

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

Case number: 81797/14

Date: 22/9/2016

Reportable: No

Of interest to other judges: Yes

Revised.

In the matter between:

V CHUTTERPAUL

PLAINTIFF

Versus

ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT

TOLMAY, J:

INTRODUCTION

[1] The Plaintiff in this matter is a 30 year old adult female attorney that was injured in a motor vehicle collision on 23 July 2011 whilst driving on the R55, Midrand, Johannesburg.

[2] The issues of both liability and the quantum had to be determined by this Court. Past

medical expenses, future loss of income and general damages were in dispute.

[3] The Plaintiff filed expert reports of 7 experts, including an actuarial calculation. The Defendant failed to file any of its expert reports timeously and only furnished the Plaintiff with its industrial psychologist's report on the morning of the day before the trial.

[4] Before the commencement of the trial counsel for Defendant informed the Court that he was briefed only the day before the trial was to commence and did not have time to peruse the expert reports. The industrial psychologist for the Defendant at that point also refused to sign the joint minute. She did sign it later however. I was informed that Defendant's industrial psychologist was not available to testify. Counsel for the Defendant also informed the Court that Defendant had no witnesses but his instructions were to proceed nonetheless.

[5] At the pre-trial the parties agreed that Plaintiff suffered the injuries as set out in the respective medico legal reports filed by Plaintiff and suffered the *sequelae* as set out therein. It would seem that the only real issues were the difference of opinion between the industrial psychologists which relates to future loss of income and general damages. The invoices for past medical expenses were provided to the Defendant but for unknown reasons this issue was still disputed.

MERITS

[6] The Plaintiff testified that on 23 July 2011 she was travelling along the R55, in Midrand, Johannesburg in a southerly direction. She approached the intersection with Dytchley Road, Kyalami. The light was red for her upon approach. She stopped at the intersection behind another vehicle in the right-turn only lane until the filter arrow turned green in her favour, allowing vehicles in her position to execute a right- hand turn into Dytchley Road. The vehicle in front of her had already completed its right hand turn, whilst following close behind it, she felt a bang and lost consciousness. She testified that when she regained consciousness her car was on its roof and she was hanging upside down. She described how scared she was that the car would blow up as she could smell fuel. She tried to open the door which was stuck. She was very anxious about the smell of fuel as well as being stuck in a confined space. She tried to release the seatbelt.

Despite some difficulty she managed to release it and collapsed on her side and rolled out. She was then assisted by onlookers who took her to a traffic island. Someone assisted her to stabilise her neck. An ambulance arrived which took her to Sunninghill hospital.

[7] The accident reconstruction specialist Prof Lemmer testified that the insured driver's motorcycle which collided with the Plaintiff's vehicle came from a northerly direction. Plaintiff's vehicle was almost stationary at the time of the collision. Despite that, the motorcycle which weighs ± 200 kg in comparison with the motor vehicle's 1 000 kg, managed to flip the car over onto its roof. The motor cycle hit the motor vehicle in the middle on the passenger side turning the motor vehicle into a V-shape as a result of the impact of the accident. Prof Lemmer estimated the motorcycle must have travelled at a speed of more than a 100 kmph and said it could even be up to 150 kmph and would have been more than 200 m away when Plaintiff started executing her turn. At the time that the motorcycle collided with Plaintiff's vehicle she nearly completed her turn. Consequently, because of that, and the speed at which the motorcycle was travelling she would not have seen the motorcycle approaching nor would there have been anything she could have done to prevent the accident from happening.

[8] The Defendant had no witnesses pertaining to the merits of the case nor was there any effective cross-examination pertaining to the probabilities of the Plaintiff or the expert's versions. The Defendant based their opposition on the merits on the general assumption that nobody has an absolute right of way. It is clear that the facts of the case, the photographs, police reports etc were not considered by the Defendant or its legal representatives. This was clearly an instance where the merits were opposed without any proper consideration of the pertinent facts of the case. Despite the lack of any evidence at all counsel for the Defendant proposed a 80/20 apportionment. There is not a shred of evidence to support this submission and there is no doubt in my mind that the Defendant should be a 100% liable for any damages suffered by Plaintiff.

