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

CASE NO: 62228/2018

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

Date: 23 November 2022

In the matter between:

RENIER VAN HEERDEN

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DATE OF JUDGMENT: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be 10h00 on **23 November 2022**.

JUDGMENT

KHASHANE MANAMELA, AJ

Introduction

[1] The plaintiff was injured in a motor vehicle accident in the evening of 13 January 2017 on the R29 Kinross/Leslie road. He was 41 years at the time of the accident as he was born on 27 September 1975. The plaintiff was the driver of one of the two motor vehicles involved in the accident. He attributes the cause of the accident to be the negligent driving of the driver of the other motor vehicle ('the insured vehicle'). Due to the accident, the plaintiff sustained bodily injuries, including the following: head injury; fracture of face right maxillary; fracture of right orbit floor sinus; fracture of right scapular blade; multiple fractured ribs; right haemothorax; pulmonary contusion; grade 2 liver laceration; open fracture of right radius/ulna; open fracture of right femur; open wound on the right elbow, and multiple soft tissue injuries. He, consequently, suffered damages in the form of past and future medical, hospital and related expenses; past and future loss of income, and general damages. On 29 November 2017, the plaintiff caused a claim for compensation to be lodged against the defendant by dispatch of the necessary form and supporting documents to the defendant in terms of the provisions of the Road Accident Fund Act 56 of 1996 ('the Act'), but in vain.

[2] On 27 August 2018, the plaintiff caused summons to be issued against the defendant for compensation relating to the damages suffered as a result of the accident in terms of the provisions of the Act. The composite amount of the plaintiff's claim was initially in the amount just below R2 million. The claim was defended by the defendant until its defence was struck out by an order of this Court on 20 May 2022 *per* Ndlovane AJ. Thenceforth, the plaintiff pursued default judgment proceedings against the defendant.

[3] The matter came before me for a hearing by way of video link on 3 October 2022. Mr RG Bowles appeared on behalf of the plaintiff. Due to, ostensibly, the striking-out of its defence there was no appearance on behalf of the defendant. I reserved this judgment after listening to oral submissions by Mr Bowles for the plaintiff. The judgment also benefited from the written submissions filed by him on behalf of the plaintiff in terms of the practice directive of this Division.

[4] Plaintiff's counsel confirmed that the issues relating to liability or merits, future medical and hospital expenses, and general damages have been disposed of in terms of the order of this Court referred to above. The issue of liability or merits was ordered by

the Court to the effect that the defendant will be fully (i.e. 100%) liable for the plaintiff's damages, proven or agreed. Therefore, the outstanding issues for determination relate to past medical expenses and loss of earnings, which were previously postponed *sine die*.

Evidence and submissions on behalf of the plaintiff

General

[5] The plaintiff has a grade 10 qualification obtained in 1992. He had failed grade 4. He was employed at Pick-n-Pay over various years after doing various internal short courses which were duly completed.

[6] The plaintiff's work history includes the following. From 1996 to June 2004 he was employed as a security guard on a permanent basis at Oscar Victor Security. He quit this job in search of better opportunities. From July 2004 to August 2006 he was employed as a receiving manager on a permanent basis at OK Foods. He also quit this job for better opportunities. As from September 2006 to September 2012 the plaintiff was employed as a receiving and floor manager at Pick-n-Pay Secunda Mall on a permanent basis. Upon promotion he was employed at Pick-n-Pay Corporate as acting store manager in Leandra from October 2012 to 13 January 2017, when he met the accident. The plaintiff was absent from work for a period of six months following the accident. And from 3 August 2017 the plaintiff has been a floor manager at Pick- n-Pay Secunda Mall.

[7] To establish his claims against the defendant, the plaintiff appointed various medico- legal experts to assess his injuries sustained during the accident and their *sequelae*. The plaintiff filed reports containing these experts' respective opinions. For purposes of the hearing, the experts also filed affidavits to confirm the contents of their reports as evidence in terms of the requirements of the practice directives of this Division. I ruled that the reports by the various medico-legal experts, subsequently confirmed under oath in terms of the affidavits filed, be admitted in terms of Uniform Rule 38(2)¹ of this Court.

