the left cheek. The damage to nerve endings resulted in an inability to raise the left eyebrow and close the eyelids tightly. He was left with a persistent swelling in the injured area with resultant irritation

of the eye and excessive weeping and left with a twitching of the left eye. Although the scarring had improved and could further be improved by plastic surgery, severe irregular scarring remained as a "serious cosmetic blemish". The award of general damages of R 2500 at the time translates to R 64 000 in present value.

18 Illustrations of the types of cases referred to in paragraph 16.2 are the following:

- 18.1 Kobego v Road Accident Fund 2013 JDR 2270 (GNP). In this matter a five-year-old girl was struck by a car resulting in a degloving of her right lower leg. She suffered a loss of right leg muscle bulk and she had extensive scarring about which she felt very sad and "ugly". The amount of R 350 000 for general damages was awarded.
- 18.2 Minnie NO V Road Accident Fund 2012 (6A4) QOD 82 (GSJ). In this matter the plaintiff again suffered a degloving injury, this time coupled with a severe head injury which required repeated surgery and caused permanent and extensive disfigurement. The plaintiff was also left with neurocognitive deficits associated with poor memory and language difficulties. The plaintiff was five years and 11 months at the time of the motor accident. The large amount of R 800 000 granted for general damages translates to R1.24 million in current terms.
- 18.3 Roberts NO v Northern Assurance Co Ltd 1964 (1A4) QOD 573 (D). In this case a schoolboy aged 15 described as being with "a cheerful and charming personality" was involved in a debilitating accident leaving him with a brain injury, complete reversal of his personality, traumatic epilepsy and a danger to himself and others requiring him to be restricted to a mental institution for the rest of his life. Combined with this, the unfortunate plaintiff also suffered gross facial and other

disfigurement. The award for general damages of R 30 000 at the time translates to some R 2,6 million in current terms.

- 18.4 Van Rensburg v AA Mutual Insurance Company Ltd 1969 (2E3) QOD 40 (E). In this case the plaintiff suffered various fractures to his knees and left foot. She was crippled for life and was still on crutches after three years. She also suffered various scarring which constituted a real degree of disfigurement causing some self-consciousness and possibly affecting her chances of remarriage. The general damages of R 12 000 at the time translates to R 900 000 in current terms.
- 18.5 Damba v AA Mutual Insurance Association Ltd 1980 (3E3) QOD 251 (E). In this case a boy aged 7 ½ years at the time suffered fractures to both his femurs with resultant complications. He was left walking with a slight limp and had scarring on his right thigh. The general damages award of R 8000 at the time translates to R 206 000 in 2018 terms.

19 Illustrations of the types of case says referred to in paragraph 16.3 are the following:

- 19.1 Noble V Road Accident Fund 2011 (6J2) QOD 54 (GSJ). Here the mechanism of the scarring was, in addition to the head and brain injury and fracture of the right femur and tibia, fractured patellae of both knees with extensive and associated scarring. Further scarring of the right thigh took place as a result of skin grafts taken from that area to the right lower leg. The amount of general damages of R 600 000 at the time translates to R 885 000 in present terms.
- 19.2 Nxumalo v SA Eagle Insurance Company Ltd and others 1995 (4G5) QOD 1 (N). The mechanism resulting in scarring involved and extensive degloving injury of the right lower limb from foot to groin leaving the plaintiff with severe scars on thigh and lower leg and permanent deformity and disability.

The scarring to the lower leg involved 80% of the circumference with all skin and subcutaneous tissue having been lost and subsequently replaced by skin grafts but leaving particularly unsightly scarring which was hyper-pigmented and irregular. The amount of general damages of R 90 000 translates to R 344 000 in 2018 terms.

19.3 Phiri and Another v Shield Insurance Company Ltd 1967 (1E6) QOD 780 (E). The mechanism causing the scarring of a boy of four years old knocked over by a bus was laceration tearing all the muscles away from the front of his one leg. Apart from the orthopaedic interventions, subsequent skin graft operations left him with extensive scarring. The amount of general damages was awarded in pounds but converted to R 3 250 which translates to R 255 000 in current terms

19.5 Union and South West Africa Insurance Co Ltd v Humphrey 1979 (3E5) QOD 58 (A). The scarring of the leg of a 15-year-old girl, injured whilst riding pillion on a motorcycle was, apart from the fractures of the tibia and metatarsals severe laceration of her lower leg. Apart from orthopaedic interventions, to further operations were necessary including one for skin grafting. The scarring of the foot was described as a definite cosmetic blemish. The amount of general damages of R8 500 at the time translates to R 282 000.

20 Illustrations of scarring caused by bum wounds and how they were dealt with by our courts are the following:

20.1 Julie v Winter 1955(1D3) QOD 567 (C). In this case hot tar poured over the head, chest, shoulder and arms of the plaintiff as a result of an assault left him with severe burns. Apart from the severe shock suffered, the plaintiff required three skin grafts but was still left with gross scarring and the skin in a bad condition. The amount of £400 only translates to R 83 000 in current terms.

