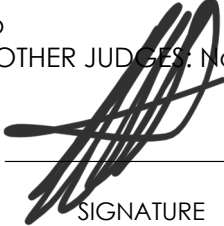


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
24/3/2023	
DATE	SIGNATURE

Case No: 38498/2017

In the matter between:

MLALELI SIBANDA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

This judgment is deemed to be handed down upon uploading by the Registrar to the electronic court file.

Gilbert AJ:

1. The plaintiff, at the time a 36-year old male, instituted action against the Road Accident Fund (“the Fund”) arising from a collision that occurred on 2 August 2016 at approximately 23h15 when his motorbike collided with a vehicle.
2. By the time the matter was heard before me on trial, the plaintiff sought the following relief:
 - 2.1. payment of general damages of R550 000.00;
 - 2.2. special damages in respect of ‘loss of earnings’ of R492 557.55;¹
 - 2.3. the usual undertaking from the Fund in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996 (“the Act”);
 - 2.4. the usual prayers in respect of interest and cost, including the costs of experts.
3. When this relief is compared to the relief that the plaintiff seeks in his particulars of claim, the relief that he seeks is less than that which appears in his particulars of claim and so there is no concern that the plaintiff is seeking to recover more than what is provided for in his particulars of claim.
4. The Fund initially defended the matter and delivered a special plea and plea. But as the Fund in one respect or other failed to timeously prosecute its

¹ See paragraph 25 of the heads of argument, at 024-10.

opposition of the claim, and after having been compelled to comply, the Fund's defence was struck out on 10 August 2022.

5. The matter when called before me was then one where the Fund was in default.
6. Uniform Rule 39(2) provides that when a defendant has by his default been barred from pleading, and the case has been set down for hearing, and the default duly proved, the defendant shall not, save where the court in the interest of justice may otherwise order, be permitted, either personally or by an advocate, to appear at the hearing.
7. At the commencement of the trial, on 8 March 2023, a representative did appear for the Fund, Ms Moyo, instructed by the State Attorney. After having stood the matter down for Ms Moyo to consider the Fund's position, Ms Moyo was unable to take the matter any further and to make out a substantive basis as to why the Fund should be permitted to participate in the trial given that it was in default. In the circumstances, Ms Moyo was excused, and the trial proceeded on a default basis.
8. Uniform Rule 39(1) provides that if, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim insofar as the burden of proof lies upon him and judgment shall be given accordingly, insofar as he has discharged such burden, provided that where the claim is for a debt or liquidated demand, no evidence shall be necessary unless the court otherwise orders.

9. This is not a claim for a debt or liquidated demand and so evidence is necessary.

10. Paragraphs 28 to 31 under the heading “Procedure at the default judgment trial court” of the Revised Directive 1 of 2021 (issued on 8 July 2022) provides:

“28. Until further notice, it is assumed that all trials, including matters in which it is necessary to present evidence to obtain a default judgment shall be conducted by video link. In the event that a physical hearing is deemed necessary by a trial Judge, which ought to be the exception, evidence from one or more witnesses may nevertheless still be adduced via video link to the court room, subject to the discretion of the trial Judge.”²

29. In all such matters in which default judgment is sought, evidence may be tendered on affidavit and the trial Judge may, in the exercise of a discretion, accept such evidence or call for oral evidence.

30. In all such matters in which default judgment is sought, medical reports should generally be confirmed under oath by the expert and be tendered as evidence, subject to the discretion of the Trial Judge to interrogate such reports and call for oral evidence to amplify or clarify the reports, should this be deemed

² Although the operation of paragraph 28 has been suspended in terms of a subsequent notice issued by the Acting Judge President dated 1 December 2022, this does not preclude the trial being conducted by way of video link.

necessary. All expert reports must comply fully with the prescripts set out in chapter 4 of this directive.

31. In all such matters in which default judgment is sought, argument as to the computation of damages must be presented in written format to the Trial Judge with full references to the relevant case law, which should be uploaded to the electronic file on CaseLines.”

11. In this particular instance, the plaintiff elected to adduce oral evidence himself and that in relation to expert evidence, to do so by way of affidavit.
12. The plaintiff's evidence, in summary, was that he was driving home from work on 2 August 2016 late that evening along Grant Avenue in Norwood on a motorbike when he collided with the insured vehicle. The plaintiff testified that he was travelling along Grant Avenue when the insured vehicle that had been parked alongside the road and facing in the same direction as him suddenly made a U-turn in front of him, without signalling, and which resulted in his motorbike colliding with the insured vehicle. The plaintiff emphasised that the insured vehicle did not signal its intent to make a U-turn in front of him.