¹ Uniform Rule 38(2) reads as follows: "The witnesses at the trial of any action shall be

Plaintiff's injuries and/or sequelae

[8] Apart from the injuries stated above, the plaintiff underwent a total below-knee amputation of the right leg. I will return to this major surgical procedure and its consequences, below. The plaintiff, reportedly, also underwent subsequent surgery relating to his abdominal injuries, two operations on the right ankle and a left total knee replacement.

[9] Currently, the plaintiff's complaints include the following: right arm pain (resulting in weakness and difficulty carrying objects); bilateral knee pain and stiffness (worsening in inclement weather); right shoulder and elbow pain, as well as significant right ankle pain and decreased movement. And from recent examination, the plaintiff's complaints included significant shoulder, ankle and knee impairment. Also, it has been postulated that the plaintiff would require in the future revision total knee replacement. The effect of the aforementioned complaints is that the plaintiff struggles when walking, standing or sitting for long periods of time; struggles when picking up heavy objects, climbing stairs (which is painful); has frequent headaches; psychological and cognitive complaints (such as depression, irritability and problems with concentration).

[10] The plaintiff's complaints have the following effect on his work environment. As stated above, the plaintiff is the floor manager at his workplace and, therefore, due to his current complaints or deficits arising from the accident he has problems walking, standing and sitting for long periods during the day. These activities are extremely painful. He also experiences problems when climbing staircases. His psychological deficits due to the accident has caused his work pace to become slower when compared to what it was before the accident, due to what is referred to as 'brain fog and decrease in concentration'. The latter affects the plaintiff's ability to focus whilst carrying out his daily administrative or management duties.

orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be

[11] Overall, the plaintiff had suffered a combined Whole Person Impairment or WPI of 38%. The plaintiff was hospitalised and/or received treatment for a period of 3½ weeks. He also received rehabilitation, pain management, physiotherapy and therapy for a period of about 6 weeks. For a period of about 3 weeks the plaintiff ambulated through the mode of wheelchair and for a period of about a week he used a walking frame.

[12] The plaintiff, reportedly, also suffered brain injury as a result of the accident. Apparently, he lost consciousness after the accident and only remembers waking up in hospital after a period of three weeks. His Glasgow Coma Scale or GCS was 2/10 upon admission.

[13] As indicated above, the plaintiff also has a claim for past hospital, medical and related expenses arising from the injuries sustained in the accident in the amount of R4 189 490.62. It is submitted on behalf of the plaintiff that the various vouchers substantiating the aforesaid amount were furnished to the relevant department of the defendant, but to no avail. I will revert to this claim towards the end.

Medico-legal opinions or evidence

[14] The orthopaedic surgeon expressed, among others, the following opinions. Generally, the plaintiff's prognosis is poor and his future work capacity would be significantly affected by the injuries from the accident and/or their *sequelae*. He will be permanently disabled due to his injuries and will only be able to perform light duty or sedentary type of work. The plaintiff, due to the combined effects of all the orthopaedic and non-orthopaedic injuries sustained in the accident is also possibly permanently disabled for any type of work up to the age of about 60 years. He may also need revision surgery to his left knee as he is still young and the current prosthesis may fail in a few years' time.

[15] The following are some of the opinions expressed by the occupational therapist regarding the injuries sustained by the plaintiff and/or the *sequelae*. Given the plaintiff's ongoing symptoms, the occupational therapist opines that the plaintiff would be optimally suited for sedentary to light nature of work tasks, albeit that neither of which

ought to be exerted on a constant basis. Also, those tasks should avoid the constant use of the lower extremities of the body, such as walking, standing, squatting and kneeling. Further, the plaintiff has to avoid static postures such as sitting on a constant basis. Some of these tasks constitute inherent requirements for the plaintiff's job as a floor manager. The plaintiff has already been in a temporary incapacity due to his current conditions.

[16] The clinical psychologist's opinions include the following. The plaintiff had sustained a severe head injury from the accident and there is a possibility of the plaintiff having sustained a secondary brain injury, due to hypoxia post-accident. He suffers from post-traumatic stress disorder and depressive disorder, due to the traumatic brain injury. The plaintiff, reportedly, has decreased concentration abilities and the clinical psychologist also noted cognitive difficulties. Both are considered likely to impact negatively on the plaintiff's performance in any occupation especially in tasks of a more administrative nature. His productivity and performance are likely to be negatively affected.

