

IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE, PORT ELIZABETH

NOT REPORTABLE

Case No.: 1531/2010

Date Heard: 18 May 2012

Date Delivered: 29 May 2012

In the matter between:

RAFIEK ABRAHAMS

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

EKSTEEN J:

[1] The plaintiff who was 41 years old at the time sustained severe bodily injuries in a motor vehicle collision which occurred in Stanford Road, Port Elizabeth on 17 June 2007. The accident occurred when the vehicle driven by the plaintiff came into collision, head-on, with an oncoming vehicle. As a result of the injuries sustained in the collision the plaintiff suffered damages and he has instituted action against the defendant for the recovery of such damages.

[2] At the commencement of the trial the defendant conceded the merits and acknowledged that it was liable to compensate the plaintiff for such damages as the plaintiff was able to establish that he has suffered in

consequence of the injuries which he sustained in the collision. In addition, the defendant admitted the plaintiff's damages in respect of past hospital expenses in the amount of R130 824, 44. It also indicated that it wishes to tender an undertaking in terms of section 17(4) of the Road Accident Fund Act, 56 of 1996 in respect of future medical and related expenses and requested that an order be made accordingly. What falls to be decided therefore is the plaintiff's loss of earning capacity, both past and future, and general damages.

[3] The plaintiff alleges that he has suffered the following injuries in and as a result of the collision:

1. A badly comminuted proximal right femur fracture;
2. A fracture of the right patella;
3. A fracture of the right distal fibula;
4. A fracture of the right medial malleolus;
5. Severe soft tissue injury to the left hand;
6. Secretions in the chest;
7. A mild concussive traumatic brain injury.

[4] The defendant has admitted that the plaintiff sustained all of these injuries in and as a result of the collision, save for the soft tissue injury to the left hand. The dispute in respect of this injury appears to me to be more apparent than real. I shall revert to this aspect below.

[5] The plaintiff contends further that as a result of the collision and the injuries sustained therein he developed a chronic post-traumatic stress disorder, a chronic general anxiety disorder, a chronic major depressive disorder, a chronic social phobia and a pain disorder. The defendant has similarly admitted all these sequelae too, however, as I shall show later, the evidence placed before me establishes that both the general anxiety disorder and the social phobia were pre-existing conditions which were exacerbated as a result of the collision and the injuries sustained.

[6] I was handed a bundle of medico-legal reports and I was advised from the Bar that all of the medical reports, bar one, that of Ms van Zyl, to which I revert later, were admitted. The admission, I was advised, entails an admission of the correctness of the conclusions arrived at and the opinions expressed in these reports.

[7] These reports set out the nature, extent and degree of severity of the various injuries and their sequelae. In this regard I was referred to the reports of Dr Daan Joubert, Dr Basil Mackenzie and Dr Colin Audley, all orthopaedic surgeons, Dr Leandré Gauché, a psychiatrist, Dr Bawasa, a family physician, Dr Landman, a radiologist, Dr Peter Whitehead, an industrial psychologist, Mr Ian Meyer, a clinical psychologist and Ms McCrindle and Ms MC Bean, both physiotherapists. To the extent necessary I shall refer to these reports later.

[8] Ms van Zyl, an occupational therapist, testified before me in respect of her examination of the plaintiff and the plaintiff himself testified. The plaintiff's evidence casts little light on the collision nor on the immediate consequences thereof. There is, however, some detail provided in the admitted reports. In respect of the period of his hospitalisation the plaintiff testified only that whilst he was in hospital he was unable to sit upright on his own nor to stand. He says he was discharged from hospital in a wheelchair and upon his arrival at home was unable to dress himself or to perform any menial tasks for himself. He was dependent upon his wife and children, initially completely, and to a greater or lesser extent for a period of approximately three months after his arrival home.

[9] The plaintiff testified in respect of the injury to his left hand confirming that he hurt the middle finger. The finger is permanently swollen and it is painful when it is cold. This evidence accords with the evidence of Dr Mackenzie in this regard and was not placed in dispute. This, it must accordingly be accepted, is the extent of this injury.

