IN THE HIGH COURT, BISHO

CASE NO 295/98

In the matter between:

PANTINI MAY Plaintiff

and

MULTILATERAL MOTOR VEHICLE ACCIDENTS FUND First Defendant

THE ROAD ACCIDENT FUND Second Defendant

JUDGMENT

Ebrahim J:

1. On 29 January 1996 at about 08h00 the plaintiff was cycling in Main Road, Whittlesea when he was involved in a collision with a motor vehicle driven by one, E N Xelisilo. As a consequence thereof the plaintiff sustained various injuries. The plaintiff now seeks to recover damages in the amount of R165 151,48 from the first defendant in terms of the provisions of the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989, alternatively from the second defendant as the successor to the first defendant by virtue of the provisions of the Road Accident Fund Act 56 of 1996.

The evidence relating to the collision

2. The only evidence tendered by the plaintiff in regard to the circumstances of the collision is that provided by himself. His version of how the collision occurred is that he was en route home after completion of his night shift as a watchman. He

was cycling from North to South in Main Road, Whittlesea on the correct side thereof fairly close to the kerb when he came to a stationary truck from which goods were being off-loaded. He commenced an overtaking manoeuvre and emerged from behind the truck but as he drew parallel with it he was struck by an oncoming motor vehicle. He had not observed the oncoming vehicle previously but only became aware of it when it was a few metres in front of him. In view of this he was unable to take evasive action in order to avoid a collision. He says the collision occurred on his side of the unbroken white traffic line in the middle of the road and thus on the incorrect side of the road for the oncoming vehicle. He was about a metre away from the right hand side of the truck but not near the line in the middle of the road. He does not know why the oncoming vehicle had crossed this line onto its incorrect side of the road.

3. As a result of the collision the plaintiff lost consciousness and only regained same at the hospital. He sustained various injuries, including an open fracture of the tibia and fibula of the left leg, which necessitated him being hospitalised for treatment. I return to the nature and import of these injuries in due course.

4. The plaintiff admits that he was unable to see beyond the parked truck before he began to overtake it and was thus not aware of any oncoming traffic. His prime concern as a cyclist, he says, was the presence of any vehicles approaching from the rear. On his own admission the plaintiff did not keep a proper look-out when he overtook the parked truck. He says he failed to see the motor vehicle which collided with him until it was right upon him.

5. The version furnished by the defendant is that the insured vehicle, which was travelling from North to South in Main Road, Whittlesea, remained on the correct side of the road. It did not cross the line in the middle of the road nor did it collide with the plaintiff on the incorrect side of the road. The driver of the insured vehicle says that he did not see the plaintiff riding on his cycle and only became aware of his presence when he alighted from his motor car after the collision. He says that the point of impact was on his side of the road near to the intersection and virtually in line with the northern kerb of the intersecting road.

6. The first defendant has also presented the evidence of a pedestrian who was walking on the pavement on the western side of Main Road in a northerly direction. His description of how the accident occurred is that the plaintiff was riding his cycle close to the western kerb of Main Road when he executed a gradual turn towards the eastern side of the road and across the line of travel of the insured vehicle. This vehicle then collided with the plaintiff. The point of impact, according to him, was on the correct side of the road for the insured vehicle and about a metre from the western kerb of Main Road and slightly north of the intersection.

Counsel's submissions in regard to the issue of negligence

7. Mr Cole who appears for the plaintiff and Mr Theron for the first and second defendants have provided the Court with written heads of argument. These have facilitated the Court's task. They are *ad idem* that the versions provided by the plaintiff and the defendant are mutually destructive. Each is also critical of

the other's witnesses while maintaining that the quality of the evidence of their own witnesses is beyond reproach. These claims are somewhat extravagant since neither the evidence of the plaintiff, on the one hand, nor that of the driver of the insured vehicle and the pedestrian, on the other, can be said to be without blemish.

8. Counsel for the plaintiff has argued that the plaintiff was not negligent in failing to keep a proper look-out. Since he remained on his correct side of the road when overtaking the parked vehicle it could not have been expected of him to establish whether there were any oncoming vehicles travelling on his side of the road i.e. the incorrect side of the road for the oncoming motorist. The import of this argument is that there is no obligation on a user of the road, who is unable to see the road ahead, to establish that it is safe for him to proceed as long as he remains on his side of the road. This argument is not sustainable. There is manifestly a duty on every user of the road to ensure that it is safe for him to proceed and to be alive to the need to take avoiding action whenever danger presents itself.

