

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

30/05/2011  
CASE NUMBER: 75621/2009

In the matter between:

A M MUNNIK

and

ROAD ACCIDENT FUND

DELETE WHICHEVER IS NOT APPLICABLE  
(1) REPORTABLE: YES/NO.  
(2) OF INTEREST TO OTHER JUDGES: YES/NO.  
(3) REVISED. ✓  
30/5/11 DATE  
SIGNATURE

Plaintiff

Defendant

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JUDGMENT

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GOODEY AJ:

[1] INTRODUCTION:

(1.1) This is a RAF matter which only pertains to quantum

(1.2) The merits (100%) have been conceded by the Defendant.

- (1.3) This is a brief judgment per arrangement with counsel and at a later stage more comprehensive reasons will be supplied if so requested.
- (1.4) The parties have agreed not to call any witnesses, but only make submissions based on and pertaining to the Plaintiff's expert reports – bundle B. (The Defendant file no expert reports).
- (1.5) The agreement [paragraph (1.4) above] is contained in exhibit C1 and Exhibit C2 of which the relevant portion reads as follows:

*"It is agreed that:*

1. *The Defendant concedes the merits of the action in totality.*
2. *The Defendant accepts the content of all the Plaintiff's expert reports of which notice were given by the Plaintiff in terms of Rule 36(9)(a) and 36(9)(b),*

*both with regards to facts therein and the opinions therein expressed as true and correct.*

3. *The parties agree it is not necessary to call the expert witnesses to proof any of the content of the expert reports. Argument will be based on the expert reports insofar as it pertains to the contents of the expert reports.”*

[2] **EXPERT REPORTS – BUNDLE B:**

(2.1) **General:**

2.1.1 Plaintiff filed 5 expert reports.

**NOTE:**

2.1.2 On page 80(2)(b) [BUNDLE B] the retirement date is indicated as 54 years. It is common cause that it should be 65 years. A fresh calculation based upon this factor was prepared by the auctiary and handed in (exhibit C3) and accepted by the Defendant as to the calculations.

2.1.3 It is common cause that the Plaintiff (subject to the aforesaid agreement and draft order X) has to prove her case as to:

- (a) Loss of future earnings / earning capacity;
- (b) General damages.

2.1.4 The reports are as follows:

| <b>No.</b> | <b>Document</b>                                                                 | <b>Page</b> |
|------------|---------------------------------------------------------------------------------|-------------|
| 1.         | Dr JJ Viljoen<br>Neurosurgeon<br>Report dated 3 April 2008                      | 1 – 15      |
| 2.         | Dr AH van den Bout<br>Orthopaedic Surgeon<br>Report dated 27 January 2010       | 16 – 45     |
| 3.         | Abida Adroos<br>Occupational Therapist<br>Report dated 28 March 2011            | 46 – 70     |
| 4.         | Christa du Toit<br>Industrial Psychologist<br>Report dated 21 January 2011      | 71 – 84     |
| 5.         | Wellsfaber Human & Morris<br>Consulting Actuaries<br>Report dated 28 April 2011 | 85 - 91     |

(2.2) Dr J.J. Viljoen

2.2.1 "p2 - 1 **HUIDIGE KLAGTES:**

*Sedert die ongeluk het sy feitlik **konstant nekpyn**.  
Dit wissel egter in intensiteit. Hiermee geassosieerd  
het sy dan nekspierspasma en **geassosieerde  
hoofpyn**".*

(My emphasis)

2.2.2 "p3. - 2. Pyn in die regter heup area:

*Sedert die ongeluk het sy **pyn in die regter gluteale  
area** wat soms na mediaal en haar **lae rug  
versprei**".*

(My emphasis)

2.2.3 "p3 – 1.1.4 Affek en assosiasie:

*Sy het 'n probleem na die ongeluk deurdag sy **baie  
angstig en gespanne** is. Sy sal verkies om nie  
motor te bestuur nie as gevolg van die motor ongeluk  
waarin sy was. **Sy sukkel ook om te slaap.**"*

(My emphasis)

2.2.4 "p6 – **KLINIESE ONDERSOEK:**

1. *Neurologies:*

1.1 *Hoër geestesfunksies:*

*Ek kon **geen abnormaliteit** demonstreer wat haar lang- en korttermyn geheue, rekenkundige vermoë en algemene kennis aanbetref nie."*

