THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 145/11
Not Reportable

In the matter between:

KEITH LONG **First Appellant**

THE MEMBER OF THE EXECUTIVE COMMITTEE FOR EDUCATION, WESTERN CAPE **Second Appellant**

and

TANIA MEGAN JACOBS **Respondent**

Neutral citation: ***Long & another v Jacobs*** **(145/11) [2012] ZASCA 58 (2 April 2012)**

Coram: Mthiyane DP, Cloete, Van Heerden and Leach JJA and Petse AJA

Heard: **20 February 2012**

Delivered: **2 April 2012**

Summary: Negligence – what constitutes – educator assaulted by learner in class – whether conduct of the first appellant in failing to prevent assault on becoming aware of death threats made by learner against educator negligent.

Damages – apportionment – when appeal court may interfere with the narrow exercise of judicial discretion by trial court in assessing apportionment.

Quantum – whether the assessment of the award of damages was fair and appropriate.

ORDER

On appeal from: Western Cape High Court, Cape Town (Moosa J sitting as court of first instance):

The appeal is dismissed with costs, including the costs occasioned by the employment of two counsel.

JUDGMENT

PETSE AJA (Mthiyane DP, Cloete Van Heerden and Leach JJA concurring)

Introduction

[1] On 27 September 2001, at Rhodes High School (RHS), Cape Town the respondent, Ms Tania Megan Jacobs, then a Grade 8D class teacher at RHS, was attacked with a hammer by a 13 year old learner in her class, Bheki Kunene. She suffered serious bodily injuries as a consequence of the assault.

[2] RHS is a public school falling under the control of the Western Cape Provincial Education Department. The first appellant, Mr Keith Long, was the headmaster of RHS at the material time. The second appellant, the Member of the Executive Committee of Education, Western Cape is the nominal representative of the department which was held to be vicariously liable for the acts and omissions of the employees of the department at RHS.

[3] Subsequent to the attack the respondent instituted action in the Western Cape High Court against the appellants and two other defendants

who do not feature in this appeal – the action having been withdrawn against them before the commencement of the trial – for damages consequent upon the assault. The trial court found for the respondent and granted judgment against the appellants jointly and severally for damages in the sum of R1 114 685.53, costs and ancillary relief. Subsequently it granted the appellants leave to appeal to this court, hence this appeal. The judgment of the trial court has since been reported *sub nomine Jacobs v Chairman, Governing Body, Rhodes High School & others* 2011 (1) SA 160 (WCC).

[4] What occurred on 27 September 2001 was a concatenation of certain incidents that had been brewing for a while after the respondent joined the RHS as an educator on 1 January 2001, pursuant to a written employment contract concluded on 24 November 2000 between the respondent and the Governing Body of RHS as the employer.

Issues

[5] Four principal issues arise for determination in this appeal, *viz*:

(a) whether the trial court erred in finding that the appellants and their servants owed the respondent a legal duty to act positively to ensure the safety and security of the respondent;

(b) whether the trial court erred in finding that the first appellant's conduct on 27 September 2001 was negligent and that such conduct, if found negligent, was causally linked to the harm which the respondent suffered;

(c) whether, in the event that this court finds that the appellants were delictually liable to the respondent, the trial court in finding the respondent contributorily negligent, erred in determining the parties' respective degrees of fault;

(d) whether the trial court erred and misdirected itself in assessing the quantum of the respondent's damages to a degree that would warrant interference by this court.

Pleadings

[6] In her particulars of claim, to the extent relevant for present purposes, the respondent alleged that the first appellant had been negligent, inter alia, in the following respects:
(1) the first appellant failed to ensure that Kunene was not left unattended or unsupervised whilst he called the police for assistance on 27 September 2001;
(2) the first appellant failed to ensure that Kunene was detained within his office or within other suitable premises, until the police arrived on 27 September 2001 and/or that his school bag was searched for dangerous weapons and/or that it was safely secured;
(3) the first appellant failed to take effective and reasonable steps to safeguard the plaintiff from being exposed to the risk of undue physical harm or danger from Kunene when, by the exercise of reasonable care he could and should have done so;
(4) the first appellant failed to take any or adequate and/or reasonable steps to preserve and protect the bodily integrity, psychological well-being, mental tranquillity and dignity of the plaintiff;
(5) the first appellant failed to prevent the assault by Kunene upon the plaintiff, when by the exercise of reasonable care, he could and should have done so.

