



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

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

CB Bhoola

SIGNATURE

02 September 2021

DATE

CASE NO:50948/17

LEGODI, SETH

Plaintiff

ADVOCATE JANA VAN DER MERWE

(appointed to investigate the protection of funds)

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

BHoola AJ

INTRODUCTION

- [1] The plaintiff in this matter, Mr. Seth Legodi, a constable in the South African Police Services sued the defendant in terms of *the Road Accident Fund Act 56 of 1996 (Act)*, for bodily injuries sustained by him, whilst a passenger, in a motor vehicle collision which occurred on the 30th June 2014 on Brits Rosslyn Road, Makau, close to Brits, in North West Province.
- [2] On the 31st May 2021, the matter came before me. The matter stood down until the 2nd June 2021 for settlement negotiations between the plaintiff and the defendant. On the 2nd of June 2021, there was no appearance on behalf of the defendant. The defendant was initially represented, however, the defendant terminated its mandate with their panel of attorneys due to a policy decision for the defendant to deal with the claims and litigation arising therefrom internally without the assistance of the panel of attorneys. On the 31st July 2020, the defendant's attorneys withdrew as attorneys of record.
- [3] The plaintiff requested to testify by way of affidavit in support of his claim under Rules 39(1) and 38(2) of the Uniform Rules. The acceptance of evidence in this manner is congruent with an approach to balance the disposal of cases against minimizing the danger of spreading Coronavirus (Covid-19). I accordingly granted an order for the matter to proceed by way of affidavits and by way of default. There was no representation or evidence presented by the defendant.¹
- [4] In terms of a pre-trial held between the parties on the 29th October 2019 the following was admitted between the parties:
- (a) the defendant had already issued the plaintiff with a certificate in terms of section 17(4)(a) of the Road Accident Act, Ac 56 of 1996 as amended;
 - (b) quantum relating to the loss of earnings, past medical and hospital expenses, and general damages were postponed *sine die*.
 - (c) the hospital records of Brits Medi Clinic, clinical records of Dr. Moloisane - Ledwaba, Dr. Mashigo, Dr. E Scholtz, and Dr. Khubedu and the correctness of the content of the hospital or clinical records as well as the fact that the plaintiff received the treatment as stipulated in the records.
 - (d) time limits in terms of the Act and Regulations have been complied with;
 - (e) the Road Accident Fund (RAF) – claim forms and the reports by Dr. Smuts and Dr. Shevel were lodged with the defendant;
 - (f) the x-rays as well as the plaintiff's orthopedic surgeon's qualifications. Furthermore, the defendant does not object to the said orthopedic surgeon testifying regarding the x-rays and the interpretation thereof. Additionally,

¹ *Madibeng Local Municipality v Public Investment Corporation Ltd* 2018 (6) SA 55 (SCA) PER Plasket AJA (Ponnan JA, Wallis JA, Willis JA, and Makgoka AJA concurring), para 26 (page 60 G-H:

the diagnostic radiologist does not need to testify regarding the interpretation of the said x- rays;

- (g) plaintiff's employment contract, senior certificate, salary advice, a national certificate in policing, a certificate in crime prevention level 1, and certificate in tactical driving unless defendant's experts dispute the correctness of the content thereof;
 - (h) the correctness of plaintiff's quantum bundle save to the extent that defendant disputes;
 - (i) the schedule of past medical schedules and vouchers were provided in the amount of R19 571,04;
- [5] On the 25th August 2020, Advocate Jana Van der Merwe was appointed as *curatrix ad Litem* to investigate and manage the plaintiff's abilities, own affairs and to make recommendations as to whether a *curator bonis* and or whether a trust should be created to safeguard the plaintiff's financial and other interests.
- [6] At the trial before me the outstanding issues which remained for adjudication related to quantum. The plaintiff, following an amendment, claims a total of R5 970 000.00 in total, made up of the following heads of damages in its amended particulars of claim: R20 000.00 for past hospital expenses, R600 000.00 for estimated future expenses plaintiff claims, R650 000.00 for estimated past loss of earning or earning capacity, R3 200 000,00 for estimated future loss of earnings or earning capacity and R 1 500 000 in respect of general damages.
- [7] In terms of an order dated 28th January 2019, amongst others, the defendant was ordered to pay 100% of the plaintiff. Additionally, the defendant also offered an undertaking dated the 6th March 2017, to the plaintiff, assuming 100% liability for future medical and hospital expenses as encapsulated in section 17(4)(a) of the Act and was separated in terms of Rule 33(4) of the Uniform Rules of Court and the matter was postponed *sine die*.
- [8] There are joint minutes by the following expert witnesses, the Orthopaedic Surgeons, the Occupational Therapist, Drs Heyde, and de Bree whose report is dated 19th May 2020, as well as Industrial psychologists. Only the plaintiff obtained actuarial calculations.
- [9] The general injuries and sequelae of the plaintiff are that the plaintiff sustained a head injury with skull and facial injuries including a fracture of the frontal bone extending into the frontal sinuses, brain injury with resultant permanent irreversible organic brain syndrome and neuropsychological deficits, neck injury, lower back injury, multiple lacerations and serious permanent scars including

facial lacerations, the psychiatric or psychological insult that include post-traumatic stress syndrome and clinical depression.

PLAINTIFF'S EVIDENCE

- [10] The plaintiff was born on [.....]. He is accordingly 38 years of age and was 32 years of age at the time of the motor collision. The plaintiff was employed as a Constable by the South African Police Services at the time of the accident and is currently promoted to the rank of Sergeant.
- [11] The plaintiff served its RAF1 claim form on the defendant on 27th September 2016. According to paragraph 5(g) of the said claim form, most of the information was not completed and the plaintiff's response was "will follow". Dr. N. C Ngoben completed the claim form.
- [12] The plaintiff subsequently issued a summons on 24th July 2017 and pleaded amongst other things that he has been involved in the aforesaid motor collision and as a result of the motor collision he sustained neck whiplash and head injuries.
- [13] On the 15th September 2017, the defendant served two special pleas on the plaintiff requesting that the plaintiff's claim for general damages be dismissed for want of compliance of Section 17(1) and Regulation 3 of 2008 RAF Amendment Act, in that plaintiff failed to submit an RAF- 4 form justifying general damages. Since the merits have become 100% settled, the special plea will simply be dismissed with costs.
- [14] In its plea, the defendant essentially denied negligence and there was no plea of contributory negligence since the defendant was a passenger in a motor vehicle bearing registration JDL 181 NW at the time of the collision.
- [15] There was no replication filed by the plaintiff.
- [16] The plaintiff, without seeking the court's indulgence, amended its pleadings on the morning of the hearing and filed the plaintiff's affidavit. There was service upon the defendant. Although this is frowned upon, in the interest of justice and order not to escalate costs, unnecessarily I condoned the late filing of the affidavit and continued to hear the matter as it was not prejudicial to any of the parties. I say this for two reasons: Firstly, as the matter was previously before the court for the merits which were settled, and secondly, the amendment was effected as a result of all expert witnesses reports, which were not available to the plaintiff at the time of issue of summons.

