

IN THE HIGH COURT OF SOUTH AFRICA

Not reportable

EASTERN CAPE, PORT ELIZABETH

Case No.: 255/09

Dates Heard: 10 May 2010

11 May 2010

12 May 2010

Date delivered: 1 June 2010

In the matter between:

GUY AMBROSE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

EKSTEEN, J:

[1] The plaintiff, who was 58 years of age at the time, was involved in a motor vehicle collision on 5 September 2007 in Port Elizabeth when the vehicle which he was driving came into collision with another vehicle ("the insured vehicle"). He sustained severe bodily injury, most significantly, a compression fracture of the body of the 12th thoracic vertebra, in and as result of the collision. The plaintiff instituted action against the defendant in which he claims damages for past and future hospital and medical expenses, loss of earning capacity and general damages for pain and suffering, discomfort, disability and loss of the enjoyment of the amenities of life.

[2] The merits were conceded and the trial was set down in respect of the quantum of the plaintiff's damages. At the hearing I was advised that the parties had reached agreement in respect of the quantum of past medical expenses in the sum of R31 679,22. The defendant has tendered to the plaintiff an undertaking in terms of the provisions of section 17(4) of the Road Accident Fund Act, 56 of 1996 in respect of his future medical and hospital expenses. Appropriate orders in this regard will be incorporated herein at the conclusion of this judgment. What remains for consideration is accordingly the plaintiff's claim for the loss of earning capacity and general damages.

[3] The plaintiff is a qualified diesel mechanic and has worked in this capacity and related fields for all of his working life. At the time of the accident he was employed by Rayven's Auto Mechanical Services as a working foreman. He was employed on a freelance basis and did not enjoy the benefits of a full time employee.

[4] On the day of the accident the plaintiff was test driving a vehicle in the course and scope of his employment. The vehicle which he was driving was struck from the side and it overturned. He immediately felt that his back was sore and he says that he felt a burning pain in his back. He also had pain in his neck and shoulder. Initially he was unable to get out of the vehicle as the door had jammed. When he was ultimately assisted out of the vehicle both his employer and paramedics had arrived. He was advised by the paramedics to go directly to the casualty section at the hospital. Plaintiff says that he drove himself to the hospital in his employer's vehicle. At the St

George's Hospital he was sent to have X-rays taken of his back. He was required to lie prostrate on a metal table and to stand rigidly upright against metal machinery for purposes of the X-ray. This caused considerable pain of which he complained to the staff.

[5] After having considered the X-ray the hospital staff advised the plaintiff that he had a back spasm and he was given tablets and told to rest. The plaintiff testifies that he had never previously experienced back problems and had been in good physical health before the accident. The pain in the neck and shoulder cleared over a few days, however, the back pain improved marginally for a brief period upon taking the analgesic tablets given him before it again became worse.

[6] The plaintiff rested for a few days and then returned to work. At work he encountered great difficulty as he experienced intrusive pain whilst his employer was somewhat sceptical of his complaints in view of the earlier diagnosis that he had merely suffered a back spasm.

[7] After some time at work the plaintiff decided to consult a general practitioner, Dr van Heerden. She prescribed more pain killers which did not bring any meaningful relief to the plaintiff. He accordingly went to see a chiropractor, one Tait. The treatment administered by the chiropractor did bring temporary relief for approximately one hour, whereafter the pain again became more intrusive. He accordingly returned to his general practitioner

and was attended to this time by Dr Venter. Dr Venter advised that he should rather consult an orthopaedic surgeon.

[8] At this juncture the plaintiff resolved, however, of his own accord, to set up a consultation with Dr Greeff, a neurosurgeon. Dr Greeff had a series of X-rays taken, then during or about November 2007, advised the plaintiff that he had sustained a compression fracture of the 12th thoracic vertebra in his back. He recommended that the plaintiff wear a back brace for six weeks and then return to him. This the plaintiff did and he was thereafter advised by Dr Greeff that the injury had commenced its healing process and that no further treatment should be administered.