[10] As a result of the collision the plaintiff's one leg is shorter than the other and he was given an assistant device to wear in his shoe in order to compensate for the discrepancy. He states however that this device hurt his foot and as a result of the pain he discontinued the use thereof. He continues to experience pain on a daily basis and utilises still pain tablets

to elevate the pain. When the weather is cold he uses more than he would on other days.

[11] The plaintiff is a devoted adherent to the Islamic Faith and was a regular attendee at the mosque prior to the accident. After the collision he was totally unable to attend the mosque for a period of approximately six months, a matter which caused him considerable disquiet. In consequence of the injuries which he sustained to his right leg he is entirely unable to kneel during prayers and is required to sit in a chair in the mosque. He says that his friends began to mock him as a result of this disability and he has accordingly now taken to attending a different mosque where he is not well-known to the congregation.

[12] It is common cause that the plaintiff was employed at Volkswagen South Africa prior to the accident as a spray painter and that he has been unable to return to his employment since. The pension scheme of which he is a member by virtue of his contract of employment is underwritten by Metropolitan Employee Benefits. The particular scheme is an income continuation benefit scheme in terms of which the plaintiff continues to receive a benefit of 75% of his total salary until his normal retirement age, subject to what is set out later herein. The plaintiff testified that for the first three months after the accident, which is a waiting period under the scheme, he received 45% of his normal wage and has since then received 75% of his ordinary income. I shall revert to this benefit below.

[13] Plaintiff testified that whilst employed at Volkswagen he worked different shifts and received shift allowances, a spray paint allowance and overtime pay when work was available. In addition he received an annual bonus equivalent to one month's salary and he did certain private repair work to motor vehicles from his home in his spare time. In this regard he says that he performed bodywork, removing rust from vehicles, spray painting work and certain mechanical work. He earned, on an average, approximately R1 000 per month from such part-time work. The R1 000 per month he says is a calculation of the average monthly income. Upon questioning, however, he was unable to provide any particulars relating to the period over which the calculation was done or the manner in which he arrived at the figure. At best, it seems that the figure of R1 000 per month is an estimate.

[14] Notwithstanding his injuries and his inability to return to work he testified that he continues to do certain mechanical work, aided by an assistant, from home, but that his income in this regard is minimal. He estimates approximately R100 per month on average.

[15] As set out above the plaintiff casts very little light on the accident and his initial treatment in his evidence. Dr Daan Joubert, however, records in his report that the plaintiff was removed from his vehicle by ambulance personnel and fire brigade personnel and transported to St

Georges Hospital Trauma Unit by ambulance. His condition was stabilised, X-rays were taken and his leg was splinted. He was then referred to Dr Audley, the orthopaedic surgeon on duty and was transferred to the Greenacres Hospital High Care Unit by ambulance.

[16] On the same evening he was taken to theatre by Dr Audley and an open reduction and internal fixation of the right femoral fracture was performed with a sliding hip nail and a long plate. On the femur the loose bone fragments were secured by wire loops over the fracture site. An open reduction of the patella fracture was performed and immobilised with Kirchner wire pins and wire loops to hold the fracture together. In the right ankle the medial malleolus was fixed with a screw and a plate was used to immobilise the fractures of the distal fibula.

[17] Dr Joubert records that the plaintiff was nursed for approximately three days in the High Care Unit and transferred to the general ward. After five days in the general ward he was discharged on 26 June 2007. On 19 June 2007, prior to discharge, he was referred to Fiona McCrindle who initially treated him with chest treatments, bed exercises and eventually mobilisation on crutches. On 21 June 2007 he could walk with non-weight bearing on the right leg. He had a brace on the right knee that controlled the flexion that was slowly increased by Fiona McCrindle. After discharge he was further treated by Amanda MC Bean, also a physiotherapist at the same firm as Ms McCrindle.

[18] Dr Audley produced three very brief reports setting out the injuries sustained and the treatment which he administered. Dr Daan Joubert examined the plaintiff and prepared a medico-legal report on 11 March 2008, some nine months after the collision and again in September 2009. Dr Basil Mackenzie examined the plaintiff during November 2011 and prepared his report accordingly. The reports all deal with different times during the plaintiff's recuperation and accordingly reflect the position as it was at the different times. There are no significant discrepancies between the reports and I shall refer herein primarily to the report of Dr Mackenzie, the most recent report of an orthopaedic surgeon.