THE QUANTUM

[9] The medico legal reports of all the other experts were admitted and I will refer to the findings in these reports as well as the evidence led at the trial. The Plaintiff, Mr Marais,

a partner of the firm where Plaintiff works and Mr Wessels, Plaintiff's industrial psychologist testified. Defendant called no witnesses.

[10] The medico legal reports indicate that the Plaintiff suffered the following injuries:

- 10.1. A brief period of post-traumatic amnesia.
- 10.2. Bruising on the lateral side of the chest and her anterior abdominal wall together with multiple abrasions.
- 10.3. An undisplaced fracture to the lateral wall of her left orbit followed by swelling of the upper- and lower eyelids.
- 10.4. A lateral herniation of C6-C7 disc to the left.
- 10.5. A minor concussive head injury.
- 10.6. Emotional shock and trauma.
- 10.7. The hospital and RAF1 form notes contusion of the thorax and abdominal wall.
- 10.8. Open wounds are described on the abdomen, part of her head, shoulder, wrist as well as lower limbs.
- 10.9. Multiple lacerations.

[11] She received the following treatment:

- 11.1. She was admitted to the ICU overnight for observation and given pain tablets together with intravenous infusion.
- 11.2. The Plaintiff underwent a CT brain scan as well as a CT scan of the abdomen, together with X-rays.
- 11.3. She was booked off for 2 to 3 weeks.
- 11.4. The Plaintiff still takes homeopathic medication, anti- inflammatories and paracetamol for the pain.

[12] A perusal of the reports reveal that the Plaintiff suffers the following symptoms and *sequelae* as a result of her injuries:

- 12.1. The Plaintiff experiences pain on the left side of her neck that radiates into the left trapezius muscle and periscapular area. The pain sometimes radiates down into her left arm. It worsens when she carries her handbag over her left shoulder, but she tries not to use her left arm when it is not necessary.
- 12.2. When her symptoms is at its worst (she describes it as 10/10) it lasts for

approximately 2 days at a time and this occurs approximately once a month.

- 12.3. The Plaintiff struggles to fall asleep and wakes up tired. She can no longer sleep on her left side. Her sleeping difficulties are also as a result of the emotional *sequelae* of the collision. In addition, she still gets flashbacks of the accident.
- 12.4. She suffers from severe headaches approximately twice a month.
- 12.5. She experiences pain in her right knee when she runs at the gym.
- 12.6. She initially suffered a lot of pain in her jaw when chewing, but this has improved.
- 12.7. She has mild global weakness of her left arm.
- 12.8. The neck injury has resulted in a mild neurological deficit in her left arm.
- 12.9. The Plaintiff suffers from severe anxiety when driving as well as post-traumatic stress disorder.
- 12.10. The left shoulder and scapular area suffers from pain radiating down her left arm. This is described as cramping, spasm, shooting and stabbing, squeezing and a pins and needles sensation on a daily basis.
- 12.11. The Plaintiff describes the pain as debilitating. Her inability to train and run as she did before leaves her feeling unmotivated and depressed. This affects her ability to cope with the demands of everyday life.
- 12.12. She suffers from moderate depression and anxiety.
- 12.13. In addition, she suffers from mild discomfort in her lower back.
- 12.14. Excursion/physical exercise such as lifting heavy objects mainly heavy files causes pain. The pain is worsened in cold weather as well as when she is feeling stressed or anxious. Sustained standing and static sitting also causes pain.
- 12.15. She experiences difficulty in day-to-day home management, especially with the more physically demanding tasks.

