REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

REPORTABLE: No
OF INTEREST TO OTHER JUDGES: Yes
19/4/2021

Case No.: 2014/09203

In the matter between:

WILLEMSE, JOHANNES JACOBUS Plaintiff

and

ROAD ACCIDENT FUND Defendant

JUDGMENT

Gilbert AJ

1. During the afternoon of 9 April 2021 the parties reached a settlement and consequent upon a joint written submission in support of the settlement signed by the plaintiff's counsel and the Fund's claim manager I was requested to make a draft order reflecting the settlement an order of court.

2. Given the circumstances that gave rise to this settlement and as it is relevant to the issue of costs, it is appropriate that I set out what transpired in the trial as it unfolded before me. Of particular relevance is a mismatch between the amounts

claimed by the plaintiff in respect of which judgment was sought and the significantly lower amounts claimed in the particulars of claim, and which mismatch I would only become aware of after I had reserved judgment.

3. The plaintiff, a twenty-six year old male, instituted proceedings against the Road Accident Fund ("the Fund") for the recovery of damages suffered by him in his personal capacity as a result of injuries sustained in an motor vehicle accident which occurred on 3 May 2013 and in which he was a passenger. The plaintiff was 16 years old and a scholar in Grade 9 at the time of the accident.

4. The aspect of merits was previously settled, with the Fund being liable for 100% of the plaintiff's agreed or proven damages.

5. What remained for determination at trial were the following heads of damages:

5.1. general damages;
5.2. future medical expenses;
5.3. past loss of earnings and/or earning capacity; and
5.4. future loss of earnings and/or earning capacity.

6. The trial was set down for 1 September 2020. Notwithstanding various interactions between the plaintiff's legal representatives and the Fund, the matter was not settled and the trial was allocated for hearing before me on 2 September 2020.

7. When the matter was a called before me on the afternoon of 2 September 2020, shortly after 2 pm, there was no appearance on behalf of the Fund. The plaintiff was ready to proceed in the absence of the Fund.

8. I was satisfied, after considering the emails uploaded on Caselines as part of the court file and the various submissions made by the plaintiff's counsel, that the Fund was aware of the set down of the trial for 1 September 2020, that the trial had

stood down until 2 September 2020 and that in the absence of the matter being settled, the plaintiff would proceed with the trial in the Fund's absence. The Fund had neither instructed any one to appear on its behalf to make any submissions as to the further conduct of the trial nor directed any communications to my registrar as to what the Fund's intentions were or whether they required a further stand down of the matter. It appeared that in the absence of the plaintiff accepting the Fund's then most settlement offer, the Fund had left the fate of the trial in the hands of the plaintiff and the court.

9. Although this was not a desirable state of affairs, in the absence of the Fund seeking a postponement or otherwise dealing with the matter, the plaintiff could not be prejudiced by the Fund's intransigence and there was no reason before me why the trial should not proceed in the absence of the Fund.

10. Uniform Rule 39(1) provides that if, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim insofar as the burden of proof lies upon him and judgment shall be given accordingly, insofar as he discharges such burden, but provided that where the claim is for a debt or liquidated demand no evidence shall be necessary unless the court otherwise directs. As the present action for damages is neither a claim for a debt nor a liquidated demand as envisaged in Rule 39(1), it was for the plaintiff to adduce evidence to prove his claim insofar as the burden of proof lay upon him.

11. The plaintiff chose to do this by way of affidavit. This is permissible in these matters.[1] The plaintiff adduced into evidence affidavits confirming under oath the content of the various medico-legal reports. In addition, affidavits of the evidence of the plaintiff as well as the plaintiff's current employer were adduced into evidence for purposes of confirming the factual basis upon which the experts based their opinions. When the matter was called on 2 September 2020, it transpired that an affidavit from one of the medical experts was missing. The matter accordingly stood down until 15h00 on 3 September 2020 to afford the plaintiff an opportunity to

[1] *Havenga v Parker* 1993 (3) SA 724 (T). This principle is reiterated in the recent Judge President's Directive 1 of 2021, para 29, although that directive is not applicable to this matter as the trial commenced before the commencement of the directive.

adduce this affidavit. The plaintiff then did so, and, after hearing the plaintiff's counsel's submissions in argument, I reserved judgment on 3 September 2020.

