IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

20/4/16.

Case No: 40279/2013

In the matter between:

ADV M VAN ANTWERPEN
obo L D COERTZE Plaintiff

and

ROAD ACCIDENT FUND Defendant

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

20/4/16
DATE

SIGNATURE

JUDGMENT

D S FOURIE, J:

[1] The plaintiff acts in her capacity as the duly appointed curator *ad litem* on behalf of L D Coertze. She claims damages from the defendant in terms of the Road Accident Fund Act 1996 for injuries sustained by Coertze in a motor vehicle accident which occurred on 30 October 2008. Coertze sustained certain orthopaedic and soft tissue injuries in addition to a mild concussive brain injury. The defendant conceded liability for payment of

100% of Coertze's proven or agreed damages flowing from the collision. The defendant has also tendered an undertaking in terms of section 17(4)(a) of the Act in respect of the claim for future hospital and medical expenses. The claim for past and future loss of earnings (or earning capacity) is the only remaining issue.

[2] Prior to the accident and thereafter Coertze was employed as a senior sales representative at Homemark. During August 2014 (six years after the accident) he was involved in a shooting incident in which his assistant was killed. He was shot in the left arm. Summons was only thereafter issued during July 2013. The defendant denies that Coertze has suffered any past or future loss of earnings, and if any such loss has been suffered, then the defendant denies that it was caused by the motor vehicle accident and its *sequelae*.

FACTS WHICH ARE COMMON CAUSE:

[3] The following facts are common cause between the parties:

- the orthopaedic and soft tissue injuries are not a major cause of Coertze's inability to be gainfully employed, neither are they responsible for the difficulties which he experienced in the period between the accident and the shooting incident;

- Coertze has significant problems with regard to his language profile and ability to communicate, mainly in the areas of speech and pragmatics;

- his ability to communicate is poor and his prospects for remaining in a job as a sales representative was considered to be poor and not suited to a workplace situation which he found himself in at the time when he was still employed;

- Coertze had an unstable and/or dysfunctional family life;

- Coertze, but for the accident, would have remained in the retail field where he was employed as a sales representative by Verimark and later Homemark;

- his career and/or remuneration ceiling (irrespective of his job level description) would have been in the region of R400 000.00 to R450 000.00 per annum (albeit according to the plaintiff's industrial psychologist in 2010 money terms and according to the defendant's industrial psychologist in 2015 money terms);

- the retirement policy of the employer of Coertze was retirement at the age of 65 years;

- a high post-accident contingency deduction is indicated on any income which Coertze may be postulated to earn.

[4] It was also agreed at a pre-trial conference held on 6 October 2015 (par 12) that the parties are bound by agreements contained in the joint minutes of expert witnesses, unless disavowed by a party on reasonable notice. Neither party did so and they are accordingly bound by the agreements contained in such joint minutes.

MAIN ISSUES:

[5] The following are the main issues between the parties:

- Coertze's actual career performance before the accident;
- his actual career performance after the accident;
- the role, if any, of the accident and its *sequelae* on the post-accident career performance of Coertze;
- the promotional prospects of Coertze but for the accident and at what time he probably would have attained it;
- Coertze's ability to earn an income and to be gainfully employed at the moment and the reason for any compromise in this regard;

- the appropriate contingency deduction to be applied to any pre-accident employment and the appropriate contingency deduction for post-accident earnings and the level at which he will probably earn.

[6] As far as these issues are concerned, the plaintiff has presented the evidence of Ms Coertze, Mr Gaggiano, Dr Mazabow and Ms Noble. The defendant has presented the evidence of only Ms Pulles. There is also a joint minute of the two experts, Ms Noble and Ms Pulles.

EVIDENCE FOR THE PLAINTIFF:

MS COERTZE

[7] Ms Coertze is the sister-in-law of Coertze. She testified that she knew Coertze before the accident and had occasion to have frequent interaction with him on a social basis. According to her he was a cheerful outgoing person. He was not aggressive and always willing to help other people. He would consume alcohol occasionally during social events. She was aware of his use of cannabis from time to time but she is not aware of consistent or excessive alcohol or drug abuse.