9. The plaintiff's counsel has also argued that it is inherently improbable that the plaintiff would have turned across the road towards his right since he was on his way home to Sada township which is in a southernly direction further along Main Road. I do not agree - there may have been any of a number of reasons why he turned to his right even though he was on his way home.

10. Counsel for the defendants has made a submission of a similar nature. He says that it is inherently improbable that the driver of the insured vehicle would have veered onto the incorrect side of the road for no reason whatsoever. It is trite that it is the absence of a reason that makes such an action improbable and not the action by itself.

Analysis of the evidence

11. The plaintiff's identification of the point of impact is open to doubt. Since he was rendered unconscious as a result of the collision he was not in a position to establish where the collision had taken place. All that he is able to recall, therefore, is that as he commenced his overtaking of the stationary truck he was struck by the oncoming vehicle. In any event, he has not provided any other evidence which establishes the point of impact and has accordingly failed to discharge his onus in this regard.

12. While both the driver of the insured vehicle and the pedestrian, N Ngwane, identified the point of impact as being close to the kerb on the driver's side of the road, they differ in regard to the exact location thereof. In my view the difference is not of such a nature as to cast doubt on their assertion that the collision occurred on the driver's (or western) side of the road near the intersection, nor does it have the effect of making their versions improbable. I accept the evidence of the driver and the pedestrian in regard to the location of the point of impact. I consider it more probable that it was near to the western kerb on the driver's side of the road in close proximity to the intersection and not as

indicated by the plaintiff.

13. The driver has admitted that he did not see the plaintiff on his cycle prior to the collision. He does not deny that he failed to keep a proper look-out, nor does he dispute that he did not take any steps to avoid a collision. Since he had not seen the plaintiff he had not taken evasive action. Moreover, he accepts that had he seen the plaintiff, at the stage that the plaintiff was visible to oncoming traffic, he would have attempted to take appropriate steps to avoid a collision.

14. The evidence of the witness, N Ngwane, is significant. He had an unobstructed view of the plaintiff from the stage that the plaintiff was cycling next to the kerb on the opposite side of the road until the collision took place. It is clear from his evidence that he witnessed how the collision occurred. His evidence reveals that both the plaintiff and the insured driver were negligent.

15. The evidence of this witness has been criticised by the plaintiff's counsel. He says that in view of where this witness was walking immediately prior to the accident he was not in a position to see the collision as the insured vehicle was between him and the cyclist (the plaintiff). I do not agree with this submission. It is clear that he had an unobstructed view of the road and the collision. He was in a position to, and in fact did, observe the plaintiff from the time that he was cycling next to the kerb and then turned to proceed across the road into the path of travel of the driver of the insured vehicle. It appears to me from his description of how the collision occurred that even if there was any obstruction

of his view that it would only have been virtually at the moment of impact.

16. I accept the evidence of the pedestrian, N Ngwane, in preference to that of the plaintiff. I find him to be a credible and truthful witness. There are some blemishes in his evidence but these are not of a material nature. I regard his version of the events as the correct account of how and where the collision occurred. He impressed me both in respect of his demeanour and the tenor of his evidence. He favoured neither the plaintiff nor the driver of the motor car in describing how the collision had taken place.

17. I also accept the evidence of the witness, E N Xelisilo. He has been completely frank in regard to what transpired and has not sought to diminish the culpability of his own conduct. He admitted quite readily that he had not seen the plaintiff prior to the collision. This admission even appears in the statement that he had made to the police a short while after the accident.

18. I do not consider the version of the accident provided by the pedestrian, N Ngwane to be improbable. In fact various aspects of his version are confirmed by the evidence of the plaintiff himself. In both versions the plaintiff was initially cycling next to the kerb on his side of the road. They both state that at a certain stage the plaintiff turned to his right. While the plaintiff says this was for the purpose of overtaking a parked truck the witness says that the plaintiff proceeded across the road to the opposite side. In both versions, too, the collision occurred during the course of this manoeuvre. Even though they differ

substantially in regard to where the collision occurred both versions confirm the fact that the front of the car collided with the cycle.

19. The plaintiff fared poorly under cross-examination. He became agitated at questions he considered to be unnecessary and on occasions responded by being argumentative. A number of his replies were evasive and in certain instances he refused to reply to questions put to him by defendants' counsel. I do not find the plaintiff's version of how and where the collision occurred to be convincing and I do not accept same.

