



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Case No: 11522/2011

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

4 April 2014

EJ Francis

In the matter between:

JANSE VAN RENSBURG, NICOLE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

FRANCIS J

Introduction

1. The plaintiff instituted an action for damages against the defendant arising from a motor vehicle collision on 7 March 2008 in the vicinity of Jubilee and Thomas Pringle Streets, Boksburg South between motor vehicle D[...] in which she was a passenger there and then being driven by a certain E J Botha and motor vehicle M[...] driven by an unknown person.

2. The defendant has conceded that it is liable to pay the plaintiff 100% of her proven or agreed damages. The plaintiff is not claiming past medical expenses. At the commencement of the proceedings, the defendant undertook

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to furnish the plaintiff with an undertaking for future medical expenses in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for the injuries she had sustained in the motor collision.

The evidence led

3. The plaintiff testified and called five witnesses in support of her claim. They were Dr G Read; Ms J Schoeman; Ms M Pretorius; Ms S Venter and Dr Mahomedy. The defendant did not call any witnesses in this matter.

4. The plaintiff was born on 9 [...]. At the time of the collision on 7 March 2008, she was 17 years old and was in matric and was doing home schooling. She was going to write her matric examinations in May/June 2008. She was a back seat passenger when another vehicle collided with the vehicle she was in. She was immediately rendered unconscious for about 20 minutes. She sustained injuries to her head, neck, back, ribs and legs and was transported by ambulance to hospital where she remained as a patient for a week. Two procedures were performed on her under anaesthetic, namely cleaning and suturing of the wounds above her eye and on her leg. She now has a laceration on her forehead. As a result of the collision, the plaintiff only wrote

two subjects which she failed on 2008. She was unable to study until she completed her matric examinations in 2011.

5. The plaintiff testified that in 2006, she had wanted to become a hairdresser and beautician and had made enquiries at a number of colleges about the

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requirements and costs for becoming a hairdresser and beautician. Matric was not needed to become a hairdresser but she decided to complete her matric first before enrolling for it. She had decided that she first wanted to complete her matric before she would enrol for the hairdresser and beautician course. The former did not require a matric certificate. However after matriculating in 2011, she did not pursue her dream due to the nature of her injuries and the costs of becoming a hairdresser and beautician. She used to do her family, friends and her own hair and nails. However since the collision she has not been able to do any hairdressing or beautician on herself and her friends. She has tried to do hairstyling but there is too much strain on her head and back and bending forward is very painful. This has upset her that she cannot pursue her dreams. If she stands long, her head, back and neck is painful. She cannot do the normal things that she used to do. She feels severe pain in her neck most of the time. She gets headaches quite often and they are severe. She gets migraine attacks. The pain in her back is severe and she gets it five times a week. The pain is brought about by sitting and standing long and like when she washes dishes, making up the bed and doing tasks. She is unable to lift up heavy things. It is difficult for her to get in and out of bed. She showers and it is difficult for her to do her own hair. Over the passage of time since the

collision the pain has gotten worse. This has affected her memory and she forgets things which she normally would have remembered. Before the accident, she used to go to the gym, and took part in athletics and hockey but cannot do so now. The injuries have had an impact on her social life. Before the accident she was a social butterfly but now does not go out and would only

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do so once in a blue moon. She is scared to travel in a car and is scared of drunk people on the roads. She cannot socialise with a group of people and feels conscious of her scars. She has to cover them with makeup. She acquired a driver's licence after the accident and drives. She is a nervous driver and prefers to drive then sitting as a passenger. She gets panic attacks and screams and shouts if she is a passenger.

6. The plaintiff was before the collision employed as a waitress at Barney's Pub and Grill (Barney's) on a part-time basis and was earning approximately R15 000.00 per month made up of salary and tips. She worked weekends and some days during the week. She was earning R200 per shifts and worked four days a week and four weeks a month. Sometime after the accident, she returned to work at Barney's where as a result of her injuries she was not able to perform the duties that she did before the accident. Her employer allowed her to continue in employment but on reduced duties. She was no longer required to serve tables and she could not carry food trays. She worked mainly in the bar but could not cope physically and resigned. Barney's closed down a few months later. During the period October 2011 to August 2012 she was employed at First National Bank (FNB) as a foreign rates specialist in terms of

two contracts, the first of which was for four months and the second for six months. Her contract with FNB was not renewed after the second contract period due to her high level of absenteeism following on the injuries sustained in the collision. Since then she has failed to secure employment.

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7. The plaintiff said that since the collision and in addition to the initial treatment whilst hospitalised immediately after the collision, she has received treatment inclusive of a number of rhizotomies and one lumbar infiltration. The rhizotomy procedures have been repeated every six months. Needles would be put into her spine and fluids would be injected to deal with the pain and to numb it. She went for lumber punctures and for rhizotomies which is a radio pulse frequency treatment. She had one lumber puncture after she had a migraine and panic attack and it had no impact on the migraine headaches. Before the accident, she had no problem with her neck and back or had severe headaches. She is currently not on any medication.

8. The plaintiff said that the injuries have impacted on her relationship with her family in that she is now short tempered and bad tempered, does not have a lot of patience and is irritated by people quickly. She does not want people around her and she can cause a fight. There has been a marked impact on her social life to the extent that she no longer wants to go out or see friends and has lost most of her friends. She does not speak to her friends anymore. She had many friends before the accident. She is unable to take part in sporting activities as she did prior to the collision. Her general life has been

detrimentally affected. She is limited and is restricted both physically and mentally and is unable to wash a bath, make up a bed, wash dishes etc. She is in constant pain and experiences migraine headaches approximately 5 times a week. She said that in 2007 she experienced an episode of depression which was linked to her having to inform her parents about her sexual preference.

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She was hospitalised and put on medication but was went into remission in August or September 2007. She was still in remission at the time of the collision and was no longer on medication. She knows Susan Venter since December 2007 who is her lover and they live together. She fights a lot with her.