[8] As far as the workplace is concerned the witness confirmed his dedication and described him as a neat, punctual and clean shaven person.

He acted socially appropriate with good personal skills. All of this changed after the motor vehicle accident.

[9] After the accident she noticed that he was complaining about headaches. He then also started to deteriorate as far as his personal behaviour was concerned. He failed to keep social appointments and indicated that he did not want to see people. He preferred to be left alone. He started to stutter and to forget things. He also became "verbally aggressive". He no longer wanted to travel far distances and his employer accommodated him in this regard. He was no longer neat and clean shaven.

[10] After the shooting incident during August 2014 he was totally devastated. He was admitted to Weskoppies Hospital and was suffering from post-traumatic stress. His appearance also changed. He painted his nails black and was always fiddling with his hands. At some stage the witness became afraid of him.

[11] In cross-examination she described Coertze, with reference to his other family members, as the "normal one" prior to the accident. She also explained that after the accident he "deteriorated" and was no longer socialising with his family. She confirmed that he was treated in Weskoppies Hospital during October/November 2014.

MR GAGGIANO

[12] Mr Gaggiano was the manager of Coertze at Homemark. He knows him for the last 12 to 14 years. According to him Coertze was the best employee with whom he had ever worked with. He described him as hard working, never been off sick and very loyal. He promoted Coertze to be his senior sales representative. He took a lot of pride in his work and was never late. He rated him "far above the rest".

[13] According to the witness he was grooming Coertze for the key accounts manager post which he envisaged would materialise within 1½ to 2 years from 2008. It would have been his decision to promote Coertze to this position. From there Coertze could have become the national key accounts manager. As key accounts manager he would have earned between R400 000.00 to R600 000.00 during 2010 and as national key accounts manager his salary would have been between R600 000.00 and R1 million also calculated according to 2010 money terms.

[14] After the accident Coertze was given sick leave for a period of one month but according to the witness he returned after six days. Initially there were no problems but later he started to look "scruffy". When he was reprimanded, he got aggravated. During or about 2011 the witness noticed that Coertze started to change and was no longer coping as before. He received complaints about Coertze and noticed that he became forgetful. He behaved as if he was suffering from depression and also started to stutter. It

was then decided to give him an assistant. If it was not for him (the witness) Coertze would not have been further employed by Homemark. The witness testified that he "felt sorry for him". However, as there was no improvement, Coertze was demoted to his previous position of an ordinary sales representative. His amount of calls and travelling was also reduced.

[15] Coertze's assistant was killed during the shooting incident. Thereafter Coertze became a nervous wreck. The witness then requested the human resources department to assist him. Coertze was then sent to Weskoppies Hospital where the witness visited him a few times. His employment contract was finally terminated during October 2014.

[16] In cross-examination the witness explained that he would have appointed Coertze as key account manager from 2010 until approximately 2012. However, during 2009 and also 2010 he appointed two other people at national level. He conceded that he did not appoint Coertze at local level during 2010 as there was no "budget available" to appoint him also. He said that he would have appointed Coertze during 2012 or later if his performance was acceptable, the position still available and the budget sustainable. According to him Coertze was at that stage not promoted due to budget constraints. According to his opinion it was not the accident, but the shooting incident which caused Coertze to become unemployable.

DR MAZABOW

[17] Dr Mazabow is a clinical psychologist. He prepared a neuro-psychological assessment of Coertze dated 17 August 2015. He considered collateral information from, *inter alia*, Ms Coertze and Mr Gaggiano. He testified that Coertze was a vulnerable individual in terms of his pre-accident psychological make-up. Despite this vulnerability, he functioned effectively in the workplace. His intellect was at least average to high average and he managed to channel his skills into the work arena effectively and consistently.

[18] After the accident in 2008 a significant deterioration in his work situation occurred in terms of memory, not meeting deadlines and complaints which were received from stores. This was due to a deterioration in his psychological functioning – the trauma experienced in the motor vehicle accident was magnified.

[19] As a result of the shooting incident during 2014 he experienced a further serious decline in his psychological functioning. He became severely depressed and was admitted twice to Weskoppies Hospital. The witness described his current functioning as "very low", he is suicidal, paranoid and engages in self-mutilation. Finally, the witness described him as a person who "is out of touch with reality".