[7] It was common cause both on the pleadings and at the trial that Kunene assaulted the respondent on 27 September 2001 with a hammer. However, the appellants denied in their further amended plea that the first appellant or any of the employees of the second appellant had been negligent in the respects alleged by the respondent or at all.

[8] In the alternative the appellants alleged, in the event that it was found that the assault on the respondent was caused by the negligence of the first appellant or other employees of the second appellant as alleged or at all that the assault was caused partly by the fault of the employees of the second appellant and partly by the fault of the respondent in that, so far as is relevant, she:

(1) generally did not exercise reasonable care in the management of her relationship, in her capacity as an educator, with Kunene, in his capacity as a learner, and that this resulted in the assault;

(2) paid insufficient attention to Kunene, particularly after having read his journal, a fact which should reasonably have caused her to realise that he required more attention than she was giving him;

(3) failed to inform the second defendant and/or any other person in authority at the school and/or the South African Police Service about the contents of Kunene's journal upon becoming aware thereof and, in particular, when, by the exercise of reasonable care, she ought to have done so.

Facts

[9] The respondent, who was thirty-two years old at the commencement of the trial, testified that on 27 September 2001 she was invigilating her Grade 8D class which was writing a comprehension test. She observed that Kunene, who was one of the learners in her class, was not writing the test. She approached him only to discover that Kunene was drawing in his journal. Despite her request that Kunene stop drawing in his journal, he refused to do so claiming that the test was difficult for him. At that juncture she observed that there was a death certificate in the journal, made out in her name. Alarmed at what she had seen she approached the Head of the General Education Band at RHS, Ms Leslie Hutchings, to report the incident. She then called Kunene out of the class to meet with Ms Hutchings in the corridor. Kunene came out with his journal. The respondent attempted to show Hutchings the death certificate in the journal but Kunene would have none of that and wrested the journal from the respondent's possession. Hutchings

suggested to the respondent that the latter should return to her class whilst she dealt with Kunene. Hutchings then took Kunene to the first appellant and reported to him what the respondent had told her. The first appellant advised Hutchings that he would attend to the matter and that Hutchings could return to her class, which she did.

[10] The respondent further testified that after some time Kunene returned to the class to collect his school bag. She did not pay any particular attention to him as she sat at her desk. But she saw Kunene walking towards the exit door carrying his school bag. All of a sudden she saw Kunene again turning back and retrieving something from his school bag. Immediately thereafter he attacked her with a hammer, striking her twice on her head and once on her left arm when she tried to deflect his blows. She was also struck on her left knee. Some learners in her class intervened and took Kunene out of the class. She sustained head injuries, a fractured wrist and a swollen left knee. She was conveyed by ambulance to Vincent Palloti Hospital where she received medical treatment for her injuries.

[11] The first appellant testified that on the day of the incident he was in his office when Hutchings brought Kunene to him. Hutchings told him that Kunene had made death threats against the respondent in his journal and had refused to give her the journal. The first appellant asked Hutchings to leave Kunene with him and said that he would deal with him. He then asked Kunene to hand over the journal but he refused. He therefore grabbed the journal and had to wrestle it from him. He told Kunene to sit on a chair outside his office, instructing him not to leave. He then studied the journal and saw the death threats as well as a death certificate. He described what he saw in Kunene's journal as 'absolutely horrifying stuff, stuff of nightmares'. Alarmed by this, he asked his secretary to call the police and Kunene's mother. When he returned to where Kunene was supposed to have been waiting, he found that he had left. Immediately thereafter some learners came running into his office, yelling that Kunene had attacked the respondent. He went to investigate and found

Ms Gallie, an educator at RHS, struggling with Kunene – who was still in possession of the hammer – in the corridor. He joined in the attempts to subdue Kunene and dispossessed him of the hammer.

