IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:54997/20

Delete whichever is not applicable

(1)Reportable: No.

(2) Of interest to other judges: No.

(3) Revised.

27 July 2022
Date

Signature

In the matter between:

EVERT JOHANNES PETRUS DE GOEDE Plaintiff

and

ROAD ACCIDENT FUND Defendant

This judgment has been handed down electronically and shall be circulated to the parties via email. Its date and time of hand down shall be deemed to be 27 July 2022.

JUDGMENT

Munzhelele J

Introduction

[1] The plaintiff, Evert Johannes Petrus De Goede, brought an action to this court, claiming damages for injuries sustained during a motor vehicle accident which occurred on 28 May 2017. The defendant never entered an appearance to defend this action. The summons was served on the defendant on 20 October 2000, on the administrative clerk for the Road Accident Fund ("the RAF") at Menlo Park Pretoria. The defendant was aware of the summons but never filed an appearance to defend. The matter was set down for hearing on 31 January 2022, and the notice was served at the office of the RAF in Menlo Park reception as reflected on the notice of set down, and the defendant is aware of the date for trial. The defendant never attended court. The plaintiff appeared before me seeking default judgment on the following heads of damages as amended.

1.Past medical and hospital expenses	R 668 999,54
2.Future medical and hospital expenses	R1 611 565,00
3.Estimated past and future loss of earnings	R9 777 655,00
4.General damages	R1 000 000,00
Total	R13 058 219,54

[2] Rule 31 of the Uniform Rules of Court provides that:

> *"31 Judgment on confession and by default and rescission of judgments*
>
> *(1) ...*
>
> *(2) (a) Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand, and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in sub-rule (4) for default judgment and the Court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit.*

...

(4) The proceedings referred to in sub rules (2) and (3) shall be set down for hearing upon not less than five days' notice to the party in default: Provided that no notice of set down shall be given to any party in default of delivery of notice of intention to defend."

[3] I am satisfied that the plaintiff complied with the rules because they served the summons to the defendant and again notified the defendant of the set down date. The plaintiff has complied with the practice directives of this division and the Judge President's consolidated directive of 18 September 2020. I have already said above that the defendant was well aware of this case, and they have chosen not to defend the matter.

Background of the case

[4] The case's background is derived from the affidavit by the plaintiff and the pleadings thereof. The plaintiff was driving his motor vehicle CHH985 NC Toyota bakkie, at the speed of 120km per hour on Douglas road at night with his headlights on. He drove into a stationary Volvo truck CY 226342 trailer. The truck was parked outside the road but at the T-junction obstructing the signboard. Mr Hendriks was the insured driver. The plaintiff alleged that the road sign was invisible. The truck was invisible, covered with mud. The plaintiff's version was corroborated by Mr. van der Westhuizen, a panel beater. The plaintiff alleged that he had kept a proper lookout and that there was nothing he could have done to avoid the accident. Due to the accident, the plaintiff sustained the following injuries:

1. aorta rupture,
2. C2 fracture,
3. open fracture of the right tibia and fibula,
4. right femur fracture,
5. left haemothorax,
6. pancreatitis and kidney injury and
7. rhabdomisis (kidney failure)

Merits of the case

[5] During the default judgment hearing, I found that the plaintiff was able to establish that the defendant was negligent in causing the accident, which resulted in the plaintiff being injured on his knee, and fractured patella. The defendant is 100% liable for the proved damages of the plaintiff.

Quantum

[6] The plaintiff seeks the following heads of damages as stated above already on para. 1 of this judgment.

1.Past medical and hospital expenses	R 668 999,54
2.Future medical and hospital expenses	R1 611 565,00
3.Estimated past and future loss of earnings	R9 777 655,00
4.General damages	R1 000 000,00
Total	R13 058 219,54

Past medical expenses and hospital expenses

[7] I have perused the vouchers for the past medical expenses and hospitalization and found that the plaintiff has claimed the correct amount. The past medical expenses should be granted.

[8] Future medical expenses have been deferred to the Full Court for its decision and the general damages. The damage I will concern myself with here is the loss of earnings.

