



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

**CASE NO: 49658/2018**

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

**15 MARCH 2022**

**Date**

\_\_\_\_\_  
**K. La M Manamela**

In the matter between:

**CLEMENT KATALI MALANGABE**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

**DATE OF JUDGMENT:** This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be 10h00 on **15 MARCH 2022**.

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## JUDGMENT

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**KHASHANE MANAMELA, AJ**

### *Introduction*

[1] The plaintiff, Mr Clement Katali Malangabe, was injured in a motor vehicle accident on or about 23 August 2009. He was a passenger in the motor vehicle whose driver lost control thereof before it overturned. There was no other motor vehicle involved. According to the plaintiff the negligent driving of the driver of the motor vehicle was the sole cause of the accident. Due to the accident the plaintiff sustained injuries (including to his head or skull) and, among others, experienced pain and suffering, loss of amenities of life, and disability. As a result of the injuries and their *sequelae* the plaintiff suffered damages in the form of future loss of earnings or earning capacity, future medical expenses and general damages. The plaintiff issued summons against the Road Accident Fund (RAF) in July 2018. He claimed, among others, the amount of R2,5 million as damages. RAF is statutorily liable for the conduct of the aforementioned driver (i.e. the insured driver) in terms of the provisions of the Road Accident Fund Act 56 of 1996 (the RAF Act).

[2] After it was served with summons in July 2018, RAF caused to be delivered a notice of intention to defend the plaintiff's action. RAF appointed attorneys to represent it in the action. At some stage after the exchange of the pleadings and finalisation of the discovery process, RAF appears to have terminated the relationship with its attorneys. RAF appears not to have taken an active part in the proceedings after it got rid of its attorneys. But it appears from the papers that RAF was directly furnished or served with all documents in the matter, including the notice of set down for the trial held in this matter.

[3] The matter came before me on trial on 19 November 2021. Ms M Mabotja (Kgwale) appeared for the plaintiff. There was no appearance on behalf of RAF. Therefore, the trial proceeded in the absence of RAF. The evidence in the matter was by way of the reports compiled by the experts in the matter. The reports, or actually the contents thereof, were subsequently confirmed under oath by the specific experts. I reserved this judgment after briefly listening to counsel for the plaintiff. The determination of the issues also benefitted from the written legal argument filed by counsel.

[4] Counsel submitted that the issues relating to the merits of the claim have been fully settled in the plaintiff's favour. This aspect is borne by the following. On 27 October 2014 RAF made an offer of settlement of the merits on the basis that the insured driver's negligence was the sole cause of the accident. This offer appears to have been accepted in terms of the plaintiff's attorneys' letter dated 22 June 2018, delivered to RAF on 25 June 2018. Therefore, the trial only concerned the issues relating to the *quantum* of the claim.

[5] Further, on 2 November 2021, Mali J of this Court, granted an order addressing RAF's failure to engage with the plaintiff in order for the matter to proceed to trial. The terms of that order included that RAF is compelled to attend a pre-trial conference, failing which RAF's defence was to be struck on 19 November 2021. But at the hearing of this matter counsel for the plaintiff submitted that the plaintiff was not insisting on this. I do not think such an order would achieve much, if anything. RAF has filed no expert reports and/or affidavits for its defences in this matter.

### ***Evidence and submissions on behalf of the plaintiff***

#### **General**

[6] As already indicated no oral evidence was adduced and the matter is to be decided on the basis of the opinions expressed by the experts in their reports. The contents of the reports were subsequently confirmed under oath individually by the experts. Counsel for the plaintiff based both her written and oral argument on the contents of these reports. Although I have directly consulted the contents of the reports, what appears below has significantly benefitted from the submissions by counsel. I am grateful to counsel in this regard.

#### Overview of the plaintiff's claim

[7] The central issue in this trial, as stated above, is the determination of the nature and extent of the damages or *quantum* for the future loss of earnings or earning capacity, general damages and future medical expenses. Ms Mabotja, for the plaintiff, submitted that RAF would have to furnish an undertaking in terms of section 17(4)(a)<sup>1</sup> of the RAF Act in respect of the plaintiff's future medical expenses. Obviously, without active participation in this matter a voluntary undertaking or tender of the certificate is impossible. Therefore, should I find the plaintiff's claim meritorious, I will include in the order a term for the RAF to provide such an undertaking.