- [17] In his affidavit, dated the 2nd June 2021 the plaintiff confirmed his third party claim as well as the bodily injuries that he sustained resulting from a motor collision. Additionally, he attested that he was examined by the experts that were appointed and he accepted the opinions expressed by the expert witnesses as his narrative. He, therefore, requested that the expert reports be incorporated into his affidavit.
- [18] The plaintiff also confirmed having received treatment from Brits Medi Clinic and that the said medical records belong to him. His evidence reveals that he does struggle physically and emotionally as a result of the injuries that he sustained in the motor collision. He confirmed the correctness, of all his documents relating to his studies, employment contracts, salary advice, and IRP5 forms. The plaintiff also indicated that he understood and accepted the establishment of the Trust.

Plaintiff's Injuries and Sequelae

- [19] The general injuries and sequelae of the plaintiff I can be summarised that the plaintiff sustained a head injury with skull and facial injuries including a fracture of the frontal bone extending into the frontal sinuses, brain injury with resultant permanent irreversible organic brain syndrome and neuropsychological deficits, neck injury, lower back injury, multiple lacerations and serious permanent scars including facial lacerations, the psychiatric or psychological insult that include post-traumatic stress syndrome and clinical depression. He was taken by ambulance from the scene of the accident to Brits Mediclinic Hospital and was discharged on the 7th July 2014. The plaintiff has no recall of the events at the scene of the accident because of the post-traumatic amnesia which lasted at least about 10 to 11 hours.

MEDICO-LEGAL EVIDENCE

- [20] The plaintiff provided the following affidavits in support of his case: Dr. Engelbrecht the Orthopaedic surgeon, Ms. Gerda Cilliers, the physiotherapist, Ms. Heyde, the Occupational therapist, Dr. Pretorious, the industrial psychologist, Dr. Mazabow the neuropsychologist, and Mr. Boshoff, from Munro Forensic Actuaries. All the affidavits were correctly and properly attested to.

Dr. Engelbrecht the Orthopaedic surgeon

- [21] Plaintiff consults with Dr. Piet Engelbrecht, the orthopedic surgeon, on 22nd September 2018. He expressed the opinion that there was no tenderness of the neck but a muscle spasm was noted. He also opined that muscle spasm and tenderness were noted in the lower lumbar spine. There was no loss of life

expectancy, the patient should be able to work until 65, the scars on the face will not be improved by further treatment and he noted a Whole Person Impairment (WPI) of 4%. He opined that future allowance must be made for a slight possibility of neck and soft tissue lumbar spine surgery.

- [22] He reveals that Mr. Mphuthi, the plaintiff's brain concussion of Plaintiff's Glasgow Coma Scale (GCS) was documented as 14/15 and dense post-traumatic amnesia, which can be considered as complicated. According to him, the plaintiff suffered from a complicated mild traumatic brain injury at the time of the accident. Which has contributed to residual neurocognitive deficits.
- [23] Dr. Engelbrecht also reports that Dr. M. Pillay, the neurosurgeon, reports that the plaintiff is at risk of developing delayed post-traumatic epilepsy 17 (seventeen times more than the general population and that any cognitive impairment, if present, will be permanent given the severity of the head injury and persistence of symptoms.
- [24] According to Dr. Engelbrecht Dr. Shevel, a psychiatrist diagnosed plaintiff with mild post-traumatic organic brain syndrome with a probable mild degree of frontal lobe dysfunction often show some limitation of insight and judgment which may still have a disastrous effect on levels of occupational and social functioning which results in impulsive unpredictable behaviour and it will be prudent for the plaintiff's firearm to be removed.

Ms. Cilliers the Physiotherapist

- [25] Ms. Gerda Cillier's, a registered physiotherapist, assessed the plaintiff on the 4th April 2019. She reported plaintiff was transported by ambulance and was unable to recall how the accident occurred save for the fact the truck lost control and collided with them She concluded the frontal headaches are due to the claimant's skull fracture, and even though the radiographs reported a normal cervical spine, he displays nerve root impingement. In so far as the lumbar spine was concerned, there was no nerve root impingement suspected. The plaintiff did present with soft tissue injury to his lumbar spine.

Ms van der Hyde the Occupational Therapist

- [26] Ms van der Hyde, the Occupational Therapist, assessed the plaintiff on the 20th March 2019 and concluded that residual effects of Post-Traumatic Stress Disorder (PTSD and Traumatic Brain Injury (TBI) have a significant impact on his personal and work-related functioning. She reported that the spine pain experienced will aggravate his work and have a negative impact on his work output. She reported that Dr. Shevel diagnosed the plaintiff with a mild post-traumatic organic Brain Syndrome with a probable mild degree of frontal lobe dysfunction. In so far as the plaintiff's residual work capacity is concerned he displayed strength to conduct medium demand level.
- [27] The Plastic and Reconstructive Surgeon, Dr. Pienaar, consulted with the plaintiff on 16th March 2021 and reported that the plaintiff retained facial scars due to the fracture of the frontal bone of the skull and described the plaintiff's injuries as follows
- "Over his mid-forehead, there is a 4 cm x 2 cm depressed scar and contour deformity due to a depressed skull fracture."*
- "Above that, there is a 1 cm scar and above his left eyebrow, there is a 1, 5 cm scar. They are irregular, visible, and very unsightly."*
- [28] According to Dr. Pienaar, the plaintiff qualified for general damages under the narrative test in terms of serious permanent disfigurement. He reported plaintiff's WPI was 10%, and the scarring caused social rejection and stigmatization which results in the plaintiff undergoing surgery and this would only bring about an improvement of 30%. He concluded that the plaintiff qualified for general damages based on Serious Permanent Disfigurement.
- [29] It is the consensus of the various experts who had examined the plaintiff that he ultimately suffered a mild to moderate traumatic brain injury. Following his examination of the plaintiff in March 2021, the Neuropsychologist, Dr. Mazabow, also diagnosed the plaintiff with moderate depressive mood disorder together with symptoms of post-traumatic anxiety which further impacts on plaintiff's concentration, processing speed, memory encoding, motivation, energy, frustration tolerance, self-confidence, and social interest.