13. The plaintiff's evidence continued that he was then taken by ambulance to Edenvale Hospital as he had suffered a fracture to his right femur. The plaintiff testified that as a result thereof he had surgery twice in the hospital. Although the plaintiff's evidence is not entirely clear in this regard, it would appear that on the first occasion his fracture was internally fixed with a so-called Gamma nail and locking screws but that as he was suffering pain as the "*operation had not been done properly*", he had to return to hospital where a total hip replacement was then carried out. The submissions made by the plaintiff's counsel during closing argument is that the hip replacement took place on the first occasion in the hospital but then needed to be redone. This is not my recollection of the plaintiff's evidence, which was that the hip replacement would only be done at a later stage. The plaintiff's heads of argument in paragraph 8 also describes the hip replacement having been done during the second hospitalisation.
14. Nonetheless it is clear from the evidence given by the plaintiff that he was hospitalised on two occasions, underwent significant surgery on both occasions, which included a hip replacement. There also does not appear to be any reason to doubt from the plaintiff's evidence that the injuries and the surgery that took place was as a result of the collision.
15. Although little evidence was given by the plaintiff as to the pain and suffering he experienced, there is no reason to doubt that these operations would have caused him pain and suffering.

16. As the plaintiff's evidence continued, the plaintiff's counsel put to the plaintiff the accident report. That report contains a sketch plan and a brief description of the accident. The accident as described in the accident report is that the insured vehicle was travelling along Grant Avenue when the plaintiff on his motorbike, which was travelling along Francis Road (which is perpendicular to Grant Avenue), turned into Grant Avenue and collided with the insured vehicle. This is clearly a different description of the accident than that which was given by the plaintiff earlier in his testimony.
17. The difficulty that arose is that the plaintiff then confirmed that the accident occurred as described in the sketch plan.
18. The plaintiff's counsel did not ask any questions of the plaintiff to clear up which of these versions, both of which he had now confirmed under oath, was the correct version.
19. As it would transpire, the plaintiff's case would be closed without addressing this difficulty.
20. When the court raised this difficulty with the plaintiff's counsel during closing argument, and after having stood down the matter until the next day, 9 March 2023 to enable the plaintiff to consider his position, the plaintiff's counsel asked from the bar to reopen the plaintiff's case in order to recall the plaintiff to give evidence to clear up this issue. As the plaintiff's counsel did not appear to be in a position to formally motivate and substantiate an application for reopening the plaintiff's case that day, I further stood down the matter until the next day, 10 March 2023 to enable a substantive application to be brought.

21. The plaintiff did then bring a substantive written application, which I then granted after hearing the plaintiff's counsel's further submissions in relation thereto. The upshot is that the plaintiff's counsel only came to the realisation that this discrepancy existed and had not been adequately addressed when the issue was raised by the court in closing argument. It appears to me that the plaintiff's counsel's failure to clear this issue up during her initial examination of the plaintiff was through inadvertence. To refuse the application to reopen the plaintiff's case would not be in the interests of justice, especially where the trial is proceeding on a default basis. It would be severely prejudicial to the plaintiff that this issue not be cleared up as it would lead to conflicting versions, both adduced by him into evidence, of how the collision occurred. As these two versions are materially different, the court will not be able to find that the plaintiff had proven that his loss or damage had been suffered as a result of a bodily injury caused by or arising from the driving of a motor vehicle and where that injury was due to the negligence or other wrongful act of the driver of the insured vehicle. Where there are two versions of the collision under oath, which are materially different, both from the plaintiff, and the one or other of the versions cannot be rejected, a finding of negligence cannot be made as it is necessary to make that finding in relation to the particular collision. In any event, the plaintiff's only evidence of negligence relates to the U-turn collision, more particularly the failure of the insured vehicle to signal before executing the U-turn. No evidence was led of any negligence in relation to the accident report version of the collision.

