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7 June 2017

24/5/2017 PP

Date

Signature

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 53419/2014

In the matter between:

MABUTI JACOB MASEMOLA

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

MAKHUBELE AJ

Introduction

[1] The plaintiff ("Mr. Masimula") instituted action against the Road Accident Fund ("the RAF") and claimed damages suffered as a result of the injuries that he sustained when he was knocked down by an unknown motor vehicle on 07 September 2013 on the R573 Moloto Road, KwaMhlanga, Mpumalanga Province.

[2] When the matter came before me, I was advised by the both Counsel for the parties that the RAF has conceded the merits of the claim and has agreed to compensate him 100% of his proven damages. Furthermore, I was

advised that the other heads of claims were settled as indicated in the Draft order that will be attached to this judgment as Annexure "X".

The only issue before me was to determine the extent of the General Damages that Mr. Masimula is entitled to. Counsel assured me that they would advance their argument on the basis of the respective expert reports and joint minutes filed.

I was also advised that there was consensus on the nature of the injuries that he has suffered as well as the sequelae thereof. The only dispute was the amount that should be awarded. The allocation was for a two (2) hour argument and both Counsel confirmed this. Contrary to these submissions and confirmation of duration, the argument lasted almost two days.

The dispute was on the nature of the injury on his neck; whether it was a fracture of the or just a soft tissue injury. Despite the absence of conclusive evidence, counsel for Mr. Masimula, Mr. Lourens, sought to argue that I should make a finding that there was a fracture of the neck because the attorneys for the RAF admitted the contents of a document entitled "Application to transfer a patient" which was completed by the first hospital that admitted him on his transfer to the next one. This document refers to injuries that he has sustained, amongst which is a query with regard to a neck fracture. This document does not constitute what one would refer as "hospital notes" or a diagnosis by a doctor.

The argument with regard to the nature of the injury on Mr. Masimula's neck took almost the entire first day and half of the second day. Mr. Lourens went as far as to submit a bundle of cases dealing with the question of the ability

of an attorney to bind the client by making admissions. He abandoned this argument whilst Ms Mthembu, on behalf of the RAF was on her feet addressing this issue. He simply stated that he was prepared to accept that the alleged neck fracture was an unspecified soft tissue injury of the neck. This concession actually confirms what the Orthopaedics agreed on, as it will appear hereunder.

I could write a substantive judgment just on the submissions relating to the alleged neck fracture that is based on an "admission" by the RAF attorneys. This issue started as a non-issue because there is no medical evidence to support it. In fact, the medical reports indicated that the neck injury or alleged fracture was not visible in the x-rays.

This delay that was caused by argument in this regard has a bearing on the issue of costs that should be allowed to the successful party.

Other than this, the medical history is very simple and the experts are agreed on the basic details, except for the appropriate amount that should be awarded for general damages.

The relevant expert reports

[3] Mr. Masimula's injuries are of an orthopedic nature and appear from the joint minutes of the Orthopaedic Surgeons, Drs E Mennen and AF Pienaar dated 07 March 2017. They are indicated as follows:

1. *Left compound tibia fracture.*
2. *Closed injury of the pelvis.*
3. *Fracture of the right acetabulum.*

4. *Fracture of the right pubic rami.*
5. *Injury to the left knee.*
6. *Unspecified soft tissue injury of the neck."*

[4] The Orthopaedics agreed that the injuries were of a serious nature and that Masimula has suffered a long-term serious physical impairment. They also agreed that the instrumentation should be removed from the left tibia at his earliest convenience and that at the time of this surgery, an arthroscopic assessment of his left knee could be performed and any internal derangement including a cruciate ligament injury be repaired. They also established that there were signs of post-traumatic osteoarthritis of the right hip and that he would require a total hip replacement on the right no longer than 5 years from the present.

On employability, they both agreed that taking into account his age, the nature of the pathology and the physical demands of his work, he would not be able to perform work in the building industry.