[13] The experts are of the view that she will require future medical treatment, this will include symptomatic treatment of her headaches. The neck pain will require medication, physiotherapy and biokinetics. She has a 50% chance of undergoing surgery to her neck in the future and this will entail 6 weeks of sick leave after the neck fusion. She will require treatment by a clinical psychologist for her symptoms of post-traumatic stress disorder. The Plaintiff will require occupational therapy of approximately 15 hours,

including a worksite visit. In addition, she will require an array of assistive devices. She will require 30 sessions of psychotherapy.

[14] Her educational and employment history reveals the following:

She matriculated in 2002 and obtained a B-Social Sciences Degree in 2007. The Plaintiff was an exceptional student in circumstances where she obtained distinctions in all of her subjects both in matric and at university. The Plaintiff's career started in January 2007 as a trainee financial service provider, before taking up a position as an investment consultant until August 2008. She was then appointed as an HIV research assistant until September 2009 prior to taking up a position as a training co-ordinator and human resources administrator until February 2011. She was appointed as a sales co-ordinator with Empower Logic at the time that the accident happened in July 2011. Each of her appointments was motivated by career progression.

[15] According to Dr Du Plessis's report, the Plaintiff has a 7.5% loss of work capacity solely as a result of the neck injury. The Plaintiff requires increased effort with lifting and carrying, she will not be able to do this in an effortless and pain-free manner, she will require assistance with such tasks. She suffers from a fairly significant degree of fatigue affecting her daily tasks. There has been a general decrease in efficiency and/or autonomy and this relates to pain, spasm, decreased endurance and increased fatigability. The occupational therapy assessment illustrated difficulties with accuracy and speed which may result in error proneness as well as reduced productivity and performance, she makes errors at work, loses concentration and then has to deal with the pain which affects her ability to lift and carry heavy files. She suffers from headaches when she sits and works at her computer. Neck and left-sided trapezius muscle and scapular pain radiates into her left upper limbs when sitting at her computer when typing or writing. The pain affects her concentration as she is not as alert as she was pre-morbidly, forcing her to have to re-read passages whilst having difficulty focusing. She considers her work speed to be slower than it was before.

[16] According to the occupational therapist, she may become less productive with ongoing pain and fatigue, her mental and physical endurance is expected to diminish and her motivation levels may be affected at work. According to the clinical psychologist, Dr Truter, the Plaintiff is psychologically vulnerable and struggles to meet the extreme

demands of her present work. She developed a severe panic attack at the office and was booked off from work for a week. Her supervisor Mr Marais reported that he allows the Plaintiff time off work for physiotherapy and medical appointments. Although Mr Marais considers her functional performance as satisfactory, he commented that the demands of the job are high and that it could be accepted that her pain or discomfort may negatively impact on her work performance and that had the accident not occurred she may have been doing better in her job. The occupational therapy assessment indicates that the Plaintiff did not meet accuracy requirements. Factors such as the need for future surgery and related work absenteeism, her mood problems, psychological components related to her pain perception, would be likely to compromise her occupational functioning. She presents with a measure of occupational dysfunction and her competitiveness in the highly paced legal profession appears to be compromised. The Plaintiff has difficulty concentrating at work due to the neck and left shoulder pain as well as the difficulty experiencing preparing bundles and files. Reading, working on a computer, flexing her neck and sitting all exacerbate her neck and left shoulder pain. She applies heat to manage the pain and takes pain tablets. The Plaintiff was left psychologically vulnerable and struggles to meet the extreme demands of her present work. According to Dr Mazabow, the Plaintiff had somewhat poorer than expected scores on certain tests during the evaluation which are attributed to the combination of chronic pain and chronic depression which would have impacted on her attention/concentration, energy and frustration tolerance. Her on-going problems, in particular chronic pain, anxiety, depression and related concentration variability, social withdrawal, reduced frustration tolerance, irritability and fatigability would prevent her from performing at her full potential academically and vocationally, necessitating greater levels of time and effort on her part with slower performances and proneness to error.

[17] As a result of the aforesaid, it is postulated by Mr Wessels, the Plaintiff's industrial psychologist in his report that she no longer has the potential to become an equity partner within the firm as a direct result of the *sequelae* of the injuries sustained in the accident.