*Sy was egter **erg gespanne**.*

*(My emphasis)*

1.2 *Kraniaal senuwees:*

*Haar eerste tot twaalfde kraniaal senuwees wat intakt en dundoskopies en kon **geen tekens van verhoogde intrakraiale druk** waargeneem word nie".*

*(My emphasis)*

2.2.5 "p7 – Regter heup:

*Met eksterne rotasie het sy **pyn ondervind** en sy was drukteer oor die regter groter trochanter."*  
(My emphasis)

2.2.6 "p8 – **SWEEPSLAG BESERING VAN DIE NEK:**

*Die pasiënt het tipiese simptome en tekens van 'n sweepslag besering van die nek wat insluit **kroniese herhalende hoofpyn, nekpyn en nekspierspasma** geassosieerd met drukteerheid en paravertebrale spiersapsma met kliniese ondersoek."*  
(My emphasis)

2.2.7 "p12 – **EFFEK OP PASIËNT SE LEWENSVERWAGTING:**

*Hierdie ongeluk het **geen direkte effek** op die pasiënt se **lewensverwagting nie.**"*  
(My emphasis)

2.2.8 "p14 – **ARBEIDSONGESKIKTHEID:**

*Volgens Kessler is die arbeidsongeskiktheid vir 'n een vlak fermotomie en fusie 15% en vir twee of meer vlakke is dit 25%.*

2.2.9 "p14 – **VERVROEGDE AFTREDE:**

*In die lig van die feit dat daar steeds 'n kroniese degeneratiewe proses in die servikale en limbale area is en die moontlikheid bestaan dat sy chirurgie mag ondergaan, stel ek 'n vervroegde aftrede van **drie tot vyf jaar daar.**"*

(My emphasis)

(2.3) **Dr A.H. Van den Bout**

2.4.2 – p23

*"She has pain to the right shoulder, especially to the back side of the shoulder, but not to the left".*

2.4.3 - p24

*"The patient complains of her lower back, especially on the right hand side that radiates down to her **buttock** and causes a lame feeling in her upper leg."*

(My emphasis)

2.4.4 - p26

*"It is quite clear that this patient still faces operations and that her whole person impairment and by that, disability will increase as time goes on."*

2.4.5 - p28

**"LOSS OF ENJOYMENT OF LIFE**

*The patient loved swimming, gymnastics and like to jog. At the moment she cannot participate in any of these activities as she has too much discomfort of her neck and lower back. She also participated in singing and was even busy with production of her own CD. The recording was done in Pretoria and the patient was not able to continue with this **because of her***

*injuries and her fear of driving. She had to give this up."*

(My emphasis)

2.4.6 - p28

*"It is therefore clear that the patient's situation worsened in the time span between then and now."*

2.4.7 – p39

*"The patient had some **pain and suffering** physically but also emotionally which was also mentioned by Dr Viljoen."*

(My emphasis)

(2.4) **Abida Adroos**

2.4.1 – p56

**"13.4 WORK COMPETENCE**

- *Ms Munnik grasps physical concepts easily. She is able to work independently on tasks.*

- *Quality and accuracy of work diminishes as the task progresses due to increased pain and sensory symptoms in her upper limbs especially when she has to work with her arms in an overhead position.*

2.4.2 – p60

*“Upon her return to work, her job description remained the same. Two months later she **became the management representative. There was no delay in this arrangement as a result of the accident.**”*

(My emphasis)

(2.5) Christa du Toit (Counselling and Industrial Psychologist)

2.5.1 – p73

*“Ms Munnik’s plan prior to the accident was to record a CD. She no longer drives after the accident and due to the injuries she sustained.”*

2.5.2 – p73

**“7. SPORTING ACTIVITIES AND HOBBIES**

*Ms Munnik does gymnastics, swimming and singing;  
pre- **and post-accident**”*

(My emphasis)

*“Regarding her work performance pre-accident, Mr Botha described Ms Munnik as “op en wakker”, as well as open, friendly and helpful. He added that Ms Munniks’ work execution was “perfek” and that she was the type of person who would climb into a truck and accompany Investigators on the road for roadworthiness testing. Post-accident however, she cannot even climb into a truck due to her hip or sit in front of a computer for extended periods of time due to headaches, neck- and hip pain, as well as problems with her eyesight. In this regard, Mr Botha mentioned that the accident had a **significant impact on Ms Munnik’s work.**”*

(My emphasis)

[3] AD: PLAINTIFF'S CASE:

- (3.1) At the outset Mr Vermeulen (on behalf of the Plaintiff) made it clear that the case was not conducted on the basis that the Plaintiff is not able to work, but on the basis that her capability and work capacity have been impaired.
- (3.2) Consequently, he submitted that an order should be made based and as per exhibit C4 being the summary of the calculations which reads as follows:

"A. FUTURE LOSS

| <u>UNINJURED</u>        | <u>INJURED</u>          |
|-------------------------|-------------------------|
| R3 071 786-00           | R1 633 202-00           |
| -15% <u>R460 767-90</u> | -30% <u>R483 960-60</u> |
| R2 611 018-10           | R1 143 241-40           |
| <u>BALANCE</u>          |                         |
| R2 611 018-10           |                         |
| <u>-R1 143 241-40</u>   |                         |
| Total loss:             | <u>R1 467 776-70</u>    |

|    |               |   |               |
|----|---------------|---|---------------|
| B. | Sick Leave    | : | R11 707-00    |
| C. | Generals      | : | R190 000-00   |
| D. | Past meds     | : | R1 216-00     |
|    | Total damages | : | R1 670 699-70 |

(3.3) Mr Vermeulen refer to various authorities as per *inter alia* neck injuries:

[4] **DEFENDANT'S CASE:**

(4.1) The Defendant submits that any loss of income derived (if any) from the musical activities of the Defendant have not been proven neither any quantum in this regard.

(4.2) It has further been submitted that the pain in the buttock derived from the pain in the neck.

(4.3) Mr Westebaar then submitted that an award should be made in terms of exhibit C5 which *inter alia* reads as follows:

**"DEFENDANT'S CALCULATION:**

**1. BUT FOR ACCIDENT:**

R3 071 786

Less 20% contingency

R2 457 428-80

R2 457 428-80

Less R1 633 202-00

= R614 357-20

**2. GENERAL DAMAGES:**

R120 000-00

TOTAL: R734 357-20"

**[5] DISCUSSION:**

(5.1) The amount for sick leave (R11 707,00) and the amount for past medical expenses (R1 216,00) have been agreed between the parties. In fact, everything has been agreed on except:

5.1.1 Loss of earnings, more particularly earning capacity, consisting of:

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- (a) income derived from music;
- (b) work capacity / possible promotion; and

5.1.2 general damages.

(5.2) **What I find peculiar:**

5.2.1 5 December 2009 – original particulars of claim:

- (a) Paragraphs 9.3 and 9.4 read as follows:

**“9.3 LOSS OF EARNINGS / EARNING  
CAPACITY:**

*At the time of the collision, the Plaintiff worked as a NATIS official. She is able to continue to work in her current position, but with certain limitations. She will be off work from time to time in the future when undergoing medical treatment, and will therefore suffer a loss of earnings/earning capacity.*

*She will have to adapt her working conditions to her injuries and may have to work in a half day position and even retire earlier. [An estimated loss of earnings of R200 000,00 has been claimed. ]*

9.4 **GENERAL DAMAGES:**

*General damages in respect of pain, suffering, discomfort, loss of amenities, shock and psychological trauma, permanent disability and scaring.*

*It is not practical to apportion specific amounts to the heads of damages claimed." [An amount of R200, 000 has been claimed]*

- (b) Not a word is mentioned pertaining to the income derived from any **music activities**, in fact not even referred to as a hobby;

5.2.2 **27 January 2010 – report by Dr Van den Bout:**

- (a) He refers to her music and the possible income in this regard.

5.2.3 9 September 2010 – notice to amend the particulars of claim:

- (a) It is word for word the same as the original particulars of claim except that the loss of earnings went up to R400 000,00 and the general damages to R300 000,00. This is despite the reference (paragraph 5.2 above) of the report by Dr Van den Bout as to the music activities of the Plaintiff.

5.2.4 Great emphasis has been placed on the Plaintiff being incapable to drive her motor vehicle to musical venues.

5.2.5 From the report it is clear that she **“enjoys her work”**. It is difficult to comprehend how she could enjoy her work if she is hampered and constantly in pain.

5.2.6 It is very strange that if the music was such an important activity and/or hobby and income has been derived from the music activities that it was not

mentioned to either the attorney or mentioned to or by Dr Viljoen.

5.2.7 The fact of the matter is that I have to accept that there were music activities from which an income was and could be derived in the light of the agreement between the parties but at the end of the day the Plaintiff still has to convince me as to the **quantum** thereof.

(5.3) There is no doubt that the Plaintiff suffered neck and some back injuries and pain and suffering in this regard.

