IN THE HIGH COURT OF LESOTHO

HELD AT MASERU **CASE NO. CIV/T/172/2016**

In the matter between:

MATSELISO MOSHOESHOE **PLAINTIFF**

AND

LESOTHO NATIONAL GENERAL INSURANCE COMPANY LIMITED **DEFENDANT**

Neutral Citation: Matseliso Moshoeshoe v Lesotho National General Insurance Company Limited [2024] LSHC 75 (CIV) (08 MAY 2024)

CORAM: **MOKHESI J**
HEARD: **Various dates since 30 September 2021 to 27 March 2024**
DELIVERED: **08 MAY 2024**

SUMMARY

Law of Delict: *A claim for damages as a result of the collision between the vehicle driven by the plaintiff and the insured driver- the plaintiff claiming general*

damages for pain, suffering and lost amenities of life – she further claims damages for medical and hospital expenses, lost earning capacity and estimated future loss of earning- Principles applicable thereto discussed and applied- The court finding that only general damages and medical expenses have been successfully proven.

ANNOTATIONS

Legislation

Road Traffic Act No.8 of 1981

Books

J M Potgieter et al ***Visser & Potgieter Law of Damages*** **3 ed. (Juta)**

W. E Copper, ***Delictual Liability in Motor Law*****, Juta & Co., 2006**

Cases

Lesotho

Commander Lesotho Defence Force and Others v Lesotho Letsie LAC (2009 – 2010) 549

Lesotho National General Insurance Co. Ltd v Tšolo LAC (2013 – 2014) 195

South Africa

April v Minister of Safety and Security [2008] 3 ALL SA 270 (SE): 2009 (2) SACR 1 (SE)

Kruger v Coetzee 1966 (2) SA 428 (A)

Ntšala and Others v Mutual & Federal Insurance Co. Ltd 1996 (2) SA 184 (T)

Road Accident Fund v Grobler 2007 (6) SA 230 (SCA)

Sandler v Wholesale Coal Supplies Ltd 1941 AD 194

Santam Versekeringsmaatsappy Bpk v Bylevldt 1973 (2) SA 146 (A)

Telematrix (Pty) Ltd v Advertising Standards Authority SA 2006 (1) SA 461 (SCA)

JUDGMENT

[1] **Introduction**

The plaintiff, an adult female aged 62 years on 02 April 2014 was involved in a motor vehicle accident with the driver insured with the defendant. She sustained injuries as a result of which she claims damages as follows:

a) Medical and hospital expenses = M101,135.67
b) Medicines purchased = M8,549.00
c) Estimated future medical expenses = M150,000.00
d) Loss of earning capacity = M50,000.00
e) Estimated future loss of earnings = M100,000.00
f) General damages for pain and suffering, loss of amenities of life and disfigurement = M300,000.00.

[2] It is common cause that the defendant was the third-party insurer in respect of the vehicle registered under numbers and letters DA 318. The insured driver was Mr Sello Matlali. A collision occurred on the 02 April 2014 along Roma public road near or at Mahlabatheng when the plaintiff was a driver of the vehicle registered under numbers and letters CK 879. The plaintiff's vehicle was written off beyond repair due to this collision. It is further common ground that the plaintiff suffered a right proximal femoral fracture; left knee severe soft tissue avulsion; Right forearm radial and ulnar fracture. These injuries were surgically treated. It is further common cause that the plaintiff had to undergo a right total hip replacement – treated with metallic implants – and further that her right forearm was treated with metallic implants as well.