[9] Subsequent to the consultation with Dr Greeff the plaintiff attended upon an orthopaedic surgeon, Dr de Jonge who prescribed certain exercises. Dr de Jonge advised that if surgery were to be carried out the plaintiff would never work again. In these circumstances he has accepted his condition, although he receives physiotherapy at regular intervals. The physiotherapy alleviates his pain temporarily and he continues to use medication several times a day to further subdue the pain.

[10] Throughout all this period the plaintiff continued in his employment notwithstanding ongoing pain and discomfort. Ultimately, the plaintiff says, the intensity of the pain simply became unbearable and he resigned from his employment in March 2010.

[11] Dr Keeley, a neurosurgeon, testified on behalf of the plaintiff. Dr Keeley originally consulted with the plaintiff on 26 May 2009. At that time he expressed the view that the nature of the work which the plaintiff was required to do was indeed a significantly aggravating factor of his back pain which contributed to the prolongation of the symptoms. He was of the view that by continuing in his employment the plaintiff was merely aggravating his condition. Dr Keeley, however, stated that before any decisions regarding his prognosis could be made, adequate radiological investigation with CT scanning of the thoracic vertebra T10, T11 and T12 and lumbar vertebra L1 and L2 was essential. I shall revert to this aspect below.

[12] Upon consultation with Dr Keeley the plaintiff complained of a feeling as if there is “something squeezing his rib cage closed”. This, the plaintiff says, wakes him at night and bothers him at his work, particularly if he has to squat or stretch his arms out over a workbench. The pain, he complained, is bilateral and over the fourth and fifth ribs. The plaintiff did not experience it as an intercostal pain but felt it more deeply under his ribs. When he sat in a chair the plaintiff was most comfortable in a straight backed position, but he complained that he required arm rests to help lift him out of the chair and straighten up before walking off.

[13] He complained too of low back pain. The pain which he experiences was in the region of the thoraco lumbar junction. The plaintiff reported that the pain in his lower back was aggravated by the various awkward positions

that he works in, particularly when sitting or stooping forwards. The pressure over the thoracic lumbar junction was very uncomfortable.

[14] Finally the plaintiff complained of cervico-occipital muscle tension headache which he experienced every day. Physiotherapy gave him temporary relief and accordingly he uses various analgesic tablets which he takes every day.

[15] On examination the neck showed full cervical movements and no bruits were heard in the head or neck. There was no cervical lymphadenopathy. The thyroid gland was not palpable. Dr Keeley did however note that the plaintiff was tender to pressure in the suboccipital triangles.

[16] The respiratory system appeared healthy on examination and the plaintiff did not appear to be particularly tender to pressure over the rib cage, particularly the lower ribs. The plaintiff conveyed to Dr Keeley that such pressure did not aggravate the pain which is constantly present somewhere deep beneath his ribs. Upon further examination Dr Keeley noted that percussion along the ribs and along the spine was tender over the thoracic lumbar junction at the gibbus, but this was not referred along the ribs. Dr Keeley, in evidence, attributed this pain to the compression fracture which plaintiff sustained.

[17] The spinal examination revealed an obvious gibbus at the lumbo thoracic junction and there was some scoliosis in the lower thoracic and upper lumbar region, because the plaintiff tended to tilt to the right with some minor rotation of the lower thoracic spine. Dr Keeley noted that the plaintiff was a tall man who tended to stoop. The range of movement of the cervical spine was full when measured on an Inclinator. When bending forward, however, the plaintiff was hesitant and reached about three quarters of the way between his knees and his toes. Straightening up was obviously uncomfortable. Left and right lateral flexion (lumbar) and extension of the back (lumbar) all appeared restricted to about half the normal range and obviously painful.

