

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

**CASE NO. 941/08
DATE HEARD: 22/11/10
DATE DELIVERED: 25/11/10**

In the matter between

GLADWIN VUYOLWETHU PIET

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

ROBERSON J:-

[1] On 4 April 2006 the plaintiff, a 57 year old school principal, was injured when a refuse truck collided with the vehicle he was driving. He instituted this action for damages, alleging that the negligence of the driver of the truck was the sole cause of the collision. The defendant conceded the merits of the claim, and quantum in respect of general damages and past medical expenses was agreed. The defendant also gave an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, but initially limited the undertaking to 30% of the plaintiff's expenses, because the plaintiff had a pre-existing condition. However it was conceded on behalf of the defendant that such a limited undertaking was not permissible. The remaining issue was the contingency rate to be applied to

future loss of earnings.

[2] Medico-legal reports by Dr. R. Keeley, Dr. G. Greeff, and Dr. G. Read, were handed in by agreement, as well as a joint minute prepared by these three doctors. Drs. Keeley and Greeff are neuro-surgeons and Dr. Read is an orthopaedic surgeon.

[3] As a result of the collision the plaintiff suffered injuries to his right loin, his right shoulder and his lumbar spine. The latter two injuries were the most significant. The shoulder injury has resulted in an impingement syndrome, causing intermittent pain. He cannot lie comfortably on his right side and the pain is most significant when he attempts to lift his hand higher than his head. The lumbar spine injury aggravated a pre-existing condition of spinal stenosis, precipitating surgery which would only have been necessary in one or two years' time. He has persistent low back pain, and pain and numbness in his right leg. He cannot sit, stand, walk, or drive a vehicle for very long. He struggles to carry out his work satisfactorily.

[4] The joint minute reflects that but for the accident "there was every likelihood" that the plaintiff would not have to retire before reaching 65 years. Dr. Keeley was of the opinion that as a result of the back injury the plaintiff would have little option but to "hang in there" until he reaches 60 years, when he can take early retirement. Dr. Greeff was of the opinion that following the back injury and with

the motivation of compensation, the plaintiff will retire earlier than age 65. Dr. Read was of the opinion that the combination of the shoulder injury and the aggravation of the spinal stenosis, may require the plaintiff to take early retirement.

[5] An actuarial calculation of future loss of earnings was handed in by agreement. The basis of the calculation was the difference between what the plaintiff would have earned had he continued to work until age 65, and what he will earn until he reaches age 60. He has been a teacher for thirty years and a school principal for the last ten years. The resulting amount is R578 774.00.

[6] Mr. Frost for the plaintiff suggested a contingency rate of 20% and Mr. Paterson for the defendant, 50%. Mr. Frost submitted that 20% was already a high rate given the particular circumstances and the so-called norm of 15%, but referred to the possibility that the plaintiff might work beyond the age of 60, and submitted that 20% was appropriate.

[7] Mr. Paterson submitted that it was not definite that pre-morbidly the plaintiff would have worked until 65, and may have retired earlier, given his pre-existing condition. With regard to post-morbid retirement, he submitted that the joint minute did not indicate how much earlier than age 65 the plaintiff would retire. Whereas Keeley said the plaintiff would work until age 60, Greeff and Read did not specify a particular age. In support of his argument, Mr. Paterson referred to

the fact that in spite of his injuries the plaintiff had continued to work since the collision, which was more than four years ago. Given all these uncertainties, so it was submitted, a higher than usual contingency rate was called for.

[8] I am of the view that the uncertainties are not as extensive as contended for. All three experts were of the view that pre-morbidly the plaintiff would not have retired earlier than age 65. Regarding post-morbid retirement, Mr. Frost pointed out that in his July 2009 report, Keeley had been of the same opinion, and that Read, in his earlier report, had agreed with Keeley's July 2009 report. Greeff said in an earlier report that early retirement would be the plaintiff's choice and not a result of his medical condition.

[9] The weight of opinion seems to be that the plaintiff will retire at age 60, or at least not much later. It should also be born in mind that Greeff's opinion related to the lumbar spine condition. He and Keeley specifically noted in the joint minute that they were unable to comment on the shoulder injury because they are not orthopaedic surgeons, whereas Read's opinion involved both injuries. Keeley said in his July 2009 report that the plaintiff told him he would like to have worked until age 65 but now had no option but to "hang in there" until age 60. Keeley was of the view that whatever the plaintiff's intention, he would not be able to work much longer after reaching age 60. In his September 2010 report Keeley said that the plaintiff now had a persistent fear that he might not manage to work until age 60. The plaintiff reported that the pain in his back and leg was

worsening and that he had difficulty climbing stairs and walking on uneven ground. Keeley was of the view that the plaintiff “may just be able to struggle through to age 60”. From the reports, it appears the plaintiff is a stoical and determined person, who returned to work the day after the collision and only after suffering significant pain, underwent surgery during July 2006. His fears of not being able to carry on working until age 60 are therefore significant in relation to his retirement age. The fact that he has continued to work after the collision does not diminish these fears or the accompanying reality of retirement well before age 65.

[10] What uncertainties there remain about the date of retirement are in my view more than adequately met by a contingency rate of 20%.

Order

[11] The following order is made:

[11.1] The defendant is ordered to pay to the plaintiff the following amounts:

General damages	R110 000.00
Past medical expenses	R 4 284.40
Loss of earnings	R463 019.20

[11.2] The above amounts will bear interest at the rate of 15,5% per annum from a date 14 days after judgment to date of payment.

[11.3] The defendant is ordered to furnish the plaintiff with an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, for the costs of future accommodation of the plaintiff in a hospital or nursing home, or treatment of or rendering of a service to him or supplying of goods to him arising out of the injuries sustained by him in the motor vehicle collision on 4 April 2006, after such costs have been incurred and upon proof thereof.

[11.4] The defendant is ordered to pay the plaintiff's costs of suit, as taxed or agreed, on a party and party scale together with interest thereon at the legal rate of 15,5% per annum as from a date fourteen days after taxation or agreement. Such costs are to include:

[11.4.1] Attending in respect of the merits on a necessary inspection *in loco* at the scene of the collision with Attorney, Plaintiff and Counsel;

[11.4.2] The reasonable qualifying expenses, if any, of the following expert witnesses:

Dr. R.J. Keeley

Dr. A. Morkel

Dr. G. Read

Dr. S.M. Ngapi

Dr. D. Malherbe

Mr. J. Olivier

Ms A. van Zyl

J.M. ROBERSON
JUDGE OF THE HIGH COURT

Appearances:

Adv A Frost, instructed by Roelofse Meyer Attorneys, Port Elizabeth

Adv N Paterson, instructed by Friedman Scheckter Incorporated, Port Elizabeth