IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO.: 4485/2007

In the matter between :

MAGDA GERTRUIDA BOTHA Plaintiff

and

MALCOLM C. KING Defendant

JUDGMENT 14 APR 2010

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[1] Plaintiff has instituted action for damages in the amount of R1 983 717.23 against the Defendant pursuant to certain injuries which she sustained during a motor vehicle collision that occurred on the R44 arterial road between Somerset West and Stellenbosch during the early evening on Saturday, 2 April 2005. Plaintiff was the only passenger in a vehicle being driven at the time by the Defendant which left the road after Defendant had lost control thereof.

[2] It is pleaded in the Particulars of Claim that the collision was caused by the sole negligence of the Defendant, who is alleged to have driven the vehicle at an unreasonably high speed in the circumstances; failing to exercise due

care and attention; failing to maintain a proper look-out; failing to apply the brakes of the motor vehicle timeously or at all; and failing to avoid the collision when by the exercise of reasonable care he could and should have done so. These averments are effectively placed in issue in Defendant's Plea.

[3] Both the merits as well as the quantum of Plaintiff's claim were in issue at the trial. Plaintiff was legally represented, while the Defendant appeared in person. Plaintiff testified and presented the evidence of three experts with regard to quantum, namely Dr. Welsh a neurosurgeon, Dr. Herbst a clinical psychologist and Dr. Lekas, a psychiatrist. The report of Dr. Steyn, an industrial psychologist, was handed in by agreement between the parties. Defendant testified and called the evidence of three witnesses in respect of the merits of the claim.

[4] In view of the conclusion that I have reached with regard to the merits of the matter, no useful purpose would be served by dealing with the expert testimony in any detail. In any event, much of this evidence remained uncontested at the hearing. Accordingly only a brief summary of this evidence is given.

[5] Dr. Welsh confirmed his two reports dated 26 July 2006 and 2 September 2009 respectively. In accordance with these reports, the Plaintiff suffered a cervical spine injury which resulted in a unifacet dislocation at the C6-7 level and a direct injury to the right C7 nerve root. On 5 April 2005 a neurosurgeon

reduced the facet dislocation and performed an anterior cervical discectomy and an interbody fusion which was secured using a plate and screws. During the assessment by Dr. Welsh on 17 May 2006, Plaintiff's neurological symptoms had settled down with an almost 100% recovery. At that stage she still experienced occasional minor neck pain and a minor degree of residual numbness in her right index finger. This was expected to resolve further with time. During the subsequent assessment on 1 September 2009, Dr. Welsh indicated that the symptoms of Plaintiff's neurological injury have essentially resolved and that she is able to work a full day doing legal and secretarial work for which she was qualified. Dr. Welsh indicated that possible accelerated cervical spine degeneration puts Plaintiff at a small risk of a shortened working career, estimated at 5 years at most. Dr. Welsh indicated that there was a small risk in the region of 20% that Plaintiff will suffer from accelerated degenerative cervical spine disease or cervical spondylosis, and if this were symptomatic it may require cervical treatment in future. A single level cervical fusion cost in the region of R40 000.

[6] Drs. Herbst and Lekas testified about Plaintiff's psychological condition and indicated that Plaintiff suffered from depression and anxiety prior to the collision, for which she had received medical treatment. Dr. Herbst saw the Plaintiff approximately 2½ years after the accident when she treated the Plaintiff, *inter alia,* for severe depression. Plaintiff's functioning is estimated to be 50% of the norm. Dr. Lekas saw the Plaintiff on 9 December 2005. Dr. Lekas treated the Plaintiff for reactive depression, anxiety, social phobia and post traumatic stress disorder. In his report of 10 September 2009 Dr. Lekas

indicated that Plaintiff's ability to work has been reduced to between 60% and 70% of her prior capacity. It is also envisaged that Plaintiff will be required to take medication for her psychological condition for an indefinite period.

