

SOUTH AFRICA / JUDGMENT

Groenewald v Road Accident Fund (74920/2014) [2017]

ZAGPPHC 879 (5 October 2017)

[2017] ZAGPPHC 879

COURT

North Gauteng High Court, Pretoria

BEFORE

N M Mavundla

CASE / FILE NUMBER

74920/2014

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII

Policy

IN

THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC

OF SOUTH AFRICA]

CASE

NUMBER: 74920/2014

Not

reportable

Not

of interest to other judges

Revised.

5/10/2017

In

the matter between:

GROENEWALD,
Claudette PLAINTIFF
And
ROAD
ACCIDENT
FUND DEFENDANT

JUDGMENT

Mavundla, J.

- [1] The Plaintiff is Claudette Groenewald an adult female born on the 12 November 1983, instituted an action against the Defendant in terms of the Road Accident Fund Act 56 of 1996 ("the Act") for damages she suffered whilst she was a passenger in a motor vehicle with a registration number "FNY 544 MP", which was rear-ended by motor vehicle with registration number "FCB 290 MP" ("the insured vehicle") being driven by one H Jacobs on the 17 September 2013 at approximately 10h00 on the N4 Highway at Brits off-ramp .
- [2] According to the plaintiff in her particulars of claim, she sustained neck and back injuries as a result of the aforesaid accident. The parties had in their pre-trial minutes agreed that there should be no separation of the merits and quantum.
- [3] It is trite that the plaintiff, as a passenger claimant, need to prove only 1% negligence on the part of the insured driver in order to succeed with her claim against the defendant. It is equally trite that where a vehicle collides with another motor vehicle from behind, the presumption is that the driver of the vehicle which rear-ended the other vehicle was negligent in failing to keep a proper look out, failed to scan the road ahead and failed to avoid the collision in not applying his brakes timeously or at all. The merits were conceded by the defendant in court before plaintiff called any witness. I find this conduct on the part of the defendant extremely disturbing in the sense that the parties held a pre-trial much earlier during which merits were not conceded. The tendency on the part of the defendant in not conceding merits well in advance in matters where the plaintiff need only prove 1% is mind boggling, if it is not a deliberate stratagem to unnecessarily inflate litigation costs. Such conduct needs to be depreciated in the severest measures.
- [4] The merits have since been conceded in favour of the Plaintiff on the basis of 100% liability on the part of the Defendant. The parties have agreed that the defendant will pay 100% proven damages. The only issue remaining to be decided is the loss of earning capacity, with the rest of the damage related issues to be postponed sine die.
- [5] It was agreed by the parties that the plaintiff will not testify. It was also agreed that the plaintiff was involved in another accident in 2003 where she sustained certain injuries and was treated in that regard and continued a normal life as she was asymptomatic. It is agreed that as the result of the present accident, she is showing some symptoms of the previous injuries. She did not institute a claim against the defendant for the first accident.
- [6] It is not disputed by the defendant that the plaintiff suffered the following injuries as the result of the accident of the 17 September 2013: neck injury and back injury. The plaintiff sued the defendant for payment of an amount of R504 418.63 which was set out in the amended particulars of claim as follows:

6.1 already incurred medical and hospital expenses R9

418. 63 6.2 estimated future medical expenses R195

000. 00 6.3 estimated past and future loss of earnings R200

000. 00 6.4 general damages Total R100.

000. 00 R504

418. 63

[7] The plaintiff filed several medico legal reports. The defendant has not filed a single expert medico legal report. The relevant history of the plaintiffs injuries and sequelae resultant from the accident are chronicled in the undisputed medico legal report of Dr L. F. Oelofse, an orthopaedic surgeon as follows:

7.1 HISTORY: The plaintiff was taken by ambulance to Life Midmed Private Hospital by ambulance. Her Glasgow scale was recorded as 15-15 on arrival at the casualty department. She complained of neck and back pain. She was sent for x-rays of the cervical and lumbar spine. She was also sent for CT of the cervical spine. She was admitted to the ward for observation and conservative treatment. She was discharged on 19 September with prescription for analgesics and anti-inflammatory medication. She received physiotherapy for about 2 week after the accident. She only received conservative treatment for the neck and lumber injuries she sustained in the accident.

7.2 PAIN AND SUFFEREING She had acute pain in her neck and lumbar area for about 4 weeks after the accident. She was treated conservatively only for the injuries she sustained in the accident. The prescription medication she received offered temporary pain relief.

