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

CASE NUMBER: 73865/17

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

DATE: 09 FEBRUARY 2022

In the matter between:

BALOYI PATRIC NKATEKO

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

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**JUDGMENT**

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**INTRODUCTION**

**KHWINANA AJ**

- [1] The plaintiff, instituted action proceedings in his personal capacity against the defendant for damages in terms of the Road Accident Fund Act 56 of 1996, pursuant to a motor vehicle collision.
- [2] The plaintiff caused summons to be issued against the defendant on this the 01<sup>st</sup> November 2017 for past hospital and medical expenses at R 100 000.00,

future medical expenses and hospital expenses at R 400 000.00, loss of future earnings at R 2000 000.00 and general damages at R 500 000.00.

[3] This matter is before me for determination of merits and Quantum.

### **BACKGROUND**

[4] The plaintiff is PATRICK NKATEKO BALOYI an adult male person residing at Unit 3 [..... ] Gauteng province.

[5] The Defendant is THE ROAD ACCIDENT FUND, a juristic person established by virtue of Section 2(1) of the Road Accident Fund Act, No 56 of 1996, as amended (hereinafter referred to as the “Act “), with its registered address and principal place of business being Eco Glades 2 Office park, 420 Witch Hazel Avenue, Centurion, Pretoria, Gauteng.

### **BACKGROUND**

[6] The defendant entered an appearance to defendant on 22<sup>nd</sup> November 2017. The defendant pleaded to the plaintiff's particulars of claim on this the 19<sup>th</sup> February 2018. On 25<sup>th</sup> May 2021, the court ordered the Defendant to hold a pre-trial with the Plaintiff within 5(Five) days of this Order. On the 13<sup>th</sup> September 2021, the court struck out the Defendant defence on Merits, Quantum and allowed the Plaintiff to take default Judgement against the Defendant based on the Plaintiff Reports. Notice of Set-down for default

Judgement for the 22<sup>nd</sup> November 2021 was served on the defendant personally on the 29 October 2021.

### **MERITS**

- [7] The plaintiff submits that on this the 1<sup>st</sup> August 2015, he was involved in motor vehicle accident as driver. The plaintiff submitted an affidavit describing how the accident happened. The plaintiff stated that the accident was reported at Giyani Police Station under AR Number: 49/10/2019. The Police Accident report, the plan and key to the plan have been discovered.
- [8] The plaintiff in her affidavit states “On or about the 01st day of August 2015 at or near Xikukwana village, Giyani, Limpopo province, a collision occurred between a motor vehicle with registration letters and numbers CYT [.....] driven by myself and a motor vehicle whose registration letters and numbers are to me unknown driven by an adult male person whose further particulars are to me unknown (hereinafter referred to as the insured driver) The said insured driver decided to turn right in the middle of the road without giving adequate and or any warning of his intention to do so, and as a result thereof a collision occurred between my car and his car. I tried to avoid the accident by applying the brakes and swerved to the right, as I could not have swerved to left as there was another car, but the insured driver collided with my car on the left side and I lost control of the vehicle it overturned. The plaintiff alleges that the sole cause of accident was the driver of the car that turned or made U-turn in the middle of the road without indicating”

- [9] The plaintiff states that he was taken to Nkhesani Hospital at Giyani for emergency medical treatment. The defendant admitted that the accident, occurred however denied the rest of the allegations. The said defence was struck out by the Justice Lusi on this the 13<sup>th</sup> September 2021.

### **LEGAL MATRIX**

- [10] Counsel for the plaintiff submits that apportionment is not applicable in this matter. He referred me to FOX vs RAF (A 548/16) [2018] ZAGPPHC 285(26 APRIL 2018) the full bench of this division held that in paragraph 13 “Where the defendant had in the alternative pleaded contributory negligence and apportionment, the defendant would have to adduce evidence to establish negligence on the part of the plaintiff on the balance of probabilities, Johnson, Daniel James v Road Accident Fund case Number 13020/2014 GHC paragraph 17, confirming Solomon and Another v Musset and Bright Ltd 1926 AD 427 and 435.”
- [11] He further submitted that the defendant defence was struck out and therefore plaintiff is entitled to 100% merits. I am inclined to agree with the plaintiff’s counsel that the plaintiff is entitled to 100% proven or agreed damages.

