FORM A

FILING SHEET FOR EASTERN CAPE, PORT ELIZABETH JUDGMENT

Civil Judgment

Richard Barry Lawson
vs
Road Accident Fund

CASE NUMBER: 1566/2006

DATE ARGUED: 25 February 2009, 22 February 2010 – 24 February 2010

DATE DELIVERED: 4 March 2010

JUDGE(S): Pickering J,

LEGAL REPRESENTATIVES:
Appearances*:*
for the State/Applicant(s)/Appellant(s): Adv. Niekerk
for the Accused/Respondent(s): Adv. Huisamen

Instructing attorneys*:*
Applicant(s)/Appellant(s): Brown Braude & Vlok
Respondent(s): Wilkie Weiss van Rooyen

CASE INFORMATION:

4. *Nature of proceedings* :

5. *Topic*:

6. Keywords:

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

CASE NO: 1566/2006

In the matter between

RICHARD BARRY LAWSON

VS

THE ROAD ACCIDENT FUND

JUDGMENT

PICKERING J:

On 10 May 2003 plaintiff, an adult male medical practitioner, was driving his motor vehicle on the road between Humansdorp and St. Francis Bay when it was struck from behind by a motor vehicle driven by a man with the somewhat ironic surname of Genade, causing it to roll twice and land in a ditch alongside the road. Plaintiff sustained a serious injury to his back in consequence thereof. He accordingly instituted action against defendant for recovery of damages. The merits of his case were conceded by defendant and the trial before me proceeded on the issue of the quantum of plaintiff's damages only.

It was agreed between the parties that defendant was liable to pay plaintiff's past medical expenses in the sum of R70 208,69. It was further agreed that an order should be made directing defendant to furnish plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 in respect of plaintiff's future medical expenses. It was further agreed that plaintiff had no claim for past loss of earnings. The issues at the trial related therefore to plaintiff's alleged loss of earning capacity in respect of which plaintiff claimed the sum of R2 818 400,00 and to plaintiff's claim for general damages in the sum of R300 000,00.

The dispute between the parties in respect of plaintiff's alleged loss of earning capacity resolved itself largely into a dispute between the two orthopaedic surgeons who testified at the trial, namely Dr. Edelstein for plaintiff and Dr. MacKenzie for defendant as to the precise nature of plaintiff's back injuries and the future consequences thereof, although during the course of the trial certain of the evidence relating to those injuries became common cause.

At the time of the collision plaintiff was employed as a medical doctor at Humansdorp Hospital where he was performing his compulsory community service. After his motor vehicle had come to a standstill alongside the road plaintiff attempted to exit the vehicle through the passenger side window which was now uppermost but severe pain and spasm in his lower back prevented him from doing so. An ambulance eventually arrived and he was extricated through the back of his vehicle on a solid spine board. An excruciatingly painful journey to Humansdorp Hospital ensued. Once there plaintiff suffered the embarrassment of being stripped naked and assessed by colleagues with whom he worked. He was then transferred to Greenacres Hospital, Port Elizabeth. There it was found that he had sustained fractures of the transverse processes of L2, L3 and L4 on the right side of his lumbo-sacral spine together with an L4/L5 disc extrusion with L4 nerve route compression. He was treated conservatively at first but, after an MRI scan showed the extrusion of the disc, a decision to operate on him was taken and he underwent an L4/L5 discectomy on 21 May 2003, in the course of which a large loose fragment was removed.

In his evidence plaintiff stated that during the period 10 May until the operation on 21 May he suffered constant, unremitting and excruciating pain which was not relieved by schedule 7 medication. He was obliged to use a catheter. He was unable to wash himself. He was unable to walk. During

this period he experienced extreme anxiety emanating from the realisation that his injury was of a significant and possibly life-changing nature.

Once the operation had been performed he experienced almost immediate pain relief save for residual pain mainly from the fractures to the transverse processes and the surgical wound itself.

He was discharged from hospital on 24 May 2003 in a lumbo-sacral corset. After two weeks spent convalescing at his holiday home at St. Francis Bay his condition had improved to the extent that he was able to return to his home in Johannesburg. He eventually returned to work on 1 August 2003. He underwent rehabilitation and by November 2003 was able to jog lightly and to exercise on an exercise bicycle. By the end of 2003 he stopped using the corset.

