

IN THE HIGH COURT OF SOUTH AFRICA  
(WITWATERSRAND LOCAL DIVISION).

CASE NO: 2001/21401

**REPORTABLE IN**  
**QUANTUM OF DAMAGES**

In the matter between

**CORINNE NICOLA SCHOLTZ**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

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**J U D G M E N T**

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**VAN OOSTEN J**

- [1] This is an action for damages in respect of bodily injuries suffered by the plaintiff in a motor vehicle collision. Negligence is no longer in issue and the defendant is accordingly liable for the payment of the plaintiff's damages. At a previous hearing of this matter on 18 November 2005, part of the plaintiff's claim for damages was disposed of and the remaining issues were postponed *sine die*. Goldstein J on that occasion granted an order firstly for an interim payment by the defendant to the plaintiff in the sum of R750 000; secondly for the defendant to furnish the plaintiff with a certificate in terms of the provisions of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 and thirdly for the defendant to pay the wasted costs occasioned by the postponement. I have been informed that the defendant has duly complied with the orders.

- [2] At the commencement of the trial before me I was informed that further aspects regarding the *quantum* of the plaintiff's damages including the claim for the plaintiff's past hospital and medical expenses, had become settled. The only issues which remain and which have been referred to me for determination are, firstly, the *quantum* of the plaintiff's loss of earning capacity and, secondly, the plaintiff's general damages for pain and suffering, disability, disfigurement and loss of amenities of life. Although liability for payment of the costs of the action was not specifically agreed upon, the plaintiff's entitlement thereto was left undisputed. No evidence was led on behalf of either party and, by agreement between the parties, the issues fall to be decided on the pleadings, the medico-legal reports filed on behalf of the parties, the actuarial report filed on the plaintiff's behalf and lastly the joint minutes in which the agreed findings and opinions of the neurosurgeons, clinical psychologists, occupational therapists and industrial psychologists on both sides are recorded.
- [3] Before dealing with the disputes, it is necessary to briefly refer to the injuries sustained by the plaintiff and the treatment she received in respect thereof. The motor vehicle collision in which the plaintiff was injured, occurred on 24 March 2000. She was then almost 46 years old. She lost consciousness, having sustained a mild concussive brain injury. A traumatic dissection of the left internal carotid-artery developed and this in turn led to the development of a large left mid-cerebral artery infarction which in consequence left the plaintiff with paralysis or hemiplegia of the right side of her body as well as pain sensation on the right side, loss of visual field on the right side, and diminished hearing and speech impairment. In addition thereto, she has since the collision suffered a number of epileptic seizures. After the collision she was admitted to Harrismith Hospital but a few hours later she was transferred to Bethlehem Hospital. Three days later she was transferred to the intensive care unit of Milpark Hospital where she regained consciousness and received treatment for four weeks. Upon her discharge she was admitted to the Netcare Rehabilitation Centre at

Argyle Clinic where for some seven weeks she was treated in a multidisciplinary rehabilitation programme in respect of speech and mobility. Initially complete paralysis on the right side occurred confining her the use of a wheelchair for six months. Thereafter she walked with the aid of an elbow crutch resulting in a noticeable circumduction in her gait. I will deal with the further *sequelae* of the injuries in more detail later in the judgment.

- [4] I shall now deal with the remaining issues, each under a separate heading.

### **LOSS OF EARNING CAPACITY**

- [5] The bases upon which the calculations by the plaintiff's actuary have been made are, save for two aspects with which I will presently deal, accepted by the parties as correct. The first dispute concerns the amount of the salary increase plaintiff would have received upon her being promoted. It is not in dispute that at the time of the collision, the plaintiff was employed in the sales and marketing field as a key accounts manager at Legacy Hotels and that but for the accident, she would have been promoted on 1 September 2001, with a concomitant increase in her salary. Some uncertainty however has arisen as to the exact amount of the increase. The uncertainty is attributable to the fact that the manager of the plaintiff's erstwhile employer furnished the industrial psychologists with different amounts for her possible salary increments. He indicated two amounts, the first "approximately R3 000 per month" which I should add, was given in April 2002, as against the lesser amount of R2 000 per month which was the amount furnished more recently. Under these circumstances an estimate of the amount is called for. Such estimate in my view, would lie somewhere between the two extremes to which I have referred. The plaintiff's promotional increase for the purpose of the award I propose to make in respect of the loss of plaintiff's earnings, is accordingly determined in the sum of R2 500 per month.