On pain and suffering, they noted that he experienced acute pain following the motor vehicle accident and the subsequent surgery. He is symptomatic and suffers from chronic pain but that this has no bearing on his life expectancy.

Masimula's expert reports.

[5] Masimula's Urologist, Dr. D. Ligthelm indicated the following in paragraph 7 of the report under "Discussion (urological)"

"-The above patient has no current urological complaints.

- This patient suffered a closed pelvic fracture (ring fracture).*
- When a patient suffers a pelvic fracture we know that tremendous forces was applied to his pelvis to cause such a fracture.*
- He did bot suffer an associated bladder-or urethral injury but because of the excessive forces that were applied to his pelvis, he will have suffered neurovascular change of his pelvic area, making him prone for erectile dysfunction at an earlier age as expected. Although he currently does not suffer from erectile dysfunction, it can be expected for him to suffer from erectile dysfunction at an earlier age than normally anticipated in men (5-10 years earlier)"*

[6] The Urologist prescribed certain devices and tablets that were anticipated he would need in the next five years when early erectile dysfunction sets in.

[7] The Plastic and Reconstructive Surgeon, Dr Pienaar, noted the following scars from a plastic surgery point of view.

"1. Over his chin there is a very regular "W" shaped scar which measures 2 1/2 x 1cm which is very visible and unsightly.

-A large part of his left lower leg is covered by hypo-pigmented abrasions. They are mutilating in nature and extremely visible and unsightly. Specifically there is a scar over his left knee which measures 5cm. below his left knee there is a 2x2 cm hyper-pigmented puncture scar with a screw palpable underneath and protruding which is palpable and painful.

-There is a 2cm and a 1 1/2 cm hypo pigmented scar over his left mid-tibia there is a area of 8-x5 cm of hypo pigmented scarring. There is a clear irregularity over his tibia and there is bony contour deformity. There is a 16 x 16 cm scar that runs down to his ankle. It is hypo pigmented irregular very visible and unsightly. On the medial aspect of his calf there are two 1 1/2 cm puncture scars. On the lateral aspect there are two 1 1/2 cm puncture scars. These scars are irregular, mutilating in natures, very visible and extremely unsightly"

[8] On future treatment, Dr Pienaar indicated that Masimula would need scar revision surgery to his chin and selective revision over his left lower leg.

[9] He also indicated that other than the severe scarring, the accident has left him shy, withdrawn, self-conscious and this has had an effect on his emotional wellbeing, confidence and self-esteem. It also has a detrimental effect on his quality of life.

[10] According to the Clinical Psychologist, Dr. Truter , he now suffers from depressed mood that is inspired by his physical limitations, pain and discomfort.

He noted that Mr. Masimula had some accident related complaints or changes such as difficulty to carry large containers of water, walking long distances and painful sexual activity.

He also still relives the accident and displays features of a "Post Traumatic Stress Disorder" which is triggered by for example passing the scene of accident or being alone.

Certain psychometric tests were performed and they confirmed, amongst other things, the fact that he has severe depression.

He suffers from an adjustment disorder with depressed mood, and this requires psychotherapy to prevent the symptoms from becoming even more debilitating and chronic.

[11] The Occupational Therapist, Abida Adroos noted that Masimula complains of pain in the right pelvic area and right hip and that this radiates into his groin. She also noted that he has pain in his left knee and lower leg, neck pain and that he is unable to lie on his right leg.

[12] After a physical examination, some of the following findings were made were that;

- There is increased muscle spasm in his lowr back in the right pelvic area.

- Malignant of his left lower leg.
- Limited range of movement in his right hip with flexion and that movements are also limited with internal and external rotation. He has pain in his groin with movements.

[13] His functional ability has been compromised due to pain in his right hip and pelvis as well as his left knee. He struggles with prolonged standing due to bilateral lower limb symptoms.