#### Accident and negligence of the insured driver

[8] The plaintiff was 33 years old when he met the accident on 23 August 2009. He was 45 years old at the time of the trial. The accident occurred in Botshabelo, Free State Province. The plaintiff was a passenger in the insured motor vehicle.

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<sup>1</sup> Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 reads: "Where a claim for compensation under subsection (1)- (a) includes a claim for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her, the Fund or an agent 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, notwithstanding section 19 (c) or (d), in accordance with the tariff contemplated in subsection (4B)".

[9] The insured driver lost control of the motor vehicle, and this caused it to overturn. The accident was caused solely by the negligent driving of the insured driver. I have already mentioned that the issues in the merits of this matter appear settled between the parties. But I am also convinced that the accident was caused solely by the negligent driving of the insured driver. The plaintiff confirmed the accident against the background of the accident report, including that the insured driver had lost control due to the puncture of the rear wheels. As submitted by Ms Mabotja for the plaintiff there is an enduring duty on a driver of a motor vehicle to keep a proper lookout, which duty does not simply entail looking straight ahead, but includes an awareness of what is happening in one's immediate vicinity and surroundings.<sup>2</sup> Consequently, I will order that RAF be held liable for 100% on the plaintiff's damages.

#### Plaintiff's injuries

[10] The plaintiff's injuries sustained during the accident are the following: head injury with base of skull fracture and otorrhea, laceration of the forehead and the vertex of the scalp and right acromio-clavicular joint dislocation. The latter injury is said to have been originally missed and subsequently revealed by the X-Ray images.

[11] Following the accident the plaintiff was evacuated from the scene to Botshabelo hospital where his lacerations were sutured. From there he was transferred to Pelonomi hospital where he received clinical and radiological examination. He remained in hospital for 4 days.

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<sup>2</sup> *Diale v Commercial Union Assurance Co of SA Ltd* 1975 (4) SA 572 (A).

[12] For purposes of the plaintiff's claim for general damages, there is evidence by way of assessment reports that the plaintiff sustained serious injuries as contemplated by Regulation 3 of the Road Accident Fund Regulations, 2008, read with section 17(1A)<sup>3</sup> of the RAF Act.<sup>4</sup>

Expert witnesses

[13] The plaintiff relies on the reports of six expert witnesses, namely, Dr PT Kumbirai (specialist orthopaedic surgeon); Dr LF Segwapa (neurosurgeon); Dr A Peta (clinical psychologist); Dr PD Albertyn (ear, nose and throat specialist); Ms C Avenant (audiologist); Ms K Kgatla (occupational therapist); Ms FR Chamisa-Maulana (industrial psychologist), and Mr Johan Potgieter of GRS Actuarial Consulting (actuary). As stated above these experts confirmed their opinions under oath or in terms of affidavits, filed before the trial. For completeness, it ought to be mentioned that RAF did not appoint any experts, in as much as it did not appear at the trial. Next, I deal with the pertinent parts of the reports, guided by counsel's written submissions

[14] According to the expert witnesses, the *sequelae* of the injuries sustained by the plaintiff include the following: complaints of a short-term memory; poor concentration and recurrent headaches; painful right shoulder which is exacerbated by the lifting of heavy weights and cold weather.

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<sup>3</sup> Section 17(1A)(a) of the RAF Act provides: "[a]ssessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party. (b) The assessment shall be carried out by a medical practitioner registered as such under the Health Professions Act, 1974 (Act 56 of 1974)."

