

IN THE HIGH COURT OF SOUTH AFRICA
BOPHUTHATSWANA PROVINCIAL DIVISION

CASE NO: 120/2006

In the matter between:

ONALENNA WILLEM PELO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

**FOR THE PLAINTIFF
ZWIEGELAAR**

: ADV C

FOR THE DEFENDANT

: MR P SMITH

**DATE OF HEARING
2007**

: 12 NOVEMBER

DATE OF JUDGMENT

: 22 NOVEMBER 2007

JUDGMENT

LANDMAN J:

[1] Onalenna Willem Pelo, the plaintiff, instituted action against the Road Accident Fund in terms of the Road Accident Fund Act 56 of 1996, for injuries sustained when he, a pedestrian, was knocked down by a motor vehicle on 23 January 2003. The plaintiff claims:

Past medical expenses:	R 3 593.00
Future medical expenses:	R 60 000.00
Past loss of earning:	R 3 423.40
Future loss of earnings	R 79 350.00
<u>General damages:</u>	<u>R100 000.00</u>
<u>Total:</u>	<u>R246 366.40</u>

[2] The parties are in agreement that:

- (a) I award R3 593.00 for past medical expenses;
- (b) I record an undertaking as envisaged in section 17(4) (a) of Act 56 of 1996, limited to 80%, in respect of the costs of future treatment of or rendering of a service or supplying of goods to the plaintiff to compensate the plaintiff in respect of the said costs after the costs have been incurred and on tendering of proof thereof, in consequence of the injuries sustained by the plaintiff in an

accident which occurred on 23 February 2003
(plaintiff will attend a clinic for pain medication);

(c) I award R3 423.00 for past lost of earnings; and
that

(d) I make no award for future loss earnings.

[3] The only issue in dispute is what is fair and reasonable compensation for the plaintiff's pain and suffering, loss of amenities of life and disfigurement caused by the injuries sustained in the motor vehicle accident.

[4] The parties have agreed that the expert report of Dr D I Barnes, orthopaedic surgeon, dated 20 August 2007, be admitted as evidence.

[5] The plaintiff also gave evidence. I will not record any evidence which is also contained in the specialist's report.

[6] The plaintiff was born on 3 August 1973. He is currently 34 years old. He said his mouth is sore. This he said is caused by the scars on his upper lip as well as a 10mm scar below his lip. He is self conscious about the scars. Previously he was clean shaven. But now he wears a moustache and a small beard because it is too painful to shave. The pain also occurs in bad

weather.

- [7] His left leg was fractured. A broad blemish is discernable on that leg just above the ankle. He has pain in the leg when he walks long distances. He walked the width of the courtroom. He has a slight limp. He is unable to run because it is too painful. He used to play soccer but can no longer do so. He also experiences pain when it is cold. He describes the pain as shooting pains. He used to wear shorts. But he is troubled by the blemish on his leg and now only wears long trousers.
- [8] He can no longer ride a bicycle for a long period. He worked at the Vryburg Abattoir before the collision. He returned to his employer after the collision. His employer, on the advice of the plaintiff's medical practitioner, accommodated him by assigning him to weigh hides. He is obliged to place 10 hides on the scale and then load them, one by one on a bakkie. He is unable to lift heavy loads. His salary amounts to R1 350.00 per month. It is better than what he earned before the collision but the management of the Abattoir has changed and so has pay scales. It is not possible for him to say whether he is better or worse off now compared to his remuneration before the collision.

[9] He wears Wellington boots at the abattoir. He uses one size bigger than his normal shoes as his left foot swells. He cannot wear dress shoes for long periods as his ankle swells up. He does not wear a built-up shoe. He says that he experiences the same degree of pain as at the time of the collision. He was, he says, unconscious for 15 days. It appears that he may mean he was disorientated. It would seem that the pain he experiences is not of the same intensity as immediately after the collision.

[10] The plaintiff is not married but is in a long term relationship with a woman. They have 2 boys aged 6 and 9. The eldest is at school. The youngest is in crèche. He has had no physiotherapy.

[11] Dr Barnes reports that the plaintiff was admitted to the Vryburg Provincial Hospital with a fracture of the left tibia and fibula and a laceration of the lower lip.