9. During cross examination the plaintiff did not deviate materially from her evidence in chief. It is not necessary to repeat her evidence in any great detail. She said that in 2006 she worked at a business doing decorations for events in 2006. At Barneys she made R15 000.00 and was 17 years old. She worked part time doing night shifts and studied during the day. She was hospitalised in June/July or September 2007 for five days. What had led to her depression was that she had struggled to tell her parents that she was involved in a same sex relationship. After she had told her father, he was sad for a week but he eventually accepted it. There were also problems in her same sex relationship that also contributed towards her depression. She agreed that she went for some treatment for her injuries and that whilst she was in hospital she did physiotherapy which was very painful. She had decided not to return to hospital for it and has since 2008 not attended physiotherapy. It was put to her

that she had not given it a chance but said that it was very painful and they could not touch her at all. She told the physiotherapist that it was painful and did not go back to physiotherapy but went for other treatment under anaesthetics and did not feel pain. If the physiotherapy worked, she will go for it. It caused more pain which was severe and she could not handle it. Her

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pain threshold is very high. She would get pain five days a week. When she stands or sits, her neck is in pain. If she washes the bathroom and do light activities the pain increases. It was put to her that if she went back to Barney's and worked nothing stopped her from become a hairdresser. She said that at Barney's she was assisted and as a hairdresser she could get an assistant. She tried to cope but could not. She is now 23 years and her pain has not gotten better but worse. She said that she went for therapy but not for physiotherapy. The physiotherapy was the massaging of her back, neck and shoulder and with ointment and with a machine.

10. The first witness called by the plaintiff was Dr Read, an orthopaedic surgeon. He confirmed that he prepared a report that is at B67 - 78 and that he stands by it. He said that he examined the plaintiff on 29 August 2012 and has set out her present condition and complaints at B68 of his report. She complained of ongoing pain, stiffness and paraspinal muscle spasm in the mid and lower cervical spine area. Associated with the neck pain, she has frequent and severe headaches. The pain is aggravated by mild activity especially when she was sitting for a prolonged period of time and working on the computer. She has no radicular symptoms in either of the upper limbs. She complains of

ongoing pain, stiffness and paraspinal muscle spasm over the lower lumbar vertebrae. The pain is aggravated by activity which causes repeated flexing and straightening of the lumbar spine. She occasionally experienced 'pins and needles' in both lower limbs. She also complained of pain over the anterior aspect of the right knee, stiffness and limitation of movement. The plaintiff

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has symptoms suggestive of post traumatic chondromalacia in the knee with no evidence of instability. Her mobility is somewhat restricted. She cannot kneel down, as well as having difficulty when crouching. On examining her he noted that she was generally well. She has a 6 cm healed scar above the right eyebrow which was related to the accident. This has healed with some residual, unsightly scarring. He examined her head and neck and noted that her cranial nerves were intact. On inspection there was some loss of the normal cervical lordosis. The head was held forward of the normal centre of gravity. It was uncomfortable and caused discomfort. The plaintiff was not malingering and could not fain her entire symptoms. She cannot fain muscular spasm and the cervical spine was slightly reduced. On inspection of the lumbar spine, she was noted to have a normal lumbar lordosis. She had no difficulty dressing and undressing, or getting on an off the examination couch. On palpation of the lumbar spine, she was tender over the L4/5 and S1 region. She has associated paraspinal muscle tenderness bilaterally. When he pushed her in that region, it caused discomfort. She has a good range of movement of the lumbar spine with discomfort at the extreme ranges of all movements. She can flex to within 5cm from the ground. Her straight leg raising is to 70 degrees on the right with discomfort and normal 89 degrees on the left. On the

neurological testing of the lower limbs she was noted to have normal sensation over all the dermatomes of both lower limbs. The knee, hamstring, and ankle reflexes were tested. They are present in both lower limbs. The plantar reflex is present in both lower limbs. This was consistent with the finding of the lumbar spine. On examination of the knees, there was effusion/swelling and

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on the left it was normal. He said that the plaintiff is young and can twist normally. He said that the McMurray on the right knee causes discomfort and the only difference was between the left and right knee. There was an obvious bony abnormality of the tibiae or fibulae. It appeared to be in a good position and alignment. There is an area of numbness measuring 5 x 4 cm over the anteo medial aspect of the right tibia, probably due to a deep laceration over that area and it was stitched up.

11. Dr Read testified further about the final diagnosis of the plaintiff. He said that she sustained the following orthopaedic injuries namely a cervical spine soft tissue injury. He took x-rays of the cervical spine note disc space narrowing localised to the C4/5 level. This type of an appearance is a norm of people over 40/50/60 years. The disc has a space narrowing not expected of the plaintiff. She has a lumbar spine soft tissue injury and x-rays were taken of the lumbar spine which was noted to be normal. She had a right knee soft tissue injury and it showed normal on the x-ray. She has soft tissue injury to the neck and the disc narrower was a secondary effect. Physiotherapy cannot cure any condition ever. It makes it easier for a patient to heal what it can heal and it has no curative effect. The patients go to a physiotherapy for help to get

better quickly. All that it can do is to teach a person how best to use what the person has. Nothing can cure the space narrowing. They may do fusion which has side effects. The lumbar spine soft tissue indicates that the bony outline is normal. The lumbar spine is a whole skeleton with the old boat wooden structure with top of ropes. Ligaments do not heal well. The bone