12. The Fund remained absent notwithstanding the further stand down of the matter to 3 September 2020.

13. During the evening of 3 September 2020, when the judgment was in an advanced state of preparation, I was unable to locate particulars of claim seeking the amounts prayed for and motivated during argument totalling R7 524 081.00. The only particulars of claim uploaded on Caselines were for R4 million, with *inter alia*, estimated past and future loss of earnings at R300 000.00[2] and general damages at R400 000.00.

14. I requested my registrar to address an email to the parties and particularly to the plaintiff's legal representatives seeking of them to urgently upload *"a copy of the amended particulars of claim"*. I assumed that there was an amended particulars of claim that had inadvertently not been uploaded to the electronic Caselines file given that the plaintiff's counsel in arguing the matter before me and leading evidence on behalf of the plaintiff had sought judgment in a total amount of R7 524 081.00 in respect of loss of earning and general damages, being R6 024 081.00 for loss of earnings and R1 500 000.00 for general damages. I did not contemplate that the plaintiff may be seeking judgment in an amount exceeding that claimed in the particulars of claim, as an elementary aspect of trial preparation would be to ensure that which would be claimed at trial aligns with the pleadings. More so, given the extensive obligatory pre-trial case management that is necessary in matters such as this, in terms of the Practice Manual and the various practice directives.

15. Unfortunately, my registrar misinterpreted my direction and instead informed the plaintiff's legal representatives at 8h39 on 4 September 2020 that *"Acting Judge Gilbert requests you to amend your particulars of claim and to upload to caselines by 16h00 today"*.

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[2] This may be a typographical error and should be R3 million, based on the total claim of R4 million.

16. Later that day, at 10h50, the plaintiff's attorneys emailed to my registrar:

16.1. a notice of intention to amend in terms of Uniform Rule 28 dated 27 August 2020, together with a covering email of the same date 27 August 2020 serving the notice upon the Fund. The notice records that unless there was written objection to the proposed amendment within 10 days, the amendment would be effected. The intended amendment was principally to increase the total claim from R4 million to R10 million, with R8 000 000.00 for estimated future loss of earnings and the like and R1 500 000.00 for general damages;

16.2. a filing sheet, dated 4 September 2020, enclosing amended pages.

17. What is immediately evident is that:

17.1. the particulars of claim before me at that stage were in their unamended state, seeking a total of R4 000 000.00;

17.2. the plaintiff had not amended his particulars of claim by the time I reserved judgment the day before;

17.3. the amendment, if effected, would in any event have been premature in that the plaintiff has called upon the Fund to object within ten days, but those ten days have not yet lapsed.

18. It would subsequently transpire that the plaintiff's attorneys had not served the amended pages upon the Fund simultaneously when filing same on 4 September 2020 and did not appear to have any intention of doing so.

19. I was unaware of this state of affairs when evidence was led before me in support of amounts far exceeding the claims in the particulars of claim, and when I reserved judgment. Again, I had not anticipated that evidence would be led and judgment sought for sums for exceeding the extant particulars of claim, and at least not without my attention being drawn thereto.

20. The plaintiffs' attorneys tendered no explanation in their covering email to my registrar on 4 September 2020 when attaching the notice to amend and the amended pages, apparently content that no more was required of them. The plaintiff's attorneys appeared oblivious to the serious difficulties that the plaintiff faced, including that judgment had already been reserved by the time the plaintiff purported to amend his particulars of claim (prematurely) on 4 September 2020, that no amendment had been regularly effected and so judgment was being sought for amounts far higher than claimed in the extant particulars of claim and that at no stage had I been alerted to any potential amendment or that the evidence had been led and amounts claimed far exceeding the extant particulars of claim.

