

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

14/3/2017

Case Number: 12503/12

In the matter between:

C G R

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

BAM J

Appearances:

For plaintiff: Adv. L Visser.

For defendant: Adv. S Matabathe

1. The plaintiff instituted action against the defendant consequent upon an accident that occurred on 5 November 2009. The merits were resolved 100% in favour of the plaintiff. In respect of the quantum of her damages the draft order reflects the agreed upon issues of loss of earnings and past medical expenses. The only remaining dispute to be resolved by this court is the assessment of general damages.

2. The plaintiff, whom at the time of the accident was 28 years of age, sustained the following injuries: An injury to her cervical and lumbar spine; an injury to her thoracic spine; injuries to her big toe nail beds (requiring surgery); and, she also hit her head. Apart from the surgery to her toe nail, she received a lumbar fusion on levels L4/LS and C4/CS in April 2013. It is the plaintiff's case that the accident also caused psychological and psychiatric sequelae. Her present condition can be summarised as follows: She has panic attacks once or twice a month; suffers from depression; becomes forgetful; is anxious, frustrated and irritable; has poor concentration and is easily distracted and provoked; her appetite has increased resulting in her gaining weight; her libido is seriously affected; experiences constant back and neck pain for which she has to use medication; she has problems with bladder control; she experiences problems with her walking ability; and, suffers from an overall decline in enjoyment of life. There is also a 25% possibility of further surgery to her neck.
3. I have perused the numerous comprehensive expert reports filed on behalf of both parties. However, in view thereof that the issue before this court turns solely upon general damages, I do not deem it expedient to refer in any more detail to the said reports and opinions.
4. Mr Visser submitted, with reference to comparable cases, that an amount of R525 000 "*will constitute fair compensation*". In this regard Mr Visser referred to several decisions, including: *Shongwe v Road Accident Fund*: Case Number A466/2013 (Full bench decision of this Court). General damages awarded R300 000: and, *Lawson v Road Accident Fund*: (Eastern Cape High Court, Port Elizabeth, Case Number 1566/2006). General damages awarded - R300 000.
5. It is the defendant's submission, presented by Mr Matabathe, that an amount of R200 000 to R250 000, would be fair in the circumstances. It was further pointed out by Mr Matabathe that the plaintiff, since the age of 7, as a result of a traumatic experience, suffered from certain psychological problems and submitted that it contributed to her present psychological condition.
6. I have considered the submissions made by counsel as well as the effect of the

incident on the plaintiff, reported upon by the respective experts in their reports.

7. I am satisfied that the facts to be taken into account, submitted by Mr Visser, correctly reflect the plaintiff's situation.
8. I am not convinced that the trauma experienced by the plaintiff at the age of 7 should be considered to be material concerning her present psychological condition.
9. In view thereof that other comparable cases can only serve as guidance; each and every matter has to be considered on its own merits. Accordingly, after having taken into account all relevant aspects, in exercising my discretion, I am of the view that an amount of R450 000 is fair in respect of general damages.
10. Mr Visser also raised the issue of a Trust to be created in order to safeguard the award granted to the plaintiff. (Paragraph 12 of the draft order.)
Mr Matabathe raised the issue who would be liable for costs in creating a trust. It was clear that the parties, concerning the issue of a trust, contrary to the wording of the said paragraph 12, were not at idem.
I then indicated that the issue of costs should be decided upon by the court before which such application is enrolled. Accordingly the second sentence of paragraph 12 does not form part of the order I intend to make and is deleted.
11. The draft order marked X, as amended, and including the sum of R450 000 for general damages, is made an order of court.

A J BAM JUDGE

9 March 2017

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

AT PRETORIA ON THIS THE 8th DAY OF MARCH 2017

BEFORE _____

CASE NUMBER: 12503 /12

IN THE MATTER BETWEEN:

C G R

PLAINTIFF

AND

THE ROAD ACCIDENT FUND

DEFENDANT

DRAFT ORDER

(RAF REF: "" last known 505/1585782/1/10)

(PLAINTIFF REF: R3029)

(PLAINTIFF ID: [...])

