

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 792/2010

In the matter between:-

LOUIS BOSHOFF

Plaintiff

and

MANGAUNG LOCAL MUNICIPALITY

First Defendant

MPE EQUIPMENT CC

Second Defendant

HEARD ON: 14 JUNE 2011

JUDGMENT BY: RAMPAL, J

DELIVERED ON: 4 AUGUST 2011

[1] The matter came to court by way of action proceedings. The plaintiff sued the defendants for payment of compensation in the amount of R400 000,00, plus interest thereon at the rate of 15% per annum from the date of the judgment as well as the costs of the action. The claim was based on delict. The action was defended by both defendants.

[2] The pleadings were exchanged. The stage of *litis contestatio* was reached. The notice of setdown was served.

Rule 16(2)(b) was complied with. The pre-trial conference was held in Bloemfontein on 11 May 2011. Advocate P.J. Loubser and Attorney C. Vorster attended on behalf of the plaintiff, Attorney J.P. Otto on behalf of the first defendant and Attorney G. Watkins on behalf of the second defendant.

[3] The plaintiff withdrew his action against the first defendant. The notice of withdrawal was served on the defendants on 23 May 2011 and filed two days later. Therefore the judgment concerns the plaintiff *versus* the second defendant only.

[4] The second defendant was previously represented by E.G. Cooper Majiedt Incorporated. On 6 April 2010 they withdrew and filed a notice to that effect. On 30 April 2010 Christodoulides Attorneys of Klerksdorp came on board as the second defendant's new attorneys. They appointed a local lawfirm, Horn & Van Rensburg, as their correspondents. On 31 May 2011 they too withdrew from the case as informed by Mr. Loubser. The second defendant was apparently informed of their decision by registered mail (*vide* exhibit "A" certificate of posting).

- [5] The matter was allocated to me for hearing. On 14 June 2011 there was no appearance by or on behalf of the second defendant. Since the notice of setdown was duly served in terms of Rule 16(2)(b) on 23 August 2010, I accepted that the defendant was aware of the date(s) allocated for the hearing of the matter. Accordingly I was satisfied that the hearing could go on in the absence of the second defendant.
- [6] The version of the plaintiff was narrated by one witness, namely: Mr. Louis Boshoff, the plaintiff himself. He testified that he was an electrician by occupation. He was previously in the employ of Centlec. He was injured in Bloemfontein on Wednesday, 6 June 2007. He was 50 years of age at the time.
- [7] On that day he was dispatched to Station Road here in the city to repair a broken streetlamp. He sat on the chairlift of the hoister mounted onto a truck. He then mechanically hoisted himself up. The chairlift was attached to the hoisting-arm. Standing in the cage in that elevated position he began working on the electrical cables of a broken streetlamp. While he was busy fixing it, the hoisting-arm snapped and

the chairlift sheared off from the hoisting-arm. He was then flung off the hoisting-cage. He fell approximately nine metres or so down.

[8] He testified further that as a result of the fall he sustained certain bodily injuries. From the scene he was rushed to Rosepark Hospital. He was admitted. He was treated in the intensive care unit. He was hospitalised for a number of weeks. His major complaint concerned severe back pains. He was x-rayed. It was then discovered that he sustained spinal cord injuries. He was operated. Some pins were inserted to strengthen his fractured spinal cord. He wore a back support for weeks. After his operation he received further intensive treatment at the hospital. He was immobilised for weeks.

[9] Subsequent to his discharge from the hospital he spent four more weeks recuperating in bed at home. His wife nursed and helped him to get active again. She supported him in many ways. He used the artificial back support for a further period of about six weeks during his home recuperative stage. He endured a great deal of pain. Although the

operation, the medication, the treatment and the homecare have somehow alleviated the intensity of the body pains, he continued to experience pains.

[10] The freak accident has had an adverse impact on his life. It has been four years since he was injured, but his back continues to trouble him a lot. It remains stiff and painful most of the time. He can no longer sit for longer than an hour; remain standing for longer than ten minutes; or restfully sleep for any significant length of time. He has to turn now and then in bed. At night he frequently has to wake up, get out of bed and stand up. In general, his body movement is now drastically curtailed in many ways. Cold weather exacerbates his condition. He sustained permanent disability. His contract of employment was prematurely terminated on medical grounds. He now lives on pension in the amount of R8 000,00 per month.

[11] Before the injury he was an active person. Among his hobbies were boat surfing, kick-boxing marshall art, karate marshall art, fishing and playing guitar. He liked karate so much that he became an instructor. He immensely enjoyed

fishing. He longs for the fun of lazily lying, sitting or standing while fishing. The dream of boat surfing lives on, but he realises that he cannot physically do it anymore. He has improved, but he accepts that the prospects of becoming better, were absolutely bleak. He readily accepted the various facets of the medical opinion. He has resigned himself to the thought that he will permanently experience pain and discomfort – *vide* Dr. J.J. Fourie's orthopaedic assessment report filed in terms of Rule 36(a) and (b). The plaintiff's case was then closed.

- [12] Mr. Loubser submitted that the second defendant was negligent and that such negligence caused the injury which the plaintiff sustained. I am in respectful agreement. The plaintiff obtained expert opinion from Dr. H.J. Marx, a civil engineer, who specialises in structural engineering matters. A summary of his expert evidence was filed in terms of Rule 36(9)(a). According to the summary of his evidence the structural specifications of the metal of the hoister-arm was supposed to be four millimetres thick and an edge reinforcing plate was supposed to be welded to the bottom of the hoister-cage.

[13] The expert found, upon physical examination of the hoister-arm, which cracked, that the thickness of the metal used, was three millimetres instead of four millimetres at the particular point where the hoister-arm cracked. Moreover, the expert also found that the specified reinforcing plate was not welded to the bottom side of the hoister-cage.

[14] Dr. Marx came to the conclusion that the hoister-arm did not comply with the aforesaid structural specifications as regards the thickness of the metal used in the manufacturing of the hoister-arm and the welding of the reinforcement plate at the bottom of the hoister-cage.

[15] As regards the merits, I would find in favour of the plaintiff. The second defendant's denial of negligence falls to be rejected. I am inclined to dismiss the second defendant's plea as far as the merits are concerned.

[16] As regards the quantum, I have to point out that the second defendant did not deny the amount of the plaintiff's claim. It follows, therefore, that the quantum was not an issue. The plaintiff was severely injured as a result of the second

defendant's defectively manufactured equipment or product. The plaintiff's bodily injuries were fully described by Dr. J.J. Fourie, the orthopaedic surgeon. In the circumstances of this particular case, I am persuaded that the amount claimed, represents a fair and reasonable assessment of the compensation the plaintiff deserves. The compensation claimed is commensurate to the injury suffered, the physical integrity permanently impaired, the persistent discomfort endured and still to be endured and all the amenities lost.

[17] Accordingly judgment is granted against the second defendant in favour of the plaintiff for:

17.1 The payment of the amount of R400 000,00;

17.2 The payment of interest thereon at the rate of 15,5% per annum from the date hereof;

17.3 The payment of the costs of the action.

M.H. RAMPAL, J

On behalf of plaintiff:

Adv. P.J. Loubser
Instructed by:
Webbers
BLOEMFONTEIN

On behalf of second defendant: No appearance