[17] It is stated that the plaintiff was transferred to a floor manager position at Pick-n-Pay in Secunda Mall due to his limitations related to driving and his need for supervisory assistance. Mr Duncan Oliver, the current store manager of Pick-n-Pay Corporate: Secunda Mall, was contacted for collateral information. He, among others, stated the following: the plaintiff, post- accident, was unable to engage in all various supervisory and physical duties required of an acting store manager and was transferred to the store in Secunda as a floor manager from 3 August 2017 to 1 August 2019.

[18] The plaintiff was declared temporarily disabled after the accident from 1 August 2019 until April 2022 and received 75% of his monthly salary as a result. Thereafter, as from May 2022 the plaintiff started working again as floor manager under the supervision of Mr Oliver at the Secunda store due to his physical limitations, specifically related to walking and standing during the day. The plaintiff is said to require close supervision in his financial and administrative duties subsequent to the accident. Before the accident the plaintiff was reportedly an effective acting store manager in Leandra, which store had thrived and flourished. He was on the verge of becoming a permanent store manager at Leandra Pick-n-Pay store, prior to the accident due to his extensive work experience at

Pick-n-Pay and his two year stint as an acting store manager. Due to his long loyal service to Pick-n-Pay he has been accommodated subsequent to the accident. Further collateral information was obtained from Ms Lucelle Jooste, the current Human Resource Manager at Pick-n-Pay Corporate: Secunda Mall.

[19] According to the industrial psychologist, the plaintiff's loss of earnings could be calculated in the following scenarios or calculation bases:

[19.1] Calculation base 2A. This is considered to consist of very optimistic assumptions. In terms of this base the plaintiff would continue working in his current position at Pick-n-Pay as a floor manager with inflation related growth until retirement age 60. Higher post-accident contingencies are to be applied if this base is to be used for calculations.

[19.2] Calculation base 2B. This base is considered by the plaintiff to be conservative probable scenario when considering expert opinion. In terms of this scenario or base, consideration ought to be given to what Dr A Younus, the orthopaedic surgeon, had mentioned, being that the plaintiff would have to be re-evaluated after six months. It is considered probable that the plaintiff would be declared medically permanently disabled. Therefore, for purposes of calculations it can be accepted that the plaintiff is declared permanently disabled to work as from December 2022 and that from January 2023 he would receive only 75% of his basic salary and other benefits. Appropriate higher contingencies are to be applied providing for the plaintiff's less than postulated earnings.

[19.3] Another approach urged upon to the Court is to calculate the average between calculation base 2A and 2B and apply appropriate higher post-accident contingencies.

The industrial psychologist's addenda reports and plaintiff's amputation

[20] The industrial psychologist prepared two *addenda* to the report filed and stated, among others, the following. On or about 18 May 2022, the plaintiff informed his employer that he was unable to cope with his duties and the new position. The plaintiff

applied for permanent medical disability. He explained the basis for his decision to include the following: immense pain and difficulties experienced when performing his duties, and his consideration for amputation to his right lower leg on medical advice previously obtained. He also indicated urgent need for psychological/psychiatric support and care.

[21] The industrial psychologist reconsidered the basis for calculating the plaintiff's future loss of income, stated above, and expressed the following opinions:

[21.1] that, the Base 2A of calculation, in terms of which it is assumed that the plaintiff is to continue working for Pick-n-Pay as a floor manager upon considering recent changes regarding the plaintiff's employment status, is now highly unlikely.

[21.2] that, the calculation under Base 2B, which in terms of expert opinion is more probable, commencing with temporary disability in June 2022 and permanent disability from January 2023.

[21.3] that, another alternative possible scenario, called calculation base 2C, ought to be considered in terms of which the plaintiff could lose his employment through dismissal or resignation within the next few months. This, it is submitted will lead to temporary disability payment to end December 2022 and no future earnings from January 2023, as the plaintiff would be considered uncompetitive and unemployable.

[22] The plaintiff's post-accident employability and work capacity, according to medical opinion, is dependent on prosthetic devices and walking aids for the rest of his life. Further, it came out during submissions by counsel that the plaintiff's right leg has indeed been amputated by Dr Younus on 21 May 2022 as a result of the accident. It is opined that due to this surgical procedure, the plaintiff will be immediately permanently disabled or be declared permanently medically disabled as from December 2022.

