

IN THE HIGH COURT OF LESOTHO

In the matter between

LITEBOHO LEUTA

PLAINTIFF

And

KOBE MOTORS (Pty) Ltd

DEFENDANT

JUDGEMENT

CORAM: His Lordship Keketso Moahloli

DELIVERED: 27 September 2019

SUMMARY

Action for damages - Motor collision-Vicarious liability of the employer-Claim of delictual damages- Medical Expenses- Estimated Future Medical Expenses- Pain, Suffering and Discomfort- Loss of Amenities of Life.

Moahloli J

INTRODUCTION

[1] This is undefended action in which the Plaintiff (Teboho Leuta) is suing the Defendant [Kobe Motors (Pty) Ltd for damages caused by the negligent driving of the Defendant's Employee (Thapelo Mota), who hit and injured the Plaintiff with the Motor Vehicle he was driving. The Plaintiff is claiming the amount of M96 335.00 broken down as follows:

(a) Medical Expenses	M1 335.00
(b) Estimated Future Medical Expenses	M3 000.00
(c) Pain, Suffering and Discomfort	M50 000. 00
(d) Loss of Amenities of Life	M60 000. 00
(e) Interest at the rate of 18.5%	
(f) Costs of Suits	

[2] There is a Return of Service of Summons which proves that the Defendant has been served with the summons on the 21/09/2019 through his manager. The Defendant did not file Notice of Intention to Oppose. The Plaintiff said both parties went to Magistrates Court before lodging a case with the High Court, as to try to settle the matter amicably but they did not reach agreement.

SURVEY OF EVIDENCE

[3] The Plaintiff testifies that the Incident took place on the 14 February 2018 at Likhaseng Khubetsoana around 10.00 am. He was going to DLM Complex, walking on the side of the road. He heard sound of the car approaching as if the driver was applying brakes. He (the Plaintiff) tried to run away on the side he was walking. When turning the head to look, he was knocked down by the car and fell unconscious. He recovered in the late afternoon at Tšepong Hospital. He realized he was injured left arm, neck and head was swollen and left foot. He was released from Tšepong Hospital the following day. He said his mother took him to Morija Hospital two days later after he was released from Tšepong, because his mother was not satisfied with the treatment he got from Tšepong.

[4] Plaintiff further testified that after the accident he felt unwell for a long time, and still cannot exercise or train. He said he was fitted a neck brace, and could not turn his head for a month. He said he was still experiencing pain in the back, and whenever it is cold he feels pain in his hip. Unfortunately Plaintiff did not provide any medical proof of all this or at least some corroboration.

[5] plaintiff's narration of the accident is supported by his Declaration Exhibit "F", The Lesotho Mounted Police Service Motor Vehicle Accident Report Form LMPS 29 in all

material respects, save that the actual date of the accident is given therein as February 2018.

[6] He submitted in court a Medical Report compiled by the doctor who treated him at, Tšepong, showing injuries he sustained during the accident, and it was labelled Exhibit “A”. The Report states that the cause of injuries was a pedestrian vehicle accident which resulted in soft tissue injury. He was bleeding from ears, nose bleeding and back pain. The degree of force inflicted was considerate; the degree of injury to life was moderate; the degree of immediate disability was light; and Leuta was treated as an outpatient. The doctor did not tick anything in the place where he had to tick whether the degree of long-term disability was None/Partial/Total. Plaintiff did not provide any medical report of the treatment he received at Morija Hospital.

[7] Plaintiff also submitted the Receipts for Medical Expenses and said they do not cover all the expenses, since some expenses are not quantified, such as (i) Travelling Expenses incurred by his mother from Mantšebo, (ii) M250.00 (two hundred and fifty maloti) for hiring vehicle to transport him to Tšepong and Morija, (iii) Headache tablets and (iv) His wife’s travelling expenses.

ANALYSIS OF EVIDENCE AND ARGUMENTS

Vicarious Liability

[8] The Plaintiff is suing for damages from Kobe Motors Pty Ltd as the Defendant for the wrongful actions committed by Thapelo Mota who at the relevant time was an employee of the Defendant. The employer is vicariously liable for the negligent act committed by his employee during the course of the employment.

[9] For the Plaintiff to establish that the Defendant is vicariously liable he has to prove in addition to the usual allegations to substantiate delictual liability, (a) that the person who committed the delict was the employee of the defendant at the time he committed the wrong act; and (b) that the employee performed the delictual act in the course and scope of the employment¹.

