

Venter v Nel
1997 (4) SA 1014 (SAHC D)

The plaintiff sought damages from a previous partner who had infected her with HIV. In assessing the appropriate amount of damages, the Durban High Court (South Africa) considered the plaintiff's past and future medical expenses, as well as the physical stress and psychological trauma that the plaintiff endured as a result of her infection.

Excerpts

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The plaintiff in this action claims the amount of R466 031,86. Her cause of action, as stated in the particulars of claim is, in broad outline, that the defendant, a businessman who resides in the Durban area, infected her with HIV. This occurred when the parties had sexual intercourse, one with the other, in August or September 1995.

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I am asked simply to fix a figure for damages and, in doing so, I stress that, the matter being undefended, the inquiry is inevitably not as detailed as would otherwise be the case.

The plaintiff's claim falls under three main heads. The first is for past medical expenses and the schedule, annexure A, has been handed in and it demonstrates that the plaintiff's costs of medication to date amount to R19 399,06. I propose to allow that sum.

The second is for future medical expenses, the amount claimed is R195 000. These expenses are based on the evidence, in the main, of Dr Clark, who has given the present costs of the present medication. There are other forms of medication, far more costly, and these figures may well change in the future. Any assessment for future medical expenses involves two principal factors, namely the estimated amount of the annual expenditure and the duration of such expenses. That is to say the plaintiff's expectation of life - how much is it estimated she will have to pay per year and for how long is it estimated that she will have to pay these amounts. As indicated by Dr Clark, the matter of expectation is by no means clear. In the worst case, it would be estimated at five to seven years and in the best case it could be virtually a normal expectation. Much depends on the treatment the patient receives.

In the nature of things, it seems to me that the annual expenses will increase, not only on account of the inflationary tendencies to which we have had to become accustomed, but also I think allowance must be made for the plaintiff's condition becoming more serious and requiring more expensive drugs more frequently. The figure I arrive at is inevitably an estimate. It is an amount of money which, if put away now, will see the plaintiff through for the rest of her life. At present the expenses are R19 000 per year. I do not propose to indulge in any actuarial calculation, discounting future expenses at some arbitrary rate of interest. It seems to me that the discounting procedure is more or less offset by the inevitable rise in costs of these things and, as I say, the probable necessity of having more expensive drugs more often. In my judgment, justice would be done if I were to allow a figure of R150 000 under this head.

The third is for general damages. Here I have heard the evidence of the plaintiff herself, of Mrs Towell and, as I say, Dr Clark. They all touch on the matter of general damages which, as I have said, involve the possibility of a reduction in life expectancy, psychological stress, contumelia and pain and suffering. I do not

propose to recapitulate all the evidence that I have heard. My impression of the plaintiff is that she is a well-adjusted person. She is now aged 34. She appears to have come to terms with her condition but, at the same time, there were hints in the evidence of other witnesses that there were times when the stress and inevitable fear of the unknown took its toll on the plaintiff. She has been seen on occasions to be tearful. It is obviously an extremely serious matter for her. It strikes at the very heart of her life. At times she must experience feelings of helplessness and hopelessness. She is aware of the adverse effect that this condition has on her general relationship with all others. That is with family and friends and people at work. All the more is this adverse effect evident when in the realms of her sex life. The anguish must be gross. It is so, as Dr Clark pointed out, that it is mostly of a psychological and social character but, nevertheless, it is a form of suffering for which the plaintiff must be adequately compensated. Dr Clark was of the opinion that the initial episode of encephalitis and meningitis were, more probably than not, caused by the HIV condition. That, in itself, was a most unpleasant and relatively protracted episode in her life and was severely disabling. Now, as I say, she is left with HIV, with the various possible progressions mentioned by Dr Clark. What I have said so far is just a very broad outline of some of the evidence that I have heard this afternoon. I see this as an extremely serious case. I see her condition as one which calls for extremely high damages under the head of general damages, as claimed. It is so that money can never put plaintiffs back in the position in which they were before they suffered their particular disability, but the Court must do its best to put a monetary figure on the plaintiff's disability, the effect that it has on her day-to-day life, the possible reduction in her life expectation and, I think, most important of all is the factor that I have already mentioned, that is the fear of the unknown. No one can foresee exactly what will happen. It ranges from the worst case to the best case and it is this uncertainty which is ever-present in her life and which is a matter which must cause great distress. It must cause her a great deal of stress and, inevitably, a great deal of fear. Doing the best I can, it seems to me that a figure of R175 000 would be appropriate in this case.

I therefore refer to the particulars of claim and under para 8, award under 8.1 the amount claimed, 8.2 the amount of R150 000 and I take 8.4, 8.5 and 8.6 together and award R175 000, giving a figure of R344 399,06.

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