

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 83986/2016

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

In the matter between:

CASSIEM, MICAILAH

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

FLATELA A.J

Introduction

[1] The matter served before me on 29 October 2021 for the determination of the loss of earnings and past and future medical expenses. Liability and general damages having being settled in favour of the plaintiff; the Defendant is liable to pay 100% of the Plaintiffs proven damages.

[2] On 12 November 2015 and at Helshoogte pass in Stellenbosch Western Cape, the Plaintiff was injured as a passenger of a motor cycle with registration no. [...], (the insured vehicle) when it collided with a pedestrian. The motor cycle was driven by the plaintiff's former boyfriend Ridha Allie. Unfortunately, the driver and pedestrian died on the scene of the accident. The cause of the collision was the negligent driver of the motor cycle.

[3] In respect of the past medical expenses, the defendant has offered the plaintiff a voucher to the amount of R8658.60 (eight thousand six hundred and fifty-eight rand sixty cents).

[4] The plaintiff is seeking an undertaking in terms of Section 17 (4) (a) of Act 56 of 1996 in respect of the future medical expenses.

[5] In terms of the amended particulars of claim the plaintiff sustained the following injuries:

- 5.1 Head injury with an associated traumatic brain injury of a mild to moderate severity;
- 5.2 Left acromion fracture;
- 5.3 Undisplaced fracture of the base of the second metacarpal of the left hand;
- 5.4 Fracture of the left clavicle.

Loss of earnings

[6] The Plaintiff is claiming R1 206 249.00 (One million two hundred and six thousand two hundred and forty-nine rand) for loss of earnings. At the time of the accident the Plaintiff was 19 years with a grade 12 certificate as her highest level of education.

[7] The Plaintiff was employed as a pre-school teacher's assistant who earned about R3500.00 (Three thousand five hundred rand). The Plaintiff resigned because of her arm being in a cast and she was unable to care for the babies. She was unemployed until 7 April 2016.

[8] On 7 April 2016, the plaintiff secured a permanent position as a call center agent for Foschini Group, Cape Town. She was earning R3500 p.m. (Three thousand five hundred rand) plus medical aid, pension fund and annual bonus. She left this job to seek a better paying job.

[9] In July 2018 to January 2020 she was employed as a data capturer by SA Commercial, Cape Town, earning R5000.00 (five thousand rand) per month plus

benefits. The plaintiff resigned from work because she fell behind her work because she had to take additional breaks. She decided to resign before the officials took disciplinary action against her. She has remained unemployed to date.

[10] The plaintiff employed several medical experts and they have provided expert evidence. The main report being that of an Industrial Psychologist.

[11]. Pieter de Bruyn an Industrial Psychologist states the following:

11.1 Plaintiff expressed her intention to qualify as a primary school educator to De Bruyn. For this position, Plaintiff would have had to complete, at least, a relevant one-year national certificate. She would then be regarded as a skilled worker on NQF level 5.

11.2 De Bruyn postulates that Plaintiff may well have completed such a qualification around 2020 or 2021 and then secured work in this field.

11.3 He is of the view that it is not unreasonable to assume that the Plaintiff may well have commenced work in this field around 2022.

11.4 **But for the accident**, it is postulated that Plaintiff would have been able to function as a semi-skilled worker, alternatively able to perform any other work role in line with her education, knowledge, skills and occupational experience.

11.5 De Bruyn is of the view that Plaintiff would as a semi-skilled worker have reached her career ceiling at the age of approximately 45 on a Paterson Grade

B3-B4 level.

11.6 Alternatively, with a recognized certificate (NQF level 5), Plaintiff would have entered the open labour market in line with Paterson Grade B3, and eventually reaching a career at the age of 45 in line with Paterson Grade C1-C2.

[12] The impact of the MVA on Plaintiff's career:

12.1 Plaintiff sustained at least a mild and possibly a moderate traumatic brain injury with a negative effect on her intellectual functioning;

12.2 Plaintiff has been left with serious permanent disfigurement;

12.3 Neuropsychological assessment revealed a number of deficits ranging from below average to severely impaired in several areas of functioning assessed, including attention and concentration, speed of information processing, visuopraxis, executive functioning and memory;

12.4 The functional effects can be considered to be permanent and irreversible and left Plaintiff vulnerable to the development of an array of organically based psychiatric disorders over her future lifetime;

12.5 Findings of cognitive assessment reveal below-average to severely impaired cognitive deficits in some areas of functioning;

12.6 Plaintiff's occupational functioning has been negatively impacted by the

sequelae of the injuries sustained in the MVA and resulted in a loss of productivity and efficiency.

