

FORM A
FILING SHEET FOR EASTERN CAPE HIGH COURT, PORT ELIZABETH
JUDGMENT

PARTIES:

ROGER THOMAS OLIVIER COLLIER

plaintiff

and

ROAD ACCIDENT FUND

defendant

[1] Registrar: CASE NO 3708/06

[1] Magistrate:

[2] High Court: **EASTERN CAPE HIGH COURT, PORT ELIZABETH**

DATE HEARD: 5 and 6 February 2009

DATE DELIVERED: 07 April 2009

JUDGE(S): **SANGONI J**

LEGAL REPRESENTATIVES –

Appearances:

[2] for the Plaintiff(s)/Applicant(s)/ Appellant(s): Adv Nepgen

[3] for the Defendant(s)/Respondent(s): Adv Pillay

Instructing attorneys:

1. Plaintiff(s)/ Applicant(s)/Appellant(s): **Ungerer Struwig Hattingh**

[1] Defendant(s)/Respondent(s): **Ketse Nonkwelo Inc**

CASE INFORMATION -

1. *Nature of proceedings* :

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE, PORT ELIZABETH**

CASE NO 3708/06

In the matter between:

ROGER THOMAS OLIVIER COLLIER plaintiff

and

ROAD ACCIDENT FUND defendant

JUDGMENT

SANGONI J:

INTRODUCTION

[1] This is a claim for recovery of damages against the Road Accident Fund (“the Fund”) in terms of Act 56 of 1996 (“the Act”). On 1 January 2003 the plaintiff was involved in a motor vehicle accident where two vehicles collided. He sustained serious injuries. The plaintiff was the driver of one of the vehicles involved in the collision. The other vehicle was the insured vehicle driven by one Mr Pause.

[2] The current proceedings relate to the assessment of damages only. In a judgment of this Court on 16 January 2008 the defendant was ordered to pay the plaintiff such damages as he may prove but such damages be reduced by 25%, having regard to the plaintiff's degree of fault in relation to the collision.

[3] As set out in the amended particulars of claim, the plaintiff's total claim stands at R10 718 530,10, apart from interest and costs. It is made up as follows:

3.1	Past Hospital Expenses	R 48,037.00
3.2	Past Medical Expenses	R 60,493.10
3.3	Future Medical Expenses	R 130,000.00
3.4	Past loss of income	R 240,000.00
3.5	Future loss of income and/or loss of earning capacity	R9,840,000.00
3.6	General Damages	R 400,000.00

[4] What remains for determination is the issue of damages relating to the past and future loss of income and/or loss of earning capacity. The defendant has conceded all the other claims. As shown above, the amount claimed for past loss of income is R240,000.00 and it is R9,840,000.00 for future loss of income and/or loss of earning capacity. For the future medical expenses the plaintiff has accepted an

offer by the defendant to furnish an undertaking in terms of section 17(4) of the Act to cover the claim.

- [5] The plaintiff was born on 3 September 1982. When he got involved in this accident, on 1 January 2003, he was about 20 years and 3 months old. He matriculated from St Andrews College in Grahamstown in the year 2000. According to Doctor Meyer, a clinical psychologist, his record shows inadequate diligence and self-discipline. He matriculated even though he obtained what is referred to as a 'weak matriculation exemption'. During the year 2002 he registered with the University of Port Elizabeth to study for B.Comm. in accounting. According to the medico-legal psychological report of Dr Holmes the plaintiff's academic "difficulties persisted with obvious poor results" for the years 2001-2002. In his report Dr Meyer records that during this period the plaintiff did not manage to pass any subjects. In 2004 he commenced study at Damelin College. The results were not made available for purposes of this exercise. In 2005 he enrolled for B.Comm. Degree at the University of South Africa, passing six of the nine subjects offered. He was generally described as an underachiever, given the high IQ assessment results in 1999.

