

**Bouchereau v Panagary
(1997) SLR 116**

France BONTE for the Plaintiff

Mr SCOTT, a representative of the State Assurance Company, for the Defendant

Appeal by the plaintiff was decided on 3 April 1998 in CA 29 of 1997

Judgment delivered on 11 September 1997 by:

PERERA J: The plaintiff claims a sum of R240,000 in respect of personal injuries suffered consequent to a road accident involving a taxi bearing no S 876, owned and driven by the defendant. According to the evidence of the plaintiff, the accident occurred on 11 December 1995 around 6.30 pm. He was at that time talking to one Larue at the entrance to a by-lane when the taxi, in overtaking a stationary pick-up, moved too far towards the right side of the road and hit both the plaintiff and Larue. Both of them got thrown and Larue died as a result of his injuries. The plaintiff's head hit a rock when he fell.

After a visit to the locus in quo it was abundantly clear that the defendant had been negligent. Mr Scott, counsel for the State Assurance Corporation, very correctly conceded liability on behalf of the defendant. Hence there remains only the assessment of damages payable.

According to the medical report of Dr A Korytnicov, the consultant orthopedic surgeon, the plaintiff had the following injuries on admission:

1. Comminuted fracture of the proximal end of the right tibia and fibula.
2. Fracture of the maxilla bone.
3. Multiple fractures of the ribs of the right chest.
4. Multiple lacerations of the skull, body, limbs and right eye.

He was treated by the orthopedic surgeon for the lacerations and fractures, by the dental surgeon for the injury to the maxillary bone and by the ophthalmologist for the injury to the right eye.

According to the medical report of Dr TD Bonnelame, the consultant ophthalmologist, the plaintiff suffered –

1. Right post-traumatic optic neuropathy.
2. Right lower lid cicatricial ectropion.

3. Epithora.

His conclusion, six months after the accident was-

All three components have resolved significantly. The scars around the right lower lids and temple would be of permanent nature. The maximum persisting is a consequence of (2). The epithora may continue to improve in time.

The plaintiff was a Sergeant in the Police Mobile Unit at the time of the accident. He is 53 years old. In his testimony he stated that he could not use his right leg without the use of crutches. He also stated that when he looked sideways he saw double vision. He further stated that due to the injury to his jaw, he could not bite his food. On being cross-examined he stated that although his fractured ribs had healed, he still had the scars.

On a consideration of the medical reports and the oral evidence of the plaintiff, it is clear that the plaintiff suffers a substantial incapacity to his right leg. There is also sufficient evidence to accept that he has a certain amount of weakness and defect in his eyesight.

The plaintiff claims as follows –

1.	Injuries	-	R 72,000
2.	Pain and suffering	-	R 54,000
3.	Loss of amenities	-	R 63,000
4.	Moral damages	-	R 50,000
5.	Medical Report	-	<u>R 1,000</u>
			<u>R240,000</u>

In this respect it is opportune to consider some of the previous awards of this Court for injuries similar to those of the plaintiff in this case.

In the case of *Simon Maillet v Louis* (unreported) CS /1990, the plaintiff sustained a fracture of the left tibia and fibula. After treatment by traction and casting, he continued to have pain in his ankle and also had a limp. He was engaged in sports activities before the disability. The Court, taking into consideration the nature of the injuries and the associated pain and suffering, awarded R30,000 as moral damages. In addition a sum of R10,000 was awarded for loss of amenities and enjoyment of life.

In the case of *Sinon v Kilindo* (unreported) CS 225 of 1992 the plaintiff suffered a compound comminuted fracture of the right tibia and fibula. The plaintiff was only 20 years old and had engaged in sports activities before the disability. On a consideration of the injuries, pain and suffering, loss of amenities of life and the age of the plaintiff, I awarded a total sum of R69,197.20.

In the instant case, the plaintiff is 53 years old. He was a training instructor at the Police Mobile Unit. However due to his present disabilities he has been entrusted with duties of a clerical nature. He claimed that he could not write properly now and hence has to get the assistance of a corporal.

On the basis of previous awards and on a subjective consideration of the plaintiff's disabilities as evidenced by the medical reports I award a global sum of R75,000 in respect of the injuries, pain and suffering, and moral damages.

As for loss of amenities, he claimed that he had difficulty in chewing food due to the injury to his jaw, and also had a disability in his vision. Considering the nature of the injuries, I am inclined to believe him. As he is now 53 years old, his inability, to engage in sports or other activities cannot be given much consideration. However I award R10,000 under this head. In addition, he will be entitled to a sum of R1000 spent on the medical report.

Accordingly judgment is entered in favour of the plaintiff in a total sum of R86,000 together with interest and costs.

Record: Civil Side No 110 of 1996