Loss of earnings

[9] For the plaintiff to succeed in his claim for loss of earnings and earning capacity, he should prove through evidence of his past wages and the testimony of his employer, doctors and expert witnesses. The plaintiff has filed as proof of his wages his salary slip. His salary slip reflects the amount of R45 000,00 (forty-five thousand rand) as his regular earnings. The salary slip does not show any amount for overtime, bonus, commission, 13th cheque, or performance bonus which the actuary has included in the calculation for the plaintiff's past and future loss of earnings. The father of the plaintiff, who is also the plaintiff's employer, has confirmed on his affidavit the salary amount of R45 000,00 which the plaintiff receives. No proof has been provided to the court regarding the overtime, bonus, commission, 13th cheque, performance bonus, petrol card, housing allowance, telephone allowance, medical fees, and car allowance except that it was just mentioned on a question and answer paper. I cannot attach any value to such kind of information, as a result I will disregard it.

[10] In *Santam Versekeringsmaatskappy Bpk v Byleveldt*[1] ; it was held that:

> "In a case such as the present, damages are claimed on behalf of the aggrieved party and damages mean the difference between the victim's position of ability before the wrongful act and thereafter. See, e.g., Union Government v Warneke 1911 AD 657 on p. 665 ... damage is the unfavorable difference caused by the wrongful act. The impairment must be in respect of something that is valuable in money and would include the reduction caused by an injury as a result of which the injured party can no longer earn any income or alone but earning a lower income. " The plaintiff is required to provide and prove the factual basis that allows for an actuarial calculation, which the court is then asked to use as the basis to determine the plaintiff's loss of earnings' *(Brink v Road Accident Fund* (CC03/2014) [2017] ZAWCHC 28 at *paras* 21 to 24)."

[1] 1973 2 SA 146 (A)

[11] The plaintiff never testified about these other amounts, and his salary slip reflects zero amounts on overtime, bonus, 13th cheque, performance bonus and commission. As already indicated above, these were also included in the calculations by the actuary. It is trite that courts can only rely on the facts that have been verified. In the case of the *Road Accident Fund v S M*[2], *in paragraph 2:* the SCA held that:

> "[T]he Court must first consider whether the underlying facts relied on by the witness have been established on a prima facie basis. If not, then the expert's opinion is worthless because it is purely hypothetical, based on facts that cannot be demonstrated even on a prima facie basis. It can be disregarded. If the relevant facts are established on a prima facie basis, then the Court must consider whether the expert's view is one that can reasonably be held on the basis of those facts. In other words, it examines the expert's reasoning and determines whether it is logical in the light of those facts and any others that are undisputed or cannot be disputed. If it concludes that the opinion can reasonably be held on the basis of the facts and the chain of reasoning of the expert, the threshold will be satisfied."

See also Maumela J's decision in Van Tonder NO v Road Accident Fund[3] at para 7.

[12] Counsel for the plaintiff argued that the plaintiff had produced the best available evidence, and the court should use it to arrive at its conclusion. The question and answers provided by the employer are not enough to prove that the plaintiff has been getting all those benefits. I will not consider them because they were not proven. I will only consider the salary slip, which indicates that the plaintiff was getting R45 000,00 per month when determining the fair and reasonable amount to be awarded to the plaintiff for his loss of earnings.

[13] To prove how the injuries have affected the plaintiff's ability to work, the plaintiff has engaged experts for his assessment. However, there has been no evidence from the plaintiff regarding what duties he performed as a plant manager (chief supervisor). There has not been any evidence by his employer or co-worker about the plaintiff's professional

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[2] (1270/2018) [2019] ZASCA 103 (22 August 2019)
[3] (4032/2013) [2021] ZAGPPHC 382 (30 May 2021)

opportunity, work history and performance on the job. We heard some of these facts from the experts but were never confirmed by the plaintiff through affidavit or oral evidence. They remain hearsay evidence and will be disregarded when assessing the future loss of earnings. It is necessary for the plaintiff to testify through an affidavit or oral evidence in order to compare his previous opportunities before accident and the loss that he anticipate due to the injuries sustained after the accident. In *Mathebula v RAF*[4], it was stated that;

> "an expert is not entitled, anymore more than any other witness, to give hearsay evidence as to any fact, and all facts on which the expert witness relies must ordinarily be established during the trial, except those facts which the expert draws as a conclusion by reason of his or her expertise from other facts which have been admitted by the other party or established by admissible evidence".

[14] The only facts which the plaintiff testified about and which the court will rely on are that; the plaintiff was involved in an accident and as a result thereof was injured and has testified about the occurrence of the accident. I am also certain that the plaintiff worked when he was involved in an accident because he even produced his salary slip. I am certain that the plaintiff earned an amount of R45 000, 00 because his salary slip is attached as proof. The experts have to inform me through their expert knowledge of the extent of the injuries, what kind of treatment the plaintiff will need in future, and whether the plaintiff would be expected to return to work. And whether he will be able to perform his previous work going further. Or he will require assistance or other different types of work.