Dr. Mazabow the Clinical Psychologist

- [30] According to Dr. Mazabow, the prognosis for treatment of the plaintiff's clinical psychological and neuropsychological disturbances is poor, and his current cognitive/behavioural and interpersonal status is likely to be permanent. According to him, post-accident the plaintiff's neuropsychological impairments

have manifested themselves in the following ways on the plaintiff's duties as a police officer:

- [30.1] The plaintiff's high irritability levels have resulted in complaints from colleagues and the public and he relies on his patrol partner to handle more sensitive duties because of his impatience.
- [30.2] The plaintiff has been highly aggressive with assault charges having been brought against him and all charges were dismissed.
- [30.3] Plaintiff had concentration problems during his clerical and administrative tasks and required the assistance of his juniors as he was prone to careless errors. In this regard, and somewhat alarmingly, the plaintiff also accidentally shot himself with his service pistol in 2018.
- [30.4] Plaintiff's concentration and memory problems manifested themselves while studying. This caused difficulties with focusing his attention and retaining information during a one-week Domestic Violence Management course in 2015.
- [30.5] Plaintiff's physical abilities have become limited as he was unable to run or drive long distances and experiences difficulty attending shooting practice because of his inability to stand in certain positions.
- [31] Dr. Mazabow, Dr. Shevel, and Ms van der Heyde all expressed the view that the plaintiff's firearm license should be withdrawn.
- [32] As a result, the plaintiff has been rendered a vulnerable employee and unequal competitor who is not suited to policing and therefore unlikely to further his career in the SAPS in any meaningful way.
- [33] The overall picture is therefore of a mild to moderate brain injury with significant and permanent neuropsychological impairments and a poor prognosis for recovery. Coupled with this chronic pain due to injuries to the cervical and lumbar spine and serious permanent facial scarring which will not fully be alleviated by surgery. (Defendant has previously conceded that Plaintiff qualifies for general damages. By letter from the defendant's previous attorneys.)

Dr. Pretorius the Industrial Psychologist

- [34] The crux of Dr. Pretorius's, the Industrial Psychologist's report, who consulted on 4th April 2019, was to evaluate the impact of the accident and related injuries on the plaintiff's physical and cognitive functioning to predict his educability, employment prospects, and earning potential assuming that the accident had not occurred and had regard to the consequences of the accident.

- [35] According to his opinion, the plaintiff was a Constable at the time of the motor collision in 2014, at Notch 3 with all the additional fringe benefits. After the accident, the plaintiff remained at Notch level 3 until 2017, when he was promoted to a Sergeant after which he has been earning at Notch Level 7.
- [36] According to the Industrial Psychologist, Mr. Pretorius, pre-accident the plaintiff would most likely have received the customary 3 yearly Notch increases available to members of the SAPS but with a promotion to the Warrant Officer in mid-2025. After the age of 40, the plaintiff would have remained in the capacity of a Warrant Officer until retirement age 60 whereafter, due to his experience in the SAPS, he would have been able to obtain contract work as a security officer from age 60 to 65. He is currently employed as a Sergeant and is currently remunerated R239 505,00 per annum which is R19 958,75 per month with additional benefits as indicated in the salary slips provided This salary is comparable to a notch 7 as per full-time salary notches 2019 salary scale.
- [37] But for the accident, the plaintiff was a constable on notch level 3 earning R143 685.00 per annum. In 2017, he received a promotion to sergeant earning R235 965 plus benefits. He would have been promoted to a warrant officer in 2025 and earned R295, 905.00 and after age 43 he would have increased up to top-notch of R360 012.00 plus benefits at 60 he would have had inflation-related growth.
- [38] Having regard to the accident, he reported that the plaintiff will only remain a Sergeant with a three-yearly notch increase due to the Organic Brain Syndrome, which is permanent and irreversible, frontal lobe dysfunction which may result in limitation of judgment and insight. As a result of the frontal lobe dysfunction, his behaviour can be impulsive and unpredictable and due to his psychiatric diagnosis and cognitive difficulties, he will be prone to negligent mistakes, and that he works under supervision.
- [39] In the post-accident scenario, Mr. Pretorius firstly expresses the view that the plaintiff should be moved to an office-based work environment to prevent error or negligent mistakes due to the psychiatric diagnosis of a Post-Traumatic Organic Brain Syndrome which may have a disastrous effect on his occupational functioning. Added to this, he is of the view that the plaintiff's firearm should be withdrawn.
- [40] Having had regard to the numerous earnings vulnerabilities he concludes that, the post-accident, plaintiff will *"...at best in a highly optimistic postulation (assuming continued sympathetic accommodation and effective treatment), only remain in his capacity as a Sergeant, with 3 yearly Notch increases (until he reaches the top-notch of sergeant,), then only inflationary increases to early retirement age (in optimistic postulation to early retirement age of 55 years when SAPS members can apply for early pension.)"*

- [41] Mr. Pretorius also opines that "appropriate (probably substantial) higher post-accident contingencies" should be applied given the various impairments listed by the various experts. In determining the percentage differential to be applied in this regard, Mr. Pretorius refers to the research of the actuary Mr. Gregory Whittaker, which indicates that a "higher" contingency deduction generally implies a 20% differential and "substantially higher" a 35% differential.
- [42] Munro forensic actuaries provide that the basis of the claim is that the plaintiff is not expected to reach the suggested pre-accident career potential. He postulates that plaintiff's capital loss of earnings whereby plaintiff's uninjured earnings are R7390 200 less 15% contingencies equals R6281 670,00 and plaintiff's injured earnings are R6 698 400 less 45% contingencies equal R3684 120 which results in plaintiffs total loss of earnings being R2 597 550.

ISSUES IN DISPUTE

- [43] The issues in dispute to be determined by this court are:
- [43.1] Whether the special plea regarding non-compliance with Section 17(1A) of the Act read with Regulation 3 of the Road Accident Fund Amendment whereby the plaintiff failed to provide the RAF with an RAF-4 form should be upheld?
- [43.2] Did the plaintiff discharge the onus on a preponderance of probabilities in so far as the determination of quantum for past hospital and medical expenses;
- [43.3] Did the plaintiff discharge the onus on a preponderance of probabilities in so far as the determination of general damages; which is dependant only if the special plea is dismissed;
- [43.4] Did the plaintiff discharge the onus on a preponderance of probabilities in so the determination of past and future loss of income;

LAW

Special plea in respect of non-compliance with Section 17(1A) of Act and Regulation 3 of the Road Accident Amendment Act of 2008.