20. Counsel for the plaintiff has made the submission that whichever version of the accident the Court accepts, there is no negligence attributable to the plaintiff. He contends that the plaintiff's actions, measured against that of the reasonable man, do not amount to negligence.

21. Counsel for the defendants, on the other hand, has conceded that the driver of the insured vehicle was negligent but he contends that this applies equally to the plaintiff. He says that both of them failed to keep a proper look-out and, in addition, that the plaintiff crossed onto the incorrect side of the road.

22. I cannot agree with the submission made by plaintiff's counsel that neither of the versions reveal that the plaintiff was negligent. I am in agreement with the submission made by defendant's counsel that there was contributory negligence on the part of the plaintiff. It is clear from the version of the witness, N Ngwane,

that the plaintiff was negligent when he turned across the road into the face of the oncoming vehicle driven by the insured. In assessing the degree of negligence of the plaintiff and the driver of the insured vehicle I find that they were equally negligent. Accordingly the proved damages of the plaintiff fall to be reduced by 50%.

The medical evidence relating to the plaintiff's injuries

23. The plaintiff, in substantiation of his claim for damages, has tendered the evidence of certain experts, These witnesses are Marion Joan Lamont Butler, a physiotherapist, Wilma Pretorius, an occupational therapist, and Dr Basil L Mackenzie, who has practised as a specialist orthopaedic surgeon since 1976 in the field of orthopaedic injuries caused in motor vehicle accidents. There is no challenge to their status as experts.

24. The evidence of the witnesses M J L Butler and W Pretorius relates to the separate interviews and examinations which each conducted on 10 November 1998 and 24 September 1998 respectively. The reports they compiled were tendered in evidence as Exhibits "3" and "4". They confirm that on the dates of their respective interviews the open fracture of the plaintiff's left leg had not united. Further, it seems unlikely that the plaintiff would be able to resume his former employment once he had recovered from these injuries. Their opinions and conclusions were not questioned by the defendants save for the plaintiff's claim that the pain he was experiencing in his right knee was also attributable to the accident since he had not mentioned this at all to the

doctor who first examined him.

25. The evidence of Dr Mackenzie is that the doctor who examined the plaintiff upon his admission to Hewu Hospital, Whittlesea, and treated him thereafter, had not mis-diagnosed the injuries. He did not consider the doctor to have been negligent in failing to ascertain that the bones had not united. The indications were that the bones had united and the doctor had not been negligent in not having x-rays taken to establish whether this was indeed so. He also could not fault the treatment that was administered. In his view, the doctor had acted reasonably and there was no indication of negligence on his part nor that of the other members of the medical staff who were responsible for the treatment of the plaintiff's injuries. In his experience in as many as twenty per cent (20%) of cases of this nature non-union of the bones is not diagnosed even though the patient is receiving the best possible medical treatment.

Can the defendants be held liable for all the damages suffered by the plaintiff?

26. The fact that the plaintiff suffered damages is not disputed by the defendants. However, they dispute liability for all the damages which the plaintiff claims in respect of the injuries sustained by him in the collision. Counsel for the defendants has argued that not all the harm that the plaintiff has suffered as a result of the '*open fractures of his left tibia and fibula*' is sufficiently closely or directly linked to the negligence of the driver so that it gives rise to legal liability on the part of the defendants. In this regard Mr Theron has directed my attention to the relevant portions of the judgments in the leading decisions on

the issue of causation.

27. In *Minister of Police v Skosana* 1977 (1) SA 31 (AD) at 34E-H and 35A Corbett JA (as he then was) set out the position as follows:

'Causation in the law of delict gives rise to two rather distinct problems. The first is a factual one and relates to the question as to whether the negligent act or omission in question caused or materially contributed to (see *Silva's Fishing Corporation (Pty.) Ltd. v. Maweza, 1957 (2) S.A. 256 (A.D.) at p. 264; Kakamas Bestuursraad v. Louw*, 1960 (2) (S.A. 202 (A.D.) at p. 222) the harm giving rise to the claim. If it did not, then no legal liability can arise and *cadit quaestio.* If it did, then the second problem becomes relevant, viz. whether the negligent act or omission is linked to the harm sufficiently closely or directly for legal liability to ensue or whether, as it is said, the harm is too remote. This is basically a juridical problem in which considerations of legal policy may play a part. The distinction between these two enquiries is well explained by Prof. Flemming, *The Law of Torts*, 4th ed., p. 169, as follows:

"*The first involves what may broadly be called the 'factual' question whether the relation between the defendant's breach of duty and the plaintiff's injury is one of cause and effect in accordance with 'scientific' or 'objective' notions of physical sequence. If such a causal relation does not exist, that puts an end to the plaintiff's case, because no policy can be strong enough to warrant the imposition of liability for loss to which the defendant's conduct has not in fact contributed.*

The second problem involves the question whether, or to what extent, the defendant should have to answer for the consequences which his conduct has actually helped to produce. There must be a reasonable connection between the harm threatened and the harm done. As a matter of practical politics, some limitation must be placed upon legal responsibility, because the consequences of an act theoretically stretch into infinity. The task is to select those factors which are of sufficient significance to justify the imposition of liability and to draw a boundary along the line of consequences beyond which the injured party must either shoulder the loss himself or seek reparation from another source." '

28. This position was restated by Corbett CJ in *International Shipping Company (Pty) Ltd v Bentley* 1990 (1) SA 680 (AD) at 700E-I, in the following terms:

'As has previously been pointed out by this Court, in the law of delict causation involves two distinct enquiries. The first is a factual one and relates to the question as to whether the defendant's wrongful act was a cause of the plaintiff's loss. This has been referred to as 'factual causation'. The enquiry as to factual causation is generally conducted by applying the so-called 'but-for' test, which is designed to determine whether a postulated cause can be identified as a *causa sine qua non* of the loss in question. In order to apply this test one must make a hypothetical enquiry as to what probably would have happened but for the wrongful conduct of the defendant. This enquiry may involve the mental elimination of the wrongful conduct and the substitution of a hypothetical course of lawful conduct and the posing of the question as to whether upon such an hypothesis plaintiff's loss would have ensued or not. If it would in any event have ensued, then the wrongful conduct was not a cause of the plaintiff's loss; *aliter*, if

it would not so have ensued. If the wrongful act is shown in this way not to be a *causa sine qua non* of the loss suffered, then no legal liability can arise. On the other hand, demonstration that the wrongful act was a *causa sine qua non* of the loss does not necessarily result in legal liability. The second enquiry then arises, viz whether the wrongful act is linked sufficiently closely or directly to the loss for legal liability to ensue or whether, as it is said, the loss is too remote. This is basically a juridical problem in the solution of which considerations of policy may play a part. This is sometimes called 'legal causation'.'

29. The first defendant accepts that the plaintiff has proved a causal link between the collision and the injuries he sustained. Subject to the Court's finding in respect of contributory negligence on the part of the plaintiff, the defendants do not dispute that the negligence of the insured driver caused these injuries. However, the first defendant repudiates liability for all the harm that the plaintiff has suffered as a result of the injuries, specifically the portion of the plaintiff's claim which relates to damages occasioned as a result of the non-union of the bones in his left leg. It has been submitted that if the further operation, which Doctor Basil L MacKenzie recommends, had been carried out at the time when it became apparent that there was non-union of the bones, the additional damages would have been averted. For this reason, so counsel argues, it cannot be said that the first defendant is the cause of such further damage.

30. Counsel for the defendants contends that the evidence of Dr Mackenzie is supportive of the view that there was a mis-diagnosis and a failure to carry out the necessary corrective operation timeously. I do not interpret his evidence in the same way. It is clear from his evidence that he does not conclude that there has been any mis-diagnosis or negligence on the part of the doctor.

31. On the evidence before me there is no basis for a finding that the doctor was either negligent or had failed to act timeously in his treatment of the plaintiff's injuries. The same applies to the other members of the medical staff. There is manifestly no doubt therefore that but for the collision in which he was involved on 29 January 1996 the plaintiff would not have been in his present condition. This applies both to his actual injuries and the further operation he has to undergo to ensure that there is proper union of the tibia in his left leg. It is the collision which is the *causa sine qua non* of the further loss suffered by the plaintiff and not any conduct or omission on the part of the doctor who treated him nor that of any of the other medical staff. I accordingly find that the collision is causally related and directly linked to all the damages claimed by the plaintiff and that the defendants may be held liable therefor.