It was put to him under cross-examination by Mr. Huisamen, who appeared for defendant, that his evidence as to his present physical condition was at odds with what defendant's orthopaedic surgeon, Dr. MacKenzie, had found when he examined plaintiff on 14 January 2009, a month prior to the commencement of the trial. Dr. MacKenzie described him as being "*superbly fit looking, tanned and well muscled*." His back posture and gait pattern were normal; he had a full range of back movement, apart from slight restriction of forward flexion; lateral bending, rotation and extension of the back was within normal limits. According to Dr. MacKenzie plaintiff had described his present situation as being one of "*discomfort with occasional mild periods of true pain, never severe enough to necessitate the use of analgesic medicine.*"

Plaintiff stated in this regard that Dr. MacKenzie had to some extent understated his symptoms. At the time that he consulted with him on 14 January he was on holiday, well-rested and trying to get as fit as possible. After that consultation, however, he had returned by road to Johannesburg

and the trip had been debilitating. He described the pain experienced by him as being grade 3 pain, a pain that made it difficult for him to complete tasks. He dealt with it by altering position, by resting and by keeping as fit as possible rather than by using analgesic medication. His non-use of such medication was not because he did not experience pain such as would justify the use thereof. It was rather in consequence of a personal decision not to become reliant on medication.

Plaintiff stated that at the time of the commencement of the trial in February 2009 he was jogging approximately 5km a day. He stated that he had continual discomfort in his lower back which got worse as his working day progressed. He said, however, that he coped with the demands of his 56 hour working week because he had to.

Having closely observed plaintiff during the course of his testimony I have no hesitation in accepting his evidence in regard to his symptoms. There is, in my view, no merit in Mr. Huisamen's submission that plaintiff had "*recognised the necessity to embellish upon the consequences of his injuries for purposes of establishing his damages*" and that he was, in effect, malingering.

Apart from plaintiff's evidence there was the testimony of Dr. Edelstein who stated that plaintiff's complaint that he was in almost continual discomfort was a very typical consequence of his injuries and entirely consistent therewith.

Both Dr. Edelstein and Dr. MacKenzie were agreed that plaintiff will require a fusion at levels L4/5 of his lumbar spine. In his medico-legal report Dr. MacKenzie put the situation thus:

> "*[T]here is evidence of early unstability at the operated level (L4-5) evidenced by anterolysthesis between L4 and L5 on flexion stress studies. There is also degenerative spondylolisthesis at L4/5. This*

> *situation is frequently seen after discectomy for a prolapsed intervertabral disc and is due to the altered biomechanics of the articulation. The extent of the instability and forward slipping of the more cephalad vertebra on that below will undoubtedly get worse with the passage of time, and the need to remedy the situation surgically will certainly arise. It is impossible to provide a precise time-frame, however, at present, because of his youth and superb physical condition, his spinal musculature is able to support his lower back satisfactorily, and prevent severe disabling pain, but with the passage of time, the spinal musculature will inevitably weaken and become decompensated, with a more rapid progression of the instability between L4 and L5 and increase in pain levels. When this occurs, he will need to undergo surgery predicted by Drs. De Jonge and Edelstein, namely stabilisation of the level by means of a fusion at L4/5 with instrumentation.*"

According to both surgeons such operation should be delayed as long as possible and plaintiff's condition managed conservatively with the use of analgesic medication. The time will come, however, with the inevitable deterioration of the L4/5 level, that plaintiff's pain will increase and become intrusive and unremitting to the extent that he will be obliged to submit to surgery. This will be required after ten to fifteen years. This operation would probably result in a compromised earning capacity of approximately 6 months.

It is at this point that the views of the two surgeons diverge.

According to Dr. MacKenzie, there was what he termed a theoretical possibility that after the fusion operation the level of the lumbar spine below L4/5, namely L5/S1, could develop early onset degenerative changes because of the excessive movement of the solidly fused two vertebra above it but the likelihood was remote enough to be discounted. Dr. MacKenzie was

of the view that after the fusion plaintiff's back symptoms would recover and that his functioning would return virtually to normality. He proffered, in support of this view, the anecdotal evidence of the success of a laminectomy performed to his own thoracic spine.