[13] Plaintiffs potential studies will also be delayed by approximately 2 years completing her certificate by 2023 only.

[14] This figure is bolstered by actuarial calculation by Ivan Kramer CC after applying a 15% contingency deduction in respect of Plaintiff's prospective earnings but for the accident and 30% in respect of the Plaintiff's prospective earnings having regard to the accident, Plaintiff's loss in respect of Basis A1 (no further studies) amounts to R938 262.00 (nine hundred and thirty-eight thousand two hundred and sixty-two rand) and in respect of Basis B2 (certificate) amounts to R1 474 236.00 (one million four hundred and seventy four thousand two hundred and thirty-six rand).

[15] The Plaintiff then requires an amount of R1 206 249.00 (one million two hundred and six thousand two hundred and forty-nine rand). The Plaintiff avers that this amount is fair and reasonable as the average between two bases.

The Legal Principles

[16] The legal principle in respect of a claim for diminished earning capacity is trite in that the Plaintiff must be placed in the position he would have been in had the injuries not occurred. To succeed in the claim for loss of income or earning capacity, the Plaintiff

has to establish on a balance of probability that as a result of the accident, he has lost future earning capacity¹.

[17] Mbatha J said in *Duma v RAF* ²The court, in determining a fair and reasonable compensation for loss of income or earning capacity, has a wide discretion which needs to be exercised judicially. In the *Road Accident Fund v Guedes*³ the court states as follows:

'It is trite that a person is entitled to be compensated to the extent that the person's patrimony has been diminished in consequence of another's negligence. Such damages include loss of future earning capacity (see for example *President Insurance Co Ltd v Mathews*).⁴ The calculation of the *quantum* of a future amount, such as loss of earning capacity, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature, such an enquiry is speculative and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate (see, for example, *Southern Insurance Association Ltd v Bailey NO*).⁵ The court necessarily exercises a wide discretion when it assesses the *quantum* of damages due to loss of earning capacity and has a large discretion to award what it considers right. Courts have adopted the approach that, in order to assist in such a calculation, an actuarial computation is a useful basis for establishing the *quantum* of damages. Even then, the trial Court has a wide discretion to award what it believes is just (see, for example, the *Bailey* case ⁶ and *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd*).⁷

¹ Rudman v RAF 2003 (SA)234 (SCA)

² 2019 JOL 1446

³ *Road Accident Fund v Guedes* 2006 (5) SA 583 SCA at 586H-587B.

⁴ *President Insurance Co Ltd v Mathews* 1992 (1) SA 1 (A) at 5C-E.

⁵ *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A).

⁶ *Southern Insurance Association* fn3 at 116G-117A.

⁷ *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) at 114F-115D.

[18] The plaintiff relies on the evidence of the several expert witnesses. A court's approach to expert testimony was neatly summarised in *Michael and Another v Linksfeld Park Clinic (Pty) Ltd and Another* 2001 (3) SA 1188 (SCA). Howie J writing for the court stated-

"[36] . . . what is required in the evaluation of such evidence is to determine whether and to what extent their opinions advanced are founded on logical reasoning. That is the thrust of the decision of the House of Lords in the medical negligence case of Bolitho v City and Hackney Health Authority [1997] UKHL 46; [1998] AC 232 (HL (E)). With the relevant dicta in the speech of Lord Browne-Wilkinson we respectfully agree. Summarised, they are to the following effect.

[37] The Court is not bound to absolve a defendant from liability for allegedly negligent medical treatment or diagnosis just because evidence of expert opinion, albeit genuinely held, is that the treatment or diagnosis in issue accorded with sound medical practice. The Court must be satisfied that such opinion has a logical basis, in other words, that the expert has considered comparative risks and benefits and has reached 'a defensible conclusion' (at 241G-242B). . . .