RAF expert reports

[14] I have already referred to the joint minute of the Orthopaedic Surgeons in the preceding paragraphs. Ms Mthembu, on behalf of the RAF highlighted certain findings though that were made by Dr. AF Pienaar in his own expert report, for instance, under "Treatment", Dr. Pienaar noted that Mr. Masimula's left tibia and fibula were managed by means of external fixation followed by the intramedullary nailing on 15 September 2013 and that his other injuries were treated non-operatively.

[15] Dr. Pienaar conceded that Mr. Masimula has experienced acute pain and discomfort and that he was still symptomatic because of long-term sequelae.

He however, is of the view that provision should be made for future medical treatment. This is basically what the joint minutes has also indicated. Finally,

he noted that the sequelae of the orthopaedic injuries will not have an effect on his life expectancy.

Other expert reports filed by the RAF(Occupational Therapist and Industrial Psychologist) , were not referred to in argument.

[16] Ms Mthembu referred to the plaintiff's reports in argument with a view, I believe, to minimize the weight of the opinions expressed therein. For example, she lamented the fact that Dr. Mennen's report on the basis that it was compiled over two years ago and at least a year after the accident. The argument is that current status of the issues raised therein is uncertain.

She also emphasized the fact that the Urologist has only indicated that Mr. Masimula would be prone to early erectile dysfunction, and provision has been made for treatment.

Legal principles on general damages

[17] I deem it necessary to reproduce the following paragraphs in the judgment of **Navsa JA** In the matter of **Road Accident Fund v Marunga** 2003 (5) SA 165 (SCA) that sums up the principles in the assessment of claims for general damages and earlier authorities on the issue. I deem it necessary to reproduce the paragraphs;

" [23] This Court has repeatedly stated that in cases in which the question of general damages comprising pain and suffering, disfigurement, permanent disability and loss of amenities of life 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. This Court will interfere where there is a striking disparity between what the trial court awarded and what this Court considers ought to have been awarded: See *Protea Insurance Company v Lamb* 1971 (1) SA 530 (A) at 535A-B and the other cases cited there.

[24] At 535B and following of the *Protea* case Potgieter JA considered what regard should be given to awards in previously decided cases. After considering dicta in several decisions of this Court the learned judge of appeal stated that there was no hard and fast rule of general application requiring a trial court or a court of appeal to consider past awards. He pointed out that it would be difficult to find a case on all fours with the one being heard but nevertheless concluded that awards in decided cases might be of some use and guidance.

[25] In the *Protea* case, above, this Court in determining the measure of damages considered all relevant factors and circumstances and derived assistance from the 'general pattern of previous awards'.

[26] The following case (with synopsis) which was included in the list of cases to which the trial Court was referred for purposes of comparison, demonstrates the difficulty and (paradoxically) the usefulness of considering awards in previously decided cases:

Wright v Multilateral Vehicle Accident Fund a 1997 decision of the Natal Provincial Division – Corbett and Honey Vol 4 E3-31— The plaintiff, a 28-year old woman, sustained a open comminuted fracture of the right femur with complete division of the quadriceps muscle and loss of substantial quantity of bone which extended into the knee joint. There was an initial surgical procedure to repair the quadriceps mechanism and to apply an external fixator – plaintiff hospitalized for two weeks and discharged on crutches. Readmitted two weeks later for treatment of infection. Later readmitted for a period of one week for further treatment for infection. At the same time the external fixator was removed and replaced with a pin. Traction applied at

home for four weeks. The fracture failed to unite and the plaintiff was again hospitalized for a few weeks during which an open reduction was carried out for an internal fixation. The plaintiff wore a leg brace with a hinge for several weeks and left with a limitation of flexion in her right knee, bad scarring of the right leg, a shortening of the leg by 3½ cm requiring raisers in footwear. She experienced weakness of the leg, residual pain and recurring infections and abscesses, which would in future probably require antibiotic therapy and surgical drainage. Removal of the pin was expected. Plaintiff experienced a great deal of pain, particularly during episodes of infection. She had been an outdoors person but was now permanently unable to run or play sport, kneel or squat. She experienced difficulty in negotiating stairs- awarded R65 000-00 as general damages [value in 2001 (at time of trial in the present case) – R81 000-00].