[18] Dr Keeley had occasion to reassess the plaintiff almost a year later on 26 April 2010, a mere two weeks before the commencement of the trial. By this time the plaintiff had been forced to give up his work as a motor mechanic in consequence thereof that the pain at the thoracic lumbar junction had become increasingly incapacitating. A CT scan of the thoracic lumbar junction had also been performed with significant findings. Dr Keeley recorded that he has studied the X-rays and that the compression fracture of T12 is more marked in this high quality investigation than had been considered on the plain X-ray studies. The X-rays provide evidence of a bilateral facet joint injury at the T12/L1 level. Dr Keeley expressed the view that there was also involvement of the posterior elements of T11 and T12 which have long since healed.

[19] Ms Letitia Strauss, an occupational therapist, conducted an assessment of the plaintiff's current condition on 13 April 2010. Her findings accord in every material respects with the evidence of Dr Keeley. She testified that she was advised by the plaintiff that he was experiencing pain, mainly in his back and in his ribs. He reported that this pain was aggravated by physical activities, as well as maintaining static positions for long periods of time. The pain was somewhat relieved when he rests, or administers analgesics.

[20] In consequence of the foregoing Ms Strauss conducted a Dallas Pain Questionnaire which revealed that the pain experienced by the client is affecting his daily activities up to 82%. Ms Strauss admitted under cross-examination that the test is necessarily subjective and it reflects only the plaintiff's perception of his ability and the extent of his pain. I do not consider that the criticisms of the subjectivity of the test necessarily detract from the value of her evidence in this regard. It accords with the views expressed by Dr Keeley that the pain will be constant, although it may be alleviated to some extent by posture control.

[21] Loss of Earning Capacity

Ms Strauss concluded as follows:

"The client has experienced a significant decline in participation in leisure time and recreational activities, including sporting activities, as well as participation in social activities, as a result of the injuries sustained in the accident.

He is currently independent in personal care activities, but has some difficulties with performing all of his activities of daily living, especially domestic chores and home management chores.

Mr. Ambrose made an effort to cope with his vocational duties since returning to work after the accident. Although he was no longer able to perform all the physical duties as required in his job, he still attempted them to the best of his abilities, and acted in an advisory capacity where he could not perform any duties. He reported difficulties with some core activities of his job, which are essential in his line of work, including getting underneath a vehicle, leaning over the engine of a vehicle while working on the engine, lifting and carrying of heavy items including car batteries (typically weighing between 15 and 30kg), and assuming and maintaining static positions, whether underneath or above a car engine. He also has some difficulties with bending, kneeling, stooping and crouching, especially if required to maintain these positions. Taking into consideration his injury, and the sequelae of this injury, the assessor is of the opinion Mr. Ambrose is no longer capable of performing the above-mentioned duties of his job successfully, and that he would only aggravate his condition should he continue in attempt to perform such duties.”

[22] I have already stated that at the time of the trial the plaintiff had terminated his employment in consequence of the pain that he suffered. In respect of his current ability Ms Strauss concluded as follows:

“Based on observations and reports arising from the assessment and perusal of the available documentation, the assessor is of the opinion that Mr. Ambrose is only capable of sedentary work, which is defined as work involving lifting of no more than 10 pounds (approximately 4,5kg) at any time, and only carrying of light items such as docket files, ledgers and small tools. A sedentary job is further defined as a job that primarily requires sitting, with occasional standing and walking. However, in the field of automechanical work, it is not common to find a job of sedentary nature, unless in a supervisory or advisory capacity only, and such positions are not usually abundantly available. Considering Mr. Ambrose’s educational and vocational background, it would not be advised he sought work outside of the automotive industry, as he is qualified in this industry, and only has experience (be it extensive) in this field of work. Facts that could further impair Mr. Ambrose’s employability, is his age, as well as his race (based on Employment Equity Act principles).

The assessor is cautious to state that Mr, Ambrose is still employable in the open labour market, but it has to be noted that he will not be able to successfully perform the duties of a job that he is qualified or experienced to do, and will most probably have to accept a sedentary job, one which he is most likely not qualified for or has any experience in, such as an administrative position, and which will most definitely be at a significantly lower wage as he would have earned in his own job.

