

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

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
DATE <u>26/4/10</u>	SIGNATURE <u>[Signature]</u>

Case number 6621A/2009

26/4/2010

In the matter between:

CAROLYN MARGARET GREEN

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

BOTHA J:

This is a so-called third party matter in which only the quantum of the plaintiff's claim is in dispute.

By agreement no evidence was presented. The court was referred to the plaintiff's bundle of expert reports. The parties were in agreement that the contents of the reports could be accepted as correct.

The plaintiff was involved in a motor vehicle collision on 31 March 2008. She was the driver of her own vehicle. At present she is 50 years old. She is employed as a portfolio manager by a property company. Her expected retirement age is 65.

The plaintiff sustained a soft tissue injury of the neck (whiplash) and a soft tissue back injury. She received medication and physiotherapy. According to Dr Birrell, an orthopedic surgeon, there is a 3% to 4% chance that she will have to undergo cervical surgery. He assessed her loss of work capacity at 2% to 3%.

Dr du Plessis, a neuro-surgeon confirmed Dr Birrell's findings. He assessed her loss of work capacity at 3%. He did not foresee any early retirement.

Mr Kobus Truter, a clinical psychologist, stated that the plaintiff suffered from depression, partly caused by the collision and anxiety disorder, entirely caused by the collision. She did not want to drive a motor car outside Pretoria and she was now suffering from headaches.

Dr Shevell, a psychiatrist, confirmed the plaintiff's psychological symptoms. According to him she will require therapy and an increased dosage of medication.

Tracy Brown, an occupational therapist, found that the plaintiff's physical and psychological tolerance had been reduced. Her concentration levels are reduced and she is suffering from fatigue. She has problems with extended sitting.

Linda Krause, an industrial psychologist, had an interview with the plaintiff's employer. He informed her that the plaintiff had lost her innovation and ability to identify and manage problems. He had earmarked her for promotion to a more senior post, but had to abandon the idea.

On the income figures supplied by Linda Krause the plaintiff's actuary, Mr Whittaker, has calculated her future income without injury as R 2 634 546,00. After deduction of a 15% contingency factor it amounted to R 2 249 364,00. He assumed that her income with her injury would be the same, but from it he deducted a contingency factor of 35%, giving a future income of R 1 712 455,00. The nett loss is R 526 909,00, the difference between the amounts of R 2 239 364,00 and R 1 712 455,00.

The plaintiff annexed documentation in support of her claim for past medical expenses. It amounts to R 7 847,40.

Ms Lingenfelder, who appeared for the plaintiff argued that the court should make an award in respect of general damages in an amount between R 120 000,00 and R 150 000,00. She referred to the awards in two cases reported in volume V of **Corbett and Honey : Daniels v Road Accident Fund C 3-1** where R 80 000,00 was awarded for a whiplash injury in 2000, and **Jacobs v Road Accident Fund C3-131** where R 80 000,00 was awarded for a similar injury in 2003. She adjusted the awards to their present day values according to the tables in **Koch's Quantum Yearbook 2010** to R 147 000,00 and R 120 000,00 respectively.

In respect of future medical expenses Mr Ledwaba, who appeared for the defendant, accepted that the defendant should be ordered to furnish an undertaking as formulated in a draft submitted by Ms Lingenfelder.

In respect of general damages I find the cases of **Daniels and Jacobs supra** instructive. In my view, however, the injuries and their *sequelae* in those two cases were somewhat more serious than in this case. Bearing that in mind, I am of the view that an amount of R 100 000,00 would be a fair award in respect of general damages.

No reason was advanced why the amount claimed in respect of past medical expenses should not be awarded. In respect of future medical expenses, Mr Ledwaba, who appeared for the defendant, accepted that the defendant should be ordered to furnish an undertaking as formulated in a draft submitted by Ms Lingenfelder.

In respect of the future loss of earnings I find it impossible to consider making an award in the form of a lump sum. I would simply not know where to begin. The plaintiff's loss in this respect is not inconsiderable, even though the evidence is that she will be able to continue doing her work until her normal age of retirement. It is, however, clear that her work is not of the quality that it used to be and that she will have to forgo the prospect of advancement. I find the approach in the actuarial report useful and rational. I would, however apply a differential contingency of 15% (the same as in the

case of **Jacobs supra**). On that basis the future loss of earnings amounts to R 395 181,90.

The total amount to be awarded to the plaintiff is R 503 029,30, being the total of the amounts of R 7 847,40, R 100 000,00, and R 395 181,90.

The plaintiff is obviously entitled to her costs, which costs should include the qualifying fees of her expert witnesses.

The order that I make largely follows the wording of the draft submitted by Ms Lingenfelder. It is as follows:

1. The defendant must pay the plaintiff an amount of R 503 029,30 as damages, which amount is to be paid on or before the 28th May 2010.
2. The amount of R 503 029,30 will not bear interest before the 28th May 2010. Thereafter, if not paid in due time, it will bear interest at the rate of 15,5% per annum until date of payment.
3. The defendant will furnish the plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996 in respect of future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to her resulting from the motor vehicle collision on 31 March 2008 to compensate the plaintiff in respect of the costs of such

accommodation, services or goods after the costs have been incurred and upon proof thereof.

4. The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale up to and including the 26th April 2010 provided that:

4.1 if the costs are not agreed:

4.1.1 the plaintiff shall serve a notice of taxation on the defendant's attorney of record;

4.1.2 the plaintiff shall allow the defendant seven court days from the day of the *allocatur* to make payment;

4.1.3 should payment not be effected on time, the plaintiff will be entitled to recover interest at the rate of 15,5% per annum on the the taxed or agreed costs from the date of the *allocatur* until the date of payment.

4.2 Such costs shall include:

4.2.1 the costs incurred in obtaining payment of the amount of R 503 029.30;

4.2.2 the costs of counsel;

4.2.3 the qualifying fees of Dr Birrell, Dr du Plessis, Dr Shevell, Mr K Truter, Ms T Brown, Ms L Krause, and Mr Whittaker; and

4.2.4 the reasonable costs of plaintiff in attending medico-legal examinations in such amounts as allowed by the taxing master.

5. Any amounts payable to the plaintiff in terms of this order shall be paid to the plaintiff's attorneys, Adams & Adams, by direct transfer into their trust account, the particulars of which are:

Bank: Nedbank, Pretoria

Branch Code: 1604 4500

Account number: 1604 318 902

Reference: GWW/ren/S314/08



C BOTHA

JUDGE OF THE HIGH COURT