Legal duty

[12] It has been repeatedly proclaimed in numerous judgments of this court that a negligent omission will not attract delictual liability unless it is also wrongful. In *Trustees, Two Oceans Aquarium Trust v Kantey & Templer (Pty) Ltd* 2006 (3) SA 138 (SCA) the requirements of wrongfulness were discussed by Brand JA (with whom the other members of the court concurred) in these terms (para 10):

'Negligent conduct manifesting itself in the form of a positive act causing physical damage to the property or person of another is *prima facie* wrongful. In those cases, wrongfulness is therefore seldom contentious. Where the element of wrongfulness becomes less straightforward is with reference to liability for negligent omissions and for negligently caused pure economic loss (see eg *Minister of Safety & Security v Van Duivenboden* 2002 (6) SA 431 (SCA) ([2002] 3 All SA 741) in para [12]; *Gouda Boerdery BK v Transnet* 2005 (5) SA 490 (SCA) ([2004] 4 All SA 500) in para [12]. In these instances, it is said, wrongfulness depends on the existence of a legal duty not to act negligently. The imposition of such a legal duty is a matter for judicial determination involving criteria of public or legal policy consistent with constitutional norms.'

The learned judge of appeal continued (para 12):

'When we say that a particular omission or conduct causing pure economic loss is "wrongful", we mean that public or legal policy considerations require that such conduct, if negligent, is actionable; that legal liability for the resulting damages should follow. Conversely, when we say that negligent conduct causing pure economic loss or consisting of an omission is not wrongful, we intend to convey that public or legal policy considerations determine that there should be no liability; that the potential defendant should not be subjected to a claim for damages, his or her negligence notwithstanding. In such event, the question of fault does not even arise. The defendant enjoys immunity against liability for such conduct, whether negligent or not….'

[13] The trial court stated the following in its judgment:

'Rhodes High as a public school offering public education to the community, is an organ of state. The educators of such school, and in particular the Defendants in charge of such school, as functionaries of the State, were exercising public power and were accountable for the implementation of the rights enshrined in the Constitution and, more particularly, "the right to freedom and safety of the person to be free from all forms of violence from either public or private sources in terms of section 12(1)*(c)* of the Constitution".'

But although the appellants are enjoined in terms of the South African Schools Act 84 of 1996, the Western Cape Provincial School Education Act 12 of 1997 and the regulations promulgated thereunder to ensure that a safe learning and teaching environment prevailed at RHS, that did not necessarily give rise to a legal duty to act for purposes of delictual liability. (*Rail Commuters Action Group & others v Transnet Ltd t/a Metrorail & others* 2005 (2) SA 359 (CC) (2005 (4) BCLR 301) paras 79-81).

[14] In the present matter, I have no doubt that societal norms require the imposition of liability for negligence. If that were not so then, no matter how negligent the first appellant might have been, he would be immune from the consequences. That cannot be the law.

Negligence

[15] In *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430E-G this court stated the test for negligence as follows:

'For the purposes of liability *culpa* arises if –

(a) a *diligens paterfamilias* in the position of the defendant –

(i) would forsee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and

(ii) would take reasonable steps to guard against such occurrence; and

(b) the defendant has failed to take such steps.

… Whether a *diligens paterfamilias* in the position of the person concerned would take any guarding steps at all and, if so, what steps would be reasonable, must always depend upon the particular circumstances of each case. No hard and fast basis can be laid down.'

[16] In determining the question of negligence one must of course pay due heed to the warning of Nicholas AJA in *S v Bochris Investments (Pty) Ltd & another* 1988 (1) SA 861 (A) at 866J-867B that:

'In considering this question [reasonable forseability], one must guard against what Williamson JA called "the insidious subconscious influence of *ex post facto* knowledge" (in *S v Mini* 1963 (3) SA 188 (A) at 196 E-F). Negligence is not established by showing merely that the occurrence happened (unless the case is one where res *ipsa loquitur*), or by showing after it happened how it could have been prevented. The *diligens paterfamilias* does not have "prophetic foresight". (*S v Burger* [1975 (4) SA 877 (A)] at 879D). In *Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd (The Wagon Mound)* 1961 AC 388 (PC) ([1961] All ER 104) Viscount Simonds said at 424 (AC) and at 414G-H (in All ER):

'After the event, even a fool is wise. But it is not the hindsight of a fool; it is the foresight of the reasonable man which alone can determine liability.'

