THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 11730/2015

Before the Hon. Mr Justice Bozalek
Hearing: 7, 8 & 14 November 2018
Delivered: 1 February 2019

In the matter between:

D B ***Plaintiff***

and

THE CITY OF CAPE TOWN ***Defendant***

JUDGMENT

BOZALEK J

[1] The plaintiff claims damages from the defendant, the City of Cape Town following an incident on 9 March 2013 when he fell into an uncovered drain inspection hatch whilst fleeing from attackers and as a result suffered a severe injury to his right ankle. He now claims general damages in the amount of R 280 000 together with special damages for loss of past and future income as well as past and future medical expenses.

The merits of the claim have been settled but the parties have, unfortunately, been unable to resolve the quantum of damages.

[2] In the trial the plaintiff testified and led the evidence of Dr Theo Le Roux, an orthopaedic surgeon; Ms Benita Crouse, an occupational therapist; Mr Johan Benade, and industrial psychologist and Mr Edward Theron, an actuary. The defendant presented no evidence.

[3] Dr Le Roux testified that the plaintiff suffered a Weber Fracture of the right ankle with fractures of the medial and lateral malleoli as well as to his ribs. He was unable to work for four months and was hospitalised for one month. Post-discharge he had to use crutches for four months after which he could mobilise independently. As a result of the injury the plaintiff is no longer able to run, limps when walking, has to rely on a bannister when managing stairs, has added pain in winter in the ankle, has to rely on pain killers most days due to the pain in the ankle and is no longer able to jump and land on the injured leg. Further sequelae are that he has poor balance, is no longer able to walk a long distance and has to rely more on public transport, has to be careful when walking on uneven surfaces and, whereas he once worked seven days per week, he can now only work five days per week. The plaintiff was 45 years old at the time of the accident and 48 at the time of the trial. He is self-employed as a shoe shiner working at the Waterfront. His job entails soliciting clients and then squatting in front of them whilst they sit on an elevated chair in order to clean and shine their shoes. The plaintiff lives in Kraaifontein in Bloekombos and has a long journey by public transport to and from work each day.

[4] The surgery which the plaintiff underwent was an open reduction and internal fixation of the fracture which was then placed in plaster of paris.

[5] The plaintiff's case was not presented with care with the result that there was a good deal of chopping and changing in the amounts being sought both under special and general damages. What is more, the argument delivered on behalf of the plaintiff was cursory and, as a result, less helpful than it should have been.

[6] As far as earnings was concerned after a number of false starts a document, Exhibit D, was eventually introduced into evidence recording the monthly turnovers as submitted by the plaintiff's business to the Waterfront from 2012 to 2016. It was agreed that this document would form the basis for calculations of past and future income. It does not, however, record the tips which the plaintiff earned which must therefore be separately catered for. The plaintiff's evidence was that as at November 2018, working a five day week i.e. not on Saturdays or Sundays, he would earn tips of approximately R 500 per month. It was the plaintiff's undisputed evidence furthermore that for a period of four months from the accident when he was unable to work at all his business was conducted by a substitute who paid him 50% of the income earned but no tips. Thereafter the plaintiff commenced working a five day week and it is to be assumed will continue to do so until reaching a retirement age of 65 years. During that period however he will earn monthly tips based on a five day working week i.e. R 500 per month in November 2018 terms.

[7] As far as future medical costs are concerned, Dr Le Roux reported that the plaintiff would need regular consultations to monitor the effect of the injuries to his ankle at a total cost of R 20 000, regular pain medication at a cost of R 50 000 and an adapted heel to his shoe at R 850 for each such adaptation. As far as future surgery was concerned the removal of the internal fixation which tended to cause pain would cost R 45 000 and,

if that was unsuccessful, an arthrodesis of his right ankle would be necessary at a cost of R 95 000 if his ankle degenerated. Dr Le Roux effectively discounted the possibility of a left ankle arthroplasty.

Analysis

[8] I propose to deal firstly with the claims for loss of income, thereafter the future medical costs and finally the general damages.

