

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

JOHN MADIGAGE APPELLANT

and

SENATOR INSURANCE COMPANY LIMITED RESPONDENT

CORAM: TRENGOVE, VILJOEN, JJA et HEFER, AJA

HEARD: 22 MAY 1984

DELIVERED: 1984 - 07 - 12

J U D G M E N T

VILJOEN, JA

On 16 December 1978 the appellant, driving

his /.....

his motor vehicle, collided with another vehicle at the intersection of 4th Avenue and 3rd Street, Geduld, Springs, in which collision the appellant sustained certain injuries.

In the Witwatersrand Local Division the appellant sued the respondent, the insurer in terms of the Compulsory Motor

Vehicle Insurance Act 56 of 1972 of the other vehicle,

for damages suffered as a result of the injuries. It was

conceded by the respondent that the driver of the insured

vehicle was negligent and that his negligence was the cause

of the collision. The only issue which remained and on

which the trial Court heard evidence was that of the quantum

of damages. The trial Court awarded the appellant an amount

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of R3 250 but in view of a tender made which exceeded the amount awarded, the trial Court awarded costs incurred up to the time of the tender to the appellant and ordered him to pay the costs subsequent to the tender. Against the whole of the judgment of the Court a quo the appellant now appeals. The attack in this appeal is against the amount of R250,00 awarded for future medical expenses and the amount of R2 889,76 as general damages. The balance of the R3 250 in respect of medical and hospital expenses and loss of earnings was agreed upon by the parties.

The appellant was 53 years of age at the time of the collision. At the trial it was common cause that

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he was unconscious after the collision; that he sustained an injury which caused haematuria and that he sustained contusion of the ribs. After recovery of consciousness in the Far East Rand hospital to which he had been admitted on the day of the collision the appellant complained of severe neck pain. He was discharged from hospital on 21 December 1978 and resumed work on 3 January 1979. No direct evidence was led as regards his condition while in hospital but both sides agreed to certain hospital records being admitted as evidence. For some time (which, according to the witness Freddy Maboja was a period of about 6 weeks but which according to the evidence of the appellant was about /.....

about three months) the appellant received physiotherapy as an out-patient at the medical station on the Impala Platinum property. According to the appellant his neck was treated.

The appellant claimed that as a result of the collision he sustained:-

1. A severe neck injury.
2. A hemiparesis involving both right limbs and the right side of the face causing the appellant to appear to speak out of the left side of his mouth and a slight speech impediment.
3. Injuries to his knee and ribs which were apparently due to contusion and which cleared up soon after the collision.

According to the appellant he experienced a

severe /.....

severe headache after the collision but that condition soon resolved itself. He further testified that he suffered severe pain in his back in hospital and it was common cause that that could have been caused by some injury to the kidney or the bladder. The pain in his back and the haematuria cleared up, however, soon after the appellant's admission to hospital. Under these circumstances the learned trial Judge considered that his main task was to determine whether the appellant's complaints in respect of his neck injury and the hemiparesis were well founded and, if so, to what extent he should be compensated for such injuries.

The task was complicated, however, by the

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fact that the appellant had sustained a severe head injury in 1944 when he was 19 years of age; it was 34 years before the collision in 1978. He was knocked over the head with a knob kerie which fractured his skull in the area of the left frontal lobe of the brain and which caused severe scarring of the brain extending into the ventricle. Two neuro-surgeons, one on each side, were called to give evidence. Mr Froman testified for the appellant and Mr Snyckers for the respondent. Mr Froman first examined the appellant on 8 January 1981. Mr Snyckers examined him on 25 August 1981 and then Mr Froman again examined him on 6 May 1982. Both the experts furnished reports to the attorneys who had

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instructed them but both reserved final opinion pending the evidence of witnesses who could throw light on the appellant's condition before the collision. At intervals they sat in court listening to some, if not all, of the evidence. On what they did not hear they were briefed.

Warrant officer Majola of the South African Police, Mr Thompson and Mr Delagey testified for the appellant. The respondent called one Venter to testify for it. Subject to minor concessions and adjustments, each of the expert witnesses either claimed to find support for his views in the testimony of the lay witnesses or, in the absence of any evidence affecting such views, adhered

substantially /.....

substantially thereto.