Having heard counsel and perused the papers, **THE COURT ORDERS:**

1. The defendant is ordered to pay to the plaintiff by way of delictual damages on/.before 28 APRIL 2017 the amount of r1 743 864, 06 (no apportionment to be applied).

1(a) The judgment amount stipulated in paragraph 1 above consists of the following:

- (i) R 1,141,370.00 (one one four one three seven zero Rand and zero cents) (in respect of the plaintiff's claim for payment of loss of earnings / earning capacity;
- (ii) R 450,000.00 (in respect of the plaintiff's claim for payment of general damages;
- (iii) R 152,494.06 (in respect of the plaintiff's claim for payment of past medical and hospital expenses.

1(b) The amounts recorded in paragraphs 1(a)(i) and 1(a)(ii) are payable in full and final settlement of plaintiff's claims for those heads of damage. The

defendant contends that the amount reflected in paragraph 1(a)(iii) constitutes payment of all provable past medical and hospital expenses whereas the plaintiff contends that it does not and that a balance is due. The defendant will provide within 10 court days from date of trial to plaintiff's attorney a copy of the medical department's bill review. The parties agree that the plaintiff is at liberty to pursue the alleged balance but that she will do so at her own risk and that she will bear any future costs should she so proceed and not be able to prove any balance. The alleged balance in respect of the past medical and hospital expenses is hereby separated in terms of rule 33(4) from the resolved issues and postponed sine die.

2. If the defendant does not pay the agreed amount or any portion thereof on or before the date stipulated in paragraph 1 above interest will run on the outstanding amount from date of this order until date of final payment to be calculated at the applicable statutory mora rate of interest.

3. The plaintiff's claim for payment of past medical and hospital expenses is hereby separated from the resolved issues in terms of rule 33(4) and postponed sine die at defendant's request. Any wasted costs occasioned by reason of the postponement of this head of damage is immediately taxable and payable against the defendant in favour of plaintiff.

4. The defendant will within 4 months from date of this order furnish the plaintiff with an unlimited undertaking in terms of the provisions of Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996 for the costs stipulated in terms of the said Section arising out of the injuries sustained by the plaintiff in the motor vehicle collision that is the subject of the claim instituted under the abovementioned case number. By agreement between the parties any accident related future costs relating to gardening / domestic / maintenance assistance (if any) will be payable under and in terms of the undertaking.

5. The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs of suit on the opposed High Court scale which costs will include, but not necessarily be limited to the following:

5.1 The defendant is liable to pay the wasted costs occasioned by the postponement of the trial on 3 March 2017 to include but not necessarily be limited to: the reasonable travelling and subsistence costs of the plaintiff and her witnesses for trial on 3 March 2017, the fees of counsel for the

plaintiff to be taxed on the senior-junior scale and reasonable taxable preparation, qualification and day fees of Dr W Pretorius for trial on 3 March 2017 and the reasonable taxable preparation, qualification and reservation fees of all the plaintiff's other experts for trial on 3 March 2017;

5.2 The reasonable taxable costs of the necessary consultations with the plaintiff's experts (if any); the costs of all the expert reports and assessments, follow up and addendum reports and assessments by all plaintiff's experts (if any); the costs incurred in respect of any meetings between the experts and in procuring the joint reports of all the plaintiff's experts (if any); the costs of all the actuarial calculations and the reports thereon procured on plaintiff's behalf;

5.3 The additional costs (if any) incurred by reason of the fact that the defendant employed more than one attorney to represent it in the action are to be costs in the cause;