(5.4) As for the music activities of the Plaintiff I have not been persuaded as to the fact that any quantum in this regard has been proven, neither have any particulars or detail in this regard been supplied.

(5.5) As to the possible loss of earning capacity there is a strong case being made out by the Plaintiff in this regard.

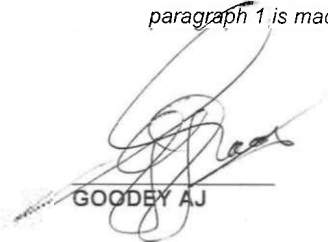
(5.6) However, it is not practical to apportioned specific amounts as to pain and suffering, loss of amenities and loss of earning capacity.

(5.7) In view of the aforesaid, the following components are awarded:

|       |                                                                                                                                               |                 |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 5.7.1 | Sick leave:                                                                                                                                   | R11 707         |
|       |                                                                                                                                               | (agreed)        |
| 5.7.2 | Past medical expenses:                                                                                                                        | R1 216 (agreed) |
| 5.73  | General damages which includes<br>pain and suffering, discomfort,<br>shock, trauma and loss of earning<br>capacity (future loss of earnings): | R800,000        |
|       | <b>Total:</b>                                                                                                                                 | <b>R812 913</b> |

[6] In the result I make the following order:

*"The draft order marked "X" where the amount of R812 913 is inserted in  
paragraph 1 is made an order of Court."*

  
GOODEY AJ

Date of hearing: 12 May 2011  
Date of Judgment: 30 May 2011

**On behalf of the Plaintiff:**

**ADV P VERMEULEN**

**SAVAGE JOOSTE & ADAMS INC.**

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**On behalf of the Defendant**

**ADV D WESTEBAAR**

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Ref: Mr Phaleng/FS/RAF17426



IN THE GAUTENG HIGH COURT  
PRETORIA

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Case No: 75621/2009

In the matter between:

**A M MUNNIK**

PLAINTIFF

and

**ROAD ACCIDENT FUND**

DEFENDANT

**DRAFT COURT ORDER**

**BY AGREEMENT** between parties:

The Defendant is ordered to pay an amount of R 812,913  
(Eight hundred & twelve thousand nine hundred & THIRTY THREE RAND) which  
amount shall be paid within 14 days to the credit of the trust account of the  
Plaintiff's Attorneys of record, Savage Jooste & Adams Inc, Pretoria, whose  
trust account details are as follows:

Nedbank name: NEDCOR – ARCADIA  
Account type: Trust account  
Branch code:  
Account no:

2. The Defendant is ordered to furnish the Plaintiff with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, No 56 of 1996, to compensate Plaintiff for 100% of the cost of future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to Plaintiff resulting from injuries sustained by him/her as a result of an accident that occurred on the 7<sup>TH</sup> of November 2006;

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- 3.1 The Defendant further tenders, the Plaintiff's taxed or agreed party and party costs of the action, on the High Court scale including costs up until and including 12 April 2011 and the costs of making this order an order of Court on 12 April 2011, including the reasonable costs of one consultation with Plaintiff to consider this offer, the costs incurred to accept this offer and to obtain payment of the amount.
- 3.2 The costs will include the costs of the following expert reports and the preparation fees (if any), as the Taxing Master may, upon taxation, determine the following:
- 3.2.1 Dr. Anton van den Bout, Orthopaedic Surgeon;
  - 3.2.2 Dr. J J Vijjoen, Orthopaedic Surgeon;
  - 3.2.3 Christa du Toit, Industrial Psychologist;
  - 3.2.4 Abida Adroos, Occupational Therapist;
  - 3.2.5 Wells Faber Human Morris, Actuaries;
- 3.3 Costs of Senior-Junior Counsel.
- 3.4 The cost of two scheduled pre-trials including the costs of attendance of Counsel.

4. No interest will be payable on the capital sum, provided that payment is made 14 days after the Court Order. Should payment not be made timeously, the Defendant will pay interest at the rate of 15.5% per annum from due date to date of payment;
5. The Plaintiff shall in the event that the costs are not agreed between the Plaintiff and the Defendant's attorneys, serve a notice of taxation on the Defendant's attorney of record;
6. Following agreement on or taxation of the costs, the Plaintiff shall allow the Defendant seven Court days after the allocator has been made available to the Defendant's attorneys, to make payment of the taxed or agreed party and party cost, whereafter interest will be charged at 15.5% per annum from date of the stamped allocator to date of payment.

BY ORDER

REGISTRAR

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