[23] It is reported and/or submitted that the plaintiff - had the accident not occurred - would have a net past loss of income of R642 029.00; net future loss of income of R3 059 006.00 and, therefore, total net loss of income of R3 701 035.00. These

calculations are prior to the application of contingencies. Counsel made submissions with regard to the application of contingencies to the aforementioned figures.

[24] The following facts are also material for purposes of determination of the award for future loss of earnings. It is reported that a certain Ms Jacobs provided collateral information with regard to the plaintiff's claim for permanent disability. It is indicated that Capital Alliance is the administrator of the provident fund of Pick-n-Pay. As stated above, the plaintiff was already on temporary disability leave while being paid by Capital Alliance before he opted to quit his job and apply for permanent medical boarding. According to Ms Jacobs if the plaintiff is declared permanently disabled by Capital Alliance, in her experience he will receive 75% of his basic salary per month, if he is fully (i.e. 100%) disabled to work. The plaintiff would also receive monthly additional benefits, such as provident fund and medical aid, from the date of permanent disability until retirement age.

Claim for both medical, hospital and related expenses

[25] As indicated above, the plaintiff has in addition to the loss of earnings, claimed loss with regard to past medical, hospital and related expenses. A schedule detailing these expenses has been included as part of the papers accompanied by vouchers in the amount of R4 189 490.62.

[26] I indicated during the hearing that I require further evidence with regard to the chain of evidence relating to the claim for past medical, hospital and related expenses. In addition to what was already before the Court, I indicated that evidence from a functionary of the medical scheme be made available to the Court as to how the computation and collation of the information related to this claim was done. The plaintiff's legal representatives provided the Court with some documents and made supplementary submissions in this regard received on 4 and 5 October 2022.

[27] On 4 October 2022, Ms Faith Lingham, an employee of Momentum Health Solutions ('Momentum') deposed to an affidavit which was also made available to the Court. She is employed as an administrator in the motor vehicle accident department of Momentum and she is based in Cape Town. The material part of her affidavit includes

the following:

[27.1] she confirmed that she attended the virtual hearing on 3 October 22. She was ready to give factual evidence in respect of the vouchers and schedules for the plaintiff's

claim in this regard. Further, she confirmed that she has been advised by plaintiff's attorneys of record that the Court requires further specific evidence.

[27.2] Momentum works in co-operation with Pick-n-Pay Health Scheme. Her duties include drawing, assessing, identifying and listing those medical expenses which in the opinion of Momentum are recoverable from the Road Accident Fund, the defendant herein, in action proceedings.

[27.3] How it works is that Momentum will be notified of medical expenses recoverable from the defendant. Momentum will contact the policyholder and confirm the details regarding the accident and also acquire members undertaking in this regard.

[27.4] As an administrator, Miss Lingham deals exclusively with accident-related medical expenses and exclusively those to be recovered from the Road Accident Fund. She will assess the particular policyholder's entire claims' history by identifying from the payments history those claims which are processed for payment containing, something she describes as 'ICD-10' code. Such code will illustrate 'MVA', which refers to a motor-vehicle accident. Ms Lingham will then calculate all claims with the aforementioned code and generate a list through the system. She will have to contact all service providers individually for purposes of acquiring the relevant medical vouchers in terms of the list generated. Thereafter, she will assess the corresponding medical vouchers with the schedule that it been generated and in her discretion separate vouchers relating to the accident and those relating to other ailments such as colds and general 'check-ups'. She would liaise with the policyholders' designated attorneys for purposes of providing them with the necessary documentation. All this was done in this matter, Ms Lingham confirmed under oath in terms of her affidavit deposed to on 4 October 2022.