[27] In the Wright case (Corbett and Honey Vol 4 E3-36) Broome DJP stated:

'I consider that when having regard to previous awards one must recognize that there is a tendency for awards now to be higher than they were in the past. I believe this to be a natural reflection of the changes in society, the recognition of greater individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significantly lower than those in most other countries.'

[28] The Wright case at E3-34 to E3-37 is instructive. The learned trial judge considered all the relevant circumstances and set out in detail the reasoning that motivated the award."

[18] In the matter of **De Jongh v Du Pisanie NO** 2004 (2) ALL SA 565 (SCA), Brand JA dealt with issues such as fairness in the context of previously decided cases of similar facts. The comparison is not a mechanical process because the court must still exercise its discretion . They only serve as broad

guidelines to indicate a pattern of previous awards based on the facts of each case.

[19] On fairness of the award, Brand JA also cited, with approval the following passage from the judgment of Holmes J in the matter of *Pitt v Ecomnomic Insurance Co. Ltd* 1957 (3) SA 284 (D) where he stated the following;

" The courts must take care to see that its award is fair to both sides-it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense."

[20] The approach and process of comparison of previous awards was described as follows in the matter of **Protea Insurance Co. Ltd v Lamb 1971(1) SA 530 (A) 534 to 536B ;**

"It should be emphasized, however, that this process of comparison does not take the form of meticulous examination of awards made in other cases in order to fix the amount of compensation, nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters.

Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible in an

appropriate case to test any assessment arrived upon this basis by reference to general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration. "

[21] Counsel for the both parties referred me to several judgments on the correct approach for determining general damages . I am grateful for the assistance.

In his written heads of argument, Mr. Lourens referred me to cases such as **Hurter v RAF and Another 20110 (6) quantum of damages A4-12 (ECP)** at para 20 to advance a contention that in exercising my discretion, I should take into account a broad spectrum of facts and circumstances that include the nature of the injuries, the severity thereof and how it impacts on the quality of life of the plaintiff. Furthermore, I should also take into account the modern approach which takes into account the rising standards of living and the fact that past awards in our courts were conservative as compared to other jurisdiction (*RAF v Marunga 2003 (5) SA 164 (SCA at 170)*).

[22] Ms. Mthembu referred me to the matter of *Sandler v Wholesale Coal Supplies Ltd* **1941 AD 194** at 199 where the court stated the following:

"The amount to be awarded as compensation can only be determined by The broadest general considerations and the figure

arrived at must necessarily be uncertain, depending upon the judge's view of what is fair in all the circumstances of the case"

[22.1] She also referred me to extracts from "*The Law of Third Party Compensation*", a book written by HB Klopper, on factors that may influence an award for general damages. These include the age of the plaintiff, sex, culture, resistance to pain and lifestyle.

Submissions on comparable awards

[23] In his heads of argument that were handed up during the hearing, Mr. Lourens referred to several awards that in his view, are comparable to the circumstances of this case. I counted eleven (11), but I believe these are sufficient to mention.

[23.1] **Benade and Benade v The Road Accident Fund** (Case number 536/2007, Eastern Cape High Court). The plaintiff had suffered multiple orthopaedic injuries that included, fracture of the left clavicle, compound fracture of the radius and ulna, fracture of the left 4th and 5th metacarpal shafts of the knuckle joints of the hand, fracture of the right superior and inferior pubic rami of the pelvis and fracture of the right tibia. In 2008, the award for general damages that was made was the sum of R600 000.00, which translates to R919 543.00 in 2016.

[23.2] In **Schmidt v Road Accident Fund** 4834/05 (2006) ZAGPHC 64 (23 June 2006), the plaintiff had suffered fractures of the left humerus, left

proximal radius and ulna at the elbow, right midshaft radius and left tibia . She also had a knee injury that became infected at some stage, thus increasing a possibility of a bilateral knee replacement and one revision later on. She was awarded R600.000 00, which translate to R1 098.432 in 2016 terms.

