REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 31049/2011

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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SIGNATURE **DATE**

In the matter between:

ASHRAF ADAMS PLAINTIFF

And

ROAD ACCIDENT FUND DEFENDANT

JUDGMENT

COLLIS AJ:

INTRODUCTION

[1] The plaintiff, an adult male, has instituted a damages action against the defendant for certain bodily injuries he sustained in a motor vehicle collision on 7 June 2008. At the time of the accident the plaintiff was the driver of a motor vehicle bearing registration letters and numbers 3….. A…. GP which collided with an Opel Corsa motor vehicle, bearing registration letters and numbers E…. 6….. GP, there and then being driven by Steven Pretorius, referred to as the insured driver.

[2] In the particulars of claim at paragraphs 5 and 6 thereof the plaintiff alleged as follows:

> "5 The sole cause of the collision aforesaid was the negligent driving of the said Steven Pretorius; he having been negligent in one or more or all of the following respects:
>
> 5.1 He failed to keep a lookout, alternatively, any proper lookout; and /or
>
> 5.2 He failed to keep the truck of which he was the driver under any, alternatively, any proper control; and/or
>
> 5.3 He failed to avoid the collision when, by the exercise of reasonable care, she could or should have done so; and/or
>
> 5.4 He failed to apply the brakes of the truck of which he was the driver timeously or at all; and/or
>
> 5.5 He failed to allow the Plaintiff a safe berth at a stage where he could and should have done so; and/or

5.6 He failed to pay due regard to the rights of other users of the road and in particular the rights of the Plaintiff aforesaid; and/or

5.7 He turned right suddenly and without warning directly across the path of travel of oncoming traffic and more specifically the Plaintiff's vehicle and collided with the Plaintiff's vehicle; and/or

5.8 He turned right directly across the path of travel of oncoming traffic more specifically the Plaintiff's vehicle and collided with the Plaintiff's vehicle; and/or

5.9 He failed to exhibit the requisite degree of skill expected from a reasonable driver in the circumstances.

6 The impact of the aforementioned collision was severe and as a result of which the Plaintiff sustained the following severe bodily injuries:

6.1 Head injury

-multiple lacerations head

-multiple lacerations face

-loss of consciousness

6.2 neck injury;

6.3 injury to right shoulder-acromioclavicular joint sub-dislocation of

Type II;

6.4 fracture right ulna;

6.5 laceration of right knee."

[3] In its plea the defendant denied the allegations and placed the plaintiff to proof thereof.

THE DISPUTE

[4] The matter comes before me for the determination of the quantum of damages suffered by the plaintiff as the issue of liability had already been settled between the parties. The defendant accepted liability for 80% of the plaintiff's proven damages.

[5] In respect of the quantum, the following of the plaintiff's heads of damages have been agreed:

5.1 Past hospital and medical expenses in the amount of R 19 590.36;

5.2 General damages in the amount of R 600 000;

5.3 Future hospital and medical expenses shall be covered by an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, limited to 80%.

[6] In respect of the quantum the court was as a result called upon to decide what the plaintiff's pre-morbid career path would have been had it not been for the collision and further what the

plaintiff's post-morbid career and coupled to that his earning capacity would entail, now that the collision did occur.

[7] It was common cause that at the time of the collision the plaintiff, post school had obtained a N1 qualification and was employed at a pharmacy as a front shop assistant.

THE EVIDENCE

Factual Evidence

[8] Two factual witnesses testified on behalf of the plaintiff, namely his employer at the time of the collision and his wife. Ms Nazeema Fredericks evidence can be summarised as follows: She was the owner of Nazeema's Pharmacy and the employer of the plaintiff since 2007. At the time of the collision, the plaintiff was employed at her pharmacy as a front shop assistant with his general duties entailing ordering stock, unpacking stock upon delivering, pricing of stock and placing it onto the shelves. At the time of the collision he was earning a salary of R 7000 per month and she regarded him as a trustworthy and excellent worker. She gave evidence that approximately a month after the collision, the plaintiff returned to work, but was a different person. He suffered from memory loss, was irritable and had constant headaches. He also made a lot of mistakes resulting in her having to check on his work all the time. It is for this reason that she decided, it would be best that the plaintiff should rather stay at home in order to recover from his injuries. For the next six months, she kept his position open for him, but as his memory loss persisted, she decided it would be best to terminate his services. During cross-examination the witness conceded that she was married to the father of the plaintiff's wife. Further that prior to

employing the plaintiff she never enquired about his past employment history, but was aware that the plaintiff only obtained a Grade 10 passing at school level.