Quantum of Damages

[10] In considering what is fair and adequate, the judge whilst having a wide discretion of how to assess the quantum of damages must:

- (i) Decide each case on its own unique circumstances
- (ii) Provide some reasonable basis for the amount awarded
- (iii) Generally have regard to previous awards in comparable cases for guidance, but always bearing in mind that such comparison can never be decisive, but is instructive

¹ Litlhare Sebatane v Medical Superintendent Botha-Bothe & Others CIV/T/39/ 2016, Mkize v Marten 1914 AD 382 at 390

- (iv) When using not so recent awards, make allowance for depreciation in value of money
- (v) When using Southern African cases for guidance on quantum, factor in the different economic conditions in Lesotho and that country
- (vi) Take care to ensure that the award is essentially fair to both parties²

[11] Medical Expenses: The plaintiff is claiming medical expenses of about M1 335.00. He submitted the receipts from Tšepong Hospital which only prove R150.00 of his medical expenses. He said others are transport expenses which he did not even try to quantify, say, by affidavit. Therefore it is difficult to award the unknown and unclear expenses. He said at some stage he hired a car to take him to hospital and the car charge was M250, there is no proof for such payment. I believe that the owner of the hired car would have not refused to make him a receipt if he asked for it or any written proof. He said he bought headache tablets, of which amount it is unknown to court. In the circumstances the Plaintiff is only awarded M150.00 of medical expenses.

[12] Estimated Future Medical Expenses: Future medical costs are expenses for medical care that will be incurred due to treatment of accident-related injuries that will occur after litigation is resolved. Typically, future medical costs are an issue where serious injuries are suffered in the accident. One can recover for future medical expenses

² Sebatane case at para 29 (and the cases cited therein)

if it is proven that there will be a need of continued medical care because of the injury suffered in the accident, based on the estimated cost of that care.

[13] Future medical costs require different proof than past costs; future medical costs obviously have not happened yet and cannot be documented by medical bills. To prove future medical costs usually requires expert medical testimony. Physicians and other healthcare providers would have to testify about the medical care a patient will require in the future as a result of injuries. The proof must include enough detail to make it possible to ascertain roughly what that future care will cost. In this case the Plaintiff did not give any proof that shows he will need further medical attention due to the injuries (either internal or external) he sustained from the accident. Therefore the claim of future medical expenses is not approved due to the lack of proof.

[14] **Pain, Suffering and Discomfort:** Pain and suffering damages refer to an award given by the court to the Plaintiff for physical and or emotional pain due to injury, illness, or loss. These damages are not the same as compensatory damages, which reimburse the Plaintiff financially, but are not meant to assist the Plaintiff with the pain inflicted by the defendant. The court may award pain and suffering damages for variety of ailments. Generally if Plaintiff has suffered harm as a result of the defendant's conduct, the court will look at the correlation between the defendant's actions and plaintiff's injuries.

Instances relating to this case are emotional trauma, bodily injury and its effects and limitation of personal activities.

[15] Subjective experience of the Plaintiff which may be established through evidence by the Plaintiff and medical practitioner is duration and intensity of the pain of the suffering. “Before damages payable to the injured person can be assessed it is necessary that the court should determine factually what injuries were suffered by the Plaintiff as a result of the defendant’s wrongful act”.³ The Appellate Division stated in *Sandler v Wholesale Coal Suppliers* held⁴. “Though the law attempts to repair the wrong done to the sufferer who has received personal injuries in an accident by compensating him in money, yet there are no scales by which pain and suffering can be measured and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty”. Therefore the Plaintiff is only awarded R20 000.00 under this head. As I have intimated in paragraphs 4 and 6 above the medical report the Plaintiff has provided does not evidence any serious or long-term injuries; only light immediate disability.

[16] **Loss of Amenities of Life:** In relation to a personal injury claim, the terms loss of amenity refers to how the victim or claimant’s quality of life has been affected by the

³ The Quantum of Damages, volume 1: Corbett Fourth Edition at page 30

⁴ 1941 AD, 194 at 199

injury. Loss of amenity therefore relates directly to the non-financial impact the injury has on the claimant's social life, family life, ability to do their job and so on.

In this case the Plaintiff said in his evidence; he suffered body pains which on some other parts of the body he was healed with time but he can no longer exercise like he used before the accident. Inability to exercise shows that he lost the flexibility of his body due to the accident and that is he can no longer enjoy life like he used. However I believe the Plaintiff should only be compensated in the amount of M10 000.00 because once again he has failed to provide this court with medical substantiation of his claims.

Order

1. The Defendant is ordered to pay the Plaintiff damages in the amount of M30 150.00 (thirty thousand and one hundred and fifty maloti).
2. The Defendant must pay the Plaintiff interest on the aforesaid sum at the prescribed rate, calculated from 14 days from date of judgment to date of payment.
3. There is no order as to costs.

K.L. MOAHLOLI
JUDGE

Appearances:

Adv. FK Choene for Plaintiff