

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

CASE NO 2007/17287

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES / NO
- (2) OF INTEREST TO OTHER JUDGES: YES / NO
- (3) REVISED: YES / NO

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DATE

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SIGNATURE

In the matter between

DIEKETSENG SELINA MOTAUNG

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

J U D G M E N T

VAN OOSTEN J

[1] In this action the plaintiff claims damages from the defendant arising from the injuries she sustained in a motor vehicle collision on 25 December 2003 in the Sebokeng area. She was a left rear seat passenger in the vehicle when the insured vehicle collided with it on the side she was sitting. The defendant has prior the commencement of the trial conceded liability. Concerning the *quantum* of the plaintiff's damages the parties further reached agreement on the following aspects as set out in a list handed up to me at the commencement of the trial:

1. The plaintiff sustained a mild concussive head injury in the collision of 25 December 2003.
2. The plaintiff presently presents neuropsychological deficits ("the deficits").

3. The deficits will cause the plaintiff to progress in her career as per the opinion of Tanya Vermaak and recorded in the joint minute of the industrial psychologists (Tanya Vermaak and Friedl van der Westhuizen) in paragraph 2.4 thereof.

4. In the event of the disputed issue,..., being determined in favour of the plaintiff, the plaintiff will suffer a loss of income, as actuarially calculated in accordance with paragraph 3 *supra* whilst applying a contingency deduction of 20% but for the accident and 25% having regard to the accident.

5. In the event of the disputed issue,..., being determined in favour of the defendant, the plaintiff will suffer a loss of income in the amount of R267 235, 00.

6. The plaintiff's claim for general damages is agreed in the amount of R230 000,00.

The only dispute the parties have referred to me for my determination is whether the deficits are accident related. Two draft orders reflecting the agreed orders to be made in the event of either a finding for or against the plaintiff on the disputed issue are before me. A finding in favour of the plaintiff will result in an effective award of R1 277 991,00, while a finding against her will result in judgment for the much lesser sum of R497 235,00.

[2] The plaintiff testified on the disputed issue and two medical expert witnesses were called to testify on her behalf, Dr Lewer-Allen, a neurosurgeon and Ms Bev van Zyl, a qualified research psychologist. Some faint attempt on behalf of the defendant was made to challenge her ability to diagnose neuropsychological deficits which so the argument went, falls outside the practice framework description for a research psychologist adopted by the Professional Board for Psychology.¹ There is no merit in the argument: Ms van Zyl testified and this was not challenged that she has been practicing in neuro psychology for the past ten years and that she is regarded as one of the best qualified neuro psychologists in this country. The defendant led the

¹ Research psychologists are involved in planning, developing and applying psychological research methods which have broad scientific validity and among scientific peers.

evidence of two expert witnesses, Ms Lida Möller, an educational psychologist² and Dr Capitani, a clinical psychologist³ specialising in neuropsychology.

[3] I turn now to briefly examine the evidence of the plaintiff. She is presently employed at LCT Construction in Evaton as an administrative clerk and receptionist. In her evidence she dealt with her school performance prior to and post the accident. She alluded to the general problems she experienced post accident. Those she said are the consistent occurrence of head aches, forgetfulness or loss of memory, short temperedness and generally difficulty in learning especially relating to the subjects of maths and science. She was 14 years old and in grade 9 when the collision occurred. Prior to the collision she never experienced any problems with her memory, she was socially well adapted and was a top achiever at school. After the collision all this changed significantly: she could no longer remember simple things like normal daily chores which she now found necessary to record in a list or in her diary. The year after the accident when she was in grade 10, for the subjects of maths and science she changed from high to lower grade and received extra tuition and assistance in these subjects from the Vaal Technical Star School, as well as in the other four subjects at the school she attended.

[4] A performance evaluation certificate in respect of the plaintiff's performance in grade 9 to grade 12 at the Tokelo Secondary School shows that in grade 9 she scored within the range of 40 – 69%; in grade 10 (ie post accident) 59,3% and in grade 11, 69,1%. She passed grade 12 with a Senior Certificate with university endorsement. The results undoubtedly show a significant improvement which she ascribed to a lot of extra effort, devotion, commitment and the assistance she derived from the extra classes.

² Educational psychologists are involved in assessment, diagnosis and intervention in order to optimise functioning in the broad context of learning and development.

³ Clinical psychologists assess, diagnose and intervene with people in dealing with life challenges, particularly those with relatively serious forms of psychological distress and/or psychopathology.

[5] Compounding her difficulties the plaintiff said was the occurrence of an unplanned pregnancy after she had left school during 2007, which she testified, increased her anxiety and had a significant impact on her emotional life.