[40] Finally, it must be borne in mind that expert scientific witnesses do tend to assess likelihood in terms of scientific certainty. Some of the witnesses in this case had to be diverted from doing so and were invited to express prospects of an event's occurrence, as far as they possibly could, in terms of more practical assistance to the forensic assessment of probability, for example, as a greater or lesser than fifty per cent chance and so on. This essential difference between the scientific and the judicial measure of proof was aptly highlighted by the House of Lords in the Scottish case of Dingly v

The Chief Constable, Strathclyde Police 200 SC (HL) 77 and the warning given at 89D-E that

‘(o)ne cannot entirely discount the risk that by immersing himself in every detail and by looking deeply into the minds of the experts, a Judge may be seduced into a position where he applies to the expert evidence the standards which the expert himself will apply to the question whether a particular thesis has been proved or disproved – instead of assessing, as a Judge must do, where the balance of probabilities lies on a review of the whole of the evidence.’ (Emphasis added)

[19] I now deal with the evidence of the experts reports upon which Dr De Bruyn, the Industrial Psychologist relied on in his conclusion that the plaintiff suffered loss of earnings.

[20] Dr Hovsha, the Clinical neuropsychologist examined the plaintiff on 25 October 2018. She noted several cognitive and executive functioning difficulties. She opined that this is consistent with a traumatic brain injury, in her opinion possibly severe. However, she deferred to severity, and if any presence of a brain injury to a neurosurgeon.

[21] Dr Allen, the Neurosurgeon examined the plaintiff on 19 July 2019 having read the report of Dr Hovsha concluded that a traumatic brain injury could not be excluded notwithstanding the level of consciousness the claimant presented at the casualty ward at the time of accident. However, his view, assuming presence of trauma brain injury, concluded that its effect on her was of a mild, or possibly moderate effect. With regards to her earning capacity, he was of the opinion that that the head trauma would only

have a mild effect. However, he deferred to the opinion of an Industrial Psychologist to determine the same.

[22] Orthopaedic Surgeon Dr Read examined the plaintiff on 13 September 2017 he recommended R10 000 for a conservative treatment surgery and physiotherapy. R15 000 for certain injections and physio. And on the off chance that none of his advised recommend treatment work to ease the claimant symptoms, then a R50 000 provision for a certain specialised surgery. He also addresses the following aspects: -

22.1 Past Disability – in an arm cast for five months whilst healing at home.

22.2 Future disability – Dr Read opines if treatment as advised above is done, claimant symptoms will improve.

22.3 Employment – claimant copes satisfactorily in her present occupation. And she qualifies for sedentary work, this means light normal light loads. But not carrying objects above 9kgs.

22.4 Loss of amenities – notes that the patient social life activities are different pre and post MVA.

22.5 Serious long-term impairment of loss of body function

Dr Read reports clearly states that the orthopaedic injuries in question **DO NOT** fall within the 5.1 – that is not serious impairment as they are treatable as he advised above; and secondly, many of them are relatively healed save for few fractures that can be remedied here and there.

[23] Dr Berkowitz, the Plastic Surgeon who examine the plaintiff on 11 September 2017 noted that the claimant has “serious permanent disfigurements because of MVA”. However, a holistic reading of his reports and the multiple lacerations he notes to have healed qualifies the “serious permanent disfigurements” to scars. What he refers to as disfigurements are the skin scars insofar as they shall forever be with the claimant. For remedy he recommends for scar one and scar two, revision surgery at about R10 000 (this includes hospital and surgeon at about R5000 each). On scar three, he recommends pigment cream at about R7940) – in total, future medical expenses are at R18 000 for remedy, which all the more gives reason to believe that by “serious permanent disfigurements because of MVA” he actually means scars.

[24] N. Sibiya an Occupational Therapist examined the plaintiff in 2019. She states that:

24.1 The client presents with reduced range of motion in the shoulder accompanied by moderate levels of pain on active movement. Ms Cassiem’s right hand dominant and has adequate pinches and grasps with both hands.

24.2 The time of the accident in question, she was employed as a teacher’s assistant. From a physical perspective, the client’s pre-morbid occupation can be considered to be of light physical demand. Post-accident, she resigned from this position. Ms Cassiem reports her upper limb injuries restricted her from performing load handling tasks. She therefore anticipated she would not be able to carry or lift toddlers at work.

