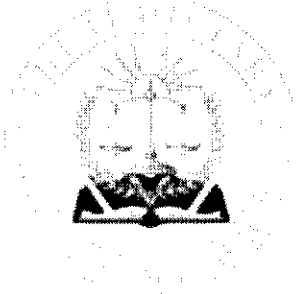



REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 3804/15

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
12/04/17	
DATE	
	
SIGNATURE	

12 / 4 / 2017

In the matter between:

MAKHUTHUDISE LAWRENCE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

J U D G M E N T

TEFFO, J:

[1] The plaintiff, a 26 year old male, instituted an action against the defendant for damages suffered as a result of bodily injuries sustained by him in a motor vehicle collision which occurred on 30 March 2014 on Mokgwathi Road, in Mokgwathi, Limpopo Province.

[2] The collision occurred between an unidentified motor vehicle and the plaintiff who was a pedestrian at the time.

[3] I was requested by the parties to determine the issue of liability and quantum limited to general damages only. The parties have agreed that the defendant will pay an amount of R1 768 310,00 (one million seven hundred and sixty eight thousand three hundred and ten rand) to the plaintiff for loss of earnings. The defendant has tendered a section 17(4)(a) undertaking in respect of future hospital, medical and ancillary expenses which the plaintiff has accepted.

[4] Only the plaintiff testified in support of his case while the defendant closed its case without calling any witnesses.

THE EVIDENCE

[5] The plaintiff testified that on 30 March 2014 he was at his homestead. He took a walk with his sister who was accompanying a friend to her homestead. The two accompanied his sister's friend home and on their way back home, he was involved in an accident. They were walking on the right-hand side of the road and as they were approaching a hump, an unknown motor vehicle came at a high speed, moved out of the road and knocked him down on the side of the road. When he realised that the motor vehicle was moving out of the road, he could not do anything. It was late for him to have taken precautionary measures to avoid the collision. The accident happened

at Mokgwathi village in Bolobedu. The motor vehicle that collided with him was travelling on the tarred road from Mokgwathi to Tzaneen. He does not know the name of the road where the collision took place. He was walking outside the road when accident took place.

[6] Under cross-examination he was asked as to how far was he walking from his sister and he testified that she was on his right although he could not tell the distance. He was also asked if he remembered the accident or was he told about it. He testified that he was told about it and also remembers certain things after he was told. He was further asked as to when did he start to remember anything about the accident and he testified that when he consulted doctors and they were asking him questions. He testified that if any of the doctors could tell the court that he did not remember the accident, he will not be telling the truth. He admitted that he was medico legally examined by Dr Chabalala, the Psychiatrist. He was asked if he remembered what time did the accident happen and he testified that he did not and that the accident happened at night. When asked whether he would agree if told that the accident happened at 03:00, he said he did not know.

[7] His sister was not injured. The motor vehicle collided with him towards the end of his body, on the waist and he did not even touch his sister. It knocked him down with its right front lamp. They were walking from Mokgwathi to Tzaneen in the direction North to South and the insured vehicle was travelling in the opposite direction. The motor vehicle was travelling on the left and it wanted to avoid the speed hump. When it knocked him down,

its whole body was outside the tarred road. He corrected his evidence and said he was knocked down with the left part of the motor vehicle. He conceded that if the entire body of the motor vehicle was outside the road, it means his sister was able to avoid the collision and he did not. He disputed that if his sister managed to avoid the collision, he could have also managed. He was asked what was the state of his sobriety and he said he was sober. He could not recall how he was dressed on that day.

[8] Under re-examination he testified that he left his homestead just after 21:00 when he accompanied his sister's friend with his sister to her homestead and estimated the distance to her homestead as \pm 10 minutes. When asked what time could the accident have happened, he testified that he did not know. He further testified that there are no street lights in the area but he could see the lights of the motor vehicle because it was not that dark. That concluded the plaintiff's evidence.

