

**FREE STATE HIGH COURT, BLOEMFONTEIN**  
**REPUBLIC OF SOUTH AFRICA**

Case No.: 1929/2008

In the matter between:-

**PULENG ANGELINA MOHLOBOLI**

Plaintiff

and

**MANEMA MERRIAM RALETHOHLANE**

1<sup>st</sup> Defendant

**MAJANA CLEMENT SITHOLE**

2<sup>nd</sup> Defendant

---

**HEARD ON:** 15 FEBRUARY 2011

---

**JUDGMENT BY:** KRUGER, J

---

**DELIVERED ON:** 24 FEBRUARY 2011

---

- [1] This judgment concerns the quantum of plaintiff's claim. Plaintiff was injured in a motor collision on 2 May 2005. Plaintiff was a passenger in a taxi driven by the second defendant who was at the time in the employ of the first defendant. As a passenger, plaintiff's claim against the Road Accident Fund is limited to R25 000,00, and the parties agree that R25 000,00 must be subtracted from whatever award is made by this court.

- [2] Merits and quantum of plaintiff's claim were separated, and on 26 November 2009 Rampai J granted judgment on the merits against the defendants jointly and severally, reserved the costs and directed that quantum be determined at a later stage.
- [3] No evidence was led before me. The parties agreed on future medical expenses in the amount of R3 360,00. The parties agreed that should the award for the plaintiff (after subtraction of R25 000,00 recoverable from the Road Accident Fund) exceed R100 000,00 costs on the high court scale should be granted and if not, costs on the magistrates' court scale. The parties handed in the reports of the plaintiff's two experts by consent, and the legal representatives made submissions. The reports were those of Dr P. Repko, a neurosurgeon and Dr J. J. de Wet, an orthopaedic surgeon.
- [4] The parties were not ad idem as to the injuries suffered by the plaintiff in the collision. Mr Van Aswegen, for plaintiff, contended that the following injuries should be considered:
- (1) Head injury causing scarring;

- (2) Skull fracture;
- (3) Injury to pelvis;
- (4) Whiplash.

[5] Mr Steenkamp, for the defendants, argued that the only two injuries to be considered are the skull fracture and the injury to the pelvis, the latter being the serious injury. He said the scarring on the head and whiplash of the neck had not been proven. In support of his argument Mr Steenkamp referred to plaintiff's particulars of claim, where the following allegation is made in par 6:

“A direct result of the aforementioned collision, the plaintiff suffered serious injuries, being a fracture of her pelvis as well as a skull fracture.”

No mention is made of whiplash or scarring of the head. Dr Repko does mention a neck injury in paragraph 2 of his report, but does not deal with it in any detail. Dr De Wet says there was a possible whiplash injury, which healed without any complication, and says the plaintiff only showed symptoms of mild neck spasma.

[6] In support of alleged scarring, Mr Van Aswegen in reply referred to:

(1) para 3.3 of Dr Repko's report:

"In this accident the patient sustained a head injury on the right side of the head, which included a 3cm laceration, which was stitched. This laceration later turned septic and the stitches had to be removed."

2) para 10.8 of Dr Repko's report:

"on the right forehead several scars were present well-healed and not tender to touch."

3) para 1.5 of Dr De Wet's report:

"Met ondersoek was daar tekens van 'n laserasie in die frontale gebied regs. Dit is in die haarlyn en kom goed geheg voor."

[7] The statement by Dr De Wet of a possible whiplash, with mild effect, at best for plaintiff establishes only a minor injury. As to the scarring, there appears to have been, apart from the skull fracture, a 3cm laceration of the right frontal region of the forehead, and this is also a minor injury. Dr De Wet describes a laceration in the hairline, well healed. The

injuries to the neck and forehead were of a minor nature. Apart from the fact that the alleged injury to the neck and the scarring were not part of plaintiff's particulars of claim, nor mentioned in further particulars, those alleged injuries have not been established on a preponderance of probabilities in the evidence before me. They will be disregarded.

- [8] Plaintiff was unconscious for a short period. She had regained her consciousness when she was admitted to hospital. She was not operated on. The skull fracture and pelvic fractures healed with conservative treatment. She was in hospital for 14 days.

#### **The skull fracture**

There was a linear fracture of the skull, not depressed. There was concussion. She suffers from intermittent mild headaches, but bed rest with panado relieves the headache. The injury has healed, and she can remember normally.

#### **The pelvic injury**

There was a fracture of the inferior pubic ramus and a chip fracture of the left acetabulum. The injuries were treated

conservatively and no surgery was contemplated. The symphyse was probably also injured in the collision. As a result of the injury, movement of the hip is slightly limited, and the plaintiff experiences pain where there is extreme movement. X-rays show a slight asymmetry due to incorrect joining of the pubic rami. The rest of the pelvis is normal.