<sup>4</sup> The following registered medical practitioners completed the serious injuries report or RAF4 Form and individually opined that the plaintiff sustained a serious injury under the narrative test: Dr PT Kumbirai (specialist orthopaedic surgeon) indicated that the plaintiff's impairment of the whole person amounted to 6 %WPI, but that he qualifies on the grounds of serious long term impairment or loss of a body function under 5.1 and severe long term mental or severe long term behavioural disturbance or disorder under 5.3 of the RAF 4 Form; Dr Albertyn opined that the plaintiff's impairment of the whole person amounted to 2%WPI, but he would qualify for general damages on the ground of serious long-term impairment or loss of a body function under 5.1 of the RAF 4 Form because of bilateral hearing loss, and Dr Segwapa opined that the plaintiff's permanent impairment amounted to 20%WPI, but the plaintiff would qualify to be awarded general damages on the grounds of severe long term mental or severe long term behavioural disturbance or disorder under 5.3 of the RAF 4 Form.

*Orthopaedic surgeon (Dr Kumbirai)*

[15] Dr Kumbirai, a specialist orthopaedic surgeon, examined the plaintiff on 12 November 2019. His clinical examination revealed a 1centimetre scar on the forehead, 1centimetre scar on the vertex of the scalp and tender to deep palpation over the acromio-clavicular joint. The plaintiff's X-Ray images showed right acromio-clavicular joint dislocation with osteoarthritis changes. The clinical and radiological findings are that the plaintiff has suffered 6% whole person impairment (WPI) based on the AMA guides (6th edition). Further, the plaintiff has suffered severe acute pain for a period of about two weeks which is said to have subsided over a period of four weeks. The inconvenience and discomfort of chronic pain from the plaintiff's right shoulder continues. The same applies to the *sequelae* of the head injury.

[16] Regarding the prognosis and future mobility of the plaintiff, counsel's submissions included the following. The plaintiff would benefit from the reconstruction of the right acromio-clavicular joint with a Hook Plate in order to reduce the dislocation and alleviate the pain. Due to the accident the plaintiff will experience problems in engaging normally in activities which require the lifting of heavy weights.

*Neurosurgeon (Dr Segwapa)*

[17] Dr LF Segwapa, a neurosurgeon, examined the plaintiff also on 12 November 2019. His opinions include the following. He noted that according to the plaintiff he was rendered unconscious at the scene of the accident. He only recovered consciousness in the ambulance on the way to the hospital. Further, he noted that whilst at the Pelonomi hospital the plaintiff presented with cerebrospinal fluid (CSF) leak from his left ear, which was managed

conservatively. The neurosurgeon opined that these are the features of a mild traumatic brain injury.

[18] Further, according to the neurosurgeon the plaintiff has no post-accident neurocognitive and neurophysical impairments. Also, the plaintiff denied headaches and memory problems on direct questioning by the neurosurgeon. The plaintiff has no memory problems after the accident, the neurosurgeon opined.

*Clinical psychologist (Dr Peta)*

[19] Dr A Peta, the clinical psychologist, examined the plaintiff on 13 November 2019. She expressed views which included the following. She noted that the plaintiff complained about the leaking of the CSF fluid from the left ear; inability of the right hand to lift heavy objects; dizziness and fatigue; short temper and anger outbursts; scars on top of head and forehead, and decreased memory.

[20] The neuropsychological assessment and cognitive abilities revealed that the plaintiff is below average regarding the following: abstract reasoning abilities; simple attention ability; working memory and attention; visual memory and auditory narrative memory. Further, the following impairments were revealed: the visual spatial organisation and integration; rote verbal learning abilities; slowed psychomotor speed; visual motor coordination; poor planning abilities and poor organisation; poor social reasoning; poor judgment; impulsivity and poor self-control.

[21] Dr Peta's conclusion is that the neuropsychological profile obtained is commensurate with at least a mild traumatic head injury, likely exacerbated by a number of accident-related

factors. She further opined that the plaintiff revealed symptoms that were consistent with mild to moderate severity depressed mood on the self-report questionnaire and reported symptoms of intrusion as well as arousal suggestive of post traumatic anxiety in the interview.

*Ear, nose and throat specialist (Dr Albertyn)*

[22] The plaintiff was assessed by Dr Albertyn, an ear, nose and throat specialist, on 11 November 2019. This specialist's opinions and notes include the following. The plaintiff complained of hearing loss in respect of the left ear and sometimes otorrhea. But the plaintiff did not complain of deafness on the right side. The investigation of the plaintiff revealed the central perforation of the right ear drum and signs of a healed perforation of the left ear. There is an assessment of 2% whole impairment when utilising the AMA Guides for the evaluation of permanent impairment. Dr Albertyn recommended in this regard that a right myringoplasty be considered. This could repair the hearing back to normal. It is expected that the successful closure of the perforation will return the plaintiff's hearing to just normal limits.