Dr. Edelstein agreed that the possibility of the L5/S1 level developing degenerative changes could be discounted. He strongly disagreed, however, with the view that plaintiff's back would recover as suggested by Dr. MacKenzie. He was of the opinion that after the fusion operation plaintiff would in all probability require at least one further operation. This opinion was based on both his clinical assessment of plaintiff as well as certain x-rays which had been ordered by Dr. MacKenzie. According to Dr. Edelstein the x-rays demonstrated that there was traumatic degenerative spondylolisthesis at the L3/4 level, in other words that the L3 vertebra had shifted at least 4mm, if not more, back on the L4 vertebra. According to Dr. Edelstein degeneration occurred adjacent to a fusion in 35% to 45% of patients, adjacent segment instability being defined as being more than 3mm of translation. In the present case therefore the L3/4 level was already at risk.

Dr. MacKenzie disagreed entirely with Dr. Edelstein's interpretation of the x-rays. Whilst agreeing that according to the x-ray the postero-inferior angle of the body of L3 appeared to be posteriorly displaced in relation to the antero-posterior angle of L4, this was, in his view, in all probability an illusion.

Under cross-examination the following exchange between Dr. MacKenzie and Mr. Niekerk, who appeared for plaintiff, occurred:

> "*Q Can you fault at all (Dr. Edelstein's) opinion that in this particular case where there is already instability and degeneration at L3, as is evident from the radiographs, that (intervention) …*

A *I do not see that. I do not agree with that. I see a malalignment there. I do not see degeneration at L3/4.*

Q *Do you not concede that the malalignment is an indication of instability and degeneration?*

A *It is possible, but I, as I have said I think a few times now that I am not prepared to venture a full cut and dried opinion on the status on that particular level unless I have insight into the full range of the stress views as well as an MRI of that specific disc.*"

And further:

"*Q* *What Dr. Edelstein says is that the more operations you go for, and this is a general explanation he gave, the more operations to your lumbar spine the worse the effects of the operation are going to be post-operatively.*

A *Well if it develops that he has, and with the passage of time that L3/4 is proven with further investigation, including radiology, that that disc is degenerated and is unstable, the necessity will arise then for not just a single fusion between L4/5, but also between L4 and L3. That would mean a more extensive operation.*"

Under further cross-examination Dr. MacKenzie stated that should it be found that there was indeed existing degeneration at the L3/4 level the outcome for plaintiff would, in his opinion, be "*less favourable*". He reiterated, however, with reference, *inter alia*, to an article in a medical journal, Spine, that the level which concerned him most was that at L5/S1. He stated that his understanding was that adjacent segment deterioration was found more frequently in the level below the fusion. He conceded, however, that the article did not in fact support his views and that, on the contrary, in the 29 cases investigated by the authors the adjacent segment degeneration

occurred below the fusion level in only three cases and above it in the remaining twenty six.

I do not intend to burden this judgment with any further discussion of Dr. MacKenzie's reliance on the article. Suffice to say that by the end of his cross-examination he had been obliged to make a number of telling concessions which to a great extent undermined the conclusions he sought to draw from it. He finally conceded that if there was "*incontrovertible*" evidence of problems at the L3/4 level the inference that the prognosis for plaintiff was "*at best poor*" was acceptable.

In the light of what transpired during the cross-examination of Dr. MacKenzie the matter stood down at Mr. Huisamen's request until later in the week in order to enable him to consult with the relevant radiologist. It thereafter proved logistically impossible to continue with the matter and it was postponed *sine die* on 25 February 2009. The matter was for some reason eventually only placed on the roll again for 22 February 2010. It is regrettable that such a delay should have occurred. Be that as it may, when the matter resumed, I was informed that during the intervening period a further set of x-rays with stress views had been taken and a CT scan and an MRI scan were done. Two radiological reports by Dr. Meintjies (Annexure I) and Dr. Msweli (Annexure J) respectively were handed into Court by consent. In his report Dr. Msweli stated that there was, at the L3/4 level, a slight L3 retrolisthesis of approximately 4mm on L4, retrolisthesis being the posterior displacement to a degree of one vertebral body with respect to the adjacent vertebral body. It is this displacement that was at the heart of the dispute between the specialists before the postponement of the matter.