22. In the further examination of the plaintiff once leave was granted to the plaintiff to reopen his case, the plaintiff clarified that the correct version was the U-turn collision and that his previous confirmation of the sketch plan version was incorrect.
23. I accept the veracity of this evidence. It did appear to me that the plaintiff may perhaps have been confused at the questions put to him in relation to the sketch plan and so was not aware that he was confirming the sketch plan version, rather than simply acknowledging that is what the sketch plan reflected. This is particularly so as he was making use of an interpreter. Further, the U-turn version was given by him naturally and freely and it did appear to me to be the correct version of the incident. Nonetheless this issue was cleared up in his further examination.
24. The U-turn version also accords with the other evidence given by the plaintiff. For example, in further examination, the plaintiff made it clear that at no stage was he travelling along Francis Avenue but at all times was travelling along Grant Avenue. This accords with the U-turn version and not the sketch plan version. Also, as emphasised by the plaintiff's counsel, the plaintiff repeatedly stated that he did not know where the description or other information in the accident report came from as he did not give that version or any of that information to anyone. This is corroborated by the plaintiff's version that he was taken to hospital by ambulance and therefore the opportunity for him to have given this version as is recorded in the accident report is absent.

25. In any event, the accident report is hearsay. No evidence was adduced by any person with personal knowledge of the document, and its contents. Whilst it appears that a police officer may have completed this accident report, that officer was not called as a witness and where in any event it is not clear where the information had come from that was used to populate the report. The accident report has little if any probative value, even assuming it to be admissible.
26. In the circumstances, I am prepared to accept that the plaintiff's U-turn version as the correct version of how the collision occurred and that the driver of the insured vehicle was negligent in executing a U-turn in front of the plaintiff's motorbike without signalling.
27. Returning to the plaintiff's evidence, the plaintiff testified that before the accident occurred in August 2016, he was working as a chef for The Schwarma Company and that in fact he was returning from work that evening when the collision occurred. The plaintiff testified that he worked at least five days per week, earning R4 700.00 per month. He described his duties as going downstairs in the morning to fetch meat, carrying the meat upstairs where the meat would then be cut in portions and customers would be served.
28. The plaintiff then further testified that he did then return to work after the incident, although he naturally did not work whilst he was hospitalised and for unspecified periods following upon the operations.

29. But what evidence was not adduced by the plaintiff was that he did not get paid by his employer or that in fact he had lost any earnings because of the accident. Whilst it might be that he did lose earnings whilst he was hospitalised, little, if any, evidence to that effect was led to enable the court to determine what, if any, loss there was in earnings.
30. The plaintiff's counsel sought to make various calculations of past loss of earnings based upon an absence of three to four months from work. However I am unable to find that the evidence supports that calculation. Apart from the plaintiff not having testified that he did not get paid, it would have been expected of the plaintiff to adduce evidence of his stays in the hospital, particularly the duration thereof, and the duration of his absence from work.
31. The hospital records would have assisted in established the former, and his employment records would have assisted in established the latter.
32. Although hospital records were uploaded into the electronic court file, these were not adduced into evidence, at least not in an acceptable manner such as by calling a witness with the appropriate personal knowledge to testify to these documents. Nor did the plaintiff testify with any clarity as to the duration of his stays in the hospital, such as with reference to the hospital records as an aide.
33. There also appears to be a disconnect between the plaintiff's evidence as adduced by him during the trial and that which appears to have been reported to the experts in various interviews and which features in the expert reports uploaded to the electronic court file.

34. The plaintiff's counsel, in her heads of argument, sought that an order be made in respect of 'loss of earnings' of R492 557.55, and which claim was repeated during her closing argument. It is unclear to me from the evidence that was led and the submissions how this figure was calculated, and whether it relates to past and/or future loss of earnings, and includes loss of earning capacity.
35. Thus figure does not appear to accord with the actuarial report to which I was referred and which had been uploaded to the electronic court file. That report, which appears at CaseLines 020-125, is dated 29 April 2022 and reflects a loss of income totalling R885 826.00. This is different to the amount as now claimed of R492 557.55.
36. But there are more fundamental difficulties in relation to the plaintiff's claim for loss of earnings. This actuarial report was not confirmed under oath. Although I raised with the plaintiff's counsel during closing argument that there did not appear to be an affidavit by the expert actuary confirming under oath his expert report, the plaintiff's counsel informed me that it was not practice to do so. Whatever the practice may be, and I express doubt as to whether this can be the practice, the fact remains that the actuary's report is not evidence as it was not given under oath. As referenced earlier in this judgment, the practice directive expressly provides for the evidence of experts to be confirmed under oath, including by way of affidavit if necessary and appropriate.
37. In the circumstances, there is no evidence, or even explanation, as to how the amount of R492 557.55 is calculated.