[15] The radiologist Dr. W Conradie found that the bony fragment at the inferior anterior aspect of C2 with irregular and non-corticated medullary margins is in keeping with the previous fracture. He also found normal anterior and posterior alignment of the cervical spine with no prevertebral soft tissue swelling. He again found that the plaintiff had a

[4] (05967/05) [2006] ZAGPH

fractured line demonstrated in the tibia. The fibular spiral fracture configuration had no significant callus (delayed union).

[16] Orthopedic Surgeon Dr. Mare indicated that the plaintiff had the following injuries:

1. Fractured tibia and fibular right.
2. Fractured hip right
3. Aorta damage in his chest
4. Neck C2/3 had a crack fracture
5. Lower back ache and shoulder pains

[17] He found that the aorta was satisfactory healing at the stage he saw the plaintiff. And he referred the plaintiff to the thoracic and vascular surgeon. The plaintiff did not file the report of the thoracic and vascular surgeon. The right tibia is stable, but it swells. The plaintiff also undergoes physiotherapy. The plaintiff's back is still painful after heavy work or at night. The shoulder is still painful.

[18] On examination by the orthopedic surgeon, he found that the spinal cord curvature appears normal from the neck to S1. On the lower limb, he found large scars on the anterior put of the left lower leg. However, he found that both legs aligned acceptably. These findings by the orthopedic surgeon are different from what the occupational therapist found. The occupational therapist found a 2.5 shortening of the right leg.

[19] The orthopedic surgeon found that the tibia fracture feels united and stable. The upper limbs have pain in the left shoulder. The radiologist saw the narrowing of the cervical spine at C6 and C7 spaces. The pelvis is slightly narrowing at the right superior joint space. The right lower leg is partially united on the fracture of the distal third of the tibia and fibular with a bony union. The orthopedic surgeon said he could no longer mine due to the plaintiff's injuries. The plaintiff informed the orthopedic surgeon that he was helping at a friend's farm. The orthopedic surgeon found that the plaintiff has impaired quality of life and amenities. He will also have to cope with chronic pain in future. However, his life expectancy has not been affected.

[20] Occupational Therapist Wilma van der Walt said the plaintiff shows discomfort when performing exercises to determine his functional ability after the injury. Most of his pain is reported when he walks and with load handling. The occupational therapist said that the plaintiff had stiffness of the neck with a lot of lordosis and stiffness of trapezius muscle on both sides, with the left more affected. The occupational therapist found a loss of grip strength from the plaintiff's left shoulder. The right thigh muscles are wasting, and the right calf and ankle enlargement. Further, there is also a loss of flexibility and joint range at the right ankle. There is a 2.5 shortening of the right leg. The plaintiff walks with pelvis tilt and limping from the right. When carrying the loads, he increases limping. The occupational therapist's findings are that the plaintiff would not return to his pre-accident strength and physical activity level because of his injuries.

[21] The occupational therapist did not find any cognitive difficulties with the plaintiff following his injuries. She also did not find any noticeable and intrusive cognitive and emotional impairment severe enough to disrupt his capacity for independent living and oversee his affairs as usual. The above finding by the occupational therapist is in contrast with the finding of the clinical psychologist and neurologist. The clinical psychologist found that the plaintiff is functioning lower than his pre-accident level and experiencing significant emotional distress, adversely affecting his quality of life. The plaintiff will need psychotherapeutic intervention from clinical psychology focusing on the mild neurocognitive disorder due to TBI (traumatic brain injury, major depressive disorder, and chronic pain. The neurologist found that the plaintiff would likely not be able to function neurologically in the capacity, as would have been the case had the accident not occurred.

[22] According to the occupational therapist, the plaintiff was working as a plant manager at a matador mining company, which belongs to his father. He was responsible for the management of the machinery used in the operation of the diamond mine. He was also responsible for maintenance. He travels to the mining site to repair the equipment. He worked in the Douglas and Postmasburg areas. After the accident, the plaintiff could

not work for seven months due to his injuries. The occupational therapist recommended that there should be medical and surgical intervention. Supplementary health services and special adaptation equipment should be afforded to the plaintiff for recovery. He will require assistance at home as well as transport.

[23] In his report, the Ophthalmic Surgeon, Dr. Dippenaar, said that although the plaintiff suffered a laceration to his upper eyelid, he has sustained no loss to his visual system concerning the accident.