7.3 CHRONIC PHASE: She continued to have pain and discomfort in her neck and lumbar area during certain physical activities.

7.4 Her previous history reveals that she had:

Charcot-Marie- Tooth disease and diabetes and is on chronic medications on treatment namely on insulin.

7.5 she also had injuries from a previous accident with C7 compression fracture injury--- 2003 and L1/2 compression fracture injury 2003.

[8] According to Dr Oelofse it is difficult to determine the neurological effect of the neck and lumbar spine injuries due to the

Charcot-Marie-Tooth disease, which was diagnosed in 2010.. She has small muscle atrophy in both hands and show signs of muscle dystrophy in the upper and lower limbs. She has a drop-foot on both sides and wears permanent drop-foot splints. She has absent little sensation plantar areas of both feet due to the peripheral neuritis caused by her diabetes diagnosed in 2006.

- [9] Dr Oelofse diagnosed the plaintiff with previous compression of fracture; C5/6 and C6/7 facet joint injury; C6/7 disc lesion. Dr Oelofse concluded that because on the CT-scan done on the day of the accident, it was reported that there are signs of facet joint degeneration on levels C6/7 and C7/T1 he gave a 50:50 apportionments for the plaintiff.
- [10] Dr Oeloesfe opined that "even with successful treatment, the plaintiff will always have difficulty due to the neck and lumbar spine injuries she sustained in the first accident and which were aggravated after the 2013 accident. As her degeneration worsens, her productivity will decline. The injuries she sustained make her an unfair competitor in the open market. "He further opined that the plaintiff would most probably only work to the age of 60 years whereas, but for the accident, would have worked to the normal retirement age of 65.
- [11] According to the report of Dr A C Strydom (industrial Psychologist), the plaintiff's salary as an administrative assistant was: Salary R47 093 -R167 193; plus bonus of R0. 00 - R17302; profit sharing: R45 00, commission R2 500 total R47 166 -R172 904. Depending on her work, the plaintiff would have been able to secure earnings ranging between R56 000 and R173 000 which was her actual earnings at the time of the accident, plus straight-line increase should be applied, up to the age of 45 years thereafter she must be regarded as her career ceiling, with normal inflationary increase which should be applied. She may have continued to be employed until the age of 60 to 65 years depending on her health problem. Strydom further opined that the plaintiff was pre-morbid already vulnerable in the open market due to her condition of Diabetes, CMT and pre-existing cervical-and lumbar injuries.
- [12] The medico legal report of Rita van Biljoen Occupational therapist, compiled by Ms Alana Stroebel that the writing of plaintiff is affected by the Charcot-Marie- Tooth (CMT) disease. She writes with the pen positioned within closed web space with her finger wrapped around the pen. Legibility of her handwriting is negatively influenced by her poor grip, still however clear enough to read. She mainly typed with her right hand, utilising the right index finger and left middle finger while typing. With sustained flexion of the neck, after constant writing of +- 10 minutes and constant typing of +- 13 minutes, she presented with neck discomforts reporting stiffness of the neck. The plaintiffs condition of CMT (intrinsic muscle weakness of the hand) and likely cervical discomfort
- experienced presently has minor influence on her writing quality and typing speed. It was observed that she is skilled with written and typing tasks.
- [13] Stroebel has further opined that the plaintiff, whose educational level is Grade 12 with her work experience, will continue to work within an administrative sedentary type of employment. Her optimal functionality can be achieved through her being provided with an assistant to tasks such as lifting items. Otherwise the plaintiff will have to be tasked with light administrative work. She would require to be accommodated with rest breaks within her tasks. She can do sedentary work. The plaintiff was already vulnerable in an open market due to her condition of diabetes and CMT. Overall the plaintiff is able to cope with

her work and she is provided with assistance by the assistant at her work place. She is however compromised to a certain degree. It is common cause that the plaintiff is not asking for an order for the past loss of earnings, correctly so because according to Stroebel, she was paid sick leave during her absence from work as a result of the accident.