Loss of Income

[9] It was common cause that as a result of his injuries the plaintiff was no longer able to walk certain stages of his journey to and from work but had to catch a taxi resulting in increased travelling expenses of R 28 per day. It was agreed, however, that this claim would be offset in lieu of a reduction in the plaintiff's monthly earnings as recorded in Exhibit D which did not take into account the plaintiff's rental, a figure of approximately R 300 per month. As a result the claim for additional traveling expenses can be disregarded and the turnover/income figures in Exhibit D can be accepted as an accurate picture of the business' income, subject to inflationary increases. Those income figures must be adjusted furthermore to take account of the tips which the plaintiff earns and which are not reflected therein. It was common cause that as at November 2018 the plaintiff earned monthly tips of approximately R 500 working a five day week. There are different methods of calculating the amount of tips which would have been earned by the plaintiff had he worked on a seven day basis but in my view the most appropriate assumption is that the sum of R 500 reflects 5/7ths of what the plaintiff would have earned in tips working a seven day week.

[10] The parties were at idem that the plaintiff will continue to work in the same job

until retiring at the age of 65 years.

[11] I accept the evidence that after the accident in March 2013 the plaintiff earned 50% of the revenue of his business for four months but earned no tips in that period. Since June 2013 the plaintiff has worked five out of a possible seven day week i.e. not on Saturdays and Sundays. However, he earns the value of six out of the seven days of the weekly revenue since he arranged for a substitute over the weekends with whom he shares 50% of the revenue of the business over those two days. He does not, however, earn any share of the tips earned over those two days. In other words the plaintiff's loss of income is 1/7th of the weekly revenue of his business plus 2/7ths of the tips earned. As mentioned it was common cause that past and future income must be calculated on the basis of the turnover figures set out in Exhibit D. Further assumptions which must be applied to such calculations and which were not in dispute are those as set out in para 5.2 of the report of the actuary dated 20 June 2018 (Mr Edward Theron). These relate to price inflation, postulating a future rate of 5% and a nett discount rate of 3.5%, earnings inflation at a future rate of 6% and a nett discount rate of 2.5%. They use an interest rate after all fees and taxes of 8.65% and tax according to the 2018/2019 table. They also postulate a mortality table according to the South African lifetables 1984 to 1986 for males.

Contingencies

[12] Ultimately the plaintiff's counsel contended for a 2.5% and 7.5% contingency deduction on past and future uninjured income respectively, no contingency deduction on past injured income and a 30% contingency on future injured income. On behalf of the

defendant it was contended that no contingency deductions should be made with regard to past income i.e. not even a 2.5% contingency on past uninjured income. I accept the defendant's contentions in this regard. As for future income the defendant contended for a contingency deduction of 25% to be applied to both future injured and uninjured income. The rationale for no distinction being drawn is, as I understand it, that the plaintiff's career path would be exactly the same on both scenarios, the only difference being that on the injured scenario the plaintiff earns on the basis of six working days per week. In my view a distinction should be drawn since, on the uninjured scenario, the plaintiff would work seven out of seven days a week for the rest of his working life which is quite an exacting regime for a man beyond two score years and ten whilst in the injured scenario i.e. (five days per week) he is also dependent on an additional external factor, namely, engaging the services of someone who will work over weekends and share those takings with him (apart from tips) and he suffers from a physical limitation which has the potential of introducing further obstacles into his career path.

[13] The defendant seeks, as I have said, contingency deductions of 25% of future injured and future uninjured income. Provision for contingencies is often made by the courts in awarding damages for future loss to account for the *'vicissitudes of life'*. It has been remarked that uncertainty is a central tenet of the concept of contingencies since they cannot be proven on a preponderance of probabilities and fall outside the domain of actuaries.[1] The determination of contingencies therefore falls within the discretion of the Court which must decide what is reasonable or fair in the specific circumstances of the matter.

[1] Potgieter et al, Visser and Potgieter's Law on Damages, on page 147.