In the light of all of the above, the assessor wishes to conclude that Mr. Ambrose has been severely compromised with regards to vocational abilities and income potential, as he is no longer considered capable of performing the duties of his own job successfully, and it is considered unlikely that he will find suitable alternative employment in his field of expertise, at his current remuneration level.”

[23] These concluding remarks of Ms Strauss accord with the opinion of Dr van Daalen, an industrial psychologist who testified on behalf of the plaintiff. Dr van Daalen predicted that in his current physical condition the plaintiff his prospects of obtaining a suitable sedentary position in the job market are very limited. Dr van Daalen ventured to estimate that the plaintiff has a 5-10% prospect of obtaining such a position which would probably attract a remuneration of between R4 000-R5000.

[24] The plaintiff in fact returned to his employment virtually immediately after the accident, albeit with some measure of discomfort. He makes no claim for past loss of earnings prior to the date of his resignation from Rayven's Auto Mechanical Services during March 2010.

[25] In the Particulars of Claim the plaintiff avers that at the time of the collision he was employed with Rayven's Auto Mechanical Services as a

foreman motor mechanic on a freelance basis where he earned R50 per hour, working 10 hours per day, five days per week. On the pleadings he contended that he would have continued in such employment until the age of 70. In view of the injuries which he sustained the plaintiff contends that he is now unemployed and unemployable on the open labour market. The amount of R820 900 claimed in the Particulars of Claim is actuarially calculated on the basis of the averments set out in the Particulars of Claim apparently on the assumption that he worked such hours 52 weeks per annum.

[26] In evidence the plaintiff handed in two weekly payslips from Rayven's Auto Mechanical Services for the week commencing 15 January 2010 and the week commencing 22 January 2010 respectively in support of his alleged earnings. The weekly payslips reveal that the plaintiff worked 40 hours per week as normal time and 12 hours per week as overtime. He earned R2 652,56 per week. Notwithstanding some tentative suggestion in cross-examination that the plaintiff is currently still able to continue in his employment as a foreman motor mechanic, the uncontradicted evidence of Dr Keeley, Ms Strauss, the plaintiff and Dr van Daalen is to the contrary. In his initial report in 2007 Dr Keeley already expressed a measure of surprise that the plaintiff managed to perform his duties. I am satisfied that the evidence clearly establishes that the plaintiff is currently unable to perform the functions which his previous job demands.

[27] It is common cause that the plaintiff is currently not employed. It is also common cause that the plaintiff is able currently to perform a purely sedentary

function provided he were able to find an employer who would be prepared to permit him to move around from time to time and even to lie down when necessary. Dr van Daalen has predicted that the plaintiff has no more than a 5-10% prospect of obtaining such employment and then at a much reduced remuneration.

[28] None of the aforestated evidence was contradicted. During cross-examination Mr **Frost**, who appeared on behalf of the defendant, repeatedly stated that one De Villiers, the owner of Rayven's Auto Mechanical Services would testify. Similarly references were repeatedly made to the evidence of Ms Corrie de Witt, an occupational therapist and Mr Hannes Swart, an industrial psychologist who, it was suggested, would differ with the views of Ms Strauss and Dr van Daalen. None of these witnesses were called. The matter accordingly falls to be decided on the evidence of the plaintiff's witnesses.

[29] The evidence of the plaintiff himself was that he would have continued working at Rayven's Auto Mechanical Services, but for the collision, in his capacity as a foreman motor mechanic until the age of 70. The proposed retirement age, but for the collision, formed a subject of much debate at the Bar during cross-examination. Dr van Daalen conceded that the normal retirement age is 65 and that mechanics working to the age of 70 would be the exception rather than the rule. He testified, however, that one frequently finds in the case of artisans, including mechanics, that they do not have any pension benefits or any other income post retirement and that they have

made insufficient provision for retirement. In such case, provided they were in good health, one would generally find that such persons would continue in their employment beyond the normal retirement age. Their skills, so Dr van Daalen opines, are sought after and they would experience no difficulty in obtaining employment. Dr van Daalen testified that the plaintiff was such a person and that he expected the plaintiff would probably have continued in his employment until the age of 70, but for the collision.