- [14] The plaintiffs actuarial report prepared by Mr Johan Sauer provided that deductions for general contingencies are as follows:

Had the accident not happened Now that the accident has happened Difference: Loss Past earnings 259 710 258 414 1231 less contingency deductions (5%/5%) 12 985 12 921 Total loss of past earnings 246 724 245 493 Future earnings 3869562 3 443 648 less contingency deductions (10%/24%) 386956 826 475 Total loss of earnings 3 482 606 2 617 172 865 433 Total loss of earnings 866 664

- [15] The parties are not in agreement as to what percentage should be employed in respect of contingencies deductions. Neither were they *ad idem* with regard to the amount in respect of loss of future earnings, with the plaintiff's counsel contending that an amount of R866 664 should be awarded to her while counsel for the defendant vigorously contended that an amount of R478 113. 76. The parties are *ad idem* that a 12% contingency deduction be employed on the future earnings had the accident not happened. They however differ with regard to the percentage to be employed on the future earnings now that the accident had occurred, with the plaintiff advocating contingency deductions of more than 50% with 12% pre- accident and 25% post-accident on a spread of 13%; while the defendant contended for contingency deduction on 12% pre and 15% post with a spread of 3%. They were separated by a 7% difference. In an effort to persuade the parties to reach a compromised middle point, with the plaintiff discounting 50% of the figure which represented their difference, and with the plaintiff increasing its figure with 50% of the figure that separated the parties. However, counsel for the defendant gallantly and strenuously opposed this methodology. On reflection, I must conceded that such an approach is incorrect for a number of reasons, *inter alia*, as it had the potential of tilting the scale in favour of the plaintiff and against the defendant and "pour out largesse from the horn of plenty at the defendant's expense."; Vide *De Jongh v Du Pisanie* NO[1] without taking into account the plaintiff's pre-accident limitations nor the 50% 50% deductions recommended by Dr Oelofse in respect of the cervical-lumbar spine injuries the plaintiff sustained during the previous accident[2].

- [16] The authorities in respect of GENERAL CONTINGENCIES provide that:

"When assessing damages for loss of earnings or support it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is the prerogative of the Court. However, most matters do not go to Court so the relevant deductions become matter for negotiations. Even when the matters do go to Court some judges seek advice from expert witnesses as regards the appropriate deductions to make. General contingencies cover a wide range of considerations which vary from case to case and may include; taxation, early death, saved travel costs, loss of employment, promotion

prospects, divorce etc. There are no fixed rules as regards general contingencies". In the matter of *Legal Insurance Company Ltd v Bates*[3] Holmes J.A. held that 'In assessing the compensation the trial Judge has a large discretion to award what under the circumstances he considers right. He may be guided but is certainly not tied down by inexorable actuarial calculations."

[17] The claim for loss of future earning capacity, is the diminishing of the plaintiff's earning capacity in the future, encompassing, inter alia, the potential appreciation of that future earning capacity, in the form of salary increment and promotion, the difference between that potential future earning and the pre-morbid earning. The plaintiff is compensated for the loss of her earning capacity, which is a capital asset, and not for a loss of earning as such. *Vide Barclays V Road Accident Fund*.[4]

[18] In his book *The Quantum Yearbook*[5], Koch states that:

"when assessing damages for loss of earnings or support it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation..... The deduction is in the prerogative of the court. General contingencies cover a wide range of considerations which may vary from case to case and may include: taxation, early death, saved travel costs, loss of employment, promotion prospects, divorce etc."

Koch refers to the following as some of the guidelines as regards general contingencies:

- "Normal contingencies" as deductions of 5% for past loss and 15% for future loss.
- Sliding scale: Vz% per year to retirement age, i.e. 25% for a child, 20% for youth and 10% in middle age and relies on *Goodall v President Insurance* 1978 1 SA 389 (W); and on *Bailey v Southern Insurance* 1984 1SA 98 (A) for child claims.
- differential contingencies are commonly applied, that is to say one percentage applied to earnings but for the accident, and a different percentage to earnings having regard to the accident. He makes reference to some decided cases: *Hutchings v General Accident Insurance* 1986 3 QOD 737 (C) 744 (10% and 20%); *Venter v Mutual and Federal Versekeringsmpy* 1988 3 QOD 749 (T) 759 (10% and 25%); *Van Drimmelin v President Versekeringsmpy* 1993 4 QOD E2-19 (T) (10% and 30%)."