[9] No evidence was placed before court to counter the evidence presented by the plaintiff. In his address counsel for the defendant raised various issues relating to the fact that no accident report was furnished to the defendant, police were never called to the scene and no statements were taken from witnesses relating to the accident. Further to this he questioned the time of the accident, why the plaintiff's sister who was allegedly walking with him at the time of the collision did not testify, the fact that Dr Chabalala mentioned in his report that the plaintiff could not remember how the accident happened and that according to the information recorded in the hospital

records of the plaintiff, he was drunk and that because according to his evidence, his sister was able to avoid the collision, the plaintiff was contributory negligent as there was no reason why he could also not have avoided the collision.

[10] Most of the issues raised were not taken up with the plaintiff when he was testifying especially the issue about the accident report and also the failure to call the police immediately after the collision. According to the records from Letaba hospital where the plaintiff was admitted immediately after the accident, he was semi-conscious on his arrival at the hospital. It was reported that he was knocked down by a motor vehicle while walking at approximately 03:00. He was at the time from a gathering. He was seen by Doctor Mathye in casualty and diagnosed for PVA, alcohol intoxication and head injury. The accident was a hit and run and it happened at night. All this information on the hospital records was not taken further or investigated. There is no reason why the defendant did not appoint assessors to follow up the information. The plaintiff testified two years and some months after the accident. He testified that he does not know what time the accident happened. All he could say was that as far as he can recall he accompanied his sister's friend with his sister to her homestead around 21:00. To argue that 21:00 and 03:00 are far apart is neither here nor there and does not assist the defendant in any way. The hospital records are clear that he was semi-conscious when he arrived at the hospital and could not talk. It is not known where the information that the accident happened at 03:00 came from. This can also not be regarded as certain because there is no evidence to give the court a

picture as to how the plaintiff came to the hospital, what was the distance from where the collision occurred and the hospital and whether he was immediately thereafter taken to the hospital or whether they had to wait and get a vehicle or an ambulance to transport him to the hospital. It does not necessary mean that because they accompanied his sister's friend to her homestead at 21:00, that they walked to her residence for ± 10 minutes therefore the accident could have happened at that time.

[11] The only thing that I find strange in the hospital records is that it is recorded that he was from a gathering. As I indicated it is not known who wrote that information and the person was not called to testify. What I have under oath is the evidence of the plaintiff which has not been challenged. There is no evidence to prove that he was indeed drunk and that he was contributory negligent. It is clear from the evidence that the accident happened in a village at night. The plaintiff was not asked as to why the accident was not reported to the police. No evidence was presented to indicate what could have actually happened that resulted in the accident not being reported. As to the fact that Dr Chabalala stated in his report that the plaintiff could not remember the accident, that cannot be taken against him. He testified that initially he did not remember but as he heard what happened and as he was being asked about it, he could remember certain things.

[12] His evidence is that as he was walking on the right-hand side of the road with his sister, an unknown motor vehicle left the tarred road, went outside the road at a high speed to avoid a hump and knocked him down. It

came from the opposite direction and the way it went out of the road, he could not do anything to avoid the collision. There is no evidence to counter his evidence. He was not walking on the tarred road but outside the road where he had a right of way. The insured vehicle was negligent by leaving the tarred road where it was travelling and going outside the road to avoid a hump. The plaintiff has therefore succeeded in establishing negligence on the part of the insured vehicle. He is therefore entitled to 100% of the proven damages caused by the collision.