After having dealt with the evidence of the witnesses called on both sides, and particularly with the evidence of the two neuro-surgeons, the learned trial Judge listed the salient facts which he found proved on the probabilities, as follows:-

- "1. Before the collision in 1978 the Plaintiff suffered from two conditions. Firstly in 1944 the Plaintiff received a severe blunt head injury which is demonstrated on the brain scan photographs to have resulted in extensive scarring going right down to the ventricle. The mild hemiparesis which the Plaintiff now exhibits will in all probability increase with advancing age. There is a possibility of epilepsy (in respect of his right limbs), a grave impairment of speech and the ability to select the right words to express a thought. And later a possibility

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of an impairment of mental faculties resulting in a change of personality. I rely on this finding in the main on the opinion of Mr Snyckers. Secondly, the Plaintiff's cervical spine showed clear evidence of degenerative spondylosis which is a condition compatible with his age and a condition which must have developed over many years.

2. The work-history of the Plaintiff between 1944 and 1976 shows that he was able to perform strenuous manual labour. That demonstrates that the Plaintiff had overcome any deleterious effects which the 1944 episode might have caused in relation to his work problems. But, as stated by Mr Snyckers, his ability to move heavy objects is a less reliable indication of the presence of incipient hemiparesis than tests which relate to the dexterity of the Plaintiff's hands and fingers. The way in which he executes his signature for instance could be a better guide in this respect than his ability to move heavy objects.

3. After 1976 and until 16th December, 1978 when

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he was involved in the collision between two motor cars; he did not work as a manual labourer. The work which he performed during this period could have been performed by the Plaintiff while undergoing the degenerative processes which involved loss of brain cells without it being noticeable to lay persons.

4. On 16th December, 1978 the Plaintiff received a blunt head injury in the collision. Neither the time when he received that injury nor the time of the Plaintiff's admission to hospital is known from any source other than that of Plaintiff's evidence. The Plaintiff stated in evidence that he received the injury at about 3 p.m. and that he recovered consciousness at about 6 p.m. The first entry on the treatment sheet dated 16.12.78 reads:

'Unconscious for period'. That entry suggests that the Plaintiff was conscious on admission or recovered consciousness in hospital soon after admission but after having been unconscious for some unknown period before admission.

The next entry: 'Pain neck +++' and '? fascial

(sic) (R) side for observation' as well as the directions for treatment numbered 1 to 4 support the contention that the Plaintiff regained consciousness on the day of admission and presented no further problem related to the function of the right limbs.

The absence of any entry suggesting a severe head injury is significant.

5. Both experts accept that the Plaintiff suffered acute neck pain after recovering consciousness in hospital and in view of the entries on the treatment sheet relating to the pain in the neck and X-Ray photographs it is safe to accept the Plaintiff's evidence on this point. The experts also agree, as I understand their evidence, that the painful condition of the neck has now become chronic. Mr Snyckers describes the Plaintiff's neck condition as follows (I am quoting from page 70 of the record): 'He suffers from a painful neck which has not responded adequately to conservative treatment, but although the examination cannot be taken as being reliable in view of the finding of the right arm, there is no

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doubt that he has complained of his cervical pain from the beginning. In fact, so severe was the pain initially, that it was suspected that he might have fractured the neck. The present X-Rays appearance is compatible with degenerative cervical spondylosis. The degree of spondylosis is not unusual at this age group and in itself does not constitute proof of an injury, but it is reasonable to accept that an aggravation of a pre-existing spondylotic condition causing neck pain has occurred. Since many of these patients with marked cervical spondylosis are painfree, it does not necessarily follow that he would have developed symptoms of his cervical spondylosis in any case although in the normal event some degree of discomfort would have been expected with a high degree of probability. The degree of neck pain that he now complains of, cannot be assessed objectively other than from what the patient states from the clinical examination which was referred to above, from the way in which it influences the patient's way of life and from the quantity of analgaesic medication that he consumes.'

Since the Plaintiff's account of his experience

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of pain given to the experts is suspect, however, I do not think that the Plaintiff's evidence that he had not experienced pain in his neck at all before the 1978 accident should be accepted at face value. To some extent his evidence is supported by the witness Thompson who stated that he had been in charge of the First Aid Station at the Plaintiff's place of employment and that he had never received a complaint from Plaintiff about his health, or a request for medicine of any kind. Venter also stated that the Plaintiff had never before the 1978 accident complained to him about his health.

6. The Plaintiff was discharged from hospital on 21st December, 1978, that is five days after admission.
7. The Plaintiff received physiotherapeutic treatment for one month and some weeks (according to the evidence of Freddy Maboja). It is probable that the treatment was for the Plaintiff's neck injury only. There was no evidence that it related to his right arm or leg. But Maboja states that in January the

Plaintiff /.....

