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

CASE NO: 34757/2014

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

19 APRIL 2022

Date

K. La M Manamela

In the matter between:

NOXOLO NOZUKO LIMBA

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 **19 APRIL 2022**.

JUDGMENT

Introduction

[1] Ms Noxolo Nozuko Limba, the Plaintiff, is a 42-year old lady from Katlehong, south-east of Johannesburg. She is currently unemployed and she attributes this to the motor vehicle accident she was involved in on 25 May 2013 in Khotso Street, Katlehong. She was hit by a BMW motor vehicle driven by a certain Mr Jabulane Malaza (the insured driver) whilst after she had alighted from a taxi. She ascribed the cause of the accident to be the sole negligence of the insured driver. She sustained the following injuries from the accident: fractured tibial plateau on her left leg and soft tissue injury on her left knee. She was hospitalised and received medical treatment following the accident. On 22 May 2014 she caused summons to be issued against the Defendant, the Road Accident Fund (RAF), as the statutorily liable entity in terms of the Road Accident Fund Act 56 of 1996 (the RAF Act), to recover the damages she suffered in the amount of R3 million. RAF defended the action and employed a firm of attorneys to this effect. However, by the time the matter reached trial stage RAF had no attorneys on record.

[2] On 26 November 2021 the matter came on trial virtually before me. Mr P Leopeng appeared on behalf of the Plaintiff. There was no appearance on behalf of RAF. The notice of set down was directly served on RAF. Mr Leopeng advised the Court that the parties have amicably resolved the issues relating to general damages through settlement in the amount of R350 000 payable to the Plaintiff by the Defendant. He also made submissions regarding the need to apportion contributory negligence on an 80/20% basis in favour of his client, the Plaintiff. But it appears elsewhere on the documents filed that the issues relating to the merits may have also been settled. Should both these issues be settled then the only issue remaining

for determination by the Court would have been the *quantum* of the Plaintiff's loss of income or earning capacity. But, as it appears below, there is still more to say about issues relating to both the merits and general damages. I reserved this judgment after listening to submissions by counsel for the Plaintiff.

Settlement of merits or liability and general damages

Issues relating to the merits or liability

[3] RAF, in its plea, denied fault (towards the cause of the accident) on the part of its insured driver. But, RAF also pleaded, as an alternative defence, that the negligence of the Plaintiff contributed to causing the accident. In advancing the latter defence, RAF sought the apportionment of any damages recoverable by the Plaintiff under the Apportionment of Damages Act 34 of 1956.

[4] After pleadings had closed and the matter needed to be allocated a date of trial, the Plaintiff's legal representatives appeared before Fourie J on 11 May 2021 for certification in this regard. On the basis of the submissions in the documents filed before Fourie J, the learned Judge certified the matter as "trial ready" in respect of only issues relating to *quantum*.¹

[5] Further, in an email by the Plaintiff's attorneys to a Defendant's functionary of 26 February 2021 (attached as annexure "NN5" to the application to strike out RAF's defence)²

¹ In the "*Judge's Certificate of Trial Readiness*" by Fourie J, dated 11 May 2021, among others, the following appears: "*2.1 Merits (on the Defendant's Plea) Merits were settled, and Quantum has not been settled... Plaintiff's version On or about the 25th of May 2013 at approximately 20H30 and at Khotso Street, Katlehong ... a motor vehicle accident occurred ... At the time of the accident the Plaintiff was a pedestrian standing on the pavement waiting for a taxi. . . Defendant's version The defendant's version as per the Defendant's plea uploaded on the Case Line system . . . 2.2 Issues to be dealt with by court on the Day of Trial: Quantum.*" [italics and bold ink added for emphasis] See CaseLines: 0020-27 to 0020-28.

