



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not Reportable
Case no.: 3046/2013
Appeal no.: A51/2022

In the matter between:

PS K

Appellant

and

THE MINISTER OF POLICE
WARRANT OFFICER MOTAUNG

First Respondent
Second Respondent

CORAM: Musi, JP, Chesiwe, J *et* Opperman, J

HEARD ON: 12 June 2023

DELIVERED ON: 20 July 2023

JUDGMENT BY: Opperman, J

JUDGMENT

[1] This is an appeal against the order of a single judge of this Division. It is before us with the leave of the court *a quo*.

[2] The facts are succinctly that, in March 2011, the appellant who was 23 years old at the time, was dragged from his home, assaulted by the police and then detained. The duration of the

detention was approximately five hours. He was released and nothing came of the case against him.

[3] As a result of the assault the appellant suffered physical and mental injuries. The appellant testified that the assault and arrest affected his life not only on a physical level, but also psychologically. His case turns, among others, on a diagnosis of post - traumatic stress disorder.

[4] The claim is for a total of R 2 419 485.00.¹ The second respondent passed away in the meanwhile and the merits were settled on 4 November 2014 in respect of claims A and B; claim C was withdrawn. The only issue before the court *a quo* was the *quantum*. Claim A is based on the assault and claim B on the unlawful arrest and detention.

[5] The order granted *a quo* was for R 250.00 in respect of past medical expenses, R 10 000.00 in respect of the wrongful arrest and R 15 000.00 in respect of the assault. The first defendant was ordered to pay the then plaintiff's taxed or agreed party and party costs on the High Court Scale including the costs of the experts.

[6] The crisp dispute on appeal emanates from the finding by the court *a quo* that:

[14] *Without a full investigation into the medical and family history of the Plaintiff it is not certain whether the PTSD was caused by the arrest alone.* There is no investigation into any other possible causes for the PTSD and whether such other causes could have contributed to the condition. The reports and the evidence of the experts are not at all conclusive on whether the PTSD was caused by the arrest. One can even go further and conclude from the expert reports and evidence that the condition of PTSD is not clear and thus inconclusive. What is clear from all the evidence in its

¹ Bundle: "Amended Combined Index: Appeal" dated 16 May 2023 on pages 318 to 322.

Past medical expenses: R250.00

Future medical expenses: R202 800.00

Past loss of income: R1 371 780.00

(The calculation of which appears from the report by Munro Actuaries dated 4 June 2019)

General damages in respect of shock,
pain and suffering, loss of amenities of life and
mental anguish: R500 000.00

Contumelia in respect of unlawful arrest
and detention: R50 000.00

TOTAL: R2 519 485.00

totality is that the Plaintiff definitely suffered mental anguish as a result of the arrest. Dr. Greeff, the neurologist concludes that the Plaintiff suffered from emotional problems. (Accentuation added)

[15] Based on the expert evidence it is not proven on a balance of probabilities that the Plaintiff's condition of post - traumatic stress disorder was in fact caused by the circumstances and conditions of his arrest.

[16] The claims of future medical expenses, past and future loss of income which is based on the condition of PTSD as a result of the arrest can as a result not succeed.

[7] The Appellant, Dr. Shevel (Psychiatrist), Dr. Landman (Industrial psychologist) and Mr. Boshoff (Actuary) testified during the trial while in terms of an agreement reached by the parties, the reports of Dr. Smuts (Neurologist), Dr. Cronje (Urologist) and Mr. Greeff (Counselling psychologist) were handed in. The parties further agreed that the report of Dr. Moshakoa (Urologist) on behalf of the first respondent, as well as the joint minute signed by herself and Dr. Cronje, be handed in.

[8] The first respondent did not call any witnesses.

[9] The grounds of appeal are that the court *a quo* erred by concluding that the reports prepared by the various expert witnesses and presumably their *viva voce* evidence is not conclusive. The court erroneously ruled that the investigations and consultations conducted by the various expert witnesses were insufficient since they merely consisted of a single consultation with the plaintiff. In addition, that the court erred in finding that the plaintiff did not prove, on a balance of probabilities, that his diagnosis of post - traumatic stress disorder was caused by his unlawful arrest and assault. The court erred by finding that the plaintiff's claim for past and future loss of income, which is premised on his diagnosis of post - traumatic stress disorder, cannot succeed because he did not prove that his post - traumatic stress disorder was caused by the unlawful arrest and assault. The court should have concluded that the plaintiff has proved that he suffers from post - traumatic stress disorder and that the same was caused by the arrest and the assault.