38. In any event, leaving aside that the actuarial report was not confirmed under oath, the plaintiff was not asked and did not confirm the facts upon which the actuarial assessment is calculated. Indeed, the plaintiff was not asked to confirm any of the facts that appear in the expert reports.
39. Apart from this omission, the plaintiff's evidence that he did give before me is that he returned to work and continued to undertake the same duties as he had done before. This casts into significant doubt whether the plaintiff suffered and will suffer loss of earnings and earning capacity.
40. Whilst it may be anticipated that his injury to his right leg, and which resulted in a hip replacement, should have at least some negative impact on his work life, the general principle applicable to the assessment of damages for loss of earnings capacity is that the plaintiff must prove that the reduction in earning capacity gives rise to pecuniary loss.³ As stated, the plaintiff's evidence before me was deficient on this aspect. And no admissible expert evidence was led in this regard, including by way of the actuary as to the calculation of any loss.
41. In the circumstances, I am unable to find that the plaintiff has adduced sufficient evidence to sustain a claim for loss of earnings, whether past or future, or of earning capacity.
42. Insofar as the plaintiff's claim for general damages of R550 000.00 is concerned, I do find that sufficient evidence has been adduced to demonstrate that the plaintiff did experience pain and suffering arising from the accident,

³ *Rudman v Road Accident Fund* [2002] 4 All SA 422 (SCA) (26 September 2002).

was disfigured and did, to at least some extent, have a loss of amenities of life. The accident did cause the plaintiff a serious injury, namely to his right femur, and this resulted in at least two periods of hospitalisations where significant surgery was undertaken.

43. The plaintiff's counsel in her heads of argument drew my attention to *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 535H – 536B where the court held in assessing general damages for bodily injuries with reference to comparable cases that:

“It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court’s general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration”.

44. My attention was also drawn to a decision of Broome DJP in *Wright v Multilateral Vehicle Accident Fund*⁴, as cited in *Road Accident Fund v Marunga* 2003 (5) SA 164 (SCA):⁵

“[26] The following case (with synopsis) which was included in the list of cases to which the trial Court was referred for purposes of comparison, demonstrates the difficulty and (paradoxically) the usefulness of considering awards in previously decided cases:

Wright v Multilateral Vehicle Accident Fund - a 1997 decision of the Natal Provincial Division – Corbett and Honey The Quantum of Damages in Bodily and Fatal Injury Cases Col 4 E3-31: The plaintiff, a 28-year old woman, sustained an open comminuted fracture of the right femur with complete division of the quadriceps muscles and loss of substantial quantity of bone which extended into the knee joint. There was an initial surgical procedure to repair the quadriceps mechanism and to apply an external fixator – plaintiff hospitalised for two weeks and discharged on crutches. Readmitted two weeks later for treatment of infection. Later readmitted for a period of one week for further treatment of infection. At the same time the external fixator was removed and replaced with a pin. Traction applied at home for four weeks. The fracture failed to unite and the

⁴ A report of this case does not appear to be available.

⁵ Para 26 and 27.

plaintiff was again hospitalised for a few weeks during which an open reduction was carried out for an internal fixation. The plaintiff wore a leg brace with a hinge for several weeks and left with a limitation of flexion in her right knee, bad scarring of the right leg, a shortening of the leg by 3½ cm requiring raisers in footwear. She experienced weakness in the leg, residual pain and recurring infections and abscesses, which would in future probably require antibiotic therapy and surgical drainage. Removal of the pin was expected. Plaintiff experienced a great deal of pain, particularly during episodes of infection. She had been an outdoors person but was now permanently unable to run or play sport, kneel or squat. She experienced difficulty in negotiating stairs – awarded R65 000 as general damages [value in 2001 (at time of trial in the present case) – R81 000-00]”.

[27] *In the Wright case (Corbett and Honey vol 4 E3-36) Broome DJP stated:*

“I consider that when having regard to previous awards one must recognise that there is a tendency for awards now to be higher than they were in the past. I believe this to be a natural reflection of the changes in society, the recognition of greater individual freedom and opportunity, rising standards of living and the recognition

that our awards in the past have been significantly lower than those in most other countries”.

45. In *Lamb* the plaintiff had suffered serious injury to both his legs and also sustained broken teeth, lacerations of his tongue and various contusions and abrasions. As that case is over 50 years old, the figure awarded there is not of much comparative assistance but the court’s description at 536C-E of the plaintiff’s situation in that matter is presently apposite:

“Reverting to the facts of the present case, it seems clear that, although the respondent suffered grievously, both at the time of his accident and during his protracted period of hospitalisation, and although he will undoubtedly be left with an unhappy legacy of disfigurement, discomfort and future disability, his case cannot be regarded as falling in the most serious category of those cases which have come before the courts.