21. I recalled the matter for hearing before me at 14h00 that day, on 4 September 2020.

22. When the matter was re-called, the plaintiff's attorney was present as well as representatives of the Fund. The Fund's representatives were claims managers rather than legal practitioners and therefore did not actively participate in the proceedings, and so "sat" in the virtual gallery.

23. The plaintiff's attorney, who confirmed that he had rights of appearance in the High Court, stated that he was unable to make contact with plaintiff's counsel as there appeared to be some or other connection problem and requested that the matter stand down. I declined given that he had rights of appearance. I put the difficulties to him.

24. The plaintiff's attorney remained somewhat oblivious to the gravity of the situation and sought to simply move for an amendment of the particulars of claim. I pointed out that there were various substantive and procedural difficulties and that it would be necessary to first reopen the plaintiff's case. He then proceeded to ask that the plaintiff's case be re-opened so he could then ask for the amendment. I pointed out that the reopening the case requires a substantive application, at least in these circumstances, motivating why the case should be reopened.

25. As the plaintiff's attorneys remained at somewhat of a loss, I intimated that it may be necessary for the matter to be postponed *sine die* to enable such an application to be made. I also enquired of him why I had not been informed at any time on 2 or 3 September 2020 when the matter was before me that the pleadings as they stood did not support the relief that was being sought or that there was a pending amendment (bearing in mind the notice to amend delivered on 27 August 2020).

26. Plaintiff's counsel then joined the hearing, having only just becoming aware of his attorney's attempts to contact him.

27. The plaintiff's counsel also seemed somewhat unconcerned, at first, at the gravity of the situation and too proceeded to effectively seek an amendment. As was the case with the plaintiff's attorney, I pointed out that procedurally this may be problematic and that the plaintiff's case may have to first be reopened. The plaintiff's counsel submitted that this may not be necessary as an amendment could be made at any stage, including on appeal. I intimated that it may be appropriate for the matter to be postponed so that a substantive application to reopen the case could be made, particularly as the plaintiff's counsel did not appear to have adequate instructions on the pending amendment, and the state of the pleadings.

28. As the matter ultimately settled, it is not necessary to go into any further details on this aspect.

29. In the circumstances, I granted an order on 4 September 2020 as follows, with reasons to follow later (which reasons are these):

29.1. the trial is postponed *sine die*;

29.2. the plaintiff is granted leave to bring a substantive application to reopen his case within twenty days of this order;

29.3. the application is to be served on the defendant. The periods provided for in Uniform Rule 6(5) shall apply;

29.4. the parties are granted leave to approach the court for the re-enrolment of the matter before this court (Gilbert AJ) on a date to be determined by the Registrar in consultation with the Deputy Judge President;

29.5. the costs of 2, 3 and 4 September 2020 are reserved.

30. The plaintiff then proceeded to timeously launch a substantive application to reopen his case, which was not opposed by the Fund notwithstanding multiple communications with the Fund.

31. The trial, which included the plaintiff's application to reopen his case, was set down for resumption initially for 12 January 2021 and then at the request of the plaintiff, with the agreement of the Fund, removed from the roll and re-enrolled for 9 April 2021.

32. On 9 April 2021 the trial resumed before me. At the commencement of the hearing, the Fund's managers Messrs Kola and Johnstone who were also in the virtual hearing introduced themselves, and informed the court that they were there on behalf of the Fund to render such assistance as the court may require. Mr Johnstone excused himself, leaving his colleague Mr Kola to attend to the trial on behalf of the Fund. Neither Messrs Kola or Johnstone are legal practitioners and so naturally the extent to which they could formally participate from the virtual 'gallery' in the proceedings was limited.