Ms Y Adams gave evidence as follows: She married the plaintiff during 2006 and they are the proud parents of two children. Prior to the collision she described the plaintiff as a sporty, hands-on, and a very active individual. The day following the collision, when she first saw the plaintiff at the hospital, he did not recognise her. He was discharged three days thereafter. Since the collision the plaintiff has become a more forgetful, moody and irritable person. A month following the collision, he returned to work but found the environment very stressful and he suffered from memory loss. He struggled to do his work efficiently and after a discussion they decided it would be best for him to stay at home. During cross-examination, the witness conceded, that post the collision, the plaintiff has never looked for other employment, as he would not be able to attend an interview and work in a new environment. She also testified that on a daily basis he would take the children to school and collect them from school. Most days he would tidy the house for her and would spend the better part of his day on the internet. Since the collision she however has become the breadwinner in the household and has had to shoulder much of the responsibilities as a parent.

Evidence of the Psychiatrist

[9] Dr Jacobus Prinsloo, a psychiatrist, interviewed the plaintiff on 6 May 2013 and filed a report[1] on behalf of the plaintiff. His clinical findings were that the plaintiff suffered from a cognitive disorder, a mild to moderate depressive mood disorder and a mild to moderate anxiety

[1] See in this regard Exhibit E

disorder which he testified were all due to a traumatic brain injury sustained on 7 June 2008. It was his assessment; that the plaintiff did not suffer from dementia but that stress levels brought about unremitting loss of his functional capacity since 7 June 2008. During cross-examination the witness conceded, that memory loss suffered by the plaintiff, did not show as clearly during his assessment as the plaintiff was able to recall adequately; but was adamant that one must be careful not to minimise the plaintiff's degree of suffering and that his condition is impaired.

Evidence of the Clinical Psychiologists

[10] Mr Robert Macfarlane, a Clinical Psychologist, conducted his assessment of the plaintiff on 1 May 2013, and compiled a report[2] in respect of such assessment. In his report and on the basis of the available information at his disposal he was of the opinion, that the plaintiff seems likely to have sustained a traumatic brain injury, resulting in permanent difficulties which are believed to constitute a mild to moderate neuropsychological impairment. He testified that the plaintiff post collision would be an unattractive employee, where such employment would require a high degree of mental concentration and attention. Furthermore, he testified that post collision the plaintiff would have difficulty to return to the same work environment as that he was in before the collision, but that he might still be able to have some working capacity left if such working environment would be structured, routine, simple and supervised.

[2] See in this regard Exhibit G

[11] Ms Maria Genis, the Clinical Psychologist called by the defendant testified that she examined the plaintiff on 24 June 2014 and compiled her report[3] pursuant thereto. She gave evidence in compiling her assessment that she administered a number of tests on the plaintiff as outlined in her report. Post collision, she concluded from a neuropsychological perspective that the plaintiff could struggle with attention and concentration and that this was confirmed by his scoring of varied results on complex mental tracking tasks. She confirmed that on all memory tests performed, he scored average performances and that he struggled with a proactive interference, in that previously learned material interfered with his ability of learning new material. She was further of the opinion that the plaintiff would be able to return to work from a physical and neurocognitive perspective, but from a neurobehavioral perspective, behaviour such as irritability, short-temperedness, feeling guilty and worthless would impact negatively on his ability to manage stress. During cross-examination she reiterated that she did not think that the plaintiff was unemployable.

