

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION – BHISHO)**

**CASE NO: 435/2009
DATE HEARD: 18/10/2013
DATE DELIVERED: 24/10/2013**

BERESFORD DALE KAISER

PLAINTIFF

and

**THE MEMBER OF THE EXECUTIVE COUNCIL DEFENDANT
FOR THE PROVINCE OF THE EASTERN CAPE
RESPONSIBLE FOR ROADS AND PUBLIC WORKS**

JUDGMENT

ROBERSON J:-

[1] On 25 December 2007 the plaintiff was injured in a motor vehicle accident on the R72 road in the Eastern Cape Province. His Land Rover vehicle, in which he was travelling, was also extensively damaged as a result of the accident. The defendant is the statutory authority with the duty to maintain provincial roads, one of which is the R72. The plaintiff instituted an action against the defendant, initially for damages arising from the injuries he sustained in the accident, alleging various grounds of negligence on the part of the defendant relating to the

condition of the R72. At a later stage he amended his claim to include a claim for the loss he suffered as a result of the damage to his vehicle.

[2] On 26 October 2010 Seti-Nduna AJ delivered a judgment in which she found the defendant liable to the plaintiff for any damages he might prove or on which the parties might agree.

[3] On 18 October 2013 the matter proceeded before me on the issue of quantum. The plaintiff's past and future medical expenses were agreed in the sum of R61 779.35 and R125 846.00 respectively. Both counsel agreed that the so-called normal contingency of 15% should be applied to the future medical expenses and I have no reason to decide otherwise. The resultant amount is R106 969.10. General damages and the loss occasioned by the damage to the Land Rover remained in issue.

GENERAL DAMAGES

[4] The evidence under this head was a medico-legal report by Dr. P.A. Olivier, an orthopaedic surgeon, which was admitted by agreement. The plaintiff suffered a fracture of the sternum and a fracture which involved the lamina of the 7th cervical vertebra. The plaintiff was first treated conservatively and a cervical collar was fitted. Pain in the cervical area however persisted and an MRI of the cervical area revealed the presence of slight anterolisthesis of the cervical vertebra. The plaintiff was referred to a neuro-surgeon who performed an

anterior cervical fusion and fixated the fusion with a cervical plate. When Dr. Olivier examined the plaintiff in 2009 the plaintiff complained of pain in the cervical area, which became worse if he moved his head in a certain direction. This pain was sometimes accompanied by a dull occipital headache. The plaintiff also experienced pain if he tried to look behind him, when he slept on his right hand side, and when he handled heavy objects. On examination Dr. Olivier found that the range of flexion and extension in the cervical area was restricted to a degree of 50%, rotational movements were restricted to 25%, and lateral flexion on both sides restricted to 25%.

[5] Dr Olivier was of the opinion that a second surgical procedure would be required approximately five years after the accident, which would either be an anterior cervical fusion or a cervical disc replacement.

[6] The plaintiff would have suffered a severe degree of pain and discomfort for 16 weeks after the accident and a further 16 weeks of severe pain and discomfort is anticipated after the second surgical procedure. The plaintiff will also suffer a slight to moderate degree of pain and discomfort in the cervical area in the future. He will also suffer pain and discomfort as a result of accelerated age-related degenerative changes of the discs between the 5th and 6th cervical vertebrae. He will not be able to perform strenuous physical activities such as lifting heavy objects.

[7] I was referred by Mr. de la Harpe, who appeared for the plaintiff, to the awards in a number of cases where neck injuries had been suffered. I have considered the varying degrees of severity of the injuries and their sequelae in these cases, as well as the present value of money. Mr. de la Harpe suggested an award in the range from R100 000.00 to R125 000.00 and Mr. Maseti, who appeared for the defendant, fairly agreed, although he suggested an amount towards the lower end of that range. In my view an amount of R120 000.00 is an appropriate award in the present case.

DAMAGE TO VEHICLE

[8] The plaintiff led the evidence of an expert witness, Mr. Kenneth Bezuidenhout, who is a qualified and experienced motor vehicle assessor. He examined the vehicle on 4 January 2008 and was of the opinion that the costs of repairs would exceed its pre-accident value and repairs would therefore be uneconomical. He took into account the age, general condition, accessories and mileage of the vehicle, and estimated its pre-accident value at R193 500.00. The vehicle was sold for scrap for the price of R18 744.90 and Bezuidenhout was of the opinion that this was a fair and reasonable sum. The loss therefore amounted to R174 755.10. There was no expert evidence to contradict that of Bezuidenhout and there was no reason not to accept his evidence.

[9] Mr. de la Harpe submitted that interest on this amount should run from the date of summons or date of service of summons. I am of the view that interest on this sum should only run from the date on which the notice of intention to amend the claim was served on the defendant's attorneys, namely 11 February 2011.

ORDER

[10] The defendant is ordered to pay to the plaintiff:

[10.1] R288 748.45 plus interest thereon at the legal rate from date of judgment to date of payment.

[10.2] R174 755.10 plus interest thereon at the legal rate from 11 February 2011 to date of payment.

[10.3] Costs of suit plus interest thereon at the legal rate from a date 14 days after allocatur to date of payment.

J M ROBERSON
JUDGE OF THE HIGH COURT

Appearances:

For the Plaintiff: Adv D de la Harpe, instructed by Drake Flemmer & Orsmond Attorneys, King Williams Town

For the Defendant Adv M Maseti, instructed by State Attorney, East London