### **General**

Dr Repko states that the plaintiff, who was born on 24 January 1953, and was 52 at the time of the collision, will not be able to perform any remunerative work in future. Dr De Wet expressed the view that the plaintiff will suffer no permanent disabilities as a result of the collision. Mr Van Aswegen did not contend that the plaintiff is permanently disabled.

- [9] Mr Van Aswegen referred to a number of decided cases. I list the cases together with a summary of the facts of each case as appears from the headnote. The present value of the claim is as stated by counsel with reference to the appropriate tables. References are to the Quantum of Damages in Bodily and Fatal Injury Cases, Volumes I – III by

Corbett and Buchanan, and Volumes IV – VI by Corbett and Honey. References to Volume I are contained in the 2<sup>nd</sup> Edition (1964), not the 3<sup>rd</sup> Edition (1985) nor the Hardcover 4<sup>th</sup> Edition (1995).

A. **Neck Injuries**

1. **SOUTHGATE v ROAD ACCIDENT FUND**

(16/08/2001)

Corbett and Honey Vol V C3-71 to C3-75

Adult married female.

Mild injury of the neck.

Virtually full recovery.

Intermittent pain.

Responded well to treatment.

Award: R20 000,00

Present value: R36 000,00.

B. **Scars**

2. **VAN DER SPUY v RONDALIA**

**VERSEKERINGSMAATSKAPPY**

(22/05/1964)

Corbett and Buchanan Vol I 324 – 327

Disfigurement resulting from residuary scars of

two cuts on forehead.

Award : R400,00

Present value : R24 000,00.

3. **McLINTOCK v LAYDEN** (1977)

Corbett & Buchanan Vol II 782 – 784

Facial lacerations and abrasions with removal of tissue from eyebrows.

Lower lip torn to ribbons – 150 stitches

Plastic surgery required.

1.600 Zimbabwe dollar

Rand value: R40 000,00.

C. **Head Injury**

4. **PALM v ELSLEY** (1974)

Corbett & Buchanan Vol II 388

Fracture at base of skull - 14 days in hospital.

Confused and disorientated for 11 days.

Lost sense of smell permanently.

Severe headaches initially.

Now severe headaches once in six weeks.

Award : R2 500,00

Present value : R89 000,00.

D. **Pelvis**

5. **MURPHY v COMMERCIAL UNION**

**ASSURANCE CO LTD** (1983)

Corbett & Buchanan Vol III 391 – 393

Boy aged 15 years.

Fracture of pelvis.

Fracture of femur.

Possibility of future arthritis.

Permanent disability flowing from femur injury likely.

Award : R8 715,00

Present value : R104 000,00.

6. **NTULI v ROAD ACCIDENT FUND**

(25 February 2009)

Corbett & Honey Vol V J2 – 207

43 year old woman.

Abdomen and lower leg injured and openbook fracture of pelvis.

12 days in hospital.

Award : R200 000,00  
 Present value : R221 000,00.

7. **REDDY v SANTAM LTD** (1997)

Corbett & Buchanan Vol IV F3 – 24

Hip and pelvis.

Posterior dislocation of left hip.

Fracture of acetabulum.

Award : R53 000,00

Present value : R119 000,00.

8. **HENEKE v ROYAL INSURANCE CO LTD**

(1954) 1954 (4) SA 606 (A)

Three fractured ribs.

Treatment was very painful.

Weights attached to plaintiff.

Partial rupture of urethra.

Award : R1 000,00

Present value : R150 000,00.

9. **MASTERSON v AA MUTUAL INSURANCE ASSOCIATION (1)** (1971)

Corbett & Buchanan Vol II p. 192 – 195

73 year old spinster.

Fracture of pelvis extending into hip joint.

Ribs possibly fractured.

Severe cut and abrasions.

Temporary loss of memory.

Award : R5 500,00

Present value : R254 000,00.

10. **LUTZKIE v SOUTH AFRICAN RAILWAYS AND  
HARBOURS AND ANOTHER** (1974)

Corbett & Buchanan Vol II 403 – 405

Pelvis fracture.

No permanent disability.

Bed-rest for three weeks.

Discomfort for six months.

Award : R1 800,00

Present value : R64 000,00.

E. **Multiple Injuries**

11. **FAIVELOWITZ v AUTO PROTECTION**

**INSURANCE CO** (30/10/1962)

Corbett & Buchanan Vol I 523

Multiple injuries to head, pelvis and hipbone.