[19] Dr Mackenzie records that the plaintiff was discharged from the Greenacres Hospital on 26 June 2007 and that Dr Audley noted that on 30 May 2008 the plaintiff was taken back to the operating theatre where Dr Audley removed the wires that had been used to stabilise the right patella fracture. Under the same general anaesthesia he carried out a right knee arthroscopy. An important finding of this exercise was an area of chondromalacia affecting the lateral femoral condylar articular surface. Furthermore, under the same anaesthesia, Dr Audley carried out realignment and revision internal stabilisation and bone grafting of a non-union of the plaintiff's right distal fibular/lateral malleolar fracture. Autogenous bone graft material was harvested from his right iliac crest.

[20] To the best of the plaintiff's recall he has not received any specific treatment since July 2008 in respect of the injuries sustained in the accident.

[21] In respect of the fracture to the right proximal femur shaft Dr Mackenzie noted that this was "expertly treated" by means of open reduction and internal stabilisation using a sliding hip screw and plate device augmented by two cerclage wires. These internal fixatives remain in place and the femur fracture has united in satisfactory angular and rotational alignments with functionally insignificant shortening of the bone and therefore the right lower limb. The plaintiff has however been left with discomfort along his proximal thigh and trochanteric regions. This, Dr Mackenzie postulates, is probably a result of scar tissue formation associated with both the fracture and its surgical management, although it is possible that it may be caused by the continued presence of the internal fixatives.

[22] The fracture to the right patella was managed surgically but it did eventually become necessary to remove the fixative wires which became a source of irritation under the skin overlying the patella. At the arthroscopy conducted on 30 May 2008 one of Dr Audley's findings was an articular cartilage defect on the lateral femoral condyle. This finding, together with the fact that he sustained a patella fracture, is, in the view of Dr Mackenzie, a strong indication that severe compressive forces were

applied to the patelo-femoral articulation. The comminuted nature of his femur shaft fracture may also be explained on this basis.

[23] Most recent radiographs, being those explained in the report of Dr Landman, demonstrated irregularity of the posterior surface of the patella with what appeared to Dr Mackenzie to be only fibrous union of a distal patellar pole fragment. The tangential view of the patelo-femoral compartment demonstrated narrowing of the joint space and evidence of secondary osteoarthritis. Dr Mackenzie expressed the view that this was one of those instances where the plaintiff, if he feels his pain levels warrant it and that non-operative treatment is insufficient, would benefit from a total patellectomy. This procedure may alleviate symptoms but it would probably not eliminate the anterior knee pain and it is associated with certain functional disadvantages. These include quadriceps wasting, 25-50% loss of extension strength and limitation of terminal flexion.

[24] Dr Mackenzie recorded that the medial malleolus united "per primam" following open reduction and internal stabilisation using a single malleolar lag screw and a single Kirschner wire. Union has occurred in perfect anatomical alignment. Initially, surgical management of his distal fibula shaft fracture was complicated by non-union, however, in May 2008, this was remedied by means of revision open reduction and internal stabilisation with autogenous bone grafting. The internal fixatives, a bone plate and six screws, remain in place. Radiographs demonstrated that at

the time Dr Mackenzie prepared his report in November 2011 solid union of the fibular had been achieved, however, the bone plate appeared to have backed away slightly from the fibular cortex and the tip of the single Kirschner wire which was used to stabilise his medial malleolus also appeared to be fairly prominent above the cortex of the bone. It is however significant that, despite the lapse of some four years since the accident, radiographs showed no feature of secondary ankle osteoarthritis.

[25] In respect of the soft tissue injury to the hand to which I have referred above Dr Mackenzie records that the plaintiff complained of occasional hand discomfort and indicated a slight functionally unimportant mallet deformity of his left middle finger DIP joint. Dr Mackenzie considered the most recent radiographs to be unremarkable so that attenuation of the dorsal attachment of the extensor mechanism to his distal phalanx is the most likely cause of this slight deformity, swelling and discomfort.