[18] At the time of the accident she worked at a BEE rating's agency, Empower Logic and lived in Johannesburg as a sales co-ordinator. After the accident she was not able to work for 2 - 3 weeks due to her injuries. She went back to her parents in Kwa-Zulu

Natal so that they could assist her during the period of recuperation. It became clear to her that she would not be able to resume her employment in Johannesburg as she needed the support of her family. She attempted to persuade her employer to open an office in Kwa-Zulu Natal but when that did not materialise she resigned. She then enrolled for and completed her LLB degree in 2013. She started working at Adams & Adams Attorneys, Pretoria during January 2014 and is presently an associate attorney and earns R38 000-00 per month.

[19] She testified how the *sequelae* of her injuries affected her life. She suffers from chronic pain, anxiety and depression. It must be noted that prior to the accident she suffered from depression after her cousin died. She testified how all of the *sequelae* of the accident impacts on, not only her enjoyment of life, but also her ability to meet the demands, both physical and emotional that her very demanding profession requires of her. She testified that she has difficulty concentrating at work due to neck and shoulder pain. She also has difficulty in preparing bundles and files.

[20] The Plaintiff excelled academically and the evidence put before court clearly illustrates her inherent ability to compete and excel on an intellectual level. Unfortunately it seems that the *sequelae* of the injuries she sustained will curtail her career development to some extent.

[21] The Plaintiff called Mr Marais a partner at Adams & Adams who works in the commercial litigation division of the firm and in whose team the Plaintiff works. He confirmed what he reported to the experts and testified to the career path and potential progression of attorneys within the structure of the firm. He testified as to the salary structures that apply to the different levels of associates and partners.

[22] Mr Marais testified to the probable career path of the Plaintiff. He emphasised the enormous pressure under which attorneys in the firm work, as well as the high level of competition both external and internal. He states that the Plaintiff has both the intellectual ability and work ethic that is required, but states that she suffers from severe pain that impacts on her performance and he is of the view that this will impact negatively on her career progression. He referred to a couple of incidents where she was forced to go home early because of tension headaches and related pain. Although

Plaintiff tries to downplay the pain and her difficulties as a result of that, it does impact on her ability to perform at the required level. He also states that absence from work, either because of pain or medical treatment, will impact on plaintiff's career despite the firm's commitment to assist her.

[23] The evidence of Mr Marais indicates that Plaintiff presents with a measure of occupational dysfunction and her competitiveness in the highly paced profession of an attorney appears to be compromised.

[24] The career path at Adams & Adams generally progresses as follows. An associate attorney 1 will remain in such a position for \pm 2 years. Depending on satisfactory performing will then progress to associate II. A person will remain on this level for another approximately 2 years and after that depending on performance such person will become a Senior Associate and will remain in that position for 2 - 5 years before consideration will be given to partnership. The first level appointment as a partner is a salaried partner and after that equity partner.

[25] The Defendant's counsel had no version to put to Mr Marais and the cross-examination was limited to emphasize her intellectual ability and I suppose, to illustrate that the Plaintiff's future loss of income will be limited. Nothing was put to this witness by the Defendant that could assist the Court in determining a just evaluation of the Plaintiff's impairment in the workplace.

[26] The Plaintiff called Mr Wessels the industrial psychologist. He confirmed his report and content thereof and testified that his assessment of the plaintiff is based on his knowledge and experience of the demanding and competitive environment in which the Plaintiff is employed. He testified that the *sequelae* of the accident will impact on her output capacity and will detrimentally impact on her career progression and ultimately on her earning capacity. The *sequelae* of the accident will also impact on her ability to compete equally within the working environment. He confirmed Mr Marais's evidence that her fixed terms contract, based purely on her work performance, will in all probability be transformed into a permanent employment contract.

