

Case number: 29013/2009
Date heard: 12 August 2010
Date of judgment: ~~23 September 2010~~

13/10/2010

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

In the matter between:

SPINOLA, L

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

Hiemstra AJ

- [1] The plaintiff was a front seat passenger in a motor vehicle that was hit on its left side by the insured vehicle at an intersection in Pretoria. She sustained certain injuries as described more fully below. This judgment concerns only the quantum of the damages that she has suffered in the collision.

[2] The plaintiff's injuries were the following:

1. Chest injury

An undisplaced fracture of the body of her sternum

2. Facial injuries

A puncture wound to the inner aspect of her lower lip on the left and an abrasion on the left side of her chin.

3. Blunt abdominal injury

Bruises over her right hypochondrium.

4. Left hand injury

Bennett's fracture to the base of the first metacarpal bone on the left and fracture to the base of the proximal phalanx of her thumb.

5. Neck injury

She became aware of neck pain after she was discharged from hospital.

6. Post traumatic stress disorder

She becomes very anxious when driving, especially in the dark. She develops a tremor and severe headache when she enters an intersection.

[3] She was taken to the Little Company of Mary Hospital from the scene of the collision. An intravenous line was placed and she was resuscitated and thereafter admitted to a general ward. On the following morning an orthopaedic surgeon stabilised her hand fractures by internal fixation with K-wires, followed by external stabilisation with a Plas-

ter of Paris cast. The sternum fracture was treated conservatively. She returned to work after two weeks of convalescence at home. She received physiotherapy for a cervical whiplash injury and mobilisation and stretching exercises for her injured thumb.

[4] The plaintiff is a 54 year old widow and the owner of a butchery in Pretoria-West, which she purchased in 1992. Her two sons assisted her in the butchery and the youngest son is employed full-time in the butchery. She has four other employees. Before the accident, she did everything in the butchery, including cutting of meat and fish, making packages of meat and fish, driving to Garankuwa early in the mornings to collect fresh meat. In addition to meat, the butchery sells various other products, such as dry beans, rice, potato chips, maize products, etc. She purchases these products in bulk and packs them in suitably sized packages herself. Before the accident she worked from 07:00 to 19:00 on weekdays and fewer hours on weekends. She had a solid customer base in the Portuguese community, especially Portuguese clubs. She provided personal service to them because they are, according to her very fussy. As a result of her accident she can no longer provide same degree of personal service she used to.

[5] She used to do her own cooking and housework, knitting, needle work and gardening before the accident. She used to cycle up to 8 km four times per week, but because of weakness in her left hand, she lost her grip and fell, injuring her left leg. She now rides a stationary bicycle and walks for exercise. She continues to perform these tasks, but with considerable discomfort.

[6] According to a joint minute of a pre-trial discussion between orthopaedic surgeons, Dr L.P.G. Blignaut and Dr D.A. Birrell on 15 July 2010, her current complaints are the following:

1. Weakness in the left hand;

2. Pain in the left thumb;
3. Occipital headaches;
4. Anxiety when driving;
5. Sternal chest pain at times.

[7] According to the two surgeons, she has a work restriction of 5%.

[8] According to a medico-legal report by Dr Birrell, she also suffers some loss of grip in the left hand. He says she is right handed, but uses a knife with her left hand. According to other reports, she is ambidextrous. Dr Birrell is of the view that the plaintiff should now seriously consider a fusion of the MP joint with removal of a small fragment screw from the base of the proximal phalanx and within about five years, a fusion of the base of the first metacarpal.

[9] The plaintiff claimed the following damages:

1. Past hospital expenses:	R10 000
2. Past medical expenses:	R10 000
3. Future medical, hospital and related expenses:	R100 000
4. Loss of earning capacity:	R100 000
5. General damages:	R250 000
Total:	R470 000

[10] The parties have agreed on an amount of R30 407.86 in respect of past hospital and medical expenses. The defendant has further given an undertaking in terms of s 17(4)(a) of the Road Accident fund Act, 56 of 1996 in respect of future medical and hospital expenses.

[11] In respect of future loss of income, the parties have agreed on the calculations made by an actuary, Mr G.A. Whittaker of Algorithm Consult-

ants & Actuaries CC. Mr Whittaker has calculated the plaintiff's future loss of earnings at R99 108.

- [12] The only issue that remains for this court to decide is the amount of general damages. I have been referred to a number of judgments and arbitration awards where general damages have been considered for broadly similar injuries and impairments. As it has repeatedly been held, such judgments can only serve as a guideline since circumstances differ so widely between cases. I have not been referred to any case in which the injuries and impairments resemble those of the plaintiff so closely that it can be used as a precedent. The only case in this decade involving a hand injury is that of *Newhouse v Road Accident Fund*, an arbitration award reported in Corbett & Buchanan, volume V, D5-1. In that case the plaintiff suffered a more severe hand injury, which rendered her incapable of resuming her duties of kitchen manager and front-of-house manager in a restaurant she owned with her husband. Her functional abilities limited her to her residual work duties of a mere hostess. The plaintiff, by contrast continues to perform her duties, albeit with some restriction, necessitating the employment of an additional assistant.
- [13] I also consider the restriction on her domestic duties and leisure activities such as cycling. She has also suffered trauma causing anxiety when driving. In the *Newhouse* case the arbitrator awarded R200 000 for general damages.
- [14] In comparing this case with *Newhouse*, I consider the following distinguishing features:
1. The plaintiff's injury is less severe;
 2. Her injury is generally less restrictive;

3. She is able to continue her previous duties, albeit with some limitations necessitating additional staff.

[15] I also consider the depreciating value of money.

[16] I therefore award an amount of R200 000 as general damages.

[17] The total amount of damages is R372 825.86, in addition to the undertaking in terms of s 17(4)(a) of the Act for future medical, hospital and related expenses. The amount is made up as follows:

1. Past Medical Expenses	30 407.86
2. Past Loss of Income	43 310.00
3. Future Loss of Income	99 108.00
4. General damages	200 000.00
	R372 825.86

Accordingly I make the following order:

1. The Defendant is ordered to pay to the Plaintiff the amount of R372 825.86;
2. The Defendant is ordered to furnish the Plaintiff with an undertaking in terms of s 17(4)(a)(1) of the Road Accident Fund Act, 56 of 1996 in respect of future medical, hospital and related expenses.
2. Interest on the aforesaid amount of R372 825.98 at 15.5% per annum from a date 14 days after judgment to date of final payment;
3. Costs.

J. Hiemstra AJ

Acting Judge of the High Court

Date of judgment:	2010-09-23
Date heard:	2010-08-12
Counsel for the Plaintiff:	Adv R. Ferguson
Attorney for the Plaintiff:	Adams & Adams
Counsel for the Defendant:	Adv G. Lubbe
Attorney for Defendant:	Dyason Incorporated