

Republic of South Africa



In the Western Cape High Court of South Africa
(Cape of Good Hope Provincial Division)

In the matter between:

Case No: 3266/2008

Ellen Savage

Plaintiff

Versus

Derick Nieuwoudt

Defendant

Judgment delivered: 19th August 2010

Louw J

[1] The plaintiff who was born on 1 February 1962 and who is presently 48 years old suffered severe injuries in a motor vehicle accident on 6 December 2007. She was a backseat passenger in the vehicle driven by the defendant, Derick Nieuwoudt.

[2] The plaintiff's claim against the RAF was settled at the statutory maximum of R25 000.00 and she claims the balance of her damages arising from the accident from the defendant.

[3] The defendant who was represented by an attorney pleaded to the Particulars of Claim, denying liability. The trial was set down for Wednesday

11 August 2010. Shortly before that date the defendant's attorneys withdrew. The defendant told the plaintiff's attorney, Mr Batchelor, who testified, that he had no money and that he would not appear at the trial to oppose the relief sought.

[4] Since there was no appearance by or on behalf of the defendant at the commencement of the trial on 11 August 2010, the matter proceeded on an unopposed basis and Mr. McDougall, who appeared on behalf of the plaintiff, first moved an amendment (which had been served by Registered post on the defendant), and later during argument for a further amendment (the particulars of which had likewise been served on the defendant) to the plaintiff's claim. These amendments were granted.

[5] I heard the evidence of Dr Allison Madden a clinical psychologist on the nature and extent of the plaintiff's injuries and some of the sequelae to the plaintiff's injuries. The plaintiff testified as to the defendant's causal negligence, her past income, pain and suffering and her loss of amenities of life as well as her past medical costs.

[6] I thereafter received evidence in the form of affidavits by the following medical experts.

Dr Zayne Domingo, Neurosurgeon; Dr RD Shrosbree, Orthopaedic Surgeon; Lyall Mari Brink, Physiotherapist; Melissa Melnick, Clinical Psychologist; Dr Andrew Perrott, Ophthalmologist; Dr Dale Ogilvy,

Speech and Language Pathologist; Elke Carey, Occupational Therapist; Liza Hofmeyr, Industrial Psychologist. Mr. Munro, the actuary also testified by way of affidavit. The experts all confirmed the contents of their various reports which had earlier been delivered in terms of Rule 36.

[7] On the evidence it is abundantly clear that the defendant's recklessly negligent conduct caused the accident and the plaintiff's injuries.

[8] The plaintiff suffered a closed head injury and a C4/5 fracture dislocation with spinal cord injury. She also suffered an injury to her shoulder. The plaintiff was hospitalised immediately after the accident. She remained in hospital for 5 months after spinal surgery and was discharged in a wheel chair as a C5 tetraplegic. Due to financial constraints, her rehabilitation was not completed. She will endure the future complications associated with her condition and she will in future require the various medical procedures and treatment, all of which are described in the reports of the medical experts. The plaintiff is severely disabled and will not be able to work again. Her loss is total and permanent.

[9] Mr. Munro has calculated the plaintiff's future medical costs on the basis of the evidence of the expert witnesses in the amount of R6 353 850.00. In doing so, he had regard to the plaintiff's reduced life expectancy.

[10] At the time of the accident the plaintiff lived on a small holding near Hopefield with her husband and two children, an adult daughter and young son who is now in grade 12. They had chosen to leave Cape Town as they wanted to live in the country. They kept 4 horses and several dogs. Up to the accident the plaintiff was an active biker and horse-woman. She ran a Beading business with 24 beaders and supplied retail outlets with beaded garments. As a result of the accident the plaintiff lost her business and they were not able to continue servicing the mortgage bond and, as a result, the property was sold. They moved to rented accommodation in Kuilsriver but at the time of the trial they had been ejected for their inability to pay the rental and were living in a caravan and tent in a caravan park.

