REPUBLIC OF NAMIBIA **REPORTABLE**

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: I 3533/2009

In the matter between:

KUTWANO VENNITAH MILUNGA **PLAINTIFF**

And

DR. PELIER CARCASES TANIA **FIRST DEFENDANT**

MINISTER OF DEFENCE **SECOND DEFENDANT**

Neutral citation: *Milunga v Tania* (I 3533/2009) [2015) NAHCMD 112 (15 May 2015)

Coram: MILLER J

Heard: 2-6 June 2014

Delivered: 15 May 2015

Flynote: Delict- General damages- assessment of

ORDER

(a) The second defendant is ordered to pay plaintiff in sum of N$1, 734,198.23

(b) Interest on that amount at 20 percent per annum calculated from the date of judgment to the date of payment.

(c) Cost of suit which will include the costs of one instructing and one instructed counsel as well as the fees of Dr. Goagoseb, Dr. Brandt and Mr. Kock

JUDGMENT

MILLER, AJ:

[1] At the time relevant to these proceedings the plaintiff was a member of the Namibian Defence Force and stationed at the military base in Grootfontein.

[2] The first defendant was a medical practitioner employed by the second defendant and stationed at the medical facility situated in Grootfontein military base. The first defendant is a Cuban national who has since returned to Cuba and he took no part in these proceedings.

[3] On the morning of the 11 October 2007 the plaintiff consulted the first defendant complaining of a sore throat. The first defendant administered penicillin a substance so it turned out, the plaintiff was allergic to.

[4] By the next morning an allergic reaction had set in. This manifested itself in swollen eyes and in the formation of blisters on her face. In addition she had

developed a high body temperature. The plaintiff again consulted the first defendant. On this occasion the first defendant administered a more powerful dose of penicillin. The consequences for the plaintiff were severe. I will during the course of the judgment refer to those in more detail.

[5] The plaintiff thereupon issued summons against the defendant in which she claims damages from the defendants in the following amounts, based upon an allegation of negligence:

(a) Past medical treatment N$10,527.23
(b) General damages for pain and suffering loss of amenities of life and disfigurement N$ 1,500,000.00
(c) Damage for loss of earnings N$ 52367.00

[6] I pause to mention that the plaintiff was found unfit to work due to the trauma she had experienced and was discharged from employment on medical grounds on 30 June 2012.

[7] The action was defended by the second defendant initially both on the merits and the quantum of the plaintiffs claim. Prior to the commencement of the trial and during the case management process the second defendant conceded the merits of the plaintiffs claim. Consequently only the issue of quantum remained in dispute.

[8] At the commencement of the trial counsel for the second defendant, Mr Nkiwane informed me that the second defendant admits the plaintiffs' claims for post medical expense and loss of earnings in the amounts of N$ 10, 527.73 and N$ 523 671. Respectively. What remained in issue was limited to the amount of N$ 1500 000 claimed as general damages.

[9] In support of her claims in that respect this plaintiff testified and called two expect witnesses Dr Goagoseb and Dr Brand. The evidence of these witnesses was not really challenged by Mr Nkiwane. The second defendant also did not call any witnesses. That being the case it will be sufficient to summarize the evidence.

[10] At the relevant time in plaintiff was a married person in her thirties. She was a healthy person and was leading a normal and active life. She testified that subsequent to the first dose of penicillin she developed blisters on her lips, her eyes became swollen and she was running a temperature. Consequent upon the second dose of penicillin she developed blisters all over her body. Her condition deteriorated to the extent that she was admitted to hospital on 15 October 2007 until she was discharged on 7 December 2007. She was initially unable to walk and had to receive physiotherapy to teach her to walk again.

[11] The blisters which had formed left scars on her face and body which the plaintiff finds uncomfortable and traumatic to live with. Her evidence is supported by Dr Goagoseb the physician who treated her. Dr Goagoseb stated that pain suffered by the plaintiff is tantamount to the pain caused by third degree burns. Dr Goagoseb testified that at some stage the condition of the plaintiff worsened to the extent that he feared for her life. In addition the plaintiff suffers now from Stevenson Johnson syndrome a condition which affects the eyes. The main symptoms which are permanent are:

(a) Constant dry eyes, which necessitate the application of fluids to the eyes.
(b) Scarring of the corneas.
(c) Ingrown eye slashes

[12] The plaintiff also suffers from poor vision and sensitivity to light. She has to wear dark glasses to protect her eyes from light. The plaintiff has undergone eye surgery and will have to undergo further surgery in the future. The plaintiff's evidence in this regard is fully supported by Dr. Brandt who has treated her and will continue to do so in future.

[13] In sum it is apparent that the plaintiff suffered severely and will continue to suffer for the remainder of her natural life. The approach to the assessment and

general damage is well formulated by Hoff J in *Susanna Vivier N.o and Another vs The Minister of Basic Education, Sport and Culture*. (Case I 2394/2005).

[14] The principles were stated to be the following.' Firstly that in quantum of compensation must bear relation to the extent of the loss suffered. In this regard the Court will have regard to the intensity of the injury to feelings, its nature and its duration.

[15] Secondly the object of compensation. In *casu* that would be to counterbalance the plaintiff unhappiness and provide psychological satisfaction for the injuries done to them.

[16] Thirdly the principles of fairness and conservatism.

[17] Fourthly the use previous of awards as a yardstick.

[18] As to the last mentioned principle I have not been referred to, nor have I found a case on all faurs with the present. I am mindful of the fact that it is impossible to quantify the plaintiff's compensation with any degree of precision. The court at best exercises a discretion having regard to all the relevant facts and circumstances.

[19] I will consider and take account predominantly the fact that the plaintiff suffered severe pain and trauma for a relatively long period of time, the fact of some permanent disfigurement and the fact that the plaintiff's eyes and vision will be impaired for the remainder of her natural life. I also bear in mind that the plaintiff is relatively young and is likely to live with her condition for a number of years. I am of the view after done consideration that an amount of N$ 1 200, 000 and in respect of general damages is appropriate.

[20] As a result I make the following orders:

(a) The second defendant is ordered to pay plaintiff in sum of N$1, 734,198.23

(b) Interest on that amount at 20 percent per annum calculated from the date of judgment to the date of payment.

(c) Cost of which will include the costs of one instructing and one instructed counsel as well as the fees of Dr. Goagoseb, Dr. Brandt and Mr. Kock.

P J MILLER

Acting Judge

APPEARANCES

PLAINTIFF:	Zacharias Johannes Globler Instructed by Grobler & Co
DEFENDANT:	S. Nkiwane of Government Attorneys

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