[24] The Plastic Surgeon, Dr Berkowitz, in his report, said that he had found several minor scars on the plaintiff's right-hand dorsum. He further found the superficial scars on the left wrist of the plaintiff, scar on the right knee; small scars on the tibia margin of the right leg, two hyper-pigmented scars on the anterior tibia border of the distal third of the right leg, scars as a result of the placement of the external fixator, a scar lying obliquely across the anterior aspect of the distal third of the right leg and a small post-surgical scar lying longitudinally on the medial aspect of the right ankle. The plastic surgeon found that the plaintiff is not suitable for scar revision. However, he has been left with permanent disfigurement due to the accident.

[25] The Clinical Psychologist, Dr. Swanepoel, found that the plaintiff is functioning lower than his pre-accident level and experiencing significant emotional distress, adversely affecting his quality of life. The plaintiff will need psychotherapeutic intervention from a clinical psychology focusing on the mild neurocognitive disorder due to TBI, major depressive disorder, and chronic pain. The issue of brain injury arose when the neurosurgeon found that there was an eye laceration.

[26] Physiotherapist Christel Botes found that the plaintiff would not be able to perform physical work due to the plaintiff's injuries. The plaintiff received paid sick leave during his absence from work. In December 2017, the plaintiff was retrenched due to his inability to work. He went and sold one of his houses for income. The plaintiff alleges that he can

perform sedentary work, but that has never been his ideal type of work because he loves to do physical work.

[27] The plaintiff can use his left shoulder after his treatment without any limitations. The plaintiff will have limitations with using his lower limb due to the accident. His one leg is shorter than the other, as a result the length discrepancy will affect the biomechanics of the rest of the body. This will also result in functional disability with standing and walking, lifting and carrying, squatting and working below waist level. The plaintiff will develop symptoms over time – pathology in the pelvis and spine-even with the corrective shoe wear. The plaintiff will not be able to work in a physical capacity again. He is best suited for sited work with regular breaks. The plaintiff is an unfair competitor in the labour market. The physiotherapist suggested an early retirement of 3 – 5 years, considering his current years and injuries.

[28] Neurosurgeon Dr. Kruger indicated that the plaintiff was unconscious immediately after the accident but did not know how long after the accident was he unconscious? However, at the scene of the accident, the neurosurgeon said the plaintiff said that he could be able to see his friend's wife. This statement is confusing. If the plaintiff could remember that he saw his friend's wife at the scene of the accident, then it means he was no longer unconscious. Perhaps that could be why the neurosurgeon indicated that the plaintiff was sedated, which gives a reason for his phase of amnesia for four days. There are no records of the paramedics who attended the plaintiff at the scene of the accident; as such, there is no clear indication of the plaintiff's Glasgow coma scale of the plaintiff at the scene.

[29] It is trite that an expert witness is required to assist the court and not to usurp the function of the court. Expert witnesses are required to lay a factual basis for their conclusions and explain their reasoning to the court. The court must satisfy itself as to the correctness of the expert's reasoning. Examining the plaintiff at the time of the injury or detailed accounts of the injury is much more valuable in formulating a concussion diagnosis. Eye witness reports are important. The Glasgow coma scale is the best

indicator to assess the depth of a coma from traumatic causes of unconsciousness. None of these indicators except the eye laceration, which we do not even know the details of were part of his evidence. There has been no evidence which proves with certainty that the plaintiff was unconscious. There has been no CT scan or MRI scan done at the time either. How does the doctor explain the fact that the plaintiff could be able to see his friend's wife at the scene of the accident? The only Glasgow coma scale we know of is the Glasgow coma scale at Netcare Universitas Private Hospital in Bloemfontein, which was 15/15 throughout his ordeal. If the plaintiff was unconscious and only woke up at Netcare, the Glasgow coma would not have indicated 15/15 throughout. With this said, I will not consider the findings which are not based on proven facts. I will reject the expert report of the neurosurgeon and neurologist regarding their brain damage findings; I will reject the same as there is no proper basis for their findings. I will also reject the fact that the plaintiff cannot be able to manage his own money and that a trust should be established.

[30] The occupational therapist did not find any cognitive difficulties with the plaintiff following his injuries. She also did not find any noticeable and intrusive cognitive and emotional impairment severe enough to disrupt his capacity for independent living and found that plaintiff oversee his affairs as usual. The plaintiff has sold his house and is managing his finances with no difficulties. I am also not bound by nor obliged to accept the opinion of an expert witness whose reports are based on information which has not been proved to be correct. See *Road Accident Appeal Tribunal & others v Gouws & another*[5] para. 33.