### **INJURIES AND SEQUELAE**

- [12] The Plaintiff suffered the following injuries- head Injury [Mild head Injury] Dizziness; Right elbow injury, Right upper arm laceration and Chest Injury.
- [13] Dr Sello Solly Selane (Plastic & Reconstruction Surgeon); assessed the plaintiff on 29/10/2019 and reported thereon that the Plaintiff sustained the following injuries: Right arm: Scars: multiple keloid scars on the extensor aspect of the arm on an area of about 8 x 4 cm. These scars have features of scar hypertrophy and they are cosmetically unsightly and disfiguring. Dr J Sibanyoni (Orthopaedic Surgeon); assessed the Plaintiff and reported that on 08/11/2019 concluded that plaintiff sustained injuries on his right shoulder with post traumatic bursitis.
- [14] Dr Faku (Clinical psychologist) assessed the Plaintiff on 30/10/2019 and reported that the plaintiff suffers the following emotional distress; psychological trauma, 1 depression & anxiety related symptoms. The main complaints are pain on the right shoulder since the accident, especially when lifting heavy objects. He avoids lifting or carrying heavy objects due to the right shoulder pain. He struggles to play table pool and sleep on the right shoulder. He prefers wearing long sleeves shirts because of unsightly scars.“
- [15] The neurosurgeon recorded that the plaintiff has significant permanent residual memory disturbances has severe difficulty with concentration, behavioural disturbances post injury, has poor recovery post injury and persistent neuropsychological problems

[16] The Plaintiff qualifies for general damages per the RAF 4 assessment of the Neurosurgeon (Dr Mazwi), who concluded that the Plaintiff suffered permanent serious disfigurement, as well as severe long-term mental, or severe long-term behavioural disturbance or disorder. Due to the Plaintiff's head injury, the combined whole person impairment is recorded at 22%. Dr Sello Solly Selane (Plastic & Reconstruction Surgeon) concluded that the Plaintiff suffered permanent serious disfigurement point 5.2. Due to the Plaintiff's Scars, the combined whole person impairment is calculated at 5%. Dr Sibanyoni (Orthopaedic Surgeon) concluded that the plaintiff suffered serious long-term impairment or loss of a body function. Due to the Plaintiff's Orthopaedic injuries, the combined whole person impairment is calculated in terms of the at 6%.

[17] Counsel submits that this assessment has not been rejected by the defendant, taking into account all the injuries and the consequences. The plaintiff alluded to authorities and opines that general damages be awarded in the amount of R 900,000,00 is fair towards both the plaintiff and the defendant.

### **LOSS OF AMENITIES OF LIFE**

[18] According to the neurosurgeon report the plaintiff lost the following amenities of life, normal living were lost during the period of hospitalisation, activities of daily living and mental function have been affected. In *Bismilla v Road Accident Fund*<sup>1</sup> the plaintiff a 21-year-old engineering student with an above average IQ. The plaintiff suffered a concussive brain injury of moderate severity. It was common cause that he would probably have entered the labour market at Patterson B5/C1 level and attained his career ceiling at the age of 40–45 at a Paterson D3/D4 level. The plaintiff's academic results deteriorated from 2014 to 2017 causing him to repeat several subjects. The neurosurgeons, having agreed on the severity and nature of the injury, deferred to the opinions of clinical neuropsychologists regarding the functional effect of the sequelae on the plaintiff. These two experts expressed widely divergent views about the long-term effect of the injury.