[20] Dr Mazabow explained the decline in his psychological functioning on the basis of the formula "V+T1→S+V2+T2→S2". He used this equation to

explain the pre-existing vulnerability (V) which resulted in psychological symptoms as a result of the accident in 2008 (T1) which in turn resulted in an even more serious vulnerability (V2). This more serious vulnerability then increased exponentially as a result of the second trauma (shooting incident (T2)) whereafter his symptoms became exponentially worse (S2) resulting in his current psychiatric/psychological condition. The witness was of the view that this condition is permanent and psychotherapy will be supportive rather than curative.

[21] In cross-examination he explained that prior to the accident his symptoms would be more evident at home than at his workplace. After the accident symptoms like aggressiveness would occur more gradually and rudeness would go hand-in-hand with depression. He also explained that if the shooting incident did not occur Coertze would have continued to display all those symptoms (aggressiveness, rudeness and depression) in his workplace. These symptoms would then manifest as memory problems, problems with impulse control, working memory and mental tracking. He also was of the view that if Coertze was malingering about these symptoms, it would have been exposed by the tests which he conducted.

MS NOBLE

[22] This witness is an industrial- and counselling psychologist. She prepared a medico-psychological report after she had consulted with Coertze

on 2 June 2015. She is also a co-signatory to the joint minute concluded between herself and Ms Pulles on 5 October 2015.

[23] In paragraph 8 of the joint minute it appears that both industrial psychologists (this witness and Ms Pulles) agree that, pre-accident, Coertze's career/remuneration ceiling (no matter what his job level or job title would have been) is expected to have been approximately R400 000.00 to R450 000.00 per annum to be reached at approximately 37 to 40 years of age. According to Ms Noble Coertze would thereafter have enjoyed real growth over and above yearly general increases to the median to be reached by the age of approximately 45 whereafter only yearly increases based on the consumer price index is recommended until retirement at the age of 65. She was also of the view that the calculation should be done according to 2010 money terms.

[24] In cross-examination she conceded that Mr Gaggiano did not disclose to her that the next level of promotion would be subject to availability and budget constraints. She however also explained that one should also look at Coertze's potential and his ability to apply that in the open labour market. She also explained that Coertze was at that stage fairly young and therefore she expected further growth in his workplace to be reached by the age of approximately 45 years.

EVIDENCE FOR THE DEFENDANT:

MS PULLES

[25] Ms Pulles is an industrial psychologist who prepared a psycho-legal evaluation report dated 30 September 2015. She is also a co-signatory of the joint minute concluded between herself and Ms Noble on 5 October 2015. She evaluated Coertze on 28 September 2015.

[26] She testified that according to what Mr Gaggiano had informed her, Coertze's productivity started to decrease about one year after the accident. He also started to experience memory problems and that he tried to address these problems. She was also informed by Mr Gaggiano that Coertze was "one of the best" and if it was not for the accident, he would possibly be promoted to key accounts manager within the next two years, but that would be the pinnacle of his career.

[27] She also testified that she had spoken to the human resources manager of Homemark and was informed that the current remuneration for a person employed at the level of key accounts manager, is R420 000.00 per annum. That, according to her, is comparable to a C2 level on the Patterson scales calculated in current (2015) money terms. She was also of the view that it seems unlikely for a person to be promoted from senior sales manager directly to national key accounts manager.

[28] In paragraph 8 of the joint minute both industrial psychologists (this witness and Ms Noble) agree that, pre-accident, Coertze's career/remuneration ceiling is expected to have been approximately R400 000.00 to R450 000.00 per annum to be reached by the age of approximately 37 to 40 years of age. However, while Ms Noble was of the view that this remuneration package should be applied according to 2010 money terms, Ms Pulles was of the view that this should be according to 2015 money terms comparable to the upper quartile of a C2/median of a C3 package income.