5.4 The reasonable taxable costs of one consultation with the plaintiff in order to consider the offer of the defendant, to procure performance by the defendant of its obligations in terms hereof as well as the costs incurred in preparing all discovery affidavits on behalf of the plaintiff; the costs in respect of the preparation, drafting and copying of all the bundles of documents, pleadings and notices and all indexes thereto; the costs of the preparation for and attendance of the pre-trial conference(s) and the pre-litigation court pre-trial (if such was held) by the plaintiff's legal representatives to include the taxable costs incurred in preparing the pre-trial minutes in regard to all pre-trials held;

5.5 Any costs reserved in the past are to be costs in the cause;

5.6 The costs incurred in respect of the examinations / evaluations by the plaintiff's experts as required by regulation 3 of the 2008 RAF Regulations to include the preparation of the raf-4 serious injury assessment report forms and narrative reports (if any);

5.7 The reasonable taxable travelling, subsistence and accommodation costs of the plaintiff in attending all the medico legal examinations / evaluations / assessments;

5.8 The fees of counsel occasioned by the drafting and procurement of all affidavits for the experts on behalf of the plaintiff and the fees / costs

incurred in procuring such affidavits from the experts;

5.9 The duplication in costs incurred as the result that the defendant appointed more than one attorney to represent it in the action;

5.10 The fees of counsel for plaintiff to be taxed on the senior-junior scale to include his fees in respect of both the trial dates of 3 and 8 March 2017.

6. It is noted and recorded that by agreement between the parties no preparation, reservation or qualification fees are to be allowed in respect of any of plaintiff s experts for the trial date of 8 March 2017.

7. The costs incurred by the plaintiff in connection with the interim applications (if any) are to be taxed in accordance with the cost orders made therein.

8. The plaintiff hereby abandons by agreement with the defendant paragraphs 1 and 2 of the order of His Lordship Mr Justice Teffo dated 11 January 2016 with the result that the defendant's defence is hereby re-instated ex tune to date when the defence was struck out but with the proviso that the cost order provided for in that order remains in force and that such costs remain taxable against and payable by the defendant and with the further proviso that the defendant complies within 40 calendar days from today with the default by the defendant underlying the order to strike solely to the extent that it relates to the plaintiffs claim for payment of past medical and hospital expenses to further steps to compel such compliance.

9. All payments of the plaintiff s capital and legal costs are to be made by paying the amount(s) and taxed or agreed costs to the credit of the Trust account of Salome Le Roux Attorneys, the detail of which is as follows:

SALOMe LE ROUX ATTORNEYS

BANK:	THE STANDARD BANK OF SOUTH AFRICA
BRANCH:	PRETORIA, CHURCH SQUARE
BRANCH CODE:	01-00-45-00
ACCOUNT NUMBER:	[...]
ACCOUNT HOLDER:	SALOMe LE ROUX TRUST ACCOUNT
TYPE OF ACCOUNT:	TRUST CHEQUE ACCOUNT
REF:	R3029

10. In the event of the parties not being able to agree on the amount of the legal costs payable by the defendant, the plaintiff shall:

serve a notice of taxation on the defendant's attorneys in the action; and

and shall allow the defendant FOURTEEN calendar days to make payment of the costs so taxed.

If the defendant falls in mora to pay the plaintiff s taxed or agreed to legal costs the defendant will pay interest on any such outstanding costs to be calculated on the outstanding amount at the statutorily prescribed mora rate of interest applicable from time to time to be calculated from date of mora to date of final payment.

11. It is noted and recorded that the plaintiffs claim is subject to a contingency fee agreement.

12. The defendant is in agreement that application has to be made to the motion court in order to have the question determined whether a trust needs to be put up for the plaintiff to safeguard her award due in terms of this order. The defendant is furthermore in agreement that if the plaintiff s award requires protection in the form of a trust that the formation costs, the costs in administering same, the annual audit fees, the costs in furnishing security and the fees and costs of the trustee are to be payable from time to time under and in terms of the undertaking to be issued in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996.

BY ORDER OF THE COURT

THE REGISTRAR

S LE ROUX '	082 338 1904
M OELOFSE	072 298 7476
L VISSER	0824525254
S MATHABATH E	079 966 3756