33. Plaintiff's counsel proceeded to move the application to reopen the plaintiff's case, which I granted, ordering that there were no costs ordered in relation to the plaintiff's reopening of his case and that the plaintiff's counsel and attorney were not entitled to recover from the plaintiff any remuneration relating to the application. I indicated that my reasons would follow later.

34. As the matter has become settled, it is unnecessary to deal in detail with the application to reopen the case. The plaintiff sought to reopen his case to firstly address the difficulty that his extant particulars of claim did not accord with the judgment he sought of the court and secondly to adduce further evidence.

35. Although the explanation given by the attorney in his affidavit supporting the reopening of the case is not persuasive, to refuse the application would have been highly prejudicial to the plaintiff. There was no opposition to the application by the Fund. There did not appear to be any compelling reason why the plaintiff should be prejudiced by the conduct of his legal practitioners. An appropriate costs order relating to the application to reopen, to which the plaintiff's legal practitioners readily acceded during argument, addressed the position.

36. Having granted the plaintiff leave to reopen his case, the plaintiff's counsel adduced further evidence that was largely directed at addressing deficiencies that had been overlooked previously before the plaintiff had closed his case. The plaintiff further introduced an updated actuarial calculation by his expert actuary, Gregory Whittaker. Plaintiff's counsel informed me that the purpose of this updated actuarial evidence was to include an updated actuarial report that calculated the capital value of the claim as at 1 September 2020, being the date the trial commenced as the previous actuarial report that had been relied upon from Mr Whittaker had calculated the capital value as at a year earlier, 1 September 2019.

37. Although the plaintiff's counsel submitted that the plaintiff had already amended his particulars of claim by increasing the quantum sought from R4 million to R10 million by way of delivery of amended pages on 14 September 2020 consequent upon the notice to amend in terms of Rule 28 that had been delivered on 27 August 2020, a few days before the trial commenced, I expressed reservations as to whether this procedure was competent.[3] I was also concerned that the plaintiff persisted in seeking an amendment of the capital sum to R10 million, when judgment was being sought for R7 634 486.00. By that stage the plaintiff knew the sum it was claiming and motivating to the court be the amount of the judgment.

[3] For example, the manner of service of the notice to amend and amended pages on the Fund might be deficient (see *Taylor v Road Accident Fund* 2020 JDR 2351 (GJ), para 94), and delivery of the amended pages on 14 September 2020 occurred after the plaintiff had closed his case.

38. Again, it is unnecessary to dwell further on this aspect given that the plaintiff's counsel then elected to rather move for an amendment afresh from the Bar in the following terms:

38.1. By substituting paragraph 8 of the particulars of claim with the following paragraph:

"*As a result of the aforementioned collision and injury sustained by the plaintiff, the plaintiff has suffered and will suffer damages, in an amount of R7,634,486, which is calculated as follows:*

8.1 Deleted.

8.2 Estimated future medical expenses - a section 17(4) undertaking.

8.3 Estimated future loss of earnings / loss of earning capacity / loss of employability:-

R6,134,486.00;

8.3.1 the estimate makes allowances for the time the plaintiff will be off work as a result of the sequelae of his injuries, as well as the time he will be off work as a result of treatment for such sequelae;

8.3.2 the estimate also makes allowance for the fact that the plaintiff's aforesaid injuries and sequelae have interfered with his earning capacity;

8.3.3 the estimate also makes allowance for the plaintiff's loss of employment prospects and/or general loss of employability and/or loss of productivity;

8.3.4 it is not practicable for the plaintiff at this stage to give any greater particularity in respect of this claim.

8.4 General damages:- R1, 500, 000.00.

The amount claimed is not capitalised and represent an estimate of the damages suffered. It is not reasonably practical for the plaintiff to apportion the amount claimed in respect of general damages amongst the components thereof.

8.5 Total:- R7 634 486.00."

38.2. By the substitution of the amount of R10 million in prayer 1 of the particulars of claim with the amount of R7 634 486.00.

39. In addition, the plaintiff's counsel moved for and I granted an amendment to also provide for a prayer in the particulars of claim for a section 17(4) undertaking.