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heals well to what it was before. The soft tissue does not ligament and the disc goes. Her bone was normal and it does not say anything about soft tissue injury. The right knee soft tissue injury is more or less similar to what he had testified about. However x-rays of the cervical spine showed disc space narrowing localised to C4/5 level. This was an unusual x-ray finding in a 22 year old person and it therefore suggested that it directly related to the accident in question. He said that soft tissue injuries to the axial skeleton can take up to two years to settle and the plaintiff belongs to the second group of patients. After two years, she will have symptoms emanating from the axial skeleton and those symptoms are likely to be a chronic, and on going nature and will require conservative and/or surgical treatment. He said for the back or neck they have to wait two years to see her as she had the potential to get better. He said that his opponent Dr Kumbirai said the timeframe was between one and two years. He placed the plaintiff's pain at the intrusive discomfort level and said that she will not get better. Her plateau is one to two years and he and Dr Kumbirai agreed that she will have it forever. It was not his experience that a young person will lie to him and said that it does not happen. Rhizotomy is to do a division by injection or surgical on the nerve producing pain. If she has a painful nerve the pain is in the brain and it goes

from the knee to the brain. The brain tells a person what to do. If they cut the nerve, it cuts the information and does not deal with the pain. It cannot cure anything and it cuts the nerves and is a pain controller. If you cut the nerve you get relief for some time. Other nerves are developed and they can give her an injection to permanently destroy the nerve. She will get pain around

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the other nerves. He said that pain is protecting. Rhizotomy is only done by a neurosurgeon.

12. Dr Read testified that he stands by the contents of pages B76 and B77 of his report. The nature of the work of the plaintiff when she was at FNB was 95% sedentary in nature sitting in an office working on a computer. She coped with her work although she experienced some discomfort when sitting or standing for any long period of time. When sitting at the computer for more than an hour, she experienced pain in the neck and back. She had to get up at frequent intervals in order to stretch the axial skeleton. In so doing, she would lose about one hour of productive work in a day. This equated to a 10% loss of productivity. He said that the plaintiff cannot become a hairdresser and beautician. The job of a hairdresser involves standing and he does not what is involved with a beautician. As a hairdresser, she puts her head in different positions. She must stand up and the best job is to move around and it puts stress on the back and knee. He did not know that she wanted to become a hairdresser and beautician. Hairdressing is not good for her and she will not be able to cope. Her neck and knee cannot improve. If she had had received

the treatment as recommended in his report, her symptoms would improve. She will be able to return to an occupation similar to what she was doing prior to the accident with less disability. Should she find suitable occupation in the future, she will require eight to six weeks to attend to her treatment. Orthopaedic injuries sustained in the accident should not preclude her from working until normal retirement age. The plaintiff has a one to two year

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window period. He said that she must work her life around and she is not a cripple. She must live her life with what she is able to do. She must do a job that is less stressful and that is sedentary and not sit before a computer. He confirmed that he and Dr Kumbirai compiled a joint minute that is bundle F. They did not disagree about her. He saw the plaintiff in August 2012 and Dr Kumbirai saw her in September 2013. He said that the picture that Dr Kumbirai paints about the plaintiff is much worse than the picture that he paints. She got worse from August 2012 to 2013. He said that Dr Kumbirai talks of surgery and he scored her with a RAC narrative. He believes that in the long term she will be serious. She got worse then what she was last year. She did sedentary work as a foreign note specialist and there is no prospect of her condition improving to work as a hairdresser and beautician.

13. Ms Janine Schoeman, the plaintiff's second witness testified that she is an occupational therapist. She assessed the plaintiff on two occasions namely on 21 August 2012 and 3 October 2013 and prepared two reports to be found at bundle B36 to 66 and B234 to 266. She confirmed the contents and

correctness of both reports. In the first report, she said that she did not canvass the aspects of hairdressing and beautician because the plaintiff did not tell her about it at that time. She dealt with that in the second report. In the first report she commented on the aspects of the administration type job at FNB after she had left it. In the first report, the plaintiff complained about her neck and back. The work place is in a seated position. There is kneeling and standing and there was lower back discomfort. If she was standing she would

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complain of pain. If the plaintiff told her at the first assessment that she wanted to be a hairdresser or beautician, she would not have advised her to do it. During the second assessment, she noticed changes in her. She did a battery of tests on the plaintiff who performed worst. Her neck pain was worse. She first complained of back pains and the toleration had decreased. Her ability to meet demands were less. There was a deterioration in her performance. Since the tests results on both occasions were consistent, she ruled out the possibility of the plaintiff malingering or exaggerating the *sequelae* of pain and suffering. The plaintiff cried in two of the tasks she had to do noting pain in her back. She has looked at Dr Read and Kumbirai's reports as well as the defendant's occupational therapist report – Dalene van Wyk and there was nothing inconsistent with her findings. There is a limitation on the functions involving her lower back and neck. In her view, the plaintiff could not become either a hairdresser or beautician and her employment was limited to sedentary work of a light nature where she is not required to either sit or stand for lengthy periods at a time. They agreed in their joint minute that the plaintiff can do sedentary and light physical work,

although she has limitations in positional tolerance, particularly prolonged sitting, standing, working in elevated planes and forward flexed positions. They reached the same conclusion although they had used different tests. They agreed that she should be able to perform work in a sedentary position although with some reduced productivity noting the need for increased comfort breaks required to relieve discomfort associated with prolonged static positioning. They agreed that at present the plaintiff remains physically, best

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suited to work that can be classified as light physical load, where prolonged standing or sitting work should include the opportunity for changes in position or comfort breaks. They agreed that she should avoid any work with weight handling exceeding a light load and any frequent work in elevated planes and forward flexion, as this seemed to exacerbate pain in her neck and lower back significantly. They agreed that the plaintiff's hopes to become a hairdresser and beautician have effectively been compromised by discomfort in her neck and lower back noting the frequent work in elevated planes and forward flexion involved in such work. She said that it is difficult to classify what hairdressing and beautician work is. She can pursue another career.