[7] The views expressed by Dr. Steyn in his report dated 13 September 2009 are largely dependent upon the medical opinions, particularly the opinions concerning the Plaintiff's psychological condition and her apparent resultant inability to work.

[8] Plaintiff and Defendant were the only witnesses that presented direct evidence concerning the collision. Plaintiff called no witnesses with regard to the merits, while the Defendant presented the evidence of three witnesses, including the Plaintiff's mother, with regard to subsequent events.

[9] Plaintiff testified about her personal circumstances which are fully canvassed in the various expert reports. Insofar as her qualifications and work history are concerned, she completed a 2 year commercial secretarial course as well as a legal secretary higher diploma. At the time of the collision she was employed at Pam Golding Properties as an administrative clerk in the conveyancing department with a prospect of progressing to the position of conveyancing secretary. She was earning a salary of R5 500 per month. After the collision she was booked off work for approximately 6 weeks whereafter she returned and continued working at Pam Golding Properties until the end of February 2006 when she resigned her position there due to psychological problems. She has been treated for depression since 1995

and has been on regular medication for that condition. Her psychological condition had deteriorated pursuant to the collision.

[10] After she had left Pam Golding Properties she did a course in Pastel at Creative Minds during the period March to April 2006. She was employed during July 2006 as a wage clerk and subsequently went overseas and worked in London as a personal assistant during the period October to December 2006. She returned home and got a position as a company secretary at Laubscher Du Plessis in Stellenbosch during February 2007 where she earned a salary of R5 500 per month. She held this position until June 2007 and was forced to resign because of her deteriorating psychological condition. She was unemployed for the rest of 2007 and obtained a position as personal assistant at Creative Learning in Somerset West during June 2008. She started off earning a salary of R15 per hour which was subsequently increased to R30 per hour. She held this position until June 2009 and decided to resign due to the adverse working conditions. She was still unemployed and hunting for a job at the time of the trial in October 2009.

[11] Plaintiff confirmed the injuries which she sustained in the collision as well as the medical treatment she had undergone and gave details of her medical expenses, which included medication for her psychological condition. The total medical expenses amounted to the sum of R151 469,83. It was suggested in argument that the amount of R28 000 should be deducted from

this figure to cater for the medication for the Plaintiff's psychological condition which has no causal *nexus* to the collision.

[12] Insofar as the collision is concerned, the Plaintiff testified that she met the Defendant at his house at approximately 6 o'clock on the evening of the collision with the intention of going to a party of one of her friends in Stellenbosch. The Defendant was living in Somerset West at the time. On the way to Stellenbosch they travelled on the R44 arterial road in the right hand lane at a high speed. The Defendant was catching up with a vehicle ahead of them in the right hand lane and was flicking his lights for the vehicle ahead to move into the left hand lane. The vehicle did not move out of the way and the Defendant braked. Their vehicle went onto the gravel next to the road and started rolling until it eventually landed on its wheels again. After the vehicle went onto the grass verge on the right hand side of the road, the Defendant steered the vehicle to the left and the vehicle crossed both the right hand and left hand lanes and then rolled and eventually landed to the left of the left hand lane. After the vehicle had come to a stop, the Defendant immediately jumped out of his seat and told her that he was drunk. She was in pain and was about to faint. The Defendant tried to keep her awake by shaking her by the shoulders. The Defendant contacted his friends on his cellphone and asked them to come and assist. The police also arrived on the scene and recommended that she be taken to hospital as soon as possible, after they had ascertained that no one had been killed in the collision. The Defendant's friends arrived on the scene and took her to hospital in Somerset West. The Defendant was also at the hospital and appeared to be worried.

The Defendant telephoned her while she was still in hospital and although they had seen each other subsequently, they never went out together again. She heard the Defendant's version that another motor vehicle turned into his lane and he was compelled to swerve in order to avoid an accident when she overheard the Defendant speaking to one of the doctors in the casualty department at the hospital in Somerset West on the night of the collision. She disputed this version as false. She indicated that the speed limit on the stretch of road where the collision occurred was 100 km per hour.