40. The Fund's representative, Mr Kola, remained attendant throughout the amendment proceedings, and raised no objection to the intended amendment, notwithstanding the considerable increase in the quantum.

41. I accordingly granted the amendment.

42. The plaintiff, by this stage, having commenced his action in 2014 and after having dealt with the challenges arising from the manner in which his case had been conducted, had reached a position in the trial where his revised claim totalling R7 634 486.00 was aligned with now his amended pleadings and which claim, his counsel submitted, was sustainable on the evidence adduced by affidavit.

43. But that the trial was to take another unexpected turn.

44. At that point Mr Kola for the Fund interjected and requested that the matter effectively be postponed to allow the Fund an opportunity to consider its position now that the case had been reopened, and the amendment allowed significantly increasing the capital amount of the claim from R4 million to R7 634 486.00.

45. I expressed some reservation at this approach on behalf of the Fund as it had been aware throughout the plaintiff intended amending his particulars of claim. The Fund was "present" that morning throughout the court proceedings and the lengthy interactions between the court and the plaintiff's counsel which resulted in the

plaintiff's case being reopened, further evidence being adduced and the amendment being granted, all without any objection from the Fund.

46. The parties requested a short indulgence to engage with each other.

47. I then stood down the matter on several occasions to allow this engagement.

48. Pursuant to these engagements, the parties settled the matter, as indicated at the beginning of this judgment, agreeing upon a draft order (save for the issue of costs which I was left in my discretion) and which resulted in the jointly signed written submissions in support of the settlement.

49. Given the various practice directives relating to settlements of actions against the Fund, the parties were required to and sought that I interrogate the settlement based upon the joint written submissions. Naturally I would do this in the context of what had unfolded before me, which included the evidence adduced on affidavit by the plaintiff.

50. The parties have agreed upon a capital amount, in addition to the usual section 17(4)(a) undertaking, in an amount of R4 388 610.10. This is made up of:

50.1. loss of earnings of R3 588 610.10;
50.2. general damages of R800 000.00.

51. Having applied my mind to the matter, especially shortly after I had reserved judgment on 3 September 2020, as described above, and in light of the significantly reduced capital amount agreed upon, I am satisfied that the settlement amount is appropriate.

52. What is immediately noticeable that although the plaintiff had to go to considerable lengths to increase the quantum as reflected in his initial particulars of claim to R7 634 486.00, the plaintiff then within an hour or two agreed to a reduced

capital amount of R4 388 610.10, which is only little more than the R4 million sought in the initial unamended particulars of claim issued in 2014.

53. The plaintiff's counsel informed me that this was a result of the Fund having adopted a particularly aggressive approach in applying contingencies in light of the plaintiff's pre-morbid schooling difficulties and having disputed the career progression opined upon by the plaintiff's experts. The signed joint submission provides as follows:

> "*7. THE OFFER ON LOSS OF EARNINGS*
>
> *7.1.1. The Defendant disputed the Plaintiff's loss of earnings as calculated and believed that in light of the Plaintiff's pre-morbid schooling difficulties and the career progression opined upon by Ms McGill Scott and Ms Nicolene Kotze higher contingencies should be applied.*
>
> *7.1.2. The Defendant, while accepting the past loss of R366,751.00 was only willing to tender an amount of R3,221,889.10 in respect of future loss. This amount is arrived at based on a compromise between the Defendant's experts own assessment of loss amounted R6,7 million before contingencies and the Plaintiff's loss of R8,140,693 prior to contingencies. The Defendant then applied a risk discount of 30%to account for the uncertainties of the pre- morbid career progression before applying further contingencies to the calculation of 38% pre-morbidly to arrive at the aforesaid amount.*
>
> *7.1.3. The client, after all the risks associated with the matter and the inherent uncertainties and the somewhat arbitrary nature of contingencies was explained to him, and the fact that the court, even on an unopposed basis may not accept all the evidence at face value placed before it, elected to accept the amount offered.*
>
> *7.1.4. In the premises this head of damages has been compromised between the parties on an agreed amount of R3,588,640.10 (R366,751 plus R3,221,889.10).*"