[19] After a critical evaluation of their evidence the court accepted the version of plaintiff's expert, Dr Ormond-Brown. Consequently, the court accepted that plaintiff suffered from a frontal lobe brain injury; that he was experiencing problems with abstract concepts, expressing himself and formulating ideas; that he struggled to keep up the pace and that his functioning was variable and unpredictable. His conduct makes him unreliable and would have a negative effect on his employability.

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<sup>1</sup> 2018 (7B4) QOD 64 (GSJ)

[20] The court also found, based on the agreement between the educational psychologists, that there would be a delay in completing plaintiff's studies. It also accepted the reasoning of plaintiff's industrial psychologist in respect of plaintiff's expectations in the labour market and career progression. The parties agreed on the value on income uninjured to which the court applied a 24% contingency based on  $\frac{1}{2}\%$  per annum with 45 years ahead of plaintiff until the retirement age of 65. A contingency of 54% was applied to the value of income injured for the reasons advanced in para [84] of the judgment. He was awarded R 700 000 general damages in 2018 which is equivalent to R 828 000 in 2021 quantum yearbook by Robert j Koch.

[21] In *Monaisa v Road Accident Fund*<sup>2</sup> 52-year-old male transport manager (56 years old at the time of trial) Sustained: Concussive brain injury with subacute subdural haemorrhage and a basal skull fracture; fracture of the medial wall of the right orbit and distortion of the left nasal bones and subacute subdural haemorrhage; laceration to the forehead, soft-tissue injury to the cervical spine and to the right hand. Current complaints: headaches, memory loss, forgetfulness, aggression and short temperedness; verbal aggression such as shouting and becoming physically aggressive; symptoms suggestive of soft-tissue injury of his cervical spine with symptoms occurring intermittently; pain in relation to the mid and lower cervical vertebrae which is increased by activity, cold and inclement weather – pain radiates down into his upper back, into both shoulders and up his neck into his head causing occasional occipital headaches; stiffness of the neck, as well as, muscle spasms in the

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<sup>2</sup> 2017 (7B4) QOD 55 (GJ)



paraspinals and trapezii; difficulty sitting or standing in one position for prolonged periods of time and finding a comfortable position in which to lie; inability to rotate his neck and has to turn his whole body to look over his shoulder; pain over the distal interphalangeal joint of third finger of his right hand and resultant weakened grip strength of the right hand; withdrawn and lack of sociable interaction; difficulty with dealing with heavier loads at work and made several mistakes upon return to work due to being forgetful and losing his temper realised that he was not able to cope with the work and therefore resigned; walks with a limping gait; short concentration span and loses track when watching television programs; experiences feelings of depression, negativity and worthlessness. He was severely disabled for three months after the collision and remains moderately disabled as a result of the cervical symptoms and right hand symptoms. He suffered from a considerable degree of pain and suffering as a result of the injuries sustained.

- [22] He has also been seriously permanently disfigured in the area of his face involving the left upper eyelid extending from the eyebrow into the upper lid. He sustained a head injury of a significant nature and suffers from impulse dyscontrol and intellectual difficulties as a result. His occupational prospects have been compromised as a consequence of the sequelae of the head injury and ongoing intellectual difficulties. He has alterations in mood and is emotional and argumentative. His sleep patterns have also been interrupted and he experiences fatigue during the day. He has decreased motivation and initiation. These changes in personality as well as sleep pattern fatigue are

typical of a brain injury of this magnitude. It is likely that he would remain unemployed in the long term.

[23] He was awarded R 650 000.00 general damages in 2017 which is equivalent to R 768 300 in 2021. *Mofokeng v Road Accident Fund 2015 (7B4) QOD 12 (GSJ)* The plaintiff A 23-year-old female phone booth operator sustained A softtissue injury of the neck, a lower back and moderately severe head injury. The brain injury was referred to as a diffuse rotational shear injury, invisible to MRI scans, characterised by an effective disconnection between the frontal lobes and the rest of the brain to a lesser or greater degree. The plaintiff was hospitalized, was unconscious for about an hour after the accident with an inability to lay down continuous memory for approximately 6-7 hours after the accident. She was fitted with a cervical collar; X-rays were done and she was kept under observation and discharged the very same afternoon.