*Audiologist (Ms Avenant)*

[23] Again on 11 November 2019, the plaintiff was assessed by an audiologist, Ms C Avenant. According to the audiologist, the plaintiff complains of a decreased hearing in the left ear. He also complains of general aches and pains. Upon an otoscopic examination in the plaintiff's left ear, the presence of scar tissue and a large central perforation in the right ear, was revealed. The plaintiff has a mild temporary problem in both his ears. Surgical intervention would alleviate any communication problem experienced. She noted complaints of headaches and convulsions by the plaintiff.

*Other expert witnesses*

[24] The views of the occupational therapist and industrial psychologist are discussed jointly with the issues relating to the plaintiff's claim under the head, loss of earnings or earning capacity. The discussion would conclude with the calculations by the actuary.

*Loss of earnings or earning capacity*

*General*

[25] As already indicated the plaintiff was 33 years old at the time of the accident in August 2009. He was 45 years old at the time of the trial in November 2021. His highest level of education is grade 12. At the time of the accident he was a peer educator at Kganya, a community-based organisation. In this position his duties, mainly, included providing information about HIV/AIDS to learners at schools and kids at orphanage centres. These duties, according to the occupational therapist, were light in nature. The plaintiff, reportedly, was earning a stipend of R500 per month as a peer educator. This placed his annual earnings at R6 000.00 per annum. After the accident he worked at Ramothello Attorneys as a debt collector. He earned R6 500.00 per month and, therefore, had annual earnings of R78 000.00.

*Occupational therapist (Ms K Kgatla)*

[26] The occupational therapist, Ms K Kgatla, assessed the plaintiff on 11 November 2019. She noted that after the accident the plaintiff stayed home for three weeks whilst recovering. He earned a full salary. He, thereafter, resumed work and did his usual duties. He remained in that position until in 2012 when he joined Ramothello Attorneys as a call centre agent. He had no difficulties executing his duties in the latter position, as a call centre agent. He remained in the latter position until in 2018 when he was retrenched, due to the employer's operational requirements. In September 2019, he worked as a general labourer with Nthoba

Construction. His duties involved digging up foundations, erecting and dismantling scaffolding, and generally assisting bricklayers. This job, evidently, had heavy physical demands. He quit the job after only two weeks, due to pains on the right shoulder. He was unemployed at the time of his evaluation by the occupational therapist.

[27] Against the background provided by the other experts, Ms Kgatla, opined that the plaintiff would have followed the same career path to date. Within 2 to 3 years of his retrenchment he would have secured similar type of employment as his job at Ramothello Attorneys earning in line with his earnings as at Ramothello Attorneys. The plaintiff's earnings would have increased in line with inflationary increases until the age of 65 at retirement.

[28] Due to his physical and neurocognitive deficits the occupational therapist is of the opinion that the plaintiff should ideally be restricted to sedentary, light and low ranges of medium duties. He has residual capacity that falls within that range of physical demands. Even if the plaintiff receives surgical intervention his residual capacity will remain the same, opines the occupational therapist. He is at a disadvantage and is an unequal competitor in the open labour market.

*Industrial psychologist (Ms FR Chamisa-Maulana)*

[29] The plaintiff was assessed by Ms FR Chamisa-Maulana, the industrial psychologist, also on 11 November 2019. Her views include that the neuropsychological *sequelae* will have a negative impact on the plaintiff's occupational functioning and would result in a reduced work performance and lack of motivation. Further, it is the opinion of the industrial psychologist that the plaintiff presents with a reduced working capacity due to the accident

and its *sequelae*. This renders the plaintiff an unequal competitor in the open labour market. He is also likely to face extended periods of unemployment due to his cognitive, emotional and physical limitations. He will thus not be able to function at the same pre-accident capacity. Therefore, it is recommended that the extent of the plaintiff's emotional, cognitive and physical limitations be addressed by a higher than normal post-accident contingency deduction, as those limitations will negatively impact on his ability to sustain and maintain employment and lead to possible extended periods of unemployment.