54. When I applied my mind to the matter on 3 September 2020, I gave close consideration to whether the contingency (discount) to the future value of the loss of earnings but for the injury should be increased (which would ultimately decease the damages) in that the plaintiff suffered from pre-morbid behavioural difficulties. The evidence shows that the plaintiff was a troubled youth, having experienced a deeply traumatic childhood and living a nomadic lifestyle. He struggled at school, from Grade 5, missed school, failed Grade 7 in 2011, and at the end of 2011 insisted that he would not be returning to school. But he appears to have perhaps turned a corner when his uncle took him in, and enrolled him at a technical college for Grade 8, where his marks improved and he passed. Unfortunately for the plaintiff, the accident intervened in 2013, whereafter, the plaintiff contends, his injuries afflicted his educational path. It cannot be predicted whether the plaintiff would have maintained his newfound upward trajectory that commenced in 2012 and so achieve a higher education or better employment (and maintain that employment), or whether he would have lapsed into his pre-morbid behavioural difficulties.

55. The Fund's challenge to the plaintiff's version on this aspect is understandable and there does not appear to be any reason for me to go behind the parties' negotiated outcome on this aspect, at R3,588,640.10.

56. The Fund also adopted a less generous approach to the assessment of the plaintiff's general damages, agreement being reached on an amount of R800 000.00 in contrast to the R1.5 million general damages sought by the plaintiff.

57. I also gave consideration to this aspect on 3 September 2020 as it appeared to me that the plaintiff's contended for general damages was somewhat generous when regard was had to certain of the cases cited in the plaintiff's heads of argument. Again, I see no reason to go behind the negotiated outcome of the parties in relation to general damages at R 800,000.00.

58. To summarise:

58.1. the plaintiff had initially claimed a capital amount of R4 million in his particulars of claim;

58.2. at trial, when I reserved judgment on 4 September 2020, the plaintiff sought judgment in an increased capital amount of R7 524 081.00 but had neither effected nor drawn the court's attention to the then pending amendment seeking to increase the capital amount to R10 million;

58.3. after I granted leave re-opening the case, on 9 April 2021, the plaintiff amended his claim to R7 634 486.00, and sought judgement in that revised amount;

58.4. the plaintiff then settled on a significantly lower amount of R4 388 610.10, which I am prepared to grant by way of the draft consent order.

59. It is difficult not to have a sense of disquiet at how the trial played out. The involvement of the Fund, as sporadic and belated as it may have been, resulted in a settlement at a capital amount significantly less than that in respect of which the plaintiff, after much effort, sought judgment. This demonstrates the importance of the active involvement of the Fund, which is obviously seriously restricted by the Fund's failure to instruct attorneys to protect its interests. And it is unlikely that that the difficulty that arose in the present trial, being the mismatch between the plaintiff's pleadings and the judgment sought of the court, would have gone unnoticed until after judgment was reserved had the Fund been legally represented throughout the trial proceedings. The problematic situation of the Fund having terminated the mandates of their attorneys in the matters against it as identified by Fisher J in *Taylor*[4] resonates in the present matter.

60. What remains is the issue of costs. Although the draft order provided that the Fund would pay the plaintiff's taxed or agreed party and party costs on the High Court scale, including the costs of various experts, I expressed reservation at the formulation in relation to costs of the plaintiff's legal practitioners given the manner in which the matter had unfolded. The plaintiff's legal practitioners readily accepted that not only the Fund but also their client, the plaintiff, should not be

[4] Above, para 9, 10, 32, 123 and 124

prejudiced by any costs incurred after the reservation of my judgment on 3 September 2020. Had the matter been properly attended to, including ensuring that matter was trial ready (which would include ensuring that the relief being sought of the court was aligned with the relief sought in the pleadings and that all the necessary evidence to support the relief had been adduced, including an updated actuarial report), there would have been no need for any further proceedings after 3 September 2021.