### **PAST LOSS OF EARNINGS**

- [6] Under this head of damages the plaintiff is entitled to an award in the sum of R887 201, which is made up as follows:

Accrued value in 'but for' scenario	R1 904 422
Less	
5% contingency	R 95 221
Less	
Accrued value in 'having regard to' scenario	<u>R 922 000</u>
<b>Net accrued loss</b>	<b>R 877 201</b>

### **FUTURE LOSS OF EARNING CAPACITY**

- [7] The only remaining dispute between the parties under this head of damage concerns the contingency allowance that ought to be made in respect of the plaintiff's estimated future loss of earnings. The plaintiff contended for a 15% contingency allowance and the defendant for 20%. Counsel for the defendant submitted that the possibility of the plaintiff's reduced life expectancy of "up to 5 years" as agreed upon by the neurosurgeons, has not been specifically factored into the actuarial calculations. In support of the contention that a 20% contingency must be allowed, counsel submitted that allowance must be made for the plaintiff's reduced life expectancy, combined with the plaintiff's estimated 75% prospect of promotion to a next level. I am however satisfied that the contingency contended for by the plaintiff in the circumstances of this case, is appropriate and that the calculations provided by the actuary should therefore be accepted.

- [8] The result is that I assess the loss of the plaintiff's future earning capacity in consequence of the accident, at R1 999 608, made up as follows:

Prospective value:	
In 'but for' scenario	R3 802 971
Less	

In 'having regard to' scenario	<u>R1 450 491</u>
	R2 352 480
<i>Less</i>	
15% Contingency allowance	<u>R 352 872</u>
<b>Total</b>	R1 999 608

- [9] On the basis I have set out above, the total award in respect of the plaintiff's loss of earning capacity therefore is R 2 876 809.

### **GENERAL DAMAGES**

- [10] It remains to consider an appropriate award for pain and suffering and loss of amenities of life, disability and disfigurement. Defendant's counsel has suggested an award of R700 000, whilst plaintiff's counsel somewhat more optimistically, contended for an award of R950 000.
- [11] Counsel for the plaintiff relied heavily on the case of **Garroch v Road Accident Fund** (unreported judgment delivered in this Division on 3 August 2005 [Case no 2003/2558]). This case comes the closest to the injuries suffered by the plaintiff in the present matter. The amount awarded in that case in respect of general damages, was R900 000. There the injuries that the plaintiff, a 55 year old female business woman/artist, had sustained in a collision were described by Foulkes-Jones AJ as "most severe". Those injuries included extensive head injuries associated with a fracture to the base of the skull, haemorrhagic contusions of both frontal lobes, neuro-psychological deficits, right upper arm paresis, optic nerve trauma with deterioration of vision, reduced hearing, facial disfigurement and loss of bladder and bowel control. She also suffered a soft tissue injury to her right elbow and hand, segmented fractures of the shaft of the radius; a comminuted mid-shaft fracture of the left ulna, a compound fracture of the left leg with local vascular injury which resulted in a below knee amputation, heavily contaminated compound fractures of the right tibia and fibula, with skin and bone loss, a chest injury involving rib fractures and widespread abrasions, nasal and periorbital fractures and a right

brachial plexus injury. She was hospitalised for a period of about 16 months and remained unconscious for a month. During the course of her hospitalisation she underwent multiple painful procedures, including cleaning and debridement, a below-the-knee amputation, external fixation of the right tibia, muscle flap surgery to the right leg, surgery to the left forearm with internal fixation and skin grafts, together with follow-up procedures, various bone and skin grafts and tracheotomy. Although she had in the passage of time shown some improvement she was left with severe permanent disabilities both physically and mentally. Her faculties had undergone major deterioration. She was still confined to the use of a wheelchair and had become isolated. She had no quality of life left and was described by her husband as a vegetable. These injuries and their *sequelae* the learned Judge held justified an award of not less than R 900 000.