[24] The plaintiff became forgetful and personality changes occurred. The plaintiff's lumbar range of movement was impaired; straight leg raising was very restricted. She experienced pain when walking or standing for a long time and had headaches and back pains for which self-medication was taken. The plaintiff lost her job after the accident, but managed to find various other jobs which were all terminated because of her inability to physically cope with long working hours. Neuro-psychological deficiencies and pain in the lower back and spine rendered the plaintiff unemployable. He was awarded R 700 000

general damages in 2018 which is equivalent to R 969 000 in 2021 quantum yearbook by Robert j Koch page 23.

[25] In *Mohale v Road Accident Fund* 2015 (7A4) QOD 15 (GNP) an accident resulted in the plaintiff having headaches with a slightly increased risk of developing epilepsy. Due to the severity of the neuropsychological sequelae of the head and brain injury, behavioural and neurocognitive changes, psychiatric changes, headaches, back and neck pains, poor progress at school and the industrial psychologist's opinion that the plaintiff is unemployable, the court was satisfied that the accident has had a tremendous impact on the ability of the plaintiff to work. He was awarded R 650 000 general damages in 2018 which is equivalent to R 900 000 in 2021 quantum yearbook by Robert j Koch. Based on the plaintiff's age at which he sustained a devastating injury robbing him of all personal independence and rendering him subject to multiple medical and surgical procedures in future, apart from profound intermittent psychological and psychiatric consequences.

[26] Counsel opines that the trite principles applied by our courts in assessing general damages and the wide discretion afforded the courts, bearing in mind that no two cases are exactly the same, he respectfully submits that a reasonable amount for general damages in this instance would be R900 000.00 which is fair for both the plaintiff and defendant.

**LOSS OF INCOME.**

[27] According to the industrial psychologist Mr Baloyi was 33 years old at the time of the accident was employed as an Assistant Electrical Technician at Diesel Innovations (PTY) Ltd earning ±R6 000 per month, depending on the number of hours worked. He has Grade 11 level of education, and Electrician Trade Certificate. He had no previous work experience at the time of the accident, apart from been employed in his pre-accident employment as an Assistant Electrical Technician. In light of the above, had the accident not occurred, the following scenario would have unfolded: Considering his age, education level, and work experience, Mr Baloyi would have most likely continued working as an Assistant Electrical Technician earning ±R6 000 per month. Mr Baloyi would have continued with his employment until such time when he would have been promoted to an Electrical Technician as his supervisor reported that he would have been send for training to become a qualified technician earning ±R10 000 per month, manually calculated to R120 000 per annum. He would have reached his career ceiling at this stage and growth in his earnings would have been through additional inflationary related salary increments until retirement at the age of 65 years depending on his health, economic factors, and retirement policy of his employer.

#### **POST-ACCIDENT WORKING POTENTIAL**

- [28] Dr Sibanyoni (Orthopaedic Surgeon) opines that Mr Baloyi's ability to compete in an open labour market has been affected. He will be able to work until his normal retirement age. He estimate loss of working capacity of at least 05% to 10% if the patient is allocated in sedentary job. Based on the radiological and clinical investigations done, patient would require further treatment of his condition in future from a neurocognitive point of view. Dr Mazwi (Neurosurgeon) opines that he has sustained a mild head injury and has significant permanent residual memory disturbances. Has severe difficulty with concentration. Has behavioural disturbances post injury. Has poor recovery post injury. Has a persistent neuropsychological problem. Has a chronic postconcussive headache. Has recurrent dizziness.
- [29] According to the Plastic & Reconstructive Surgeon - Dr Selahle, Mr Baloyi's scars have features of scar hypertrophy and they are: cosmetically unsightly and disfiguring and permanent with some prospects of scar improvement by scar revision techniques. He feels very uncomfortable with these scars. He has suffered from considerable physical pain and he is still suffering from emotional pain due to his cosmetically disfiguring scars From a functional point of view, the Occupational Therapist (L.T Motsepe) opines that the claimant manages working but he still has challenges with his right shoulder joint which tends to be in his way of work as his job falls within heavy category of work. He still would remain limited and unfit to continue working in the current job. The probability that he will manage working in the current job until his retirement age is very poor. It is unlikely that the surgery would increase his capacity to work but reduce pain and pressure in the joint with decreased strength following pain that could result from surgery. He is already put in a