14. The plaintiff's third witness was Mariana Pretorius a qualified industrial psychologist. She assessed the plaintiff on two occasions namely on 25 September 2012 and 24 October 2013 and she prepared the two reports in bundle B79 to 98 and B281 to 286. The plaintiff's complaints are migraines accompanied by nausea and blackouts; frequent neck pain; continuous upper

and lower back pain; insomnia; depression; irritation; inability to lift heavy objects; self consciousness about the cut in her face; her social life has changed; feelings of listlessness, low motivation and low energy; feelings of worthlessness; suicidal attempts; getting terrible nightmares for about a year after the accident, but no more; poor concentration and memory, she is nervous and even anxious passenger driver; and she always wanted to build up a motor vehicle as a hobby but does not anymore. The plaintiff always wanted to become a hairdresser and beautician. A matric certificate is not needed for

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a hairdressing course but for a beautician course. A grade 8 is required for a hairdressing course. The remuneration for a hairdresser and beautician course is different. The plaintiff will not be able to become an owner and manager of a salon. She needs experience in the field. If her father buys her a salon, she will have to employ people to manage it and she can eventually manage it. She needs psychotherapy for her depression and she is not emotionally competent to manage a salon. In her opinion from the joint minutes, there is no room for physical improvement. She will have pain in the upper limbs and she will not be able to do it and become a manager. If she is the owner, she may employ the people that she wants. Many owners work on their own and work alone with assistants. If she can do hairdressing and beautician and is the owner, she can do it alone. She can physically do the job if she is the owner. The plaintiff is sad that she lost all those years and could not pursue her career aspirations. She said that the complaints that the plaintiff has appear at B87. She had an appointment with the plaintiff who stills has migraines and depression and she was in a lighter mood. She still has

insomnia and pain if she lifts up heavy objects. She has pain if she stands and walks around.

15. Pretorius testified that the plaintiff could not stand for long and realised that she would also not be able to handle the requirements set for a hairdresser. The plaintiff's job at FNB entailed administrative tasks, such as filing. She experienced back pain when lifting and carrying heavy boxes of files. She was also responsible for electronic transactions. She was seated behind a desk

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most of the time. Sitting for long periods exacerbated the pain in her lower back and neck. She did not really like that job but was thankful for the income. The plaintiff had the career ambition to become a hairdresser but at that stage she was demotivated because she believed that she would not be able to cope with the demands of standing for long hours. The after effects of the accident caused her a major depressive disorder and post traumatic stress disorder and caused her to lose momentum in her studies for grade 12. She has however despite the fact that she was still struggling with those emotional and psychological after effects, completed grade 12 while working at FNB. Her temporary contract with FNB was not renewed due to the after effects of the accident. She needs to decide on another possible career field. She has already lost a number of years and is currently at a loss about how to pursue her preferred career. She will find it difficult to find a job to ensure an income during the 12 months of psychotherapy and the period undergoing conservative treatment to her back and neck, as she will have to take time off work. This will require a sympathetic employer. Sympathetic employers are

hard to come by when the skills the employees bring to the company are not rare or in high demand.

16. Pretorius testified about the pre and post morbid scenarios. She said that with the pre morbid scenario there are two scenarios. In the first scenario the plaintiff would have completed grade 12 in 2008. She would have pursued training as hairdresser and started to work in a salon after having completed her course and would have earned on level B3 of the Paterson's scale. She

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would have proceeded with her career and would have retired when she turned 65 years on C1/C2 level. The beauty industry depends on where the person works. It is a general kind of extending. The owner income may differ. In the second scenario the plaintiff would have completed grade 12 in 2008 and would have pursued training as a hairdresser. She would have started to work in a salon after having completed her course and would have earned on level B3 of the Patterson scale. She would have proceed with her career and become a manager of a salon. She would have retired at the age of 65 on a level higher than C1/C2 probably at level C3/C4. She said that with scenario two it means that the plaintiff would have pursued training as a hairdresser and would have qualified and obtained a certificate. It takes 15 years for a hairdresser to become a manager after qualification if she worked herself up in a salon. A person is appointed as a manager if they have experience and management skills. She believed that both scenarios were possible. She said that based on the plaintiff's perseverance she has shown by independently, making progress with her schooling at a young age of 12/13 indicates that she

could have made scenario two a reality. Scenario 2 is the more likely of the two scenarios.

17. Pretorius testified about the post morbid scenario. She said that with the first scenario, the plaintiff would have completed grade 12 in 2011. Her contract with FNB was not renewed in February 2012 and by October 2012 she was still unemployed. She would start with the treatment prescribed by the different medical experts. Because of the time that it takes to visit the

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different medical practitioners for the treatment, she does not find work in 2013. By the end of 2013, she is fortunate to find admin work which is light enough for her to do comfortably. She earns on level A3 of the Patterson's scale. She would have retired at age of 65 on a B3/B4 level. She said that according to Goch, somebody in the informal sector with a grade 12 earns less. In the formal sector i.e. the corporate sector, the person can go to level B3 which is higher than in the informal sector. In the informal sector, it is lower than A1. She said that in the second scenario, the plaintiff would complete grade 12 in 2011. Her contract with FNB is not renewed in February 2012. By October 2012 she is still unemployed. She starts with the treatment prescribed by the different medical practitioners for the treatment and does not find work in 2013. Because of the fact that she only has a grade 12 qualification and has to be selective regarding the nature of the job, she accepts light work and struggles for more than three years to find work. By the end of 2016, she is fortunate to find admin work which is light enough for her to do comfortably. She earns on level A3 of Paterson's scale. She works

in this admin field and at the age of 65 retires on a B3/B4 level. The second scenario is the more likely scenario of the two. Work is scarce for matriculants and for people who must go for treatment due to injuries. It was more likely that she would have become a manager due to her passion, perseverance, and intention to further her career.

