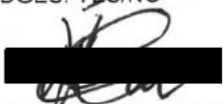




**HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case No: 6371/2017

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED
<u>21.06.24</u>	
DATE	SIGNATURE

In the matter between:

SANELE WISEMAN MAZIBUKO

Plaintiff

and

**PASSENGER RAIL AGENCY
OF SOUTH AFRICA**

Defendant

JUDGMENT

NHARMURAVATE AJ:

PRASA – claimant pushed from the train – 60% apportionment of damages – only issue remaining Generals Damages- severe brain injury - 1,9 million awarded.

INTRODUCTION

- [1] The question before this court is that of general damages. The parties advised that they had settled all the other heads of damages in conjunction with an agreement from the *curator at litem*. The only question remaining was that of general damages.
- [2] The parties argued the matter regard being heard from the experts reports filed.

BRIEF BACKGROUND OF THE FACTS

- [3] The patient is Sanele Wiseman Mazibuko (Mazibuko) who is currently 34 years of age. Mazibuko boarded a train at Houtkop station heading to Nancefield. He was subsequently ejected and fell out of the moving train and sustained severe injuries inclusive of a severe head injury. The merits trial was run and the Plaintiff was awarded 60% of damages in his favour by Molahlehi J on 18 October 2021.
- [4] The parties filed various joint minutes, regard being had to the injuries sustained. In light of the joint minutes filed by the Neurosurgeons they both agreed as follows: that there were no pre-accident neurological problems that were reported on behalf of Mazibuko, subsequent to the accident he sustained a severe brain injury, upon admission he had low Glasgow coma scale and he was hospitalised for 5 months. He had a comminuted depression left frontal parietal skull fracture, subarachnoid and intraparenchymal hemorrhage.
- [5] They also agreed that he was unemployable as a result thereof. Mazibuko is experiencing weakness of the left arm and he had a problem with his gait and can only walk by aid of a walking stick. He was also suffering from post-traumatic headaches, had problem with concentration and memory. He was also suffering from post-traumatic epilepsy.
- [6] In terms of the joint minutes filed by both Neuropsychologists, Mazibuko had significant changes including personality changes, fatigue, depression, neurocognitive deficits, memory problems, processing speed and had attention difficulties.

- [7] Additionally, the joint minutes filed by both Orthopedic Surgeons Doctor Robert JL Stein and Doctor F Peters, they concluded as follows: that the patient complained of pain and decreased function of the left side of his body. He had decreased memory and was struggling with his day-to-day activities. He had an antalgic and hemiplegic type of gait and was unable to mobilise without a crutch. There was weakness in both the left arm and leg with decreased function of both limbs. The patient sustained a fracture of her left tibia following a fall in 2018 and this has been internally fixed but has nonunion and he presented early arthritis of the left elbow and left knee as well as the nonunion of the left tibia with the broken screws related to the internal fixation. They noted that he never returned to work and was totally disabled for four months whilst in hospital, and that he remains partially disabled.

ARGUMENTS FROM THE PARTIES

- [8] Mr Matika for the Plaintiff argued that the patient should be awarded an amount of R2 800 000 (two million eight hundred thousand). He also confirmed that in line with the particulars of claim filed only 2.5 million rands was claimed under this heading. He therefore conceded that he could not argue for more than the maximum claim of 2.5 million. A number of cases were used in support of this contention. Mr Matika stressed on the judgment of *Maponya v Road Accident Fund* 2018 JDR 1142 (GJ) an unreported judgement of Moshidi J dated 18 June 2018 where the plaintiff was granted an amount of R1.9 million in respect of general damages. In line with this judgment, it was argued that the plaintiff suffered similar injuries as that of Mazibuko if not more than that. He sustained a severe head injury, leading to neurocognitive and neurobehavioral changes which manifested in poor memory and concentration, aggressive behaviour and various other injuries which left him disabled and disfigured. The plaintiff was awarded R1 900 000.
- [9] He highlighted that the plaintiff sustained devastating injuries which robbed him of his personal independence and which rendered him subject to multiple

medical and surgical procedures in future. He distinguished that the injuries of Mazibuko were different from the cases relied on by the Defendant.