[3] The plaintiff's case is anchored on the testimony of three witnesses, while on the one hand, the defendant's case is based only on the evidence of the

insured driver. PW1 was No. 49980 P/C Lebohang Maphallela who re-constructed the scene of collision. His evidence was not disputed except his comments as recorded in Lesotho Mounted Police Motor Vehicle Accident Report Form 29 (LMPS 29). His cross-examination was directed only at those comments. He was asked what the insured driver's explanation was. His answer was that the insured driver informed him that there was a minibus that had stopped inside the road in the same lane of travel as that of the insured driver as a result of which he overtook it resulting in the accident. It was put to the witness that the version of the defendant is that he was driving a 15-tonne Mercedes Benz truck going in the Roma direction, and that, there was a vehicle which was parked inside the insured driver's lane of travel. When the insured driver was five to six meters away from it the vehicle in front pulled away, and to avoid colliding with it, the insured driver swerved to the right lane in which the plaintiff was travelling. The witness maintained that it was reckless for the insured driver to overtake at that spot as the latter had told him he was overtaking.

[4] PW2, the plaintiff, testified that on the fateful day as she was driving her vehicle after passing a side junction to Koro-koro at a curve. She saw a truck was travelling in the opposite direction and that as they were about to pass each other, the truck left its lane of travel and headed straight to her. She could not swerve to the left as there was a ditch. She did not know what happened as she suffered a blackout. When she regained consciousness, she saw many people surrounding her car debating on what to do to rescue her as she was trapped inside the wreckage of her vehicle. It was at this point when she tried to take out her cellphone to call for an ambulance when she realized that her "arm was dangling." The ambulance ultimately arrived

after a long wait, and she was taken to Tšepong hospital where she was admitted as an in-patient and operated on immediately. Her hip bone and right arm were broken. The tissue on the left knee had avulsed. She was also attended to by Dr Erasmus at Rosepark hospital in Bloemfontein. She was admitted to this hospital. Dr Erasmus recommended and conducted a total right hip replacement using metallic implants. He further inserted metallic implants into her right forearm.

[5] Pw2 testified that she was later attended to by Dr Mojela (PW3) who conducted physiotherapy. She told the court that she had to, at a certain point, pay medical bills out of her pocket as she had exhausted her medical aid entitlements. She stated that she uses crutches; that her right arm is weak; her vision on her left eye is weak even though she wears spectacles; that she is constantly on painkillers. When the accident occurred, she was researching a paper she was due to present at a conference in Lyon, France. Because she failed to attend the conference, she lost out on a *per diem* she would have been paid for attending. She testified that she was disabled as a result of the accident, and that the injuries negatively affected her academic advancement.

[6] Under cross-examination she conceded that there was a vehicle which was stationary at the "Stop" area next to the road. It was a taxi. She, however, could not recall whether the truck passed the taxi while it was stationary as "I did not observe those details." The following is the exchange between the plaintiff and the defence counsel:

“Q: Were there vehicles in front of the truck in the road or next to the road?

A. There was.

Q. Was that vehicle driving or standing still?

A: I was passing next to it. I recall a stationary vehicle at the stop.

Q. Where is the stop on the map?

A. Taxis normally stop at point “F.”

Q. What did this taxi do?

A. It had stopped.

Q. Did the truck pass while the taxi still standing?

A. I did not observe those details.

Q. The truck driver says as he was coming down there was a taxi which was not totally off road and when he approached, it got into the road?

A. I would not deny what he saw.

Q. He swerved to his right with the truck as it moved when he was about 5 to 6 metres?

A. I won’t deny what he is saying.

Q. You were an Assistant Professor in 2014?

A. Now I am an Associate Professor

Q. He couldn't swerve to the left because there was no space for a 15-tonne truck and he swerved to the right?

A. I can't disagree

Q. He says, that was the only way to avoid the accident, and when he approached he saw you raising your both hands leaving the steering wheel?

A. I did not do that. I dispute that vehemently."

[7] She conceded under cross examination that she did not leave her employment at the National University of Lesotho after the accident due to disability. She retired in June 2017 when she turned 65 years old. It was three years after the accident when she mandatorily retired. She continued to generate income post-retirement and was still employed at the time when she testified before court. She stated that she would work until she turned 70 as Professors are required to retire at that age. She testified that she no longer goes to hospital but undergoes occupational therapy which helps her a great deal. She exercises at Lehakoe Recreational Facility.