- [44] The defendant raised a special plea to the effect that its obligation concerning non-pecuniary loss (i.e. general damages) was consequent upon the injuries sustained by the plaintiff has to be “*serious*” and the plaintiff had to complete and submit the RAF 4 form.
- [45] Since the defendant conceded liability of 50% of the plaintiff's proven or agreed damages, I do not see the relevance of restating the law relating to general damages save to say the relevant provisions are the provision in section 17(1) of the Act, paying careful attention to subsection (1A) read with Regulation 3 of the Act.

Past hospital and medical expenses

- [46] A Claimant is entitled to claim all the medical and hospital expenses reasonably incurred for purposes of effecting a cure, or all reasonable costs incurred in mitigating the amount.²
- [47] According to the author Klopper³, reasonableness means that the claimant must be sufficiently compensated for the injury suffered, but conversely, this implies that an inordinately high award should not unnecessarily burden the defendant. What this means in practical terms is that the claimant must demonstrate that he acted reasonably under the prevailing circumstances in incurring such costs or submitting himself or herself to a particular medical treatment or procedure.

Future hospital and medical expenses

- [48] The practice of quantifying future medical expenses has now largely fallen away as the standard procedure now is to furnish an undertaking in terms of section

² Potgieter et al. *Law of Damages* 456

³ *Third-Party Compensation* 146

17(4)(a) to cover these expenses. In terms of Section 17(4)(a) of Road Accident Fund Act, 56 of 1996 (Act) as amended,

"(a) includes a claim for the cost of the future accommodation of any person in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods...the Fund...shall be entitled, after furnishing the third party concerned with an Undertaking to that effect or a competent court has directed the Fund or the agent to furnish such Undertaking to compensate (i) the third party in respect of the said costs after the costs have been incurred and on proof thereof; or (ii) the provider of such service or treatment directly and notwithstanding Section 19(c)(d)."

[49] If the defendant offers the aforesaid undertaking, the court generally makes it an order of the court for completeness.

General Damages

[50] General damages include a person's physical integrity, pain and suffering, emotional shock, disfigurement, a reduced life expectancy, and loss of life amenities.

[51] The case of *Hendricks v President Insurance*⁴ and the authors *Visser and Potgieter Skadevergoedingsreg* (2003) 97 provide that the nature of the general damages to be awarded make quantifying the award a complex task. This is because of the personal, non-pecuniary, and subjective nature of these interests, which make it difficult to quantify, but remains recoverable.⁵

[52] To qualify as a serious injury three steps must be undertaken by the medical practitioner. Firstly, to apply the non-serious injury criteria list; secondly, the methodology is contained in the *American Medical Association's Guides to the Evaluation of Permanent Impairment* (AMA Guide); and thirdly, the methodology

⁴ 1993 (3) SA 158 C

⁵ *Hendricks v President Insurance* 1993 (3) SA 158 (C); *Visser & Potgieter Skadevergoedingsreg* (2003) 101105.

as set out in the narrative test. In this matter, the plaintiff crossed the threshold of meeting the requirements of "*serious damages*" by the expert reports.

- [53] The plaintiff in the *De Jongh*⁶ matter sustained a head injury consisting of extensive fragmented fractures of the frontal skull extending into the orbits (eye sockets) and the zygomatic arches -cheekbones, as well as the jaw, causing extradural haematoma which led to unconsciousness and which had to be surgically removed. Importantly, in this matter the SCA, quoting Holmes J, also pointed out the following fundamental principle relative to the award of general damages:

"that the award should be fair to both sides, it must give just compensation to the plaintiff, but not pour largesse from the horn of plenty at the defendants' expense."

- [54] In *Mashigo v Road Accident Fund*⁷ Mr. Justice Davis summarises the well-known approach to general damages and the use of previous comparable awards as follows:

"[10] A claim for general or non-patrimonial damages requires an assessment of the plaintiff's pain and suffering, disfigurement, permanent disability, and loss of amenities of life and attaching a monetary value thereto. The exercise is, by its very nature; both difficult and discretionary with wide-ranging permutations. As will be illustrated herein later, it is very difficult if not impossible to find a case on all four with the one to be decided. The oft-quoted case of Southern Insurance Association v Bailey NO 1984 (1) SA 98 AD confirmed that even the Supreme Court of Appeal had difficulties in laying down rules as to how the problem of an award for general damages should be approached. The accepted approach is the "flexible one" described in Sandler v Wholesale Coal Suppliers Ltd 1941 AD 194 at 199, namely: the submissions were "The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending on the Judge's view of what is fair in all the circumstances of the case".

[11] Of course, awards in cases that show at least some similarities or comparisons are useful guides, taking into account the current value of such awards to accommodate the decreasing value of money. See inter alia: SA Eagle Insurance Co v Hartley [1990] ZASCA 106; 1990 (4) SA 833 (A) at 841 D and the practical work of The Quantum Yearbook by

⁶ 2005(5) SA 547

⁷ (2120/2014) [2018] ZAGPPHC 539 (13 June 2018)

Robert J Koch which includes tables of general damages awards annually updated to cater for inflation.

[12] In respect of the issue of comparable cases and the guidance provided thereby, the Supreme Court of Appeal has stated in Protea Assurance co Ltd v Lamb 1971 SA 530 at 536 A - B: "Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time, it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration".

[55] The court in these cases has discretion. However, this discretion is not restrained by a relentless tariff drawn from previous similar awards. When assessing such damages the factors must be considered in totality. Naturally, courts are assisted by sufficiently comparable case law which can be used as a yardstick to assist the court in arriving at an appropriate award.

[56] Counsel referred me to several comparable cases enlisted below. However, each case must be adjudicated on its own merits within the overarching maxim of *stare decisis*. In the case Van Heerden J in *Dikeni v Road Accident Fund*⁸ stated

"Although these cases have been of assistance, it is trite law that each case must be adjudicated upon on its own merits and no one case is factually the same as another..... previous awards only offer guidance in the assessment of general damages."

Loss of Earnings

[57] Future loss of earnings may comprise one of two categories: Firstly, where the plaintiff is away from work to receive treatment, and secondly, whereas a result

⁸ 2002 C&B (Vol 5) at B4 171

of the injury sustained in the accident the plaintiff would suffer a loss in earning capacity as he is now not able to do certain types of work.