[14] A Court can take judicial notice of general contingencies. In this regard Koch in a section headed 'General contingencies' in his Quantum Yearbook 2018, includes guidelines which he suggests can be helpful to the Courts. He advocates a sliding scale of deductions of a half percent a year to retirement age, thereby constituting 25% for a child, 20% for a youth and 10% for a middle aged person. By contrast the Road Accident Fund, one is told, usually employs *'normal contingencies'* of 15% for future loss. In my view a contingency deduction for future income based roughly on the age of the claimant is appropriate simply because more *'vicissitudes of life'* are likely to occur in a longer life span than in a shorter one. Based on the plaintiff's age a contingency deduction of 10%, being roughly half a percent for each of the remaining years of his uninjured income earning life, appears appropriate. I do not subscribe to the defendant's notion that the contingency deductions for future injured income must be the same percentage as that for injured income because the plaintiff's future scenarios are similar i.e. the only difference being that on the injured scenario the plaintiff merely earns six seventhes of what he would earn on the uninjured scenario. In my view a greater contingency deduction should apply to the injured income scenario since the plaintiff is now more vulnerable to the vicissitudes of life vis-à-vis his income earning capacity. He is no longer able bodied. The burden of the distances he must travel to his workplace and the physical duties he must perform in his job are more likely to exact a toll on him. Furthermore, as mentioned previously the plaintiff is no longer the sole master of his fate in that a portion of his income is generated by a substitute with whom he shares his weekend profit. Finding such a person may not always may not always be possible or likely be arranged on such advantageous terms for the plaintiff. This is simply to mention two possible variables. Nonetheless there is no direct evidence to suggest that the plaintiff's present career path

or future will not follow the course envisaged, namely, that he will continue working until age 65. Taking all these factors into account I consider that an appropriate contingency deduction for future injured income would be 20%.

Future medical costs and expenses

[15] The actuarial assumptions set out in para 3.2 of the Actuarial report dated 30 June 2018 set out at page C57 of the trial bundle should apply, there being no disagreement between the parties on this score. This entails a future medical inflation rate of 8.65%. The various heads under which these costs and/or expenses were claimed are based on the evidence of Dr Le Roux as supplemented by further evidence from the plaintiff as to the medical aids and medications which he is presently using and their costs. There was little disagreement between the parties on the items or heads but some differences on their present value, in some cases on the probability of the expense being incurred and a contingency deduction. I shall deal with them in turn.

[16] The capital value for the future costs for the following items must be calculated as follows:

Consultations

R 20 000 spread over the plaintiff's remaining lifetime.

Medication

Dr Le Roux estimated a present value for pain relief medication in the amount of R 50 000. However, this figure was something of a thumb suck and was undermined by Dr Le Roux's evidence that he estimated a cost of R 150 per month for medication over a period of 20 years. This produces a sum, in present terms, of R 36 000 (R 150 x 12 x 20). Defendant's counsel pointed out that the plaintiff is

presently spending much less than R 150 per month on pain medication. This may be so but R 150 per month is a rounded average, presumably taking into account that the plaintiff's requirement for pain medication will increase as time goes by and that he will be able to afford more effective pain medication once the award is made. I consider it appropriate to make provision for an amount of R 40 000 spread over the plaintiff's remaining lifetime.

Right ankle orthopaedic aids

There was evidence that there was a 40% probability of the plaintiff requiring these from the age of 68 at a cost of R 850 per aid replacing these every one and a half years over his remaining lifetime. I accept this evidence.

Surgery right ankle joint

I accept the evidence that there was a 40% chance of the plaintiff developing degenerative arthritis and a 90% chance, in that event, of an operation being required at age 68 costing R 95 000.

Hot packs

These cost R 350 each, last three years and will be used over the plaintiff's remaining lifetime.

Ankle Guards

These cost R 350 each, last three years and will be used over his remaining lifetime.

Knee Guard

Similarly, these cost R 350 and will be required every three years over his remaining lifetime.

Occupational therapy

The plaintiff will require five sessions over his remaining lifetime at a cost of R 490 per session.

