



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: **1677/2018**

In the matter between:

JOHANNES NICOLAAS VAN DER WESTHUIZEN

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

HEARD ON: 5 OCTOBER 2022

JUDGEMENT BY: LOUBSER, J

DELIVERED ON: 20 OCTOBER 2022

- [1] On the evening of 6 September 2014 the Plaintiff's vehicle collided with a tractor outside Bloemfontein. He sustained *inter alia*, a fracture of the right acetabulum, a dislocated femoral head of the right hip, a frontal lobe injury and various lacerations and bruises. Alleging that the driver of the tractor caused the accident by his negligence, the Plaintiff came to this Court claiming an amount of R3 801 800.00 damages, of which the amount of R1 307 000.00 is claimed under the heading of General Damages.
- [2] At the commencement of the hearing, the Court was informed that the parties have come to an agreement on most of the issues in dispute. The agreement was reduced to writing, and handed in to be made an order of Court. In terms of the agreement, marked "X" the only issue that needs to be adjudicated is the

amount of General Damages. To this end, the parties agreed that the expert reports filed by the Plaintiff would be accepted as evidence in this respect.

- [3] In a medical legal report by dr. Julius Preddy dated 7 June 2022, it is mentioned that the Plaintiff is 29 years old. It appears from this report that the right hip of the Plaintiff was treated with a plate and screws. Dr Preddy also mentions that the Plaintiff's right knee may develop post traumatic osteoarthritis, for which he would need surgery in the future. As far as the right hip is concerned, the Plaintiff would need a hip replacement in the near future. This procedure would need to be repeated every 12 to 15 years.
- [4] According to Khanyisa Ntshengulana, an occupational therapist, the Plaintiff is only suited for sedentary, light and low-level medium work. Dr. Liesl Smit of the Department of Neurology of the Free State University, mentions in her report that the Plaintiff had sustained a frontal lobe injury which presented one year later with a tonic-clonic epileptic attack. He showed signs of frontal lobe dysfunction, and symptoms that could be epileptic in origin.
- [5] The Plaintiff himself testified in support of his claim for General Damages. He confirmed the injuries to his knee, pelvis and hip. After the accident he received treatment in hospital until 14 September 2014. At the time of the accident, he was employed as a project assistant, but he was recently retrenched. He further testified that he always loved the outdoors and sport, but he is now severely restricted in those areas. His hip and knee are causing him the most problems. He used to be a Varsity Cup rugby player, where he played for the Shimlas. At the time of the accident, he was negotiating a contract to play professional rugby in Georgia. The accident brought an end to his rugby career.
- [6] When it comes to the awarding of general damages, a Court has a wide discretion to award what is considered a fair and adequate compensation to the injured. Such discretion may be exercised with the guidance of previous awards made in comparable cases, but this is not a hard and fast rule that should be strictly applied.¹

¹ See *RAF v Marunga* 2003 (5) SA 164 (SCA)

- [7] Both counsel appearing in the matter referred the Court to a number of cases where amounts in excess of R1 million or less were awarded for general damages in cases where the claimants have suffered orthopaedic and head injuries. Mr. De la Rey, appearing for the Plaintiff, submitted that an amount of R1 million would be fair and just in the circumstances of this case.
- [8] The Court is mindful of the fact that the Plaintiff has lost an apparent promising career in rugby. He is now compromised as far as other physical activities are concerned, and further medical interventions are waiting for him in the future. In addition, he is now unemployed. In the premises, I agree with Mr. De la Rey that an amount of R1 million would be fair and adequate for the Plaintiff's general damages.
- [9] The following order is made:
1. The Agreement marked X is made an order of Court, as amended.
 2. The Defendant is ordered to pay to the Plaintiff an amount of R1 million for General Damages, less 10% resulting in the amount of R900 000.00.



P. J. LOUBSER, J

For the Plaintiff: Adv. H. De la Rey
Instructed by: Peyper Lessing Attorneys
Bloemfontein

For the Defendant: Me. K. Mkhwanazi
Instructed by: The Road Accident Fund
Bloemfontein