[26] Ms Ansie van Zyl examined the plaintiff on 25 July 2011. In respect of the injuries to the right leg she testified that the range of motion in the right hip, knee and ankle is impaired. The right hip flexion is limited to 80% and the right knee flexion to 90%. All the movements of the right ankle are limited. By virtue of the limited range of motion in the right hip, knee and ankle measurement of the muscle power in the right lower

limb was very difficult. She states that the plaintiff reported severe pain in his right hip, knee and ankle as well as the left ankle. She says that his balance in the seated position is functional but that the plaintiff sits with minimal weight on his right buttock and tends to sit with the right leg straight in front of him. He uses his right arm to support himself by sitting. In the standing position he is able to stand unsupported but with limited weight on the right leg. He is unable to use his upper limbs whilst standing due to his impaired standing balance and all movements are slow and awkward with limited right hip flexion and ankle movement. She noted that he is able to walk short distances indoors with no assistance. His walk is however slowed and the limited flexion in his right hip and knee causes an awkward gait on uneven terrain. Ms van Zyl opined that his walking was not safe and she stated that he almost fell twice in the gym on his way to the steps. He approached the steps with his left side first and dragged his right leg on the next step. She testifies that he relies on the handrails to pull himself up. She also noted that he prefers narrower staircases as it allows for handrails on both sides and that he lacks the endurance to cope with long staircases and struggles to walk longer distances.

[27] Ms van Zyl states that the plaintiff reported to her that he has great difficulty in accepting himself with his psychiatric condition. He finds it difficult to accept that he is not able to cope with all aspects of his life due to a psychiatric condition. In this regard he reported that he comes from

a conservative Muslim family and depression and anxiety are conditions he thought he would never struggle with. The fact that he cannot kneel during prayers when he attends the mosque is a huge problem as he considers himself less of a Muslim and always feels that he will be judged for this.

[28] Mr Ian Meyer prepared a lengthy report in respect of the psychological disorders and the mild concussive traumatic brain injury.

[29] The latter injury is easily dealt with. In respect of the retrograde amnesia the plaintiff was able to recall that he was on his way to work at the time when the accident occurred and that it was dark at the time. He was travelling in Stanford Road in the direction of Uitenhage when he saw lights approaching from the opposite direction and an oncoming vehicle crossed the barrier line into his lane. Retrospectively, he recalls taking evasive action by steering to the left, close to the pavement and applying brakes. Mr Meyer concluded that the plaintiff probably had a very brief period of retrograde amnesia, considering that he has no recall of the actual collision.

[30] Mr Meyer records that the plaintiff advised that his memory returned to consecutive functioning whilst he was still in his vehicle with his feet in the pedal-well and his upper body thrown against the passenger seat. He recalled that his vehicle, which had come to a stop on

the adjacent pavement, had remained on its wheelbase, but had made a 180° turn on its axis and was facing in the direction of oncoming traffic. Mr Meyer concluded that the plaintiff probably had a very short period of post-traumatic amnesia.

[31] In summarising his conclusions Mr Meyer stated as follows:

"A retrospective history indicated that the plaintiff presented with a brief period of retrograde amnesia, and a short period of PTA, indicating collectively that he probably experienced an alteration of consciousness. However, the hospital record indicates that his GCS was rated at 15/15 at the scene of the accident, and there was no subsequent alteration in his level of consciousness that was mentioned in the hospital record. Furthermore, the examiner was clinically unable to confirm the presence of a Postconcussional disorder."

[32] At best, it seems to me, that such concussional injury, to the extent that it has been established, was minimal.

[33] In respect of his psychological disorders Mr Meyer diagnosed each of these disorders. As pointed out earlier he concluded that the social phobia and the generalised anxiety disorder were pre-existing conditions which were intensified as a result of the collision. He concluded as follows:

"Besides his chronic Pain Disorder, the plaintiff also presents with PTSD, which is partially in remission, a GAD and Major Depressive Disorder, for which he is treated by a psychiatrist with psychopharmacotherapy."