[58] It is accepted that earning capacity may constitute an asset in a person's patrimonial estate. If loss of earnings is proven the loss may be compensated if it is quantifiable as a diminution in the value of the estate.⁹ It must be noted, a physical disability that impacts the capacity to an income does not, on its own, reduce the patrimony of an injured person. It is incumbent on the plaintiff to prove that the reduction of the income-earning capacity will result in actual loss of income.¹⁰

[59] In quantifying such a claim an actuary is often used to make actuarial calculations based on proven facts and realistic assumptions regarding the future. The role of the actuary is to guide the court in the calculations to be made. Relying on its wide judicial discretion the court will have the final say regarding the correctness of the assumptions on which these calculations are based. The court should give detailed reasons if any assumptions or parts of the calculations made by the actuary are rejected. It must be borne in mind that the actuary depends on the report of the industrial psychologists, who in turn are dependent on the information provided by the claimant.

[60] In *Dippenaar v Shield Insurance Co Ltd*¹¹ where the following was said at 917A-D:

'In our law, under the lex Aquilia, the defendant must make good the difference between the value of the plaintiff's estate after the commission of the delict and the value it would have had if the delict had not been committed. The capacity to earn money is considered to be part of a person's estate and the loss or impairment of that capacity constitutes a loss, if such loss diminishes the estate.'

[61] The court, in the case of *Road Accident Fund v Guedes*¹² at paragraph [9] referred with approval to *The Quantum Yearbook*, by the learned author Dr. R.J. Koch, under the heading '*General Contingencies*', where it states that:

⁹ *Prinsloo v Road Accident Fund* 2009 5 SA 406 (SECLD) at 409C-41A

¹⁰ *Rudman v Road Accident Fund* 2003 (2) SA 234 (SCA) at para 11, *Union and National Insurance Co Limited v Coetzee* 1970 (1) SA 295 (A) AT 300A.

¹¹ 1979 2 SA 904 (A)

“...[when] assessing damages for loss of earnings or support, it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is the prerogative of the Court...” [my emphasis]

[62] The percentage of the contingency deduction depends upon many factors and ranges between 5% and 50%, depending upon the facts of the case¹³.

[63] The importance of applying actuarial calculations and their advantages were discussed in the case of *Southern Insurance Association v Bailey NO*¹⁴ where the court referred with approval to the case of *Hersman v Shapiro and Company*¹⁵ at 379 per Stratford J where the following was said:

‘Monetary damage having been suffered, it is necessary for the Court to assess the amount and make the best use it can of the evidence before it. There are cases where the assessment by the Court is little more than an estimate; but even so, if it is certain that pecuniary damage has been suffered, the Court is bound to award damages.’

“Any inquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs, or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.”

[64] Ultimately, the award for future loss of income must be based on good medical evidence and corroborating facts. There must be some reasonable basis for arriving at a particular figure. In the event of a mathematical approach, one has to first work out what the third party's earnings would have been but for the accident (that is if the accident had not occurred), and secondly, one has to calculate what the plaintiff's earnings are now that the collision has occurred (having regard to the accident) and the difference between these two amounts will then represent the loss.¹⁶

¹² 2006 (5) SA 583 (SCA)

¹³ . (See *AA Mutual Association Ltd v Maqula* 1978(1) SA 805 (A) 812, *De Jongh v Gunther* 1975(4) SA 78 (W) 81, 83, 84D, *Goodall* (supra), and *Van der Plaats v SA Mutual Fire & General Insurance Co Ltd* 1980(3) SA 105(A) 114-115A-D)

¹⁴ 1984 1 SA 98.

¹⁵ 1926 TPD 367.

¹⁶ *Potchefstroom Electronic Law Journal (PELJ) On-line version ISSN 1727-3781, PER vol.18 n.7 Potchefstroom 2015*

[65] In *S v Mthethwa*¹⁷ the court, in dealing with the limitations of the opinions of experts, and with reference to *Goldie v City Council of Johannesburg*¹⁸ stated as follows:

“The weight attached to the testimony of the psychiatric expert witness is inextricably linked to the reliability of the subject in question. Where the subject is discredited the evidence of the expert witness who had relied on what he was told by the subject would be of no value”.

*[22] In the same vein, in the oft-cited English decision of R v Turner*¹⁹ *Lawton LJ found:*

“...that the report put forward by the defendant as to his psychological condition and specifically his susceptibility to provocation contained hearsay character evidence which was inadmissible”. He stated further that “[B]efore a court can assess the value of an opinion it must know the facts upon which it is based. If the expert has been misinformed about the facts or has considered irrelevant facts or has omitted to consider relevant ones, the opinion is likely to be valueless”

[66] The principle regarding the calculation of loss of earnings is to place the claimant in the position he would have been in had the accident not occurred, because he must mitigate his damages. This is regulated by section 17(4)(c). Past loss of earnings will be the losses incurred up to the date of the trial in a litigated matter or up to the date of settlement if settled at the claim stage.

[67] In *Mlotshwa v RAF*,²⁰ Petersen AJ granted absolution from the instance. In this, the plaintiff provided no proof of any bank statements to prove his income and he was not registered for income tax purposes with the South African Revenue Service (SARS). In this case, he quoted *Terblanche v Minister of Safety and Security and Another* at para 14²¹ - stated

“ [18] I agree with the salutary practice proposed in the above-quoted paragraphs of Bailey. It has mustered approval in numerous judicial pronouncements and is widely accepted as the best practice available. I wish to add, however, what the learned judge said further on page 379, which is omitted in Bailey. The two sentences which follow immediately upon the quote in Bailey are apposite:

¹⁷ [2017] ZAWCHC 28 at [98]

¹⁸ 1948 (2) SA 913 (W) at 920

¹⁹ [1975] 1 All ER 70.

²⁰ (9269/2014) [2017] ZAGPPHC 109 (29 March 2017)

²¹ 2016 (2) SA 109 (SCA)

"...It is not so bound in the case where evidence is available to the plaintiff which he has not produced; in those circumstances, the Court is justified in giving, and does give, absolution from the instance. But where the best evidence available has been produced, though it is not entirely of a conclusive character and does not permit of a mathematical calculation of the damage suffered, still, if it is the best evidence available, the Court must use it and arrive at a conclusion based on it."

APPLICATION OF LAW TO FACTS

[68] It is important to note the following was agreed upon between the parties in respect to the pre-trial conference held between the parties on 29th October 2019:

[68.1] The defendant conceded 100% of the plaintiff's proven or agreed damages.