[27] The Plaintiff is currently employed as an associate 1. The probabilities are

favourable that she will be offered a permanent employment contract as of 1 March 2017 at an associate 11 level. Mr Wessels envisages Plaintiff's career progression as follows:

Senior Associate: 1 March 2020 (4 - 5 years)

Salaried Partner: 1 March 2023 (50% chance)

Equity Partner: No chance due to challenges she faces resulting from the *sequelae* of injuries sustained in the accident.

[28] The industrial psychologist of the Defendant, Ms Mathabela, did not testify but applied the Patterson scale in determining future loss of income. According to Mr Wessels the Patterson scale is not applicable. He said that factual information applicable in the organisation regulates the progression policy and procedures, therefore one does not need to generalise. According to him there exists no grading in the Patterson job evaluation that deals with lawyers, it only deals with legal advisors, which is not comparable. He also said you can never compare salaries, if such positions are not contained in numeration surveys.

[29] Regarding the evidence of Mr Wessels the Defendant's cross-examination was limited to the simple issue that their industrial psychologist's assumption should be accepted that Patterson level D, 25th percentile should be accepted. She was however not called as a witness and consequently Defendant failed to persuade the Court that Mr Wessel's evidence should not be accepted.

[30] Only the Plaintiff submitted an actuarial report. The actuary applied pre-accident contingencies of 15% and post-accident contingencies of 25%. Counsel for Applicant argued that it is under the circumstances of this matter appropriate to apply these contingencies. Defendant said 10% and 5% is more appropriate, but was unable to provide any legal or factual argument on why he proposed that these contingencies should apply.

[31] The Court has a wide discretion in determining the appropriate contingencies and it will depend on the Court's impression of the case.¹ The Defendant contributed no

¹ See *Southern Insurance Association v Bailey* NO 1989(1) SA 98 (A); *Van Der Plaats v South African Mutual Fire*

assistance whatsoever to assist the Court to exercise its discretion judicially. The Court therefore has to take the sole responsibility to determine the contingencies with the assistance of the evidence put before Court by the Plaintiff.

[32] In order to determine the appropriate contingencies I need to consider the particular circumstance of the case. I do that with reference to the medico legal reports and evidence before me presented by the Plaintiff. If one considers the circumstances of this case, in particular the abilities of the Plaintiff, the *sequelae* of her injuries and how it will probably impact on her career progression and on the other hand what the situation would have been, but for the accident, I am of the view that but for the accident Plaintiff would probably have progressed to a salaried partner and maybe even an equity partner. I also take into consideration the fact that the accident apparently motivated her to study law, which she may not have done if the accident didn't occur. Plaintiff is clearly an exceptional person and has the intellectual ability to accomplish whatever she sets her mind to, but due to the *sequelae* of her injuries her career progression will in all probability be compromised. She will experience periods of absence from work due to pain and the possibility of medical treatment will also impact on her career progression. In the light of circumstance of this case I am of the view that a 15% contingency deduction pre-morbid and a 25% contingency post-morbid is appropriate.

[33] The actuary did a calculation of future loss of income based on Mr Wessels and Ms Mathabela's reports this is set out as follows:

SUMMARY OF RESULTS

SCENARIO 1 – MR WESSELS

Losses before the application of the Amendment Act

Future loss

| | | |
|-----------------------------|---------|--------------------|
| Value of income uninjured: | | R 27 516 188 |
| Less contingency deduction: | 15.00 % | <u>R 4 127 428</u> |
| | | R 23 388 760 |
| Value of income injured: | | R 18 007 994 |
| Less contingency deduction: | 25.00% | <u>R 4 501 999</u> |

R 13 505 995

Total net loss:

R 9 882 765

Losses after the application of the Amendment Act

Net future loss: Total net loss:

R 5 840 500

R 5 840 500

SCENARIO 2 - Ms MATHABELA

Future loss

Value of income uninjured: R 9 665 717

Less contingency deduction: 15.00% R 1 449 858

R 8 215 859

Value of income injured: R 9 665 717

Less contingency deduction: 25.00% R 2 416 429

R 7 249 288

Total net loss:

R 966 571

[34] As there was no evidence led that could persuade me that Ms Mathabela's scenario should be accepted I am of the view that an award of future loss of income of R5 840 500-00 is appropriate.