light work, regarded as light for the company in his line of work. He would post accident require lighter jobs that he would manage. He so far would never be an equal competitor from an emotional / interpersonal point of view.

[30] Mr Faku (Clinical Psychologist) opines that the noted emotional distress is associated with the impact and change of full physical control which has resultant in significant psychological trauma (subtle depression and anxiety related symptoms). The noted symptoms do meet the criteria for a DSM V diagnosis for anxiety related symptoms and was observed to have some personality vulnerabilities. He would benefit from seeing a Clinical Psychologist for Psychotherapy. Based on the information obtained and psychological assessment, Mr Baloyi has sustained significant injuries on the day of the accident. The neuropsychological assessment suggests that Mr Baloyi experienced no significant neuropsychological deficits. The noted difficulties also attributed to the accident in the form of physical changes seem to impact negatively on his daily existence in multiple platforms socially and occupationally.

[31] In light of the above, the writer opines as follows: Mr Baloyi sustained a head injury, chest injury, multiple abrasions above right elbow and painful right arm. Given the expert's and the claimant's information the writer notes that Mr Baloyi currently present with pain and poor physical endurance. He is still employed in his pre-accident employment and he has been promoted to an Electrical Technician post-accident. His supervisor reported that his performance is still good; however he struggles with lifting heavy objects. This

statement is further supported by the Occupational Therapist who noted that Mr Baloyi manages working but he still has challenges with his right shoulder joint which tends to be in his way of work as his job falls within heavy category of work. He would post accident require lighter jobs that he would manage. He so far would never be an equal competitor. Therefore, noting the nature of his employment where he has to frequently load and unload heavy objects the writer opines that the accident has negatively affected his employability.

- [32] The Orthopaedic Surgeon added that his ability to compete in an open labour market has been affected and he will need further treatment for his condition in future. Taking cognizant that there are no future plans in terms of promotions and that he struggles performing his duties post-accident, the writer is of view that the accident has curtailed his career advancement. Furthermore, Mr Baloyi reported that he is no longer permanently employed, but only works on part time basis depending on availability of work. Thus, the writer opines that the accident had a deleterious effect on his effectiveness in the labour market. Mr Baloyi will remain as a part-time Electrical Technician without any career growth. He is thus, employed by a sympathetic employer.
- [33] Therefore, he is expected to continue with his current employment albeit the reported pain and discomfort. He would require psychotherapy which should be aimed at assisting him in dealing with the negative effects of the emotional distress and behavioural challenges he is experiencing, as recommended by the Clinical Psychologist. He is currently 38 years old and he is not expected to secure alternative employment.

[34] Therefore, his earnings will continue to be based on the inflationary increases until retirement age. Dr Mazwi mentioned that he has sustained a mild head injury and has significant permanent residual memory disturbances. This is likely to interfere with his work output, as he has to remember how to service and install the generator. The plastic surgeon added that he has suffered from considerable physical pain and he is still suffering from emotional pain due to his cosmetically disfiguring scars. Thus, the writer opines that he will continue in his capacity however his chances of securing alternative employment are compromised. The writer accepts that he is no longer an equal competitor in the open labour market as compared to his peers. Mr Baloyi suffers loss of income due to the accident. Therefore, the writer defers to relevant contingencies to address his vulnerabilities.