[6] Next, I deal with the evidence of the four expert witnesses. I do not consider it necessary to traverse their evidence in any detail. Suffice it to briefly refer to the conclusions they have arrived at. There was no evidence from the clinical documentation showing that the plaintiff had sustained a significant head injury. Dr Lewer-Allan by way of background referred to the probable causes and dysfunctions arising from what he described as a mild to moderate diffuse rotational axonal brain injury, which according to him is probably the injury sustained by the plaintiff. The deficits the plaintiff presents with in his view are compatible with such an injury having been sustained. Ms van Zyl testified as to the post-accident neurocognitive and neuropsychological dysfunctions suffered by the plaintiff. She has performed extensive testing of the plaintiff and concluded that the plaintiff's lowered brain function was as a result of the concussive head injury sustained in the collision.

[7] Ms Möller, whose field of expertise focuses on education, having performed a battery of psychological tests on the plaintiff, concluded that the deficits (ie loss of memory, irritability and learning difficulties) are not accident related. She conceded however that she was not made aware at the time of her assessment that the plaintiff had admittedly suffered a mild concussion head injury nor that she as it has now been agreed, suffered from neuropsychological deficits. Finally, Dr Capitani took issue with the admitted issue of the plaintiff presenting with neuropsychological deficits. Apart from a slight lack of concentration, the extensive testing she performed, she said revealed nothing out of the ordinary. She found no signs of permanent neuropsychological deficits and such problems the plaintiff experienced in her learning ability and memory retention she said could be ascribed to her pre-accident intellectual ability which was from the lower end of average to the upper end of average.

[8] The plaintiff's evidence in regard to the significant changes she experienced post accident, was not challenged. It has rightly not been suggested that her evidence falls to be rejected. As counsel for the plaintiff correctly pointed out her evidence concerning the post accident deficits is entirely consistent with the opinions of Dr Lewer-Allen, whose evidence I should add was likewise not challenged on any single aspect. As for the deficits and their relation to the accident Dr Lewer-Allen deferred to the opinions of the neuro psychologists, but he as a matter of probability concluded that the deficits of the kind referred to by the plaintiff in her evidence were compatible with a mild concussive head injury. Ms van Zyl although on certain aspects deferring to the views of an educational psychologist, as I have mentioned, confirmed that the deficits were accident related.

[9] This brings me to the evidence of the defendant's expert witnesses. Counsel for the defendant conceded, in my view rightly so, that the plaintiff on their findings (except for Dr Capitani mentioning a slight loss in plaintiff's concentration span) does not present with neuropsychological deficits. Those aspects that were revealed through testing were described as quite normal, and according to Dr Capitani, could be ascribed to her intellect. The fact of the matter is that it was agreed between the parties as I have alluded to earlier in the judgment, that plaintiff presented with the deficits. It is probably for this reason that the plaintiff's evidence on this score was not challenged at all. Nor was the evidence of Dr Lewer-Allen. The issue is simply whether the deficits are accident related. The plaintiff's case is that they are. The evidence of the defendant's expert witnesses did not proceed from nor was it based on the accepted premise. I am for obvious reasons unable too accede to the request by defendant's counsel in argument to simply disregard the consensus of the parties reached on this issue and to decide this case on the basis of the deficits having been in issue from the outset.

[10] In conclusion the common cause facts before me are that the plaintiff sustained a mild concussive head injury in the collision and that she presents

with neuropsychological deficits. On the evidence of the plaintiff and the medical experts who testified on her behalf, which I accept, those deficits are related to the accident. No other cause for the deficits has been put forward by the defendant's expert witnesses. The disputed issue accordingly is decided in favour of the plaintiff.

[11] In the result I make the following order:

1. The defendant is ordered to pay the amount of R1 277 991,00 to the plaintiff's attorneys of record.
2. The defendant is ordered to pay interest on the amount in paragraph 1 above at the rate of 15,5% per annum, from fourteen days from the date of this judgment to the date of final payment.
3. The defendant is ordered to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, for the costs of the future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to her arising out of the injuries sustained by her in the motor vehicle collision which occurred on 25 December 2003, after such costs have been incurred and upon proof thereof.
4. The defendant is ordered to pay the costs of this action, such costs to include the preparation fee of the following expert witnesses:
 - 4.1 Dr Lewer-Allen
 - 4.2 Ms Bev van Zyl
 - 4.3 Ms Linda Swart
 - 4.4 Dr Oelofse
 - 4.5 Ms N Panchoo
 - 4.6 Dr D Rossouw
 - 4.7 Ms T Vermaak
 - 4.8 Mr G Jacobson

FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

**COUNSEL FOR THE PLAINTIFF
PLAINTIFF'S ATTORNEYS**

**ADV EJ FERREIRA
KRUGER AND KELLY INC**

**COUNSEL FOR THE DEFENDANT
DEFENDANT'S ATTORNEYS**

**ADV A KNOETZE
MF JASSAT DHLAMINI INC**

**DATE OF HEARING
DATE OF JUDGMENT**

**8 & 9 DECEMBER 2008
10 DECEMBER 2008**