- [12] Reverting to the present matter, I have already dealt with the plaintiff's injuries as well as the treatment she received in sufficient detail to indicate that her injuries were of an extremely serious nature. Those injuries had a dramatic effect upon her, both physically and mentally. She has undergone a major deterioration in her faculties. The spastic right hemiplegia I have already referred to, is maximal in the right upper limb, which now is functionless. She experiences overall weakness of the right leg requiring her to use an ankle brace when walking. A right sided neglect occurs resulting in an unawareness of her right arm. She has lost the use of her dominant right hand and is now in the process of retraining so that she can write with her left hand. Her speed and fluency of writing and script are permanently impaired. She still suffers constant pain affecting her right side. Her visual impairment obliterates objects on the right side whether stationary or mobile. Her speech impediment although having improved, remains incomplete while word-finding difficulties persist. There is no prospect of further improvement in her physical incapacity and she will continue to experience pain and discomfort resulting from her injuries. Lastly, the possibility of epilepsy recurring in future, will always remain.

[13] The plaintiff's loss of life amenities can rightly be described as very severe. Compared to her pre-accident lifestyle she has become isolated both socially as well as in the family circle. She has been left with physical disabilities which preclude her from pursuing most of her previous leisure activities. Her life-style has dramatically altered from a highly self-sufficient independent and physically active pre-accident lifestyle to a post-collision one of inactivity and semi-dependence, requiring her to rely on the goodwill of family members and others including a full time domestic assistant, to accommodate her and assist with her ordinary daily tasks. She will be precluded in future from engaging in any occupation. The prosperous and successful career which she had developed with great passion and efficiency, has prematurely been terminated. All this has resulted in significant psychological impairment including anxiety and depression, poor memory, irritability, moodiness, lack of self-confidence, self-consciousness about her appearance and in general in her having become an introvert.

[14] Aside from *Garroch*, previous decided cases do not really provide me with meaningful guidance as to the amount that should be awarded. I do not think it will serve any useful purpose to embark upon an examination of awards made in other cases in order to fix the amount of compensation. It suffices to have regard to *Garroch*, which has provided me with useful guidance in assessing the plaintiff's general damages. The injuries the plaintiff sustained in the *Garroch*-case as well as their *sequelae* although similar in many respects, are more serious and debilitating than those in the present matter. In *Garroch* apart from the more extensive and serious nature of the physical injuries sustained as well as the more intense and extensive treatment she received, the plaintiff's leg had to be amputated which of course resulted in significant disfigurement to which must be added her total immobility as well as incontinence which have caused her

immense embarrassment and shame. Having considered these factors, I have come to the conclusion that a lesser amount than that suggested by counsel for the plaintiff would be appropriate in the circumstances of this case. No two cases are of course alike and comparison must not be allowed to dominate the enquiry. The award I make must be fair in all the circumstances of this case. In the consideration thereof due recognition must moreover be given to the modern tendency of awarding generally higher amounts than in the past (See **Road Accident Fund v Marunga** 2003 (5) SA 164 (SCA) par [34]).

[15] I am of the view that as general damages, a fair and just compensation for the plaintiff would be an amount of R 800 000. The final award I make therefore is for the sum of R 3 285 578 -10 made up as follows:

Past hospital expenses	R 128 406 – 40
Past medical expenses	R 230 362 – 70
Loss of earning capacity	R2 876 809 – 00
General damages	R 800 000 - 00
Sub total	<u>R 4 035 578 -10</u>
Less	
Interim payment	<u>R 750 000 - 00</u>
<b>Total</b>	<b>R3 285 578 - 10</b>

[16] In the result judgment is granted in favour of the plaintiff for:

1. Payment of the sum of R3 285 578-10.
2. Interest on the amount in par 1 above at the rate of 15,5% *per annum* calculated from 14 days after the date of this judgment to date of payment.
3. Costs of suit including the qualifying fees of the industrial psychologists, Louis Linde and Elna May, as well as the costs consequent upon the employment of senior counsel.

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**FHD VAN OOSTEN**  
**JUDGE OF THE HIGH COURT**



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***DATE OF HEARING  
DATE OF JUDGMENT***

***20 NOVEMBER 2006  
27 NOVEMBER 2006***