### **THE ACTUARIAL CALCULATION**

[35] The plaintiff appointed Manala actuaries who calculated the plaintiff loss of income. Counsel submits that 10% Future Pre-morbid will be fair and reasonable in line with Supreme court of appeal judgement of Masemola v Road Accident Fund (256/2015) [2016] ZASCA 72 (25 May 2016) the supreme court of appeal reduced 15% contingencies on the future pre-morbid to 10% for the following reasons which appears on the Judgement: “

[36] The court a quo accepted the Linde report and opinion expressed in it, that had the accident not happened, the appellant would probably have returned to the open labour market as a security officer, and that now that the accident



has happened, she would not be able to engage in employment as a security officer nor as a full-time domestic worker. It also noted that one of the factors it had to consider in exercising its discretion was a possibility that the plaintiff may have less than a normal life expectancy. Despite acknowledging all those factors the court imposed a higher deduction of 15 per cent. In so doing the court a quo erred. The appellant is clearly an ambitious woman who aimed to improve her employment prospects so that she could fend for herself. Whilst raising her children she was not content with simply being a full-time home maker but commenced employment as a domestic worker for two years, and only resigned because she was expecting her second born child. She also had ambitions of being a security officer and thus completed security training and registered as a grade C security service provider. She also completed a six month certificate in early childhood development and obtained a learner's licence. After the accident, she did not sit at home and feel sorry for herself but she again went out into the open labour market in an attempt to make ends meet, but is, as a result of the injuries she sustained in the accident, not able to secure permanent employment. The resultant consequence of allowing a higher contingency deduction for pre-morbid future loss of earnings is that she will get a lower award for damages for loss of earnings. That means that the court a quo had very little regard to her potential earning capacity, had the accident not happened. This court must thus interfere with the trial court's estimate, and the pre-morbid contingency deduction pertaining to future loss of earnings is consequently reduced to 10 per cent.

[37] “We submit that 50% future post-morbid is appropriate as per Tolmay J judgment of Sayed NO v Road Accident Fund (49442/2013) [2016] ZAGPPHC 1112 (16 November 2016) dealing with sympathetic employment contingencies. Having applied the said contingencies loss of income is R 1 030 750 Calculated as follows: Future loss Premorbid R 1 954 395 -10% = R 1 758 955, Post morbid R 1 456 411 – 50% = 728 205, 5 Total Future Loss of income R 1 030 750 Total loss of income R 1 030 750.00.

[38] It is trite law that the defendant does not award an amount in relation to future hospital and medical expenses. The defendant furnishes the plaintiff with an undertaking in terms of section 17(4) (a) of the Road Accident Fund, No 56 of 1996 (“Act”).

### **ANALYSIS**

[39] The plaintiff’s counsel has referred me to a plethora of caselaw. It is so that one cannot find a case that is exactly the same as that of the plaintiff, however there are injuries and sequelae that informs me in determining the quantum. I have considered the injuries and I am inclined to agree with the plaintiff’s counsel that the plaintiff must be compensated. I however, considered that in some of the matters I have been referred to the injuries might have been worse therefore I am of the view that the amount that is fair and appropriate in this matter is the sum of R 800 000.00 for general damages.

[40] The plaintiff has been recorded as a person who was earning an income and will proceed to do so except there are no guarantees considering that he is

nolonger able to compete as a well abled person. In the Bailey<sup>3</sup> matter the court considered the two scenarios in determining the compensation for the plaintiff. There is records of the income of the plaintiff as well as the fact that he has vocational training which is authenticated with a certificate. The actuarial report has been filed which counsel has alluded to. I do not wish to deviate from his suggestion particularly because he currently is not in a stable job, This is evident that same has been caused by the accident and one cannot say if he will be retained in the same job in future.

[41] I am therefore satisfied that the sum of R 1 030 750.00 be awarded to the plaintiff as his loss of earnings. It is trite law that costs must be awarded to the successful party.