[31] Regarding the finding by the Dr Smuts that the plaintiff will in future have epilepsy; The Glasgow coma scale classifies traumatic brain injuries as mild at 14-15, moderate at 9-13, and severe at 3-8. A 14 -15 scale is associated with 90% of recovery. Normal Glasgow is 15/15 and shows that a person is fully conscious. The people who can develop epilepsy are people who scored below 8 eight on a Glasgow coma scale. Besides, Dr Smuts should have provided the Court with proper medical indications why a plaintiff who

[5] [2017] ZASCA 188; [2018] 1 ALL SA 701 (SCA)

had a 15/15 Glasgow scale will in future have epilepsy. The fact that a person with a 15/15 score as per the Glasgow coma scale will suffer epilepsy is incorrect, and I reject the same as it is based on no facts. In *Nonyane v Road Accident Fund*[6] it was said that:

> "The tendency to think that our courts capitulate to every evidence or report of an expert is wrong and has to be dispelled and discouraged. Each case has to be determined on its merits. That responsibility for evaluation of the reliability of facts and or evidence lies in the domain of the courts contrary to belief of those participating in the court proceedings."

[32] Neurologist Dr. Smuts indicated that the plaintiff informed him that his headaches were not different from what he used to have before the accident. The neurologist found that because the plaintiff was unconscious for 4 days, then it means he had sustained a blow to the head, which resulted in a mild to moderate concussive head injury with associated brain injury. Dr. Kruger indicated that it is not known how long the plaintiff's state of unconsciousness occurred, but in this instance Dr. Smuts indicates that it was 4 days. Who is telling the truth between these two doctors? Both of them did not have anything to base their findings on. There is confusion upon proper evaluation of their opinion of these two doctors. Their findings should be based on proven facts. There is no Glasgow coma scale given by the paramedics, Douglas hospital or Kimberly mediclinic.

[33] The neurologist indicated that regarding the memory loss, his opinion is that there might be a problem but more so due to chronic pain and emotional distress. The neurologist further indicated that the plaintiff would likely not be able to function neurologically in the capacity, as would have been the case had the accident not occurred. Life expectancy has not negatively been influenced by accident.

[34] The Industrial Psychologist Nicolene Kotze indicated that the plaintiff could be able to secure sedentary work because he had passed grade 12. However, his cognitive and psychological impediments will hinder him. However, securing a job that suits his current profile will be daunting. He had to be treated first. The neurologist and the neurosurgeon

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[6] (3126/2016) [2017] ZAGPPHC 706 (10 November 2017)

differ regarding the diagnostic opinion of the plaintiff regarding his brain injury. Dr. Kruger indicated that he sustained a severe brain injury, and Dr. Smuts indicated that he sustained a mild brain injury. The industrial psychologist opined that the plaintiff would have neurocognitive sequelae, affecting his employability. Past loss of earnings, the plaintiff was earning his regular salary during his absence from work and lost his overtime and a 13th cheque, housing allowance and performance bonus. Since January 2018, he has not been working. Loss of this rental income was also suffered when he sold his houses to get an income to survive. Future loss of earnings, the plaintiff will no longer be able to run his father's company as he did before the accident. His retirement will be early in 3-5 years. There should be a higher contingency past morbid deduction, but the Court has discretion.

[35] Actuarial calculation by Prima company for past loss of earnings was R1 149 090,00 (one million one hundred and forty-nine hundred thousand and ninety rand), future loss of earnings was R8 628 565,00 (eight million six hundred and twenty-eight thousand five hundred and sixty-five rand) and the total loss of earnings was R9 777 655,00 (nine million seven hundred and seventy-seven thousand six hundred and fifty-five rand). The contingency deduction was measured at 25%. The earnings are calculated from the basic monthly salary of R45 000,00 overtime of R15 000,00 (fifteen thousand rand) per month, a medical scheme fringe benefit of R2 400,00 (two thousand four hundred rand) per month, a housing allowance of R7 000,00 (seven thousand rand) per month, and a mobile phone allowance of R1 600,00 (one thousand six hundred rand) per month. The use of the company vehicle to the value of R6 500,00 (six thousand five hundred rand) per month, a 13th cheque equal to the basic monthly salary as a regular annual bonus and R1 000,00 (one thousand rand) per annum as a performance bonus. These were projected at the annual inflationary increases only until retirement at the age of 70 (seventy) years. There has not been any evidence that the plaintiff said he would retire at the age of 70 or that the expert said he would retire at such a period. The retirement age is 65 (sixty-five), and the calculation should be based on the retirement age of 65.