[13] Under cross-examination the Plaintiff was referred to annexures "C1" and "C2", which are photographs taken of the Defendant's BMW vehicle after the accident, which shows no damage to the roof of the vehicle. It was put to her by the Defendant that the vehicle had not rolled but had spin across the road. The Plaintiff insisted that the vehicle had rolled and had not spun as alleged by the Defendant. The Plaintiff indicated that she was on Prozac medication for her psychological condition on the day of the collision and had also taken alcohol. She testified that she was prepared to drive with the Defendant, because she was not aware that he was under the influence of alcohol. She denied that the Defendant was speaking to her on the cellphone after he had left her at the vehicle and he had gone towards the road to look for help. She also denied that the Defendant was driving the vehicle that had taken her to hospital in Somerset West. According to her the vehicle was driven by its owner. She also confirmed that during the collision she had closed her eyes and that she concluded that the vehicle had rolled because of the sensation

that she experienced. She denied having told the Defendant in their prior conversations that she was struggling at work and wanted to resign. She could not remember that the vehicle had damaged a waterpipe on the side of the road and that the water was spurting out of the pipe. She cannot say what the speed of their vehicle was at the time of the collision but assumed that it was 110 km per hour. Her father has a BMW vehicle and she knows how the speed of a BMW feels like. She confirmed that the Defendant and her father had spent a lot of time together at the hospital. She denied the Defendant's version that the vehicle ahead of them had moved over to the left hand lane and was in the process of moving back to the right hand lane as they were busy overtaking. She indicated that the other vehicle had stayed in the lane in front of them. She cannot remember the make or the colour of the other vehicle. She testified that the Defendant was shooting down the road and had driven too close to the other vehicle and had to brake sharply and swerve which caused the collision. She also denied that any of the airbags in the front of the vehicle were released in the collision. She later conceded that the airbag on the driver side might have been released.

[14] The Defendant confirmed that he was the driver of his BMW 318i automatic vehicle at the time of the collision which had occurred in the early evening on 2 April 2005 on the R44 arterial road between Somerset West and Stellenbosch. The weather was good and it was at dusk. The Plaintiff had asked him to accompany her to the party of her friend in Stellenbosch and it was arranged that they would meet at the Defendant's house in Somerset West. Before they left his house, the Plaintiff had taken two alcoholic drinks

and he had taken a soft drink. He was unaware that the Plaintiff was on anti-depressants at the time. They left his house and proceeded to the R44. His vehicle was fully roadworthy. Approximately 10km outside of Somerset West they approached an older model cream Mercedes Benz vehicle which travelled ahead of them in the right hand lane. The speed limit in the area was 100 km per hour. As he caught up with the vehicle ahead of them, it moved over to the left hand lane. As the front of his vehicle was moving past the back wheel of the other vehicle, it started moving back towards the right and the Defendant swerved to the right in order to avoid a collision between the two vehicles. The Defendant was travelling at approximately 100 km per hour at the time. The right front wheel of his vehicle went onto the grass verge on the right hand side of the road where there was a fairly deep ditch next to the road. The Defendant pulled his steering wheel to the left to avoid going into the ditch and rolling the vehicle. The back wheel of the vehicle went onto the gravel and the vehicle started spinning across the lanes but never rolled. The vehicle came to a stop on the left hand side of the road after it had hit a waterpipe and a few small poles on the side of the road. The vehicle had in fact ended up approximately 2 to 3 metres from the roadway amongst the vineyards. Water was spurting out of the damaged waterpipe. He immediately checked on the Plaintiff who complained that she was dizzy. He helped her out of the vehicle and asked her to keep her cellphone on while he ran towards the road to look for help. He spoke to the Plaintiff on the cellphone throughout the period that he left her alone at the vehicle. A motor vehicle stopped at the scene but indicated that they did not have any medical knowledge whereupon he ran back to where the Plaintiff was and also