² See par 17 below regarding the application and order to strike out RAF's defence.

it is stated (warts and all) that “[t]ake note that merits were previously settled at 50/50 in favour of the Plaintiff. We were tendered with an offer previously which was not acceptable to our client, and we request that a through consideration be made based on the reports attached.”³ The same email appears to have been repeated as annexure “NN6” to the same application which was heard on 12 August 2021.⁴ I will revert to the application to strike out RAF’s defence, below. Further, from these documents, I noted a draft order of 3 December 2019 before Potterill J in terms of which reference is made to the settlement of the issues relating to the merits on what appears to be 50% (inserted by hand). The draft order is not signed or stamped by the Court.

[6] Despite what appears above, as already indicated, Mr Leopeng appearing at the trial of this matter urged the Court to hold RAF liable for 80% of the proven damages, including in his written submissions. This, obviously, is contrary to the assertions by his instructing attorneys that the issues relating to the merits were settled when appearing before Fourie J for certification of trial readiness and in the striking application. It is either the merits in the matter are settled or are not, but obviously both versions cannot be true. Therefore, in the absence of credible evidence I will assume that there is no settlement in this regard and look at the issue of merits afresh. To the extent that any party is disgruntled by this approach it would be open to such party to invoke the mechanisms of our law for a remedy.

General damages

[7] Mr Leopeng, as stated above, also mentioned that the issues regarding the general damages suffered by the Plaintiff have been settled. He undertook, or so I understood him, to cause the settlement documents to be uploaded on CaseLines. I have subsequently noted,

³ CaseLines: 0020-27 to 0020-29.

⁴ CaseLines: 0020-27 to 0020-30.

from the uploaded documents, that RAF sent to the Plaintiff's attorneys a "without prejudice" offer of settlement dated 12 April 2021. The document reflects a figure of R350 000 for general damages amongst the figures in respect of other heads of damages, which have been redacted through black ink. Also, an undertaking in terms of section 17(4)(a)⁵ of the RAF Act was offered. Also uploaded is a document titled "Notice of acceptance of Defendant's offer of Settlement" by the Plaintiff Attorneys dated 26 November 2021. The latter document appears to have been sent or served on RAF through email at 11h27 on 26 November 2021. This was the date of the trial. The time on the email appears to have been after Mr Leopeng had appeared before me, initially at 10h44, although he made subsequent appearances on the virtual link or platform to add on to his submissions.

[8] But counsel, also, made both oral and written submissions with regard to general damages, which – with respect - rather contradicts the existence of settlement of the general damages. Be that as it may, I cannot determine the issues relating to general damages in the face of all these facts. Therefore, I will reflect the "settlement agreement" in the order to be made and make it clear that in the event of no settlement on general damages the issues in this regard are postponed *sine die*.

Merits or liability

[9] Following the conclusion reached above that there is no settlement of the issue relating to the liability of RAF or the merits, I have to determine this issue.

⁵ Section 17(4)(a) of the RAF Act reads as follows: "(4) 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)".

[10] In the summons the Plaintiff pleaded that she was hit by a motor vehicle whose registration details and driver was unknown to her. She further pleaded that she was standing by the pavement of the street waiting for a taxi when this happened. But a different picture emerged from the submissions by her own counsel and the objective evidence in the documents in this matter.

[11] There are two critical documents, ostensibly from the police docket, available in this matter: the warning statement of Mr Jabulane Alfred Malaza (the insured driver or Mr Malaza) taken by the police on 17 July 2013 and the Plaintiff's own sworn statement to the police.

[12] Mr Malaza's statement reads as follows in the material part:

“On Saturday 2013-05-25 at about 19:00 in the evening I was driving my red BMW with registration No. JBZ 339 GP, direction from east to west along Mosoko road in Ramokonopi West, after jumping the robot, there was a taxi stopping at opposite house no. 33 Mosoko road. It was off-loading the passenges [sc. passengers]. One off [sc. of] the passenger (adult female) tried to cross the street without observing. She just got into the road, only to find out that I was already closed as I tried to applied the brakes but I was late because I bumbed [sc. bumped] her with the right side of the bumper of my m/v. I then contacted the police together with the ambulance for further assistance.”⁶

[13] The sworn statement by the Plaintiff reads as follows in the material part:

“Limba Nozuku states under oath in English

...