GENERAL DAMAGES

[35] Pertaining to general damages I was referred to a number of cases. In my view the following cases might assist in determining an appropriate award in this matter:

a. **TORRES v RAF [Corbett & Honey Vol 6 A4-1] R931 000.00**

Award: R600 000.00

2016: R1, 025 000.00

South Gauteng High Court : 2007

The plaintiff, a 24 year old male suffered a severe diffuse brain injury, a soft tissue injury to the neck, face and chin. The head injury resulted in significant neuro-cognitive and neuro behavioural deficits associated with concentration, working memory, impulse control and abstract reasoning. This also resulted in depression and adjustment disorder. The award in 2007 for general damages was R600 000.00.

b. HERBST v RAF [Corbett & Honey Vol 6 A4-7] R931 000.00

Award: R600 000

2016: R1, 025 000.00

Witwatersrand Local Division : 2007

The Plaintiff, a 34 year old male anaesthetist suffered a severe head injury rendering him functionally unemployable with no residual earning capacity. The award in 2007 for general damages was R600 000.00.

c. ABRAHAMS v ROAD ACCIDENT FUND 2014 (7J2) QOD 1 (ECP)

Award: R500 000

2016: R619 000

41-year-old male spray painter

Synopsis of injuries and after-effects:

Badly comminuted fracture of the right proximal femur; fractures of the right distal fibula and patella; fracture of the right medial malleolus; severe soft tissue injuries to the left hand; secretions in the chest and a mild concussive traumatic head injury. Surgery in the form of an open reduction and internal fixation of the right femoral fracture; open reduction of the patella fracture and immobilisation with wire pins and loops; open reduction and internal fixation of the medial malleolus with a screw and plate was used to immobilise the fractures of the distal fibula. Subsequent surgery to remove wires at the site of the patella fracture and to carry out realignment and revision of the non-union of the right distal fibula/lateral malleolar fracture. Shortening of the right lower limb with need to wear an assistive device. Secondary osteoarthritis in the left knee. Limitation of range of motion and pain in the right hip, knee and ankle. Pre-existing generalised anxiety disorder and social phobia exacerbated. Rendered unemployable.

d. D'HOOGE V ROAD ACCIDENT FUND 2010 (6J2) QOD 1 (ECP)

Award: R650 000

2016:R930 000

Injured person:

21-year-old male.

Synopsis of injuries and after-effects:

Diffuse axonal brain injury; fractures of the humerus, tibia, and tibial plateau; severe trauma to the lungs and chest; development of respiratory distress syndrome requiring intubation and ventilation for two months. Extended recuperation in hospital complicated by embolism, infections of the lungs and development of bed sores on the face and body. Permanently disabled with unattractive gait, immobile right ankle, a clawed right foot, pain and restricted movement of the right hip, an inability to straighten the right knee and right elbow, discomfort in the lower back, restriction of movement of the left shoulder, loss of balance control, an inability to walk fast or run, and sleep disturbance. Impairment of social, emotional cognitive and executive functioning manifested by excessive fatigue, episodes of frustration, irritability, short-term memory deficit, attention and concentration lapses, depression and inappropriate behaviour. Significant impact upon ability to work and to compete in the employment market.

[36] All the aforesaid cases present with more serious injuries and *sequelae*. In most of the cases the Plaintiffs were rendered unemployable. Helpful as comparable cases maybe, each case must be determined on its own merits. I am of the view that in the light of Plaintiff's injuries and *sequelae* thereto as well as how all of this impacts on her life an award of R600 000-00 is just.

POST MEDICAL EXPENSES

[37] The Plaintiff provided proof of the medical expenses incurred but up to the end of the trial Defendant did not indicate why these amounts are still disputed. I award the post medical expenses claimed by the Plaintiff.