[34] The plaintiff's disability, as it emerges from the various medic-legal reports, is a consequence of the combined effect of the orthopaedic injuries and the psychological conditions. Dr Mackenzie opined that it was indeed not possible for the plaintiff to return to his position as spray painter after the accident and he does not believe that the plaintiff will be competitive in that kind of work in future either. He concludes however that from a purely physical perspective he does not believe that the plaintiff has been rendered unemployable. In his opinion the plaintiff would tolerate a job description where he is permitted to sit intermittently throughout a working day for a total of approximately 33% of the time. Traversing uneven terrain, squatting, frequently adopting bent knee posture, frequent stair climbing and heavy manual material handling should also not be requirements of the job.

[35] Dr Mackenzie recognised, however, that the plaintiff continues to have pain, mainly as a result of the disruption of his right knee extensor mechanism and in particular the articular surface of his patella. Mr Ian Meyer concluded that in his opinion, the plaintiff presents with a pain disorder due to a general medical condition. He proceeds to state as

follows:

"Furthermore, there is probably a complicating synergistic interaction between the plaintiff's experience of pain and secondary psychological factors, although on brief psychological testing his cognitive functioning does not appear to be significantly impaired. Subjectively the plaintiff complained that he experiences consistent pain/discomfort and that this interferes with his ability to concentrate."

[36] Later Mr Meyer records as follows:

"When considering the intensity and chronicity of his Pain Disorder, improbable future orthopaedic rehabilitation, and underpinned by his secondary psychiatric disorder, his age, and the chronicity of the disorder, the examiner is of the opinion that his prognosis is poor, especially when considering the synergistic interaction between his orthopaedic and psychiatric/psychological disorder.

In his current condition, it is improbable that the plaintiff will return to his former job and considering his education, intellectual ability, training and mental state, the examiner is of the opinion that it is highly improbable that he will ever again be employed on the open labour market. Nevertheless, he does appear to be able to earn a meagre, irregular income from his hobbies (mechanical repairs and animals)."

[37] Dr Peter Whitehead, an industrial psychologist testified in respect of the plaintiff's employment history and prospects. He states that he has been advised by the human resources consultant a Volkswagen South Africa that the plaintiff has been employed with Volkswagen for a number

of years. Volkswagen makes use of five pay grading levels for hourly and weekly paid positions which fall into the "process operator" category. Once an employee gets hired in a process operator position, such as the plaintiff was employed in, they get paid on an hourly basis. An hourly paid employee progresses through five levels as he completes relevant mechanical and other training modules. Such an employee is then eligible for a group leadership position (which is level 5). At this level, an employee then becomes eligible for monthly payment. The next level thereafter would then be a supervisor.

[38] In the case of the plaintiff he has been employed at level 3 for the past nine years. Dr Whitehead testifies that he has been advised that in these circumstances, although there was theoretically a possibility that the plaintiff may in future have progressed to level 4 this was thought unlikely. Dr Whitehead accordingly postulated that, but for the accident, the plaintiff would in all likelihood have continued working at Volkswagen in the position of a productions spray painter on level 3 where he would have retired at the age of 65.

[39] In consequence of the plaintiff's injury he has been compensated under the income continuation benefit scheme to which I have referred earlier. Under this scheme he will continue to receive 75% of his salary until retirement age or until he has been found fit to work, based on an annual assessment of disability status which is mandatory. Ms van Zyl

then testified that she had prepared her medico-legal report filed of record at the instance of Metropolitan Employee Benefits for the purpose of such an annual assessment. It is apparent that these assessments are carried out on the basis of medical opinion. Dr Whitehead, an experienced industrial psychologist, concluded as follows:

'The likelihood of Mr Abrahams being declared "able to work" during an annual assessment will need to be dealt with on a contingency basis. However, based on the various medical reports perused, this eventuality seems highly unlikely.'

[40] This conclusion accords with the conclusion reached by Mr Ian Meyer which I have recorded earlier.

Loss of earning capacity

[41] The plaintiff's loss of earnings since the collision and his future loss of earning capacity has been calculated actuarially by Mr Alex Munro, a consulting actuary. The assumptions upon which the calculations are based are not in dispute and both parties rely for purposes of their argument on the computation of Mr Munro.