18. Pretorius said that she was of the opinion that the plaintiff would, with the necessary conditions described by the orthopaedic surgeon and psychiatrist,

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probably have been able to have worked productively until the retirement age of 65. She would however not have been able to achieve her ambitions of following the career of hairdresser or beautician. She will have to complete her psychotherapy and only after 12 months start with another career. In the meantime, she would very likely not find work. With no tertiary education, she will have to compete for a job in the job market with other people with only a grade 12 qualification. In this case, she would likely have struggled for three to five years to find a job and retired on Paterson level B3/B4. Pretorius did a second report. She said that the complaints were still the same and her mood was not as low as it was previously. She concluded by saying that if the accident did not take place, the plaintiff would have been able to pass the training as hairdresser or of beautician and would emotionally have been able to handle the demands of both those jobs, despite the pre-accident symptoms of depression. She may even have owned her own salon, working as sole proprietor with no hairdressers employed. Due to the accident and its aftermath, she would physically not have been able to handle the demands of

the jobs of either hairdresser or beautician. She said that exhibit D is the joint minutes that she and Kgosana signed off and she stands by it. They agreed that the job as a hairdresser requires standing for long periods which the plaintiff will not be able to do. Although the job as a beautician does not require the same amount of standing, it will also be very strenuous for her to cope with and they are of the opinion that she will also not be able to cope with the demands of the job of beautician, before her symptoms have not improved. Her symptoms are permanent. They agreed that she is emotionally

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not ready to manage a salon, but may after completion of psychotherapy and after necessary management training be able to cope with the demands of a management position. It is financially better to have an owner salon and not manage it. The plaintiff can act as a beautician and hairdresser as an owner. It depends on the size and place where the salon will be. They believe that the plaintiff currently has a relative disadvantage when competing with peers and would also have a slight disadvantage when competing with peers after completion of her treatment. The plaintiff will have to be selective about where she applies for positions but it will be difficult to find work. She does not know if the plaintiff is disabled. What happens in the industry is that people with disabilities or cannot hear properly can be productive. If they are physically not productive, they do not get employed. The unemployment rate is 26% and the rate is higher for people with disabilities. They agreed that the plaintiff will remain dependant on a somewhat sympathetic accommodation for as long as her symptoms persist. FNB was not a sympathetic employer

and if they were, she would not have lost her job. Her father had played a role in her obtaining the job.

19. During cross examination Pretorius said that the plaintiff had a passion and would have pursued it in an ideal world. Given her age, she could be a candidate for retraining. She has the potential to become a manager with in service training or if she studied for a diploma or degree. The plaintiff is compromised but is not disabled. She can do sedentary work and management is a sedentary work. She possesses probable challenges to manage a salon and

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she would lose her childhood dream. A person cannot study management and step into the position but must work themselves up. She agreed that the plaintiff needed career counselling and she would benefit from career counselling. With a matric certificate there are thousands alternatives. She must alternate her position and do something else but only if she can find such a job. She agreed that there is ample room for retraining. The plaintiff can identify another career and work herself up. The plaintiff had worked for two contracts at FNB. She said that everything was possible including another scenario but it must be taken into account that she is not psychologically strong but has completed her matric and there are many things working against her. She must go for career counselling and work herself up. It is harder for her and she must be more selective. She can be anything that she wants to be. Anything was possible with retraining but there are limits on what was possible in relation to her and what was possible or not probable. She said that

she is standing by what is in her report about what is probable or recorded in the scenario.

20. The plaintiff's fourth witness was Susana Venter. She is in a same sex relationship with the plaintiff and knows her since 1 December 2007. She said that before the accident, the plaintiff used to be fun to be around with. She used to make jokes and enjoyed going out with friends and family. She used to talk about what her plans were for the future and what she wanted to accomplish. She is now quite different to what she was. She loved doing hair, nails, makeups and beauty and had looked at the courses to study further in

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hair dressing and beauty. She had made plans with her father to purchase a salon. She played doll with her hair and did her makeup and nails. Her family telephoned her to cut and do their hair and nails. After the accident she had difficulty to do certain tasks. Her back and arms affected her. She finds it difficult to lift up her hands for about ten to 15 minutes to do blow drying. She has a problem with her knee and cannot stand for long. She still tries to do their hair but it is challenging. Before the accident she was outgoing and due to the scars on her face, she is withdrawn because of her appearance. She took the plaintiff to most of the doctors for treatment. She has received numerous treatment and Rhizotomy and lumber puncturing. Her different medication was changed to try and assist her with the pain and migraines as well. She said that when the plaintiff sits she finds it difficult to stand up. If she stands, she finds it difficult to sit. She can clean baths. If she bends over she cannot stand up and needs to be helped and must take medication. The

plaintiff prefers to drive and not be a passenger. She does not travel a long distance due to having to sit and it is painful in her lower back and is scared when other people are driving. When the plaintiff sits as a passenger, the driver must drive between 30 to 40 km an hour and if the driver drives faster she would scream at the driver and tell him or her to drive slowly. If a car turns in front of the car she is in, it freaks her out. They cannot go out on joy trips. Before the accident they used to go out regularly but now it is a miracle if they went out for more than two hours due to her pain. Her fear of driving out at night is much worse than driving during the day. She used to be patient and calm but it now different to live under one roof. She gets angry and cries

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for no reason. The emotional trauma has had an impact on her life and she had mental and physical challenges. It is now five and a half year since the accident and the pain and physical problems with the body has increased. She has deteriorated. She used to wash the bath but cannot do dishes, make up the bed or wash. It got worse since the accident with all her treatment which does not always work.