telephoned his friends who were visiting at his house and asked them to summon an ambulance. A lot of curious motorists stopped at the scene and the police also later arrived. The police went to where the vehicle was and checked to see if everything was in order. The Plaintiff was standing next to the vehicle at the time and indicated that she was feeling better. The police returned to the road and stayed to regulate the traffic. His friends arrived at the scene within about 10 to 15 minutes, before any ambulance had arrived. He suggested that they take the Plaintiff to the hospital. They all got into his friend's vehicle and he drove the vehicle to the Vergelegen Medi-Clinic in Somerset West. When they arrived at the hospital, he enquired from the Plaintiff whether he should notify her parents and although she was hesitant he convinced her that this should be done. He took the Plaintiff's cellphone and telephoned her parents and asked them to come to the hospital. The Plaintiff's parents later arrived at the hospital and he met them for the first time. He spoke to the Plaintiff's father for a long time outside of the hospital and also spoke to Plaintiff's mother inside the hospital. Plaintiff's parents would have noticed if he was intoxicated. He had not taken any alcoholic drinks prior to the accident and would not have stayed at the hospital if he was under the influence of alcohol.

[15] Under cross-examination the Defendant confirmed his work history and that at the time of the accident he was the owner of Rikki's taxis in Somerset West. Two of his lady friends had arrived approximately half an hour before the Plaintiff to visit at his home. The Plaintiff had spent approximately 20 to 30 minutes at his house before they departed at approximately 6.00 p.m. He

cannot recall how he had switched lanes as he was travelling on the R44 towards Stellenbosch, but he was travelling in the right hand lane immediately prior to the collision. He knew the road well and had travelled on it frequently. He was travelling at approximately 80km per hour as he approached the Mercedes in front of him in the right hand lane. The Mercedes was travelling slower and he was catching up with it. As he approached, the Mercedes moved into the left hand lane and he estimated that it was travelling at a speed of approximately 60 to 70km per hour. He accelerated in order to overtake and was travelling at approximately 100km per hour at that stage. The Mercedes had moved completely into the left hand lane and the right hand lane was open for him to pass. When the grill of his vehicle had just passed the back wheel of the Mercedes, the latter started moving back towards the right hand lane. He was alarmed and pulled his steering wheel in order to swerve to the right. His front wheel went onto the gravel and grass verge on the right hand side of the road. He pulled the steering wheel to the left in order to avoid an accident and in order to bring the vehicle back onto the tar surface of the road. His vehicle started sliding across the road. He applied his brakes at the time when he swerved to the right but did not sound his hooter. He formed the impression that either the driver of the Mercedes was intoxicated or there was a play on its steering wheel. He was aware at the time that one has to be cautious if it appeared that the other driver could be under the influence of alcohol. He travelled as close as possible to the solid white line on the right hand side of the road as a precaution as he was overtaking. He had not foreseen that the Mercedes would move back over into the right hand lane. There was no need in the

circumstances for him to warn the Mercedes that he was overtaking. There was no physical contact between his vehicle and the Mercedes. He indicated that the Plea and the accident report erroneously referred to his vehicle having rolled instead of having spun. He was also not certain of the exact time when the collision occurred. It was not yet dark at the time and he could still see clearly. He denied that he was travelling too fast and that he was speeding towards the Mercedes and had to swerve to the right in order to avoid driving into the Mercedes from behind. He denied having exceeded the speed limit at any stage.

[16] The Defendant called Karel Johannes Krige as his first witness. The latter indicated that he was a draughtsman and that he had taken the photos, being exhibits C1 and 2 of the BMW after the collision when it was parked at the panelbeaters. He also confirmed that the front airbags of the BMW on both sides had been released in the accident. The Defendant then called Denise Barratt. She indicated that she was a self-employed beautician. She and the Defendant were friends for the past approximately 14 years. She and a friend of hers had visited at the Defendant's house on the Saturday of the collision. They arrived before the Plaintiff who had spent some time at the house before she and the Defendant left. She had given the Plaintiff a glass of wine and had given a soft drink to the Defendant before they left. She and her friend remained behind and they were still there when the Defendant telephoned to say that he was involved in an accident. They arrived at the scene before the ambulance and she noticed the water that was spurting from the broken pipe. The Plaintiff was transported in her vehicle to the hospital in

Somerset West, but she cannot recall who drove the vehicle. At the hospital, the Defendant spoke to the Plaintiff's parents for a long time. Under cross-examination she indicated that although she had given the Defendant no alcohol at his house before he and the Plaintiff left, she cannot dispute the Plaintiff's averment that the Defendant had taken brandy and coke.