[12] Both experts in their joint minute[4] of 11 August 2014 agreed that the plaintiff sustained a traumatic brain injury as a result of the accident. The severity thereof, they deferred to the joint neurosurgical opinion. They further agreed that upon assessment of the plaintiff, there was no evidence of depression, but only mild anxiety symptoms. They also agreed that funds should be allocated for psychotherapy sessions, but disagreed as to the number of sessions needed.

Evidence of the Industrial Psychologists

[3] See in this regard Exhibit H
[4] See in this regard Exhibit D

[13] I now turn to deal with the evidence of the industrial psychologists. Ms Christa Du Toit, the industrial psychologist for the plaintiff assessed the plaintiff on 23 April 2012 in order to evaluate the plaintiff's earning capacity and employability, disregarding and having regard to the accident and injuries sustained. Pursuant thereto, she complied a report[5] on her findings. She testified that at the time of the collision, albeit that the plaintiff was employed at Nazeema's Pharmacy he had plans to complete his N2 Motor Mechanic qualification. Prior to the accident, the plaintiff had ambition to start his own technical company for panel beating, painting and car accessories. He also considered doing his trade and to qualify as a panel beater. During cross-examination the witness testified, that the fact the plaintiff did not complete school had no impact on his working ability pre-accident. She was also of the opinion, the fact that the plaintiff discontinued his motor mechanic studies, should not be viewed as an absolute negative. It was her view, that the plaintiff would still be able to secure work but could offer no opinion as to why he had been unable to do so for a period of six years post collision.

[14] Dr Pieter Harmse, an industrial psychologist for the defendant assessed him on 25 April 2012. It was his evidence the purpose of the report[6] that he compiled pursuant to his assessment of the plaintiff was to focus on the plaintiff's loss of earnings between his pre-earning capacity and his post-accident potential. He testified, pre-accident the plaintiff obtained a Grade 10 education and having completed his N1 was in the process of completing his N2 in motor

[5] See in this regard Exhibit K
[6] See in this regard Exhibit M

mechanics. At the time of the collision, he was working for Nazeema's Pharmacy as a general worker/cashier earning a total salary of R 7000. Disregarding the accident he testified, that the plaintiff would have continued to work in a similar capacity earning at the above earnings plus inflationary increases until normal retirement age of 65 years. Furthermore, that the plaintiff is currently unemployed as he resigned from Nazeema's Pharmacy due to the fact that he was relocating. During cross-examination the witness conceded that at the time when he assessed the plaintiff he had at his disposal, the report of the plaintiff's neurosurgeon, but did not have the joint minute prepared by both neurosurgeons. He further conceded that he had failed to ascertain from Nazeema's pharmacy, how the plaintiff performed post collision and confirmed that if the plaintiff was to be employed post collision, he would have to work for a sympathetic employer.

[15] In the joint minute[7] prepared by the industrial psychologists, they agreed pre-collision, that the plaintiff in all likelihood would have retired at age 60-65 years depending on his preferences and circumstances. Ms Du Toit was of the opinion, in the event that the plaintiff was self-employed, the probability existed that he might even work beyond the age of 65 years. The experts further agreed that the plaintiff has been left somewhat less competitive in the open labour market due to neuropsychological sequelae in that as per the neuropsychologists a routine, structure environment might be ideal. This will have a negative impact on his income which will although difficult to quantify, probably be at a lower level than his projected pre-accident earning potential.

[7] See in this regard Exhibit N

Evidence Occupational Therapists

[16] Ms Rose Leshika conducted her assessment of the plaintiff on behalf of the defendant on 28 February 2012. The witness testified that the purpose of her report[8] was to ascertain the impact of the injuries sustained by the plaintiff in the accident on his activities of daily living, leisure/recreation and work (earning capacity). She gave evidence that amongst the assessments conducted was the 'Whole Body Range of Motion', which depicted tasks that the plaintiff was required to perform above his head was associated with pain in his right shoulder. She further testified that the plaintiff would be able to return to his work, pre-accident as he sustained no cognitive impairments as a result of the accident. During cross-examination the witness conceded she was not aware that the plaintiff had sustained a brain injury as a result of the collision. She also conceded that if the plaintiff was to return to his pre-accident employment and in the event of him being required to perform activities above his head, it might present him with a challenge.

