

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

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
DATE: 27/5/2011	SIGNATURE: <i>B. Botha</i>

DATE: 30 MAY 2011
CASE NO: 19053/2010

In the matter between:

LYNETTE BARBARA HOWARD

PLAINTIFF

vs.

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

BOTHA J:

This is a so-called third party case arising from a motor car collision that occurred on 9 December 2007.

The defendant accepted liability for 100% of the plaintiff's damages.

The only issue in dispute was the amount to be awarded in respect of general damages.

No evidence was led. The parties agreed that the court could refer to a bundle of experts' reports.

The plaintiff was born in 1946. She has been a housewife since 1989.

The plaintiff's injuries were described by Dr Enslin, an orthopaedic surgeon, as follows:

- “ • **A sever compression fracture of L1.**
- **A fracture of the fourth and fifth metatarsal bones on the right side. She informed her husband and Dr Barnard of the pain in her foot after the accident.**
- **A soft tissue injury to her neck.**
- **An injury to her chest.**
- **An injury to her sacrum.**

She reports no epilepsy or memory loss. She experiences nightmares, relives the accident, is sometimes anxious and tires easily. She is no longer depressed, but her sleep pattern is disturbed.”

She spent some 15 days in hospital. A back operation was performed on her. She will have to undergo a further operation to correct the alignment of her right foot.

The present complaints of the plaintiff are summarized as follows by Dr Enslin:

“Lumbar Spine

- The pain in her lumbar spine fluctuates. She believes that the operation was successful. She uses Stilpane, one tablet a week and Flexadrin cream daily to relieve her back symptoms. She attends physiotherapy sometimes. She no longer uses a brace.
- Stiffness is occasionally present.
- Her sleep pattern is disturbed by the pain and discomfort in her back.
- Pain radiates to her right buttock and thigh.
- Sitting, standing, travelling and cold weather exacerbate her symptoms.
- The scars are of no concern.

Cervical Spine

- Pain is regularly present. She sometimes uses Flexadrin cream to relieve the symptoms in her neck.
- Headaches are present on her temples twice a week. She uses Panado when her headaches are intense.
- Neck stiffness is constantly present.
- Paraesthesias are intermittently present on the left side.
- Muscle spasms are not present.
- Back pain and shoulder pain on the right side are present.
- Interscapular pain is not present.
- Travelling exacerbates her symptoms.
- The intensity of her neck symptoms is not improving.

Right Foot

- Pain is present daily. She uses Gold Cross shoes and battles to fit her shoes. Her foot has a prominence over the fifth metatarsal head, which makes it uncomfortable for her to wear shoes.
- The symptoms in her foot are more severe after walking for half an hour.

- Inclement weather, driving, walking and climbing stairs exacerbate her symptoms.
- The intensity of her symptoms in her foot is not improving.”

According to Ms Havenga, a counselling psychologist, the plaintiff suffers from a low level of depression. She cannot participate in activities like playing with grandchildren or looking after them. She cannot maintain static postures. She has become irritable.

Mr Dredge, who appeared for the plaintiff, referred to two cases reported in Volume VI of **Corbett & Buchanan, Van Vuuren v Road Accident Fund C3-1**, a less serious case, and **Lawson v Road Accident Fund, C4-1**, a more serious case. In **Van Vuuren’s** case the present day value of the award for general damages is R133 000.00. In **Lawsons’** case it was R318 000.00. He submitted that an award between R200 000.00 and R250 000.00 would be appropriate.

Ms Schneider, who appeared for the defendant, referred to two cases in **Corbett & Buchanan: Poo v President Insurance**

Company Ltd Volume IV A3-96 and Marais v Road Accident Fund, Volume V C3-12.

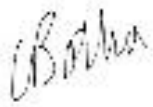
In **Poo's** case the present day value of the award is R205 000.00 and in **Marais'** case it is R181 000.00.

The cases of **Poo** and **Marais** are comparable as far as the back injuries are concerned. What makes this case more serious is the dimension of injury to the right foot. Having regard to all relevant factors, I am of the view that the award for general damages should be R220 000.00.

It was common cause that the plaintiff should be awarded R352 833.21 in respect of past medical expenses. That would bring the total amount to R572 833.21. It was also common cause that the plaintiff should be indemnified for against future medical expenses by means of an undertaking in terms of Section 17(4)(a) of Act 56 of 1996. Mr Dredge has prepared a draft order dealing with the issues of future medical costs and legal costs. I shall make it an order of court having inserted the amount of the award.

The following order is made:

The draft order marked "X", as completed and initialled
by me, is made an order of court.



C BOTHA
JUDGE OF THE HIGH COURT