⁶ CaseLines: 011-58 to 011-59.

On Saturday 2013-05-25 at about 19:15 I was from Sunrise Section with my friend ... The driver of the taxi which we where travelling with from Sunrise. I asked the driver to stop at our distination [sc. destination] The taxi that I was travelling in made... u-turn and stopped on the road facing motor vehicle that ... were coming. The taxi driver stopped on the wrong side of the road and I [sc. it] was very dark I did not notice that the passenger was on the ... road.

The driver of the BMW came on the right side of the road and tried [sc. tried] to avoid a collusion with the taxi unfortunately by the moment he tried to change the line I was already outside the taxi is where it knocked me down. The driver of BMW is JABULANI ALFRED MALAZA of no 52 Mngadi Section with Registration no JBZ 339 GP Red in colour. The driver of the taxi drove away and I couldn't be able to take or write down the registration.

The driver of the BMW phoned to Natalspruit and the paramedics took me to hospital and he proceeded to open a case docket.”⁷

[14] The above two statements clearly confirm that the Plaintiff was somewhere in the road the insured driver was using after alighting from a taxi she was travelling in when she was hit by the vehicle driven by the insured driver, Mr Malaza. This is evidently admitted by the Plaintiff, herself, in her own sworn statement. This puts paid to her assertion that she was standing on the side of the road waiting for a taxi.⁸ No doubt she alighted from the taxi at the wrong spot of the road and proceeded to cross the street or road when it was not safe for her to do so. She could have been more observant considering that she alighted from the taxi whilst being aware that it was facing on-coming traffic. There was not much the insured driver could have done to avoid the accident, although he is also not absolved of responsibility in this regard. I find the scale evenly balanced in this regard.

⁷ Caselines: 011-60. The sworn statement by the Plaintiff is written by hand.

⁸ “*At the time of the accident the Plaintiff was a pedestrian standing on the pavement waiting for a taxi*”. [italics added]. See CaseLines: 002-1, particulars of claim at par 4.

[15] Counsel for the Plaintiff submitted that the insured driver is the sole cause of the accident. But, somewhat, he also submitted that RAF should be held liable to compensate the Plaintiff for 80% of her proven or agreed damages. And what I find, with respect, to be awkward, is that counsel relied on the documents from the police docket, including the insured driver's warning statement and the Plaintiff's sworn statement I have referred to above. Counsel also referred me to various decisions for which I am grateful.⁹ After considering all these I find that the Plaintiff's negligence equally contributed as that of the insured driver in causing the accident. Therefore, RAF would be held liable for 50% of the proven or agreed damages of the Plaintiff.

Evidence and submissions on behalf of the Plaintiff

General

[16] As indicated above, this matter was certified trial ready on 11 May 2021 by Fourie J, to proceed to trial in respect of the issues relating to only *quantum*. But after what I have mentioned regarding general damages above, the only issue for determination is the *quantum* of the plaintiff's loss of earnings or earning capacity.

[17] On 12 August 2021, Bokako AJ, granted an order that RAF's defence be struck out and that the Plaintiff proceed to trial against RAF by way of default proceedings. But there is little bearing, if any, the striking has on the issues relating to loss of earnings as RAF had not filed any expert or medico-legal report.

⁹ See *Mthetwa v Road Accident Fund* (08/15751) [2010] ZAGPJHC 138 (23 September 2010); *Fibianso v Road Accident Fund* 3676 (11) [2016] ZAGPJHC 242; *Mmett v Road Accident Fund* 2038 (2008) [2011] ZANWHC 82; *Mokoena v Rondalia Insurance Co* 1982(3) SA 136 A; *Maseko v Road Accident Fund* (379994/17) [2019] ZAGPPHC 45 (6 February 2019).