[23.3] On appeal, the plaintiff in **Mpondu v The Road Accident Fund** (case number 283/2011, Eastern Cape was awarded general damages of R550 000.00 in 2011, which translates to R718.258.00 in 2016 terms.

The injuries included a fractured ankle and femur. The plaintiff underwent a hip replacement and suffered facial paralysis.

[23.4] Roe v RAF (South Gauteng High Court, Case No. 16157/ 2009, handed down on 1 April 2010). The plaintiff had sustained a fractures of the femoral shaft, tibia, right patella and left humerus. He also had an injury to the right foot and fracture on an upper tooth. An award of R650 000.00 was made. It equates to R9996.171.60 in present monetary terms.

[23.5] **Ramolobeng v Lowveld Bus Services (Pty) Ltd & Another** (Quantum of Damages Vol. VII C5-29 , North Gauteng Case No. 29836/2009, the judgment of Hassim AJ handed down on 03 February 2015) an award of R550 000 was made for general damages. This is an equivalent of R577 477.00 in 2016 monetary terms.

The plaintiff sustained injuries to the cervical and lumbar spine as well as some concussions. He underwent spinal surgery for insertion of an artificial disc at L3/L4. He suffered depression. He has reduced power in left lower limb and reduced sensation over it and monoparesis . His enjoyment of amenities of life was reduced. He suffers from severe erectile dysfunction.

[23.6] **Makeke v RAF** (Eastern Cape Case No. 611/2009. Judgment of Ibrahim J delivered on 23 November 2010).

The plaintiff was a 70-year-old male person . He lost an upper tooth and two in the lower jaw. He also had injuries to his neck, shoulder and wrist. He was an active gardener before the accident, but could no longer use his arms as before. An award of R380 000.00 was made. This is an equivalent of R530 904 .00 in 2015 monetary terms.

[23.7] The plaintiff in the matter of **Vukubi v RAF** (Eastern Cape-Bisho, Case No. 1709/2004 , delivered during 2007) sustained a severe dislocation of the right knee joint and tears to patella tendons and cruciate ligaments. There was also a closed fracture of the humerus , radius and ulna. An award of R300 000, 00 that is equivalent to R512 740.00 in 2016 monetary terms was made.

[23.8] The plaintiff in the matter of **Mofulatse v RAF** (North Gauteng High court case No. 77/2010), an award of R1 200.00 was made during 2013. It translates to R1 403.450 in current monetary terms.

The injuries that the plaintiff sustained included an open fracture of the skull, left and right supracondylar, left colles, left tibia and fibula. He had surgery on both femurs and left arm, and was treated in ICU for about 6 days and walked with a walking frame thereafter.

[23.9] The plaintiff in the matter **of Zavale v the RAF** (South Gauteng Case No. 1332/2012, judgment delivered on 20 August 2013).

The plaintiff was awarded general damages of R720 000.00 which is equivalent to R842 070 in 2016 monetary terms.

He sustained fracture of the right humerus, left femur, left elbow, right clavicle and scapula and raptures and abdominal trauma , liver laceration, a tear of the left colon, dislocation of the right thumb.

[24] During argument he handed up a copy of the judgment of Pretorius J in the matter of **TM Kgopyane v The Road Accident Fund** (Case number 43235/2014, delivered in 2016). An awarded for general damages of R600 000.00 was made to a female plaintiff who was 22 years at the time of the accident that occurred on 20 January 2013 in which she suffered a pelvic fracture which caused damage to her bladder resulting in permanent chronic incontinence, involuntary bladder contractions causing the bladder to leak urine when full. She also sustained fracture of the right superior rami as

well as a left inferior ramus fracture along the link of the bone. She also had a chest contusion, injury to her right foot as well as a soft tissue injury to her neck and shoulder. She suffers from moderate depression and post-traumatic stress disorder.

[25] In terms of the Amended Particulars of Claim, Masimula seeks an award of R1 500 00.00.