[17] The Defendant's last witness was Lucille Botha. She confirmed that she is the Plaintiff's mother and that she had met the Defendant at the hospital after he contacted her and asked that she should come to the hospital. She had formed a good impression of the Defendant. Although the Defendant's eyes were red, she cannot say if he was intoxicated. She spoke to the Defendant across the hospital bed in which the Plaintiff was lying. That concluded the Defendant's case.

[18] Adv. Vos, who appeared on behalf of the Plaintiff, urged in argument that the version of the Plaintiff should be accepted instead of the conflicting version of the Defendant. In the alternative, he submitted that even on the Defendant's own version, he was grossly negligent in the circumstances. He argued that the Defendant should have been extremely cautious when it appeared that the driver of the Mercedes Benz could be under the influence of alcohol and he should have foreseen in the circumstances that the driver of the Mercedes Benz could act irrationally. The Defendant, moreover, attempted to overtake the Mercedes without giving any warning. A reasonable driver in the circumstances, so it was argued, would at least have hooted. The Defendant should also have hooted when the Mercedes was moving back towards the

right hand lane and the Defendant should have applied his brakes, which would have avoided a collision. It was further argued that it was irresponsible of the Defendant to drive off the roadway and once he had done so he should, at best, have remained on the grass verge without pulling his steering wheel to the left. The version of the Defendant was, moreover, criticised with reference to whether the vehicle had rolled or had spun and it was submitted that the Defendant was not credible in this regard. Mr Vos submitted with reference to **Ntsala v Mutual & Federal Insurance Company 1996(2) SA 184 (T)** that a driver is precluded from relying on a sudden emergency if he was himself responsible for having caused the sudden emergency. He also referred to the matter of **Burger v Santam Insurance Company Ltd 1981(2) SA 703 (A)** and submitted that a driver in a situation of danger would reduce speed, apply brakes, swerve and hoot continuously. He submitted that on the versions of both the Plaintiff and the Defendant, the necessary degree of negligence had been established on the part of the Defendant. He furthermore made various submissions with regard to the quantum of the claim which I do not deem necessary to specify in view of the conclusion that I have reached with regard to the merits of the matter.

[19] The Defendant repeated in argument that there was nothing that he could have done to avoid the collision and that he had taken all the reasonable steps available in an attempt to avoid the collision. He denied that he was negligent in the circumstances and submitted that the version of the Plaintiff should be found not to be credible and consequently be rejected. He made no submissions with regard to the quantum of the claim.

[20] The proper approach to be adopted in a case such as the present where there are mutually conflicting versions with regard to the merits of the matter, was lucidly set out by the Supreme Court of Appeal in the matter of **Stellenbosch Farmers Winery Group Ltd & Another v Martell et cie & Others 2003(1) SA 11 (SCA) para [15].** In accordance with this approach it is necessary to assess the credibility and reliability of the relevant witnesses as well as the probabilities of the case, which I now proceed to do.

[21] Having carefully observed both the Plaintiff and the Defendant in the witness-box, there is no real criticism that could be levelled at either of them based on their demeanour in testifying. Both of them made a good impression as witnesses, although the Plaintiff's recollection of events surrounding the collision was poor.