[28] Also, an affidavit by the Fund Manager of Momentum, namely, Ms Dawn Theron, deposed to on 6 October 2022, was furnished. She is also based in Cape Town as with Ms Lingham. Her job involves processing of medical account invoices on behalf of policyholders, such as the plaintiff in this matter. The primary purpose of her affidavit was to explain to the Court how medical aid claims are handled by her employer. The highlights of the content of her affidavit include the following:

[28.1] that, expenses relating to treatment of policyholders is covered in terms of the 'Scheme Rules' at agreed rates;

[28.2] that, the professionals treating the policyholder would generate invoices using the internal software for approval by the medical scheme. Previously they would generate invoices using internal software and send or forward such invoices directly to the medical scheme and upon receipt of the medical scheme;

[28.3] that, the medical scheme will assess the invoices according to the Scheme Rules' at agreed rates;

[28.4] that, approval of such invoices can be with or without 'co-payment', directly recoverable by the service provider from the policyholder;

[28.5] that, Ms Theron confirms that the vouchers included in the plaintiffs claim for past medical and hospital expenses 'have been received and honoured by the Medical Scheme ... and accounts have been settled with the medical service providers' in the amount of R4 189 490.62.

Further actuarial calculations and submissions

[29] On 7 November 2022, through my erstwhile registrar, I requested that the following communication be forwarded to the plaintiff's legal representatives:

2.1 the current actuarial calculation as appearing in the actuarial report do not reflect the suggested contingencies. Kindly furnish a revised certificate reflecting application

of the suggested contingencies and the effect thereof on the figures or calculations.

2.2 kindly also furnish a calculation (in addition to what is requested in 2.1 above) reflecting application of 10%/20%, as opposed to 10%/30%, contingencies. It is the preliminary view of Manamela AJ that the plaintiff may still be able to use his skills in the same industry or related industry in one capacity or the other, despite his post-morbid deficits.

2.3 kindly furnish further submissions as to the implications of the monies that may be received by the plaintiff from the insurer or employer. There is reference to 75% pay-out. The implication of this to the damages sought from RAF has to be clearly explained by way of further submissions.

2.4 kindly furnish medical confirmation under oath that the plaintiff has been amputated. The plaintiff himself may confirm this under oath, by furnishing details of the procedure, the date and the doctor who performed such procedure.

[30] The legal representatives were also allowed to file legal submissions they deem fit simultaneously with the requested information by no later than 18 November 2022.

[31] On 17 November 2022, the legal representatives submitted the requested information and made further submissions, including the following:

[31.1] that, according to the industrial psychologist if the plaintiff is medically boarded he would be precluded from working in any other capacity or for any other employer for the remainder of his career life or whilst his disability payments continue until retirement or death;

[31.2] that, on 21 May 2022 the plaintiff's right leg received a below-knee amputation. Consequently, Dr Younus found that the plaintiff will not be able to go back to work to perform his job and should be placed on permanent disability because he can no longer walk.

[31.3] that, in a letter dated 19 July 2022 the employer's provident fund and Capital Alliance stated that the plaintiff is unable to proceed with his occupation and consequently his disability benefit will continue until re- evaluation on 30 November 2022.

[31.4] that, available information suggests that it is probable that the plaintiff will be permanently medically boarded at the beginning of December 2022 and will probably receive a permanent monthly payment of 75% of his monthly compensation probably in line with his September 2022 income.

[31.5] that, the actuarial calculation of the plaintiff's probable permanent disability from 1 December 2022 should reflect his temporary disability income as received on 25 September 2022.

Requested actuarial calculation:

[32] It is submitted that the current actuarial calculation includes suggested contingencies, but no statutory cap is applicable.

[33] The calculation of the plaintiff's past loss of earnings includes contingencies of 5% in respect of pre-morbid past loss and 0% in respect of the post-morbid accident past loss and therefore in the amount of R526 246.65. With regard to the future loss of earnings 10% contingency deduction is effected to the pre-morbid earnings and 30% contingency deduction is applied to the post-morbid to result in a future loss of earnings amounting to R3 312 267.60. It is submitted that disability pay-out is taken into consideration to arrive at the aforementioned amount. The plaintiff's total net loss on this calculation is in the amount of R3 838 514.25.

[34] The calculation in terms of my preliminary view is as follows. The amount suggested for plaintiff's past loss, stated above, is left untouched or intact, being R526 246.65. With regard to future loss of earnings 10% contingency deduction is applied to plaintiff's pre-morbid income and 20% to post-morbid income. The future loss of earnings amount in terms of this calculation is R3 032 686.50. Therefore, the calculation in terms of my preliminary view result in the total net loss of R3 558 933.15. This,

evidently, is lower than the figure of R3 838 514.25 by an amount of R279 581.10.