[10] The appellant pointed out that:

1. Dr. Smuts performed a physical examination as well as a neurological examination of the plaintiff. Dr. Smuts concluded that the plaintiff suffers from “chronic pain and emotional problems”. Dr. Shevel, Dr. Smuts and Dr. Cronje recorded in their respective reports that the plaintiff had no prior history of emotional and psychological problems. Dr. Shevel, Dr. Smuts, Dr. Cronje and Dr. Moshokoa recorded in their respective reports that the plaintiff will require future medical treatment. This evidence was not contradicted.
2. The joint minute compiled by Dr. Cronje and Dr. Moshokoa also recorded that the plaintiff will require future medical treatment.
3. Dr. Shevel consulted with the plaintiff in depth. Dr. Shevel testified that, as informed, the plaintiff has not had any previous mental health issues and that the plaintiff does not have a family history of mental health issues. This evidence was never rebutted or disputed by the first defendant and it was merely put to Dr. Shevel that it is the first defendant’s case that the plaintiff experiences anxiety and sadness as a result of an unrelated medical condition. Dr. Shevel refuted this statement by testifying that the condition is not an immediate life-threatening event which would cause post - traumatic stress disorder.
4. Mr. Greeff conducted a clinical interview with the plaintiff while he also administered a battery of psychological assessment instruments (for instance; the Beck Anxiety Inventory, the Beck Depression Inventory, the Quality-of-Life Index and PTSD Checklist) before arriving at his conclusions and before preparing his report. Mr. Greeff, who conducted *inter alia* a clinical interview and testing procedure, mentioned “that a possible diagnosis is a post - traumatic stress disorder-deferred, as he does not meet all the diagnostic criteria at the current moment. He does, however, still present with key symptoms present in a PTSD-diagnosis”.
5. Dr. Landman prepared a report after having performed interviews based upon a scientific and a clinical evaluation of the plaintiff, after having performed a Psychometric Assessment of the plaintiff, after having studied the other medical expert reports, after having gathered the necessary collateral information and after having conducted the necessary research.

6. The first defendant never took issue with the method employed by and the process followed by the various expert witnesses before arriving at their conclusions. The first defendant never presented any evidence to justify an inference and conclusion that the process followed and the method employed by the various expert witnesses was insufficient to enable them to express an opinion or to arrive at the conclusion that the assault and arrest did not cause the post - traumatic stress disorder. Neither the plaintiff nor the various expert witnesses were confronted during the trial with a scenario where the nature, the extent and the timing of their examinations and investigations were questioned and criticised because that is and was never an issue between the parties during the trial.
7. The plaintiff testified about his working history, about the fact that he was fired from his previous jobs due to poor performance which in turn was as a result of his emotionally vulnerable state and him not being able to cope.
8. The first defendant's expert witness, Dr. Moshokoa, expressed the opinion that the plaintiff's symptoms of erectile dysfunction and possible post - traumatic stress disorder was causally linked to the incident.

[11] Advocate Motloung for the respondents, in essence, argued that the credibility finding of the court *a quo* stands beyond any criticism. He contended that the fact that the experts' testimonies were uncontradicted does not mean that they should uncritically be accepted.

[12] A reading of the record and consideration of the arguments for the appellant and respondents convince that the court *a quo* misdirected itself on the findings of the evidence presented. In summary: Investigations were embarked upon by the experts on the issue of post - traumatic stress disorder; it seems from the expert evidence that the appellant does indeed suffer from post - traumatic stress disorder; the extent and curability was not properly canvassed.

[13] The evidence has now showed that some factors were not considered by the experts. Advocate Coetzer for the appellant conceded that the appellant is suitable for paid work as his employment record and evidence show. The employment obtained correlates with his level of education and experience before the incident. The instructions on which the actuary calculated the

appellant's damages might not have been correct if the appellant's own testimony is properly evaluated.

[14] Further and crucial, is that the post - traumatic stress disorder is medically untreated. The appellant had managed to obtain employment whilst medically untreated; with treatment his condition and employment might stabilise. In the same breath the issue of future medical costs, if any, was not given any consideration.

[15] The capacity of the appellant to generate an income will have to be re-investigated by a court and calculated by the actuaries; contingencies must be established and applied. He is, on the evidence presented, employable. In fact, was engaged in a learnership when he testified. The general damages suffered as a result of the arrest and assault must be reconsidered.

[16] The findings of the court *a quo* must therefore be set aside on the basis reflected above. The administration of justice dictates that the matter be referred back to the court *a quo* to be adjudicated anew by another judge.

[17] The past medical expenses and costs finding is not in dispute.

[18] The appeal is successful and costs in the instance must follow the cause.

[19] **ORDER**

1. The appeal succeeds with costs.
2. The order of the court *a quo*, except for the costs order and the order with regards to past medical expenses, is set aside.
3. The matter is remitted back to the court *a quo* to deal with in terms of this judgment.

M OPPERMAN, J

I concur

CJ MUSI, JP

I concur

S CHESIWE, J

APPEARANCES:

For the appellant:
Instructed by:

JC COETZER
Honey Attorneys, Bloemfontein

For respondents:
Instructed by:

SE MOTLOUNG
The Office of the State Attorney: Free State