CONDUCT OF DEFENDANT AND ITS LEGAL REPRESENTATIVES

[38] In this case I deem it appropriate to deal with the conduct of Defendant and its legal representatives. I must also note that what occurred on this case is common in many of

the cases where the RAF is the Defendant.

[39] As already stated on the first day of the trial counsel for the Defendant informed me that he was only briefed the previous day. He had no witnesses, nor did he have the opportunity to peruse any of the expert reports. He initially informed me that he could not obtain any instructions from the claims handler. This is a claim in excess of R6 million and required proper preparation, consultation and consideration by the Defendant and its legal representatives. It is unconscionable that legal representatives appear who are not prepared and who are unable to assist the Court to come to a just and equitable award.

[40] I was specifically perturbed by the fact that Defendant's counsel was not properly prepared to conduct the case. The defence was of no assistance whatsoever. No version was put to the witnesses, the cross-examination was ineffective and did not assist the Court. It was obvious that the Defendant was merely going through the motions, without having a proper strategy or purpose. Legal representatives in matters concerning the Defendant act as custodians of public resources and should assist the Court to make fair and just awards. It can't be expected of the Courts to do the Defendant's work for them.

[41] I requested the claims handler in this matter to come to Court and explain the procedures at the Road Accident Fund pertaining to the preparation and instructions to the legal representatives in an attempt to get to the bottom of the problem. Mr Lekhuleni, the claims handler in the present matter came to Court. He testified that he took the matter over from Ms Baloyi who is on maternity leave. I asked him on what basis the merits were not conceded, seeing that the Defendant had no witnesses, no version to put to the Plaintiff nor any evidence at all that there could have been contributory negligence. I was surprised, to say the least, when he informed me that the Plaintiff turned right and therefore had no absolute right of way. I asked him whether he considered the facts of this specific case and also asked him to look at the photographs taken of the Plaintiff's vehicle, which was flipped on its roof by the motorcycle of the insured driver's vehicle. His reaction made it clear that this was the first time that he had seen the photographs. Ms Ferguson in her address told me that there is a general instruction by the RAF not to concede merits if someone were executing a turn. I did not

want to believe this, but Mr Lekhuleni's evidence confirmed the veracity of her submission. The RAF and its legal representatives have a duty to consider the facts of each case, which include the expert reports, police reports, witnesses' statements etc. together with their legal representatives in order to come to a considered opinion regarding a possible concession, settlement and/or presentation of a case in Court. Generalized instructions lead to a waste of public money and court resources. Matters should only proceed to trial if the Defendant has a proper case to present in court. If there is no case to present opposition is a mere waste of public money.

[42] I tried to ascertain why counsel was briefed so late and the attorney for the Defendant gave evidence which was particularly vague. He referred to the service level agreement with the RAF which apparently impacts on his ability to arrange consultations and brief counsel timeously. I requested him to avail the Court of this agreement, he however indicated that he could not find it. With the kind assistance of Mr Mounmakwe from the RAF I finally succeeded in obtaining the standard service level agreement between the Defendant and its legal representatives. On perusal of this agreement it became clear to me that if all concerned follows the prescribed procedures, there exist no reason whatsoever for a situation like the one that arose before me to occur.

[43] The RAF and their legal representatives owe a duty to society to investigate cases properly and if matters are opposed it should be done on properly considered legal grounds. Opposing matters without such a basis is not acceptable. Representatives for the RAF should be properly prepared and should timeously obtain proper and considered instructions. I am afraid that I often get the impression in these matters that claim handlers are for reasons unknown to me reluctant to give instructions and therefore leave it in the Court's hands. This amounts to an abuse of public money and Court resources and should be discouraged, if needs be by ordering officials and legal representatives to pay the costs out of their own pockets.