[42] Mr Munro has made certain actuarial assumptions which fall within his own specific field of expertise and in addition thereto has based his calculation and assumptions on the opinions expressed by Dr Whitehead

and figures in respect of earnings provided to him by the plaintiff, which are not in dispute. Mr Munro calculated the plaintiff's loss of earning capacity as follows:

	Uninjured Income	Injured Income	Loss of Income
Past	R 606 100	R 371 700	R 234 400
Future	R1 706 100	R1 062 400	R 643 700
	TOTAL LOSS OF INCOME		R 878 100

[43] In this calculation Mr Munro has made no allowance for contingencies. The argument before me is concerned only with the contingency adjustment which must be made to this calculation. The claim in respect of past loss of earnings is calculated over a brief period extending from the date of the accident to the date of the trial and it has been become customary, in the absence of any special circumstances, to allow for a deduction of 5% in respect of general contingencies of life. I think that such a deduction would be appropriate in the present circumstances.

[44] In respect of future loss of earning capacity Mr **Niekerk** accepts the calculation. He points out however that the future projected income of

R1 062 400,00 calculated in respect of the plaintiff's post morbid condition is comprised primarily of the 75% of salary which is paid to him under the income continuation benefit scheme. Mr **Niekerk** argues that by virtue thereof that this payment is conditional upon an annual mandatory assessment of the plaintiff's disability it may be that in the opinion of Metropolitan Employee Benefits the plaintiff would be assessed to be employable whereas in actual fact he may be incapable of finding employment on the open labour market. In these circumstances Mr **Niekerk** argues that I should add on to the calculated loss a percentage, he submits 20%, of the R1 062 400 so as to provide for this possibility.

[45] I do not agree. In ***Southern Insurance Association v Bailey NO*** 1984 (1) SA 98 (A) Nicholas JA considered the approach of the court's to loss of earning capacity. He held as follows at 113G-114A:

'Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.

It has open to it two possible approaches.

One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown.

The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative.

It is manifest that either approach involves guesswork to a greater or

lesser extent. But the Court cannot for this reason adopt a *non possumus* attitude and make no award."

[46] Later in the judgment at p. 117B-D Nicholas JA, dealing with contingencies, said:

'It is, however, erroneous to regard the fortunes of life as being always adverse: they may be favourable. In dealing with the question of contingencies, WINDEYER J said in the Australian case of *Bresatz v Przibilla* (1962) 36 ALJR 212 (HCA) at 213:

"It is a mistake to suppose that it necessarily involves a 'scaling down'. What it involves depends, not on arithmetic, but on considering what the future may have held for the particular individual concerned... (The) generalisation that there must be a 'scaling down' for contingencies seems mistaken. All 'contingencies' are not adverse: All 'vicissitudes' are not harmful. A particular plaintiff might have had prospects or chances of advancement and increasingly remunerative employment. Why count the possible buffets and ignore the rewards of fortune? Each case depends upon its own facts. In some it may seem that the chance of good fortune might have balanced or even outweighed the risk of bad."

[47] Reverting firstly to the calculation, Nicholas JA stressed that the validity of the approach depends of course on the soundness of assumptions and these may vary from strongly probable to speculative. In the present matter the assumption has been made that the plaintiff will continue in future to be unemployable and that he will continue to receive 75% of his salary until his normal retirement age. This assumption is supported by a very firm opinion expressed by Mr Meyer and supported by Dr Whitehead, an experienced industrial psychologist. The assumption

accordingly seems to me to be a very sound one which may be accepted as strongly probable. I think the stronger the evidential foundation for the assumption the less the scope for further adjustment for contingency.

[48] It is correct that the possibility of an incorrect calculation should be dealt with by way of contingencies. Nicholas JA, in approving the dictum by Windeyer J acknowledged that each case must depend upon its own facts. On the facts of the present case the eventuality which Mr **Niekerk** argues should result in the inflation of the calculated figure has been considered by the expert evidence which was tendered on behalf of the plaintiff himself, to be highly unlikely. That does not mean that it should be ignored. The possibility must be considered together with all the other contingencies. Assessing what the future may hold for the plaintiff as it emerges from the evidence before me, however, the prospects of the plaintiff being considered fit for work at some future time must be remote. I certainly do not think that this positive contingency can outweigh the negative contingencies which are ordinarily recognised.

