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

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| **CASE NUMBER: 41378/2016** |

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| In the matter between:  **LISTER JOHN HEES**  **ANNEKE NELL N.O. CARMEN HEES**  and  **ROAD ACCIDENT FUND** | **1st PLAINTIFF**  **2nd PLAINTIFF**  **DEFENDANT** |

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| **QUANTUM REPORT BY CURATRIX AD LITEM** |

**INTRODUCTION:**

* 1. This natter is set down for both merits and quantum determination on 29 July 2019. It is very possible that the merits will settle 100% in favour of the 2nd Plaintiff, as she was a passenger in the motor vehicle at time of the collision. The Defendant’s attorney of record further indicated that she will attempt to obtain instructions to settle the issue of future medical expenses.
  2. The remaining issues should therefore only be past medical expenses, general damages and future loss of income and earning capacity.
  3. Past medical expenses is the claim of the 1st Plaintiff and I will therefore not deal with the issue.
  4. On behalf of the patient, we therefore have to resolve the issues of general damages and future loss of income and earning capacity.



**GENERAL DAMAGES:**

* 1. In the accident in question, the patient suffered the following injuries and experiences the following sequelae as a result of the injuries sustained:
     1. A femur fracture which resulted in a 5mm shortening of the leg and a 55mm x 10mm scar on the upper leg. She also has a slight limp.
     2. A fracture to the orbital floor and a left medial orbital blow-out fracture;
     3. An open wound to the left eye with a 12mm x 3mm scar;
     4. A mild to moderate concussive head injury with associated brain injury;
     5. A significant traumatic brain injury;
     6. A mild neuro-cognitive disorder due to the traumatic brain injury with behavioural disturbance;
     7. Personality change due to the traumatic brain injury;
     8. Unspecified trauma and stressor disorder;
     9. Post traumatic epilepsy;
     10. She experiences headaches, is short-tempered, irritable, aggression, has suicidal ideation and paranoia.
     11. She has memory and concentration problems.
  2. These injuries and the sequelae experienced is evident from the medico-legal expert reports filed on behalf of the patient.

**THE CASE LAW:**

* 1. **THE FEMUR FRACTURE AND SHORTENING OF LEG:**
     1. In the matter of **Tena v United Africa National Council and Federated Insurance Co Ltd (1981 3 QOD 254 (Z)** the court awarded the Plaintiff an amount of $ 2400 in 1981. In today’s value is equates to R 56 000.00.
     2. The Plaintiff in said matter suffered form a fractured femur, which resulted in a 1cm shortening of the leg as well as a slight limp, the same as the patient in current matter.
     3. This case is therefore a good guideline regarding the award which should be made to the patient as a result of her femur fracture.
  2. **ORBITAL FLOOR AND LEFT MEDIAL ORBITAL BLOW-OUT FRACTURE:**
     1. In the matter of **Kleinhans v African Guarantee and Indemnity Co Ltd (1959 2 SA 619 (EC))** the court awarded the Plaintiff an amount of £1600 as a result of the injuries he suffered in a motor vehicle collision.
     2. The Plaintiff in said matter suffered the following injuries:
        1. A blow on the eye caused a dropped socket and dis-alignment of the eye and double vision. These symptoms improved after surgery, which surgery was extremely painful;
        2. He had lacerations on his eyelids and cheek;
        3. He suffered paresis of right superior rectus muscle, which was improved by the surgery;
        4. The dropped floor of the socket resulted in the eye having sunken appearance and some disfigurement.
     3. As is evident in present case, the patient fractured her orbital floor, which also resulted in the dropping of the socket, and a sunken appearance of the eye as well as disfigurement. However, the patient in present matter was treated conservatively and did not undergo painful surgeries to fix the disfigurements.
     4. The award of £1600 translates into R 157 000.00 value today.
  3. **HEAD INJURY WITH EPILEPSY, TRAUMATIC BRAIN INJURY AND PSYCHOLOGICAL SEQUELAE:**
     1. In the matter of **De Jongh v Du Pisanie N.O. (2004 5 QOD J2-105 (SCA))** the Plaintiff was awarded an amount of R 250 000.00 for the injuries he suffered, which translates into R 622 000.00 in today’s value.
     2. The Plaintiff in De Jongh suffered the following injuries:
        1. A head injury with extensive fragmented fractures of the frontal skull and orbits and cheek bones;
        2. A diffuse concussive head injury;
        3. Intellectual impairment;
        4. Change of personality, apathy, lack of drive, aggression, outbursts and rage, lack of judgment, lack of insight and increased libido;
        5. He suffers from epilepsy, which he experiences twice a month despite medication;
        6. Soft tissue injury of the back and neck;
        7. Fractured clavicle;
        8. Headaches, loss of mobility of neck and shoulder and lower back.
     3. By reading of the reports filed by Dr Henk Swanepoel (Clinical Psychologist), Dr Marinda Joubert (Psychiatrist), Minette Emmirich (Educational Therapist) and Heide Joubert (Social Worker), it is clear that the patient in present matter suffered very similar injuries, and more specifically, the sequelae experienced by the patient is very similar that that of the Plaintiff in De Jongh. De Jongh suffered more severe orthopedic injuries that patient in current matter.
     4. There is also a tendency by the courts now to award more to a patient than had been awarded in the past, and I am of the opinion that the award given in De Jongh is on the lower side than is the norm.
     5. In **Smith v Road Accident Fund (2013 6 A4-188 QOD (GNP),** a 27-year-old gardener was awarded R 650 000.00 in respect of general damages, which translates to R 941 000.00 in today’s value.
     6. The Plaintiff in Smith suffered the following injuries and sequelae:
        1. Moderate to severe organic brain syndrome and post-traumatic epilepsy;
        2. A femur fracture which resulted in a 3.5mm shortening of the leg;
        3. Significant difficulties with concentration, impulsivity, distractibility, reduced drive and reduced endurance;
        4. Neuro-pchological deficits.
     7. Patient in present matter did not suffer as significant brain injury as the Plaintiff in the Smit matter, but the sequelae experienced in very similar.
     8. In **Karin van der Mescht v Road Accident Fund (2010 6 QOD J2-42 (GSJ)),** the South Gauteng High Court, Johannesburg, the Court on 12 March 2010 awarded the Plaintiff R 400 000.00 (R 642 000.00 today’s value) for general damages. The Plaintiff suffered a head injury resulting in a brain injury of a moderate degree as well as a compression fracture of the 10th and 12th thoracic vertebrae, fractures of the pelvis, left ankle, and left scapula as well as soft tissue injuries. The head and the brain injury has resulted in subtle but significant post-traumatic neuro-psychological disorder as well as a mild residual spinal soft tissue syndrome resulting in psychological reactions to the injuries of which depression is the most significant. In summary, the Plaintiff suffered the following injuries:
        1. A severe head injury resulting in a prolonged period of amnesia;
        2. The Plaintiff suffers significantly of depression of a permanent nature. This resulted in a changed personality as well as diminished functioning in the work environment;
        3. She experiences difficulty sustaining concentration and her short time memory often fails her. The erstwhile go-getter type personality has changed into placidness, passiveness, emotional insecurity and loss of self-esteem, which has taken its toll on relationships. She requires ongoing long-term therapy including anti-depressant medication.