[12] He was admitted to the Orthopaedic Ward. A backslab splint was applied to the fractured left leg. The lacerated left lip was sutured. Four days later he was transferred to the Tshepong Hospital in Klerksdorp. A closed reduction of the fractured left tibia and fibula

was performed. An above the knee plaster cast was applied. He was followed-up at the Vryburg Hospital over the next three months. The cast was removed on 6 June 2003.

[13] The plaintiff has been employed as a general labourer at the Vryburg Abattoir since 2002. He took sick leave for four months following the date of injury. He returned to work at the Vryburg Abattoir.

[14] The plaintiff lives in Vryburg. He walks to work five days per week. The plaintiff testified that sometimes he is given a lift home after an exceptionally long day.

[15] Dr Barnes examined the plaintiff on 1 August 2007. He noted that the plaintiff:

- “(a) Walks well over a distance of about 30 metres with a slight limp due to pain experienced in the left leg and shortening measuring about 6mm. Patient does not use a walking aid.
- (b) The left tibia appears short by 6mm. The overall alignment and rotation of both lower limbs is satisfactory. Active movement of both hip joints demonstrates full active motion in flexion, abduction, internal and external rotation. Flexion of both knee joints is from 0° - 130° degrees each.”
- (c) The overall alignment and rotation of the left tibia and fibula appears satisfactory. There is a scar measuring 2cm in length over the lateral aspect of the left lower leg associated with the injury sustained

on the 23 January 2003. This laceration has healed with a moderate cosmetic blemish only. Stress testing of the left tibia does produce pain at the fracture site. Active movement of the left ankle joint and toes demonstrates normal dorsi and plantar flexion of the left foot. This patient is able to stand independently on the left leg.

- (d) Both the initial injury and the subsequent four months would have proved painful. Fortunately the bone union of the left tibia is solid and there is minimal shortening of the left tibia of 6mm. There is less than 10% chance that any future surgery will be required for injuries sustained in this accident. The vascular supply and drainage of the left leg appears satisfactory.
- (e) Mr O W Pelo has temporary functional impairment of his left leg which should resolve following appropriate conservative treatment over the next six months or so. He should then be able to resume his full domestic and work activities and responsibilities."

[16] Dr Barnes concludes:

"I believe that Mr O W Pelo will enjoy a full life expectancy with relation to injuries sustained in this accident. He will also be able to work until the normal retirement age of 65 years."

[17] The radiologist, Dr A Alagem, reported as follows:

"LEFT TIBIA/FIBULA

Previous fractures of the distal tibial and fibular shafts are present.

Bony union is solid.

There is bony remodelling present.
Mild posterior alignment of the distal tibia in relation to the fracture site and mild anterior alignment of the distal fibula with respect to the fracture site.

Visualised knee and ankle joint are intact.”

[18] The plaintiff

- (a) was unconscious;
- (b) experienced severe pain;
- (c) still experiences pain and discomfort in cold weather;
- (d) has young children but cannot run nor cycle for long;
- (e) resumed employment. His job prospects are undisturbed;
- (f) will enjoy full life expectancy; and
- (g) will have scars which are slight but unacceptable to him and which causes him to cover them up; and
- (h) walks with a slight limp.

[19] Mrs Zwiagelaar, who appeared for the plaintiff, referred me to a number of decisions regarding facial injuries. The plaintiff in **Demosthenous v Poulos** vol 4 C&B G3-1 (O) was assaulted. His upper denture was broken. He had slight lacerations to the upper palate.

Four teeth had to be extracted. He was awarded R14 000 (2006 value). I was also referred to **Van der Westhuizen v Minister van Polisie en 'n Andere** 3 C&B 33 (C). The headnote reads:

“As the result of an assault by a policeman a householder had sustained a black eye, an injury to the medial aspect of the thigh muscle caused by a kick, and facial scrapes and cuts. Also a tooth with a gold filling had been smashed and the lip above it bruised. The pain would have lasted about a week. Apart from additional awards for unlawful arrest and detention, he was awarded a lump sum award of R500 for shock, pain and suffering together with the *contumelia* which latter was aggravated by the fact that the assault had taken place in the presence of a number of his friends.”