#### *Actuarial calculation*

[30] The actuarial calculations were done by Mr Johan Potgieter of GRS Actuarial Consulting (actuary). He used the basis postulated by the industrial psychologist (i.e. the plaintiff will not be able to function at the same pre-accident capacity) to arrive at an amount of R172 958.00 for the plaintiff's future loss of earnings. I will express my views on this when I conclude on the matter. I deal with the issue of the general damages, next.

#### *General damages*

[31] The determination of the appropriate award for general damages involves consideration of the plaintiff's pain and suffering, loss of amenities of life and applicable disabilities. The discretion of the Court to award fair and adequate compensation is wide. The determination is also factual, as it involves having regard to all the relevant facts and circumstances relevant to the plaintiff and the nature and extent of his injuries. The permanency, severity and the impact of the injuries sustained on the lifestyle of the plaintiff form part of the consideration.<sup>5</sup>

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<sup>5</sup> In *De Jongh v Du Pisanie N.O.* 2005 (5) SA 547 (SCA) para 60, the court, after noting the tendency towards increased awards in respect of general damages in recent times, re-affirmed conservatism as one of the multiple factors to be considered in awarding damages. The court concluded that the principle remained that the award should be fair to both sides; it must give just compensation to the plaintiff, but not pour out largesse from the

[32] Counsel for the plaintiff relied primarily on two decisions for a comparative analysis of the facts in the current matter. First is the decision in *Ngubeni v Road Accident Fund* 2017 (7A4) QOD 68 (GJ) which concerned a 13-year-old boy who suffered mild to moderate brain injury and orthopaedic injuries. He had lost consciousness for approximately 15 minutes. His orthopaedic injuries were to the right shoulder/elbow; right knee/lower leg injury (proximal tibia fracture). The traumatic head injury resulted in neurocognitive impairment, post-traumatic vascular headaches and symptomatic epilepsy. The *sequelae* of the injuries had a negative impact on the minor child's scholastic, interpersonal and psychological functioning, when viewed from a neuropsychological point of view. The orthopaedic injuries prevented the minor child from enjoying amenities such as soccer or riding his bicycle. The original award by the Court for general damages was in the amount of R600 000.00) on 19 August 2016. In 2021 terms the award equated to R786 000.00.

[33] The other decision is by this Division in *Vukeya v Road Accident Fund* 2014 (7B4) QOD 1 (GNP). It concerned a 43-year-old woman who earned a living as a cleaner. She had suffered a mild to moderate frontal lobe brain injury and orthopaedic injuries. The latter injuries included those to her neck, lower back, a fracture to the second metacarpal bone on the left hand, and soft tissue injury of the left leg. These resulted in impairments of her mathematical abilities, short-term memory and personality. She also experienced chronic headaches and suffered from depression. Due to her disabilities, she faced a substantial risk of losing her employment with no possibility of finding alternative employment. A post-accident contingency deduction of 40% was applied on the basis that the claimant would probably be able to work until retirement age of 60. The original award for general damages

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horn of plenty at the defendant's expense, as pointed out in *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (N) at 267.

was made on 10 April 2013 in the amount of R330 000.00 and in 2021 terms it equated to R487 000.00.

[34] Counsel submitted that the *Vukeya* decision was more similar to this matter under consideration. Further, that an appropriate award for general damages suffered (and still likely to be suffered) by the plaintiff is in the amount of R650 000.00. I will return to this in a moment.

### ***Conclusion***

[35] As indicated above, the actuarial calculation placed the award for the plaintiff's future loss of income or earning capacity at R172 958.00. Counsel urged this Court to direct RAF to pay this amount together with the R650 000.00 for general damages. Both figures are in the sum of R 822 958.00. This will be apart from an order that RAF furnishes an undertaking in terms of section 17(4)(a) of the RAF Act in respect of the plaintiff's future medical expenses.