Plaintiff walked with a stick. Later his body was bent to one side. Plaintiff's use of a walking stick is, however, consistent with his knee injury.

8. The Plaintiff returned to work on 3rd January, that is 12 days after he had been discharged from the hospital. I cannot determine whether the Plaintiff was possibly fit to return to work before the lapse of that period.
9. Mr Froman expressed the view that the Plaintiff's hemiparesis first manifested itself immediately after the accident in 1978. Mr Snyckers holds the view that the Plaintiff must have suffered a serious paralysis of the right arm (if not the leg on that side) in the 1944 incident which could have caused him to have been detained in hospital for about two to three months. It will be remembered that the Plaintiff stated that he returned to work within a month from the date of the injury. But, of course, this Court cannot accept that evidence as being reliable.
10. Since the Plaintiff sustained the head injury

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in 1978 more than 2 ¹/₂ years have elapsed. No evidence other than that of the Plaintiff has been placed before the Court to enable it to find how the condition of which the Plaintiff complains had developed or progressed over that period. But Dr Froman examined the Plaintiff on 8th January, 1981 and established the existence of the hemiparesis.

11. I accept Mr Snyckers' evidence in regard to the hemiparesis (although the proposition which he put forward was not put to Mr Froman for comment) that statistically the Plaintiff's age at the time of the 1978 accident was an age which fell into the pattern of this type of phenomenon and further according to Mr Snyckers the same applies to his first experience of pain due to degenerative cervical spondylosis.
12. I can find no fault with the opinion expressed by Dr Froman and I accept the probative value of the authority quoted by him. On that footing the head injury sustained in 1978 depleted the Plaintiff's pool of neurons below the level at which the mouth and right limbs could function normally. But I am no less

impressed /.....

impressed by the view of Mr Snyckers that the massive damage done to the brain of the Plaintiff was caused substantially, if not entirely, by the head injury received in 1944. I annex hereto a photo-copy of the article in the Journal of Neurology to which Mr Snyckers referred which is marked 'I'. According to Mr Snyckers the long term effects of the removal of certain brain tumours may be compared with the long term effect of extensive blunt head injuries which have resulted in extensive scarring such as revealed by the brain scan photographs in this case. Mr Snyckers drew attention to the view of the authors of the article which they expressed on page 29 as follows:-

'It is our opinion that development of the progressive vascular insufficiency of the ageing process, i e 'arteriosclerosis', will rob enough blood from the already potentially devascularised cerebral tissue in the immediate vicinity of the old operative scar to precipitate ischemia and

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secondary parenchymal (neuronal) damage.'

On page 32 the authors state:

'Finally, the same pathological process might be responsible for some of the so-called 'late post-traumatic complications', generally attributed to post-traumatic 'atrophy' or 'porencephaly' '.

Basically it was Mr Snyckers' view, subject to a concession in favour of the Plaintiff with which I shall deal later, that the ageing process in the main has caused the hemiparesis to manifest itself and that that stage arrived at some indeterminable time before the 1978 accident. Its first presence might have been so subtle that the Plaintiff himself did not appreciate it until he was in hospital when he had occasion to examine himself in a relaxed atmosphere.

13. There is no reliable direct evidence to support the Plaintiff's claim that there was a manifestation of grave hemiparesis immediately after the 1978 incident. I have only the Plaintiff's word as evidence that after he

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regained consciousness in the hospital he found his right limbs to be paralysed. The fact that he was discharged five days after the admission and that he resumed work twelve days later militates against that possibility.

14. Mr Snyckers has conceded (fairly I think) that the 1978 incident cannot be entirely dismissed as irrelevant to the Plaintiff's present condition, or as a mere coincidence. He has conceded that on the probabilities the 1978 incident caused some 'slight advancement in the Plaintiff's condition'. He was of the view that that advancement was not significant in the context of the contingencies which were introduced by the 1944 incident and having made that concession in relation to time, he was not prepared to concede that in addition the 1978 incident caused an increase in the intensity of the paresis, that is, an aggravation thereof. As I understand his evidence such advancement means one in relation to the Plaintiff's age. He was reluctant to express an opinion as to the period of such advancement but after questioning by me he said that from

a practical point of view one could regard the Plaintiff as having aged as a result of the 1978 accident by a period which could vary from a veritable moment of time to a maximum of one year.