[8] PW2., Dr Maama Mojela, who is a specialist in orthopedics and traumatology, with vast experience in the fields, testified that he met the plaintiff six years after the collision. He prepared a medical report in which he stated that the plaintiff's injuries have resulted in 6% permanent disability

and disfigurement as her hip and forearm were treated surgically with metallic implants; Her right hip was totally replaced with metallic implant; Her right forearm was also treated with metallic implant. He opined that the plaintiff, as a result of this surgical procedure on her hip, did not result in shortening of the limb; that surgical scar healed; that there was no limitation for internal rotation of the right arm; that the plaintiff at times involuntarily drops objects she holds, attributable to the right forearm having a pronation-supination neurological post-trauma deficit, as a result she developed a compensatory dorso-lumber scoliosis. He testified that the plaintiff would need revision of prosthetic substitution in fifteen years due to wearing off of the plastic material used.

[9] Under cross-examination when questioned about the screws that were inserted and were protruding through the bone, his answer was that it could be the cause of the pain the plaintiff is complaining about and that had the doctors not inserted long screws the plaintiff would not be experiencing pain. He, however, stated that this is rectifiable.

[10] As already stated, the defence case is based only on the evidence of the insured driver. He testified that he has been driving trucks since 1997. On the fateful day, he was driving a 15-tonne truck fully laden with crushed stone. It had just rained, and there was no traffic in front of him. As he approached the scene of accident, he saw a vehicle parked in such a way that its two wheels on the right side were in the road while only the left ones were outside. As he approached, the vehicle got fully onto the road and drove off. He testified that when the vehicle got into the road, he was about four hundred (400) meters away. At one point he was asked to estimate by

pointing to specific milestone, he said the vehicle moved when he was beyond the courtroom wall. There were no on-coming vehicles except the plaintiff's. The insured driver was driving at a speed of 80 km/hr. When he saw the vehicle get onto the road he swerved to the right in the lane of on-coming traffic to avoid colliding with it. He testified that he could not swerve to the left because that vehicle was very close. When he swerved to the right, he saw the plaintiff put her both hands on her head. As it had just rained, when he applied the brakes, it could not help, and the collision ensued.

[11] Under cross examination it was suggested to DW1 that he drove recklessly as he drove at a high speed. He replied that he drove at the permitted speed. In fact, it was the plaintiff who should have realized on time that he was taking an evasive action and should have swerved to avoid the accident, but instead put both hands on her head and lost control of the vehicle. When it was suggested to him that he should have stopped behind the vehicle, he answered that he was driving a big vehicle which could not immediately stop. It was put to him that he failed to apply brakes on time. He stated that he applied the brakes but due to the wet road surface that is why he opted to swerve to the right. He stated that he could not have swerved to the left because the vehicle could have overturned.

[12] **Discussion and analysis**

The plaintiff has the onus resting on her to show that the insured driver was negligent (**Ntšala and Others v Mutual & Federal Insurance Co. Ltd 1996 (2) SA 184 (T).** It is common cause that the collision occurred on the

plaintiff's lane of travel, and for this reason, the reasonable inference to be drawn is that the insured driver was negligent in the absence of evidence disproving same. The learned author W. E Copper, ***Delictual Liability in Motor Law*, Juta & Co., 2006,** at p. 101, states that:

> *"Where a motor vehicle drove onto the incorrect side of the road and collided with an approaching vehicle, it has been held res ipsa loguitur because the only reasonable inference was that the defendant's driving onto the incorrect side of the road at an inopportune moment was due to his failure to exercise proper care. Proof that a vehicle was on its incorrect side of the road at the time of collision (it is held) is prima facie proof of the driver's negligence."*

[13] In order to avoid an inference of negligence being drawn against the insured driver the defendant must adduce evidence negating the drawing of such an inference. Cooper, ***Delictual Liability in Motor Law*** (above) states that:

> *"The explanation expected of the defendant will depend upon the nature of the case and the relative ability of the parties to contribute evidence on the issue. Mere theories or hypothetical suggestions will not avail the defendant. A defendant must do more than merely show that his explanation may reasonably possibly be true. His explanation must be supported by a substantial foundation of fact and be sufficient to destroy the probability of negligence presumed to be present before the testimony adduced by him."*

[14] It is apposite to re-state that the "first principle" of our law of delict is that each one of us has to bear the loss he/she suffers. As an exception to this rule, Aquilliam liability provides that: *"in order to be liable for the loss of*

someone else, the act or omission for the defendant must have been wrongful and negligent and have caused the loss. But the fact that an act is negligent does not make it wrongful…" **(Telematrix (Pty) Ltd v Advertising Standards Authority SA 2006 (1) SA 461 (SCA)** para. [12]).

[15] The test for negligence was stated in the famous decision of **Kruger v Coetzee 1966 (2) SA 428 (A)** at 430E-G, as follows -and consistently followed in this jurisdiction-:

> *"For the purposes of liability culpa arises if –*
>
> *(a) A deligens paterfamilias in the position of the defendant –*
>
> *(i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and*
>
> *(ii) would take reasonable steps to guard against such occurrence; and*
>
> *(b) The defendant failed to take such steps.*
>
> *…Requirement (a) (ii) is sometimes overlooked. Whether deligens paterfamilias in the position of the person concerned would take any guarding steps at all and, if so, what steps would be reasonable, must always depend upon the particular circumstances of each case…"*

[16] In this matter the defendant has pleaded sudden emergency. It is therefore worthwhile to recapitulate the principle applicable to this type of defence. In

Road Accident Fund v Grobler 2007 (6) SA 230 (SCA) at para. [12], the court stated that:

> *"When a person is confronted with a sudden emergency not of his own doing, it is, in my view, wrong to examine meticulously the options taken by him to avoid the accident, in the light of after-acquired knowledge, and to hold that because he took the wrong option, he was negligent. The test is whether the conduct of the respondent fell short of what a reasonable person would have done in the same circumstances."*

[17] With this brief legal background I revert to the facts of this matter. The insured driver was driving a fully laden 15-tonne truck at a speed of 80 km/hr on a wet tarred road. When he was about four hundred meters, he could see that there was a vehicle which had stopped partly in his lane of travel. The right-side wheels and part of the vehicle's body were still on the road. The insured driver maintained the same speed. He had an unrestricted view of what was happening in front of him as there were no vehicles in front of him. He says when he was about five to six meters away from the stationary vehicle it moved into his lane of travel.

[18] The insured driver was able to see from a distance of four hundred meters that there was a stationary vehicle on the road but maintained the same speed while at the same time being aware that there was an on-coming vehicle. At the point when he could observe a stationary vehicle whose body was partly on his lane of travel, the insured driver should have slowed down because its lane of travel had been partially obstructed. The insured driver only applied the brakes when the vehicle started moving. By this time the plaintiff's

vehicle was too close in proximity. Under cross examination when it was put to him that he was reckless because he should have slowed down and stopped his vehicle behind the obstructing vehicle. His answer was that his vehicle could not immediately stop due to its weight and the load it was carrying and the slippery condition of the road. It is apparent that the insured driver did not take care to slow down as he saw the vehicle which was partly obstructing his lane of travel when he was some four hundred meters away from it, he only did so when the vehicle started moving and the plaintiff's vehicle was fast approaching. At this time, it was late and inopportune to swerve to the right onto the plaintiff's lane of travel. This apparent from the following exchange between him and the plaintiff's counsel:

> *"PC: You were supposed to travel at a slow speed because your truck was full?*
>
> *DW1: I could have driven at slow speed if the road was steep. That road permitted driving at 80 km/her.*
>
> *PC: You failed to apply brakes in time or at all?*
>
> *A: I applied brakes on time but due to wet road that is why I swerved to the right."*