[36] The actuarial calculations are on the basis of the opinion shared by the industrial psychologist and occupational therapist that the plaintiff would have followed the career path similar to that of a call centre agent (as he did when employed at Ramothello Attorneys) earning in line with his earnings in this position with inflationary increases until the retirement age of 65. As stated above, the plaintiff was employed at Ramothello Attorneys in that capacity after the accident. There is no evidence that he lost this job at Ramothello Attorneys due to performance-related considerations. Available evidence confirms that he was retrenched based on the operational requirements of the employer. Ramothello Attorneys lost the debt collection contract and had to retrench everyone who was involved in this venture. It is also not insignificant that the evidence shows that the employer was satisfied

with the performance of the plaintiff in that position. This means that the injuries or their *sequelae* had no proven bearing on his employment in this position. I understand this to mean that the plaintiff can go on and become a call centre agent or something similar if he finds such employment and perform in that position without any hindrance from the injuries or their *sequelae*. I would have understood if this position was used for illustrative purposes only. But when such is the purpose, it would have to be made clear and at the same time mentioned that the plaintiff did not have any problems discharging his duties when he occupied this position, despite his injuries from the accident or their *sequelae*. Or where the injuries and/or their *sequelae* would have a bearing this has to be specifically stated, together with an explanation why they did not affect the plaintiff's performance the last time when he was actually employed in that position. The loss ought to be established using that position or job. Without such evidence the position or career as a call centre agent cannot serve as a basis for the plaintiff's claim, without more. The only evidence I am aware of is that the plaintiff could not perform in the physical demanding job as a construction worker, due to the limitations arising from the accident. The latter issue is logical given the current condition of the plaintiff. Evidently, the plaintiff has not claimed on the basis of the latter job or career path. It is not unreasonable to assume here that the choice may have been influenced here by a comparison of the sizes of the earnings the plaintiff's previous jobs availed. His community-based volunteer job, which he reverted to after the accident, doesn't appear to have been lucrative either. The call centre position was the most lucrative of the plaintiff's jobs or previous employment positions.

[37] In the textbook *RAF Practitioners Guide* it is stated that the assessment of damages recoverable in respect of prospective or future loss "includes the loss of opportunity of increasing the value of his or her estate or patrimony arising from the detrimental

consequences of a delict”.<sup>6</sup> Another authoritative textbook *Principles of Delict* points out that a contract of employment may be an indicator of earning capacity in respect of a claimant’s past earnings, but it is not necessarily the sole criterion.<sup>7</sup> Further, I am also mindful of the applicable legal principle to the effect that opinions or reports of expert witnesses serve as a guide to the Court. Using these principles I will not render the plaintiff nonsuited by dismissing his claim for future loss of earnings, but would adjust the suggested contingencies to the extent that I deem appropriate and just.

[38] For the reasons stated immediately above, I will recalculate the award for future loss of earnings using the figures in the actuarial report. I will start by reducing the post-accident contingency (i.e. having regard to the accident) from 30% to 25%. Therefore, accepting that the future loss of income “if accident did not occur” is R980 092.00, I find that the future loss of income “given the accident did occur” is R864 786.75. The latter figure is arrived at by taking the amount of R1 153 049.00 (representing the income given the accident did occur) and deduct therefrom an amount of R288 262.25 (representing the 25% contingency deduction). The difference between R980 092 and R864 786.75 is an amount of R115 305.25 (one hundred and fifteen thousand, three hundred and five rand, and twenty five cents). This, in my view, represents the appropriate award for the plaintiff’s future loss of earnings or earning capacity.

[39] Regarding the award of general damages I find that the amount of R400 000 is appropriate. I find this matter distinguishable from those I was urged by counsel to consider. The matter of *Ngubeni v Road Accident Fund* 2017 (7A4) QOD 68 (GJ) concerned a 13-year-

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<sup>6</sup> Klopper, HB. 2021. *RAF Practitioners Guide*, LexisNexis (online version - last updated in September 2021) at C-15.