[11] The plaintiff's pre-accident working career and income are established by the evidence. On the basis of this evidence Mr Munro calculated her past and future loss of income in the amount of R2 628 900. This amount must be reduced for general contingencies as follows:

Past Loss	R 440 800.00	Future Loss	R2 188 100.00
Less 5%	<u>R 22 040.00</u>	Less 10%	<u>R 218 810.00</u>
	<u>R 418 760.00</u>		<u>R1 969 290.00</u>

The Plaintiff's total loss of income consequently amounts to R2 388 050.00.

[12] As a result of the accident, the plaintiff is tetraplegic and is wheel chair bound. She is incontinent with a permanent indwelling catheter. She is on a strict bowel regime to control her bowel function. She has minimal movement in her limbs, including some scapula movement and although both hands are severely contracted, she is able to use her left thumb for her phone. She requires 100% assistance with all activities of daily living. Although Dr. Madden found her to be a highly motivated person, she is depressed and suffers from chronic neurogenic pain and fatigue all of which impact negatively on her reduced cognitive abilities. She struggles to retain and control her attention and has problems with her memory which has affected her verbal skills. She has lost her earlier active lifestyle. The plaintiff will in future continue to suffer chronic pain and severe disability and a catastrophic loss of amenities of life.

[13] In argument Mr. McDougall referred to the following awards for general damages made in cases reported in Corbett & Honey: Quantum of Damages, Vols V and VI ; 1. Delpont NO v RAF A4-1 19 November 2003: R1,25m; 2. Geldenhuys NO v RAF A2-11 3 July 2002: R125 000.00; 3. Cunningham v RAF A2-17 19 November 2002: R700 000; 4. Mehlo + Anor v RAF 10 December 2002 A2-30: R800 000; 5. Ndaba v RAF 8 November 2002 A3-1: R600 000; 6. Sgatya v RAF 4 July 2001 A2-1: R800 000.

[14] The facts underlying the plaintiff's claim for general damages are broadly comparable to the facts in the Sgatya and Delpont cases. The plaintiff in Delpont was at 36 years slightly younger than the plaintiff in this case, who

was 45 years old at the time of the accident. In Delport, also, the plaintiff was, unlike the plaintiff in this case, completely unable to move or speak. The plaintiff in Sgatyá was considerably younger, at 29 years, than the plaintiff in this case. When upgraded to the present value of money, the award in Delport of R1,25m amounts to R1,876m and the award in Sgatyá, to R1,38m.

[15] In all the circumstances and having regard to the awards made in the cases I was referred to, I conclude that an amount of R1,4m should be awarded for general damages to the plaintiff.

[16] I am satisfied on the evidence before me that the following damages have been proven:

1.	Past medical expenses	R 304 979.36
	Future medical costs	R 6 353 850.00
2.	Past & Future Loss of earnings	R 2 388 050.00
3.	General Damages	R 1 400 000.00
	Total	<u>R10 446 879.36</u>

The amount of R25 000,00 paid to the plaintiff by the RAF must be subtracted from this amount, leaving a balance of R10 421 879.36

[17] The following order is consequently made:

The defendant Derick Nieuwoudt is ordered to pay to the plaintiff:

1. Damages in the sum of R10 421 879.36;
2. Interest on the above sum at the prevailing rate of interest calculated from date of demand to date of final payment;

3. Costs of suit, including the qualifying expenses of the following experts:

Dr Allison Madden, Clinical Psychologist;

Dr Zayne Domingo, Neurosurgeon;

Dr RD Shrosbree, Orthopaedic Surgeon;

Lyall Mari Brink, Physiotherapist;

Melissa Melnick, Clinical Psychologist;

Dr Andrew Perrott, Ophthalmologist;

Dr Dale Ogilvy, Speech and Language Pathologist;

Elke Carey, Occupational Therapist;

Liza Hofmeyr, Industrial Psychologist.

Mr. Munro, the Actuary;

4. The plaintiff is declared to be a necessary witness.



W.J. Louw

Judge of the High Court