[18] To recap: the Plaintiff sustained the following injuries in the accident: fractured tibial plateau to her left leg and soft tissue injury on her left knee. At the time of the accident the Plaintiff was 32 years old, with a Grade 10 ABET Level 02 and studying at Ekurhuleni West College towards a diploma in financial management. The Plaintiff went back to work after the accident and continued working for a period of 2 years. She stated that the necessary prolonged standing, walking and lifting exacerbating pain in her left knee led her to stop working. She has since been unemployed.

[19] The Plaintiff has served and filed the medico-legal reports of the following experts: Dr Peter T Kumbirai, an orthopaedic surgeon; Ms Metse Phelo, a clinical psychologist; Ms Attreth Thobejane, an occupational therapist; Ms Masase Eve Mokhethi, an industrial psychologist, and Mr Johan JC Sauer, an actuary. The Defendant, as I have just mentioned, did not serve and file any medico-legal reports. The Plaintiff's experts deposed to affidavits in terms of which they stated their qualifications and confirmed the opinions expressed in their respective reports. Their material views are discussed in as far as they are relevant to the Plaintiff's claim for loss of earnings or earning capacity.

Dr Peter T Kumbirai (orthopaedic surgeon)

[20] Dr Kumbirai examined the Plaintiff on 26 August 2020. He had also completed the RAF 4 form in which he found that the Plaintiff qualified for general damages under 5.1 (i.e. serious long-term impairment or loss of a bodily function), after calculating her injuries to amount to 15% whole person impairment or WPI.

[21] According to Dr Kumbirai the Plaintiff had 3 scars of 0.5cm to the lateral aspect left knee and left antalgic gait. He noted that the Plaintiff complained (after the accident) of pain

in the left knee/proximal *tibia*, which gets worse on prolonged standing, walking, lifting heavy objects or weights and cold weather. Dr Kumbirai opined that there is a chance of the Plaintiff developing osteoarthritis of the left knee, and will warrant a total left knee replacement in the next 5 to 10 years (i.e. as at August 2020).

[22] Dr Kumbirai also noted that the Plaintiff was a truck assistant, which job involved prolonged standing, walking and lifting heavy weights whilst loading and offloading stock. He is of the opinion that the injuries sustained by the Plaintiff in the accident would limit her choice of occupation in occupations requiring prolonged standing, walking and lifting of heavy objects will aggravate her symptoms. The injuries sustained had a profound impact on the Plaintiff and make her an unfair competitor in the open labour market, the orthopaedic surgeon concluded.

Ms Attreth Thobejane (occupational therapist)

[23] Ms Attreth Thobejane had assessed the Plaintiff on 17 March 2020 and her report was prepared on 14 September 2020. She opined that post-accident the Plaintiff struggled significantly to perform duties, and would not meet prolonged standing, walking and lifting of heavy objects in the execution of the demands of her position. Further, the Plaintiff was reassigned as a result of her shortcomings and directed to do administrative duties to cover for personnel on leave. She resigned as a result of struggling to execute her duties when she returned to her normal position. The Plaintiff is currently presenting with some functional limitations consistent with physical impairments, the occupational therapist further opined.

[24] Ms Thobejane concluded that the Plaintiff has not retained her pre-morbid physical and mental capacity for pre-accident employment. Further, as Dr Kumbirai opined, Ms

Thobejane is also of the opinion that the Plaintiff will not compete fairly in the open labour market. Therefore, the Plaintiff has limited employment prospects due to the injuries sustained in the accident and *sequelae* arising therefrom, she concluded.

Ms Metse Mphelo (clinical psychologist)

[25] Ms Metse Mphelo, a clinical psychologist, clinically evaluated the Plaintiff on 17 March 2020. Ms Mphelo expressed the following opinions regarding the Plaintiff's future employability and earning capacity: post-accident the Plaintiff battles with physical pain and discomfort which affect her ability to lift and/or carry heavy objects, bend her knee, to squat and to jump. The Plaintiff is currently unemployed due to being unable to carry out duties efficiently, especially those that require physical exertion.