24.3 Ms Cassiem secured a Call Consultant position at Telesales, following the accident under review. She performed sales telephonically. She reports sitting in a static position in front of a computer for 3 (three) hours or more would cause discomfort in the shoulder. She therefore took rest breaks often. She reports her doctor also booked her off on several occasions, due to the reported shoulder complaints. She eventually left this position as she was unhappy at work.

24.4 At present Ms Cassiem is employed in a sedentary position as a Data Capturer. She reports the left shoulder complaints have not subsided. As a result, she works a relatively slow pace. She has therefore been called for disciplinary hearings on two occasions. In addition, she suffers from migraines and her colleagues have raised concerns with regards to her recall abilities.

24.5 Ms Cassiem's current physical capacity conforms to the sedentary level of work. It is anticipated that as a result of the impingement in the left shoulder she will have slight difficulty working in elevated planes. Ms Cassiem is right hand dominant. Her hand test scores suggest she has adequate grip strength, low to above average hand co-ordination speed and below norm standard writing speed. Following the accident in question Ms Cassiem will not be able to meet the load handling demands of her previous position (Teacher's assistant). She is mostly likely to be precluded from jobs which load handling is an essential demand. In her current position she performs mainly administrative duties and should therefore be able to continue working.

24.6 From a cognitive standpoint it appears Ms Cassiem is presenting with reduced cognitive ability since the accident under review. Dr Lewer-Allen notes

Ms Cassiem sustained a mild to moderate head injury at the time of the accident under review. She does suspect that her inability to work at a fast pace and see clearly while performing work tasks is a result of reduced visual perceptual skills. The test results also support that she is experiencing a decline with regards to memory function. It is also plausible that as a result of mood related disorder her cognitive function is further compromised. The report of R Hovsha (Clinical Psychologist) also concurs to this and she defer to the relevant expert to comment further in this regard.

24.7 Dr Fine (Psychiatrist) noted that the client is presenting with features of depression and post-traumatic disorder following her involvement in the accident and the passing of her partner. Furthermore, he stated that she is at risk of developing

Ms Sibiya's follow up addendum dated 19 May 2021

[25] Ms Sibiya had a telephonic follow up consultation with Ms Cassiem. She reports that she is nervous since she is about to become a first-time mother. She states that she doubts that she will be able to perform her house chores while attending to her new-born, especially when her partner is away for work. Ms Cassiem is of the opinion that her new role as a mother is likely to trigger her depression. Deference is made to the Clinical Psychologist to comment further in this regard. The client anticipates that she will have trouble carrying the baby. Ms Sibiya suggests a baby carrier to assist Ms Cassiem in carrying her baby.

[26] Ms Cassiem reports that she had trouble to meet her targets because she worked at a slow pace compared to her peers. She was therefore called for a hearing on 2 (two) occasions.

[27] She occasionally suffered from migraines from sitting in front of a computer screen for long periods of time. Her vision became blurry as a result. She used Tramadol to manage her symptoms.

[28] She reports at work her colleagues would complain about her forgetfulness.

[29] Ms Cassiem asserts that she resigned from the position because she felt the job was not suitable for her and did not align to her interests

[30] “At the time of the initial interview, she had been working as a Data Capturer at S.A Commercial: Go2UBL. From a physical perspective, the client’s postmorbidity occupation can be considered to be of sedentary physical demand...My original comments remain the same.”

Relevant for loss of income:

[31] Claimant resigned from work because she anticipated she would not be able to carry out her teaching assistant duties because of having an arm cast. Sibiya classifies the patient’s work demands pre-MVA as light demand work.

[32] Dr Fine a psychiatrist states that "...she still presents with similar symptoms indicating that she had sustained a Head-Injury with significant Organic Brain-Damage, and where Neuropsychological and other reports confirm significant alteration in Mental Status, Cognition and Highest Integrative Function, and where Ms. Hovsha's report refers often to the presence of "Severe Impairment" on testing. In addition, she still has symptoms of a Post-Traumatic Stress Disorder, and Depression secondary to the effects of the Accident preventing her from performing and enjoying her normal activities of daily living and life-amenities."

On 5 March 2021, Dr Fine filed an addendum where he states that the plaintiff still requires Psychiatric Treatment as previously recommended.