[19] What comes out of this exchange is that the insured driver was driving at 80 km/hr until the moment when he swerved right when the vehicle in front started moving and his vehicle's brakes could not slow it down quickly enough due to its size and the load it was carrying. The insured driver

seemed to labour under a false belief that because he was driving at 80 km/hr being the maximum speed allowed for that stretch of the road, **(see S. 57(1) of Road Traffic Act No.8 of 1981)** he could not be found to have been negligent. He was clearly mistaken, as the court in the **Lesotho National General Insurance Co. Ltd v Tšolo LAC (2013 – 2014) 195** at para. [11] stated:

> *"Much was made of the fact that the speed limit at that point was 50 km/h. It was suggested that this meant that a driver was entitled to drive there at 50 km/h, and that he would not be guilty of negligence if he did so. That is not necessarily so. A statutory speed limit is the maximum speed at which a motor vehicle may be driven along the stretch of road concerned: it does not relieve the driver of the obligation to reduce his speed below the speed limit if the prevailing circumstances should call for such a reduction. Such circumstances might, as here, consist of impaired visibility and the presence of pedestrians in or near the road."*

[20] From the moment, at the distance of four hundred meters, when the insured driver had a good sight of a stationary vehicle, he should have slowed down. From that distance, despite the vehicle's heft and the load it was carrying, it could have slowed down considerably thereby allowing the insured driver the space and time to scan the area before executing any maneuver. The fact that the vehicle in front suddenly moved without a warning in my view did not create a sudden emergency necessitating the taking of a potentially deadly evasive maneuver in the light of the on-coming traffic. Had he exercised skill and care in the time preceding the critical moment when he decided to take an evasive action, the whole incident would have been

averted. He was negligent in the circumstances. As stated already, I do not think that there was a situation of sudden emergency: The vehicle in from was parked in such a way that part of its right side was on the road, thereby creating a partial obstruction on the insured driver's lane of travel. That that vehicle suddenly moved is of no moment because it only swerved slightly onto the road and moved forward as it was already partly on the road. What the insured driver ought to have done was to have reduced speed in anticipation that the vehicle may move forward while there was on-coming traffic making it dangerous to overtake it. This he did not do, as he applied the brakes at the last moment when the vehicle in front started moving, and at which point the plaintiff's vehicle was approaching closely.

[21] **Contributory negligence**

The defendant seemed to place much stock on the suggestion that as the insured driver swerved to the right, he saw the plaintiff placing her both hands on her head leaving control of the steering wheel in circumstances where she should have remained calm and swerved either to the right or left. The plaintiff denied ever leaving her steering wheel unattended. She stated that as she and the insured driver were about to pass each other she saw the insured driver's vehicle suddenly turn straight into her lane of travel, she could not swerve to the left because there was a ditch as "*these things happened in a blink of an eye and after that I did not know anything. I think I had a blackout because when I woke up I saw many people surrounding me…*" The plaintiff was faced with a situation of a sudden emergency in terms of which she was expected, in a matter of split seconds, to make choices to save her life. She could not swerve to the left because there was a ditch.

[22] The idea that she should have swerved to the right side into the lane of travel of the insured driver is not supported by law. This was stated in the case of **Road Accident Fund v Grobler** (above at para.[16]) at para. [8]:

> *"A driver of a motor vehicle who is faced with an oncoming vehicle which has swerved and entered its incorrect lane of travel, an impending collision must, as a general rule, avoid swerving to its incorrect lane as his primary course of action. [authorities omitted]. It is important that each case be judged on its own merits. These cases referred to must be seen in the context of their own facts. In all the cases mentioned the motorist who veered onto the incorrect side of the road had more opportunity and/or options than the respondent had."*