[49] On a consideration of all the facts of the present matter, including the medical evidence, the age of the plaintiff and his stable work history I think that it would be appropriate to reduce the calculated figure in respect of future loss of earning capacity by 10% to allow for contingencies.

General damages

[50] In determining general damages the court is called upon to exercise a broad discretion to award what it considers to be fair and adequate compensation having regard to a broad spectrum of facts and circumstances connected to the plaintiff and the injuries suffered by him including their nature, permanence, severity and the impact on his lifestyle.

[51] Watermeyer JA, in ***Sandler v Wholesale Coal Supplies Ltd*** 1941 AD 194 at 199 stated as follows:

“The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending upon the judge's view of what is fair in all the circumstances of the case.”

[52] That still remains the legal position. There is no hard and fast rule of general application requiring a court to consider past awards. Such awards are seldom on all fours with the facts of the case under consideration. (Compare ***Road Accident Fund v Marunga*** 2003 (5) SA 165 (SCA) 169G-H.) On a consideration of these general principles I have endeavoured to assess what I consider to be a fair compensation. The injuries which the plaintiff sustained and the sequelae thereof are set out

above. I have had regard thereto in endeavouring to assess a reasonable compensation for general damages.

[53] Mr **Niekerk**, on behalf of the plaintiff has referred me to a number of previous decisions including **Noble v RAF, Corbett & Honey** vol 6 J2-54; **Roe v RAF, Corbett & Honey** vol 6 J2-59; **Rieder v RAF, Corbett & Honey** vol 6 E6-1 and **Mgudwa v RAF, Corbett & Honey**, E3-1. Mr **Paterson** has referred me further to **De Bruyn v RAF, Corbett & Honey**, vol 5 J2-69; **Vilakazi v RAF, Corbett & Honey**, vol 5 J2-160 and Van **der Mescht v RAF, Corbett & Honey**, vol 6 J2-42. Whilst there are certain similarities between some of these cases and the present, each of these decisions differ on the facts and the considerations raised therein from the present. They serve nevertheless as a guide to the general trend in the value of awards made. To the extent that guidance may be derived from these matters I have given careful consideration to them.

[54] On a consideration on all the facts of the present matter and awards previously made in similar matters I have concluded that an award in the amount R500 000,00 would represent fair compensation.

[55] In all the circumstances I think that the plaintiff is entitled to be compensated in the amount of:

1. R130 824, 44 in respect of past hospital expenses;

2. R222 680,00 in respect of past loss of earnings;
3. R579 330,00 in respect of future loss of earning capacity; and
4. R500 000,00 in respect of general damages.

[56] In the result I make the following order:

1. The defendant is ordered to pay to the plaintiff the amount of R1 432 834,44 as and for damages.
2. The defendant is order to pay interest on the aforesaid amount calculated at the legal rate from a date fourteen (14) days after judgment to the date of payment.
3. The defendant is ordered to furnish to the plaintiff an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, in respect of the payment of the costs of the future accommodation of the plaintiff in a hospital or nursing home, or the treatment of, or the rendering of a service or the supplying of goods to him as a result of the injuries sustained by him in the motor vehicle collision which occurred on 17 June 2007 and the sequelae thereof, after such costs have been incurred and upon proof thereof.
4. The defendant is ordered to pay the plaintiff's costs of the suit, such

costs to include the qualifying expenses, if any, of:

- 4.1 Mr Ian Meyer;
- 4.2 Dr Leandré Gauché;
- 4.3 Ms Fiona McCrindle;
- 4.4 Ms Amanda MC Bean;
- 4.5 Dr C Audley;
- 4.6 Dr Basil Mackenzie;
- 4.7 Ms Ansie van Zyl;
- 4.8 Dr P Whitehead;
- 4. Mr Alex Munro.

- 5. The defendant is ordered to pay to the payment interest on the plaintiff's taxed costs calculated at the legal rate from a date fourteen (14) after taxation to the date of payment.

J W EKSTEEN

JUDGE OF THE HIGH COURT

Appearances:

For Plaintiff: Adv D Niekerk, instructed by Mc Williams & Elliot Inc,
Port Elizabeth

For Defendant: Adv N Paterson, instructed by Friedman, Scheckter
Attorneys, Port Elizabeth