[33] Dr Fredericks, a General Practitioner completed RAF 4 on Serious Injury Assessment. His practise specialises in medico legal claims and he is also a commercial mediator in respect of medico legal claims. He made the following findings " WPI score of 29

He based his findings on inter-alia the report of Dr Read and he categorised it under 5.1, However Dr Read's report clearly stated that the orthopaedic injuries in question DO NOT fall within 5.1, that is, it is not serious impairment as they are treatable as he advised and secondly, many of them healed save for fractures that can be remedied here and there.

Dr Du Bruyn, Industrial Psychologist 2019 recommendations :

[34] Ms Cassiem commenced her working life around 2015 as a part time Teachers assistant, for a few months. This was her position at the time of the MVA.

[35] With a grade 12 level of education she was regarded as a semi-skilled worker and would have worked as such, unless she improved her qualifications. She expressed an intention to qualify as a primary school educator.

[36] She would have to complete, at least, a relevant one-year National Certificate. She would then be regarded as a skilled worker on an NQF Level 5.

[37] It is postulated that she may well have completed such a qualification around 2020 or 2021 and then secured work in this field. It is not reasonable to assume she may well have commenced work in this field then around 2022.

[38] She would then have followed a career as per her studies.

[39] But for the MVA, it can be postulated that she would have been able to function as a semi-skilled worker. Alternatively, she would have been able to perform any other work role in line with her education, knowledge, skills and occupational experience.

[40] In the absence of apparent and/or noteworthy medical conditions, it can be reasonably accepted that she would likely have worked up to the normal retirement age of 65, depending on her employment conditions, rules of the pension/provident fund and other personal circumstances.

[41] The retirement age at her current employer, SA Commercial (Pty) Ltd, Cape Town, Western Cape, is 65 years.

[42] If eligible, she might have considered a SASSA old age grant, at age 60. She could, likewise, have chosen to supplement this income for as long as her health allowed.

[43] An official retirement age of 65 years is customarily accepted as the norm in the private sector and an official retirement age of 60 years in the public sector.

[44] The age of retirement for self-employed individuals tends to vary and is dependant on many factors, such as the person's health, nature of the own business, personal circumstance, the economy etc. However, self-employed individuals tend to work beyond the 'normal' age of retirement and for as long as they are able to.

De Bruyn's 2021 addendum report dated 12 October 2021

[45] On 12 October 2021 Dr Du Bryn filed an addendum to his 2019 report and introduces a number of supplements. He refers to addendum report of Dr Fein, Ms

Sibiya Occupational Therapist addendum and that of Dr Hovsha. He then concluded as follows:

It is opined that Ms Cassiem's career prospects and associated probable earnings have been truncated to a mild to moderate degree, especially for Teaching types of occupations, by the sequelae of the sustained MVA-related injuries.

[46] To qualify the claim, since a direct loss of future earnings cannot be expressed in monetary terms, a higher contingency deduction should be applied into the truncation of Ms Cassiem's future career prospects and probable earnings.

[47] A loss of earnings is probable.

[48] The pre-MVA earnings potential should be used as a basis to quantify the claim.

[49] Past loss of earnings seems to be inapplicable to this case. Note should also be taken of the likely delay in her engaging and completing a tertiary qualification. It seems as if there may be at least a 2-year delay in her completing such a qualification (by 2023) as it is unlikely that she will study in 2022 already.

[50] Future sick leave could constitute a loss of income should treatment be required, i.e. if employed at the time and/or forfeited leave.

[51] Early retirement is not indicated.

[52] Contingency deductions, if applicable, are the prerogative of the Court and/or matter of negotiation between the legal parties.

Actuarial report 2019

[53] The actuary recorded that the plaintiff was working for Toddlers Academy as a Part time Teacher Assistant since 2015 earning R3000p.m /R36 000 per annum. She also received about R75 per week. Her total income was R39 900 per annum. After the accident he could not continue with her work until 7 April 2016. The actuary recorded that she lost out on an income, for a period of about 5 months of approximately R16 625 .00 He included this calculation despite Dr De Bruyn's conclusion that the past loss of earning is not applicable.

[54] It is also record that after the accident she worked at Foschini Group as a Data Capture, earning R3500.00 pm plus benefits, she resigned from this work to look for better paying work.