21. During cross examination nothing in her evidence was put in issue.
22. The plaintiff's fifth witness was Dr Subeida Mahomed. She is a specialist psychologist in private practice and consulted the plaintiff on 7 August 2012. Her report is at bundle B25 to 35 which she confirmed as correct. The plaintiff who was in matric in 2008 at the time of the collision could only complete it in June 2011 since as a result of the collision, she had difficulty to

study, concentrate and had anxiety and black outs. She had always wanted to become a hairdresser but this was not possible due to the accident. She suffered from a major depression and post traumatic stress disorder. Both leads to difficulty in concentrating and affects the memory and cognitive functioning. Whilst the plaintiff was employed at FNB, she was constantly hindered by her physical problems. She was in pain frequently and had to always ask her colleagues for help especially in picking up heavy objects. She had a psychiatric history before the accident which was treated adequately and was symptom free and in remission when the accident happened. When she assessed the, plaintiff there were no signs of on going depression. The

24.

plaintiff told her that she was socially active and enjoyed full life and was studying. She has recurrent headaches, neck and back pain, depressed mood, poor concentration, memory disturbances, social withdrawal, anxiety, no motivation and no drive, feelings of worthlessness and suicidal ideation. The depressed mood is related to the injuries sustained and to the physical *sequelae* thereof. She was unable to follow her previous lifestyle and her level of activity decreased due to her ongoing pain. As a result, her weight increased significantly. She weighed 100kg at the time of the accident and her weight ballooned to 140kg in the months thereafter. She has been following a strict dietary programme recently and the weight has decreased to 115kg. Her general practitioner has commenced her on various antidepressants but nothing has helped. Her most recent medication was paroxetine and urbanol and she stopped this two weeks prior to their consultation with her due to it being ineffective. She has not been referred to a psychiatrist in the last four

years. The plaintiff's complaints are related to her current depressive and post traumatic stress disorder. The poor concentration, memory disturbance and poor memory are symptoms of a major depressive disorder. The rest of her complaints relate to her getting anxious into a car and this is post traumatic disorder and her getting out of the car is a sign of avoidance. Since the accident, the plaintiff has experienced a depressed mood, insomnia, tiredness and lack of energy, poor concentration, memory impairment, social withdrawal, poor motivation and drive, suicidal ideation, avoidance of the precipitating stimuli and panic attacks and anxiety when in a car. These symptoms relate to both depression orders.

25.

23. Dr Mahomedy explained the difference between major depression and post-traumatic stress disorder and said that there are nine causes and four symptoms for it. The first is a depressed mood for two weeks which the plaintiff has had for long time. The rest is insomnia, hypersomnia, guilt feelings and decreased concentration. The plaintiff has had more than the four symptoms. Post traumatic stress disorder is when a person has experienced a traumatic event which was life threatening on that person or another's life. She will have observed or witnessed the event and will have dreams, flashbacks, nightmares and be anxious when exposed to it. There will be avoidance, hyper arousal and irritable mood. She was exposed to a traumatic event when her life and that of her friends' lives were threatened. The event 2008 event was not a trigger effect for major depression. The pain discomfort or medication plays a role in her condition. The chronic pain leads to massive depression. The pain medication starts a vicious cycle and leads to a

depressive mood. The plaintiff must commence with antidepressant therapy and be monitored by a psychiatrist and since this is the second episode of depression, she envisages that the treatment will be lifelong. She must also receive psychotherapy to assist her in dealing with the motor vehicle accident, her injuries and her subsequent inability to function optimally; the anxiety related to the post-traumatic stress disorder and coping strategies for the depressive disorder. The psychotherapy should be at least for a 12 month period but the treatment that she will get is life long. The chances of a recurrent depression is much higher and the post traumatic stress is for a long time. There is a prospect of full recovery but since there is recurrency she will

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have to go for intensive therapy and will need the treatment for a long period of at least 2 to 5 years. The medical treatment is lifelong to prevent her from getting a recurrency of the two episodes of depression and the chances increase. She will have poor concentration, poor memory and the decision making and ability to plan at work will be affected. The medication will help. The treatment that she received was not adequate and the accident had affected her social life. She is in a dark space and the motivation and drive is not there. If she does not go for treatment, she will get another depression episode. She must get the correct medication.

24. During cross examination Mahomed confirmed that post-accident depression experienced by the plaintiff is not a carry over of the depression that commenced with the 2007 episode. She explained the detrimental effects that depression has in the workplace, how same is amplified by pain and

discomfort. She said that the plaintiff will require intensive treatment and counselling over a 3 to 5 year period and thereafter lifelong. There is a high risk of further episodes of depression, the percentage risk of further episodes occurring increasing with each episode. There is nothing untoward in the plaintiff not being able to write her matric exams during the period 2008 and 2011 when she did so. She meets the criteria for a major depressive disorder as well as a post-traumatic stress disorder, which conditions impact severely on one's social life and working ability. The two disorder affect one in the workplace negatively in that as a result of the person's memory, reasoning, ability to resolve problems, etc. are affected.

27.

The issues for determination

25. This court is required to determine:
- 25.1 whether the plaintiff has suffered any past or future loss of earnings and if so the amount thereof; and
 - 25.2 the amount to be awarded in respect of general damages.

Analysis of the evidence and arguments raised

26. The defendant did not call any witnesses in this matter. It was contended on its behalf that the evidence showed that the plaintiff could still become a salon manager after receiving the relevant psychiatric treatment and with the relevant training although she would be disadvantaged by lack of background as a hairdresser. It was further contended that the plaintiff was malingering and that she does not have a have a direct loss of earnings as this can and should be mitigated.

27. The plaintiff was seventeen years old and was in matric when she was involved in a motor collision on 7 March 2008. She sustained a head injury; a soft-tissue injury of the neck of a whiplash type; a soft-tissue injury of the lower back; bruises and abrasions of the body; laceration of the forehead; an injury to the right wrist and an injury to the right knee. She was hospitalised for a week and was discharged. She was at the time doing home schooling and worked on a part time basis at Barney's earning R15 000.00 a month which included tips. Before the accident she had suffered from depression that was brought about by the uncertainty about telling her parents that she

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was involved in a same sex relationship and the problems that she had in that same sex relationship. She was hospitalised for five days and was on medication. However at the time of the accident, she was symptom free and was in remission. Her ambition was to become a hairdresser and beautician. She had made enquiries in 2006 at various colleges to find out what the requirements were for becoming a hairdresser and beautician. For a hairdressing course, matric was not a requirement but she decided to complete her matric. Before the accident, she used to do her own hair, that of her friends and relatives. She also did their nails. She returned to Barney's a month after the accident but could not do what she used to do as a result of the injuries she had sustained. Her duties were revised and she was assisted when she did her duties. However as a result of the severe pain that she had endured, she resigned from Barney's. Due to the accident she only wrote two

subjects for her matric in 2008 which she failed. She wrote and passed her matric examinations in 2011.