Handyman Assistant

There was evidence that the plaintiff in his disabled state can no longer do the necessary major maintenance to his house and a claim was made for the cost of a handyman at R 350 per day, ten days per year for the remainder of his lifetime. The plaintiff testified that he has to obtain assistance with work such as maintenance of the roof on his house and repairing the toilet but that neighbours assist him with much lesser tasks such as changing the lightbulbs and the like. In my view provision for employing a handyman five days per year at R 350 per day over his remaining lifetime is fair and appropriate.

[17] The plaintiff contends that no contingency deduction should be applied to these costs and expenses whereas the defendant seeks a contingency deduction for all items save for the right ankle orthopaedic aids and surgery for the right ankle joint where probabilities are already built into the calculation. I can see no particular reason for applying a contingency deduction to these amounts, more particularly to those amounts where no probability was already included. The defendant contended for a *'normal'* 10% contingency deduction. The plaintiff's life expectancy has already been factored in and on the probabilities he will require all the treatment. That treatment might end up being more expensive which would call for a positive contingency deduction. I favour the reasoning and approach of Rogers J in *AD and ID v MEC for Health and Social Development Western Cape Provincial Government* (Case No 27428/2010) delivered on

10 September 2016 where inter alia he discounted the risks, the possibility of errors in the estimation of life expectancy, the possibility of illness which might have occurred in any event, inflation or deflation and finally, *'other risks of life such as accidents or even death, which would have become a reality sooner or later in any event'*, none of which factors he found compelling. None of these factors or others were argued in particular in this matter. Rogers J pointed out also that failing to make a contingency deduction from medical expenses is by no means novel. See *De Jong and Dupisani NO* 2005 (5) SA 457 (SCA) paras 48 – 49. Therefore I hold that no contingency deduction need be applied.

General Damages

[18] That leaves the remaining issue of general damages where the plaintiff contended for an award of R 280 000 and the defendant for one of R 80 000. The plaintiff's injuries and disabilities were as described by Dr Le Roux in para 3 of this judgment. The disabilities were confirmed by the evidence of the occupational therapist, Ms Crouse, and by the plaintiff himself. It is clear that the ankle injury which he sustained has had a far-reaching and negative effect on the plaintiff's lifestyle and also seems to have affected his overall outlook on life. Apart from his ability to function as a shoe shiner at the V&A Waterfront, the plaintiff must now take pain medication on a daily basis and has independently sought to alleviate his pain with knee and ankle guards or braces. He no longer has the mobility and functionality that he previously had and must resort to using public transport where he once could easily walk. It is clear that as the years go by his disability will have an increasing effect upon him. The plaintiff must have suffered considerable pain and suffering in the first few weeks post injury when he had to wait until the swelling subsided before he could have the necessary surgery. He was either fully immobilised or semi-immobilised for a period of four months. The general effect of

his disability is that he is less active and less able to make a contribution in his household. The plaintiff complained that this contributed to the breakdown in the relationship with his wife and has rendered his sex life less enjoyable. There can be no doubt that the plaintiff is less able to cope with the exigencies of his work given both his disability and the pain which he suffers and the fact that his job requires him to present as positive and cheerful and to *'market'* himself by moving around the immediate area of his shoe shine stand soliciting clients.

[19] The plaintiff relied on three cases in substantiating of the award which he sought. The first was *Alla v Road Accident Fund* (handed down on 13 November 2012) where a 41 year old correctional services officer had suffered a fracture of the ankle resulting in a displacement of the distal tibia fibula joint, with soft-tissue injury. She underwent surgery in the form of an open reduction and internal fixation of the fracture and was immobilised in a cast for six weeks and thereafter in an air-cast brace. Years later she still experienced pain in the ankle resulting in difficulty in walking long distances, standing for lengthy periods of time, ascending or descending stairs, walking on uneven surfaces, carrying heavy objects and getting in or out of a vehicle. She was unable to run or walk fast or play active sports. Prior to the accident she used to play netball. In the future there was a risk of degenerative arthritis in which case an ankle fusion or ankle replacement procedure would be necessary. After being discharged from hospital she was in a wheelchair for a period of six weeks and when she resumed her duty two months after the incident she was still walking with the aid of crutches. She had to relocate her residence to the ground floor of the building due to her difficulty in climbing stairs. The plaintiff in that matter endured acute pain for about a week to ten days following the accident and the operation and pain of the same intensity following the removal of the internal

fixatives. The plaintiff was awarded an amount of R 200 000 as general damages in respect of injuries suffered and the sequelae thereto.

