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**IN THE HIGH COURT OF SOUTH AFRICA  
NORTH WEST DIVISION, MAHIKENG**

**CASE NUMBER: RAF703/2006**

Reportable: NO

Circulate to Judges: NO

Circulate to Magistrates: NO

Circulate to Regional Magistrates: NO

In the matter between:-

**B[...] M[...] M[...]**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

*This judgment is handed down by circulating it electronically to the e-mail addresses of the representatives' parties. The date and time of hand down is deemed to be **24 June 2024 at 12h00**.*

**JUDGMENT**

**FMM REID J**

**Introduction:**

[1] This is a claim against the defendant for damages suffered by the plaintiff in 2001 in a motor vehicle collision when the plaintiff was a

passenger seated in the back seat of a vehicle. The plaintiff was travelling with her 12-month old son and at the time of the collision and she was 58 years of age.

[2] The defendant was notified of the proceedings and the notice of set-down that was duly served on the defendant on 23 November 2023. This Court is satisfied that the defendant is duly aware of the proceedings.

[3] The merits of the plaintiff's claim were conceded by the defendant as per paragraph 5 of the signed pre-trial minutes dated 4 April 2017.

[4] The issue before this Court is thus the quantification of the plaintiff's claim.

### **Expert evidence**

[5] The plaintiff duly applied in terms of Rule 38(2) of the Uniform Rules of the High Court that the evidence of the expert witnesses be admitted into evidence on affidavit. At the onset of the proceedings on 26 February 2024 an order was made that that the affidavits and reports of the plaintiff's experts be accepted as evidence.

[6] The plaintiff's claim for damages comprises of the following heads of damages:

- 6.1. Past medical and hospital expenses;
- 6.2. Future medical and hospital expenses;
- 6.3. Past and future loss of earnings and earning capacity; and
- 6.4. General damages.

[7] The plaintiff presented reports of the following experts:

- 7.1. Dr HB Enslin Orthopaedic Surgeon;
- 7.2. Alison Crosbie-Jeanne Morland Occupational Therapist;
- 7.3. Dr M Mazabow Neuro Psychologist;
- 7.4. Dr G Marus Neurosurgeon;
- 7.5. Dr C Visser Psychiatrist;
- 7.6. Anthony Townsend Clinical Psychologist;
- 7.7. Dr L Berkowitz Plastic and Reconstructive Surgeon
- 7.8. Louis Linde and Kevin Jooste Industrial Psychologists
- 7.9. Algorithm Consulting Actuary Mr G Whittaker

[8] The plaintiff sustained the following physical injuries as a result of the collision:

- 8.1. A mild to moderate concussive head injury with loss of consciousness.
- 8.2. Fracture of the left hip.
- 8.3. Fracture of the shaft of the left femur.
- 8.4. Fracture of the left femoral neck.
- 8.5. Fracture of the right medial malleolus (ankle).

8.6. Lacerations of the bridge and right side of the nose.

8.7. Lacerations of the forehead.

[9] The plaintiff also suffered psychological damage as her son, who travelled with her, passed away as a result of the collision.

#### **Treatment received**

[10] After the collision, the plaintiff was taken by ambulance to the Ferncrest hospital, where she was admitted and treated for her injuries. The plaintiff was treated in the hospital for a period of approximately 3 months. She was discharged in a wheelchair which she used for 1 month and she used crutches for a further period of 2 months.

[11] An open reduction and internal fixation were done on the plaintiff's left femur as well as her right ankle. During 2012 the pin was removed from the plaintiff's left hip.

[12] The plaintiff currently suffers from the following *sequelae* of the injuries:

12.1. Cosmetic injuries (scars) on her forehead, nose, left femur and right ankle.

12.2. Chronic pain in her left femur for which she used chronic medication. She limps when she walks and struggles to sleep due to the pain.

