

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

NOT REPORTABLE

Case No.: 2416/05

Date Heard: 30 July-3 August 2012
19 Nov-21 Nov 2012

Date Delivered: 18 December 2012

In the matter between:

FABIAN BRANDON THOMAS POTGIETER

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

EKSTEEN J:

[1] The plaintiff, who is currently 40 years old, sustained severe bodily injuries when his vehicle came into collision with another vehicle on 31 August 2002 in Stanford Road in Port Elizabeth. The plaintiff issued summons against the defendant in which he claims damages arising from the injuries which he sustained in and as a result of the collision. Prior to the commencement of the trial the defendant conceded the merits of the plaintiff's claim and what remained in issue for determination was the quantum of the plaintiff's claim.

[2] The plaintiff claims an amount of R8 242 843,13 as and for damages which amount is made up as follows:

(i)	Past medical expenses	R 10 523,10
(ii)	Estimated future medical expenses	R 52 250,00
(iii)	Past and future loss of earnings and earning capacity	R7 385 400,00
(iv)	General damages	<u>R 800 000,00</u>
		<u>R8 242 843,10</u>

By agreement between the parties the defendant has undertaken to pay past medical expenses in the amount of R10 523,10 and to provide to the plaintiff an undertaking in terms of the provisions of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996 (herein referred to as "the Act") to pay for the costs of future accommodation in a hospital or nursing home or for the treatment of or rendering of a service or the supply of goods to the plaintiff, after the costs have been incurred and upon proof thereof.

[3] In the circumstances I am called upon to determine the quantum of the plaintiff's damages for past and future loss of earning capacity and for general damages.

[4] The plaintiff was 30 years of age at the time of the accident and is the eldest of four children. His parents were married in 1971 and remain happily married. His father was employed in the building industry and never obtained any significant academic qualification as a result of a head injury which he sustained at a young age. His mother is a teacher by profession and has been in the teaching profession for more than forty years. She holds a tertiary qualification. Plaintiff has two sisters both of whom have tertiary qualifications. The eldest is a holder of a Masters degree in human resources which she obtained *cum laude*. The younger daughter is the holder of an honors degree in statistical science and is presently studying towards a Master's degree.

[5] The plaintiff brother, Grant, the youngest of his siblings, commenced his studies towards a B.Comm degree in 1998. He discontinued his studies at the time of the accident in order to look after the plaintiff and to assist him in his recuperation. In 2003 he returned to his studies and, he says, completed his majors leaving only "a few minor modules" in order to complete his degree. He has however to date not done so.

[6] Prior to the accident the plaintiff was an active sportsman playing soccer on a semi-professional level. He pursued an active social life and was described by his brother as having been "the life of the party type of person" prior to the accident. He exhibited high levels of energy and pursued a busy schedule.

[7] The injuries which the plaintiff sustained in the motor accident were not seriously in dispute. Pursuant to a conference held in terms of the provisions of Rule 37 of the Uniform Rules of Court the defendant has admitted that the plaintiff sustained a severe head injury. The precise nature of the head injury and the anatomical areas of the brain which may have been involved have not been admitted. It is, however, common cause that the plaintiff sustained a traumatic brain injury with considerable frontal lobe dysfunction in consequence thereof. He had an extensive laceration of his scalp and a fracture of the parietal region of the skull. He sustained soft tissue injuries to his neck, right wrist, right foot and lumbar sacral spine which probably improved within six to twelve weeks. Whilst it is possible that there were minor residual pain and stiffness symptoms in the neck and lower back over a further period of a few months the plaintiff has not retained any residual symptoms of pain, stiffness or loss of function in the cervical spine, lumbar spine, right wrist or right foot regions thereafter.

[8] The plaintiff was rendered unconscious in the collision and he has no recollection of the collision itself although he does recall headlights approaching him directly from the front on the incorrect side of the road. He accordingly had retrograde amnesia for only a few seconds. Shortly after the collision he was removed from the vehicle by the emergency staff and taken to the Livingstone Hospital by ambulance. He was admitted to the Livingstone Hospital with a suppressed level of consciousness and suffering from cerebral contusion, a fracture of the skull with some disruption of the right orbital margin and a substantial laceration of his scalp. His Glasgow-coma scale assessment was

recorded in the hospital notes as 10/15. His Glasgow-coma scale assessment improved over the next few days and by 3 September 2002 the hospital notes reflect a Glasgow-coma scale assessment of 15/15. Dr Keeley, a neurosurgeon testified that the plaintiff was admitted to the ward where he remained until his discharge. During this period, Dr Keeley testifies, that he did from time to time respond appropriately to members of his family but, for the most part, was confused and disorientated and quite unaware of what had actually befallen him. On the 6 September a mere six days after the accident, he was discharged from the Livingstone Hospital to the care of his relatives at home. At home it was noted that he was restless and that there was blood in his urine. He was examined by Dr Peter Maasdorp, an urologist and readmitted to hospital just three days later.