[17] Ms Mpho Zwane, conducted her assessment of the plaintiff 26 April 2013 and pursuant thereto compiled a report.[9] In essence it was her testimony that based on her assessment the plaintiff would be suited to light physical work and albeit that he meets the physical demands of his previous employment as that of a pharmacy assistant, he does not meet the cognitive demands of this occupation. He will as a result find it difficult to compete in the open labour market. During cross-examination the witness disagreed with her counterpart that the plaintiff

[8] See in this regard Exhibit O
[9] See in this regard Exhibit J

would be able to lift weighty objects as she testified that when she conducted her assessment, the plaintiff complained of pain in the shoulder and as a result she had to discontinue this test.

[18] The joint minute[10] prepared by the occupational therapists, the experts deferred the final diagnosis, outcome and prognosis of the injuries sustained by the plaintiff to the other experts. They agreed that the plaintiff would benefit from sessions with an occupational therapist and suggested four (4) sessions in this regard. They also agreed that the plaintiff would benefit from physiotherapy sessions albeit that they could not reach consensus as to the relevant expert to determine the total number of sessions.

[19] In addition to the viva voce evidence presented before the court, the parties by agreement requested the court to mark as exhibits the following reports:

19.1 The report by the plaintiff's orthopaedic surgeon Dr Colin Barlin, marked as exhibit A.

19.2 The joint minute prepared by the neurosurgeons Drs Snykers and Earle, marked as exhibit B.

19.3 The medico-legal report prepared by Dr Naidoo, marked as exhibit C.

19.4 The report compiled by Dr Leslie Berkowitz, the Plastic and Reconstructive surgeon, marked as exhibit F.

19.5 Exhibit F, the Revised Actuarial Calculations by Gerard Jacobson Consulting Actuaries, dated 2 September 2014.

[10] See in this regard Exhibit P

19.6 Exhibit L, the initial actuarial report compiled by Gerard Jacobson.

[20] At the outset it should be mentioned that the plaintiff elected not to testify during these proceedings. The rationale thereof was not explained to the court. The failure on the part of the plaintiff to take the stand deprived the court of an opportunity to observe the plaintiff and his disposition as at date of commencement of the proceedings.

[21] However, based on the factual disposition as well as the views expressed by the experts during their testimony, the pertinent question arose what award would be fair and adequate compensation for the plaintiff in respect of his loss of earnings and earning capacity.

[22] It is by now accepted that in the assessment of these kinds of damages, which cannot be assessed with any amount of mathematical accuracy the court has a wide discretion.[11]

[23] Furthermore, with regard to expert evidence, it is trite as was stated in Louwrens v Olwage 2006 (2) SA 161 (SCA) that in applying a scientific criteria or reasoning the expert witness must satisfy the Court that the conclusions drawn by the expert in question are founded on logical reasoning and that these conclusions are based on facts proved by admissible evidence.

[11] See for example A A Mutual Insurance Association Ltd v Maqula 1978 (1) SA 805 (A).

[24] The legal representative on behalf of the defendant quite appropriately referred the Court to the decision of S v Gouws 1967 (4) SA 527 (EC) at 528D, where Kotze J (as he then was) said:

> 'The prime function of an expert seems to me to be to guide the court to a correct decision on questions found within his specialised field. His own decision should not, however, displace that of the tribunal which has to determine the issue to be tried. The tendency to lead expert witnesses to attempt to influence a court with their "opinions" of the very issue which is to be determined, makes it difficult to distinguish facts from inferences and opinions. However, difficult it may be, I am called upon to sift through all the evidence and to place all admissible evidence on the scales and consider them. Inadmissible evidence, transgressing the rules regarding the admissibility of evidence of experts, will be disregarded."