See also in this regard: *Sea Harvest Corporation (Pty) Ltd & another v Duncan Dock Cold Storage (Pty) Ltd & another* 2000 (1) SA 827 (SCA) at 842F-H.

[17] In coming to the conclusion it did, the trial court found that both the conduct of the employees of the second appellant at RHS prior to 27 September 2001 and also the conduct of the first appellant on that day constituted negligence. In this court counsel for the respondent acknowledged, albeit tentatively, that to the extent that the judgment of the trial court relied on conduct prior to 27 September 2001 it was predicated on tenuous, if not erroneous grounds. Consequently I need say no more about that aspect in this judgment.

[18] The trial court analysed the evidence and said the following in regard to what occurred on 27 September 2001:

'The question to be answered is whether he [Long] acted as a reasonable person would have done when Hutchings brought Kunene to him with his journal following a complaint by the plaintiff, or did his conduct fall short of that of a reasonable person in his shoes? There is some uncertainty firstly, as to what he was told by Hutchings when she brought Kunene to him and secondly, whether he looked into the journal

before or after he had put Kunene in the chair outside his office. The Second Defendant was somewhat ambivalent about the first issue. In his evidence in chief he merely testified that he was informed that *"threats"* were made, but under cross-examination conceded that Hutchings had told him that *"death threats"* were made. I therefore find that at the time Hutchings handed Kunene over to him, he was aware of the fact that death threats had been made by Kunene against the Plaintiff.'

[19] On the facts of this case the central issue is whether the first appellant's conduct at the critical moment was reasonable or not. The enquiry as to the reasonableness or otherwise of the first appellant's conduct must be related to the relevant circumstances. This aspect was discussed in *Cape Metropolitan Council v Graham* 2001 (1) SA 1197 (SCA) para 7 where Scott JA said:

'Turning to the question of negligence, it is now well established that whether in any particular case the precautions taken to guard against foreseeable harm can be regarded as reasonable or not depends on a consideration of all the relevant circumstances and involves a value judgment which is to be made by balancing various competing considerations. These would ordinarily be

"(a) the degree or extent of the risk created by the actor's conduct; (b) the gravity of the possible consequences if the risk of harm materialises; (c) the utility of the actor's conduct; and (d) the burden of eliminating the risk of harm" … If a reasonable person in the position of the defendant would have done no more than was actually done, there is, of course, no negligence.' (Citations omitted.)

[20] With regard to the question as to whether the first two legs of the negligence inquiry had been established the trial judge, having analysed the evidence, came to the following conclusion:

'In my view, the Second Defendant, by placing Kunene on a chair outside his office unsupervised and by letting him out of his sight and control, should reasonably have foreseen the probability that Kunene would slip away to his class and carry out the imminent death threats. The Second Defendant should have taken reasonable measures to ensure that it did not happen by asking him to wait in his office in his presence or get a senior educator or any person, like Mr Cooper, the caretaker, to supervise him and warn the Plaintiff that her life is in danger and instituted measures

to secure her safety, while he arranged to call the police and Kunene's mother. The failure to take these measures in order to avoid the harm, in my view, constitutes negligence on the part of the Second Defendant.'

What this court must therefore determine in this appeal is whether this conclusion was correct. In *Van Eeden v Minister of Safety & Security* (*Women's Legal Centre Trust*, as Amicus Curiae) 2003 (1) SA 389 (SCA) para 11 this court stated that:

'The approach of our Courts to the question whether a particular omission to act should be regarded as unlawful has always been an open-ended and flexible one.'

[21] The first appellant admitted that Mrs Hutchings had told him that there was a death threat in Kunene's journal. That gave rise to the reasonable possibility that Kunene might attack the respondent. It was a simple matter for the seriousness of the threat to be investigated and for Kunene to be neutralised whilst this was done. The first appellant in fact called the police. He could and should have taken the elementary precaution of keeping Kunene in his study where he could keep an eye on him, until the police arrived. Kunene presented no threat to him personally – he had already overpowered Kunene in order to wrest the journal from him.