[9] Upon his readmission a cystoscopy was performed and it was determined that the plaintiff had a rupture of the bladder. Suturing of the bladder was, however, not necessary and the plaintiff was left with an indwelling Foley's catheter draining his urine while the bladder healed. He was discharged home again approximately ten days later.

[10] The plaintiff has no recall of the collision or of being removed from the wreck of the motor vehicle and transported to the Livingstone Hospital. He has no recall of being in the Livingstone Hospital or of his discharge from the Livingstone Hospital. He has no recall of the time that he spent at home prior to the rupture of his bladder and he is

unaware of the discovery of blood in his urine. He has no recall of having been catheterized at all. Dr Keeley accordingly concludes that he had post traumatic amnesia for about three weeks. This Dr Keeley states is significantly long and indicative of severe brain injury.

[11] On his discharge from the Provincial Hospital, he was for all practical purposes, a total invalid. He had to be bathed, fed and dressed. He had long periods of total confusion. The plaintiff had been diagnosed with diabetes in approximately 1996 and he required regular injections of insulin. After his discharge from hospital he was unable to take care of his own medication and a nursing sister, who had come to stay with them, did the necessary tests and arranged for the daily doses of insulin. His brother Grant testified that he was required to assist from time to time to administer the insulin to the plaintiff.

[12] The plaintiff was left with a scar to the right forehead as a result of the laceration which he sustained in the accident. Dr Marx, a dermatologist, reported (the report of Dr Marx was admitted) that the plaintiff presented with a linear flat scar of 3cm X 0,5cm on the right forehead. Photographs were not taken and destruction with erbium yag laser was performed. The treatment was followed up with intralesional cortisone injections and Dr Marx reports a very satisfactory cosmetic result was achieved.

[13] The plaintiff complained post accident of a slight hearing loss and was referred to Dr Black, an ear, nose and throat surgeon in Port Elizabeth. A definitive audiometry was carried out which revealed a mild conductive hearing loss present in the right ear with raised speech discrimination abilities. Hearing in the left ear appears to be within normal limits. Dr Black states in his report (which was admitted) that the hearing loss can be ascribed to a significant injury to the right ear in keeping with the extent of the injury which the plaintiff sustained in the accident. He was of the view that the conductive hearing loss with raised speech discrimination thresholds on the right hand side could indicate some form of middle ear pathology, with possible damage to the ossicular chain or scarring or adhesions of the ossicular chain. The hearing loss detected is of a mild nature and could be corrected either with the use of a hearing aid, or possibly, an attempted surgical correction of the underlying conductive hearing loss.

[14] The plaintiff complained post accident of a measure of disequilibrium. Dr Black confirmed rotational vertigo and opined that it was suggestive of a concussive injury to the Labyrinth. The degree or extent of such injury could not be ascertained with clinical testing alone. Specialized balance testing, he declared, is only available at academic institutions, the closest of which is possibly in Cape Town. Dr Black confirmed that the dizziness does interfere with the daily life of the plaintiff and the management of the vertigo will involve some form of vestibular habituation, with the length of such therapy to be determined by the success of the therapy itself.

[15] The plaintiff sustained an injury to the right eye. In the pleadings the plaintiff contended that he had sustained a fracture of the lateral pillar of the right eye socket. In preparation for trial the defendant admitted only that he had sustained a raccoon eye. Dr Keeley testified as to the fracture of the lateral pillar of the right eye socket and the injury was not disputed. Subsequent to the accident the plaintiff complains of a measure of double vision on extreme downward gaze and was of the view that the visual acuity of his right eye had been slightly blurred. He was referred to Dr Gardiner, an ophthalmic surgeon. Dr Gardiner's report has, like those mentioned above, been admitted. On an examination of the plaintiff's visual acuity in the right eye Dr Gardiner found it to be 6/6 with a small refractive error of -0.50. Dr Gardiner recommended that the plaintiff obtain glasses for driving but opined that this marginal defect was not related to the motor accident. He concluded that the plaintiff's visual fields showed no restriction and his ocular movements appeared full and normal. At times he had diplopia on extreme downward gaze; however, Dr Gardiner was not of the view that it was any cause for concern.

[16] Dr Keeley testified that there is, in his view, some minor displacement of the orbital contents of the eye (enophthalmus) which is so subtle that he is not of the view that correction is indicated. This he ascribes to the fracture of the pillar of the right eye and the force of the impact which caused such fracture.