[35] My preliminary view that the plaintiff may still 'use his skills in the same industry or related industry in one capacity or the other, despite his post-morbid deficits' is criticised, among others, for possible adoption of an incorrect view that the basis for the post-morbid 'future loss postulation is premised on actual earnings and not disability pay'. It is submitted that the postulation for post-morbid future loss of earnings is based on the probable medical boarding insurance pay-out of 75% of current earnings, and not actual earnings as the true post-morbid earnings amount to nil. Further, the contingencies applied with regard to post-morbid future loss are for 'the possible risk that upon medical boarding review, such pay-outs are possibly terminated'. In the event of this eventuality the plaintiff's loss 'will in fact be far more than what is postulated and/or claimed' and, therefore, the contingencies suggested in terms of my preliminary view should not be applied in favour of those suggested on behalf of the plaintiff above. The main reason for this submission is that there is no guarantee that 'upon yearly review and assessment the medical boarding would not be reversed' or that 'permanent and lifelong medical boarding is guaranteed'. Such an approach is conservative and possibly prejudicial to the plaintiff, the submission concludes.

[36] Further, as already apparent above, the plaintiff's counsel gratefully explain the impact of the 75% pay-out received or to be received from the employer. There is no need to repeat what is stated above or the submissions in their full expanse, save that it is submitted that monies received monthly as 'pay-out, are not reclaimable from the defendant in the circumstances ...but constitutes 'the proverbial shortfall of 25% claimed from the defendant'.

[37] There was also confirmation of the amputation of the plaintiff's right leg below the knee by the plaintiff under oath, including by way of photographs.

Conclusion

[38] Starting with the plaintiff's claim for past medical and hospital expenses, I hereby confirm that, on the basis of the available evidence some of which has been specifically referred to above, I am satisfied that the plaintiff has established his claim against the

defendant for past hospital, medical and related expenses. I will grant default judgment in the amount of R4 189 490.62 as an award for this claim.

[39] With regard to the plaintiff claim for the future loss of earning capacity, I consider the amount of R3 558 933.15 to be fair and reasonable compensation for this head of the plaintiff's claim. This figure comes from the contingencies I suggested be applied in terms of my preliminary view referred to above. I must mention though that from the submissions and explanation made I am now clear that the plaintiff will not be able to be employed elsewhere as long as he is the recipient of the disability grant. But in my view the full spectrum of the circumstances of this matter do justify the contingencies applied which led to the aforementioned amount to be awarded the plaintiff in this matter.

[40] The defendant will also be held liable for the costs, details of which appear in the order below. The details or terms of the order reflected below essentially accords with the terms of the order contained in the draft order submitted by counsel in this matter, save for the amount granted in respect of the plaintiff's loss of earning capacity.

Order

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

- 1) the defendant is ordered to pay the plaintiff a capital amount of **R7 748 423.77 (seven million seven hundred and forty-eight thousand four hundred and twenty-three rand and seventy-seven cents)** in full and final settlement, which amount shall be paid into the trust account of the plaintiff's attorneys, Savage Jooste & Adams Incorporated, whose trust account details are as follows;

Name of account holder: Savage Jooste & Adams Inc.

Name of Bank: NEDCOR – ARCADIA

Account type: Trust account

Branch code: 16-33-45-07

Account no: [...]

Reference: Mr Hayes/A Sinclair/RB1247

2) the amount in 1) hereof is constituted as follows:

2.1 R 4 189 490.62 (four million one hundred and eighty-nine thousand four hundred and ninety rand and sixty-two cents) in respect of the plaintiff's claim for past medical, hospital and related expenses, and

2.2 R3 558 933.15 (three million five hundred and fifty-eight thousand nine hundred and thirty-three rand and fifteen cents) in respect of the plaintiff's claim for past and future loss of earnings / earning capacity.