[36] I will only take cognisance of the injuries that had been adequately proven as the injuries which caused the plaintiff's loss of earnings and earning capacity. These injuries are as mentioned by the orthopaedic surgeon. I have also already indicated that there has been no proof provided to the court regarding the overtime, bonus, commission, 13th cheque, performance bonus, petrol card, housing allowance, telephone allowance, medical fees, and car allowance. Such earnings should not have been included in the actuarial calculations. I have also disregarded them in arriving at the fair and reasonable compensation of the plaintiff. The actuarial report was also based on the neurologist's findings regarding the brain damage to the plaintiff that I have already rejected above. The report of the industrial psychologist also relied on the findings of the neurologist and neurosurgeon about the severe or mild brain injury that I have rejected. This information formed the basis for the calculation of the plaintiff's loss of income by the actuary. The actuarial calculations based on the rejected findings would therefore be incorrect and is bound to be rejected also. See Seriti JA in *Bee v Road Accident Fund* 2018[7] para 22, who affirmed that the decision taken in the case of *Road Accident Appeal Tribunal & others v Gouws & another*[8] at para. 33, this court said:

> 'Courts are not bound by the view of any expert. They make the ultimate decision on issues on which experts provide an opinion'.

(See also *Michael& another v Links field Park Clinic (Pty) Ltd & another* [2002] 1 All SA 384 (A) para 34.)

[37] My finding is that the plaintiff was involved in an accident on 28 May 2017 and was injured, as indicated by the orthopedic surgeon. At the time of his accident, he was working and earning an amount of R45 000 per month. As all the experts have said above, there is definitely past loss and future loss of earnings. He will be able to use his left shoulder following his treatment without any limitations, as said by the physiotherapist. However, the limitations are concerning his lower limbs. I cannot be able to say whether the plaintiff has one shorter leg or not because there are contradictions in this fact

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[7] (4) SA 366 (SCA)
[8] [2017] ZASCA 188; [2018] 1 ALL SA 701 (SCA)

between the orthopedic surgeon and the occupational therapist. Due to an injury to his leg, he will not be able to stand for a long time or walk for a long time without feeling pain. The plaintiff will have functional impairment with lifting, carrying, squatting, and working below waist level. I am not sure what duties were the plaintiff of doing as the manager of the plant because there is no evidence to that effect. If the plaintiff will not be able to return to his employment which he had before but could work sedentary work. This will make the plaintiff to be in an unfair competition with other people in the labour market due to his experience. He will retire at 65 years.

[38] A Judge can make a round estimate of an amount that seems to her to be a fair and reasonable compensation based on the evidence at her disposal. The Judge exercises a wide discretion when assessing the quantum of damages due to loss of earnings and earning capacity. The court has a discretion to award what it considers right. The assistance by the actuary in calculating the loss of earnings is useful however, the Court still has a wide discretion to award what it believes is just. In this case, the actuarial calculations were rejected, as such, the court will award the fair and reasonable damages for loss of earning without reference to the actuarial calculation filed of record. The fair and reasonable amount is R2000 000.00(two million rand).

Order

[39] In the circumstances, I make the following order:

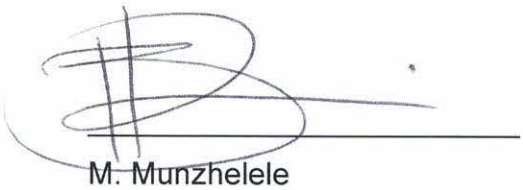
(a) The plaintiff is granted merits in his favour. The defendant is 100% liable for the proven damages of the plaintiff.

(b) The plaintiff's claims regarding general damages and future medical expenses are referred for a full Court hearing on the point of law.

(c) The plaintiff's request for a judgment by default regarding past medical expenses is granted for R 668 999.54 (six hundred and sixty-eight thousand nine hundred and ninety-nine rand and fifty-four cents).

(d) Past and Future Loss of earnings are granted in favour of the plaintiff for an amount of R2 000 000,00 (two million rand).

(e) Defendant to pay taxed costs.



M. Munzhelele
Judge of the High Court Pretoria

Virtually heard: 31 January 2022
Electronically Delivered: 27 July 2022

APPEARANCES:
For the plaintiff: Adv. De Beer
Instructed by: Surita Marais Attorneys

For the Defendant: No appearance