- 20.2 Nconywa v Cantor 1983(3G2) QOD 475 (SE). In this matter a girl aged 12 at the time had sustained deep burns on her legs constituting 15% of a total body area as a result of a tin containing highly inflammable substance being thrown on a fire and exploding. She was in hospital for two months during which she had four operations including a succession of three skin graft operations. Although she had made good recovery her scars were permanent. The amount of R 7 000 at the time awarded as general damages translates to R 221 000 in current terms.
- 20.4 Mofokeng v Fedgen Versekering Beperk 1992(4G2) QOD 11 (T). A 17 year old male scholar sustained severe third- degree burns over the whole of his left cheek neck and both shoulders and eyelids. His left ear was totally burnt off requiring several attempts at reconstruction. Skin grafting was performed on six occasions and he was left with permanent and repulsive disfigurement pronounced by permanent hair loss over damaged areas. The amount of R 40 000 at the time translates to R 199 000.
- 20.5 Oosthuizen v Homegas (Pty) Ltd 1989 (4G2) QOD 1 (0). A 46-year-old manager of a gas selling business sustained severe burns over his face, scalp, both ears, both hands, the left side of his torso, upper back and left arm caused by the explosion of a gas cylinder. His initial life-threatening condition was treated in an intensive care unit. The extremely painful subsequent treatment involved daily submersion in a bath for underwater removal of bandaging. He was left with gross permanent disfigurement of his left hand which was left in a claw, his right hand and ears and
- 20.3 Graham v Administrator Transvaal 1982 (3G2) QOD 336 (T). The plaintiff was a patient in a provincial hospital for an aorta graft operation. Negligent use of a heating apparatus caused

third degree burns of the lower back and buttocks which required three successive skin graft operations. His disease thereafter progressed resulting in an amputations and loss of his one leg and a likelihood of becoming bedridden. He was left with an aesthetic defect which would be permanent. The amount of R 9 000 awarded as general damages at the time translates to R 75 000 in present terms.

- 20.3 Buy's and Another v Lennox Residential Hotel 1978 (2G2) QOD 836 (C). In this matter a newly married woman sustained burns on the lower part of the body as a result of the hot water tap falling off while she was in a hotel bath. 35% of her body was left covered in second-degree burns. She had been left with scars and discolorations, some of them visible with the result that she had undergone a personality change. She no longer wore dresses and would not be seen in a bathing costume. The amount of general damages of R 6 000 translates to R 199 000.

other parts of his body. The general damages of R 45 000 translate to R 336 000 in present terms.

[21] The divergent particulars, injuries and, consequently nature and extent of general damages awarded in different cases where scarring also featured are adequately illustrated by those referred to above. The guidance which are provided is, on my reading of the cases the following:

- 21.1 The extent of injuries and scarring suffered by the plaintiff in this matter is, despite the nature thereof, which I will again revisit hereunder, at the lower rather than upper end of the scale.
- 21.2 Since the Muravha - case referred to above (in para 17) there was a discernible upward trend in the awards for general damages.

21.3 As explained in the De Jongh v Du Pisanie NO case, and even recognising such a trend as one of the factors to be considered, the award made should still be fair to both parties, taking the circumstances of each case into consideration.

Final evaluation:

[22] The plaintiff in this case experienced pain and suffering when sustaining the injuries. She continued suffering pain for some time thereafter, and currently still has pain although to a lesser degree. She will again experience pain during or subsequent to reconstructive surgery. She had lived with unsightly scars to her breasts since the accident and will continue to do so until reconstructive surgery. She might even remain with permanent scarring. She was, as a result of the pain in her breasts, not able to breastfeed her second child and was deprived of the nurturing and bonding experience which is part of the crucible of motherhood. In addition, she suffered minor orthopaedic injuries which impacted negatively on her amenities of life. Taking all this into consideration, I am of the view that an amount of R 450 000 will be a fair and reasonable amount in the circumstances and I will insert this amount into the draft order provided wherein the other aspects of the Plaintiffs claims and costs have been catered for.

[23] Order:

The draft order, as amended, marked "X" is made an order of court.

N NDAVIS

Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 06 June 2018

Judgment delivered: 13 June 2018

APPEARANCES:

For the Plaintiff: Adv. S Maritz

Attorney for Plaintiff: Frans Schutte Inc.
c/o Schutte De Jong Inc., Pretoria

For the Defendant: Adv. AM Smit

Attorney for Defendant: Lindsay Keller, Johannesburg
c/o Friedman Hart Solomon & Nicolson,
Pretoria

**IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]**

On this the 12th day of June 2018 before the Honourable Davis, J in Court 6G

CASE NO: 2120/2014

T T MASHIGO

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

DRAFT ORDER

AFTER HEARING COUNSEL THE COURT MAKES THE FOLLOWING ORDER:

1. The Defendant is liable for 100% of the Plaintiff's damages.
2. The Defendant pays to the Plaintiff the amounts of:
 - 2.1 R450 000 (Four Hundred and Fifty Thousand and Fifty Thousand Rands) in respect of general damages.
 - 2.2 R162 992.30 (One hundred and sixty two thousand nine hundred and ninety two rand and thirty cents) in respect of earnings by paying into the Plaintiff's Attorneys Trust Account with account number [...] at Standard Bank White River.
3. The Defendant will furnish to the Plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996 to pay the costs of the future accommodation of the Plaintiff in a hospital or nursing home, or treatment of or rendering of a service or supplying of goods to her, arising from injuries sustained by her in a collision, on 21 April 2012 after the costs have been Incurred.
4. The Defendant shall pay the Plaintiff's taxed or agreed party and party

costs on the High Court scale, to date, subject thereto that such costs shall Include the following:

- 4.1 The costs of Plaintiff's counsel;
- 4.2 The costs of all medico-legal reports, addendum reports and joint reports served by the Plaintiff, as well as such reports furnished to the Defendant or it's attorney;
- 4.3 The qualifying fees of the experts referred to in paragraph 4.2 above.
- 4.4 The reasonable costs incurred by and on behalf of the Plaintiff, as well as the costs consequent to attending the medico-legal examinations of both parties.
- 4.5 The costs of all necessary witnesses and a plaintiff who attended court.

BY THE COURT

REGISTRAR

FOR PLAINTIFF: ADV SOPHIA MARITZ 082 825 9462

OR DEFENDANT: ADV M. SMIT 078 622 6278