[30] The plaintiff himself testified that he had no intention of retiring at the age of 65 and that he could not afford to do so. The prediction that he would have been able to continue in his employment beyond the age of 65 is further supported by the evidence of Dr Keeley and Ms Strauss.

[31] I consider that on the overwhelmingly evidence it has been established on a balance of probability, that but for the accident, the plaintiff would have continued in his employment as a foreman motor mechanic for as long as he was able to do so and would have continued in employment beyond the age of 65, probably to the age of 70.

[32] Mr Alex Munro, an actuary, has calculated the plaintiff's probable earnings, but for the accident, on an acceptance of the foregoing considerations from 12 March 2010 to a retirement age of 70 in the sum of R816 600. Save for the assumed income, the further actuarial assumptions utilised in the calculation are admitted.

[33] The plaintiff's earning capacity having regard to the accident was a matter of considerable debate in evidence. I have already recorded the uncontested evidence of Dr van Daalen in respect of the plaintiff's prospects of obtaining employment in the formal job market. His conclusion accords with the evidence of Ms Strauss and I have little hesitation in accepting the correctness thereof.

[34] During cross-examination, however, Mr **Frost**, on behalf of the defendant, referred the plaintiff to a number of his tax returns, which were discovered by plaintiff, over the period 2006 to 2009. It is apparent from the tax return for the financial year ending February 2008, that the plaintiff reflected "turnover/sales" of R208 880. This clearly far exceeds the earnings which the plaintiff received from Rayven's Auto Mechanical Services and is indicative of substantial additional income. The same tax return, however, reflects "cost of sales" in the amount of R122 307. No explanation is given in the document in respect of the "cost of sales". These documents do not show whether the plaintiff held stock on hand at the year end and if so, how much.

[35] The tax returns for the year ending February 2009, reflect a "turnover/sales" of R238 458. This too far exceeds the income which the plaintiff contends that he earned from Rayven's Auto Mechanical Services. These tax returns, similarly, reflect "cost of sales" in the amount of R140 976. Again the document gives no explanation for these figures.

[36] In evidence the plaintiff was unable to account for these figures and testified that all the source documentation which might indicate the source of these earnings and the nature of these expenses were retained in a box at his home. He did however say that subsequent to the collision, in desperation, he has dabbled in the sale of used motor vehicles and sourcing used motor spares after hours. He testified that he has indeed purchased computer equipment and that he has built up many contacts which have been very worthwhile. This evidence should be seen in the light of Dr Keeley's evidence in respect of plaintiff's future plans. Dr Keeley testified, inter alia, as follows:

"His personality is such that he cannot remain idle.

Mr Ambrose sees a great opportunity for working through the internet sourcing and trading in used motorcar parts. Unfortunately he is not computer trained but believes that he could manage what he considers would be a very lucrative business.

His son is a software developer and would assist him to a considerable extent.

Advancing into this realm of financial activity which he could manage at home is significantly hampered by the fact that he cannot sit still for more than an hour. He has to get up and move around.

He must take Syndols, although only half the amount that he was taking while working as a mechanic.

He also needs to lie down for 30-60 minutes more than once a day when the pain in his back gets worse. He can walk around answering the telephone but bobbing up and down out of a chair causes him significant pain."

[37] Ms Strauss, in her report reports as follows:

"According to client, he is currently investigating the possibility of starting a business dealing with the selling and distribution of used spare parts."

[38] Later in her report she records as follows:

“Mr. Ambrose has led the assessor to believe that he is not able to retire currently, as he will not be able to financially support himself and his family, and maintain his current lifestyle, without a steady income. He is therefore investigating alternative vocational opportunities at the moment, and is hoping to secure an income again within the next 2-3 months.”