[44] I considered ordering the claims handler and the attorney to pay the costs *de bonis propriis*. Due to the fact however that I still do not know who is to blame for the chaos in this matter I refrain from making such an order, but the time has indeed come that Courts should consider ordering the officials and/or legal representatives to pay costs *de bonis propriis*. In appropriate cases the Court may also consider not allowing counsel

and the attorneys to charge a fee. As I did not alert the legal representatives in this matter to that possibility it will be inappropriate to make such an order in this case. I am also of the view that this judgment should be sent to the Regional Manager and Senior Managers of the Defendant for Pretoria and Johannesburg for their consideration. Hopefully they will intervene and take action to prevent similar situations from occurring.

[45] I make the following order:

45.1. The Defendant is liable for a 100% of the damages suffered by the Plaintiff;

45.2. The Defendant shall pay the total sum of R6 458 263-87 (Six million three hundred and fifty eight thousand two hundred and sixty three rand and eighty seven cents) to the Plaintiff's attorneys, Adams & Adams, in settlement of the Plaintiff's action, which amount is calculated as follows:

| | |
|---|---------------|
| General damages: | R 600 000-00 |
| Past medical expenses: | R 17 763-87 |
| Future loss of earnings/earning capacity: | R5 840 500-00 |

The aforementioned total sum of R6 458 263-87 (Six million four hundred and fifty eight thousand two hundred and sixty three rand and eighty seven cents) shall be payable by direct transfer into the trust account of Adams & Adams, detail of which are as follows:

| | |
|-----------------|-----------------------------|
| Account holder: | Adams & Adams Trust Account |
| Bank: | Nedbank |
| Branch: | Pretoria |
| Branch code: | 198765 |
| Account number: | [...] |
| Reference: | NK/KW/P1299 |

45.3. The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) in respect of 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 or supplying of goods to her after the costs have been incurred and on proof thereof, resulting from the accident that occurred on 23 JULY 2011.

45.4. 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 but not

be limited to the following:

- 45.4.1. The fees of Senior-Junior counsel on the High Court scale, inclusive of her full trial day fees of 18 and 19 August 2016 and her fee for the preparation of heads of argument;
- 45.4.2. The reasonable, taxable, preparation, qualification, travelling and reservation fees, if any, of the following experts of whom notice have been given, being:
 - 45.4.2.1. Dr T Birrel (Orthopaedic Surgeon);
 - 45.4.2.2. Ms P Badenhorst (Occupational Therapist);
 - 45.4.2.3. Mr W Wessels (Industrial Psychologist);
 - 45.4.2.4. Dr K Truter (Clinical Psychologist);
 - 45.4.2.5. Dr J J du Plessis (Neurosurgeon);
 - 45.4.2.6. Dr M Mazabow (Clinical Neuropsychologist);
 - 45.4.2.7. Mr G A Whittker (Actuary); and
 - 45.4.2.8. Mr G Lemmer (Accident Reconstruction Expert)
- 45.5. The reasonable costs of all consultations between the Plaintiff, and/or her attorneys, and/or her counsel and/or the witnesses, and/or the experts in preparation for the hearing and to discuss the terms of this order;
- 45.6. The reasonable, taxable, accommodation and transportation costs (including Toll and E-Toll charges) incurred by or on behalf of the Plaintiff in attending all 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;
- 45.7. The reasonable, taxable transportation costs (including toll and e-Toll charges) incurred by or on behalf of the Plaintiff in respect of all witnesses attending the Court proceedings;
- 45.8. The above costs shall also be paid into the aforementioned trust account.
- 45.9. The following provisions shall apply with regards to the determination of the aforementioned taxed or agreed costs:
 - 45.9.1. The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record;
 - 45.9.2. The Plaintiff shall allow the Defendant 7 (seven) Court days to make payment of the taxed costs from date of settlement or taxation thereof;
 - 45.9.3. Should payment not be effected timeously, the Plaintiff shall be entitled

to recover interest at the rate of 10.25% on the taxed or agreed costs from date of allocatus or settlement to date of final payment.

[46] This judgment is to be sent to the Regional manager and Senior Managers of the RAF in Pretoria and Johannesburg for their consideration.