[22] In assessing the respective versions of the parties, it is of note that the Plaintiff's evidence that the Defendant was under the influence of alcohol is effectively contradicted by both Ms Barratt and her mother, Mrs Botha. Furthermore, it is highly improbable that the Defendant would have been under the influence of alcohol without the police noticing that on the scene of the collision. In this regard, there is no reason for rejecting the Defendant's evidence that he drove his friend's vehicle that was used to transport the Plaintiff to the hospital in Somerset West. This is highly improbable if the Defendant had just shortly before that caused a collision because he was under the influence of alcohol. It is equally improbable that the Defendant

would have remained at the hospital and spent a considerable period of time in the company of both parents of the Plaintiff, without them noticing that he was intoxicated. I accordingly reject the Plaintiff's version that the Defendant was under the influence of alcohol and accept the Defendant's version that he was sober at the time of the collision.

[23] In my view, the Plaintiff's version as to how the collision had occurred should be rejected on the probabilities. In this regard, there is no reason for not accepting the Defendant's version that he was travelling within the speed limit just prior to and at the time of the collision. He had testified in this regard that he was travelling at approximately 100km per hour, which was the applicable speed limit, as he was accelerating in order to overtake and pass the Mercedes which had moved into the left hand lane. In fact, the Plaintiff herself estimated that the Defendant was travelling at approximately 110km per hour at the time of the collision. This can hardly be described as shooting down the road and does not support the Plaintiff's version that the Defendant was speeding towards the Mercedes just prior to the collision. It is highly improbable that the Defendant would have swerved to the right in order to avoid colliding with the Mercedes from behind as testified by the Plaintiff. It was not in contention that there was no other traffic in the immediate vicinity at the time when the Defendant was catching up with the Mercedes. There was accordingly no obstacle that prevented the Defendant, if there was a need to do so, from swerving to the left where the entire width of the left hand lane as well as the shoulder of the road was available in order to avoid colliding with the Mercedes from behind. The Plaintiff's version that the

Defendant had swerved to the right in order to avoid colliding with the Mercedes from behind, must accordingly be rejected on the probabilities.

[24] The Plaintiff clearly was not very observant at the time of the collision and had no recollection of some of the pertinent aspects relating to the collision. She was unable to say with any certainty where the collision had occurred. She never noticed the damaged waterpipe and the water spurting from the waterpipe. She was under the impression that the vehicle had rolled when it was evident from the photographs, exhibits C1 and 2 that there was no damage to the roof of the vehicle and that it could not have rolled in the collision. It is furthermore likely that her senses were adversely affected by the alcohol that she had consumed prior to the collision at the Plaintiff's house. All of these considerations militate against the reliability of her version of events.

[25] The Defendant's version on the other hand is supported by the probabilities. It is probable that he would have overtaken the Mercedes in the right hand lane after the Mercedes had moved over completely into the left hand lane. It is highly improbable that he would have attempted to do so if the Mercedes had remained in the right hand lane, instead of passing the Mercedes in the left hand lane. He knew the road well and was aware of the danger that was posed by the ditch on the right hand side of the road. It is highly unlikely that he would, under those circumstances, have attempted to swerve to the right in order to avoid colliding with the Mercedes Benz from behind. I accordingly find that the Defendant's version should be accepted that he proceeded to

overtake the Mercedes after it had moved completely into the left hand lane and that he was forced to brake and swerve to the right in order to avoid the Mercedes which started moving back into the right hand lane before the Defendant had completed the overtaking manoeuvre.

[26] On the accepted version, there is no room for finding that the Defendant was negligent at all. He was maintaining the speed limit (which was a safe speed in the circumstances) at all material times and was well within his rights to overtake and pass the Mercedes after it had moved completely into the left hand lane. A reasonable driver in the position of the Defendant, would have accepted that the driver of the Mercedes was aware of the approach of the Defendant's vehicle and the fact that the Defendant was about to overtake it. Under those circumstances, there was no need for the Defendant to give any warnings of his intention to overtake after the Mercedes had moved completely into the left hand lane. The Defendant had moved towards the solid white line on the right hand edge of the right hand lane when he proceeded to overtake the Mercedes, thus allowing a sufficient berth between the two vehicles. There is no reasonable basis for concluding that the Defendant should have foreseen in the circumstances that the driver of the Mercedes would have moved back into the right hand lane prior to the Defendant having completed the overtaking manoeuvre. The Defendant was accordingly confronted with a sudden emergency which was not of his making. He acted reasonably by braking and swerving to the right in order to avoid a collision between the two vehicles. This necessitated the Defendant to drive the right front wheel off the tar surface of the road. Once the collision