[25] In the decision Southern Insurance Association v Bailey NO 1984 (1) SA 98 (A) at 114C-D, Nicholas JA said:

'In a case where the Court has before it material on which an actuarial calculation can usefully be made, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an "informed guess" it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial Judge's "gut feeling" (to use the words of appellant's counsel) as to what is fair and reasonable is nothing more than a blind guess. (cf Goldie v City Council of Johannesburg 1948 (2) SA 913 (W) at 920.)[12]

[12] See also Road Accident Fund v Guedes 2006 (5) SA 583 (SCA) at para[8]

PRE-MORBID CAREER PATH

[26] The undisputed evidence in this regard is the following:

26.1 Prior to the collision, the plaintiff's highest level of education was a Grade 10 qualification passed at school and an N1 qualification as an artisan, which he obtained since leaving school. Sometime thereafter, he enrolled for an N2 course in motor mechanics, which he failed to complete.

26.2 During 2000-2006 he did his internship as a mechanic during which time he earned an income of R 1600 per month. He thus had the desire to qualify as a mechanic and to one day pursue a career as one.

26.3 In 2006 he got married and as a result resigned his employment as a mechanic as the demands of having a family took its toll.

26.4 He then thereafter took up employment at MTN as a call centre operator and at the time was earning a salary of R 7000 per month.

26.5 The hectic working hours resulted in him changing employment once again during 2007 and it was then that he took up employment at Nazeema's Pharmacy as an assistant, where he continued working there until the date of the collision.

26.6 It is also common cause that the plaintiff returned to this last employment for approximately a month following his recovery, but that he could not work satisfactory as he was very forgetful and his employer needed to check on his work constantly.

[27] On behalf of the plaintiff it was argued, that as the plaintiff was described as an excellent worker and regarded as an asset by his last employer and further that as his income as at date of collision was not placed in dispute, that the plaintiff pre-morbid would have received such income coupled with the yearly inflationary increases, which as per the evidence of Ms Du Toit, would have escalated with inflation to median Patterson B3, basic salary (being R 117 600 p/a).

[28] In addition, counsel submitted with reference to the evidence of Ms Du Toit, that in all likelihood the plaintiff would have reached his pre-morbid career ceiling of the median of Patterson B4/B5, basic salary (being R 150 000 p/a). This was premised on the fact that as at the time of the accident, the plaintiff was already earning the upper notch of semi-skilled of Patterson B3 and at that stage he was in his late twenties. Ms Du Toit was of the opinion that for the plaintiff to have moved from his pre-morbid income of median B3 to median B4/B5 would only translate to one and a half higher notches over a long period of time.

[29] On behalf of the defendant it was argued, that the plaintiff had a fairly low level of education, and had a poor track record of failed attempts at his studies. In just over a period of nine (9) years, from 1998 to 2007 he failed to complete his technical training and education. Furthermore, given the fact that the plaintiff as at date of the accident was employed by a relative, he was earning higher than expected salary than others with his level of education and as such had reached his ceiling at a much younger age. Dr Harmse, who testified on behalf of the defendant, confirmed this position and was of the opinion that what the plaintiff was earning

prior to the collisio, was unusual given his age and in all likelihood after the collision he would not have projected much higher.

[30] To the latter argument, there are some merits and demerits. Firstly the plaintiff as at date of the accident was earning R 7000 per month. This fact, quite simply, not only was undisputed, but it is how this particular plaintiff is to be categorised as. Even if this court is to accept that his earnings at the time of R7000 per month, was considered to be a high income bracket for someone of his ilk, it was a salary that he was earning before even taking up employment at Nazeema's Pharmacy. This is the position he found himself in as at date of collision. That having been the position; in all likelihood or probability would have translated in this being his likely earnings or probable earnings.

[31] The income bracket that the plaintiff found himself earning as at date of collision, (even without any improved educational qualifications),the probabilities dictate would have increased with time rather than decreased resulting in his ceiling pre-morbid, increasing from median B3 to median B4/B5.

[32] In the result I do not accept the argument presented on behalf of the defendant that indeed pre-morbid, the plaintiff had reached his career ceiling and to suggest otherwise would be wholly unrealistic. A progression to have reached a career ceiling of median of Patterson B4/B5, as basic salary, I am of the opinion is a conservative approach and in all likelihood more probable.