**RECOMMENDATION:**

* 1. It is therefore my recommendation, after studying the medico-legal reports and researching the relevant case law on the issue, that an amount of R \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is a fair and reasonable offer in the circumstances, and the offer should be accepted.
  2. Should the patient proceed to trial to try and obtain a higher award, the patient would be at risk to receive even less and/or having a costs order granted against her.



**FUTURE LOSS OF INCOME AND EARNING CAPACITY:**

* 1. On 12 July 2019 I attended a pre-trial conference at the offices of Advocate Maryke van Rooyen. We met with the attorney of record for the Defendant on that day.
  2. The Defendant’s attorney of record indicated that she had appointed an Educational Therapist, an Occupational Therapist and an Industrial Psychologist in this matter, but their reports were not yet at hand (at time of drafting if this report, the reports had yet to be served and filed).
  3. The Defendant’s attorney of record indicated that it would seem that the patient would be able to finish matric and proceed into the work market as pre-accident, as she was already in matric in 2019. It is the case of the patient that she would be unable to pass matric given the sequelae suffered in the accident, and that her loss should be calculated accordingly.
  4. On 17 July 2019 Advocate van Rooyen and myself consulted with our Educational Therapist and our Industrial Psychologist. Again they confirmed that they believe that the patient would be unable to pass matric in 2019 (the patient failed the second semester of 2019).
  5. The respective experts explained that they would keep to their reports, which opines that the patient would not pass matric, but that a court will either have to accept or reject the argument. There is a possibility that a court would reject the argument, just as the Defendant’s did, because the patient already proceeded to her matric year.
  6. The Industrial Psychologist further opined that even if the patient manages to pass her matric year (which is unlikely) she would have great difficulties in obtaining employment, and if she manages to gain employment, she would struggle to keep same.
  7. Both experts stated that before running the risk of going on trial, and a judge reject their argument that the patient would not pass matric, it might be a better approach to postpone the issue of loss of earning s, to allow history to tell the story to the court and confirm their findings. There will be less risk involved in postponing the issue of loss of earnings, allowing the patient to build up a working history, which a court can then accept, than to proceed to court now and running the risk of a court finding that this patient might follow the same career path she would have pre-accident.
  8. Because the Defendant’s expert reports are still outstanding, our expert witnesses could not enter into meaningful discussions with the Defendant’s experts and compile joint minutes. It is therefore difficult to determine what case we would have to meet.
  9. In the circumstances, it was agreed by all parties involved (myself, Adv van Rooyen and the experts) that before prejudicing the patient at such a young age and running the risk of the court rejecting our argument, it would be wiser to return to court with a definite answer whether the patient managed to pass her matric year and with a work history, which could possibly show the patient struggling to obtain and/or keep employment.
  10. As such, a postponement of the issue of loss of earnings and earning capacity would not be to the detriment of the patient, but could prove her case and secure a high award in the future.

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| Signed at Pretoria on this 25th day of July 2019. |

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| Advocate Anneke Nell  819 High Court Chambers  Pretoria Society of Advocates |