Factual and legal causation

[22] Although there may in certain circumstances be conceptual problems in regard to issues of legal causation on the one hand and factual causation on the other – see eg *International Shipping Co (Pty) Ltd v Bentley* 1990 (1) SA 680 (A) at 700 E-G and *Minister of Safety & Security v Van Duivenboden* 2002 (6) SA 431 (SCA) paras 24-25 – it is unnecessary to have to wrestle with these concepts in this case as counsel for the appellants eventually conceded that the respondent had established the requirements for both factual and legal causation. Thus no more need be said on this score in this judgment.

Contributory negligence

[23] The gist of the argument advanced by the appellants with regard to contributory negligence was that the trial court, given the conspectus of the evidence, erred in finding that the appellants' degree of fault was substantially greater than that of the respondent. It ought instead, so the argument concluded, to have found that the respondent was in fact grossly negligent. When the question of apportionment arises a trial court, having regard to the facts of the case, is obliged to asses the respective degrees of negligence of the parties. In assessing that degree in which the plaintiff was at fault in relation to the damage, the court must determine to what extent the plaintiff's acts or omissions, causally linked with the damage in issue, deviated from the norm of the bonus paterfamilias (see eg *South British Insurance Co Ltd v Smit* 1962 (3) SA 826 (A) at 836). Where no error in principle is evident, the appellate court will not lightly interfere with the apportionment decided upon by the trial court (see *South British Insurance Co Ltd* at 837) unless the trial court's assessment differs substantially from what the appellate court thinks the assessment should have been. The rationale for this juridical rule is that the trial court in 'assessing the relative degrees of blameworthiness… is not required to act with precision or exactitude but to asses the matter in accordance with what it considers to be just and equitable.'[1]

[24] It must also be remembered that, as Cloete JA said in *Transnet Ltd t/a Metrorail & another v Witter* 2008 (6) SA 549 (SCA) at 557 A-C:

'The section [s 1(i)*(a)* of the Apportionment of Damages Act 34 of 1956] requires the court of first instance to exercise a narrow discretion. Accordingly, an appeal court will not decide the question afresh; it will interfere with the exercise of the discretion by the trial court only where it is shown that:

"(T)he lower court had not exercised its discretion judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it had reached a decision which in the result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles."

An appeal court is therefore entitled to interfere (as it can in respect of sentences imposed in criminal matters – another example of the exercise of a narrow discretion)

[1] *Lloyd-Gray Lithographers (Pty) Ltd v Nedcor Bank Ltd t/a Nedbank* 1998 (2) SA 667 (W) at 673E.

where its assessment differs so markedly from that of the court a quo as to warrant interference.' (Citations omitted.)

[25] When the principles set out above are applied to the facts of this case, I incline towards the view that although the learned trial judge may have been somewhat generous towards the respondent in his apportionment of fault, it cannot be said that he failed to exercise his discretion judicially or was 'influenced by wrong principles or a misdirection on the facts or reached a decision which could not reasonably have been made by a court properly directing itself to all the relevant facts and principles.' Thus the appellants' argument on this score cannot be sustained.

Quantum

[26] What remains to be considered is the quantum of the respondent's damages as awarded by the trial court. The trial court awarded a total amount of R1 114 685.53 made up of (a) R 36 276.69 in respect of past medical expenses - which is not in issue in this appeal; (b) R46 830 for future medical expenses; (c) R414 000 for past loss of earnings; (d) R545 750 for future loss of earnings; and (e) R350 000 in respect of general damages.