[6] The extent of injuries sustained by the plaintiff and the *sequelae* thereof as well as prognosis thereto are described in the medico-legal reports of various experts in various fields. All the experts' reports are not challenged. In summary the plaintiff sustained severe bodily injuries, including a severe head injury, extensive fracturing of the facial bones and facial lacerations.

[7] I will refer to some of the remarks made by the experts which throw some clarity on the extent of injuries suffered and therefore loss sustained by plaintiff as regards the claims in issue.

7.1 Dr Keeley, a neurosurgeon, records in his report that the plaintiff suffered a significant loss of function in the right hand. He considers that a 70% impairment of the right hand function is fair. His brain injury was complicated by him having a stroke which is an infrequent complication of head trauma. Dr Keeley records in his report that:

“There is an aura of apathy and depression about him. He is obviously not a happy or confident young man. It is obvious that he mourns the loss of his sharp agile intellect, of which he was obviously very proud.”

7.2 Dr Meyer observed that the plaintiff experienced deterioration in his pride, lost confidence and self-esteem. Level of frustration

went up and that results in anger and aggressiveness. He would shout and use foul language. The plethora of jobs post-trauma is attributable to low frustration tolerance, excessive inter-personal sensitivity, amongst others.

7.3 Dr Holmes remarks as follows:

“More than five years post-accident, it would have to be accepted that Mr Collier’s demonstrated impairments, deficits and markedly altered personality characteristics would persist and that the same would remain core components of his post-accident psyche.”

In his report he also records that:

“As previously indicated, a worst scenario would imply that Mr Collier would not have completed tertiary studies and that he would have been restricted to job opportunities available to the holders of a school leaving certificate. However, even at this level of employment, Mr Collier should have enjoyed some growth in the workplace by way of the successful completion of in-house training programmes (Mr Collier’s measured high average/superior intellect being a positive factor in this regard).”

- [8] When one looks at the plaintiff’s scholastic achievements as gleaned from the history set out above, it becomes difficult to conclude, with any measure of confidence that, were it not for the accident, he would have academically progressed beyond grade 12 plus one year of post schooling training. Without understating the injuries and the effect

thereof, it appears it was his own decision and/or conduct that caused him not to further his education beyond where he stopped. It looks fair and reasonable to make the assessment of damages on the assumption that it is not a resultant effect of the accident that he did not proceed to obtain tertiary education. The pre-accident scenario depicts him as a person who did not apply his mind to his studies and thus achieving not as expected in the sphere of education, given his reported high intellect. What further strengthens this view is that even during the post-accident period it was within his reach to get reasonable academic results.

- [9] According to Dr Holmes he “remains very confused and undecided regarding his future career development”. In his report he records the following

“An evaluation of Mr Collier’s scholastic record suggested that he was an underachiever – given his measured high average/superior intellect. Non-academically, however, he excelled in various sporting disciplines. Mr Collier was also reportedly a socially well adjusted learner.”

He further states:

“Mr Collier had only turned twenty years at the time of his involvement in the aforementioned incident and although he had not been successful in

his pre-morbid tertiary studies, cognizance is taken of the fact that he possessed the intellect to proceed beyond the university graduate level. All that was required of him was to apply himself appropriately to his study programme.”

- [10] During the pre-accident period the plaintiff would mostly be employed as a waiter, barman and cashier in food/liquor supply stores or restaurants. During the post-accident period and specifically as from September 2003 he continued with that trend. As from September 2003 up until the current period he served no less than 22 different employers in jobs ranging from waiter, barman, sales assistant, assistant manager, driver merchandiser etc, which all appears to be within the grade 12 academic bracket. The movement from one job to the next, within short periods, is reportedly attributable to the change of personality characteristics, that being an after effect of the accident. He became verbose with underlying aggression, suffered from lack of patience and frustration that negatively affected his mood and interperson interactions. Dr Meyer predicted that the plaintiff’s potential for any consistent employment was jeopardized and in the future he would be relegated to low level jobs with intermittent terminations of contract. Dr Meyer further anticipated that the plaintiff would eventually become unemployable on the open labour market.