[29] In cross-examination the witness conceded that the evaluation of a person should not be confined to one employer, but his potential in the open labour market should also be taken into account. She also conceded that if Coertze would have lost his position at Homemark, he "would have had a problem". She agreed that he could not perform his duties after the accident as he was able to do before the accident. She was also not aware that Coertze had been demoted after the accident but before the shooting incident took place. She also conceded that she has to defer to Dr Mazabow with regard to the employability and incapacity of Coertze after the accident in 2008 and also after the shooting incident in 2014.

DISCUSSION:

[30] Before considering the issues, it is not only appropriate but also necessary to say something about the credibility and reliability of the

witnesses. Counsel for the defendant criticised Mr Gaggiano and argued that his evidence should be rejected as being false. An assessment of the credibility and reliability of a witness has to take into account the general context, the witness' intelligence, memory and the ability to express him- or herself properly. It is a well-known fact that sometimes witnesses do make mistakes. One should therefore distinguish between *bona fide* errors and intentional untruths. I have had the opportunity to observe the demeanour of Mr Gaggiano and also to listen carefully to his evidence and have no reason to conclude that he or any of the other witnesses were untruthful. I have to take into account that the accident in this matter occurred during October 2008 and that some of the events about which Mr Gaggiano testified, had already taken place during 2011. There is, in my view, no reason to make a finding against him or any of the other witnesses with regard to their reliability or credibility. This is a matter that should be decided on the evidence before me and the probabilities.

[31] It was contended on behalf of the plaintiff that, having regard to the proven and agreed facts, I should accept the actuarial calculation indicating a loss amounting to R4 174 146.00 after application of the loss limit in terms of section 17(4A)(a) of the Road Accident Fund Amendment Act, No 19 of 2005. Counsel for the defendant submitted that I should dismiss the plaintiff's claim for past and future loss of earnings as the plaintiff had been unable to prove any loss. It was contended in the alternative that the plaintiff's earning

potential, pre- and post-accident, is the same and therefore no loss is indicated.

PRE-ACCIDENT:

[32] When considering the issues one has to take into account, not only the evidence, but also facts which are common cause between the parties. It was agreed at a pre-trial conference that the parties are bound by agreements contained in the joint minutes of expert witnesses, unless disavowed by a party on reasonable notice. Not one of the parties did so and they are accordingly bound by the agreements contained in such joint minutes. For this reason I have to take into account what was agreed upon between Ms Noble and Ms Pulles in their joint minute of 30 October 2008. They have agreed that Coertze's career or remuneration ceiling (no matter what his job level or job title would have been) is expected to have been approximately R400 000.00 to R450 000.00 per annum to be reached by the age of approximately 37 to 40 years of age.

[33] Ms Noble was of the view that, having regard to these figures, the calculation should be done according to 2010 money terms, whereas Ms Pulles was of the view that the calculation should be performed according to 2015 money terms. Another dispute between them relates to promotional prospects had the accident not taken place. According to Ms Noble Coertze would have enjoyed real growth over and above yearly general increases to a median to be reached by the age of approximately 45, whereafter only yearly

increases based on the consumer price index should be accepted until normal retirement age of 65. According to Ms Pulles provision should be made for inflationary increases only, having regard to earnings of approximately R400 000.00 to R450 000.00 per annum calculated according to 2015 money terms.

[34] Coertze was regarded by Mr Gaggiano as his best representative. He was also promoted to a senior sales representative and there is no evidence of any disciplinary record prior to the accident. Mr Gaggiano envisaged promotion of Coertze to key accounts manager within the next two years from the date of accident (i.e. plus-minus 2010). According to this witness he would then have earned between R400 000.00 to R600 000.00 during 2010.

[35] The opinion of Ms Pulles that the promotion for which Coertze was in line during 2010 should be assessed according to 2015 money terms, appears to be unrealistic. It is common cause that Ms Pulles did not investigate to what extent the job level of key accounts manager (for which she obtained the income level from Ms Venace) accords with the job level and responsibilities of a key accounts manager in 2010. She conceded that it would have been necessary for her to have done so. Furthermore, the evidence of Mr Gaggiano was to the effect that as key accounts manager Coertze would have earned between R400 000.00 to R600 000.00 during 2010. Furthermore, it makes no sense whatsoever that the income attributed to a job in 2010 would remain static at the lowest level for a period of five

years without any increases. Ms Pulles conceded that the absence of allowance for real growth by her in the joint minute does not accord with reality, given that Coertze fell within the age group (i.e. below 45 years of age) where one would in the ordinary course expect real growth over and above inflationary increases. For these reasons I prefer the opinion of Ms Noble that the calculation should be done according to 2010 monetary terms and that Coertze would thereafter have enjoyed real growth over and above yearly general increases as set out in the joint minute. The fact that Coertze suffered from a pre-existing psychological vulnerability does not affect the principle according to which the calculation has to be done. However, this is a fact to be taken into account when applying contingencies.