In his argument in reply, Mr. Lourens conceded that this amount may be too exaggerated. He argued for an award of R1 300 00.00. The emphasis in Mr. Lourens's argument was that other than the permanent nature of the disabilities occasioned by the physical injuries, Masimula was totally unemployable, and that this affects how he feels about himself. He has been deprived of every characteristic that defined him. He has also lost his physical strength, for example, he can no longer carry heavy containers of water.

[26] Ms. Mthembu did not have written heads of argument, however she did submit copies of four (4) judgments that she referred to during argument to justify her contention that the awards thereto are comparable to the circumstances of this case. Ms. Mthembu argued that an award of R800 000.00 for general damages would be reasonable and fair under the circumstances of this case.

[26.1] In **Hendricks v Road Accident Fund** (Vol.V, Corbett & Honey F3-1), the plaintiff was awarded R145 000.00 in 2002, which translates to R388 000.00 in present monetary terms. The injuries included a fracture

and dislocation of the hip, 3 hip replacements 4 years after the accident and the 4th one anticipated with a success potential of 50%. He had a shortening of the leg and walked with a severe limp and used crutches permanently. He had broken ribs, amongst other orthopaedic injuries.

[26.2] In **Peter v RAF** (Vol.V Quantum of Damages, F3-9), an award of R180 000 was made in 2003. It is equivalent to R387 000.00 in today's monetary terms.

The 40-year-old male plaintiff's injuries were a displaced intra-articular fracture of acetabulum as a result of violent compression of the femur head against it. He also had considerable damage to ligaments on the femur. A hip replacement was anticipated in 5 years and a second one after 15 years. He also had some marked scarring on the right arm for which surgery would achieve 50% improvement.

[26.3] In **Noble v The Road Accident Fund** (Vol 6 Corbett & Honey , J2-54), a 36-year-old male plaintiff was awarded general damages of R600 000.00 in 2011. He had brain injury, fracture of right femur, shortening of right leg, fracture of right tibia and severe scarring.

[26.4] In **Nonkwali v The Road Accident Fund** (Vol 6 Corbett & Honey, J2-27) a plaintiff with pelvic injuries was awarded general damages of

R500.000.00 in 2009, which translates to R766 000.00 in present day monetary terms.

[27] On the comparable cases that Mr. Lourens relied on to justify an award of R1 500 00.00 for general damages, Ms. Mthembu submitted that;

[27.1] the sequelae in the **Schmidt case** were far more severe than in the present matter. The plaintiff in that case was admitted in hospital for 6 weeks and multiple procedures were performed on her. She had sepsis in the right knee and contracted MRSA infection which flared up about four times resulting in a lung abscess. Her life expectancy was reduced by four years. She has extensive scarring on her legs that the Judge described as resembling over-stuffed sausages. She was wheelchair bound for 14 months. She developed hypertension. A bilateral knee replacement and revision was anticipated.

[27.2] the sequelae in the **Mpondo** case were also more severe than in the current matter.

[27.3] the sequelae relating to the pelvic fracture in the **Kgopane** matter were also serious than in the current matter. The plaintiff developed incontinence.

[28] Ms. Mthembu submitted further that what is relevant is the sequelae, not the multiplicity of injuries. Furthermore, Mr. Masimula has been compensated for his unemployability in the award for loss of future income.

[29] I have already stated that Mr. Lourens conceded in his reply that the amount of R1 500.00 for general damages may be exaggerated under the circumstances. He lowered it to R1 300.00.

He maintained that the erectile dysfunction was a 100% probability that it would set in earlier than normal, not just a possibility.

He also submitted that cases where medical procedures had failed should clearly be distinguished because Mr. Masimula has not undergone one.

Analysis of the submissions with regard to comparable awards.