On the other hand, bearing in mind his experience in hospital over a period of four years, the operative procedures, the extreme inconvenience suffered, his disfigurement and the considerable curtailment of amenities of life, particularly in the field of sport, all of which was described in detail by the learned judge a quo in the passage quoted above, there is no doubt that a substantial award is merited. But the respondent is not, for instance, a ‘wheelchair’ case. He has the use of his legs, although handicapped to a considerable

extent. He is back at his work. He is able to look after himself and needs no assistance in any of his daily activities”.

46. In the present instance, as set out above, the plaintiff's evidence is sparse as to his pain and suffering, disfigurement, curtailment of amenities of life and such other factors as would be taken into account in the assessment of general damages. Nonetheless, the testimony does show that the plaintiff had to attend hospital twice, was hospitalised for some period arising from his two operations, and that he needed to move about on crutches for some time. His testimony also shows though that he too is not a 'wheelchair' case, has the use of his legs, is back at work, is able to look after himself. There is no evidence that he needs assistance in his daily activities.

47. In *Marunga*, upon which the plaintiff's counsel placed considerable emphasis, general damages was awarded by the court *a quo* in an amount of R375 000.00. In that matter there was a fracture of the left femur, soft tissue injury in the chest area and bruises on the forehead, left arm and left knee. The plaintiff in that matter received treatment, attended at hospitals and was subjected to various surgical procedures including the insertion of a plate and screws, with some five months in hospital recuperating, approximately two of which were spent with his left leg in traction and in plaster. In that matter too, the plaintiff had to be readmitted to hospital, in that instance for surgical removal of the plate and screws but which in that matter also resulted in a shortening of the respondent's left leg. There were also further attendances at different hospitals at intervals for a period of approximately four years. The appeal court reduced the general damages that had been awarded from

R375 000.00 to R175 000.00. That amount, the plaintiff's counsel states in heads of argument, would today equate to R492 275.00.

48. From the limited evidence led by the plaintiff before me (and bearing in mind that which he apparently told the experts and as appears in their reports was not confirmed by him under oath), his loss, pain and suffering is less than that as described in and informed the general damages in *Marunga*.
49. The plaintiff's counsel in supplementary heads also referred me to other cases where the awarded general damages ranged between R300 000.00 to R650 000.00 where the injuries included a femur fracture but where there was also other serious injuries.
50. Navsa J in *Marunga* in paragraph 33 cautioned that a court when deciding the quantum of general damages to be awarded, even though not engaging in an exercise in exactitude, or applying a known formula, is at the very least required to state the factors and circumstances it considers important in the assessment of damages and so provide a reasoned basis for arriving at its conclusion.
51. In the present matter:
 - 51.1. very little evidence was led by the plaintiff in relation to general damages;
 - 51.2. although there does appear to be more facts that he gave to the experts when being interviewed that may have been of assistance to

the court in assessing his general damages, those facts were not confirmed under oath;

51.3. no admissible expert evidence was adduced;

51.4. nonetheless it is clear that the plaintiff was hospitalised twice over indeterminate periods;

51.5. the plaintiff underwent surgery on both occasions, for the insertion of nails and the like in the first instance and then for a hip replacement on the second occasion;

51.6. the plaintiff did suffer from pain and to the best of his recollection had some forty self-administered injections, which he seems to recall were for pain relief;

51.7. the plaintiff was nonetheless able to return to work and to resume his duties;

51.8. the plaintiff did not lead any evidence as to how his position at work was compromised or his life generally was compromised, although he himself gave evidence at the trial.

52. In the circumstances, I consider an amount of R325 000 as an appropriate measure of general damages.

53. For illustrative purposes, taking into account inflationary considerations this would have equated to an amount of some R118,000 in 2003 when the

Supreme Court of Appeal in *Marunga* awarded damages of R175 000 to the plaintiff in that matter. As stated, I do not find the plaintiff's injuries in this matter and the factors that inform the measure of damages as compelling as those in *Marunga*.