POST-MORBID CAREER PATH

[33] It was common cause between the parties, that the plaintiff sustained the following injuries in the collision:-

33.1 A fracture of his right ulna.

33.2 A fracture dislocation of his right shoulder.

33.3. A knee laceration.

33.4 A head injury, which resulted in a traumatic brain injury, which was likely in the mild to moderate severity category.

[34] The evidence presented in respect of the plaintiff's post-morbid career path was that the plaintiff post collision has been left completely unemployable. In substantiation of this contention the plaintiff proceeded to not only present factual evidence by his spouse and previous employer, but also presented evidence of an expert nature. As to the factual evidence presented, his spouse testified that post collision the plaintiff is a different person. He has become very irritable; he is very forgetful and has to be reminded all the time about things left for him to do. The same sentiments was also expressed by his previous employer i.e. that post collision when the plaintiff returned to work, all of a sudden he was very irritable; he could not remember where he had placed new stock upon receipt thereof, and as a result she constantly had to check on his work. Prior to the collision however the plaintiff was an excellent worker. Having regard to the expert evidence presented on the plaintiff's post-morbid condition:

-the occupational therapists both confirmed restrictions to the plaintiff's physical work ability albeit that they differ as to what classification of work the plaintiff can do. Ms Leshika, the occupational therapist who testified on behalf of the defendant, confirmed that the plaintiff experienced pain and struggled when called upon to do work above his head.

-The joint minute of the orthopaedic surgeons confirmed the fracture dislocation to the shoulder and that the plaintiff would require permanent treatment to the shoulder due to permanent sequelae.

-The joint minute of the neuropsychologists confirmed a traumatic brain injury with the result that the plaintiff cannot return to his pre-morbid employment.

-Evidence of the psychiatrist, that the plaintiff suffered a traumatic brain injury and that his condition is impaired.

-The joint minute of the neuro surgeons confirming that the plaintiff's brain injury was moderate to severe.

[35] The defendant in turn was of the view, that post-collision, that the plaintiff has retained a significant residual income capacity and at the very least he should be employable in an environment as was proposed to by his neuropsychologist, Mr Macfarlane, as "routine, simple, structured and supervised. Albeit, that the defendant conceded that post collision the plaintiff presented with certain deficits and or fall outs; certain neurobehavioral problems and attention deficits, the defendant did not believe such deficits completely incapacitated the plaintiff to enable him to secure work in the future.

[36] Where the defendant was of the opinion that the plaintiff still possessed a residual earning capacity, the defendant carried the onus to prove such residual earning capacity before the Court on a balance of probability. In this respect the defendant ought to have identified the work, which on its own expert opinion was routine, simple, structured and supervised. In addition thereto, the defendant ought to have proven what income the plaintiff will earn whilst doing such work, when most likely the plaintiff would have secured such work and lastly for how long the plaintiff would have maintained such work.

[37] In this regard the most crucial evidence presented in this regard, was the evidence of the defendant's industrial psychologist. As was mentioned in paragraph 14 supra, Dr Harmse conceded during cross-examination, that the plaintiff if he is able to obtain future employment, he would have to perform work for a very sympathetic employer. The doctor further conceded that in his endeavours to obtain employment that the plaintiff with his limitations would have to compete with other job seekers and in all likelihood would find this challenging. The witness also conceded that when he prepared his report he did not have the benefit of all the expert reports of the plaintiff at his disposal and as such his opinion might not have been very objective.

[38] On the evidence presented by the defendant; I cannot find that the defendant succeeded in proving that the plaintiff post-morbid maintained a residual earning capacity and as a result I must find that such earnings are zero.