[27] With respect to future medical costs the experts called on behalf of the parties were all agreed as to the respondent's entitlement to an award for future medical costs, save for an amount of R27 360 in respect of which Mr Yodaicken – the clinical psychologist called at the instance of the respondent – felt that the respondent required additional future medical treatment in the form of insight therapy for a year. The trial court allowed the amount claimed in respect of insight therapy. It motivated its award in this regard as follows:

'From an industrial psychological's point of view, Swart who is qualified to express a view on life-coaching, is of the opinion that it is not necessary for the Plaintiff to undergo life-coaching. In this respect, he agrees with Loebenstein and Zabow. I agree with them that to provide life-coaching would be tantamount to an *"over-kill"*. I

am of the view that, should the Plaintiff receive insight therapy, it would be unnecessary also to get life-coaching therapy. I would therefore allow for insight therapy but not for life-coaching therapy. In the circumstances the amount of R27 360 in respect of insight therapy is allowed, but the amount of R12 600 in respect of life-coaching therapy is disallowed.'

[28] In this court, this award was assailed on the ground that it was made without any logical basis and that the trial court had little or no regard for the evidence of the appellants' experts, namely, Mr Loebenstein and Prof Zabow. The latter, so counsel submitted, considered that cognitive behaviour therapy combined with pharmacological treatment would be the most appropriate form of treatment for the respondent's condition. This submission cannot be upheld. To my mind the trial judge took a broad view of the situation and made an award which he considered appropriate in the circumstances. Moreover, the fact that Mr Loebenstein had initially agreed with Prof Yodaiken on the need for the respondent to undergo insight therapy must be taken into account, especially in the light of the trial court's finding that Mr Loebenstein could offer no plausible explanation for changing his initial stance on this aspect.

Past and future loss of income

[29] With respect to the past loss of income, it was submitted that the trial court committed a material misdirection in regard to the respondent's age of retirement in her injured state, in that it disregarded the agreement reached between the industrial psychologists representing the parties. On the other hand counsel for the respondent contended that the trial court's award in respect of both the past and the future loss of earnings was not predicated upon the assumption that the respondent's retirement age in both her uninjured and the injured state would be 60 years but on the basis that it would be 65 years.

[30] As to the award for future loss of income, it was argued on behalf of the appellants that the approach adopted by the trial court was wrong for it

considered whether the future earnings of the respondent, in her uninjured and injured state, were realistic whereas it ought to have asked itself whether such incomes were likely. Consequently, so the appellants' argument went, regard being had both to the evidence of Prof Zabow and Mr Loebenstein to the effect that with treatment the respondent would be capable of returning to a productive level of functioning, the contingency deductions motivated by the industrial psychologist Mr Swart, ought to have commended themselves to the trial court.

[31] The gravamen of the appellants' contentions in relation to past loss of income amounts to this. That the trial court failed to have regard to the difference of opinion between the industrial psychologists of the parties concerning the period within which the respondent would have progressed to a level nine educator. It was argued on behalf of the appellants that a period of eighteen years would have been a fair and reasonable approach to adopt, given the respondent's good qualities as an educator as against the period of 22 years which the trial court adopted.

[32] As to future loss of income, it was further contended that the trial court failed to have regard to: (a) the prospect of a significant amelioration of the respondent's psychiatric condition; (b) the acquisition of a further tertiary qualification which would enhance her prospects of reaching level C4; (c) that with treatment the respondent would return to a productive level of functioning; and (d) that with treatment the respondent's post-traumatic stress disorder should resolve. Consequently, so argued counsel, the trial court ought to have applied lower contingency deductions to those adopted by it.

[33] In considering this aspect of the case, it should be remembered that: 'Any enquiry into loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the

loss,' – per Nicholas JA in *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A) at 113G. On all the evidence presented in the trial court – which I do not propose repeating in this judgment – and the reasons motivating its ultimate conclusion, it seems to me that the learned trial judge was justified in reaching the conclusion he did. In light of all the circumstances I am therefore of the view that the amounts awarded in respect of past and future loss of earnings fairly represent reasonable compensation for the respondent's loss under those heads.

General damages

[34] The trial court, in determining the question of what would be an appropriate amount in respect of general damages and in the exercise of its discretion, took into consideration 'the nature, extent and duration of the physical injuries, the emotional, psychological and psychiatric *sequelae*, the pain, suffering and loss of amenities of life'. It proceeded to award a sum of R350 000 which it considered 'eminently fair and equitable'.