54. In *Morris v Road Accident Fund*,⁶ a decision to which the plaintiff's counsel referred in her supplementary heads of argument, there were considerably more injuries and where, importantly, there were also severe symptoms of depression with agitated mood and severe post-traumatic anxiety. In that matter damages was awarded, in 2018, in an amount of R675 000. The evidence that was led before me shows physical injuries of a significantly less serious nature and where no evidence was led of depression or any other mental health issues.
55. In *Morris*, two further cases were referenced for comparative purposes. In *Grobbelaar v Road Accident Fund*⁷, the plaintiff sustained a fracture of the left femur and left patella, underwent an operation with pins and screws inserted in his leg and was in 2018 awarded R300 000.00 for general damages, of which the defendant was liable to pay 70%. In *Adams (SP) v Road Accident Fund*,⁸ where an arbitration award was made in 2004, the plaintiff had suffered a fracture of the shaft of his left femur, which was surgically fixed and stabilised by means of an intra-medullary locking nail. In that matter the arbitrator

⁶ [2018] ZAGPPHC 486 (12 July 2018)

⁷ 2015 (7E3) QOD 1 (GNP)

⁸ Arbitration Forum: Case Number AF001/9/287 decided on 17 March 2004

awarded R50 000.00 for general damages, which today with inflation would be some R130 000.00. In the present instance, the injury appears comparable but the hospitalisation and surgery that the plaintiff underwent was substantially more.

56. An award of general damages of R325,000 would be generally in line with past awards where the injuries and their sequelae were of a sufficiently similar nature.
57. I also find that the plaintiff has established his claim to the usual undertaking from the Fund in terms of section 17(4)(a) of the Act.
58. Insofar as costs are concerned, the plaintiff has had substantial success and, subject to what is stated below, is entitled to his costs.
59. I raised with the plaintiff's counsel as to whether the plaintiff should be entitled to costs for all three days, being 8, 9 and 10 March 2023 in circumstances where if the plaintiff had been asked the necessary questions during his initial examination the matter would not have proceeded beyond that first day. In my view, it was through the indulgences of the court that the plaintiff was enabled to prove his case, albeit over a protracted period of three days. In my view, the Fund should not be required using the public purse to pay for these indulgences afforded by the court to the plaintiff and which extended the length of the trial. In the circumstances, I intend limiting the Fund's liability for the plaintiff's costs on trial to one day.

60. Insofar as the costs of the experts are concerned, I have already found that the actuarial report that was filed was not adduced under oath and in any event did not lead to any success in relation to the plaintiff's claim for loss of earnings and earning capacity. Further, as no evidence was led by the plaintiff to factually found the basis for any of the expert reports. The expert reports have not contributed to the plaintiff's success in this matter. Rather, I have relied upon the plaintiff's evidence before me in order to find on those claims upon which he succeeded. If anything, the plaintiff's evidence adduced before me conflicts with the factual assumptions or facts that appear in the experts' reports. In the circumstances, I do not intend granting costs in relation to the experts.

61. An order is granted as follows:

61.1. The defendant shall pay the plaintiff the amount of R325, 000.00;

61.2. The defendant shall pay to the plaintiff interest at the present legal prescribed rate as from date of judgment should payment not be made of the capital amount within fourteen days of service of this order;

61.3. The defendant shall furnish to the plaintiff an undertaking in terms of section 17(4)(a) of the Act for 100% of the costs of the future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering a service to the plaintiff or supplying of goods to the plaintiff arising out of the injuries suffered by the plaintiff in the motor vehicle collision which occurred on 2 August 2016, after such costs have been incurred and upon proof thereof, and which statutory

undertaking is to be delivered by the defendant to the plaintiff's attorneys of record within fourteen days of service of this order;

61.4. the defendant shall pay the plaintiff's taxed or agreed party and party costs of suit on a High Court scale, including the costs of counsel save that:

61.4.1.the costs do not include the costs relating to any experts or their reports;

61.4.2.the costs in relation to the trial itself are limited to one day, i.e. costs cannot be recovered on trial for the appearances and attendances on 8, 9 and 10 March 2023 but are to be limited to one day only and which cannot include the costs of the plaintiff's application to reopen his case to lead further evidence;

61.5. in the event the costs are not agreed, the plaintiff's attorneys are to tax their costs, and are to serve a notice of taxation on the defendant;

61.6. the defendant is to pay the taxed and/or agreed costs within fourteen days of such taxation or agreement.



Gilbert AJ

Date of hearing:

8, 9 and 10 March 2023

Date of judgment:

24 March 2023

Counsel for the Plaintiff:

Ms L R Molohe-Madondo

Instructed by:

S.S. Ntshangase Attorneys

Counsel for the Defendant:

No appearance as the
defendant was in default