THE QUANTUM

32. I turn to consider the quantum of the plaintiff's loss. It is common cause that the plaintiff has failed to prove his claim for R50,00 for past hospital expenses. This amount is thus disallowed. It is also common cause that the plaintiff's future medical expenses will amount to R23 380,00. The evidence of Dr B Mackenzie is that medical tariffs have increased by 12% and the cost of future medical treatment has to be increased accordingly. The plaintiff now applies for the amount to be amended to R26 185,60 to accommodate this increase. The defendants have not objected thereto. The amendment is granted and the plaintiff has proved that his future medical expenses will amount to R26 185,60. Dr Mackenzie has indicated that the plaintiff will require analgesics and

anti-inflammatory medication for the treatment of his right knee and the costs thereof will be R1 350,00 plus 12%. The defendants dispute liability for this on the basis that the plaintiff's evidence regarding the injury to his knee is too vague. Dr Mackenzie has indicated in his report that the knee is '*marked osteoarhritic*' but the condition is not causally related to the accident. He assumes that the knee may have been jarred in the accident resulting in it becoming symptomatic three years sooner than might otherwise have been the case. He says further that the accident has not significantly altered the anticipated natural history of the pre-existing osteoarthritis of the knee. In any event the plaintiff's counsel has not asked that this amount be incorporated in the claim for future medical expenses. Accordingly, the amount of R1 1350, has not been proved.

Past loss of earnings

33. The defendants have agreed, subject to proof thereof, that the plaintiff's past loss of earnings amount to R3 609,00. The defendants contend that, since the plaintiff admitted receiving certain amounts from his employer after the accident, he has not proved such loss. It is so that the plaintiff stated that his employer paid some amounts to him when he was hospitalised. However, the evidence does not indicate that this was his salary. It seems to me that this was more in the form of *ex gratia* payments intended to assist him while he was not receiving a salary. I am satisfied that the plaintiff has proved the quantum of his past loss of earnings in the amount of R3 609,00.

Estimated future loss of earnings

34. The defendants have also agreed that the plaintiff's future loss of earnings subject to proof thereof, will amount to R47 178,75. The defendants' denial of liability for the plaintiff's future loss of earnings is directly related to the issue of causation. As I have indicated the defendants' contend that this loss is directly attributable to the plaintiff's failure to undergo the proposed remedial operation timeously and is not causally linked to the actions of the driver. In view of the conclusion that I have reached earlier in respect of this aspect it follows that the defendants are liable for the plaintiff's future loss of earnings. I find, therefore, that the plaintiff has proved that his loss in this regard amounts to R47 178,75.

General damages

35. Counsel for the plaintiff has referred me to two cases in support of the plaintiff's claim for R40 000,00 as general damages. The first is that of *Ncunyana v President Insurance Co Ltd* which is cited in the publication by Corbett and Honey, The Quantum of Damages in Bodily and Fatal Injury Cases, Vol 14 at E3-7. The amount awarded by the Court for general damages in 1993 was R18 000,00. The plaintiff, a 42 year old man, had sustained a comminuted fracture of the femur which had not united after 3 months. He had to undergo a further operation to remedy this and was hospitalised for 6 months. When the amount of R18 000,00 is updated so that it corresponds to present day values it translates into R29 000,00. The second case is that of *Charlie v President Insurance Co Ltd* which is cited in the same publication at E5-4. There the plaintiff's injury was a comminuted fracture of the tibia with severe fragmentation and displacement and resultant angulation. Four procedures were undertaken

under general anaesthetic. He was hospitalised for 6 weeks and remained on crutches for 12 months with the leg being in plaster for about 6 months. The fracture healed with angulation of 10 to 15 degrees, a shortening of the tibia by 2 cm and reduced muscle power. His walking capacity and walking distance was reduced and due to his mobility being compromised he had to use a walking stick. As a result of this he was unable to continue his job as a mechanic or to do heavy manual labour or any work requiring an excessive amount of walking or standing. The award for general damages, also made in 1993, was similarly R18 000,00.

36. Counsel for the defendants has also referred to the case of *Charlie (supra)* as well as to the case of *Gqangeni v Ciskei Motor Vehicle Accident Fund* which is cited in Corbett and Honey at E5-1. In this matter the plaintiff had sustained a grossly comminuted fraction of the tibia and fibula and was hospitalised for 14 days. He was discharged with his leg in a plaster cast and after 2½ months it was replaced with a smaller one which was removed after a month. He experienced severe pain for the first 24 hours and discomfort for 6 months. The amount awarded in 1991 was R10 000,00.

37. I have taken due note of these awards for the purpose of determining an appropriate amount in respect of plaintiff's general damages. The plaintiff testified that he was born in 1940 and is presently 58 years old. However, his identity document reflects that he was born on 18 June 1942 and consequently he is presently 56 years old. There is limited information before me, but it

appears that apart from a previous knee injury he was in relative good health at the time of the accident. He also seems to have been fairly fit. Apart from cycling to and from work he was also expected to cycle, presumably at a fast pace, to the police station to alert the police if he encountered intruders at the premises being guarded by him.