[55] In January 2018 she was employed by SA Commercial as a Data Capture, she was receiving R5 000 per month (R60 000) per annum and other benefits. A loss of income was calculated from the valuation date.

Scenario A -No studies

[56] She may not have studied further and would have reached the career ceiling at age 45 earning B3/B4 level.

Scenario 2

[57] She may have completed a certificate. She would have reached a career at age 45 at C1/C2 level. Her earnings would have been R5000 pm /R60 000 per annum and with Peterson Grade from 05 March 2041 value at R421 000 earning R35 ,083/R421 000 Having regard to the accident on Basis 1 and 2.

[58] She will be able to earn as in but for the acceded basis A and B respectively.

Kramer concluded that the plaintiff has suffered from a decrease of productivity, she is now vulnerable and an unequal competitor on the open labour market.

On the value of income Pre morbid position, he applied 0% contingencies and post morbid he applied 15% contingencies. on the value of income having regard to the accident, accrued income he applied 0% contingencies and 30% prospective income.

Addendums and Amendment of Pleadings

[59] On 23 September 2021, the actuaries prepared further report. It is not clear what really triggered further report because the IP, Du Bruyn prepared addendum to his on 12 October 2021. The actuary also prepared yet another report on 13 October 2021. On 30 September 2021, the plaintiff filed a notice of intention to amend the particulars of

claim to include Head Injury and Psychological sequelae as a result of the Plaintiff's injuries and the event.

59.1 The figures were also amended. The amount claimed was inflated from R 2 735 0000.00 to R3 235 000.00. General damages were amended from R150 000 to R650 000.00

59.2 Estimated future loss of earnings at R2 430 000.00

59.3 Amendments were affected on 14 October 2021, a day before the lapse of 10 days' notice.

59.4 On 13 October 2021 before the amendment was affected, another notice of amendment of pleadings was filed amending the figures for the loss of income from the overall claim from R 3 235 000 to R2 279 236.00.

59.5 The figure for the loss of income was reduces for R2 430 000.00 to R1 474 236.00.

59.6 The second amendment were affected on the 27 October 2021.

59.7 Kramer cc filed a revised report. It is this report that the plaintiff is relying on to seek an amount of R 1 474 236.00 for loss of earnings.

[60]. These amendments were done hurryingly and very close to the trial date in quick succession which leaves a lot to be desired. Both amendments effected a day before dies lapsed in order to squeeze the matter to be heard on the date of set down.

[61]. The Modus operandi in this matter regarding amendment of expert's report and pleadings is similar to the modus operandi observed by Fisher J in the case of MT v RAF, HM v RAF⁸. It will serve no purpose to regurgitate them here except to say the difference in this case is that the last amendment that was affected two days before the trial date reduced significantly the amount the plaintiff was now claiming. That of course does not condone the way the plaintiff's attorneys litigate against the unrepresented RAF.

Discussion

[62] There is no doubt that the plaintiff lost earning as a result of the injuries suffered due to the accident. Neurologically, plaintiff suffered a mild brain injury with mild effect. Psychiatrically, Dr Leon A Fine is of the opinion that the plaintiff still presents with similar symptoms of significance organic brain damage. In addition, she still has symptoms of post-traumatic stress disorder and of Depression. Dr fine deferred to other experts concerning present and future occupational capacity.

[63] Ms Sibiya prepared an addendum in May 2021 regarding the new development with regards to Ms Cassiem's functional capacity. Ms Cassiem reported that she was nervous since she was to become a first-time mother, she doubted that she will perform her house chores while attending to her new born and her new role as a new mom has triggered her depression. Ms Sibiya deferred the opinion on depression to a Clinical Psychologist. Dr Hovsha, the Clinical Psychologist in her addendum 2021 report states

⁸ 2021 ALL SA 285 (G)

that she has permanent cognitive deficits and is vulnerable to an array of organically based psychiatric disorders and that her occupational function has been negatively affected by the sequelae the injuries sustained in the accident and resulted in a loss of productivity and efficiency.

[64] Regarding Ms Cassiem's educational background, she has grade 12 level of education and was regarded as a semi-skilled worker and would have worked as such, unless she improved her qualifications. She expressed an intention to qualify as a primary school educator.