[68.2] There is a causal link in that the injuries sustained are a result of a motor collision.

[68.3] That the defendant has already issued the plaintiff with a certificate in terms of section 17(4) of the Act for future medical and hospital expenses.

[68.4] In so far as general damages plaintiff lodged RAF -4 assessments by Dr. Smuts and Dr. Shevel

[68.5] In so far as loss of earnings is concerned, the defendant admits the plaintiff's employment contract, senior certificate, salary advice, national certificate policing, a certificate in crime prevention level1, and certificate in tactical driving.

[68.6] Defendant admits vouchers in the sum of R19 571.04 (nineteen thousand five hundred seventy-one rand and four cents) were provided and were submitted to bill review.

[69] Section 15 of the Civil Proceedings Evidence Act 25 of 1965 ("Civil Proceedings Evidence Act") provides that:

"It shall not be necessary for any party in any civil proceedings to prove nor shall it be competent for any such party to disprove any fact admitted on the record of such proceedings."

Past Medical Expenses

[70] Under this head of damages, the plaintiff claims an amount of R 20 000.00 (twenty thousand rands) for past hospital expenses. He submitted a computation

of all the vouches in accordance with the schedules, amount to a total of R19 571.04 (nineteen thousand five hundred seventy-one rand and four cents) of which R12 076.96 (twelve thousand seventy-six rand and ninety-six cents) has already been conceded. I see no reason as to why the plaintiff should not be reimbursed for his past medical expenses.

[71] From the perusal of the schedule, it appears to be that the plaintiff's expenses can be broken down as follows: R9 769.57 (nine thousand seven hundred sixty-nine rand and fifty-seven cents) for hospital expenses, R400.00 (four hundred) for medical expenses, and R9 401. 47 (nine thousand four hundred one rand and forty-seven cents) for medication. This gives a total amount for past medical expenses as R19 571.04 (nineteen thousand five hundred seventy-one rand and four cents).

[72] The Bill Review department of the defendant has conceded liability to the extent of R 12 076 .96 (twelve thousand seventy-six rand and ninety-six cents).

[73] Dr. Engelbrecht, who was provided with the past medical expenses was required to express an opinion as to whether the plaintiff's past medical expenses were necessary, fair, and reasonable. He expressed an opinion that certain items were unnecessary and a few were duplicated which he enlisted by the relevant page numbers. Except for the identified vouchers, he was of the view that the past medical expenses were both fair and reasonable.

[74] Computation of all the vouches in accordance with the schedules amount to a total of R19 571.04 (nineteen thousand five hundred seventy-one rand and four cents) of which R12 076.96 (twelve thousand seventy-six rand and ninety-six cents). has already been conceded. I see no reason as to why the plaintiff should not be reimbursed for his past medical expenses.

[75] I am of the view that since there were no reasons advanced by the plaintiff as to whether the suggested settlement offer by the defendant was unacceptable except for the submissions made by Dr. Engelbrecht and in light of the draft order reflecting the amount as suggested by the defendant, I find that the past medical expenses are fair and reasonable in the amount of 12 076.96. I accept that the plaintiff's version in this head of damage is credible and reliable. Plaintiff has discharged the onus on a preponderance of probabilities.

Future Hospital and Medical Expenses

- [76] According to the pre-trial minute, the issue of future hospital and medical issues have become settled and the defendant provided the plaintiff with an undertaking to the plaintiff in terms of section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996, as amended and this issue has become settled.

General Damages

- [77] I turn now to the quantum of the general damages sustained by the plaintiff. The plaintiff's counsel suggested that a sum of R600 000.00 (six hundred thousand rands) is fair, reasonable, and just under this head of damage. The parties, in this matter, agreed that the plaintiff was entitled to be compensated 100% of the proved or agreed general damages. What they were not agreed about was the amount that will be fair and reasonable taking into account the injuries sustained by the plaintiff.
- [78] In this matter, the plaintiff crossed the threshold of meeting the requirements of "*serious damages*" by the application of step three (*viz.* the Narrative Test).
- [79] In so far as general damages plaintiff lodged RAF -4 assessments by Dr. Smuts and Dr. Shevel which were admitted by the defendant. According to Dr. Smuts's report, he believes that the impact of the head injury constitutes a significant concussive head and brain injury, and therefore given the possible cognitive and emotional disabilities that the funds needed protection.
- [80] Plaintiff's injuries according to Dr. Pillay, Dr. Smuts, and Dr. Shevel can be summed up as brain injury with resultant permanent and irreversible organic brain syndrome and neuropsychological deficits. Dr. Engelbrecht's findings of the neck, post skull, and facial fractures including a fracture of the frontal bone extending into the frontal sinus in accordance with the radiological reports, including multiple lacerations and serious permanent scarring of facial lacerations. Plaintiff's injuries according to RAF-4 form, completed by Dr. Smuts reveals did not result in a Whole Person Impairment (WPI) of 30 % according to narrative with serious long-term impairment or loss of body function, permanent serious disfigurement, and severe long-term mental or severe long term behavioural disturbance or disorder. Dr. Shevel highlights the plaintiff's justified shootout incidents in 2013 and 2018 which mentally and emotionally affected the plaintiff. He estimated a WPI of 15% and if orthopedic injuries are considered would add 15%. Concerning the Narrative test, the plaintiff has clinically mild symptoms and for his firearm license to be suspended and was of the view the plaintiff qualified for serious injury award because of serious long-term impairment.
- [81] I have also considered the reports relating to scars and disfigurement on the central area of the forehead which has healed, The plaintiff had a burn wound on

his left forearm, and right lower leg bullet wounds sustained on 12th August 2018 which are not accident-related. After the motor collision but before consultation with the experts, that there is also no tenderness to the neck but spasms exist.

