



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

2/9/2014

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED. ✓

2/9/14

DATE

SIGNATURE

CASE NO: 17796/2013

In the matter between

CROSS, HS

Plaintiff

vs

Road Accident Fund

Defendant

JUDGMENT

WEPENER J

- [1] The plaintiff is an adult female over 60 years of age and was involved in a motor vehicle collision on 6 April 2012. She seeks damages from the defendant, who accepted liability therefor.

- [2] The parties agreed on a number of issues and only the question of the amount of the plaintiff's general damages remains to be determined.
- [3] The injuries and sequelae suffered by the plaintiff were extensively referred to during argument and can be gleaned from the various reports submitted by expert witnesses. The reports, and in particular the correctness of the facts and contents of the report, were common cause and I was, by agreement between the parties, asked to accept the reports as containing the correct facts.
- [4] I need not summarize each of the paragraphs to which counsel for the plaintiff referred to as a report by the clinical psychologist, Elton Bloye, summarizes all the injuries and sequelae conveniently. By referring to it I do not exclude the factors referred to by counsel in the other reports or relied on by counsel contained in the other reports, but rely on it as a general and comprehensive summary, also based on the medical – legal assessments of the other expert witnesses in the matter. Bloye says:-

“Summary and Conclusions:-

1. Injuries sustained and post-accident sequelae

Taking into account the clinical records and medico-legal records, as well as the self-reported and collateral information provided in the clinical interview, it can be concluded that Mrs Cross sustained polytrauma, as a result of the accident in question, having sustained a head injury with an underlying associated brain injury, facial fractures, a base of skull fracture, a fractured jaw, a C3 neck fracture, a clavicle fracture and fractures of the right ribs 3 to 5 with associated haemo-pneumothorax.

With regard to the head injury and underlying concussive brain injury, this appears to be in the Moderate to Severe range, on the basis of a prolonged period of loss of consciousness and post-traumatic amnesia. Mrs Cross does not recall the accident at all, and does not recall when she became conscious in hospital. However, the indication in the medico legal report by Dr. Du Plessis is that she had a post traumatic amnesia of approximately 4 days and the lowest GCS was 13/15. From a neuropsychological perspective, this would be consistent with a moderate to severe concussive brain injury. Permanent neuropsychological deficits would be expected as result of a diffuse axonal injury. A head injury of this severity was diagnosed by both Dr. Du Plessis (Neurosurgeon) and Dr. Rosman (Neurologist). The extent of a concussion may have also been complicated by a haemo-pneumothorax, resulting in some hypoxia, which would have lengthened her recovery period.

It also appears as though there was a focal brain injury, which is evidenced by punctuate haemorrhages to the left frontal lobe of the brain on the initial CT scan. A recent MRI scan was requested by Dr. Du Plessis which showed signs of blood degradation products in the 2 punctuate haemorrhages in the left frontal lobe.

She sustained a base of skull fracture, which appears to have affected the right abducens nerve, and has produced an associated diplopia (double vision). The diplopia will have a significant effect on her capacity to perform the neuropsychological tests in the visual modality, and this should be taken into consideration when interpreting the test scores. It appears as though the diplopia has affected her mobility in that she tends to sway toward the left when

walking. Dr Eksteen (Ophthalmologist) has indicated the permanent nature of scarring and optic atrophy to the right eye, with a 3/60 vision. The diplopia and loss of the visual acuity has rendered her unable to perform tasks requiring adequate visual acuity such as with needlework or crochet. This was her source of income, and therefore she is under a degree of stress from a financial perspective.

It seems as though she sustained a significant, but partial, spinal cord injury, as she has arm weakness and reduced sensation C5 and T1 levels, on the left arm only. This has also affected her ability to perform dexterous tasks, and testing of manual dexterity in the current assessment revealed significant impairment in this area.

There were multiple orthopaedic injuries as a result of the accident. It seems as though she has residual complaints from these injuries. She has ongoing pain in a number of areas including painful ribs, a painful neck with restricted movement, headaches and back pain. She can no longer lift heavy items or move heavy furniture. She is also much less productive, performing physical tasks slowly. She has significant mobility problems, which may be due to the left-sided weakness of a neurogenic origin, but which may also be orthopaedic in nature.”

- [5] Taking these injuries and sequelae into account it is common cause that her current condition is as set out in the report of Lesley Taylor, an occupational therapist. She says: “The injuries which Mrs Cross sustained were severe and have had a serious impact on her ability to function independently in tasks such as cleaning her house, cooking, gardening and washing and dressing. She is no longer able to crochet

due to her injuries, which has resulted in a loss of income as well as of a productive leisure activity which she enjoyed. The accident aggravated her pre-existing orthopaedic injuries and resulted in a loss of function in her left arm and hand. She has chronic pain and dysfunction which, then combined with her impaired concentration and attention and the changes in her personality as well as symptoms of anxiety caused by the accident, have left her more dependent on her husband and son physically and financially. She can no longer perform the household, gardening and maintenance tasks which she performed herself prior to the accident. Overall, the accident has had a very serious effect on her daily functioning and quality of life.”

[6] It is well known that courts will look at comparative cases in order to seek an answer to the question of the quantum of an injured party’s damages. It is, however, by no means anything other than a guideline to assist the court in the matter of which it is concerned¹. Other principles also come into consideration such as, inter alia, the age of the injured party. All factors must be weighed up in order to make an award that is fair in the circumstances.

[7] At the same time the Supreme Court of Appeal has cautioned against the tendency to make unwarranted high awards².

¹ Road Accident Fund vs Delport N O 2006(3) SA 172 SCA at 180B-D

² De Jongh vs Du Pisani N O 2004(2) All SA 565 SCA at para 65

- [8] The plaintiff relied on Dlamini³, Myhill NO⁴ and Zarrabi⁵ and the defendant distinguish these decisions and relied on Noble⁶ and Vilakazi⁷.
- [9] In my view, save for the age of plaintiff in the *De Jongh* matter which was 35 years, and the absence of epileptic fits in the case before me, the injuries sustained by the plaintiff are comparable with those sustained by the plaintiff in *De Jongh*. I take into account the partial loss of the use of an arm and virtual total loss of the use of an eye of the plaintiff in this matter which are issues which were not present in the *De Jongh* matter.
- [10] The general damages awarded in the *De Jongh* matter was R250 000.00 in 2004. This would equate to around R450 000.00 in today's monetary values⁸. I am of the view that such an amount should appropriately be increased to compensate for the plaintiff's loss of the use of an arm and eye, both of which are serious setbacks.
- [11] The plaintiff moved for an amendment of her particulars of claim in order to increase the amount of general damages. Save to indicate that I would have granted the amendment as there would be no prejudice to the defendant in the conduct of the case, the amendment is not

³ Dlamini vs Road Accident Fund 2012 (6A4) QOD 68 (GS)

⁴ Myhill NO (obo RC Penga) vs Road Accident Fund 2008 (5B4) QOD 271 (T)

⁵ Zarrabi vs Road Accident Fund 2006 (5B4) QOD 231 (T)

⁶ Noble vs Road Accident 2011 (6J2) QOD 54 (GSJ)

⁷ Vilakazi Sithembile Thembisile Mavis vs The Road Accident Fund 2007 (5J2) QOD160(T)

⁸ Koch, 2014 Yearbook on quantum and Damages

necessary by virtue of the quantum of the plaintiff's damages as determined by me.

[12] I issue an order in terms of the draft which I mark "W".

REFERENCES

For the Plaintiff: Adv. Van Onselen

For the Defendant: Adv. Matika F

Date of Hearing: 27 August 2014

Judgment delivered on: 2 September 2014