R500 was awarded to the plaintiff which amount to R7 900 in 2006. This was a case of assault and the award included damages for *contumelia*.

[20] The awards in these cases show (at present Rand value), that damages range between R7 900 and R14 000. However, I am mindful of the observations in **Road Accident Fund v Marunga** 2003 (5) SA 164 (SCA) that:

“ awards made in earlier cases are interesting but they serve no more than to give some indication of what sort of

awards were considered appropriate on the facts of the particular case. I consider that when having regard to previous awards one must recognise that there is a tendency for awards now to be higher than they were in the past. I believe this to be a natural reflection of the changes in society, the recognition of greater individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significantly lower than those in most other countries.”

[21] I believe that a range of R10 000 to R18 000 would be more in keeping with just present day circumstances. This is, of course, a general guide which must give way to any special circumstances.

[22] Mrs Zwiegelaar submitted that I should award R10 000 to the plaintiff. Mr Smith, who appeared for the defendant, suggested R5 000. I think that an award of R10 000 would be fair.

[23] As regard the leg injury I was (referred to the following cases, **Gqangeni v Ciskei Vehicle Accident Fund**, 4 C&B E5-1 (Ck); **Adendorff v Shield Insurance Company Limited** 3 C&B 55 (C); **Pasquallie v Shield Insurance Company Limited** 3 C&B 57 (C); **Scheepers NO v Shield Insurance Company Limited** 3 C&B 134 (C); **Walter & Walter v A A**

Insurance Association Limited, 6 June 1986, Eastern Cape Provincial Division and **Chikanda v Makumba** 4 C&B E4-1 (Z).

[24] These decisions show that at 2006's rates the awards for this type of injury range between R32 000 and R56 000. I leave out of account **Yende v General Accident Versekeringsmaatskappy SA Bpk** 1994 (4) C&B E5-21 (T) (and similar cases) which deals with a set of facts which are much more serious than those relating to the plaintiff in this matter. The facts in the matter before compares more closely with these in **Gqanyeni v Ciskei Motor Vehicle Accident Fund**, (*supra*) where R32 000 in today's rates was awarded. The headnote reads:

"Synopsis of injuries and after-effects:
Leg. Grossly communicated fracture of tibia and fibula. Hospitalised for 14 days. Discharged in a plaster cast which was worn initially for more than 2½ months and then replaced by a smaller cast which remained in position for another month. Discomfort for 6 months. Severe pain for first 24 hours whereafter it settled rapidly, but acute pain again experienced during procedure when first plaster cast removed. Prognosis good for eventual painfree leg but pain still experienced at time of trial in bad weather or when leg used to excess, for which painkillers still had to be taken. Plaintiff able to walk without limp but limping while running."

[25] Again I am of the view that R32 000 is probably too low for conditions prevailing today. Damages of R40 000 would be more appropriate. I would award the plaintiff damages in the amount of R40 000.

[26] In summary I would award the plaintiff general damages in the amount of R50 000. This must, by agreement, be reduced by 20%.

[27] Mr Smith submitted that the quantum of the plaintiff's claim for damages will not exceed R100 000.00 and because the issues in this matter are not so involved as to warrant this action being instituted in the High Court costs should be awarded on the Magistrates Court scale as between party and party.

[28] In the premises I make the following order:

1. The defendant shall pay the plaintiff:
 - (a) R3 593.00 for past medical expenses;
 - (b) R3 423.00 for past loss of earnings;
 - (c) R40 000 for general damages.
2. The defendant's undertaking is as follows:

As envisaged in Section 17(4) (a) of Act 56 of 1996, limited to 80% in respect of the costs of future treatment of or rendering of a service or supplying of goods to the plaintiff to compensate the plaintiff in respect of the said costs after the costs have been incurred and on tendering of proof thereof, in consequence of the injuries sustained by the plaintiff in an accident which occurred on 23 February 2003. The plaintiff will obtain his medication for pain from a clinic.

3. The defendant shall pay the plaintiff's costs on the Magistrates Court scale.

A A LANDMAN
JUDGE OF THE HIGH COURT

ATTORNEYS:

FOR THE PLAINTIFF : G J MAREE

FOR THE DEFENDANT : BOTHA COETZER & SMITH