61. In the circumstances, such legal costs as are to be recoverable by the plaintiff's attorney and counsel are to be limited to those legal costs up until and including 3 September 2020. This is not an unusual costs order, as specific reference is made to costs orders of this nature disallowing a legal practitioner from recovering costs from his or her own client in the various practice directives that have been issued from time to time.[5]

62. An order is accordingly granted as follows:

62.1. The defendant shall pay the plaintiff the amount of R4 388 610.10 ("the capital amount").

62.2. Payment of the capital amount shall be made to the plaintiff's attorneys of record, by payment into their trust account with the following details:

RENE FOUCHE INC
STANDARD BANK – TRUST ACCOUNT
ACC. NR: [....]
BRANCH CODE: 004305
REF: GPS/JDK/QM/W43

62.3. The defendant shall pay to the plaintiff the capital amount together with interest *a tempore morae* calculated in accordance with the Prescribed Rate

[5] See, for example, paragraph 4 of the Judge President's Practice Directive 2 of 2019 and paragraph 3 of the subsequent and most recent Judge President's Practice Directive 1 of 2021.

of Interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996.

62.4. The defendant shall furnish to the plaintiff an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for 100% of the costs of the future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service to the plaintiff or supplying of goods to the plaintiff arising out of the injuries sustained by the plaintiff in the motor vehicle collision which occurred on 3 May 20213, after such costs have been incurred and upon proof thereof.

62.5. The statutory undertaking referred to in the preceding sub-paragraph shall be delivered by the defendant to the plaintiff's attorney of record within 14 (fourteen) days of service of this order.

62.6. The defendant shall pay the plaintiff's taxed or agreed party and party costs of suit on the High Court scale, including:

62.6.1.the costs of the reports (including RAF 4 Forms and addendum reports, if any) of Dr A. Pechè, Dr A.P.J. Botha Dr Fine, Dr O. Guy, Dr J. Goosen, Dr Hovsha, Dr Van Niekerk, Sandton Radiology, Ms M Scott, Dr C. Kahanovitz, Ms A. Reynolds, Dr T. Bingle, Ms du Buisson, Mr L.J. Van Tonder and Ms N. Kotze;

62.6.2.the costs of the experts who attended to the preparation of joint minutes;

62.6.3.the qualifying and preparation costs of the experts, including relating to the affidavits of experts (if any);

62.6.4.the costs of senior-junior counsel for 1, 2 and 3 September 2020, inclusive of the costs in preparing for and appearing at the pre-trial conference and for the preparation and research of comprehensive heads of argument;

62.6.5.the costs of the actuarial reports, inclusive of the amended reports, of Mr G Whittaker (Algorithm Consulting Actuaries);

62.6.6.the plaintiff's reasonable travelling expenses to and from medico-legal appointments;

save that the defendant is not liable for any legal costs (i.e. those of the plaintiff's attorneys and counsel) for any attendances after 3 September 2020.

62.7. The plaintiff's attorneys and counsel are disallowed from recovering any remuneration and/or disbursements (other than disbursements to experts) from the plaintiff for any attendances after 3 September 2020.

62.8. In the event that the costs are not agreed, the plaintiff's attorneys are to tax their costs, and are to serve a notice of taxation on the defendant and/or the defendant's attorneys of record.

62.9. The defendant is to pay the taxed and/or agreed costs within fourteen (14) days of such taxation or agreement.

Gilbert AJ

Date of hearing:	2, 3, 4 September 2020 and 9 April 2021
Date of judgment:	19 April 2021
For the plaintiff:	M van den Barselaar
Instructed by:	René Fouché Inc
For the defendant:	No formal appearance (Attendances by fund manager Mr Kola)
Instructed by:	No attorneys mandated any longer.