[35] In this court the appellants contended that the amount awarded for general damages by the trial court is excessive and that there should be a striking disparity between that award and that which in this court's view ought to have been awarded. Counsel for the respondent argued that when regard is had to the nature of the injuries sustained by the respondent the amount awarded is fair and reasonable in the circumstances. It was emphasised in argument that the appellants' contentions to the contrary paid insufficient or no regard to: (a) the severity of the injuries; (b) that the respondent was laid off from work for two weeks; (c) was rendered 'an emotional, physical and mental wreck'; and (d) suffered from delayed onset post-traumatic stress disorder and a major depressive disorder. She is also unable to continue with her teaching career, something that was dear to her heart.

[36] This court has repeatedly stressed that a trial court, in the assessment of general damages in respect of pain and suffering, disability and loss of

amenities of life, enjoys a wide discretion to award what it considers to be a fair and adequate compensation to the injured party. Thus this court will only interfere where there is a striking disparity between what the trial court has awarded and what this court considers ought to have been awarded. See eg *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 535A-B and the cases therein cited.

[37] As to what weight should be given to previous awards in earlier decided cases, Potgieter JA in *Protea Assurance v Lamb* stated, after a comprehensive review of several cases, that there was no hard and fast rule of general application requiring a trial court, or even a court of appeal, to consider past awards. The learned judge of appeal nonetheless acknowledged that previous awards might serve as a useful guide. In *Wright v Multilateral Vehicle Accident Fund* (Corbett and Honey. The *Quantum* of Damages in Bodily and Fatal Injury Cases (1992) vol IV E3-31 at E3-36) Broome DJP said the following:

'I consider that when having regard to previous awards one must recognise that there is a tendency for awards now to be higher than they were in the past. I believe this to be a natural reflection of the changes in society, the recognition of greater individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significantly lower than those in most other countries.'

Commenting upon this judgment in *De Jongh v Du Pisanie NO* 2005 (5) SA 457 (SCA) para 60 Brand JA observed that the tendency towards higher awards is not capable of mathematical precision and may well have come to an end; that such tendency is only one of the factors to be taken into account in the exercise of a court's discretion; that care must be taken to ensure that the award is fair to both sides; and that conservatism in awards has its origin in the need to also be fair to a defendant.

[38] In my view the learned trial judge – after a thorough examination of the expert evidence – gave comprehensive reasons as to what motivated him to award the amount he did. Accordingly I do not think that it would serve any useful purpose to undertake the same task in this judgment. Suffice it to say

that having considered all the relevant factors and the authorities referred to above the assessment of the damages awarded by the trial court cannot be faulted.

[39] For all the aforegoing reasons therefore this appeal falls to be dismissed.

[40] Before concluding, it is unfortunately necessary to say something about the conduct of the trial. The trial went on for many weeks. The record itself comprises nearly 6000 pages. The cross-examination of the respondent, for example, lasted nine days. During the course of the trial irrelevant evidence was allowed resulting in the trial being needlessly dragged out to inordinate lengths. Another example is that evidence was elicited from the first appellant which had absolutely no bearing on the issues that were germane at the trial but had more to do with his personal life which should have been kept private. In addition, all too often the proceedings degenerated to a slanging contest between counsel, this without due observance of the decorum of the court.

[41] All of this led to the trial becoming an unnecessarily long and drawn out affair, no doubt adding substantially to the bills of costs. All of this was allowed to happen without any restraint, and is to be deprecated. Legal practitioners should properly apply themselves to the task at hand and do so without unnecessarily prolonging litigation and they and the trial judge should ensure that proceedings are limited to that which is relevant. To fail to do so will not only occasion a wholly unnecessary escalation of costs but will lead to the human and other resources of the courts in this country, which are under severe strain, not being optimally used.

Order

[42] The appeal is dismissed with costs, including the costs occasioned by the employment of two counsel.

_____
X M Petse
Acting Judge of Appeal

APPEARANCES:

For Appellants:	J C Heunis SC (with him R Jaga) Instructed by: State Attorney, Cape Town State Attorney, Bloemfontein;
For Respondent:	M L Sher (with him U Deetlefs) Instructed by: Parker & Khan Inc, Lansdowne E G Cooper and Majiet Attorneys, Bloemfontein