[26] Regarding the Plaintiff's loss and damages, Ms Mphelo, stated that based on the findings, the Plaintiff experienced significant long-term changes both in her physical and psychological functioning due to the trauma caused by the accident.

Ms Masase Eve Mokhehi (industrial psychologist)

[27] Ms Masase Eve Mokhehi, the industrial psychologist, assessed the Plaintiff on 17 September 2020. This, as with the assessments by the other experts above, was over 7 years after the accident in which the Plaintiff sustained her injuries.

[28] According to the information obtained by Ms Mokhehi, after the accident the Plaintiff worked as a general worker at LSC Masakhe from 12 October 2015 to 15 September 2019 where she earned "R1 070.00 – R2 661.23 (depending on hours worked and distance

travelled) **fortnightly**".¹⁰ According to her employer she stopped working as the contract ended, Ms Mokhethi reported.¹¹

[29] It is also stated in Ms Mokhethi's report that the Plaintiff was involved in another motor vehicle accident on 21 December 2016 in which she injured her left leg and back (the Second Accident). This was just over three and half years after her material accident on 25 May 2013. It was also just a few months short of four years before the Plaintiff consulted with the abovementioned medical experts, including Dr Kumbirai, the orthopaedic surgeon.

[30] But the existence of the Second Accident is a very critical issue. It does not appear that the Second Accident was disclosed to the other experts, including Dr Kumbirai, apart from Ms Mokhethi. This means that the experts were unaware of the injuries sustained in the Second Accident and their *sequelae* when preparing their expert reports. Evidently, the Second Accident, as with her first accident, concerns the Plaintiff's very same left leg. It is also surprising that this is mentioned nowhere in the submissions by Plaintiff's counsel, unless he wasn't aware and had missed the disclosure in Ms Mokhethi's report. Ms Mokhethi, with respect, also appears to have relegated this critical issue to only a note in italics tucked away in other material of her report.¹² But the issue deserves more and prominent attention than it was given. I will revert to deal with this issue, below.

[31] Looking further into Ms Mokhethi's report one notes the following. The Plaintiff was born on 01 June 1980. She attained her Grade 10 qualification from Getsang High School in 1997. Two years later she completed her ABET Level 02 in 1999. She started working in 2001. Only in 2012 or 2013 (i.e. fourteen years later) did she begin her studies towards the

¹⁰ CaseLines: 013-58, Ms Mokhethi's report.

¹¹ *Ibid.*

¹² CaseLines: 013-58, lines 62-64 of Ms Mokhethi's report.

diploma in financial management at the Ekurhuleni West College. She was 32 or 33 years old at the time. She was a fulltime student. The Plaintiff says that she had dropped out of her studies due to the *sequelae* of the reported accident. But Ms Mokhehi noted that no documentary proof was furnished to her in this regard. In Ms Mokhehi's view the Plaintiff's family has not striven for academic qualifications. I hasten to state – with respect - that this view is also applicable to the Plaintiff. It is, therefore, little wonder that I find the following view by Ms Mokhehi absurd, to say the least with respect: “[t]he writer opines that there is no reason at the time of writing this report that exist for any individual not to have been able to complete Grade 12 and continue further studies at a tertiary level”.¹³ But I would leave it at that.

[32] As I have mentioned, what appears in the preceding paragraph is what was reported to the industrial psychologist (i.e. Ms Mokhehi) by the Plaintiff on 17 September 2020. Exactly, six months earlier, on 17 March 2020, the Plaintiff had been assessed by Ms Mphelo, the clinical psychologist. She is reported to have said, among others, the following: she passed grades 1 to 7 at Cathula Primary School; grades 8 to 11 Eketsang High School, although she repeated grade 9, and ABET School grade 12. Therefore, the one expert was told that the Plaintiff attained a grade 12 education whereas the other appears to be oblivious of this fact. I will also not let anything turn on this.