12.3. Chronic pain in her right ankle, she uses medication twice a day and robbing lotion twice a week.

12.4. Her left knee pains on a daily basis.

12.5. She cannot stand for long periods of time due to the pain in her

legs.

- 12.6. Her memory is poor and has to write everything down.
  - 12.7. The plaintiff is more irritable at work and at home.
  - 12.8. She suffered of intense depression for the first 3 years after the untimely death of her son and dreamt about him frequently.
- [13] During argument, Adv JA du Plessis referred to both the plaintiff's and the defendant's experts' reports.

### **Expert reports**

- [14] Dr Enslin, the orthopaedic surgeon for the plaintiff confirmed the following:

- 14.1. The bodily injuries of the left femur fracture and right ankle of which both have clinically united.
- 14.2. Radiological examinations confirmed the fractures and subsequent uniting of the plaintiff's left hip as well as a varus angulation measuring 2 degrees of the midshaft of the femur. The x-rays indicated a shortening of 1 cm of the plaintiff's left leg.
- 14.3. In relation to the future medical hospital and related expenses in respect of the plaintiff's orthopaedic injuries, dr Enslin provided for conservative treatment and surgical treatment in the form of a synovectomy of the ankle.

- [15] The occupational therapist Ms Morland (Alison Crosbie Inc) confirmed the following in her report:

- 15.1. The plaintiff completed Grade 12 at Sekete High School.

- 15.2. The plaintiff has a valid code B driver's licence and reported that she struggles to operate the clutch due to the pain in her left knee. She therefore makes use of a taxi for transport.
- 15.3. The plaintiff has the following employment history:
- 15.3.1. She was a cashier at Dischem for about 9 years when the collision occurred. She was off from work for a period of 4 months after the collision for recovery. She retook employment, but worked for approximately 1 year whereafter she resigned due to the chronic pain experienced.
- 15.3.2. The plaintiff was then unemployed for a period of 3 years.
- 15.3.3. She took up employment as a cashier at Pick & Pay from December 2005 until her promotion in 2007. She was promoted to Supervisor in 2007 and worked as such until 2017, when the Pick and Pay branch at which the plaintiff was employed, was closed down.
- 15.3.4. From August 2017 she is employed by Scorebet as an Assistant Manager and has been employed as such since.
- 15.4. During a workday, the plaintiff will spend 50% of the day seated whilst doing administrative duties and 50% walking and checking the floor. Her day starts at 05h00 and ends at 21h30.
- 15.5. She is able to carry a bag with a maximum weight of 1 kg and she needs to make a list to remember what to purchase.
- 15.6. The plaintiff walks with an uneven gait and has limitations walking at work.

- 15.7. She has mild changes since her first assessment in 2016.
- 15.8. In relation to employment prospects, the occupational therapist stated that the plaintiff's work as cashier fell in the light to medium work categories. Her work post-collision as supervisor at Pick and Pay fell within the light work category with high demands for walking and standing. Her current work at Scorbet as Assistant Manager falls within the Light Work Category. The plaintiff is best suited for work that falls in the Light Work Category.
- 15.9. The plaintiff should be able to continue employment in her current position until normal retirement age, provided that she loses weight and receives successful medical and therapeutic treatment for her pain and psychological deficits.
- 15.10. The plaintiff is less competitive in the open labour market due to her having to implement joint and energy saving techniques and ergonomical principles. The occupational therapist confirmed that the plaintiff is no longer an equal competitor. The plaintiff would benefit from occupational therapy, assistive devices, physiotherapy and biokinetics.

[16] The Neurosurgeon Dr G Marus assessed the plaintiff and reported the following findings:

- 16.1. The plaintiff has a short period of amnesia which she sustained as a result of direct trauma to the head where a laceration on the nose is identified.
- 16.2. She sustained a probable moderate concussive brain injury in the collision on the basis of her history of prolonged post traumatic amnesia. Some patients can retain some cognitive impairment on an organic basis.