28. In 2011 and 2012, the plaintiff with her father's assistance secured employment at FNB as a forex specialist. She was employed for two contracts and after the second contract had come to an end in 2012, it was not renewed. This was because she had exceeded her sick leave and had taken time off due to the pain that she endured. The type of work that she did at FNB was sedentary in nature. She has since then not been able to secure any employment. Before the accident she was a social butterfly and loved to go out. She was a pleasure to be around with and had many friends. She took

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part in sporting activities but could no longer do so. She had become irritable, withdrawn and depressed due to the scar on her face and the fact that she was suffering from a lot of pain. She does not like to travel and if she does, she wants to be the driver and travels extremely slowly and would freak out if another driver was to cut in front of her.

29. It is common cause amongst all the experts who examined the plaintiff including the defendant's own experts that the plaintiff is no longer able to pursue her ambition of becoming a hairdresser or beautician. This is due to the nature of her injuries, the fact that she cannot raise her hands for a long time, she cannot stand or sit for a long time and if she does so, she suffers from severe pain. The fact that she is unable to pursue her dream has made her sad. All the experts including those of the defendant agreed that she will

be able to do sedentary work. She will have to undergo further treatment and once she has done so she will be able to do so in 2016. The plaintiff has accepted that she is able to do sedentary work and that is the basis of how her claim for loss of income was computed. In other words her claim is that but for the accident she would have become a hairdresser and beautician but can now only do sedentary work. She is claiming the difference between the two.

Loss of earning and future loss of earnings

30. The plaintiff did not in her evidence contradict herself or exaggerate any of the complaints or evidence. It is clear from her evidence that she planned or intended to become a hairdresser which was her passion. She investigated

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what courses were available and the details thereof. She used to perform the functions of a hairdresser and beautician for herself, family and friends and that she is no longer able to do so as a result of the injuries sustained in the collision. She cannot become either a hairdresser or a beautician due to the collision to the *sequelae* following on the injuries sustained in the collision. She was not able to matriculate in 2008 and that she was only able to do so in 2011. When she returned from Barney's, she did so on reduced duties and left her employ with Barney's due to her inability to cope with her reduced duties. As a result of the *sequelae* flowing from the injuries sustained in the collision she is unable to become either a hairdresser and/or beautician. The plaintiff has been consistent with what she has reported to the various experts and is supported by their evidence as well as the lay evidence of Ms S Venter. There is no basis to reject or question her evidence. Since the date of the collision,

the plaintiff's condition has deteriorated. Her evidence is supported by Dr Read; Ms J Schoeman; Ms S Venter and Mrs Pretorius. Dr Read's uncontested evidence is to the effect that plaintiff will continue to suffer the *sequelae* experienced by her to date as a result of the injuries sustained in the collision permanently.

31. Ms Pretorius looked at the pre and post morbid career opportunities prospects of the plaintiff. In the pre morbid scenarios she looked at two scenarios. In scenario 1 she said that the plaintiff would have completed her grade 12 in 2008. She would have pursued training as a hairdresser and started to work in a salon after completion of her course. She would have been earning on level

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B3 of the Paterson's scale until she had retired at the age of 65 on a C1/C2 level. In the second scenario she also would have completed her grade 12 in 2008. She would have pursued training as a hairdresser and started to work in a salon after completion of her course and would have earned on level B3 of Paterson's scale. She would have proceeded and have become a manager of a salon. At the age of 65, she would have retired on a level higher than C1/C2 probably at least at level C3/C4. She testified that based on the perseverance the plaintiff has shown by independently, making progress with her schooling at a young age of 12/13 indicates that she could have made scenario 2 a reality. Her opinion was that scenario 2 was more likely than one of the two.

32. Ms Pretorius then dealt with the post morbid scenarios. She also considered two scenarios. With scenario 1 she said that the plaintiff would have completed grade 12 in 2011. Her contract with FNB is not renewed in February 2012. By October 2012 she is still unemployed. She starts with the treatment prescribed by the different medical experts. Because of the time it takes to visit the different medical practitioners for the treatment, she does not find work in 2013. By the end of 2013 she is fortunate to find admin work which is light enough for her to do comfortably. She earns on level A3 of Paterson's scale. She works in this admin field and at the age of 65 she retires on a B3/B4 level. She said that in scenario 2, she completes grade 12 in 2011. Her contract with FNB is not renewed in February 2012. By October 2012 she is still unemployed. She starts with the treatment prescribed by the different medical experts. Because of the time that it takes to visit the

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different medical practitioners for the treatment, she does not find work in 2013. Because of the fact that she only has a Grade 12 qualification and has to be selective regarding the nature of the job she accepts (light work) and struggles for more than three years to find work. By the end of 2016, she is fortunate to find admin work which is light enough for her to do comfortably. She earns on level A3 of Paterson's scale. She works in this admin field and at the age of 65 she retires on a B3/B4 level. Ms Pretorius was of the view that scenario 2 was more likely one of the two.

33. Ms Pretorius evidence on the different scenarios she concluded would be applicable to the plaintiff was not challenged.

34. As a result of the evidence led by the plaintiff and her experts, as well as the joint minutes, I am inclined to accept the uncontested pre-morbid and post-morbid scenarios recorded by Ms Pretorius in her report and her opinion in regard to the pre-morbid scenarios, scenario 2 was the more likely and in regard to the post-morbid scenario, scenario 2 is also more likely of the two.