Loss of earnings or earning capacity (pertinent aspects)

[33] Ms Mokhehi, having considered the Plaintiff's level of education pre-morbidly and the fact that she was studying the college diploma, postulated the Plaintiff's premorbid income and career potential on 2 scenarios.

¹³ CaseLines: 013-63, lines 134-136 of Ms Mokhehi's report.

[34] Scenario 01 is computed on the basis that the Plaintiff would have had grade 10 level of education, which is currently the case. She would have entered the open labour market at lower *quartile* of Paterson Level A1 Basic Salary, progressing to upper *quartile* of Paterson Level B1 Basic Salary at the age of 45 years, and thereafter receiving only inflationary-based increases until she reached the age of retirement of 65. The Plaintiff's loss in terms of this scenario is only with regard to her future loss of earnings in the amount of R942 519.00.

[35] Scenario 02 was calculated on the basis that the Plaintiff would further from her grade 10 qualification have short diploma(s). She would have entered the open labour market as a semi-skilled labourer within the formal sector at Paterson Level B3 basic salary, progressing to median *quartile* of Paterson Level C1/C2 and reaching career ceiling at the age of 40-45 years of Paterson Level B1 basic salary at the age of 45 years, and, thereafter, receiving only inflationary based increases until she reached the age of retirement of 65. In terms of this scenario the Plaintiff's past loss of earnings is in the amount of R741 214 and her future loss of earnings at R4 300 391 to equate to a total loss of earnings of R5 041 605.

[36] The latter scenario (i.e. Scenario 02) differs with Scenario 01 primarily on the basis that the Plaintiff would have added diplomas to her grade 10 educational qualification. This is from the report of the Plaintiff herself that, at the time of the accident, she was busy with a diploma in financial management at the Ekurhuleni West College. But, as mentioned, Ms Mokhethi, the industrial psychologist, noted that the Plaintiff did not provide any certificates or reports regarding her alleged qualification. I will let nothing turn on this. The Plaintiff says that she did not complete the qualification due to the accident. I consider it necessary to state a few facts regarding these assertions by the Plaintiff and, generally, her claim in this regard.

[37] I do not think that the accident prevented the Plaintiff from obtaining more than the educational qualifications she currently has. There is no credible evidence in this regard. The injuries sustained by the Plaintiff are all of an orthopaedic nature and it is not surprising that her major complaint when assessed by the experts was the pain she experiences in the left knee after standing or walking for a prolonged period. It ought to be borne in mind with regard to the other *sequelae* of the Plaintiff's injuries that Ms Mphelo, the clinical psychologist, opined that the Plaintiff's "intellectual and cognitive abilities are still relatively intact" and that the Plaintiff would "greatly benefit from psychotherapy to assist her with the underlying emotional and behavioural challenges, post trauma stress symptoms she has been battling with and interfering with her functioning". Her following opinion needs to be understood against the aforementioned: "it is inevitable that significant long term changes seemed to have occurred both in her physical and psychological functioning due to trauma in which the accident was the causative factor".

[38] I respectfully reiterate that I find no evidence of reasonable credence to the effect that the Plaintiff is without the alleged diplomas or that she would still not be able to attain them, if she is still so minded, due to the accident. The Plaintiff coped with work of non-physical nature post morbid and was allegedly deemed even fit to step in or be reassigned to replace absent co-workers, but was only rendered unemployed when she reverted to her physically-demanding position. This is of course ignoring the employer's statement to Ms Mokhehi that the Plaintiff was rendered unemployed due to the contract having ended.¹⁴ I strongly doubt that a diploma in financial management or similar field of study is out of reach for the Plaintiff due to the injuries from the accident or their *sequelae*.

¹⁴ See par 28 above.