- [82] Counsel refers me to comparable cases and argues that an amount of R 600 000,00 should be awarded to the plaintiff for his general damages

Comparable cases

- [83] In the case of *Makupula v RAF* 2010 (6) QOD B4-48 (ECM), the plaintiff was a [...] -year old boy who sustained a mild to moderate brain injury, with neurocognitive deficits, hyperactivity disorder, memory dysfunction, uncooperative and aggressive behaviour, poor concentration, poor executive functioning, and school performance. In present term values, the award for general damages is valued at R517 000-00. In comparison to this case, the plaintiff before me sustained injuries to the head, neck left shoulders resulting in scarring. He reports lower back pain and feelings of depression, moodiness, and concentration difficulties. The facts are very similar when a comparison is done.
- [84] In the case of *Vukeya v RAF* 2014 (7B4) QOD 1 (KZP) the plaintiff was a [...] year old female, with a mild to moderate frontal brain injury, as well as orthopaedic injuries, whiplash, a lower back injury, fracture of a metacarpal bone in the left hand and soft tissue injury to the leg. Her mathematical and short-term memory was affected, she had chronic headaches and depression. In present terms, her award is valued at R568 000-00. Although some similarities exist in so far as the injuries are concerned, the plaintiff in the matter before me sustained fractures to the skull and facial bones.
- [85] In the case of *Modan v RAF* 2012 (6A4) QOD 123 (GSJ), the plaintiff was a [...] year old girl who sustained a concussive brain injury, a fractured nasal bone, and a soft tissue injury to the forehead with scalp haematoma. The neurocognitive and neuropsychological sequelae comprised of attention and concentration difficulties, headaches, behavioural and emotional difficulties. The child's academic performance was affected as was the child's future level of earnings. In present term values, the award is valued at R574 000-00. The plaintiff in the matter before me sustained a mild to moderate brain injury, neck injury, and left shoulder upper arm injuries which make the injuries sustained very similar to these facts.
- [86] In *Mashigo v RAF* [2018] ZAGPPHC 539 (13 June 2018) The plaintiff sustained injuries to the wrist and the knee that were, orthopaedically speaking, relatively minor, and the scarring in particular of the plaintiff's breasts constituted the primary source of the claim for damages. The plastic and reconstructive surgeon described the scarring as follows: as disfiguring scar measuring 180 mm x 20

mm on the anterior aspect of the left breast covering the lower medial and upper quadrants and extending onto the outer quadrant of the breast. It has a hypertrophic margin and the center of the scar is depigmented. There is a similar scar measuring 100mm by 25 mm running transversely across the surface of the right breast. It also has a hypertrophic margin with a depigmented center. The scars to the arms are similarly 10 cm or longer each and are hypertrophic or post abrasion in nature but they are hyper pigmented. The scars on the breasts were large and unsightly as could be seen from photographs produced. The present value award was R508 000. In the matter before me. Plaintiff's facial scars were due to the fracture of the frontal bone of the skull. The Plastic and Reconstructive Surgeon, Dr. Pienaar, describes these scars as follows¹ "Over his mid-forehead, there is a 4 cm x 2 cm depressed scar and contour deformity due to a depressed skull fracture." "Above that, there is a 1 cm scar and above his left eyebrow, there is a 1, 5 cm scar. They are irregular, visible, and very unsightly." Here too plaintiff's scarring is not as serious comparatively.

[87] However, I must exercise my discretion when considering the award to be made and in doing so, I have had regard to the findings in the matter of *De Jongh v Du Pisanie NO* (2004] 2 All SA 565 SCA, where the Court reduced the award of the Court *a quo* from R400 000.00 to an amount of R250 000.00 for a head injury as paragraph 65 of that judgment where the court noted the tendency to award high amounts and cautioned against same as it was not mathematically accurate. The fundamental principle is the court must ensure the award is fair to both sides.

[88] Of equal importance, is the view expressed in *Hully v Cox* 1923 AD 234 at 246 where it was stated that:

"We cannot allow our sympathy for the claimants in this very distressing case to influence our judgment."

[89] I have a wide discretion to award what I consider to be fair and reasonable compensation to the plaintiff. Such discretion may be exercised with the guidance of previous awards made in comparable cases provided to me by the plaintiff. The use of comparable cases is not a hard and fast rule that should be strictly applied. Two cases can never be the same, hence the need for judicial adjudicative in cases for General Damages²².

[90] I have considered the injuries sustained by the plaintiff, as well as the previous awards granted in the comparable cases I was referred to were the sequelae relating to brain injuries resulting in discomfort, pain, and suffering caused to the plaintiff. I find that a fair, and reasonable award for general damages is am of the view that the amount of R500 000.00 (five hundred thousand rands) in

²² *RAF v Marunga* 2003 (5) SA 165 (SCA) 19 G - H.

respect of this head of general damages is fair, reasonable, and justified. The plaintiff has discharged the onus on a preponderance of probabilities under this head of damages.

Loss of income and earnings

- [91] Under this head of damages, the plaintiff's counsel argues for an amount of R 3 155 200.00, (three million one hundred fifty-five thousand, two hundred rands)
- [92] He referred me to the research conducted by Mr. Pretorius where Gregory Whittaker, which indicates that a "higher" contingency deduction generally implies a 20% differential and "substantially higher" a 35% differential.
- [93] In this regard, he referred me to the judgment in the matter of *Lighthelm v RAF*²³ par [35] where a similar expert opinion was expressed that a "substantially higher" post-accident contingency ought to be applied. Having heard evidence from the Industrial Psychologist in that matter that "substantially higher" would imply a differential "over 30%" the court ultimately applied a 40% contingency differential (i.e., 15% pre and 55% post).
- [94] In determining quantum, the two important expert reports that play a key role in these calculations are the Industrial Psychologist and the Actuary. It is important to understand that Industrial Psychologists provide their expert opinions on how employees within an organisation relate to their work environment. The findings of an Industrial Psychologist are of paramount importance because the Actuary assessment is determined from this report. In compiling the report, the Industrial Psychologist relies on the findings of all other expert witnesses to postulate his opinion regarding the performance of the plaintiff in the work environment and his ability to compete in the work market. The experts in turn receive their information directly from the plaintiff.
- [95] I have summarised the plaintiff's pre and post morbidity under the plaintiff's evidence. Pre- morbidity, the plaintiff would most likely

²³ [2014] ZAGPPHC 149

Pre-morbidly

- [96] The plaintiff was employed by the South African Police Services as a Constable, earning an amount of R143 685.00 per annum including other fringe benefits as a Constable, and would have received a promotion to a Sergeant in 2017, earning an amount of R207 654 including other fringe benefits. His salary would have progressed with usually Notch increases. He would in all likelihood have secured a promotion to the rank of Warrant Officer after eight consecutive years, in his position as Sergeant and his earnings would be R295 905.00 per annum plus additional benefits. He would remain as a Warrant Officer for the remainder of his career and continue to receive his increases after every three years. He would receive earnings of R360 012.00 at the age of 58 and thereafter inflationary increases up to the age of sixty. After the age of sixty (60), he would probably have secured earnings for 5 years in the private security sector earning R186 000.00 per annum according to Kock 2020 values.