[23] Evidence adduced shows that the plaintiff was pushed into a situation of sudden emergency by the insured driver's negligence, and within a very short span of time she was in a situation where she had to decide to plunge her car into a ditch on the left or to veer off onto the right lane. But given the speed at which the events unfolded she cannot be said to have been negligent in her response. It is always easy for one sitting in the comfort of his chair to closely critique the reaction of the person who found herself in a situation of sudden emergency not of her own doing. The authorities have warned against falling into this trap (**Road Accident Fund v Grobler (above)** at para. [12]). The plaintiff had no reason to suspect that the insured driver would suddenly veer off onto her lane of travel. In the circumstances, the plaintiff cannot be faulted for her reaction. She cannot be held to have contributed to the collision.

[24] I turn now to the various heads of claim to determine whether they have been successfully proven.

Claim for past medical and hospital expenses.

From the receipt handed in as exhibits of expenditure on medical expenses, I agree with the defence counsel that the plaintiff only managed to prove an amount of M14,576.89.

[25] **Estimated future medical expenses**

It is trite that in a claim for future medical expenses the plaintiff needs to prove that it is possible in future to incur medical expenses. Medical evidence alone can achieve this, as the learned authors J M Potgieter et al ***Visser & Potgieter Law of Damages*** **3 ed. (Juta)** at p. 459 states:

> *"The general principles on the nature, proof and quantification of prospective damage are relevant here. In respect of prospective medical expenses a plaintiff does not necessarily have to prove on balance of probabilities that he or she will have to incur such expenses, since it suffices if the plaintiff merely proves a possibility (expressed as a percentage) that he or she will have to incur them."*
>
> *It is obvious that a decision on the future medical treatment of an injured person can be based only on expert medical evidence. A plaintiff's medico-legal report should thus also deal with his or her prognosis (the future development of the injuries and their consequences) as well and as the nature and cost of the required treatment."*

[26] In the present matter the plaintiff through her medical expert did not, by way of giving the prognosis of her injuries, their nature and cost required to treat them, expressed as a percentage, that she will incur future medical expenses. In the present matter the plaintiff testified that, post the accident, she has difficulty holding objects. Dr Mojela, under cross examination, opined that, were that condition to persist, in fifteen years, the plaintiff might need prosthetic substitution. On the issue of protruding screws that were inserted, Dr Mojela stated that, had the doctors who first treated the plaintiff, used shorter screws she would not be experiencing pain. He, however, said this can be corrected, and that he will ensure that it is properly done. In the medico-legal report (MVA 13) he did not indicate that there was the possibility that plaintiff will incur medical expenses in future in relation to the injuries, expressed as a percentage. He could only state that in fifteen years the plaintiff might require prosthetic substitution due to wearing of material used. He did not give the cost of such substitution currently and what it might be in fifteen years. On the premises, I find that the plaintiff has failed to prove that in future she is likely to suffer medical expenses.

[27] **Loss of past income or earnings**

The principle of our law is that where the plaintiff as a result of damage-causing act is precluded from earning income or her income get reduced she is entitled to get damages representing what she would have earned but for her incapacity (**Sandler v Wholesale Coal Supplies Ltd 1941 AD 194)**.

[28] In the present matter, there is uncontroverted evidence that following the accident, the plaintiff's employment was not terminated. She continued to

earn the same salary until she retired after reaching the legal age of retirement (65 years). She was on sick leave with full pay. Had she experienced a reduction in pay she would have stated so. She continues to work at the University of Lesotho on contract basis. It follows that the plaintiff failed to prove patrimonial loss in this regard.