[39] In the decision Burger v Union National South British Insurance Company [1975] 3 ALL SA 647 (W) at p 650 the following passage I find to be appropriate:

> 'A related aspect of the technique of assessing damages is this one; it is recognised as proper in an appropriate case, to have regard to relevant events which may occur, or relevant conditions which may arise in future. Even when it cannot be said to have been proved, on a preponderance of probability, that they will occur or arise, justice may require that what is called a contingency allowance be made for a possibility of that kind. If, for example, there is acceptable evidence that there is a 30 per cent chance that an injury to a leg will lead to an amputation, that possibility is not ignored because 30 per cent is less than 50 percent and there is therefore no proved preponderance of probability that there will be an amputation. The contingency is allowed for by building in the damages a figure representing a percentage of that which would have been included if amputation had been a certainty. That is not a very satisfactory way of dealing with such difficulties, but no better way exists under our procedure.'

[40] For all the above reasons, that in regard to the plaintiff's loss of earnings, taking into account all the circumstances of the matter, including the medical evidence, it would be fair and just that a 5% (percent) contingency deduction be made in respect of past loss of earnings of R 554 84. For the same reasons a 15% (percent) contingency deduction in respect of future loss of earning capacity of R 2 687 070 would be equitable. As previously mentioned from these amounts in addition to the already agreed amounts between the parties, the defendant accepted liability for 80% of the plaintiff's proven damages and as a result a 20% deduction is to follow.

ORDER

[41] In the result the following order is made:

41.1 The defendant shall pay the plaintiff the amount of R2 744 564,29 (Two Million Seven Hundred and Forty Four Thousand Five Hundred and Sixty Four Rand and Twenty Nine Cents only).

41.2 Interest on the above amount at a rate of 15.5% (percent) per annum from a date fourteen (14) days after the judgment to date of final payment.

41.3 Payment of the amount referred to in paragraph 41.1 supra be made directly into the trust account of Levin Van Zyl Inc. Nedbank, Business Northrand, Account No 146 904 1340, Branch Code 146 905.

41.4 The defendant shall furnish the plaintiff an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1956, for 80% (percent) of the costs of the future accommodation in a hospital or nursing or treatment of or rendering of services or supplying of goods to the patient as a result of the injuries that he sustained as a result of the collision on 7 June 2008, after such cots have been incurred and on proof thereof.

41.5 The defendant shall pay to the plaintiff's attorneys the plaintiff's costs to date hereof to be agreed upon or taxed, as between party and party, which costs shall include:

41.5.1 The costs of counsel as well of cost of preparing written heads of argument;

41.5.2 The costs attendant upon the obtaining of the payment of the capital amount referred to in paragraph 41.1 and the undertaking referred to supra;

41.5.3 The costs of the appointment of the curator ad litem herein, and the reasonable costs of the curator ad litem;

41.5.4 The reasonable travelling costs incurred by the plaintiff in attending the plaintiff's and defendant's medico-legal appointments and in respect of the trial herein, including the necessary consultations in preparations for trial as allowed by the Taxing Master;

41.5.5 The costs of the medico-legal reports, follow-up reports and addendum reports and the reasonable preparation, reservation and full day fees, for any, of the experts in respect of whom notice was given, including the following:

41.4.5.1 Prof Wisniewski/Dr C Barlin (orthopaedic surgeon);

41.4.5.2 Dr J Earle (neuro-surgeon);

41.4.5.3 R Macfarlane (neuro-psychologist);

41.4.5.4 K Kaveberg (occupational therapist);

41.4.5.5 Ms C Du Toit (industrial therapist);

41.4.5.6 Dr Naidoo (neurologist);

41.4.5.7 Dr Prinsloo (psychiatrist);

41.4.5.8 Dr L Berkowitz (plastic and reconstructive surgeon);

41.4.5.9 G Mitchell (clinical psychologist);

41.4.5.10 I Kramer (actuary).

41.6 The relief sought for the appointment of a curator bonis to administer the property of the plaintiff was not canvassed during the trial and as such same must be applied for on motion.

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C COLLIS

ACTING JUDGE OF THE HIGH COURT

Counsel for plaintiff:	A Lubbe
Attorney for plaintiff:	Levin Van Zyl Inc
Attorney for defendant:	L Adams
Attorney for defendant:	Lindsay Keller
Date matter heard:	3 September 2014
Judgment date:	21 November 2014