According to Dr. Meintjies the retrolisthesis noted by Dr. Msweli was "*not really out of normal limits*", albeit that it is in excess of the 3mm and therefore falls within the accepted definition of adjacent segment instability. As was

submitted by Mr. Niekerk although, on its own, the retrolisthesis might not be so significant it was nevertheless a sign of adjacent segment instability and it certainly put paid to Dr. MacKenzie's confident assertion that the appearance of displacement was merely an illusion as well as vindicating the opinion of Dr. Edelstein in this regard.

Plaintiff, having obtained leave to reopen his case, recalled Dr. Edelstein to testify as to the results of the further examinations. A written report by Dr. Edelstein was also handed into Court as Exhibit K. In his report and his evidence Dr. Edelstein stated that it was evident from the CAT scan that plaintiff had sustained direct injury to three levels of his lumbar spine with an intra-articular injury at the L3/4 level. The scan showed a fracture of the facet at L3/4 level which, according to Dr. Edelstein, was in all probability a direct result of the injury sustained by plaintiff in the collision. The facet was fragmented and broken which would lead to degenerative arthritis and cause pain, discomfort and dysfunction at some later stage. There were signs of degenerative change evident at the L2/3 facet. Although such change could be age-related it was improbable given plaintiff's age and fitness that such degeneration was in fact age related in his case. There was further a fracture of the L5 vertebra which had also not been noticed on the x-rays and the facets were degenerating.

In his report, with specific reference to the damage to the facet at L3/4 level, Dr. Edelstein stated that "*this puts to rest any speculation or academic discussions as to whether there is adjacent disease to the L4/5 level.*" In his evidence he stated that the scan constituted "*hard evidence*" which "*just rubber stamps my original opinion.*" Where before there may have been an element of uncertainty there was now, so he testified, none whatsoever.

Mr. Huisamen, however, took issue with his evidence in this regard, pointing out that Dr. Msweli had made no reference to the facet fracture at L3/4 and

calling into question Dr. Edelstein's ability and qualifications to interpret the scan. In this regard it is worth recalling, however, that at the first hearing both Dr. Edelstein and Dr. MacKenzie were asked to advance their opinions as to the interpretation of the x-rays, which they did at some length without their competence to do so in any way being challenged. Be that as it may, Dr. Edelstein stated that he, as an orthopaedic surgeon, was able to interpret the scan at least as well as a radiologist. He stated that should the omission be pointed out to the radiologists they would no doubt be embarrassed thereby. Mr. Huisamen submitted, however, that it was telling that the perceived L3/4 facet fracture had not been noticed or reported on by any of the radiologists who had been specifically tasked to investigate and report on this specific area of plaintiff's spine. He submitted that in the light of those reports and given that Dr. Edelstein was not a radiologist his evidence could not be accepted.

I disagree. In my view, Dr. Edelstein, as an orthopaedic surgeon specialising in spinal surgery, was clearly competent to interpret the scan. It was open to defendant, if it took issue with his interpretation thereof, to have called the relevant radiologist to rebut it. Defendant did not seek to do so. In the absence of any such rebuttal Dr. Edelstein's evidence can in my view safely be accepted.

It can therefore be accepted, in my view, given the presence of adjacent segment degeneration, that on the probabilities plaintiff will in future after the fusion of L4/5 require at least a second fusion operation in respect of level L3/4 and, possibly, a third such operation.

I turn then to consider plaintiff's claim for loss of earning capacity based on the facts which I have accepted as set out above.

In his amended particulars of claim plaintiff's loss of earning capacity is quantified as being R2 828 400,00. It is set out as follows:

"*1. Plaintiff is a qualified medical doctor, who is currently working as a registrar, and studying to specialise in anaestheology, and it is reasonably anticipated that plaintiff will enter private practice as an anaesthetist with effect from 1 August 2011.*

2. The plaintiff suffers from almost continual discomfort and regular episodes of pain in his back which impacts on his ability to earn an income and will continue to do so.