<sup>7</sup> Van der Walt, JC and Midgley, JR. 2016. *Principles of Delict*, 4<sup>th</sup> ed, LexisNexis (online version - last updated: 2016) at par 198.

old boy who suffered mild to moderate brain injury and orthopaedic injuries. The brain injury is comparable to that of the plaintiff in this matter, being a mild traumatic brain injury. Apart from the age, the injuries and/or their *sequelae* in *Ngubeni* exceed in effect those of the plaintiff in this matter. The matter of *Vukeya v Road Accident Fund 2014 (7B4) QOD 1 (GNP)* concerned a claimant whose age (i.e. 43-year-old woman) correspond with the plaintiff (who was 45 years old at the time of the trial) in this matter. But the injuries and their *sequelae* in *Vukeya* slightly differ with those in this matter, especially the chronic headaches and depression.

[40] Therefore, the final award to be made in this matter comprising the amounts awarded in respect of loss of earnings and general damages will be in the amount of R515 305.25 (five hundred and fifteen thousand, three hundred and five rand, and twenty five cents).

[41] I will also order that RAF furnish the plaintiff with an undertaking in terms of section 17(4) (a) of the RAF Act in respect of the payment 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, arising out of the injuries and sequelae thereof, she sustained in the motor vehicle accident on the 23 August 2009. The costs will follow this outcome, including those specifically mentioned below.

### ***Order***

[42] In the premises, I make the following order, that:

1. the Defendant shall pay 100% of the plaintiff's proven or agreed damages;

2. the Defendant shall pay the plaintiff the amount of **R515 305. 25 (five hundred and fifteen thousand, three hundred and five rand, and twenty five cents)** in respect of the future loss of income and general damages relating to the accident on 23 August 2009;
3. the Defendant shall forthwith furnish the Plaintiff with an undertaking in terms of section 17(4) (a) of the Road Accident Act, no 56 of 1996, to pay 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, arising out of the injuries and *sequelae* thereof, she sustained in the motor vehicle accident on 23 August 2009;
4. in the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the rate, as prescribed by the government gazette calculated from 180 calendar days after the date of this order;
5. the Defendant shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, from the onset of the matter, up to date of this order and the cost as referred to in paragraph 5.2 below, subject to the discretion of the taxing master and subject thereto that:

5.1 in the event that the costs are not agreed:

- 5.1.1 the Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;

5.1.2 the Plaintiff shall allow the Defendant 180 days from date of *allocatur* to make payment of the taxed costs;

5.1.3 should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the rate as prescribed by the government gazette per annum on the taxed or agreed costs from date of *allocatur* to date of final payment.

5.2 such costs shall include:

5.2.1 the cost of and consequent of the appointment of counsel.

5.2.2 the costs of medico-legal reports, addendums, RAF 4 forms and joint minutes, that was served on or provided to the defendant including the reports of the following experts:

5.2.2.1 Dr PT Kumbirai (Orthopaedic Surgeon);

5.2.2.2 Dr LF Segwapa (Neurosurgeon);

5.2.2.3 Dr A Peta (Clinical Psychologist);

5.2.2.4 Dr PD Albertyn (Ear, Nose & Throat Specialist);

5.2.2.5 Ms C Avenant (Audiologist);

5.2.2.6 Ms K Kgatla (of Bogone Ngwato Occupational Therapists);

5.2.2.7 Ms FR Chamisa- Maulana (Industrial Psychologist);

5.2.2.8 GRS Actuarial Consulting (Actuary);

5.2.3 the costs of uploading the bundle on the case line.

5.2.4 the costs of and consequent to the holding of all pre-trial conferences including judicial case management and counsel's fee in respect thereof.

6. the amounts referred to above will be paid to the Plaintiff's attorneys, Molaudzi Attorneys, by direct transfer into their trust account, details of which are the following:

<b>Bank</b>	<b>:</b>	<b>Absa Bank</b>
<b>Account number</b>	<b>:</b>	<b>[...]</b>
<b>Branch code</b>	<b>:</b>	<b>632005</b>

7. the contingency fee agreement between the plaintiff and his attorneys is noted.

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**Khashane La M. Manamela**  
**Acting Judge of the High Court**

**Date of Hearing** : **19 November 2021**

**Date of Judgment** : **15 March 2022**

**Appearances:**

For the Plaintiff : Ms M M Mabotja (Kgwale)

Instructed by : Molaudzi Attorneys, Pretoria

For the Defendant : No appearance