16.3. The plaintiff reported the periods that she was not able to be employed as a result of the collision.

16.4. He confirms that the anxiety and underlying mood disorder is as a result of the collision and notes the diagnoses of major depressive disorder.

[17] The clinical psychologist Dr Mazabow reported that:

17.1. The plaintiff was asleep at the time of the collision, she does not recall being in the ICU or being transferred to the ward. The collision occurred on 26 May and she was transferred on 29 May, thus indicating post-traumatic amnesia for at least 3 days.

17.2. The plaintiff was informed that her son was killed in the accident and that the funeral was to be held. She does not remember everything after she was informed her son was killed and the next memory is of her son being buried.

17.3. The plaintiff was intensely depressed for the first 3 years after the collision in response to the death of her 14-month old son and the pain that she sustained in the collision.

17.4. The plaintiff presents with mild chronic depression at the evaluation of the Beck's Depression Inventory.

17.5. Dr Mazabow concludes, after various tests were performed and documentation studied, that the plaintiff is suffering from chronic psychological disturbances and subject to chronic mild to moderate depressive symptoms, reflecting a dysthymic disorder or adjustment disorder and complicated grief reaction, together with chronic mild post-traumatic anxiety symptoms.

17.6. Dr Mazabow confirms that the plaintiff's prognosis of her current



neuropsychological profile is permanent due to the moderate concussive brain injury she sustained in the collision.

[18] Dr Visser, the psychiatrist confirmed in the report that:

18.1. The plaintiff has definite depressive features. Due to the prominence of the neurovegetative symptoms, her condition justifies the diagnosis of major depressive disorder.

18.2. The plaintiff's condition causes mild, chronic psychosocial distress and has resulted in chronic, mild functional impairment. Her career advancement and improvement in earnings are limited by the mental condition.

18.3. Dr Visser recommended multidisciplinary psychiatric management.

[19] Mr A Townsend, Clinical Psychologist reports the following:

19.1. The plaintiff presents with symptoms that meet the criteria for post-traumatic stress disorder and major depressive disorder as a result of the collision.

19.2. The plaintiff's condition causes mild, chronic psychosocial distress and has resulted in chronic, mild functional impairment. Her career advancement and improvement in earnings are limited by her mental condition.

[20] Dr Berkowitz, a Plastic and Reconstructive Surgeon, reports as follows:

20.1. The scar on the plaintiff's forehead lays obliquely at the central anterior hairline of the forehead.

- 20.2. The plaintiff's nose has a hyperpigmented post abrasion scar measuring 15 mm x 4 mm.
- 20.3. An unsightly hyperpigmented scar measuring 30mm x 3mm lying in a curve over the right alae nase (the lateral wings of the nose) and extending onto the columella (middle of the ear).
- 20.4. A scar measuring 60mm x 7mm hatching running longitudinally down the medial right ankle.
- 20.5. An unsightly and disfiguring scar measuring 390mm x 30mm with wide cross hatching running down the midline of the lateral aspect of the entire length of the left thigh.
- 20.6. The scares are amenable to improvement and future surgical and conservative treatment is recommended.
- 20.7. The future surgical and conservative treatment will cause the plaintiff further pain.

[21] Mr Linde, an Industrial Psychologist reports the following:

- 21.1. Had the plaintiff not been involved in a collision, the plaintiff would easily have been able to manage a smaller shop of approximately 14 employees,
- 21.2. A manager's starting salary is R12,000.00 and progresses to R22,000.00 per month, depending on the store.
- 21.3. Retirement age at the company is 65 years.
- 21.4. The plaintiff's pre-collision and post-collision capabilities were examined by Mr Linde and confirmed the limited capabilities post-collision as stipulated above.

[22] Dr Moagi, an Orthopaedic Surgeon reports as follows:

- 22.1. That the plaintiff has suffered the injuries as set out above.
- 22.2. That the plaintiff continues to experience chronic pain on the left femur and left knee.
- 22.3. Dr Moagi recommended future conservative and surgical treatment.