38. According to Dr Mackenzie the injury caused him to suffer very severe pain that persisted at that level of intensity for about 10 days. He had to wear a full length plaster cast for about 4 months resulting in his suffering being protracted. This reduced his ability to manage the activities of daily living. Initially he had to use two crutches to be able to move around and continued to do so for a few months due to non-union of the tibia. Dr Mackenzie expects him to suffer one further episode of severe pain when he undergoes the proposed open reduction, stabilisation and bone grafting of his ununited left tibia. He expects that severe pain will persist for about 10 days and his left leg will be immobilised in a plaster cast for about 8 weeks during which period he will have difficulty managing the activities of daily life. Since the accident he cannot cycle due to the non-union of the tibia. He still requires a crutch to assist him in walking and has difficulty in standing for long periods as he experiences pain in the injured leg. He will remain dependant on a crutch until there is solid union of his tibia. His left leg is now 20 mm shorter than the right leg and the girth of his thigh and calf has diminished. He walks with a limp and there is a scar on his left knee and calf.

39. Dr Mackenzie says, in conclusion that `*effectively the* sequelae *of his accident*

have resulted in about seven years truncation of his working life span as a night watchman' since he clearly cannot perform his functions as a night watchman. The period of 7 years is based on him retiring at 65 years of age. However, since the plaintiff is actually 2 years younger his working life span is being reduced by 9 years and not 7 years.

40. The evidence of Ms Wilma Pretorius, the occupational therapist, substantiates the opinions of Dr Mackenzie. She indicates further that '*(i)t is unlikely that Mr May would benefit from rehabilitative intervention from an Occupational Therapist. Physiotherapy may be of some assistance in the management of his back and knee pain.*'

41. It has not been suggested by defendants' counsel that the injury suffered by the plaintiff is not severe, nor have the opinions of Dr Mackenzie and Ms W Pretorius been seriously challenged in regard to the prognosis for the plaintiff's injuries.

42. After weighing up all the relevant factors I am of the view that a reasonable amount for the general damages suffered by the plaintiff is the sum of R25 000,00. The plaintiff's damages are accordingly assessed as follows:

Past and future loss of earnings	R 50 868,75
Future medical expenses	R 26 185,60
General damages	R 25 000,00
TOTAL	R102 054,35

The aforesaid damages are reduced by 50% in terms of the provisions of the

Apportionment of Damages Act 34 of 1956 on the basis of my finding, as stated earlier, that the degree of contributory negligence on the part of the plaintiff is 50%.

43. In regard to the question of costs, it is submitted by the defendants' counsel that if the damages awarded are less than R100 000,00 that costs should only be allowed on the Magistrate's Courts scale; alternatively that there be an apportionment of the costs in line with the Court's finding on my question of negligence. Plaintiff's counsel on the other hand, asks that costs be awarded on the scale of costs for the High Court and that there not be any apportionment.

44. In my view a Court should be slow to order an apportionment in respect of costs save in those circumstances where it would result in an injustice to a party not to do so. The defendants were aware that the driver of the vehicle had admitted in his statement to the police that he had not seen the cyclist prior to the collision. Armed with this knowledge it is not unreasonable to expect that they would have effected a payment into court on the basis of there having been contributory negligence on the part of the driver. They chose not to do so. The plaintiff's expectation of receiving an award for damages in excess of R100 000,00 was, in my view, not unrealistic. I see no reason therefore to deprive the plaintiff of an order for costs in his favour.

45. In the result judgment is granted in favour of the plaintiff as follows:

1. Payment of the sum of R51 027,18.
2. Interest on the said amount at the legally prescribed rate from a date 14 days after this judgment to date of payment.
3. Cost of suit, together with interest at the legally prescribed rate from a date 14 days after taxation to date of payment, which costs are to include the qualifying expenses of Dr B L MacKenzie, M J L Butler and W Pretorius.

DATED at BISHO this 28th DAY of MAY 1999.

Y EBRAHIM
JUDGE OF THE HIGH COURT, BISHO

Counsel for the Plaintiff	:	S H Cole
Attorney for the Plaintiff	:	Poswa Mpambaniso Incorporated
Counsel for the Defendants	:	A Theron
Attorneys for the Defendants	:	Squire Smith and Laurie
Dates of hearing	:	3, 4, 5 and 7 May 1999
Date of judgment	:	28 May 1999