POST-ACCIDENT:

[36] It was contended on behalf of Coertze that, having regard to the accident, he is permanently and totally unemployable. According to the evidence of Dr Mazabow, with reference to the shooting incident, the more serious vulnerability of Coertze increased exponentially resulting in Coertze's current psychiatric/psychological condition. He was also of the view that this condition is permanent and psychotherapy will be supportive, rather than curative. Having regard to this evidence, I am satisfied that Coertze should be regarded as totally unemployable. The question is whether this total unemployability can be attributed to the accident?

[37] Counsel for the plaintiff submitted that he does not avail the defendant to argue that Coertze's pre-existing vulnerability should not be visited upon the defendant. He pointed out that according to our case law, it is clear that the *"thin skull"* rule applies in matters of this nature where a pre-existing condition is either aggravated or causes *sequelae* which may not necessarily have followed in other persons who suffered the same *sequelae*. In support of this argument he relied, *inter alia*, on *Gibson v Berkowitz & Another* 1996 (4) SA 1029 (W) and *Prinsloo v Road Accident Fund* 2015 (6) SA 91 (WCC).

[38] This argument relates to the question of causation. It is trite that the conduct of the defendant must have caused the loss suffered by the plaintiff and the resulting harm must not be too remote. This principle was explained as follows by Corbett JA in *Minister of Police v Skosana* 1977 (1) SA 31 (A) at 34 F:

> *"Causation in the law of delict gives rise to two rather distinct problems. The first is a factual one and relates to the question as to whether the negligent act or omission in question caused or materially contributed to ... the harm giving rise to the claim. If it did not, then no legal liability can arise and cadit quaestio. If it did, then the second problem becomes relevant, viz. whether the negligent act or omission is linked to the harm sufficiently closely or directly for legal liability to ensue or, whether, as it is said, the harm is too remote. This is basically a judicial problem in which considerations of legal policy may play a part."*

[39] It therefore appears that the test for factual causation seems to be that of *sine qua non.* This was further explained as follows in *International Shipping Co (Pty) Ltd v Bentley* 1990 (1) SA 680 (A) at 700 F:

> *"The enquiry as to factual causation is generally conducted by applying the so-called 'but for' test which is designed to determine whether a postulated cause can be identified as a causa sine qua non of the loss in question. In order to apply this test one must make a hypothetical enquiry as to what probably would have happened but for the wrongful conduct of the defendant. This enquiry may involve the mental elimination of the wrongful conduct and the substitution of a hypothetical cause of lawful conduct and the posing of the question as to whether upon such an hypothesis plaintiff's loss would have ensued or not. If it would in any event have ensued then the wrongful conduct was not a cause of the plaintiff's loss ... On the other hand, demonstration that the wrongful act was a causa sine qua non of the loss does not necessarily result in legal liability. The second enquiry then arises, viz whether the wrongful act is linked sufficiently closely or directly to the loss for legal liability to ensue or whether, as it is said, the loss is too remote."*

[40] The application of the *sine qua non* test becomes particularly important when regard is had not only to the accident, but also the shooting incident which took place several years later. Put differently, what is the direct cause of Coertze's total unemployability? According to the evidence Coertze was still employed for a considerable period after the accident. It was only after the shooting incident, which is unconnected to the accident, that he had to be treated in Weskoppies Hospital during October/November

2014 and, according to the evidence of Ms Coertze, that *"he was totally devastated"*.