[23] Dr Fouché, an Occupational Therapist reports as follows:

- 23.1. That the plaintiff's injuries have affected her life negatively and affected her earning capacity negatively, and becomes increasingly more difficult for the plaintiff to perform her duties.
- 23.2. That it is highly unlikely that the plaintiff will be able to continue working until retirement age.
- 23.3. That the plaintiff's abilities are severely limited in procuring other work opportunities as a result of the injuries suffered as a result of the collision.

[24] Dr Earle, a Neurosurgeon, reports as follows:

- 24.1. That the plaintiff suffered a mild to moderate traumatic brain injury.
- 24.2. That the plaintiff can continue her current employment, but it will be at the expense of quite a degree of discomfort.

[25] Dr Gordon, a Plastic and Reconstructive Surgeon, reports as follows:

- 25.1. That the plaintiff suffered disfiguring injuries of the nose, left thigh and right ankle.
- 25.2. That future medical treatment in the form of plastic and reconstructive surgery.
- 25.3. That pain will be experienced by the plaintiff in undergoing the surgery.

[26] Mr Peverett, an Industrial Psychologist, reports as follows:

- 26.1. That the plaintiff assessed the plaintiff 9 and a half years post accident and that the pain she is reporting is very likely permanent of nature.
- 26.2. He confirmed concentration difficulties and forgetfulness of the plaintiff.
- 26.3. The plaintiff's medical evidence indicates that she has been permanently compromised in terms of her post-accident capabilities.
- 26.4. The plaintiff is rendered less competitive in the open labour market due to her physical injuries.
- 26.5. The plaintiff's condition will deteriorate with age and early retirement is foreseeable.
- 26.6. He recommends that a higher post-morbid contingency be considered in terms of future loss of earnings.

[27] Mr Wittaker from Algorithm Consulting Actuaries reports as follows:

- 27.1. The plaintiff's total past loss of income is R1,312,688.00. Contingencies of 11% has been applied to this amount.
- 27.2. The plaintiff's total future loss of income is R1,008,085.00. Contingencies of 31% has been applied to this amount.
- 27.3. The total nett loss of income experienced by the plaintiff is thus R2,320,774.00.

[28] I agree with the submission made by Adv du Plessis that the application of 11% contingencies for past loss of income and 31% contingencies for future loss of income are fair and reasonable contingencies to be applied to the plaintiff's loss of income.

[29] As such, I agree that the **total loss of income** suffered by the plaintiff as a result of the collision is the amount of **R2,321,000.00 (Two Million Three Hundred and One Thousand Rand)**.

### **General damages**

[30] The plaintiff is entitled to general damages in that this action originates from a collision that occurred on 26 May 2001, which is prior to August 2008 which is the time that the restrictive conditions pertaining to general damages came into effect. RAF-4 procedure (Regulation 3) is thus not relevant to this claim.

[31] General damages are adjudicated in accordance with the individual facts of the matter and previous decisions serve as a guideline. See: **RAF v Marunga** 2003 (5) SA 164 (SCA) at 169E-F.

[32] In **Tobias v RAF** 2011 (6B4) QOD 65 (GNP) the plaintiff suffered a diffuse axonal brain injury of moderate severity, fracture of the left proximal tibia, compound fracture of right proximal tibia and anterior wedge compression fractures of the eighth and ninth dorsal vertebrae.

Neurocognitive and neuropsychological deficits associated with poor memory and poor concentration, word retrieval difficulty, mood swings, inappropriate behaviour, social withdrawal, and depression. Non-union of the right proximal tibia, post-traumatic osteoarthritis in the left knee and signs of spondylosis in the dorsal vertebrae. Future surgery in the form of intra-medullary nailing and bone grafting for the un-united fracture and a total knee replacement. Inability to walk long distances or stand for long periods. She is limited to sedentary employment, but employment is unlikely. This plaintiff was awarded an amount of R450,000.00, of which the current amount is R871,000.00.