3. Plaintiff is, as a result, unable to work the same amount of billable time as he would have been able to but for the collision and has suffered an estimated 10% loss of earning capacity.

4. Plaintiff's loss has been calculated by actuary Alex Munro, as set out in his actuarial report."

Plaintiff's claim under this heading must be assessed in the light of the following facts. He is presently employed by the State as a medical registrar at the Johannesburg Circuit of State Hospitals, i.e. at Johannesburg Hospital, Baragwanath Hospital and Helen Joseph Hospital. There is no accredited training facility in the private sector in South Africa and plaintiff is obliged to work for the State for at least four years in order to qualify as a specialist anaesthetist. In addition to this clinical component he must pass two series of examinations in order to become a Fellow of the College of Anaesthetists. He has already passed Part one thereof and, in so doing, was awarded the medal for the top candidate in South Africa in the May 2008 examination, a matter to which I will return when I deal with his claim for general damages.

In plaintiff's present capacity as registrar he is obliged to work 56 hours per week. It is his intention to enter private practice in Johannesburg as soon as possible after qualifying. He has already been approached by an association

of anaesthetists servicing 75 surgeons in Johannesburg with a view to joining their association following upon his qualification. In this association the anaesthetists work between 50 and 60 hours per week. It is not in dispute that this is the probable career path that plaintiff will follow.

The uncontested evidence of Ms. Brits, an industrial psychologist, was to the effect that plaintiff's probable earnings as a specialist anaesthetist would be R2,4 million per annum, being R2,7 million less practice costs of R25 000,00 per month.

Plaintiff stated in his evidence that his main concern was that worsening pain in his back would in the future curtail his earning capacity. He testified that his work as an anaesthetist had physical demands such as the lifting of patients. He presently has grade 3 back pain and if that back pain should worsen it would interfere with his functioning in the occupational sphere. Grade 4 pain would not allow him to do his work. He was also concerned that should he be obliged to take analgesic medication such medication might interfere with his work as well.

He stated that although he would be working for an association of anaesthetists he would be expected to develop and maintain relationships with his own surgeons. He would bill for the work done by him and would receive that income but would be obliged to share in administrative and related expenses. To all intents and purposes therefore he would be self employed. If he was unable to work as a result of incapacity due to worsening back pain or due to having to take time off for surgery or other treatment he would not receive any income. Furthermore, his unavailability at any time might result in surgeons using other anaesthetists instead of him and this would damage his working relationships with the surgeons.

Plaintiff's evidence concerning the probable curtailment of his functioning is supported by Dr. Edelstein who stated that there is a "*100% chance that he will have curtailment to some extent and it will be longer than 10 years.*" Although Dr. Edelstein's initial opinion was that plaintiff could lose the equivalent of two years earnings due to sick leave and/or earlier retirement and/or a loss of working hours he was of the opinion in the light of the radiological findings that such loss would be a minimum of two years and probably as much as five years. He was of the view that as an anaesthetist plaintiff would quite simply not be able to keep up with his peers. On being re-called he stated that "*with the hard evidence of multi-level injury and degeneration now available, my original estimate of a total loss of earnings of 10% over his career, spanning 30 years or more, is conservative to say the least and I estimate a minimum loss after all contingencies have been applied, it is probably 20% loss*."

There can be no doubt in the light of the acceptable evidence of plaintiff and Dr. Edelstein that plaintiff will indeed suffer a considerable loss of earning capacity over the course of his career as an anaesthetist. Mr. Huisamen submitted that plaintiff had failed to establish a loss of 10% earning capacity and that, accepting that plaintiff would undergo two further spinal operations, provision should rather be made for two periods of 6 months each during which plaintiff would be without income. In this regard he referred to the supplementary actuarial calculation of Mr. Munro in which the total loss in such event is calculated as being R876 600,00. In my view, however, the evidence of plaintiff and Dr. Edelstein as to the curtailment of plaintiff's operational functionality in future must be accepted. The figure of 10% put forward by Dr. Edelstein on which the actuarial computations of Mr. Munro amounting to R2 818 400,00 are premised is obviously speculative to some extent but it is not based on mere guesswork but rather on assumptions resting on the evidence relating to the present condition of plaintiff's spine. Compare: Southern Insurance Association v Bailey 1984 (1) SA 98 (AD).