3) the amount in 1) and 6) hereof shall be paid into the trust account of Savage Jooste & Adams Incorporated, details of which are provided in 1 hereof, within 180 (one hundred and eighty) days from the date of this order;

4) should the defendant fail to make payment of the capital amount within 180 (one hundred and eighty) days from the date hereof, the defendant will be liable for interest on the amount due to the plaintiff at the prescribed rate per annum, from the 15th (fifteenth) day of this order to the date of final payment;

5) the defendant is expected to capture the payment of the capital amount onto its "Registered Not Yet Paid" / (RNYP) list by no later than 30 (thirty) days from the date of this order;

6) the defendant is ordered to pay the plaintiff's costs of suit of instructing and correspondent attorneys up to date, in respect of quantum, on the party and party High Court scale, and which costs will include the costs of making the order of Court, if any, and which costs will further include, but not be limited to:

6.1 costs of attending to the examinations and obtaining the medico-legal and such reports, addendum reports, RAF4 forms, as well as the qualifying fees, preparation fees, joint minutes and attendance fees (if any), of the following experts:

6.1.1 Ms Michelle Doran (Occupational Therapist);

- 6.1.2 Dr S Bismilla (Orthopaedic Surgeon);
- 6.1.3 Dr H van den Bout (Orthopaedic Surgeon);
- 6.1.4 Dr APJ Botha (Specialist Physician);
- 6.1.5 Mr Leon Roper (Clinical Psychologist);
- 6.1.6 Dr Majeed (Neurosurgeon);
- 6.1.7 Mr Barry Grobbelaar (Accident Reconstruction Expert);
- 6.1.8 Dr W Pretorius – (Industrial Psychologist);
- 6.1.9 Mr Marco du Plooy (Orthotist);
- 6.1.10 Human & Morris – (Actuary); and
- 6.1.11 All Radiologist X-Ray Reports and / or MRI and CT scans requested by any of the Experts as mentioned above.

6.2 reasonable costs relating to any further expert reports, not specifically named herein, but appointed and whose reports were served by the plaintiff's attorneys;

6.3 reasonable taxable costs of transportation at AA rate and accommodation of the plaintiff to attend the medico-legal examinations;

6.4 costs of counsel to date, including the preparation costs, drafting of heads of argument, further submissions and costs of attending the pre-trial conferences, trial interlocutory court, attendances to trial on 03 October 2022, and costs relating to the further submissions and other activities at the instance of the Court between 7 and 17 November 2022;

6.5 costs of counsel previously involved in Judicial Case Management appearances;

6.6 costs of the instructing and correspondent attorneys, which includes reasonable travelling costs at the AA rate, costs for preparing for Pre-Trial Conferences, and costs for actual attendances to Pre-Trial Conferences, Pre-Trial Agenda's, and Pre-trial minutes, costs of preparation and drafting of the Trials Interlocutory Court Application, costs for preparing for trial and attendance to trial on 03 October 2022, costs of formulating the draft order, costs relating to the further submissions and other activities at the instance of the Court between 7 and 17 November 2022; request for

further particulars, drafting of all expert confirmatory affidavits, trial readiness affidavits, directive compliance affidavits and all Rule 35(9) notices to date;

6.7 costs of the Trials Interlocutory Court Application, including the preparation costs and drafting of same and counsel's appearance on 07 March 2022;

6.8 reasonable costs for preparation for trial for instructing and correspondent attorneys;

6.9 reasonable costs of the plaintiff attending court including travelling expenses at the AA rate and accommodation expenses (if any), and

6.10 costs of the preparation of 1 trial bundle as per the Gauteng High Court Directives and as agreed upon in the Pre-Trial Minutes.

7) should the defendant fail to pay the plaintiff's party and party costs, as taxed or agreed, within 14 (fourteen) days from the date of taxation, alternatively date of settlement of such costs, the defendant shall be liable to pay interest at the prescribed rate per annum on such costs as from and including the date of taxation, alternatively the date of settlement of such costs up to and including the date of final payment thereof;

8) the plaintiff shall, in the event that the parties are not in agreement as to the costs referred

to in paragraph 6 above, serve the notice of taxation on the defendant and shall allow the defendant 14 (fourteen) court days to make payment of the taxed costs, and

9) it is noted that there is no Contingency Fee Agreement between the plaintiff and the plaintiff's attorneys.

Khashane La M. Manamela
Acting Judge of the High Court

Date of Hearing : **03 October 2022**
Date of Further Submissions : **17 November 2022**
Date of Judgment : **23 November 2022**

Appearances:

For the Plaintiff : Mr RG Bowles

Instructed by : Savage Jooste & Adams Attorneys, Pretoria

For the Defendant : No appearance