[39] I also find the unexplained impact of the injuries the Plaintiff sustained in the Second Accident on 21 December 2016 of great concern. But I have decided not to delve deeper into this issue without necessarily implying the relegation of the issue into insignificance.

Conclusion

[40] Therefore, I would deviate from what was urged by counsel for the Plaintiff that I accept Scenario 02 as it is the most likely scenario of the two. For me, the scenario which represents the most appropriate award for the damages suffered by the Plaintiff in respect of loss earnings is Scenario 01. Therefore, it is my finding that the Plaintiff be awarded the amount of R942 519.00 in respect of her loss of earnings or earning capacity. Obviously, due to my finding of 50/50% liability with regard to the negligence which contributed to the cause of the accident this amount shall be reduced accordingly to the amount of R471 259.50.

[41] I will also order that the Defendant furnish to the Plaintiff an undertaking as envisaged by section 17(4)(a) of the RAF Act in respect of 50% of the costs of the Plaintiff's future accommodation in a hospital or nursing home, or treatment of or rendering of service or supplying of goods to the Plaintiff, after the costs have been incurred and on submission of proof thereof resulting from the injuries sustained by the Plaintiff in the accident.

Order

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

- a) the Defendant is liable for 50% of the Plaintiff's proven or agreed damages relating to the accident which occurred on 25 May 2013;

- b) the Defendant shall pay to the Plaintiff the sum of R471 259.50 (four hundred and seventy one thousand two hundred and fifty-nine rand and fifty cents) in respect of loss of earnings;
- c) subject to d) hereof, in terms of the settlement agreement between the Plaintiff and the Defendant the Defendant shall pay to the Plaintiff the sum of R350 000.00 (three hundred and fifty thousand rand) in respect of general damages;
- d) in the event of no agreement existing between the Plaintiff and the Defendant in respect of general damages as stated in c) hereof, the issues relating to general damages are postponed *sine die*;
- e) the Defendant shall furnish the Plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Act 56 of 1996, limited to 50% in respect of the costs of the future accommodation of the Plaintiff in a hospital or nursing home, or treatment of or rendering of service or supplying of goods to the Plaintiff, after the costs have been incurred and on submission of proof thereof resulting from the injuries sustained by the Plaintiff during and as a result of the accident that occurred on 25 May 2013;
- f) the Defendant shall pay the amounts in b) and c) within 180 days from the date of this order;

g) interest shall be charged at the prescribed rate *per annum* on any outstanding amount calculated 14 (fourteen) days from date of judgment to date of final payment;

h) the abovementioned amount(s) shall be payable into the Plaintiff's Attorney's Trust Account with the following details:

Account Name: Maswanganye NF Attorneys

Bank: First National Bank

Type of Account: Trust account

Account Number: [...]

Branch Code: 250655

Reference Number: MNF/MVA00036/19

Link Number: 3365994

i) the Defendant shall pay the Plaintiff taxed, or agreed party and party costs, including the costs relating to the following:

(1) the costs consequent upon the employment of counsel;

(2) reasonable costs consequent to attending the medico-legal examinations;

(3) the costs of obtaining medico-legal reports, including the costs for travelling, accommodation, interpreter's fees, and court attendance fees, including 26 November 2021, if any;

(4) the costs for the reservation, qualifying fees and court attendance fees, including for trial on 26 November 2021, if any, for the following experts:

- Dr PT Kumbirai (Orthopaedic Surgeon);
- Ms Attreth Thobejane (Occupational Therapist);
- Ms Metse Mphelo (Clinical Psychologist);
- Ms Masase Eve Mokhehi of Rinoko Consulting (Industrial Psychologist), and
- Mr Johan Sauer of Johan Sauer Actuaries and Consultants.

Khashane La M. Manamela
Acting Judge of the High Court

Date of Hearing : 25 November 2021

Date of Judgment : 19 April 2022

Appearances:

For the Plaintiff : Adv PM Leopeng

Instructed by : Maswanganye NF Attorneys, Pretoria

For the Defendant : No appearance