15. Both Mr Froman and Mr Snyckers impressed me as experts in their field and as witnesses who conscientiously attempted to identify the facts on which their opinions were to be based. Both reached their opinions on firmly grounded conclusions in respect of the Plaintiff's condition. Each of them was prepared to make concessions adverse to the side on whose behalf he was testifying.

I have come to the following conclusions in respect of the main issues on which the two neurosurgeons testified. I am impressed by the evidence of Mr Snyckers to the effect that the hemiparesis first revealed itself at a time when, having regard to the history of the Plaintiff and his age, it was to be expected as a product of the ageing process and that the 1978 injury did not play a significant part in the causation of the hemiparesis

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now found to exist. I also accept as completely reliable the view of Mr Froman that it is likely that the head injury which the Plaintiff received in 1944 made him extremely vulnerable to extensive brain damage in the event of a further head injury such as that which he probably received in 1978. It is my view that the opinions of the two experts do not clash; they supplement each other.

16. On a conspectus of the evidence of Majola, Thompson, Delagey, Freddy Maboja, Venter and the evidence which the Plaintiff gave in Court, I find that the Plaintiff has shown on a balance of probability that prior to the collision in 1978 he was completely unaware of any weakness in the right side of his face and of any impediment of speech and any weakness in his right limbs. Nor, I find, had the Plaintiff developed chronic pain in his neck. There is no evidence that any person noticed anything abnormal about the Plaintiff or that his neck injury troubled him before the accident in 1978. Although the Plaintiff has been shown to have given inaccurate or indeed

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false accounts of his physical condition to the two neurosurgeons, I attach some value to his evidence that for a period of about 34 years before the 1978 collision he led a life which was symptom free of his neck condition and any brain damage. The Plaintiff must have received a severe jolt of the neck in the accident in 1978 and that probably caused commencement of the phase of chronic pain. It is not possible to ascertain the force with which the head injury was inflicted in the 1978 accident or to quantify the extent to which that injury caused loss of the Plaintiff's brain cells. While fully taking into account the evidence of Mr Snyckers I have come to the conclusion that the 1978 head injury should not be dismissed as irrelevant or as a mere coincidence. Indeed, in my view, Mr Snyckers' concession that there was a 'slight advancement' of the Plaintiff's hemiparesis is an admission that the 1978 collision played some part, albeit slight; in the development of the Plaintiff's present condition. I am of the view that the hemiparesis of the Plaintiff first manifested

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itself immediately after the 1978 accident and has become more marked since that date. In my judgment the Plaintiff has discharged the onus of showing a causal relationship between the 1978 head injury and his present condition, whether on the basis that it was 'precipitated' or 'advanced' on the evidence of the expert witnesses."

In considering the quantum of damages the learned Judge had regard to the principle that a wrongdoer must take his victim as he finds him but that the wrongdoer is not required to compensate his victim for pain, disability or discomfort which the latter would have suffered as a consequence of a pre-existing physical impairment or condition. For this proposition he referred to the judgment in the matter

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of Burger v Union Natal South British Insurance Company,

1975(4) SA 72 (W) at 76 A-D.

The judgment proceeded as follows:-

"Mr Snyckers stated that having regard to the Plaintiff's history and especially his age it was probable that he would have developed the symptoms which were found in hospital in 1978 at about that time and Mr Froman's evidence in no way controverts that opinion. On the other hand Mr Snyckers said that no medical expert could just before the accident have prognosticated the progress of the hemi-paresis or spondylosis with any measure of accuracy. It follows that I must be cautious in my approach to fixing the quantum so that I ensure that the amount fixed will not exceed a measure in excess of that attributable to the contribution of the 1978 collision to the Plaintiff's condition. This is a case where the evidence does not enable me, with any measure of certainty, to assess the degree in which the

1978 collision contributed to the Plaintiff's disabilities and to make an assessment of the Plaintiff's damages by mathematical computation. I am obliged therefore:-

'to take an overall view of the probabilities, possibilities and contingencies and to fix a figure which is a matter of impression rather than calculation but which seems to me to reflect the fairest approach to compensation that I can reach'. (See Burger's case supra at 77B)"

Sub voce "Future Medical Expenses" the

judgment reads:-

"The Plaintiff stated in evidence that since the accident he experiences pain in the neck, approximately twice a week but that two 'Aspirin' tablets give him relief. I accept that the Plaintiff will reasonably in the future have to seek medical treatment for the pain caused by his spondylotic condition, may have to buy more or more expensive analgaesics and require physio-therapeutic treatment. What such advice and medical

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treatment will cost I do not know, nor am I able to determine the degree to which the neck injury sustained by the Plaintiff in the 1978 accident contributed or will contribute to the pain which he will experience. According to the evidence the price of a packet of 48 'Disprin' tablets (which constitute a suitable but inexpensive analgaesic) costs about R3,50. I think it fair and reasonable to fix the future medical expenses in so far as they relate to the neck injuries sustained in the 1978 collision at R250,00."