Mr. Niekerk submitted that in the event of the figure of 10% being accepted no contingencies should be applied in the light of Dr. Edelstein's estimation of a 10% loss after the application of contingencies.

As was stated in Southern Insurance Association v Bailey, supra, however, the trial Judge is not tied down by inexorable actuarial calculations but has a large discretion to award what he or she considers right. One of the elements in exercising that discretion is the making of a discount for contingencies. In doing so it is erroneous to regard the fortunes of life as always being adverse. They may be favourable.

I am of the view that, in fairness to both sides and bearing in mind that the Court has no crystal ball to assist it in gazing into the future, a contingency of 10% should be applied. Such being the case plaintiff's claim for loss of earning capacity amounts to R2 536 560,00, which in my view should be rounded off to R2, 500 000,00.

I turn then to consider plaintiff's claim for general damages. Plaintiff, who was born on 12 June 1977, had a glittering sporting and scholastic career at St. John's College where he matriculated in 1994. Whilst there he played cricket for the first team for two and a half years, commencing in his Under fifteen year. In that year he was selected to play for South Africa at U15 level. He also played rugby for the first team. He was awarded honours for both sports. He was a keen athlete and represented Gauteng in cross-country throughout his school career.

After matriculating at the age of 17 years he did a sixth form post-matric year at Canford School in the United Kingdom where, despite never having played hockey before, he represented the school's first team which progressed to the County Championship finals. He was selected for the school's first team at

cricket which won an international schools' cricket festival in Barbados. He played first team rugby for the school, being made captain.

He commenced studies for his medical degree at Witwatersrand University during 1996, being awarded his MBbCh in 2001. He was awarded the University Cricket Club bursaries in 1996, 1998 and 1999 and the University Council Sport Scholarship in 1997. Whilst at university he played rugby for four years for the University U21 team. In 2001 to 2002 he played for Wanderers first XV. In 2001 he represented the Golden Lions. He completed his years internship at Johannesburg Hospital in 2002 and in 2003 was posted to Humansdorp Provincial Hospital to perform the then requisite one year of community service. On being posted to Humansdorp he resolved to attempt to play rugby for Eastern Province and to that end he joined Patensie rugby club during February 2003. It was whilst returning from a match at Patensie that the collision occurred.

It is common cause that he can no longer play cricket or rugby although, surprisingly, he can play golf, which he does, playing off a 5 handicap.

Plaintiff also excelled academically at University. In 1997, for instance, he received a University merit scholarship in consequence of having achieved A symbols in all his subjects during his first year at medicine.

After the collision he returned to work on 1 August 2003. In 2004 he commenced work as a medical officer in the Department of Orthopaedics at Johannesburg Hospital. From April 2004 to January 2005 he was employed as a medical officer in the Level 1 Trauma Unit at the hospital including two months in the Trauma Intensive Care Unit. Because of his potential he was selected to work as a flight doctor in helicopters operated by the Specialist Trauma Air Rescue Unit during 2004 and 2005. During 2005 – 6 he worked as a part time flight doctor on SOS international fixed wing flights evacuating

ill people from other countries to Johannesburg. The nature of his work, however, was such that he was unable to cope with the physical demands thereof. During 2005 – 6 he worked in the Accident and Emergency Units of certain London hospitals. During this period it became clear to him that because of his back injury he could not cope with the physical demands of surgery. Indeed, as Dr. Edelstein remarked, it would have been a waste of taxpayers money to train plaintiff any further as a surgeon.

He was therefore obliged, extremely reluctantly, to abandon the field of surgery. Because of his interest in and enjoyment of intensive care medicine he decided to pursue a career as an anaesthetist. He was accepted as a registrar in the Department of Anaesthesia at Johannesburg Hospital in 2007. True to his character he immediately made his mark in the Department winning a number of medals for excellence in 2008 including the medal for the top candidate in South Africa in the May 2008 examinations.