Multiple fractures of skull with portion depressed.

One epileptic fit resulting already.

Fractured pelvis and twisted hipbone.

Intense pain.

Award : R9 000,00

Present value : R557 000,00.

12. **MULLER v ROAD ACCIDENT FUND**

(30/10/2007)

Corbett & Honey Vol V F3 - 40

22 year old male.

Severe fracture of pelvis with dislocation.

Abrasions and bruises.

Injury of leg.

Permanent limp.

Right leg 3 cm shorter than left leg after surgery.

Award : R200 000,00

Present value : R265 000,00.

[10] Mr Van Aswegen conceded that the injuries in the above cases were more serious than the plaintiff's injuries.

[11] Mr Steenkamp took the view that the only two relevant injuries were those to the head and pelvis. He said the serious injury was the one to the pelvis and referred to five cases:

1. **SMITH v MINISTER OF JUSTICE** (1960)

Corbett & Buchanan Vol I p. 403

Lady of 77 years.

Pelvis fracture.

Slight restriction in back movement.

Impairment of memory.

Award : £400/R800,00

Present value : R51 000,00.

2. **VAN VUUREN v NEW ZEALAND INSURANCE CO LTD** (9/12/1954)

Corbett & Buchanan Vol I p. 402

Young woman.

Fractured pelvis and injured leg.

In sling for six months for pelvis.

Discomfort in back and leg persisting.

Slight disfigurement of leg.

Severe shock and pain.

Award : £500/R1 000,00

Present value : R74 000,00.

3. **SINGH v PROVINCIAL INSURANCE CO LTD** (1963)

Corbett & Buchanan Vol I p. 399

Fractured bones in pelvis.

Certain distortion remained.

Fibrosis causing permanent weakness,

Use of catheter.

Award : R1 400,00

Present value : R86 000,00.

4. **WOODMAN v SA EAGLE INSURANCE CO LTD**

(1983)

Corbett & Buchanan Vol I p. 440

Widow 69 years old.

Fracture in pelvis area.

Treated in hospital by traction for a week.

3 weeks in hospital.

Fractures painful but now healed.

No longer able to continue active life.

Award : R7 500,00

Present value : R89 000,00.

5. **MASTERSON v AA MUTUAL INSURANCE CO LTD**

**(2)** (1971)

Corbett & Buchanan Vol II 217

63 year old spinster.

Fracture of tibia and fibula extending into knee joint.

Fracture of pelvis.

Left with slight limp due to shortening of leg – now  $\frac{3}{4}$  inch shorter.

Limited movement of knee.

Inability to stand for long.

Still numbness in leg.

Award : R2 000,00

Present value : R92 000,00.

[12] As to the pelvic injury, the case which most closely resembles the facts in this case is that of **LUTZKIE** (R64 000,00 present value). The highest award in the cases

referred to by Mr Steenkamp was R92 000,00 (present value). Plaintiff did not undergo any operation, nor was she in traction. The fractures to her pelvis healed well. Movement of the hip is slightly limited, and there is a slight asymmetry in the pelvis. I am alive to the fact that a court should not follow previous awards blindly, and that courts have possibly made more generous awards in recent years. In my view an award of between R70 000,00 and R80 000,00 for the pelvic injury would be appropriate.

[13] As to the skull fracture, no surgery was required. The linear fracture was not depressed and it healed. There was slight concussion and the plaintiff has intermittent mild headaches which in the opinion of Dr Repko may disappear provided the general health of the plaintiff is satisfactory. In my view an award of between R20 000,00 and R25 000,00 would be adequate.

[14] The alleged injuries to the head and neck were not pleaded and have not been proved. General damages in the amount of R105 000,00 should be allowed from which the amount of R25 000,00 to be recovered from the Road Accident Fund

must be subtracted.

[15] **ORDER**

Defendants are ordered, jointly and severally the one paying the other to be absolved accordingly:

1. To pay the plaintiff —
  - 1.1 General damages of R80 000,00.
  - 1.2 Future medical expenses in the amount of R3 360,00.
  
2. Interest on the aforesaid amounts at 15,5% pa from date of judgment to date of payment.
  
3. To pay the plaintiff's costs including the costs of the trial on merits by Rampai J on the appropriate magistrates' court scale.

---

**A KRUGER, J**

On behalf of the Plaintiff: Adv. W. Van Aswegen  
 Instructed by:  
 McIntyre & Van Der Post  
 BLOEMFONTEIN

On behalf of the

1<sup>st</sup> & 2<sup>nd</sup> Defendants:

Adv. M.D.J. Steenkamp

Instructed by:

Wessels & Smith

BLOEMFONTEIN

/wm/sp