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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No: 2010/17218

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

8 September 2014

EJ FRANCIS

In the matter between:

MAKHETHA, THABANG

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

FRANCIS J

1. The plaintiff instituted an action for damages against the Road Accident Fund, the defendant, after he had sustained injuries in a motor collision on 13 March 2009 between motor vehicle X..... then being driven by one T J Makhetha and a motor vehicle F..... then being driven by an unknown person. At the time of the collision, he was a passenger in vehicle X.....

2. The defendant has conceded liability in favour of the plaintiff. All heads of damages have been settled except for general damages.

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3. At the commencement of the proceedings, the plaintiff brought an application to amend the particulars of claim in respect of the amount claimed for general damages from R600 000.00 to R1 050 000.00. The application was opposed by the defendant on the grounds that it will suffer prejudice if the amendment was granted. When counsel was pressed to indicate what prejudice the defendant would suffer he was unable to indicate any. Since the defendant was unable to prove any prejudice that it will suffer, I granted the application.
4. The parties agreed that the matter would proceed before me by way of a stated case. The reports of the plaintiff's experts were admitted. The following reports were filed by the plaintiff:
 - 4.1 Dr Read an orthopaedic surgeon.
 - 4.2 Dr Marus a neurosurgeon.
 - 4.3 Dr Digby Ormond-Brown a neuropsychologist.
 - 4.4 Dr Hough an otorhinolaryngologist.
 - 4.5 Dr Olivier an ophthalmologist.
 - 4.6 A Roos an occupational therapist
5. It is common cause that the plaintiff is a 33 year old male who was a bricklayer at the time of the accident. As a result of the injuries sustained in the collision he is unemployable in the open market.

6. He sustained a severe brain injury with permanent brain damage, a base of skull fractures; loss of vision; loss of hearing and soft tissue injuries to his

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cervical and thoracic spine, left shoulder, left hip, left knee and left hemiparesis.

7. The plaintiff was examined by Dr Read who found that he has a head injury with severe headaches. He has severe neck stiffness; partial hemiparesis on the left; loss of vision in the left eye and loss of hearing in the right ear. He then dealt with the cervical and thoracic spine injuries and found that he remains markedly symptomatic with regards to his axial skeleton. He is tender from the upper cervical spine all the way down to the thoracic spine. His cervical spine is very stiff. He found that he has symptoms in and signs of an impingement syndrome of his left shoulder. He has symptoms and signs of a soft tissue injury with internal derangement of the left knee. In the left hip injury he has symptoms and signs of trochanter bursitis.

8. Dr Read found that all the symptoms that the plaintiff has can be contributed to the accident. He found that the symptoms are likely to be of a chronic ongoing nature and will require conservative, surgical treatment. He may require further investigation and possible surgery of his cervical spine as x-rays show minor spiking of C6 and C7 with disc narrowing at the C5/6 level which changes are unusual for him at his age. He has an impingement syndrome of the left shoulder for which he requires conservative treatment.

He will also require conservative treatment for his left hip and left knee injuries.

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9. Dr Read found that the plaintiff has experienced a severe degree of pain and suffering as a result of the injuries he sustained in the accident. He can no longer play soccer. He has difficulty with heavy, physically demanding duties in and around the home. He made deference to the neurosurgeon in respect to the brain injury.
10. Dr Marus, a neurosurgeon found that the plaintiff sustained a severe concussive (diffuse) brain injury. He has probable anterior base of the skull fractures involving the left orbit; a left optic nerve injury; a right middle fossa fracture with residual right sided hearing loss and soft tissue injury to the cervical spine.
11. Dr Dibgy Ormond-Brown a neuropsychologist found that the plaintiff sustained a very severe traumatic brain injury which is apparent from the lengthy period of impairment of consciousness; long duration of post-traumatic amnesia; radiological findings of punctate intracranial haemorrhages; multiple skull fracture and cranial nerve palsies and clinical signs of brain injury: aphasia and left hemiparesis. He found that he has significant neuropsychological impairments. His profile is strongly consistent with relatively greater damage to the right hemisphere which implicates right hemispheric dysfunction. He has marked difficulties associated with attention

and concentration. He has major impairment of visual memory but lesser impairment of verbal memory. He has substantial difficulties with constructional praxis. He has a serious impairment of executive brain

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functions. His function is further compromised by his mood disorder and has chronic pain. He concluded that the combination of these various sources of impairments result in a significant level of disability. He has sustained a severe diffuse brain injury in the accident and has been left with serious neuropsychological impairments. The most significant limiting factor in the workplace is the organic brain injury that he has sustained. He lacks the mental capacity to hold down a job. His mental shortcomings imply that he will make many errors in the workplace. He is half-blind, half-deaf and cannot concentrate properly and has difficulty putting things together. He is incapable of managing a large amount of money and his funds should be protected. There has been a massive loss of amenities and he has been deprived of many of the usual pleasures of life.

12. Dr Hough, an otorhinolaryngologist, found that the plaintiff sustained a fracture of the base skull, causing a permanent hearing loss in the right ear, and this will never recover, neither can it be treated with an operation. As far as his ear, nose and throat problems are concerned, he is not fit to work other in any environment where he is exposed to loud noise, because it might affect his only hearing left ear. His hearing loss is permanent and will not recover.

13. Dr Olivier, an ophthalmologist, said that as a result of the head and neck injuries sustained in the accident, the plaintiff has developed atrophy in his left eye. He is blind in the left eye and his condition is permanent and will not improve. The loss of vision in his left eye is 100% and the total loss of vision

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in both eyes together is 25%.

