

OF INTEREST

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE, PORT ELIZABETH)

In the matter between:

Case No: 2176/2010

JOHAN DE LANGE

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

Coram: **Chetty, J**

Date Heard: **19 March 2012**

Date Delivered: **22 March 2012**

Summary: *Damages – Quantum – Motor vehicle collision – Contingency deductions – No reason to award higher contingencies
General Damages – Fair award*

JUDGMENT

Chetty, J

[1] The plaintiff, Mr *Johan de Lange*, suffered multiple injuries to his face, head, chest, abdomen, back, upper and lower limbs, especially the pelvis in a motor vehicle collision on the 26th April 2009. Arising therefrom he instituted an action for damages against the defendant alleging that the collision was occasioned by the sole negligence of the insured vehicle. The merits of the action have been settled 80% / 20% in the plaintiff's favour and the defendant has furthermore agreed to furnish the plaintiff with a certificate as contemplated

by section 17(4)(a) of the **Road Accident Fund Act**¹ for 80% of such costs. The agreement reached by the parties further recorded that the said certificate would encompass the costs, if any, associated with the employment of a carer.

[2] The only issues which remain for adjudication are the contingencies to be applied to the past and future loss of income suffered by the plaintiff and the amount to be awarded for general damages. Mr *Mouton*, who appeared together with Ms Barnard for the plaintiff, submitted that a contingency of 5% for past and 15% for future loss of income be applied whilst Mr *Paterson* has urged me to apply a contingency of 7½% and 20% respectively. He submitted that given the generous approach adopted by the experts' *vis-à-vis* the plaintiff's possible earnings and the admitted fact that he would probably have worked more overtime than the average, a higher contingency was indeed justified. The basis for the actuarial calculations is encapsulated in the report of Dr *Piro*, the contents of which the defendant admitted as conclusive proof. The deduction for contingencies is the prerogative of the court and in assessing the percentage to be decided, recourse is often had to actuarial guidelines. The contingency deductions reflected in the two reports commissioned by the plaintiff and defendant emanated from themselves and not the actuary. I did not understand Mr *Paterson* to suggest that the deduction advocated by Mr *Mouton* was not the norm. The argument for a higher contingency deduction was premised upon a speculative hypothesis at variance with the evidence adduced. There is, to my mind, no valid basis justifying a higher contingency deduction. The capped loss,

¹ Act No, 56 of 1996

to which a contingency of 5% and 15% was applied according to the actuarial report, was calculated as follows: -

Past loss of income	R 427 570.00
Future loss of income	R1 728 700.00

On the evidence adduced, the deduction is entirely appropriate. In terms of the apportionment the defendant would thus be liable to pay the plaintiff the sum of R1 725 016.00.

[3] As far as general damages are concerned, the reports of all the experts, not only Dr *Piro*, were admitted as constituting conclusive proof of their content. It would serve no useful purpose to regurgitate their contents in this judgment. The uncontroverted evidence of the plaintiff's wife, Mrs *Cheryl Ann de Lange*, demonstrates, quite unequivocally, the changes the collision has wrought upon him – in short, it has completely altered his life. I have been referred to a host of cases dealing with the issue of general damages and these have been useful in my assessment of what the award should be.

[4] As far as costs are concerned, I was urged to award the plaintiff the costs of two counsel. Mr *Mouton* submitted that although the defendant formally admitted the medical reports during the pre-trial conference on the 14th March 2012, the actual minute recording the agreement had only been signed by the

defendant on the morning of the trial. Consequently, so he argued, it was prudent to engage junior counsel. There is no justification for mulcting the defendant with the costs of an additional counsel. It is a luxury which the plaintiff must bear.

[5] In the result the following order will issue:-

1. The defendant is ordered to pay the plaintiff the sum of R1 725 016.00 for past and future loss of income.
2. The defendant is ordered to pay the plaintiff the sum of R600 000.00 as and for general damages.
3. Interest on the aforesaid amounts at the legal rate fourteen days from date of judgment to date of payment.
4. The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the **Road Accident Fund Act No, 56 of 1956** in respect of future expenses referred to therein and to include therein the costs, if any, associated with the possible employment of a carer.
5. The defendant is ordered to pay the plaintiff's costs of suit together with interest thereon at the legal rate from date of judgment to date of payment, such costs to include the qualifying expenses, if any, of the following experts:-

5.1 Dr P.A Olivier, Orthopaedic Surgeon;

5.2 Prof Louise Stroud, Clinical Psychologist;

- 5.3 Ansie van Zyl, occupational therapist;
- 5.4 Dr Karen Piro, Industrial Psychologist;
- 5.5 Dr Ernest Bonnet, Urologist;
- 5.6 Alex Munro, Actuary.

D. CHETTY
JUDGE OF THE HIGH COURT

On behalf of the Plaintiff: Adv P.H. Mouton together with Adv N. Barnard instructed by Struwig Hattingh, 28 – 7th Avenue, Newton Park, Port Elizabeth, Ref: Morne Struwig, Tel (041) 364 2624

On behalf of the Defendant: Adv N. Paterson instructed by Joubert Galpin & Searle, 173 cape Road, Mill Park, Port Elizabeth, Ref: R Mohamed, Tel (041) 396 9219