Dealing with "General Damages" the learned trial Judge said:-

"An award under this head must reflect an allowance for-

1. the acute neck pain suffered by the Plaintiff in hospital and for some indeterminate time thereafter and which after his discharge from hospital necessitated physiotherapy; the pain in

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- the Plaintiff's back associated with haematuria; the pain caused by contusion of the Plaintiff's ribs and the knee;
2. the probability that the condition of the Plaintiff's neck developed into a chronically painful condition as a direct consequence of the collision;
 3. the head injury sustained in the accident on 16th December, 1978 and the fact that it either 'precipitated' or 'advanced' the hemi-paresis which has since become discernible in the right side of the face and the right limbs. On the probabilities the head injury converted a contingency in respect of hemi-paresis into actuality;
 4. The onset of hemi-paresis caused an advancement of the Plaintiff's limitation of work opportunity. Cognisance must be taken of the impairment of his earning capacity in this respect."

The main dispute between the two experts

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as far as the hemiparesis is concerned may briefly be stated as follows: While Mr Froman accepted that the 1944 injury was a serious injury, he was not prepared to concede that that injury by itself was a contributing cause of the symptoms which manifested themselves in the appellant subsequent to the 1978 injury. The 1944 injury, he said, was a predisposing factor in the sense of rendering the appellant vulnerable to future injury but it was the 1978 injury which caused the appearance of the symptoms demonstrated by the appellant after the 1978 insult. His evidence, properly interpreted, means that but for the 1978 injury the appellant might never during his life-time

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have experienced the disability from which he suffered after the 1978 injury. Mr Snyckers, on the other hand, was of the view that the 1944 injury would, at about the time of the second injury, have resulted in the symptoms which presented themselves after the 1978 injury. He expressed the view that some disability caused by the 1944 injury might even have been present before the 1978 injury but that the appellant might not have been consciously aware thereof and that to lay persons it might have been barely noticeable, if at all. In his report, prepared on 25 August 1981 after he had examined the appellant and taken a brain scan, he stated that during the examination the appellant

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demonstrated unphysiological signs of weakness of the right hand, which appear to be either consciously or sub-consciously manufactured. The distribution, he said, is also in keeping with the injury sustained and in all probability his right hemiparesis is due to the injury that he sustained some years back and not to the 1978 accident, particularly since his period of unconsciousness following the accident was three hours, which is hardly severe enough to cause such a defect.

He said in his report:-

"It is therefore necessary to try and establish whether or not the patient's condition prior to the accident had in fact shown a return to absolute normality as he states it had and that in fact his early post-traumatic condition was as he states, since the only

neurological /.....

neurological deficit found at the time of admission by the admitting officer was a possible mild facial paresis. The note of the 18th December indicates no statement regarding a right hemiplegia or hemiparesis and the nursing notes fail to refer to such a hemiplegia. In addition he appears to have been in hospital for three days and not three months, which indicates that his recollection is not accurate."

Under the heading "Cosmetic Impairment"

Mr Snyckers reported that the appellant "has a mild right facial palsy of an upper motoneurone type which is visible, but in my opinion is most likely to have pre-dated the accident".

In evidence Mr Snyckers confirmed the view which he expressed in his report with this

qualification /.....

qualification, as I read his evidence, that, whereas he had formerly held the view that the second injury was entirely irrelevant, he now conceded that the 1978 injury might have advanced the onset of the disability which would in any event have manifested itself, by not more than one year. He made this concession after having listened to some of the evidence and been told what the other witnesses ^{had} said.

In view of this diversity in viewpoints counsel for the appellant submitted that the learned trial Judge erred in the view expressed in paragraph 15 of the facts found proved that the opinions of the two experts did not clash and that they supplemented

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each other. He also erred, it was submitted, in finding that Mr Froman's evidence in no way controverted the opinion expressed by Mr Snyckers that, having regard to the plaintiff's history and especially his age, it was probable that he would have developed the symptoms which were found in hospital in 1978 at about that time.