[10] In rebuttal, Mr. Opperman for the Defendant argued that Mazibuko only sustained a severe traumatic brain injury without any orthopedics injuries proven. He was therefore arguing for the court to award Mazibuko an amount of R1.2 or R1.5 million as a fair and reasonable amount. Mr. Opperman for the Defendant also highlighted a number of cases inclusive of *Herbst v Road Accident Fund* (Witwatersrand Local Division: Case No: 3035/2004)¹ where a 34-year-old male suffered a severe head injury rendering him functionally unemployable. The court awarded R600 000 which is currently valued at R1 537 977. He also highlighted the matter of *Adlem v the RAF*² where the claimant was an adult female who suffered a severe head injury causing focal and diffuse brain damage to temporary frontal lobes leading to lack of concentration and attention impaired judgment. She had insight and self-control irritability, language and speech deficit, impaired verbal reasoning, visuospatial problems and some loss of hearing in both ears. She was awarded R400 000 which is currently valued at R1 204 585.

[11] The awarding of general damages is within the courts discretion which discretion has to be exercised reasonably and judiciously. Tritely, there are no two cases which are similar in nature. The circumstances of the patient here cannot be mirrored against any of the cases which have been used by the parties. However, these cases do serve as a guide for this court to follow in consideration of the award of general damages.

[12] Determining quantum for general damages is certainly not an exact science. *"This is so because although 'the law attempts to repair the wrong done to a sufferer who has received personal injuries in an accident by compensating him in money, yet there are no scales by which pain and suffering can be measured, and there is no relationship between pain and money which makes it possible to*

¹ Corbett & Honey Vol 6 A4-7 2007.

² 2010 (6J2)QOD 1(ECP)

express that one in terms of the other with any approach to certainty'. A trial court is required, in the exercise of a wide discretion, to award 'what it in the particular circumstances considers to be a fair and adequate compensation to the injured party for his or her bodily injuries and their sequelae'".³

[13] Further, *"in the exercise of that broad discretion the trial court must: consider a broad spectrum of facts and circumstances connected to the plaintiff and the injuries suffered by him or her, including their nature, permanence, severity and impact on his or her life; take into account the tendency for awards now to be higher than they once were, as a result of changing values in our society, improvements in the standard of living and the fact that awards have traditionally been lower in this country than in many others; and allow itself to be guided by the broad patterns of awards made by courts in the past."*⁴

[14] In light of the joint minutes filed it is clear that Mazibuko only sustained a severe brain injury. In line with the medical legal report filed by Doctor Stein, Mazibuko could not recall any fractures. The orthopedic injuries were only sustained in 2018 whereas the accident occurred in 2016 which resulted in a comminuted depressed left front parietal skull fracture. In addition, Doctor Stein opined that the prognosis for his orthopedic injuries was good and it only required conservative management. He also further noted that his life expectancy was not decreased.

[15] The Occupational Therapist for the Plaintiff noted that he had lost functional independence and he was experiencing mood disorder and decreased cognitive functioning which will likely impact on his interpersonal relationships. He was further noted not to have suffered from any epileptic fits since the accident and only had a 5% chance of developing such. The Clinical Psychologist for the Plaintiff opined that Mazibuko's test results revealed a moderate to high depressive state which did not complete the clinical criteria

³ Road Accident Fund v Van Rhyn 2007 JDR 0125 (E) at para 30.

⁴ Id at para 31.

[16] The difference highlighted with the Moshidi J's judgment is that the patient there upon admission had 9/15 which dropped further to 4/15 GCS whereas Mazibuko had 9/15 which improved to 11/15. The patient there could not speak, he had to be seen by a speech therapist to assist him for two months. He could not recall several weeks post-injury. Mazibuko's mental functioning was intact as per the neuropsychologist report and he could recall recognising his partner and his family when they came to see him in hospital post-accident. Otherwise, there are some similarities regarding the sequelae post the accident.

[17] In light of the above, it is my view that an award of R 1,9 million is an appropriate award to be awarded to the Plaintiff for the injuries sustained subject to 40% apportionment as previously awarded.

CONCLUSION

[18] I therefore make the following order:

1. The Defendant shall pay the Plaintiff a sum of R1 140 000 (one million one hundred and forty thousand rands) in respect of general damages.
2. The Defendant shall pay the Plaintiff's agreed or taxed costs of the action on a party and party scale with counsel's costs on scale "B".



NHARMURAVATE, AJ
JUDGE OF THE HIGH

COURT GAUTENG DIVISION, JOHANNESBURG

APPEARANCES:

For the Plaintiff: Adv Matika

Instructed by :Titus & Associates Attorney

For the Defendant : Adv F Opperman

Instructed by : Padi Attorneys Incorporated

Date of Judgment: 21 June 2024