[42] In the result I have considered the draft order filed by the plaintiff and I have amended same and marked it X.

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**ENB KHWINANA**  
**ACTING JUDGE OF NORTH**  
**GAUTENG HIGH COURT, PRETORIA**

Adv F Matika: Counsel for Plaintiff

DATE OF HEARING: 22 NOVEMBER 2022

DATE OF JUDGMENT: 08 FEBRUARY 2022

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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<sup>3</sup> *SOUTHERN INSURANCE ASSOCIATION LIMITED V BAILEY N.O. 1984(1) at 99H*

ON THE 22ND NOVEMBER 2021 BEFORE THE HONOURABLE JUSTICE

KHWINANA AJ

In the matter between: -

BALOYI PATRICK NKATEKO

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

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DRAFT ORDER

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HAVING read the documents filed of record, heard counsel and having considered the matter:

IT IS ORDERED THAT:

1. The defendant is 100% liable to the plaintiff.
2. The Defendant shall pay to the Plaintiff an amount of R 1 830 750.00 being loss of earnings R 1 030 750.00 and General damages R 800 000.00 (\_One eight million three zero seven hundred and fifty thousand) in full and final settlement.
3. The capital amount in paragraph 2 above and the costs are to be paid into the Trust account of NKHESANI MATIKA ATTORNEYS as set –out below and within 180 days of this order: BANK NAME: NEDBANK ACCOUNT NUMBER: BRANCH CODE: 160445 REF: N MATIKA/MM/RAF/BAL0001/17

3. The defendant shall pay the plaintiff's taxed or agreed costs on the High Court Scale as between party and party pertaining to merits and quantum, which costs shall include the costs of the 09 August 2020 ;10 June 2021 and 22 November 2021, the costs plaintiff's attorney, all costs of pre-trials held between the parties in this matter, all costs of interlocutory applications including costs of application to compel and costs of trucking defendant defence, subject to taxing master's discretion but not limited to:

3.1 The costs of all expert's reports delivered in terms of Rule 36(9) (a) and (b); by the plaintiff to the defendant of the following experts:

3.1.1 Dr Sibanyoni (orthopaedic surgeon)

3.1.2 Dr Faku (Clinical psychologist)

3.1.3 Dr Sello Solly Selalane (Plastic & reconstructive Surgeon)

3.1.4 Dr Motsepe Thandiwe (Occupational Therapist)

3.1.5 Vuyani Muleya (Industrial psychologist)

3.1.6 Manala Actuaries

3.2 The costs of counsel, including the costs of the 19 August 2020 ,10 June 2021 ,22 November 2021 and including the costs of drafting heads of argument.

3. 3. The full costs of travelling, transportation, subsistence and accommodation incurred by and on behalf of the injured for attending medico-legal examinations arranged by Plaintiff attorneys on behalf of the Plaintiff.

4. The defendant shall furnish to the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for the costs of future

accommodation of the plaintiff in a hospital or nursing home, or treatment of or rendering of a service or supplying of goods to the plaintiff, arising out of the injuries and the sequelae thereof sustained in a motor vehicle collision occurred on the 01 August 2015 after such costs have been incurred and upon proof thereof.

5. The plaintiff shall, in the event that costs are not agreed, serve the notice of Taxation on the defendant or the defendant's attorney of record.

6. The plaintiff shall allow the defendant 14 (Fourteen) court days to make payment of the taxed costs.

7. Defendant will not be liable for any interest on this payment on condition that Payment made timeously.

8. In the event of the Defendant not making this payment timeously the Defendant will pay interest at the rate of 7% per annum on the amount then outstanding as provided for in section 17(3)(a) of the Road Accident Fund, Act 56 of 1996 (as amended).

9. There is a contingency fee agreement.

BY THE COURT \_\_\_\_\_

REGISTRAR

Counsel for the Plaintiff: Adv Fhatuwani Matika (073 009 7867)

Counsel for the Defendant No Appearance