[13] The next issue for determination is whether the plaintiff is entitled to general damages and the quantum thereof. The plaintiff sustained the following injuries according to the reports: head injury and remained unconscious for 4 days and confused for a further 2 to 3 days, multiple lacerations on his scalp and face, leaving him with an unsightly V-shaped scar on the bridge of his nose and laceration injuries on his left iliac crest area. Dr Selahle (the Plastic Surgeon) describes the scars and deformities on the plaintiff as follows: a 3 cm V-shaped scar on the glabella and a 6 x 4 cm hyper-pigmented scar on the left flank. According to Dr Selahle the abovementioned scars have no features of scar hypertrophy but they are cosmetically unsightly and disfiguring. Dr Enslin, the Orthopaedic Surgeon who also refers to a whiplash injury of the neck states in this report that he assessed the whole person impairment at 20% and opined that there was permanent serious disfigurement and serious long-term mental or behavioural disorder. The plaintiff's forehead was swollen on admission at Letaba hospital and a Glasgow Coma Scale ("GCS") score of 9/15 was recorded. Two days

after the accident the GCS recorded was 12/15. Bilateral subconjunctival haemorrhages were noted and a fracture of the base of his skull (anterior cranial fossa) was diagnosed on clinical grounds. The CT scan of the brain did not show an intracranial haemorrhage. He sustained a laceration to the bridge of his nose and it was suspected that he had fractured his nose. A laceration was noted on his lower lip and in the region of the left orbit. His nose was bleeding. His left hand was bruised. According to Dr J J du Plessis, the Neurosurgeon, the plaintiff suffered a moderate to severe diffuse brain injury. He also has a 2% chance of developing epilepsy.

[14] In *Road Accident Fund v Marunga* 2003(5) SA 164 Navsa JA followed the views of Potgieter JA in *Protea Assurance Co Ltd v Lamb* 1971(1) SA 530 A at 535 A-B and held that in cases where the question of general damages arises, a trial court in considering all the facts and circumstances of a case has a wide discretion to award what it considers to be fair and adequate compensation to the injured party. He stated that there was no hard and fast rule of general application requiring a trial court to consider past awards but awards in decided cases might be of some guidance.

[15] I was referred to cases that dealt with similar injuries and the amounts awarded for the damages suffered which I considered, for an example, in *Johan Hendrik Adriaan Saunders N.O obo Tshepo Michael Nkopane* case no. 69330/2011 unreported and handed down on 03/10/13, the claimant was awarded an amount of R750 000,00 for general damages. After taking into account the injuries sustained and comparable case law, I came to the

conclusion that the most appropriate and fair amount to compensate the plaintiff for general damages suffered is the amount of R850 000,00.

[16] Accordingly I grant judgment in favour of the plaintiff against the defendant as follows:

16.1 Payment of the amount of R2 618 310,00 to the plaintiff in full and final settlement of the plaintiff's claim.

16.2 Interest on the said amount of R2 618 310,00 at the rate of 15,5% per annum 14 days from date of judgment to date of final payment.


16.3 The defendant is to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for payment of the costs of future accommodation of the plaintiff in a hospital or a nursing home or treatment of or the rendering of a service to him or supplying of goods to him arising out of the injuries sustained by him in the collision in which he was involved on 30 March 2014, after such costs have been incurred and upon proper proof thereof which costs shall include:

16.3.1 The reasonable costs incurred in the establishment of a trust for the sole benefit of the plaintiff.

16.3.2 The reasonable costs incurred by the trustee in the administration of the plaintiff's estate.

16.3.3 The reasonable costs incurred in providing security for the satisfaction of the Master of the High Court of South Africa for the administration of the plaintiff's estate, provided that the costs contemplated in paragraphs 17.3.1 to 17.3.3 above shall be limited to the costs equivalent to those incidental to that which could be claimed by a *curator bonis*.

16.4 The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs of suit on High Court scale which include costs of counsel, the costs of reports and consultations, as well as preparation and reservation fees, if any, of the expert witnesses, as well as the travelling and subsistence costs of the plaintiff and the expert witnesses who attended the hearing to testify as witnesses.


M J TEFFO
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

APPEARANCES:

FOR THE PLAINTIFF

K MPHAHLELE

INSTRUCTED BY

BALOYI ATTORNEYS

FOR THE DEFENDANT

L MALULEKE

INSTRUCTED BY

BRUMAN DUMA ZITHA ATTORNEYS

DATE OF JUDGMENT

12 APRIL 2017