Post -morbidity

- [97] Considering the opinions provided by the various expert witnesses, and the nature and consequences of his injuries, the plaintiff is has been promoted at his work and will continue to be promoted considering promotion is based on time served and not on qualifications up to the rank of Warrant Officer. Considering the injuries sustained resulting from the accident, especially relating to Traumatic Brain Injury combined with cognitive behavioural and interpersonal disturbances, depressive mood disorder, and anxiety, is likely to only remain in the position of a Sergeant until the age of 55 as suggested by Dr. Pretorious.

Pre-morbid contingencies

- [98] According to Munro Actuaries, the plaintiff did not suffer any past loss of earnings and I accept that.
- [99] The plaintiff has suggested a pre-morbid future contingency of 15%. I am of the view that the pre-morbid future contingency should remain at 15% for the following reasons:
- [99.1] It would not have been possible for the plaintiff to secure any further promotion than a Warrant Officer, because any further position would warrant further studies and qualifications, which the plaintiff does not possess.
- [99.2] I have also considered the pre-existing psychological vulnerabilities and the trauma of the shoot outs before the motor collision which would most certainly impact his performance at work.

- [99.3] The plaintiff has a secure job that is stable and there are various options available in his employment to enable him to do light sedentary work.
- [99.4] I have considered the conflicting views regarding the plaintiff's work experience from collateral witnesses Colonel Sefike and Sergeant Kunda and the fact that Colonel Sefika is the plaintiff's senior and Sergeant Kunda is his contemporary.
- [99.5] I have considered that plaintiff's impulsiveness, aggression, and irrationality would arise from the previous experiences at work which would have contributed to the psychological vulnerability.

Post morbid Contingencies

- [100] I have considered factors regarding post morbid future contingency deduction and I have also considered the decision of *Prinsloo v Road Accident Fund* ²⁴ . This case is distinguishable from the above case in that the defendant tendered evidence in that matter and there is no evidence rebutting the plaintiff's version. . In the matter before me I only have the plaintiff's version and what was agreed upon upon upon at the pre-trial conference. There is no reason to not to accept such evidence. Furthermore, each case must be decided on its own merits and the injuries are also distinguishable. The plaintiff in the matter before me has physical, neurocognitive, and scarring that has changed his life tremendously. I cannot find any reason to differ with the actuary in this matter. The plaintiff has discharged the onus placed on him on a preponderance of probabilities.

RULING

- [101] I am satisfied that when I consider the case in its totality, the overall burden has been discharged by the plaintiff.
- [102] Concerning costs, the general rule in matters of costs is that the successful party should be given his costs, and this should not be departed from except where there are good grounds to do so.²⁵ I cannot find any reason why I should deviate from this general rule and I accordingly award costs in favour of the plaintiff against the defendant.

²⁴ CA 139/2009/[2010] ZAECHC9 (25 February 2010

²⁵ *Myers v Abramson* 1951(3) SA 438 (C) at 455

ORDER

[103] In a result, I make the following order

[103.1] The plaintiff's special plea is dismissed with costs.

103.2] Defendant is ordered to pay to the plaintiff by way of delictual damages within the amount of R3 667 276.96 (three million six hundred sixty-seven thousand two hundred seventy-six rands and ninety-six cents)

[103.3] The judgment amount stipulated in paragraph 1 above consists of the following:

(i) R500 000.00 (five zero zero zero zero zero rands) in respect of general damages.

(ii) R3 155 200.00 (three million one hundred fifty-five thousand rands) in respect of loss of earnings.

(iii) R12 076.96 (one-two zero seven six rands nine six cents) in respect of past medical and hospital expenses.

[104.4] Should Defendant not pay the judgment amount, or any portion thereof, within the aforesaid 180 calendar days, interest (to be calculated at the applicable statutory mora rate of interest) will accrue on the capital amount then outstanding to be calculated from 14 days from the date of this order until date of final payment.

[104.4]. Payment of the plaintiff's costs of suit, including the reasonable costs of all medico-legal reports obtained by the plaintiff, and the preparation, qualifying fees, and court attendance fees of plaintiff's expert witnesses.

[104.5] The costs of the *Curatrix ad Litem* and the costs occasioned by the preparation of her report, as well as her attendance at the virtual hearing of 2 June 2021.

[104.6] It is hereby ordered that a trust is to be formed to safeguard the capital award payable in terms of this order in favour of Plaintiff, the trust deed to such trust to be worded in accordance with the draft trust deed, Annexure "XX" hereto, subject to what follows:

(i) It is declared that Mrs. TAMMY-JEAN VAN JAARSVELD (hereinafter referred to as "the trustee") is hereby appointed as the trustee of the proposed trust.

(ii) The undertaking in terms of section 17(4)(a) of Act 56 of 1996, previously provided to Plaintiff and dated 6 March 2017 shall be administered by the trustee.

- (iii) The defendant shall pay 100% of the reasonable fees and costs of the trust/trustee from time to time, including the costs of providing security to the satisfaction of the Master, such costs to be payable in terms of the above undertaking in terms of section 17(4)(a), with the proviso that the fees of the trustee will be limited to and not exceed the fees prescribed in respect of a curatrix bonis appointed in terms of the Administration of Estates Act, Act 66 of 1965 (as amended).
- (iv) The trustee is required to comply with all directives of the Master and any other lawful directives regarding the furnishing of security.

[104.6] All payments of the plaintiff's capital and legal costs are to be made by paying the amount(s) and taxed or agreed on costs to the credit of the Trust account of Salomé Le Roux Attorneys, the detail of which is as follows:

SALOMÉ LE ROUX ATTORNEYS
BANK: THE STANDARD BANK OF SOUTH AFRICA
BRANCH: PRETORIA, CHURCH SQUARE
BRANCH CODE: 01-00-45-00
ACCOUNT NUMBER: [...]
ACCOUNT HOLDER: SALOMÉ LE ROUX TRUST ACCOUNT
TYPE OF ACCOUNT: TRUST CHEQUE ACCOUNT
REF: M0750

[104.7] The plaintiff's claim is not subject to a Contingency Fee Agreement.



C. B. Bhoola
Acting Judge of the
High Court of South Africa
Gauteng Division, Pretoria

Delivered: This judgment was prepared and authored by the Judges whose names are reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on

CaseLines. The date for hand-down is deemed to be 2nd September 2021.

APPEARANCES

Counsel for the Applicant : Advocate C van Jaarsveld
Instructed by : S Le Roux, Attorneys for Plaintiff
Counsel for the Respondent : None
Defendant : ROAD ACCIDENT FUND
Date of Hearing : 02 June 2021
Date of Judgment : 02 September 2021