- [11] The Court's attention has been drawn to actuarial calculations by Algorithm Consultants and Actuaries CC which have been worked out on the basis of the medico-legal reports of various experts, particularly those of Dr Keeley, the neurosurgeon, Dr Meyer, the clinical psychologist and Dr Holmes, the industrial psychologist. The actuary has produced three alternative career scenarios informed by the educational levels assumed, that is, level of grade 12, grade 12 plus or grade 12 plus three year National Diploma or B. Degree.
- [12] The scenario which is not contested by the defendant is the one that evaluates the plaintiff with the educational achievement of grade 12 plus one year post-school training. In support of its claim for past loss of income the plaintiff has testified himself and also called two other witnesses whose evidence touched on his employment at different times. He has been described as an impulsive and impatient employee, a person who would question authority often. The value of income the plaintiff actually earned while injured from the various jobs he got from 2003 up to January 2009, is R147,991.11. That is the amount given to the actuary for his calculations. In his evidence he gave the amount at R143,405.00. Mr Pillay, representing the defendant, raised some concerns as to how the figure was arrived at. Even though it has been submitted on behalf of the defendant that the

evidence in this regard was not original, but came before court *via* a document drawn up not by the plaintiff, the figures themselves appear to be quite reasonable considering the nature of the jobs at the time. Some of the jobs were carried out abroad. It is my view that the amounts for the travelling should have been counted in as part of the income he received. An amount of R160,000.00 would be reasonable.

[13] The amount of R304,598.00 as and for the value of income while injured is also reasonable in the circumstances. I thus find that an amount of R144,598.00 is fair for the net past loss.

[14] As regards the future loss the relevant scenario assumes that the plaintiff will be unemployable as from the age of 35 years. The value of income while uninjured is given as R4,044,735 and after deducting R606,710 being 15% contingency, it remains at R3,438,025. Up to the age of thirty five years the defendant has conceded the value of income less the contingency deduction of 30% is reasonable at R344,282.00. Similarly the amount of R1,055,987 from thirty five up to the retirement age of 65 years. It has been further conceded on behalf of the defendant that on the latter amount a 75% contingency would be reasonable leaving the net loss on the amount of R2,829,746 in terms of this scenario.

[15] This scenario fits in with what I have already decided above, placing the plaintiff's educational level for purposes of assessing damages herein of grade 12 plus one year of post schooling training. I also find no fault with the report of Dr Holmes which is the basis of the actual calculations. This report has been accepted by the defendant and the *viva voce* evidence of Dr Holmes has not been challenged.

[16] The other scenarios based and calculated on assumptions other than the level of education I have referred to are rejected.

[17] I thus assess the total damage to be R2,685,148.00 for the past and future loss of earnings plus R508,510.00 for the other claims as agreed on by the parties, excluding the claim for future medical expenses. The total amount is thus R3,639,461.00 to be reduced by 25%. 75% of the total sum is R2,729,595.70.

In the result I make the following order:

1. The defendant is ordered to pay a sum of R2,279,595.70.
2. The defendant is ordered to furnish the plaintiff with an undertaking in terms of section 17(4) of the Road Accident Fund Act 56 of 1996, to compensate the plaintiff in respect of 75% of future medical expenses.

3. The defendant is further ordered to pay the costs of suit with interest thereon at the legal rate per annum from 14 days after taxation to date of payment. Such costs to include the qualifying expenses, if any, of Dr Holmes.

C T SANGONI
JUDGE OF THE HIGH COURT

Counsel for the Plaintiff	:	Adv Nepgen
Attorneys for the Plaintiff	:	Ungerer Struwig Hattingh PEO Security Place, Cnr Hancock/Market Street, Port Elizabeth
Counsel for the Defendant	:	Adv Pillay
Attorneys for the Defendant	:	Ketse Nonkwelo Inc 522 Govan Mbeki Avenue Port Elizabeth
Date heard	:	5 and 6 February 2009
Date Judgment delivered	:	07 April 2009