[20] The second case relied on was that of *Tlhakane v The Road Accident Fund* (Case no 29632/2014, North Gauteng, Pretoria) handed down on 24 November 2015. The plaintiff sustained a tri-malleolar ankle fracture and facial scars after being hit by a car. He was discharged from hospital after three days but admitted a month later for sepsis on the right ankle wounds. The implants in the ankle, a fibula plate and screws, were removed 18 months later. Four and a half years later the plaintiff limped, used a crutch to mobilise and complained of pain in cold weather. He suffered from acute pain in the first few weeks following the accident. An X-ray revealed early post traumatic osteo-arthritis of the right ankle which might eventually necessitate an arthrodesis (ankle fusion). The plaintiff's psychological functioning was found to be dominated by a mood which was predominantly severe depression and severe anxiety, this being a sequela of the car accident. Further regarding his ankle injury he had pain when walking for longer than 30 minutes or standing for extended periods and required a *'mobility aid'* when walking. He had pain when walking longer than 30 minutes and used pain medication on a daily basis. His balance was slightly compromised and he complained of pain of the right ankle and lower back. He walked with a limp using a crutch. After the operation he required assistance for about five months with self-management tasks.

[21] After considering a range of similar cases the Court found striking similarities between that case and the *Alla* case although there were also significant differences which made the injuries and sequelae in the *Thlakane* case more serious. In the result it

awarded general damages in the amount of R 280 000 (the award in *Alla* has a present day value of R 280 000 whilst the award in *Thlakane* has a current value of R 333 000).

[22] Finally, the plaintiff relied on the arbitration decision of *Van Dyk v The Road Accident Fund* where a 44 year old female machinist suffered an undisplaced fracture of the left malleolus (ankle), with tearing of the surrounding soft tissues. Her leg was immobilised in plaster for about two and a half months. The fractured bone united without complications but chronic inflammation developed in the ankle due to fibrotic scar tissue and ultimately capsulitis of the ankle and tendonitis in the lower leg. The claimant experienced chronic (but low grade) pain and swelling on a daily basis, particularly after using the left leg and foot for any length of time. Her ankle was usually very sore by early afternoon. The condition was irreversible and permanent and conservative treatment would alleviate the symptoms but not cure the pathology with the result that the claimant would probably retire five years prior to normal retirement age or possibly even sooner. The claimant's left leg was immobilised in a plaster cast for more than two months. The arbitrator awarded the claimant R 90 000 in general damages which has a current value of R 204 000.

[23] By way of general principle I note that the Constitutional Court has set out the practical difficulty in assessing non-patrimonial loss for general damages inasmuch as such loss is an illiquid amount and not susceptible to precise calculation in monetary terms.[2] The best that a Court can do is decide *'by the broadest general considerations'* on an amount which it considers to be *'fair in all the circumstances of the case'*. It is trite that no one case precisely matches another and there is a limit to the value of comparing

[2] *Van Der Merwe v The Road Accident Fund (Women's Legal Centre Trust as Amicus Curiae)* 2006 (4) SA 230 CC para 39.

awards in similar cases. Care must be taken not to overcompensate claimants out of a natural sense of sympathy. This last consideration was well put by Holmes J (as he then was) in *Pitt v Economic Insurance CO Ltd* 1957 (3) SA 284D where he stated that *'... that the Court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but must not pour our largesse from the horn of plenty at the defendant's expense'*. This considered and sober approach, bearing in mind at all times that the award must be fair, has been endorsed by our highest courts on a regular basis including in *De Jongh v Dupisani* 2005 (5) SA 467 (SCA) para 60 where Brand JA warned that in exercising its discretion in the assessment of general damages in tragic cases concerning bodily injury, courts should guard against the tendency of humans to overcompensate.

