IN THE HIGH COURT OP SWAZILAND

In the matter between:

JOSE FERREIRA RAMOS	Plaintiff
and	
SWAZILAND ROYAL INSURANCE CORPORATION	Defendant
CORAM	F. X. ROONEY
P. COETSEE	For Plaintiff
P. FLYNN	For Defendant

JUDGMENT

27/01/89

Rooney,_J.

The plaintiff was injured in a motor accident on the Mbabane/ Manzini Road on the 10th March, 1986.

The other vehicle invlolved was insured against third party claims by the defendant., In this action the plaintiff seeks to recover damages for personal injuries and consequential loss arising out of the accident, which it is alleged was caused by the negligence of the driver of the motor vehicle insured by the defendant.

Originally liability was denied, but, at a pre-trial conference held on the 10th August last year the merits of the plaintiff's claim was conceded. It was further admitted that as a result of the collision the plaintiff suffered bodily injuries consisting of a severly comminuted closed fracture of the left ankle which fracture will probably lead to the development of an arthritic condition in the ankle necessitating an arthrodesis operation to the ankle.

The following damages were agreed upon -

a) E1,874-33 for past hospital expenses.

b) E1,424-10 for past medical expenses

c) E13,396-56 for loss of earnings

d) E7,750- for future medical expenses

e) E36,000- for future loss of earnings.

These agreed amounts which total E60,444-99 must be included in the judgmento The only issue remaining is the amount of the claim for general damages for pain and suffering, loss of amenities of life and disablement.. The amount claimed by the plaintiff on this head is E30,000.

It is not disputed that following the accident, the plaintiff bias admitted to the Milpark Hospital, Johannesburg. The irttial treatment consisted of an open reduction with internal fixation to his fractured ankle. He was discharged from hospital after one week in a plaster cast, and on crutches.

The cast was removed 5 weeks later. Extensive physiotherapy followed. He continued to use crutches

for a further three weeks.

In October, 1986 the plaintiff was examined by Mr Ian Dymond, an orthopaedic surgeon. He found that the plaintiff was able to perform his duties as an engineer with little limitation. He retained a significant limp.

At the time of his examination by Mr Dymond, the plaintiffa was described as/fit young man of twenty six. The fractures had united and the plaintiff had a functional ankle. The surgeon was of the opinion that the condition of his ankle would . progressively deteriorate as the years passed and that further surgery would be required, by way of debridgement of the joint and later, with the onset of osteo-arthritis, he would require

ankle fusion. The plaintiff had suffered considerable pain in the past and he was inconvenienced by the stiff ankle and occasional pain in the joint.

The plaintiff wag examined by another orthopaedic surgeon in December, 1987. Mr Ian Leitch found that the plaintiff still had a limp. He described the condition of his ankle as good, but, not normal.

Mr Leitch was of the opinion that some degree of poet-traumatic degenerative osteo-arthritis must be expected to develop at some future time. He suggested that the plaintiff will have to undergo arthrodesis when he is about fifty years of age. Thereafter he will be able to move about with a slight limp. There had been a curtailment of the plaintiff's ability to participate in vigorous running sports like soccer and squash.

It has therefore been established that the plaintiff's injury was severe and painfull, but, he has made a good recovery. At present the residual disability consists of a stiff ankle joint which imports a permanent slight limp. His sporting activities have been affected and there is a reasonable prospect of a deterioration in his condition in middle age which will require corrective surgery.

The only remotely comparable case which has been decided in this Court is that of Themba Mlotsa v. Swazi Roayl Insurance Corporation (Civil case 643/87, unreported). The plaintiff suffered a broken leg, there were feu indications of permanent disability and a definite prospect of improvement in the plaintiff's condition. An award of E2,000 for pain and

suffering was made by Dunn.J. on the 4th March, last year.

The present plaintiff's condition is more serious as there is an actual disability remaining and the prospect of further complications in later life.

A more serious case was M.C. Johnston v. Swaziland Royal Insurance Corporation (Civ. case 436/05, unreported) in which Hannah CO. awarded E30,000 to a plaintiff whose leg was amputated above the knee. He lost his hearing in one ear and was disfigured.

There is a reference to a very similar personal injury claim in Halsbury's Abridgement 1985, paragraph 768 at P. 189. An engineer suffered a fracture of his ankle. Although the injury had healed it was accepted that there would be an increase in residual symptoms towards the end of his working life and a risk of osteo-arthritis developing. In Jaram v. Bruch Electrical Machines Ltd the Queen's Bench Division awarded the plaintiff £5,000 on the 13th March, 1985.

That award, made in sterling nearly four years ago, is at least a guide to the damages which should be assessed in this case. While a court must make an allowance for the depreciation in the value of money, it need not follow any particular formula. (A.A. Onderlinge Assuransie Assasiase BPK v. Sodame (1980) 3 S.A. 134 . Fluctuatipn in currency exchange rates since 1985 need not be taken into account. What matters is the relative purchasing power of a particular currency on the domestic market.

I am of the view that the appropriate amount which the

plantiff In this case should receive for general damages is E12.000.

Having regard to the damages agreed, I enter judgment for plaintiff in the sum of E72,444.99 together with costs, which costs should include the engagement of counsel from outside Swaziland.

F.X. ROONEY

JUDGE