He stated that although he loved his present work and found it fascinating it had been devastating for him to have had to abandon surgery. He found it extremely difficult to have to watch surgeons across the operating table performing work which he knew in many instances he would have been better equipped to do.

Mr. Huisamen suggested during the course of argument that plaintiff was somewhat arrogant. I do not agree. In my view plaintiff was clearly a gifted individual in both the sporting and academic fields and was justifiably proud of what he had achieved. In this regard he stated as follows:

> "*What happened to me on 10 May 2003 was devastating. You know it was a proud moment for me yesterday to stand up in front of a Court and to read out my CV and to look at my achievements again but on reflection on the way home it was a sad day for me. The world was at*

my feet. I was only 25. I had worked tirelessly through my medical career at university and excelled. I had attempted to put myself in a position on the sporting field that made me proud."

Although there is no doubt that plaintiff will qualify as a specialist anaesthetist this was not his original chosen career path. He clearly had an exceptionally promising career ahead of him as a surgeon. That door is now closed to him. However rewarding the career of a specialist anaesthetist may be the fact remains that plaintiff has been deprived of the opportunity to follow the profession for which it appears he was eminently suited. It is clear from his evidence that that loss is deeply felt, and understandably so. Furthermore, his enjoyment of his profession as an anaesthetist will be seriously compromised by the pain he will experience in future. However difficult it may be to quantify his damages in this regard he is entitled to be compensated therefor.

In determining the quantum of general damages I am called upon to exercise a broad discretion to award what I consider to be fair and adequate taking into account all the facts and circumstances connected to plaintiff and the injuries suffered by him. Apart from his enforced change of professions those injuries have had a serious adverse effect upon his life. He has already undergone one spinal operation and in all probability will in future be obliged to undergo at least one if not two further operations. He has continuous pain which will become very much worse over the years. His sporting career was cut short in its prime. He has in my view in all the circumstances suffered a severe loss of amenities of life.

In all the circumstances I am of the view that the amount of R300 000,00 claimed by him as general damages is entirely fair and reasonable.

When the matter was postponed on 25 February 2009 the costs were reserved. Mr. Huisamen, however, fairly conceded that such costs should be costs in the cause.

To summarise therefore the position is as follows:

1.	For past medical expenses	R 70 028,69
2.	For loss of earning capacity	R2 500 000,00
3.	For general damages	R 300 000,00
TOTAL		R2 870 028,69

In the result I make the following order:

1. Defendant is liable to pay to plaintiff the sum of R2 870 028,69 as and for damages.

2. Defendant is ordered to pay interest on the said sum of R2 870 028,69 at the legal rate from 14 days after date of judgment to date of final payment.

3. The defendant is directed to furnish plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, to pay to the plaintiff the costs of future accommodation in a hospital or nursing home, or the treatment of, or the rendering of service to, or the supplying of goods to the plaintiff, as a result of the injuries sustained by him in the motor vehicle collision which occurred on 10 May 2003 in the district of Humansdorp, and the sequelae thereof, after the costs have been incurred and upon proof thereof.

4. The defendant is ordered to pay the plaintiff's taxed party and party costs, such costs to include:

a. The costs occasioned by the postponement on 25 February 2009;

b. The reasonable preparation fees/qualifying expenses, if any, of the following expert witnesses:

   (i) Dr. Charles Edelstein;

   (ii) Ms. F. Serfontein;

   (iii) Ms. S. Brits;

   (iv) Mr. A. Munro

   (v) Dr. T.S. Msweli.

c. The costs, if any, of the transcript of evidence;

d. Interest on the taxed costs from a date 14 days after date of taxation to date of payment at the legal rate of 15,5% per annum.

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J.D. PICKERING
JUDGE OF THE HIGH COURT

Date of hearing: 25 February 2009, 22 February 2010 – 24 February 2010
Date of judgment:

Appearing for Plaintiff: Adv. Niekerk
Appearing for Defendant: Adv. Huisamen

Attorneys for Plaintiff: Brown Braude & Vlok
Attorneys for Defendant: Wilkie Weiss van Rooyen