[24] In *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) para 20, referring to an exercise in which awards and similar cases had been scrutinised, Nugent JA stated as follows: *'Money can never be more than a crude solatium for the deprivation of what, in truth, can never be restored and there is no empirical measure for the loss. The awards I have referred to reflect no discernible pattern other than that our courts are not extravagant in compensating the loss'*. The Court went on to state of such an exercise *'The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they have no higher value than that'*.

[25] In arguing for an award of R 80 000 under this head defendant's counsel sought to distinguish the cases of *Alla*, *Thlakane* as being more serious and placed reliance in particular on the case of *Adam Richard James v City of Cape Town* where in 2013 the 46 year old plaintiff was awarded R 200 000 in general damages after he fell through a broken storm water drain cover. That award has a present value of approximately R 265 000. The plaintiff was a professional dog walker at the time of the incident and was an active and physically fit individual who was active in sport. His quality and engagement in physical activities had been substantially affected. He was also diagnosed with reactive or secondary depression as a result of the incident. His injuries were a compound fracture to the left tibia and injuries to the left knee, left ankle and lower back which left him with a tendency to fall. He was skewed to the left hand side and his left leg was 2cm shorter than the right leg. The defendant's counsel contended that the plaintiff's injuries in James were substantially more severe than in the present matter with the added sequelae that he could not perform his duties as a dog walker and could no longer participate in physical activities as he had done in the past.

[26] The defendant's counsel also sought to distinguish *Van Dyk v Road Accident Fund* as involving more serious injuries and sequelae to the plaintiff. Finally, she placed reliance on the case of *Matsana v Minister of Police* which, she submitted, involved a plaintiff whose injuries were more severe but who was awarded on the sum of R 107 000 in general damages (current value). That case was determined in 2016. The plaintiff had suffered a gunshot wound to his right foot and had to undergo two operations. Two further operations were recommended to relieve painful symptoms in his right foot and the plaintiff had unsightly scars on his right foot and his right thigh. He continued to suffer from the effects of bullet shrapnel in his foot and suffered impaired function so that

he could no longer play soccer or work in his garden. The award in this matter, however, seems to me to be out of sync with other awards. It indicates that there are sometimes outliers and underlines that there is are definite limits to the value of comparing cases.

[27] The plaintiff was immobilised for some time and, according to Dr Le Roux underwent considerable pain and suffering during the period when the swelling in his ankle was required to subside before surgery could commence, a period of some ten days. It was clear from his evidence that life has become something a daily struggle for the plaintiff particularly as he is someone who has to rely on public transport in order to make his way to and from work and does not enjoy the luxury of travelling in a motor vehicle. The sequelae of his injuries were far-reaching inasmuch as where he had previously been an active person making a full contribution to the running and maintenance of his home this was severely constrained after his accident. I accept that this would have placed some strains on his relationship with his wife but his evidence in this regard is unsubstantiated and it is something of a stretch to accept that this alone led to the divorce from his wife. Other sequelae mentioned by the plaintiff, such as a deterioration or discomfort in his sex life as well as change in his personality for the worse, although not to be entirely discounted, were not sustained or borne out by any professional evidence.

[28] When regard is had to awards in similar cases it must be borne in mind that the plaintiff was a middle aged man at the time of the accident and, apart from the ordinary activities of daily living, was not active in sports or any other related sphere which was accordingly affected by the disability/ies from which he now suffers. Taking all the circumstances and relevant factors into account I consider that an appropriate award of

general damages would be one of R 220 000.