[65] Ms Cassiem was employed part time as a Teacher Assistant at the time of accident. Ms Cassiem expressed a desire to study further when she is financially stable. There is no evidence that was placed before court that Ms Cassiem's dream of furthering her studies was put on hold by the accident. The Educational Psychologist is the relevant expert to opine regarding the plaintiff's educational needs. There is no evidence from any of the experts that state that the plaintiff will never be able to further her studies due to the accident.

[66] I am satisfied that the plaintiff has proven on a balance of probabilities that she has lost earnings.

[67]. It is trite that general contingencies cover a wide range of considerations, which vary from case to case.⁹ It has generally been accepted that contingencies of 5 per cent

⁹RH Koch *The Quantum Yearbook* (2015) at 120.

to 15 per cent for past and future loss of income have been accepted as 'normal contingencies'.¹⁰ A number of issues are considered when an actuarial assessment is done, including considerations of early death, promotion prospects, and taxes.

[68] Having considered Ms Cassiem's age, educational background, the injuries and all the expert opinions, I am of the view that 20% contingences must be applied to pre-morbid position and 30% to the post morbid position

[69] In the circumstances the calculation of the quantum will be as follows:

Pre-morbid Earnings (Had Accident not occurred)

Past Loss of Earnings		R149 054.00
R149 054.00		
Less Contingency	0.00%	-
Subtotal		
R149 054.00		

Future Loss of Earnings		R4 616 594.00
R4 616 594.00		
Less Contingency		20,00%
R923 318.80		
Subtotal		
R3 693 329.20		

Total	Pre-morbid	Earnings
R3 842 329.20		

Post-morbid Earning (having regard to the accident)

Past Loss of Earnings	R0.00	-
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¹⁰RH Koch *The Quantum Yearbook* (2015) at 120.

Less Contingency	0.00%	-
Future Loss of Earning		R4 478 426.00
R4 478 426.00		
Less Contingency		30%
R1 343 527.80		
Subtotal		
R3 134 898.20		

Total	Post-morbid	Earnings
R3 134 898.20		

Total	Loss	of	Earnings
R707 431.00			

Order

In the circumstances, following order is made:

[1] The Defendant shall pay to the Plaintiff the amount of R716 089.60 (seven hundred and sixteen thousand and eighty-nine rand sixty cents) in respect of and calculated as follows:

1.1 Loss of earnings	R707 431.00
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1.2 Past hospital and medical expenses	R8 658.00
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Together with interest a tempore morae calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with Section 17(3)(a) of the Road Accident Fund Act 56 of 1996.

[2] Payment will be made directly to the trust account of the Plaintiff's attorneys within a hundred and eighty (180) days

HOLDER	De Broglio Attorneys Inc
ACCOUNT NUMBER	[....]
BANK & BRANCH	Nedbank, northern Gauteng
CODE	198 765
REF	C466

[3] The Defendant is ordered in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 to reimburse **100%** of the Plaintiff costs of any future accommodation of the Plaintiff in a hospital or nursing home, or treatment or rendering of service to her or supplying goods to her arising out of injuries sustained by Plaintiff in a motor vehicle accident on which the cause of action is based, after such costs have been incurred and upon proof thereof.

[4] The Defendant is to pay the Plaintiff's agreed or taxed High Court costs as between party and party, such costs to include the preparation and qualifying and reservation fees of the experts, consequent upon obtaining Plaintiff's reports to be served between the parties, the Plaintiff's reasonable travel and accommodation costs, if any, are hereby declared costs in the cause and the Plaintiff as well subpoenaed witnesses are declared necessary witnesses.

4.1 The Plaintiff shall, in the event that the costs are not agreed serve the Notice of Taxation on the Defendants Attorney of record; and

4.2 The Plaintiff shall allow Defendant 14 (fourteen) days to make payment of the taxed costs.

[5] There is no contingency fee agreement in existence between the Plaintiff and her Attorneys.

FLATELA L

ACTING JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties' and or parties representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 9 February 2022

Date of Hearing: 29 October 2021

Date of Judgment: 9 February 2021

Applicants' Counsel: Adv. Justus Van den Berg

Instructed by: De Broglio Attorneys Inc.

Respondent's Counsel: Not represented

Instructed by: Road Accident Fund