[41] In both the cases of *Gibson* and *Prinsloo* reference is made to *"additional stressors"* which cannot be regarded as a supervening cause and therefore the defendant should be held liable. In *Gibson* (*supra*, at 1049 A-B) it was specifically pointed out that the plaintiff's emotional over-reaction to the stimuli emanating from *"these additional stressors"* cannot be regarded as a supervening cause. In *Prinsloo* (*supra,* at 112 par 91) it was also pointed out that:

> *"The plaintiff's reaction to what would otherwise have been normal stressors cannot be regarded as a supervening cause and the defendant should thus be held liable for her total loss of income caused by her early retirement."*

[42] The present matter is, in my view, to be distinguished from the case law referred to above. The shooting incident in this case can hardly be described as *"additional or normal stressors"*. According to the evidence this was a traumatic event during which Coertze was shot in the left arm and his assistant had been killed. No doubt, this is a supervening cause that should be taken into account to avoid visiting the defendant with consequences which are too remote. I am therefore not convinced that it has been proven on a balance of probabilities that the accident in question directly caused Coertze to become totally unemployable. On the contrary, having regard to the evidence, it is more probable than not that the shooting incident caused

him to become totally unemployable. The result is that Coertze's loss, having regard to the accident, should be calculated as if the shooting incident did not take place.

[43] It is common cause that after the accident (2008) Coertze was still employed, albeit not without problems caused by the accident, and that his employment contract was only finally terminated after the shooting incident (October 2014). The fact that he was still employed for a considerable period (six years) after the accident, is an indication that he still had at least some residual earning capacity, but for the shooting incident. Ms Pulles pointed out in this regard (in the joint minute) that he may have remained limited and captured in his post-accident capacity, without the possibility of promotion as was indicated prior to the accident. According to her his earnings level may have remained between the lower and median of a C1 Paterson level until retirement age. Ms Noble also pointed out that his prospect for promotion evaporated due to the *sequelae* caused by the accident and she recommended the figures in Table 1 of her report (par 9.1.11 thereof) for quantification purposes. Both experts have agreed that a high post-accident contingency deduction is indicated.

THE CALCULATION:

[44] A variety of actuarial calculations on different bases were performed by the actuary, Mr Whittaker. It is not necessary to refer to all of them. The historical earnings of Coertze for the 2008 to 2014 tax years have

been summarised in Table 3 of each of the calculations. These are not in dispute. The defendant has admitted the salary slips and clearly does not dispute the underlying tax documentation relied on by the actuary. Each of the different calculations was based on the same information regarding this income. The actuarial basis and assumptions pertaining to the calculation date (i.e. 1 November 2015), Coertze's personal information and life expectancy and the approach, method and assumptions listed in paragraph 3 of each of the various calculations as well as the loss limit referred to in paragraph 5 of each of the calculations, also appear not to be in dispute.

[45] It was contended on behalf of the plaintiff that scenario 2A of the actuarial calculation dated 15 October 2015 indicating a total net loss amounting to R4 174 146.00 (after the loss limit in terms of section 17(4)(A)(a) of the Road Accident Fund Amendment Act has been applied) should be accepted. When analysing this calculation it appears that past loss, taking into account both the value of income uninjured and injured, amounts to a net figure of R137 224.00 (after application of the loss limit).

[46] As far as future loss is concerned, it appears that the calculation has been performed on the basis that Coertze has no residual earning capacity, indicating a net future loss (after application of the loss limit) of R4 036 921.00. Although the net past loss of R137 224.00 appears to be a conservative calculation which may favour the defendant, I cannot see why it should not be acceptable. As far as this past loss is concerned, a contingency deduction of 5% with regard to senior sales representative and

10% with regard to key accounts manager (both uninjured) have been applied. These contingency deductions appear to be realistic.