[39] In her evidence, however, Ms Strauss testifies that she again canvassed this issue with the plaintiff on the morning of trial and that the plaintiff now advises that such an ambition is not viable. The evidence of the plaintiff himself is not as clear-cut.

[40] Dr van Daalen conceded that the plaintiff had not confided in him in respect of such additional endeavours at generating income. He expressed considerable scepticism relating to the plaintiff's intended business endeavours on the basis that the plaintiff has no experience in business and has no related qualification. He doubted whether the plaintiff would succeed in such a business, but conceded that he was unable to make a meaningful assessment as he had not been afforded the opportunity to investigate these activities whether for the financial years 2008 and 2009 or at all. Dr van Daalen was however, constrained to concede that the plaintiff was able to continue such a business from home.

[41] It is accordingly clear that the plaintiff did not take Ms Strauss or Dr van Daalen into his confidence in respect of his actual business activities. Mr **Frost**, on behalf of the defendant, argued that I should accordingly find that it is not possible to approach the plaintiff's loss of earning capacity on the basis

of an actuarial calculation and that I should accordingly provide for loss of earning capacity in a lump sum included in the award for general damages.

[42] In this regard, in the matter of ***Southern Insurance Association Ltd v Bailey NO*** 1984 (1) SA 98 at 113F-114A Nicholas JA sated as follows:

“The second attack on the judgment of the trial Court was that an actuarial computation was inappropriate in the present case for the reason that it was based on assumptions and hypotheses so speculative, so conjectural, that it did not afford any sound guide to the damages which should be awarded.

Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.

It has open to it two possible approaches.

One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown.

The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative.

It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a *non possumus* attitude and make no award.”

[43] Later at p. 114C-E Nicholas JA states as follows:

‘In a case where the Court has before it material on which an actuarial calculation can usefully be made, I do not think that the first approach offers any advantage over the second. On the

contrary, while the result of an actuarial computation may be no more than an "informed guess", it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial Judge's "gut feeling" (to use the words of appellant's counsel) as to what is fair and reasonable is nothing more than a blind guess.'

[44] In the present matter I am satisfied that the assumptions which form the basis of the calculation of the plaintiff's anticipated earnings, but for the accident, rests upon sound assumptions firmly supported in evidence. Some allowance must, be made, for the possibility that the plaintiff would indeed have retired prior to reaching the age of 70 and for the probability that the plaintiff would, in any event, have worked lesser overtime as his age advanced. Indeed, as stated above, the plaintiff worked on a freelance basis and would accordingly be remunerated only for actual hours worked. Any illness or leave taken would accordingly reduce his income and must be recognised in any reduction of the calculated amount to provide for these contingencies.

[45] Having regard to the accident and the injuries which the plaintiff sustained, the plaintiff contends that he is for all practical purposes unemployable. The evidence is strongly supportive thereof that the prospects of the plaintiff obtaining gainful employment in a structured job market are very limited. This, however, does not present the full picture.

[46] Regrettably, the plaintiff did not take Dr van Daalen into his confidence in respect of his other commercial activities which has served to handicap Dr van Daalen in his endeavours to assess the prospects of future earnings from

such activity. Dr van Daalen indeed expressed the view that he believed that the plaintiff would attempt some activity aimed at generating earnings but was sceptical as to the success thereof. The evidence further establishes that the plaintiff could conduct such activity from home. In my view, the impediments to such an endeavour which are set out in the evidence of Dr Keeley and to which I have referred above are, however, real. I am equally persuaded that the basis for Dr van Daalen's scepticism, which I have also set out above, is a factor which militates against the plaintiff's prospects of conducting a lucrative business at home.

