

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO.: 61778/2009

DATE:

15/2/2012

In the matter between:

SAIDA GATTOO

AND

ROAD ACCIDENT FUND

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED.

PLAINTIFF

13/02/2012

DATE

L. Webster

SIGNATURE

DEFENDANT

JUDGMENT

WEBSTER J

1. The plaintiff seeks damages arising from injuries she sustained when she was a passenger in one of three motor vehicles that collided on the Leslie Kinross Road, Leslie in Mpumalanga on 10 February, 2007.
2. At the commencement of the trial the Court was informed that the defendant was conceding total liability for whatever damages the plaintiff could prove.
3. The plaintiff's evidence was that she sustained fractured ribs, contusions and lacerations and soft tissue injuries to her back and neck. She was hospitalised and experienced and continues to experience pain and suffering and has, in consequence thereof, suffered and will continue to experience difficulties in performing her employment tasks: she has suffered loss of income and her future income earning potential has been reduced virtually to nil.

4. She testified that she has a thyroid problem which in turn has caused her weight problems. Her legs and feet swell. She suffers from severe head-aches, back ache and loss of smell in consequence of the injuries she sustained. With regard to her back ache she testified that she could not stand for long periods as she experiences numbness to her legs if she does so.
5. According to the specialists the plaintiff has suffered the following problems, viz., headaches on a continuous basis; her right eye becomes swollen and deviates medially; complete loss of sense of smell; continuous pain on right side of chest over the site where ribs were fractured; the chest pain is exaggerated if she bends to her right; she does not have full movement of the left knee due to the left knee injury; she is no longer able to adopt the normal prayer position and now has to pray sitting in a chair; she can no longer do gardening and housework; her business as a hawker has been adversely affected as she can no longer lift or move large bags or boxes in which her merchandise is stored. She has had to give up her business.
6. The plaintiff was examined and interviewed by the following experts, viz., Anneke Greef, an occupational therapist, Dr L Grinker, a psychiatrist, B Mendelowitz, an industrial psychologist and Michelle Doran, an occupational therapist. These experts are unanimous that the plaintiff will no longer be able to lead a normal life let alone to move about as a hawker or oversee or perform the duties of a caterer.
7. The plaintiff testified that her source of income was from hawking. She had also done catering for weddings. Her nett income prior to the collision had been R15 000 per month. This had been

drastically reduced because of the pain, discomfort and disablement resulting from her injuries. This is confirmed by the orthopaedic surgeon Dr Geoffrey Read.

8. An important consideration of Dr Read's report is the one dealt with under the heading "FINAL DIAGNOSIS" and "PROGNOSIS AND FUTURE MANAGEMENT". Under the first heading the doctor has noted "1. RIGHT-SIDED RIB FRACTURES: The patient has symptoms of a past fracture syndrome. Chest X-rays with rib views show fractures of the 5th and 6th ribs on the right. The fractures have united with slight overlap and residual deformity. 2. LEFT KNEE INJURY: X-Rays of both knees done today show degenerative changes commensurate with the patient's weight and age. I do not believe that these changes are accident-related".
9. Mendelowitz who read Dr Read's report comments as follows on the post-accident working capacity of the plaintiff: "On X-rays done today of both knees there are signs of early osteo-arthritis. This will most likely progress to the stage where she will require bilateral knee replacements. I do not believe that this is related to the accident in question. I believe that in any event she would only have been able to work for a further two or three years in her pre-accident capacity before the knees inevitably caused her difficulty".
10. According to the medico-legal report of the neurosurgeon Prof. Lekgwara the plaintiff suffered a soft-tissue injury to the back which could be the cause of plaintiff's backache. He notes that her extreme weight also contributes to this. He suggested that X-rays should be taken and "MRI to evaluate her spine".
11. Save for Mendelowitz none of the other experts whose reports were filed were called to testify.

12. It is against the above background that the issue of damages should be considered. At the commencement of the trial the Court was informed by both counsel that total liability had been conceded by the defendant. The damages sought were for (i) past loss of income; (ii) past medical expenses; (iii) general damages.
13. It was agreed between the parties, and correctly so in the light of the plaintiff's undisputed evidence that the plaintiff had suffered past loss of income for three (3) years. Her evidence that her nett income during this period as dealt with in Dr Read's report was R10000 per month. The Court was informed that the parties had agreed that the past loss of income was R8 000 per month. The total loss of income over this period was therefore R8000 multiplied by 12 times 3 which equals R288 000. Having regard for inflation and other contingencies the parties agreed that there be a contingency deduction of 20%. The plaintiff's past loss of income is therefore R288 000 less R57 600 which equals R230 400.
14. The undisputed evidence on the cost of past medical expenses is R15 000.
15. With regard to general damages it is clear that one of the factors that have contributed to the plaintiff's complaints is her reduced mobility and the pain in her knee joints. As indicated above, this is not, on probabilities and the medical evidence, attributable to any sequelae following upon any injury sustained in the collision. The factors to be considered under this heading are back pain, frontal headaches, pain over right lower chest and the permanent loss of smell. The complaints regarding the knees and limited mobility have been touched on above.

16. With regard to the enjoyment of amenities of life, the view of the orthopaedic surgeon is that "The injuries sustained in this accident have necessitated these changes two to three years earlier than would have been inevitable".
17. It was submitted by Mr Khan that the quantum for general damages taking into account the whiplash, pain from fractured ribs, the headaches and loss of smell should be R100 000. Inasmuch as this Court is totally sympathetic to the plaintiff and her suffering it is my considered view that a fair award under this heading is R75000.
18. **Judgment is accordingly granted in the plaintiff's favour in the sum of R320 400 plus costs which costs are to include the costs of the reports of the experts in terms of Rule 36(9)(a) and (b).**

**G. WEBSTER****JUDGE IN THE HIGH COURT**