

**FREE STATE HIGH COURT, BLOEMFONTEIN**  
**REPUBLIC OF SOUTH AFRICA**

Case No. : 7072/08

In the matter between:-

**TSELE REGINALD KANONO**

Plaintiff

and

**THE ROAD ACCIDENT FUND**

Defendant

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**JUDGEMENT BY:** BOONZAAIER, AJ

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**HEARD ON:** 5 MAY 2010

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**DELIVERED ON:** 13 MAY 2010

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Boonzaaier, AJ

[1] The Plaintiff instituted action in the High Court against the Defendant for payment in the amount of R124 919, 24 as and for damages sustained by her as a consequence of injuries suffered in a motor vehicle accident.

[2] The Plaintiff has chosen the High Court as appropriate forum to institute proceedings.

- [3] The merits and quantum of damages were settled in the amount of R24 919,24 being special damages. The Defendant tendered party and party costs on Magistrates Court scale and increased advocates fees. The whole amount of R100 000 for special damages was abandoned by Plaintiff.
- [4] Counsel for Plaintiff argued that the Defendant never objected to the High Court's jurisdiction before trial even when Defendant had ample opportunity to do so during the R37 conference.
- [5] It was also argued that Defendant had sufficient time to settle the matter before the trial date and all the costs could have been prevented.
- [6] Counsel for Defendant argued that proper investigation had to be done by Defendant to consider the claim and that Defendant had indeed tried to settle the claim. In fact, fellow passengers' claims were finalised with the same firm of attorneys who instituted action on behalf of the Plaintiff.
- From the beginning it was clear that Plaintiff's claim would be

limited.

[7] Even the general rule, *viz* that costs follows the event as argued by Adv Coetzer, is subject to the overriding principle that the court has a judicial discretion in awarding costs as it was indicated in the case of **JONKER v SCHULTZ** 2002 (2) SA 360.

[8] The fact that the Plaintiff claimed more than she succeeded in recovering is indeed not sufficient ground for refusing her costs or to justify the court in depriving her of costs. The claim must be excessive, or grossly disproportionate to the amount found to be due, before that would be done.

[9] The injuries were however described in the indictment as

“plaintiff suffered minor bodily injuries to the head as well as fairly severe injuries to the chest which include laceration of the left side of the face and fracture of the left ‘scapula’”.

[10] The purpose of an award of cost to a successful party/litigant is to indemnify him for the expense to which he has been put

by having unjustly been compelled to initiate or defend litigation, as the case may be.

[11] The cost order is not intended to be compensation for a risk to which a litigant has been exposed, but a refund of expenses actually incurred **PAYEN COMPONENTS SA LTD v BOVIC GASKETS CC** 1999 (2) SA 409 (W) 417. The award of costs is a matter wholly within the discretion of the court, but this is a judicial discretion and must be exercise on grounds upon which a reasonable person could have come to the conclusion arrived at.

[12] After due consideration of the facts I also came to the conclusion that this matter did not “present considerable difficulties in fact or law” as was indicated in the **BARNARD v SA MUTUAL FIRE & GENERAL INSURANCE CO LTD** 1979 (2) SA 1012 ( SE) case. The Plaintiff had been over optimistic in regard to the amount she claimed as damages.

[13] Having regard to these factors and bearing in mind the principles I have set out above and the submissions been

made by counsel it would be unfair to burden the Defendant with costs on the High Court scale.

[14] Order

The costs to be taxed on scale applicable in the Magistrate's Court.

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**A. S. BOONZAAIER, AJ**

On behalf of plaintiff:      Adv J C Coetzer  
Instructed by:  
Honey & Partners  
BLOEMFONTEIN

On behalf of defendant:      Mr. Phaleng  
A. P. Ledwaba Incorporated:  
c/o Israel & Sackstein  
(Matsepes)