[29] **Loss of earning capacity.**

There are situations where the injuries which the plaintiff has sustained may result in her/him in future being unable to earn an income. This inability to earn an income whether temporary or permanent represents loss of earning capacity, which diminishes the plaintiff's estate. As I understand the plaintiff's case and her claim under this head, she equates the loss of earning capacity to loss of future income. In this regard the following statement in **Santam Versekeringsmaatsappy Bpk v Bylevldt 1973 (2) SA 146 (A)** at 174 D – F, is apposite:

> *"Basically, it is true, the compensation our court award is also for impairment of the capacity to earn, but generally it is measured by reference to the loss of earnings. Where the injured party was in normal employment at the time he was injured and would have continued in it but for his incapacitation such employment is ordinarily regarded as reflecting his earning capacity. His loss of earnings, actual or prospective, is therefore, usually taken as the true measure of the impairment of his earning capacity. The actual, i.e., one usually sustained at any time before or up to the time of trial, must be specially pleaded, claimed, proved, and awarded as such…"*

[30] As already stated in the preceding paragraph, post the accident, the plaintiff, was on sick leave and continued to earn her full salary until she returned fully to work after four months. She continued to work until she reached her legal age of retirement. Even after she had retired, she continued to be engaged by her employer on a contract basis. This to me shows that she did not suffer incapacitation which precluded her from earning an income.

[31] **General damages for pain and suffering, loss of amenities of life and disfigurement**

Although the tendency is to compute damages on each head, the court is however, not bound to do so as it may award damages on a globular figure based on the evidence presented, as general damages *"are all natural and sometimes inevitable consequence of physical injury"* **(April v Minister of Safety and Security [2008] 3 ALL SA 270 (SE): 2009 (2) SACR 1 (SE)** at para. [18]). It is trite that an award of damages under this category falls within the court's discretion. The court is enjoined to award damages that are both fair and adequate. Assistance may be sought from past awards to achieve this (**Commander Lesotho Defence Force and others v Lesotho Letsie LAC (2009 – 2010) 549** at para. [15]).

[32] Plaintiff's counsel cited cases which she said are comparable to the present case in which a certain figure was awarded as damages. She cited cases from South Africa. It is, however, important to always bear in mind the difference in economic conditions between countries when citing cases from beyond our borders. She cited **Peter v Road Accident Fund (356/2002) [2003] ZAECHC 40** in which a plaintiff was awarded M180,000.00. Based

on R J Kock, **Quantum Yearbook, 2019,** at p. 58 that figure in 2019 was equivalent to M423,000.00. In that case the plaintiff had fractured the pelvis and acetabulum, scalp lacerations, and deep multiple abrasions on the right shoulder and upper arm. The plaintiff was unable to continue his occupation and would in future need to undergo surgical procedure.

[33] Mrs Lephatsa further cited **Mohlaba v Road Accident Fund (12010/2014) [2016] ZAGPPHC 12.** In this case the plaintiff had suffered a right proximal radius and ulna fracture. A bony ankylosis had formed between the proximal radius and ulna. He had no pronation and supination of the forearm which would prevent him from working as a motorcycle mechanic. As a result of the accident his earning capacity was significantly impaired. He was awarded M540,000.00 as damages.

[34] The present matter is not comparable to any case that was decided in this jurisdiction. In the circumstances the court will use its discretionary powers to determine a fair and adequate amount of compensation. In the present matter the plaintiff suffered a right leg neck femur fracture; a right ulna and radius fracture; deep laceration of the right knee; abrasion of the right breast and bruise to her right eye. An open reduction and internal fixation (O.R.I.F) was inserted in both ulna and radius, and her right hip was totally replaced with metallic implant. She sometimes drops objects when she holds them.

[35] In the circumstances, I consider a fair and adequate amount of damages to be as follows:

(i) Medical expenses:
M14,576.89

(ii) General damages for pain and suffering loss of amenities of life and disfigurement:
M280,000.00

(iii) Interest at a rate of 10.5% p.a. calculated fourteen days from the date of judgment until final payment.

(iv) Costs of suit.

MOKHESI J

For the Plaintiff: **Mrs Lephatsa from Lephatsa Attorneys & Consultants**

For the Defendant: **Adv. P. R Cronje instructed by Webber Newdigate Attorneys**