I agree with counsel that the learned Judge did err in the respects referred to by counsel. The two viewpoints seem to me to be irreconcilable. Mr Froman was not prepared to concede that the appellant would, but for the second injury, have developed the hemiparesis in the normal course of the ageing process. He maintained that the appellant would only have developed

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it if he had a burst blood vessel or if he grew a tumour, or suffered a major stroke but it would not have happened in the natural course of events. That a young individual who suffered such an injury as the 1944 one "should have the stigma for the rest of his life that he will as a matter of course or necessity show premature change is a postulate which I haven't heard previously", he testified.

This view of his also emerges from the following evidence given by him under cross-examination:-

"Then only one last question, doctor, what other precipitations could have caused in the normal course of events such start of

degeneration /.....

degeneration except for as you aver the accident or as Dr Snyckers aver the inset of age? --- The list is encyclopaedic, it starts with head injury, stroke, with persistent severe untreated high blood pressure, chronic abuse of drink or drugs, diabetes, syphilis. As I say those will represent the most common causes of mental ... (inaudible, both speaking together) carbon monoxide, use of a brazier in a closed room. All of these things are possible.

I think you also yesterday mentioned cold, is that correct? --- Yes, if you had a profound drop in body temperature which was sustained and there was a period of coma with that.

COURT: What do you say, coma or cold? --- Cold, my Lord, but we are talking now of a specific hyperthermic episode, where a man gets drunk, lies in a pipe overnight ..

Exposure? --- And he is found exposed the next morning and unconscious. We are talking now about an extract situation and the list as I say is endless but that is the phrase of the question and therefore I include it."

For this Court to interfere and increase the amount of damages, it must, however, despite the misdirection, be persuaded that the learned Judge was wrong in the final result. He would, of course, be so wrong if Mr Froman's opinion is to be preferred to Mr Snyckers', as adjusted in his evidence. In submitting that full effect should be given to Mr Froman's view counsel criticised Mr Snyckers' evidence and submitted that, inasmuch as he relied substantially on the evidence of Venter, who turned out to be a singularly unobservant person, Mr Froman's evidence should have been preferred to that of Mr Snyckers.

Venter's evidence related mainly to the

dispute /.....

dispute as to whether the facial paresis was present before the 1978 injury. If there was no difference in the facial features of the appellant after the 1978 accident, as Venter deposed, the inference might justifiably be drawn that the mild facial paralysis, which Venter as a layman did not observe, was present before the 1978 accident, and that this was consistent, negatively, with the theory propounded by him, Mr Snyckers reasoned. He did not, however, seem to attach much weight to the evidence of Venter. In view of the concession that Mr Snyckers made that the onset of the hemiparesis might have been advanced by the 1978 injury and the finding of the Court a quo

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that the hemiparesis manifested itself immediately after the 1978 accident. Venter's evidence does not appear to me to be very relevant.

On the vital issue as to whether advancing years superimposed on the 1944 injury would in any event, at about the time the appellant sustained the second injury or soon thereafter, have caused the hemiparesis or not, the trial Judge seems to have accepted the evidence of Mr Snyckers. He said he was impressed by Mr Snyckers' evidence in this regard and the authority he relied on — the authority which the learned Judge quoted in paragraph 12 of the facts found to have been proved and which propounded a proposition

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which Mr Froman had apparently not heard of. In view of this finding questions such as whether the hemiparesis was present before the 1978 accident or whether the appellant simulated or not appear to me to be largely irrelevant. In view of the fact that the onus was on the appellant to prove the cause of the damage, the trial Court did not, in my view err in finding, substantially, as I read the judgment, that, regard being had to the 1944 injury, the hemiparesis was largely caused by the natural process of ageing with a slight advancement of such process caused by the 1978 injury.

As far as the neck pathology is concerned, the two neuro-surgeons were ad idem that it was probable

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that the pain may disappear completely when the joints between the vertebrae became so worn eventually as to almost effect a rigid back, Mr Snyckers said.

It was common cause between the two experts that no further physiotherapy was needed. Under these circumstances, even though the two experts had at one stage agreed on a figure of R800 for future medical expenses for the neck pathology, the learned trial Judge did not, in my view, err in awarding a sum of only R250 in this regard.

The appeal is accordingly dismissed,
with costs.

TRENGOVE, JA)
HEFER, AJA) CONCUR

JUDGE OF APPEAL