[33] In **Mofokeng v RAF** (2009/11101) [2014] ZAGPJHC 160 (1 July 2014) the plaintiff was working in a public phone booth when a vehicle had lost control and driven through the phone booth, rendering her unconscious. She sustained a neck, back and head injury as a result of the collision. She became forgetful and experienced pain in her back and neck 9 years after the incident. She experienced concentration difficulties, she became listless and was lacking in energy. The plaintiff was awarded an amount of R700,000.00, the current value which is R906,764.00.

[34] In **Killian NO obo Theron v RAF** 2017 (7B4) QOD 48 (GSJ) the plaintiff was rendered unconscious as a result of a motor vehicle collision and suffered from post-traumatic amnesia. Soft-tissue neck injury and blunt soft-tissue injuries to the left arm/shoulder, right forearm, chest, abdomen and both shins were injured. The plaintiff sustained a severe traumatic multifactorial brain injury with primary diffuse and secondary diffuse components and probable focal brain injury. She experienced changes in her personality as she became short tempered, irrational and depressed. She also suffered from chronic pain and had neurological sequelae of the brain injury to such an extent that she needed curatorship. She was awarded an amount of R500,000.00 of which the current value is R803,496.00.

[35] In the matter of **Donough v Road Accident Fund** 2010 JDR 1371 (GSJ) the plaintiff was a 30 year old lady who sustained a head injury causing fatigue, headaches, visual impairment, impairment of cognitive mental function, impairment of executive mental function, insecurity, depression and emotional difficulties of permanent nature. The plaintiff had to endure a knee injury which gave her chronic pain. She also had injuries of a lesser nature in her hip and eye. The plaintiff was awarded an amount of R325,000.00 of which the current value is R617,000.00.

[36] Adv du Plessis submits a reasonable compensation for the plaintiff's general damages in the amount of R800,000.00 to R900,000.00.

[37] In addition to the abovementioned precedents referred to above, I have regard to the following facts in determining a just and fair amount of compensation for general damages for the plaintiff:

37.1. The plaintiff experienced the death of her 14 month old baby who passed away during the collision.

37.2. The plaintiff suffers from anxiety and depression as a result of the collision.

37.3. The plaintiff suffers from chronic pain in her leg and ankle.

37.4. The plaintiff's promotion possibilities and scope of employment has been negatively affected by the collision.

37.5. The plaintiff suffers from unsightly scars, which include facial scars.

37.6. The plaintiff will suffer pain from future surgeries to her current physical ailments.

[38] After a due analysis of the general damages of the plaintiff, as well as the matters referred to above, I agree with the submission made by Adv du Plessis that a just and fair amount of compensation for **general damages** will be the amount of **R800,000.00 (Eight Hundred Thousand Rand)**.

#### **Past and future medical expenses**

[39] The plaintiff is entitled to have the defendant furnish an undertaking in terms of section 17(4)(a) of **Road Accident Fund Act** 56 of 1996 in respect of future medical and hospital expenses.

[40] The plaintiff did not submit any evidence in proof of her claim of R67,378.78 and requested that this head of damages be postponed to 11 November 2024. The request for postponement is granted.

#### **Costs**

[41] The normal principle is that the successful party is entitled to its cost occurred for the litigation.

[42] I find no reason to deviate from the normal principle and as such the defendant should be ordered to pay the costs of the plaintiff.

#### **Order:**

In the premise, the draft order attached hereto is marked “**X**” and made an order of Court.

**FMM REID**  
**JUDGE OF THE HIGH COURT**  
**NORTH WEST DIVISION MAHIKENG**

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**DATE OF HEARING:** 16 FEBRUARY 2024

**DATE OF JUDGMENT:** 24 JUNE 2024

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**APPEARANCES:**

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**FOR DEFENDANT:** NO APPEARANCE

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