[19] It is important to take into account the fact that the plaintiff had a pre-morbid negative health problem, namely the Charcot-Marie-Tooth

as well as her diabetes, which already made her vulnerable in the labour market, absent the accident. She had the first accident but decided not to claim in that regard. In the matter of *Goodall v President Insurance*[6] the Court held that: "In assessment of a proper allowance for contingencies, arbitrary considerations must invariably play a part, for telling the future, so confidentially practised by ancient prophets and soothsayers, and by modern authors of certain type of almanac, is not numbered among the qualifications for judicial office." In my view, the plaintiff cannot be allowed to indirectly claim for whatever damages she could have claimed for the first accident, which claim she decided to abandon, by inflating her present claim. Besides, the

plaintiff is still employed and is being accommodated in so far as whatever inconvenience she encounters. I also take into account the fact that the retirement age in particular for women is now 60 years, with the probability that she would have had to retire much earlier, regard being had to her pre-morbid health

disposition.

[20] In the exercise of my discretion, I am of the view that in respect of future loss of earnings, an amount of R550 000. 00 would be fair and reasonable in the circumstances of this case.

[21] In the result the following order is made:

1. That the defendant is liable to pay 100% (hundred per cent) of the plaintiff's proven or agreed damages;
2. The defendant is to pay the plaintiff's attorneys the sum of R550 000. 00 (Five hundred and fifty thousand rand) in respect of loss of future earnings;
3. The remainder of quantum, in specific general damages is hereby separated and postponed sine die;
4. That the plaintiff attorney's trust account details are as follows:

ACCOUNT HOLDER: VZLR INC

BRANCH:

ABSA VAN DERWALT STREET

BRANCH CODE: 323345

TYPE OF ACCOUNT: TRUST ACCOUNT

ACCOUNT NUMBER: [...]

5. That in the event of default on the above payment, interest shall accrue on such outstanding amount at 10.50% (at the mora rate of 3.5% above the repo rate on the date of this order, as per the Prescribed Rate of Interests Act, 55 of 1975, as amended) per annum calculated from date, as per Road Accident Fund Act, until the date of payment.;
6. That the defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4) (a) of Act 56 OF 1996, in respect of future accommodation of the plaintiff in a hospital or nursing home or treatment of or treatment of or he rendering of a service or supplying of goods to the Plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collusion which occurred on 17 September 2017;

7. That If the Defendant fails to furnish the undertaking to the Plaintiff within 30 (thirty) days of this order, the Defendant shall be held liable for payment of the additional taxable party and party costs incurred to obtain the undertaking;
8. That the Defendant to pay the Plaintiff's taxed or agreed party and party costs, excluding costs of the previous trial date of 22 April 2016, in respect of which each party to pay its own costs, in the above mentioned account, for the instructing-and correspondent attorney, which costs shall include, but not be limited to the following:

8.1 All reserved costs to be unreserved, if any;

8.2 The fees of Senior Junior Counsel (for both 22 April 2016 and 19 May 2016);

8.3 The costs of obtaining all expert medico legal-, actuarial, and any other reports of expert nature which were furnished to the Defendant and or its experts save for the report of Dr Earle which will be taxed at a later stage;

8.4 The reasonable taxable qualifying, preparation fees of all experts, including the costs of consultation fees with the legal teams, if any;

8.5 The reasonable travelling and accommodation costs, if any, incurred in transporting the Plaintiff to the medico-legal appointments;

8.6 The reasonable costs for an interpreter's attendance at court and at the medico- legal appointments for translation of information, if any;

8.7 The above-mentioned payment with regard to costs shall be subject to the following conditions:

8.7.1. The plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant's attorney of record; and

8.7.2. The Plaintiff shall allow the Defendant 14 (fourteen) calendar days to make payment of the taxed costs.

N. M. MAVUNDLA

JUDGE OF THE HIGH COURT

DATE OF JUDGMENT: 05/10 /2017

APPLICANT'S ADV: ADV. D. J. MARX

INSTRUCTED BY: VAN ZYL LE ROUX INC.

RESPONDENTS' ADV: ADV. MAITE

INSTRUCTED BY: DIALE MOGASHOA ATTORNEYS.

-
- [1] 2005 (5) SA 457 CC at 475E.
- [2] Vide page 87 of the Occupational Therapy Medico legal report of bundle 1 of expert Notices.
- [3] 1963 (1) SA 608 (AD) at 614 F.
- [4] 2012 (3) SA 94 (WCC) at 97H para [15]-[28].
- [5] The Quantum of Yearbook, Robert J Koch, 2014, p114
- [6] 1978 1SA 389 (W) at 392H-393.
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2017/879.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/groenewald-v-road-unknown-topic-agpphc-2017>

Prepared on 26 October 2026 · Esheria