[30] The fact that Mr. Masimula would experience early onset of erectile dysfunction is one of the issues that was emphasized during argument. The plaintiff in the matter of TM Kgopyane v The Road Accident suffered a pelvic fracture that caused amongst other sequelae incontinence and sexual problems. She was a very young woman. The problems with her incontinence and bladder leaks caused an embarrassment for her during sexual intercourse with her husband. Compared to a possible early erectile dysfunction for a 50-year-old man, I am of the view that the sequelae of the pelvic trauma is more severe in the TM Kgopyane case.

Mr. Masimula's early erectile dysfunction is likely to occur when he is 55 years whereas Ms. Kgopyane already, in her twenties is experiencing sexual frustrations.

[31] I agree with counsel for the RAF that the sequelae of the orthopaedic injuries in the matters of Schmit and Mpondo are far more serious than in the present matter.

[32] I have considered the remaining awards that Mr. Lourens relied on as being comparable to the current matter. Although not specifically submitted, it is clear from a reading of the full judgments, not just the summary in the heads of argument that the similarities are on two levels, namely, the nature of the injuries and loss of amenities of life.

On the former level, I have already stated that I agree with counsel for the RAF that the sequelae in some cases are more severe than in this matter. On the second level, the noticeable similarities are in cases such as Makeke (where the plaintiff could no longer perform his maintenance and gardening work), Roe (where the physical limitations caused frustration), Ramolobeng and Kgapana (erectile dysfunction in the former and sexual frustration due to bladder leaks in the latter).

[33] As stated in earlier authorities, it is not always possible, if ever, to find a case where the injuries and sequelae are on all fours with a matter under consideration, and this is in my view can be attributed to the fact that each

individual react differently to what may appear to be a similar injury. As Ms. Mthembu has correctly submitted, it is not a multiplicity of injuries that matters, but the sequelae thereof.

[34] In accordance with the *Du Pisanie* case, comparison entails taking into account the personal circumstances of a plaintiff before and after the accident, the nature of the injuries and sequelae, and weighing these against previously decided cases. Previous cases provide a broad guideline that indicates a pattern of awards on similar facts.

In some of the cases referred to in the matter before me, it is clear that one or other factor became decisive. In the *Ramolobeng* case for example, erectile dysfunction, inability to sit for long periods and constant pain appear to have been the decisive factors.

[35] Taking into account all the relevant factors, the pattern of the awards under similar circumstances which as I have stated are not limited to one case, the comparable awards range from the cases of **Kgopana**, **Makeke** and **Ramolobeng** on loss of amenities of life to **Benade and Benade**, **Nonkwali** and **Noble** on the nature of injuries and sequelae thereof. There is therefore a need to strike a balance and to avoid overemphasizing one aspect over another.

[36] I am of the view that even the reduced amount of R1 300 000.00 prayed for on behalf of the plaintiff is also exaggerated. The amount of R800


000.00 argued for by the defendant is not way off the mark considering what I have stated above with regard to the seriousness of the sequelae in some of cases in the plaintiff's heads of argument where there was orthopaedic injuries.

Accordingly, an award of **R850 000.00** is in my view a reasonable and fair amount to compensate Mr. Masimula for his General Damages.

[37] Coming back to the issue of trial costs, and taking into account what I have stated in paragraph 2 above with regard to the delay in finalizing the argument, I am of the view that the plaintiff is not entitled to recover trial costs for two days.

Consequently, the order that I am making with regard to costs is that the plaintiff is only entitled to recover trial costs for one day only, namely, 07 March 2017.

[38] I make an order in terms of the Draft marked "X", as amended, and initialed by me that is incorporated in this paragraph in its entirety.


MAKHUBELE AJ

ACTING JUDGE OF THE HIGH COURT

03 April 2017

Date heard: 07 March 2017

APPEARANCES:

PLAINTIFF:

Instructed by:

ADVOCATE P. LOURENS

SPRRUYT INCORPORATED

Hatfield, Pretoria

DEFENDANT:

Instructed by:

ADVOCATE N. MTHEMBU

DIALE MOGASHOA ATTORNEYS

Nieuw Muckleneuk, Pretoria