

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

Case No: 2754/09
Date Heard: 22/02/2012
Date Delivered: 23/02/12

In the matter between

DELENE MINNIE ADAMS

Appellant

and

SHOPRITE CHECKERS (PTY) LTD

Respondent

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

REVELAS J

[1] The applicant seeks leave to appeal against the award of future medical expenses, general damages and interest as set out in the judgment handed down on 31 January 2012.

[2] An error was made with regard to the interest ordered. The order does not accord with my understanding of sections 2A and 5 of the Prescribed Rate of Interest Act 55 of 1975 (as amended). The order should have distinguished between the interest on the general damages awarded and the interest on the special damages awarded. In my view, this error could be dealt with in terms of Rule 42(1)(b) of the Uniform Rules of Court by a variation of the interest clause in the order, and I will do so in this judgment.

Future Medical Expenses

[3] The consequences of whiplash injuries and their future treatment, particularly in the case of older persons, where natural degeneration of the neck has already been in progress before the accident (which Dr van Aarde had found could have been the case) is not capable of being measured or predicted with much certainty. There is always a certain degree of guess work and arbitrariness involved in the exercise of the wide discretion to award damages in this type of matter.

[4] In paragraph [32] of the judgment I stated that my award took into account the fact that one type of treatment may diminish the need for another, but that both (physiotherapy and a rhizotomy) may be beneficial. The amount awarded for a rhizotomy (after a 25% contingency deduction) is in keeping with the amount Dr van Aarde suggested as a second option in his report. Based on all the evidence, the applicant might not have required any further rhizotomies if she attended physiotherapy. Rhizotomy procedures are seldom awarded by the court in these matters, as can be gleaned from past awards made. If I erred in this regard it was in favour of the applicant. In these circumstances, the prospect of another court awarding the costs of a second rhizotomy and a lesser contingency deduction than the one that was provided for, as argued for by the applicant, is not a reasonable one.

[5] Insofar as the award for physiotherapy sessions is concerned, I reiterate the reasons therefore as set out in my judgment.

General Damages

[6] It must be borne in mind that, apart from the fact that damages is a matter of wide discretion, this matter differs from all the cases relied upon by the plaintiff in that she was not injured in a motor vehicle accident. There was no evidence about how many boxes of frozen

vegetables hit the plaintiff. The probabilities suggest that it could not have been more than a few. Perhaps only one box hit her neck. Her injury seemed less serious or less traumatic, than one sustained in a motor vehicle accident. In addition, there was evidence that the applicant suffered no loss of amenities, other than that she could no longer perform household tasks, yet the injury made no difference to the manner in which she had always performed her duties as a factory worker. Having said that, it is indeed so that my award for general damages was substantially less than most awards in the cases I was referred to during argument. On that basis there is a reasonable prospect that another court might have a different view and raise the award for general damages.

[7] In the circumstances the following order is made:

1. Prayer 1 of the order dated 31 January 2012 is amended as follows:

By deletion of the words **"with interest thereon at the prescribed rate from 14 days from date of judgment to the date of payment"**.

and substituting it with the following:

- a) Interest is payable on the amount awarded for special damages - future medical expenses (R41 264.42) at the prescribed rate from date of judgment to date of payment.
- b) Interest is payable on the amount awarded for general damages (R55 000.00) and past medical expenses

(R14 248.61) (if not yet paid) at the prescribed rate from date of summons to date of payment.

2. The application for leave to appeal against the amount of damages awarded under special damages, (future medical expenses) is dismissed.
3. The applicant is granted leave to appeal to the Full Bench of the High Court, Eastern Cape Division, against the amount awarded for general damages.
4. Costs are to be cost in the appeal.

E REVELAS
Judge of the High Court

Counsel for the Appellant:

Adv van Rooyen

Instructed by: Van Vollenhoven & Associates

Counsel for the Respondent: Adv Smith

Instructed by: Goldberg & de Villiers

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