35. In my view, there is justification for calculating the plaintiff's income having regard to the accident (post-morbid) as commencing from the end of 2016 as suggested by Ms Pretorius having regard to the treatment that plaintiff is to receive and in particular the treatment suggested by Dr Mahomed which will take between 3 and 5 years. This is justified since the plaintiff is at a disadvantage of securing suitable employment with a sympathetic employer

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especially having regard to the current unemployment rate. In my view but for the accident she would either have become a beautician or hairdresser and would have ended being a manager of a salon. She is unable to become that and even if she does, she will not be able to do her job efficiently because it involves a lot of standing and moving and raising or using the hair brush. Much was made of the plaintiff's to go back for physiotherapy. According to Dr Read physiotherapy would not have assisted her. All that it does is to manage the pain but it does not reduce it.

36. Mr Jacobson and actuary has in the actuarial assessment, which method of calculations used by him having been accepted as correct by the defendant,

calculated the plaintiff's past and future loss of income on the basis of the scenarios put forward by Ms Pretorius. His calculation based on scenario 2 of both pre - and post-morbid scenarios as recorded by Ms Pretorius is set out in his report that is at Bundle B, page 295, in the total sum of R2 854 884.00.

General damages

37. It is common cause that the plaintiff sustained the following injuries as a result of the accident that she was involved in a head injury; a soft-tissue injury of the neck of whiplash type; a soft-tissue injury of the lower back; bruises and abrasions of the body; laceration of the forehead; an injury to the right wrist and an injury to the right knee. The injuries are permanent in nature and physiotherapy will not assist in reducing the pain. Injuries sustained by the plaintiff were of a severe nature with permanent *sequelae* of pain in the neck,

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back and knee, all of which the plaintiff experiences almost continuously; headaches of a migraine nature which she experiences approximately five times a week; restricted movement as well as restricted physical ability; she cannot play sport any longer; the changes in her personality; the dramatic effect that the injuries and the *sequelae* have had on her social life, working conditions and life in general; that prior to the collision, she was an intelligent, ambitious and motivated person. Since the collision she is no longer ambitious or motivated and suffers from major depressive disorder as well as post-traumatic stress disorder as diagnosed by Dr Mahomedy.

38. The plaintiff's long entertained ambition of becoming a hairdresser and

beautician have been shattered. She is not able to do menial tasks such as washing of a bath, making beds, washing dishes, getting in and out of bath etc. She experiences problems driving as well, as a passenger. From a healthy young lady pre-accident, she has been reduced to in all effects an old lady and a depressed and unmotivated one at that, who is in constant pain. The injuries she has sustained have affected her in almost every walk of life since the tender age of just under 17 years. This will persist for the rest of her life and in addition to her having to cope with the normal aging process, she will have the ever increasing problems, aches, pains, etc. associated with the injuries to cope with. She has undergone procedures in the form of rhizotomies, lumbar infiltrations, medication, consultation with doctors, none of which have been of any real help. Dr Read stated that the aforementioned are no more than painkillers.

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39. Since the collision, her condition has got worse which was confirmed by Dr Read, Ms Schoeman, Ms Pretorius, Mr Kgosana and Ms Venter. She requires future treatment with a possibility according to Dr Kumbirai of operative treatment. According to Dr Mahomedy, it will take between 3 and 5 years to treat the plaintiff for depressive disorder and post traumatic stress disorder and that notwithstanding same, she will be on treatment lifelong. With every episode, her chances of a recurring episode increase dramatically. The experts confirmed that she is not malingering or exaggerating her condition. She will experience difficulty in securing sedentary employment as she will need to find an employer who is sympathetic and will tolerate the frequent comfort

breaks that she will require as well as her frequent absenteeism. Any employment secured by her would have to entail a combination of sitting, standing, moving etc. All of this combined with the current economic situation and unemployment rate as well as the fact that psychological treatment will take 3 to 5 years, places the plaintiff at an enormous disadvantage in securing employment. There are few employers who would be prepared to employ the plaintiff once advised of her medical problems. In this regard, the plaintiff would have to disclose to any prospective employer details of her physical and mental disabilities. Should she not to do so, she would then run the risk of being dismissed once it becomes apparent. She will never be able to achieve job satisfaction or at least some sort of job satisfaction that she would have achieved as a hairdresser and beautician. She will be for the rest of her life experience ever-increasing, especially with aging, constant pain, discomfort, limitations physically, limitations mentally, headaches, etc. She is left with a

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scar on her face and her sex life has been affected.

40. It was contended on behalf of the defendant that an award of R350 000.00 compensation would be appropriate. I do not agree. Taking all of the above into account, an award in respect of general damages for pain, suffering and shock, loss of amenities of life and disfigurement an amount of R450 000.00 would be justified.

41. In the circumstances I make the following order:

41.1 The defendant is ordered to pay the plaintiff:

41.1.1 the sum of R2 854 884.00 in respect of past and future loss of earnings;

41.1.2 the sum R450 000.00 in respect of general damages;

41.1.3 interest on the amounts reflected above calculated at the rate of 15.5% per annum 14 days after the date of this judgment to date of payment.

41.2 The defendant is to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1999 for 100% of the plaintiff's costs as provided for in the said section of the Act

37.

being in respect of injuries sustained by the plaintiff in the motor collision that occurred on 7 March 2008 in which the plaintiff was involved.

41.3 Cost of the action, which costs are to include the preparation and attendance costs of Dr G Read; Ms J Schoeman; Dr Z Mahomed; Ms M Pretorius; Mr G Jacobson and senior counsel.

FRANCIS J

HIGH COURT JUDGE

FOR PLAINTIFF : M BASSLIAN SC INSTRUCTED BY TAITE
& SKIKNE ATTORNEYS

FOR DEFENDANT : ATTORNEY MABASO

DATE OF HEARING : 18 – 21 NOVEMBER 2013

DATE OF JUDGMENT : 4 APRIL 2014