14. A Ross is an occupational therapist who said that the plaintiff will benefit from attending a pain clinic. The aim is functioning restoration of physical functioning utilising an interdisciplinary approach with the aims to restore the range of movement; restore muscle coordination and movement control; improve muscle endurance; improve general condition; re-educate the plaintiff in the difference between normal physical loading and pain and reduce the fear and avoidance behaviour. He will require assistance with personal care and home management tasks. He would benefit with the use of assistive devices aimed at maintaining good biomechanical posture during tasks. He would benefit from occupational therapy. He will require a case manager who is usually an occupational therapist, speech therapist or social worker with experience in working with head injury individuals and their families. From a psycho-cognitive perspective his skills also appear to be impaired. He is expected to function at a basic level of independence in everyday activities and life skills with a supportive and structured environment where he receives guidance and supervision from his family and friends. He may require supervision and support when dealing with critical and complex decisions and financial issues.

15. The issue that arises for determination in this matter is what amount should be awarded for the plaintiff as far as general damages are concerned. It is clear from the aforesaid that the plaintiff is a 33 year old male who was a bricklayer

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at the time of the accident. His injuries have left him unemployable in the open market. He has suffered a severe brain injury with permanent brain damage. He had a lengthy period of impairment of consciousness and long duration of post-traumatic amnesia. He had punctate intracranial haemorrhages. He has severe headaches. He has a base of skull fractures, with loss of vision in the left eye and loss of hearing in the right ear. He remains markedly symptomatic with regards to his axial skeleton. He has soft tissue injuries to his cervical and thoracic spine, left shoulder, left hip and left knee. He has soft tissue injuries to his cervical and thoracic spine. He has symptoms and signs of an impingement on his left shoulder and symptoms and signs a soft tissue injury with internal derangement of the left knee. On the left hip, he has symptoms and signs of trochanter bursitis. His amenities have been negatively affected. He can no longer play soccer and has a difficulty with heavy, physically demanding duties in and around the home.

16. The plaintiff is seeking compensation of R1 050 000.00 general damages. The defendant referred this court to a number of out dated cases and contended that the plaintiff should be compensated R600 000.00. For some strange reason, he did not refer to the most recent cases dealing with the type of injuries that the plaintiff has sustained. I was referred to a number of cases by the plaintiff

where for a similar type of injuries the compensation that was awarded in today's current value would be anything between R900 000 and R1 000 000.00. In most of the cases that I was referred to the plaintiff suffered severe brain injuries but with deafness in the one ear and blindness in one eye.

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So for example in *Dlamini v Road Accident Fund* 2012 (6A4) QOD 68 (GSJ), the plaintiff a 37 year old male, also sustained a brain injury, fractured mandible, loss of teeth, soft tissue injury to the cervical and lumbar spine. He was hospitalised for 3 months after the incident and was left with neuropsychological *sequelae* because of the brain injury. He was no longer suitable for employment in the open labour market and was awarded general damages in 2012 of R850 000 which equates to R955 000 in 2014. In *Torres v Road Accident Fund* 2010 (6A4) QOD 1 (GSJ), the plaintiff a 24 year old male, 20 years at the time of the accident, also sustained a severe diffuse brain injury, soft tissue injury to the neck, face and chin. He has significant neuro-cognitive and neuro behavioural deficits associated with concentration, working memory, impulse control and abstract reasoning. He has depression and adjustment disorder. In 2010 he was awarded R600 000 for general damages which in 2014 equates to R931 000.00.

17. I have considered the cases that I have been referred to. In determining quantum for general damages, I am required to exercise a broad discretion to award what I consider to be fair and adequate compensation. In so doing, I must consider a broad spectrum of facts and circumstances connected to the

plaintiff and the injuries suffered by him, including their nature, permanence, severity and impact on his life. I have also taken into account that he is blind in the one eye and deaf in another ear.

18. In my view, in the light of the cases that I have been referred to and based on

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the medical and expert reports, an appropriate award for general damages would be R1 000 000.00.

19. In the circumstances I make the following order:

19.1 The defendant is to pay the plaintiff the sum of R1 000 000.00 as general damages.

19.2 The amount referred to above is payable on or before 5 October 2014 into the Trust account of the plaintiff's attorneys of record with the following details

Wim Krynauw Attorneys
ABSA – Trust account
ACC No: 4.....
Ref: TM2681/W..... P.....

19.3 The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale, which costs shall include:

19.3.1 The costs attendant upon the obtaining of the medico-legal

reports and/or preparation fees if any and as allowed by the
Taxing Master.

19.4 In contingency fee agreement entered into between the plaintiff's
attorney and the plaintiff is declared invalid.

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19.5 The plaintiff's attorney shall only be entitled to recover from the
plaintiff such fees as are taxed or assessed on an attorney and client
basis. The fees recoverable are not to exceed 25% of the amount
awarded or recovered by the plaintiff.

19.6 The sum of R1 000 000.00 is to be paid into the Trust which was
established in 2013 for the benefit of the plaintiff to assist him to
manage his affairs.

FRANCIS J

HIGH COURT JUDGE

FOR PLAINTIFF : A LOUW INSTRUCTED BY KRYNAUW
ATTORNEYS

FOR DEFENDANT : R KAY INSTRUCTED BY MAYAT,
NURICJ & LANGA ATTORNEYS

DATE OF HEARING : 2 SEPTEMBER 2014

DATE OF JUDGMENT : 8 SEPTEMBER 2014