between the two vehicles was avoided, it was reasonable for the Defendant, given the dangers posed by the grass verge and ditch on the right hand side of the road, to move back onto the tar surface of the road. There is no suggestion that the spinning motion of the vehicle was caused by any negligence on the part of the Defendant. This clearly followed the contact of the wheels with the gravel verge of the road. There was accordingly nothing that the Defendant could have done in the circumstances to avoid the collision.

[27] In the result I find that the Plaintiff has failed to establish any causal negligence on the part of the Defendant. The claim should accordingly be dismissed. As indicated, the Defendant has conducted his own defence and it is accordingly not appropriate to make any costs order in the circumstances.

[28] For the sake of completeness and in the event of it becoming relevant, I make brief comments on the quantum of the claim. Insofar as general damages are concerned, I was referred to the matter of **Daniels v Road Accident Fund Corbett & Honey Vol. V p. C3-1** where an award of R80 000 was made in respect of general damages. The Plaintiff was a 33 year old married woman who had sustained a whiplash injury of the neck which gave rise to severe psychological disturbance which resulted in her being placed on medical retirement. According to Koch's Quantum Yearbook the present value of that award amounts to R145 000. It was submitted on the Plaintiff's behalf that an appropriate award in respect of general damages would be the amount of R150 000. In my view the present matter is distinguishable from

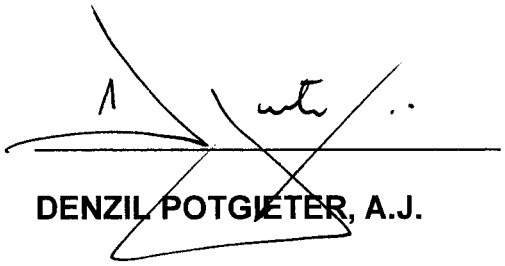
the **Daniels** matter. In the **Daniels** matter there was no pre-existing history of psychological problems that necessitated medical treatment as in the present case and in the **Daniels** matter the psychological condition resulted in eventual medical retirement. In the present matter, the Plaintiff returned to her job and basically continued in employment until she eventually resigned from her last position due to the adverse working conditions and was looking for an alternative position at the time of the trial. Bearing all of the relevant circumstances of the present matter in mind, I would have made an award of R50 000 in respect of general damages. In view of the Plaintiff's post-morbid employment history, there is no loss of earning capacity in the present matter and I would accordingly have made no award under that head. Insofar as Plaintiff's past loss of earnings is concerned she should be compensated for the 6 weeks she was recuperating after the collision at the pro rata rate of R5 500,00 per month. Insofar as the claim in respect of medical expenses is concerned, the Plaintiff conceded that some of the amounts claimed in this regard are not connected to the collision at all. As indicated above, the Defendant has not meaningfully focussed on the quantum of the claim. The claim in respect of medical expenses is based upon a schedule which was handed in as exhibit B, prepared on behalf of the Plaintiff without any supporting documentation. Plaintiff's counsel accepted that this amount should be reduced and he made an informal calculation in this regard. The Plaintiff had in fact reserved the right, as is frequently done in matters of this nature, to present an actuarial calculation once the parameters for such a calculation have been set out in the judgment. I would have required that the actuarial calculation should also include the calculation of the amount due in

respect of past and future medical expenses. In the event, this is not required.

[29] In the circumstances I make the following order :

(a) The claim is dismissed;

(b) There shall be no order as to costs.



DENZIL POTGIETER, A.J.