[47] The fact that future loss has been calculated on the assumption that Coertze is totally unemployable (but for the shooting incident) is not in accordance with my conclusion referred to above. I have already concluded that Coertze would have had (but for the shooting incident) at least some residual earning capacity as indicated by the industrial psychologists. Taking into account a remuneration ceiling of R425 000.00 (the average between R400 000.00 and R450 000.00 as agreed upon by the industrial psychologists), that the calculation should be done according to 2010 money terms and that Coertze would have enjoyed real growth as suggested by Ms Noble, the actuarial calculation dated 7 October 2015 has been performed on the assumption that Coertze would have had the ability to earn an income after the accident as discussed by the industrial psychologists (scenario 1 thereof, future loss only). The net future loss according to this calculation (after application of the loss limit) amounts to R3 807 846.00. This is after a contingency deduction of 20% for income uninjured and 50% for income injured have been applied. As was pointed out by counsel acting for the plaintiff, a 15% contingency deduction for income uninjured would have been acceptable, but for Coertze's pre-existing psychological vulnerability. Having regard to this condition, I am of the view that a 20% deduction appears to be reasonable. As far as the value of income injured is concerned, both industrial psychologists have agreed that a high percentage

contingency deduction is indicated. In this regard one should also take into account the evidence of Dr Mazabow that Coertze (but for the shooting incident) would have continued to display symptoms like aggressiveness, rudeness and depression in his workplace. No doubt, these *sequelae* call for a high contingency deduction and 50% appears to be reasonable.

[48] In the result I conclude that the total loss suffered by Coertze amounts to R3 945 070.00 calculated as follows:

- Net past loss after contingencies and application of the loss limit,

R 137 224.00

plus

- Net future loss after contingencies and application of the loss limit, R3 807 846.00

ORDER:

In the result I grant the following order:

The draft order attached hereto and marked **"X"**, is made an order of Court.

D S FOURIE
JUDGE OF THE HIGH COURT
PRETORIA

Date: 20 April 2015

ANNEXURE "X"

20/4/16

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

HELD AT PRETORIA BEFORE THE HONOURABLE JUSTICE D S FOURIE

Case No: 40279/2013

In the matter between:

M VAN ANTWERPEN obo L D COERTZE Plaintiff

and

ROAD ACCIDENT FUND Defendant

DRAFT ORDER OF COURT

HAVING HEARD COUNSEL for the parties, the Court grants judgment in favour of the plaintiff against the defendant in the following terms:

1. The defendant shall pay an amount of **R3 945 070.00 (three million nine hundred and forty five thousand and seventy rand)** to the plaintiff's attorneys, Adams & Adams, in settlement of the plaintiff's claim, by direct transfer into their trust account, details of which are as follows:

Account holder	:	**Adams & Adams Trust Account**
Bank	:	**Nedbank**
Branch	:	**Pretoria**
Branch code	:	**198 765**
Account number	:	**160 431 8902**
Reference	:	**DBS/MD/ems/S417/10**

2. The Defendant shall furnish the Curator bonis to be appointed (subject to the approval of the honourable court) with an undertaking in terms of Section 17(4)(a), in respect of 100% of the costs of the future accommodation of **LESLIE DENNIS COERTZE** (hereinafter referred to as "the Patient") in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him after the costs have been incurred and on proof thereof, resulting from the accident that occurred on 30 October 2008.

3. The aforementioned undertaking shall include and also cover the full amount of the following costs:

3.1 The reasonable fees and disbursements of the Curator *bonis* to be appointed herein for the administration of the estate of the Patient and the Undertaking referred to in paragraph 3 above, inclusive of the costs pertaining to the furnishing of security and the costs of a case manager, which costs shall also be recoverable 100% in terms of the said Undertaking;

3.2 The remuneration of the Curator bonis to be appointed, shall be calculated in accordance with the tariff prescribed by the Administration of Deceased's Estate Act, Act 66 of 1965, disbursements incurred and collection commission calculated at 6% on all amounts recovered from the Defendant in terms of the Section 17(4)(a) Undertaking;

3.3 The costs of and associated with the preparation and auditing of curatorship accounts and financial statements as required by the Master;

3.4 The cost of providing security to the satisfaction of the Master of the High Court by the Curator *bonis* in respect of the insurance cover that he will have to take out in order to furnish such security as maybe required by the Master of the High Court;

3.5 The appointment and reasonable costs of a case manager;

3.6 To the extent that the aforesaid costs are based on a percentage of the amount administered, they are not to be subjected to any apportionment and are to be met by the Defendant in terms of the Undertaking on a 100% basis.