[29] The following order is made:

1. The plaintiff is awarded the sum of R 220 000 as general damages;

2. The plaintiff's actuary is directed to calculate the capital value of the past and future loss of income suffered by the plaintiff arising from the incident which occurred on 9 March 2013 as follows:

2.1 The actuarial assumptions as set out in paragraph 5.2 of the actuarial report dated 20 June 2018, at C53 of the trial bundle, should be applied with 1 December 2018 as the date for calculation relevant to the future loss of income;

2.2 The actuary is to have regard to the monthly turnover of 'Upper Shoe Shine' as recorded in Exhibit D before the Court;

2.3 The actuary must include in his calculations the tips earned by plaintiff (not reflected in Exhibit 'D' which on a five day week averaged R 500 (2018 value) per month;

Past Loss of Income (March 2013 to 1 December 2018)

2.4 The actuary must calculate the past loss of income by subtracting the injured past income from the uninjured past income;

Past Uninjured Income

2.5 The actuary must calculate the actual monthly income (using exhibit D) and add the contemporaneous value of the monthly tip average of R 500 (2018 value) to the reported turnover; in so doing the actuary must adjust the figure of R 500 (based on a five day working week) to a seven day

working week, for example, as at November 2018 the plaintiff earns R 500 per month in tips i.e. for approximately 22 working days whereas on the seven day working week he would earn approximately R 680 per month/in that month (30 days x R 23 per day);

Past Injured Income

2.6 For the four months from March 2013 the actuary must calculate the value of 50% of the reported revenues in exhibit "D" (i.e. no tips earned);

2.7 Thereafter:

2.7.1 the actuary must calculate the value of 6/7ths of the reported revenues i.e. for six days of work; and

2.7.2 add the appropriate value for tips earned based on an average of R 500 per month (2018 value) (for five days of work).

Future Loss of Income (1 December 2018 onwards)

2.8 The actuary must calculate the capital value of future loss of income as follows:

Future Uninjured income

2.8.1 The actuary must calculate the value of the revenue reported in Exhibit D as at 1 December 2018 (on a seven day working week basis) and apply income inflation to the value referred to in paragraph 2.8 until the retirement age of 65 years;

2.8.2 The actuary must add monthly tips, averaging R 500 over a five day week, adjusted pro rata upwards for a seven day week and adjusted for inflation, until the retirement age of 65 years;

Future Injured income

2.8.3 The actuary must present the value of future income, referred to in paragraph 2.8.1, for six days per week instead of a full week of seven days;

2.8.4 The actuary must add the value of the tips, referred to in paragraph 2.8.2, for five days of the week instead of a full week of seven days; and

3. A contingency deduction of 10% and 20% must be applied to future uninjured and future injured income respectively;

4. The plaintiff's actuary is directed to calculate the plaintiff's future medical costs and/or medical costs and/or expenses as follows:

4.1 The actuarial assumptions as set out in paragraph 3.2 of the actuarial report dated 20 June 2018, at C57 of the trial bundle, must be applied;

4.2 The capital value of future costs must be calculated as follows:

4.2.1 Consultations: R 20 000 spread over the remaining lifetime;

4.2.2 Medication: R 40 000 spread over the remaining lifetime;

4.2.3 Right ankle orthopaedic aids: 40% probability at age 68 of R 850 every 1.5 years over the remaining lifetime;

4.2.4 Surgery-right ankle joint: 40% chance of degenerative arthritis developing and thereafter a 90% chance of an operation being required at age 68 costing R 95 000 spread over the remaining lifetime;

4.2.5 Hot packs: R 350 every 3 years over the remaining lifetime;

4.2.6 Ankle guard: R 350 every 3 years over the remaining lifetime;

4.2.7 Knee guard: R 350 every 3 years over the remaining lifetime;

4.2.8 Handy man: 5 days per year at R 350 per day for the remaining lifetime; and

4.2.9 Occupational therapy: Five sessions over remaining lifetime at R 490 per session.

4.3 Apart from items 4.2.3 contingency and 4.2.4 no contingency deduction will apply.

5. Should the parties require clarity on the terms of the order or to raise issues which may have been overlooked they may approach the Court to that end. The Court reserves its right to clarify or supplement the order, if needs be. The parties are also granted leave to approach the Court to make an appropriate order once the actuarial calculations have been completed and, if needs be, to seek an appropriate costs order.

BOZALEK J

For the Applicant	*:*	*Adv P Eia*
As Instructed by	*:*	*A Batchelor & Associates*
For the Respondent	*:*	*Adv A Du Toit*
As Instructed by	*:*	*Welgemoed Attorneys*