[47] Notwithstanding the foregoing I consider that an allowance must be made for the possibility of a larger income post accident from a modest business conducted at home than could be anticipated from employment in the structured job market. On the evidence in this matter I do not consider that the benefits gained from the actuarial calculation should be entirely abandoned. On a consideration of the actuarial calculation and the considerations set out above I am of the view that R600 000 in respect of loss of earning capacity would represent fair compensation.

[48] General damages

In assessing an award for general damages the court has a broad discretion to award what it considers to be fair and adequate compensation. The court will generally be guided by awards previously made in comparable cases and will be alive to the tendency for awards to be higher in recent years than was previously the case. (Compare ***De Jong v Du Pisanie NO*** 2005 SA 457D-E.)

In considering previous awards it is appropriate to have regard to the depreciating value of money due to the ravages of inflation. It would however be inappropriate to escalate such awards by a slavish application of the consumer price index. (See **AA Onderlinge Assuransie Assosiasie Bpk v Sodoms** 1980 (3) SA 134.)

[49] I have set out the injuries which the plaintiff sustained and the immediate sequelae thereof above. By all accounts the plaintiff was a fit and healthy individual prior to the collision. He is now destined to spend the remainder of his life in constant pain and he is being prevented from participating in several activities which he previously enjoyed. He is no longer able to play pool, something which he enjoyed on a weekly basis prior to the collision. He is unable to participate in off-road driving with his friends, an activity which he pursued from time to time prior to the accident. The intrusive pain to his back has effectively terminated his sex life. He suffers from regular headaches and takes medication for pain on a regular basis. He requires regular physiotherapy to control the pain.

[50] In seeking to guide me to an appropriate award counsel have referred me to numerous previous awards which they contend to be comparable. I do not intend to analyse each of those decisions. Suffice it to say that I have had regard to the facts of each of those matters, to the awards that were made in each case, to the effect which the ravages of inflation have had on the value of such awards and to the recent tendency in our courts to make more generous awards. I considered all the facts of this matter. I have attempted

to take care so as to ensure that the award which I make is fair to both sides, to give just compensation to the plaintiff but not to “pour out largesse out from the horn of plenty” at the expense of the defendant. (Compare ***Pitt v Economic Insurance Co. Ltd*** 1957 (3) SA 284 (D) at 287E-F.) On an assessment of all these considerations I am of the view that an award of R200 000 in respect of general damages for pain and suffering, discomfort, disability and the loss of the enjoyment of the amenities of life would be fair to both sides.

[51] In the circumstances the defendant is ordered:

1. To pay to the plaintiff the amount of R831 679,22 as and for damages together with interest calculated at the legal rate from a date fourteen (14) days after judgment to the date of payment.
2. To furnish the plaintiff with an undertaking in terms of the provisions of section 17(4)(a) of the Road Accident Fund Act No. 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 a service to, or the supply of goods to the plaintiff, as a result of the injuries sustained by him in the motor vehicle collision which occurred on 5 September 2007, and the sequelae thereof, after the costs have been incurred and upon proof thereof.

3. To pay the plaintiff's costs of suit together with interest thereon calculated at the legal rate from a date fourteen (14) days after *allocator* to the date of payment, such costs to include:

- 3.1 The costs of photographs and one pre trial inspection *in loco*.
- 3.2 The reasonable preparation fees/qualifying expenses, if any, of the following experts.
 - 3.2.1 Dr R J Keeley
 - 3.2.2 Ms Letitia Strauss
 - 3.2.3 Dr H J van Daalen
 - 3.2.4 Mr A J Munro
 - 3.2.5 Dr D F Malherbe
 - 3.2.6 Dr M Els
 - 3.2.7 Dr J van Jaarsveld
 - 3.2.8 Dr F Visser
 - 3.2.9 Dr E Steenkamp

J W EKSTEEN

JUDGE OF THE HIGH COURT

Appearances:

For the Plaintiff: *Adv D Niekerk* instructed by Jock Walter Inc
Port Elizabeth

For the Defendant: *Adv A Frost* instructed by Boqwana Loon & Connellan
Port Elizabeth