4. The Plaintiff's application for the appointment of a curator *bonis* is herewith postponed *sine die* to afford the Master of the High Court an opportunity to furnish the above honourable court with its recommendation, in addition to the recommendation to be made by the duly appointed curator *ad litem,* within the statutory time frame provided for in terms of the Uniform Rules of Court;

5. The parties are granted leave by the above honourable court, to approach the relevant Registrar to have the application for the appointment of a curator *bonis* re-enrolled on a preferential date on the unopposed motions roll;

6. The Plaintiff's attorneys are authorised to invest the capital amount in an interest bearing account in terms of Section 78(2A) of the Attorneys Act to the benefit of the Patient, with a registered banking institution pending the finalization of the directive referred to in paragraph 4 above;

7. Until such time as the appointed *curator bonis* to be determined in terms of the application referred to in paragraph 4 is able to take control of the capital sum, the Plaintiff's attorneys are authorised and ordered to pay from the capital

amount:

7.1 any reasonable payments to satisfy any of the Patient's needs that may arise and that are required in order to satisfy any reasonable need for treatment, care, aids or equipment that may arise in the interim;

7.2 the attorney and own client costs (fees, disbursements and interest on unpaid disbursements) of the Plaintiff/Patient;

7.3 such other amount(s) that may reasonably be indicated and/or required for the well-being of the Patient and/or in his interest which a diligent *curator bonis* would have paid if such *curator* had been appointed.

8. The Defendant shall make payment of the Plaintiff's taxed or agreed party and party costs on the High Court scale which costs shall include the following:-

8.1. The fees of Senior Counsel on the High Court Scale, inclusive of but not limited to Counsel's full, reasonable day fees for 8, 13, 14, 15, 16 and 19 October 2015, and fees for the preparation of heads of argument;

8.2. The fees of the *Curatrix ad Litem* on the High Court Scale, inclusive of her full, reasonable, day fees and costs for preparation, attending consultations, the preparation of her report etc;

8.3. The reasonable, taxable costs of obtaining all medico-legal / expert, RAF4 Serious Injury Assessment and actuarial reports from the Plaintiffs' experts which were furnished to the Defendant;

8.4. The reasonable preparation, qualification, travelling and reservation fees, if any, of the experts of whom notice have been given;

8.5. The reasonable fees of Mr Royce Buda, an interpreter appointed by the court, to assist the factual witnesses in giving testimony during the trial on 14 October 2015;

8.6. The costs of all consultations between the Plaintiff and/or the Patient, his/her attorneys and/or counsel in preparation for the hearing of the action and to discuss the terms of this order;

8.7. The costs of all consultations between the Plaintiff's attorneys, and/or counsel and the experts in preparation for the hearing of this action;

8.8. The costs of all consultations between the Plaintiff's attorneys, the factual and other witnesses in investigating the issues of liability and quantum in preparation for the hearing of this action, and the preparation of typed consultation notes thereof for furnishing to counsel and the experts. Such costs shall include but not be limited to Plaintiff's attorneys' reasonable travelling time which shall be recoverable on the full party and party tariff;

8.9. The reasonable, taxable accommodation and transportation costs (including Toll and E-Toll charges) incurred on behalf of or by the Patient in attending medico-legal consultations with the parties' experts, all consultations with his legal representatives and the court proceedings, subject to the discretion of the Taxing Master;

8.10. The reasonable costs of the application for the appointment of the curator *bonis* which is to be brought herein in terms of paragraph 4, inclusive of the reasonable day fees of senior-junior counsel and the curator *ad litem* to attend to the application and the hearing thereof;

8.11. The above costs shall also be paid into the aforementioned trust account;

8.12. It is recorded that the Plaintiff's attorneys do not act in terms of a contingency fee agreement in this matter.

9. The following provisions shall apply with regards to the determination of the aforementioned taxed or agreed costs:-

9.1. The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record;

9.2. The Plaintiff shall allow the Defendant 7 (SEVEN) court days to make payment of the taxed costs from date of settlement or taxation thereof; and

9.3. Should payment not be effected timeously, the Plaintiff shall be entitled to recover interest at the rate of 9% on the taxed or agreed costs from date of settlement /allocatur to date of final payment.

BY ORDER OF THE COURT

DBS/MD/S417/10