[17] The plaintiff complained from the outset, and still complains, of a defective memory, impaired concentration and headaches. These complaints are borne out by the evidence of his mother, Mrs. Potgieter and his brother Grant Potgieter. They accord too with the opinions of Mr Ian Meyer, a clinical psychologist, Dr Crafford and Professor Zabow, both psychiatrists, and Ms Ansie van Zyl, an occupational therapist. Mr Loebenstein, also a clinical psychologist, expresses of the view, however, that the plaintiff does not have a significant memory problem. He concludes, nevertheless that by virtue of the frontal lobe syndrome he is unable to apply new knowledge and skills in the real world. In these circumstances I think the dispute is more apparent than real. To the extent that it is necessary to make a finding in respect of his impaired memory I think that the weight of the expert evidence, which includes the evidence of Professor Zabow, for the defendant is in favour of a frontal-lymbic injury with impairment of memory. The overwhelming lay evidence confirms this. This dispute does not seem to me to be significantly material to the resolution of the present matter and I shall revert thereto below.

[18] Mrs Potgieter, the plaintiff's mother and Grant Potgieter, the plaintiff's brother both testified as a significant change in personality which the plaintiff exhibited after the collision. Prior to the collision, as recorded earlier, the plaintiff was a bundle of energy and was perceived to be the "life of the party" in his social activities. Subsequent to the accident he is withdrawn, quiet and has become disproportionately and noticeably aggressive. Plaintiff too acknowledges that he has become less tolerant, more

impatient and irritable to the point of being internally angry whilst nevertheless thinking that he does not externalize this personality trait. His brother Grant, testified by way of example, to an incident where he was required to intervene so as to prevent an assault by the plaintiff upon a referee on the soccer field, conduct which he says would be entirely inconsistent with the plaintiff's personality prior to the accident. Professor Zabow testified that during his examination the plaintiff's mood was one of depression with congruous effect. He states that the plaintiff is anxious as to the future capacity in occupational situations and his ongoing ability to function.

[19] On a clinical assessment Professor Zabow states that there is no gross cognitive impairment but slowness is evident and change in ability is evidence thereto. He is of the view that although the plaintiff is presently employed there is indication of decreased functional capacity and impairment. The degree to which this capacity is curtailed due to cognitive dysfunction which is influenced by depression and financial personal stresses needs ongoing evaluation. He concludes that overall the plaintiff's presentation is now related to that of depression and anxiety together with some frontal-limbic brain dysfunction residual.

[20] Whilst Dr Crafford seeks to place the emphasis elsewhere and there is some terminological differences between his evidence and that of Professor Zabow, his conclusion is essentially the same as that to which Professor Zabow came.

Loss of Earning Capacity

Past loss

[21] The plaintiff matriculated in 1989. During 1990 he embarked upon full-time study at the now Nelson Mandela Metropolitan University. He terminated his studies during the course of the year and in 1991 took up employment with his grandfather in his construction business. At first he was employed as a driver and later worked as a site foreman and managed some of the wages and order books. He remained with the construction company for approximately two years. From 1992 to 1995 he performed lesser functions mostly on a casual basis at Markhams, Edgars and Woolworths. In 1995 he took up a permanent position with Absa Bank as a teller, however, he did not enjoy the work and did not remain there for an extended period. In 1996 he took up an appointment with the Port Elizabeth Technikon, as it then was. He started as a financial clerk at the Technikon and remained there until the end of 2001. At the end of 2001 he applied for a more senior position in the same institution and was unsuccessful in his application. He therefore resigned and in 2002 embarked on a short-lived endeavour to import clothing from Bangkok and to sell same at a profit. In June 2002 he again took up a position, this time with his uncle in a packaging firm. This was a small business in which he reported directly to his uncle and was placed in a supervisory position over fifteen unskilled employees. This business did however not last long and was liquidated. The collision occurred on 31 August 2002.

[22] During the course of this period from 1990 to 2002 the plaintiff made various attempts at part-time study in an endeavour to obtain a tertiary education. I shall revert to this endeavour below in consideration of his future loss of earning capacity. The industrial psychologist, Dr Piro, who testified for the plaintiff, and Dr Whitehead, for the defendant, are in broad agreement as to the plaintiff's probable career path, had the accident not occurred, from the date of the accident until the plaintiff reached the age of 40. Dr Piro expressed the view that the plaintiff would probably have obtained a B.Comm degree at the age of 40 whilst Dr Whitehead held the contrary view.

[23] Both the industrial psychologists are of the view that the plaintiff would probably have remained within the Paterson B Band, semi-skilled positions, from the date of the accident until 2012. Dr Piro appears to have accepted a more optimistic point of departure in respect of the plaintiff's probable earnings from the date of the accident until 2007 (Paterson B3) than that utilized by Dr Whitehead. In addition she has predicted a more optimistic progression through the various levels of the Paterson B Band to the Paterson B5 level by 2007.

[24] Dr Whitehead, on the other hand, was more conservative. He expressed the view, having regard to the liquidation of his uncle's business, that the plaintiff would probably have obtained employment in the latter part of 2002 at the level of the

Paterson B1 remuneration. His view was that the plaintiff would gradually have progressed to the level of Paterson B3 by 2007 reaching the Paterson B4 level in 2012.

[25] It would appear that the difference between the two industrial psychologists in respect of the plaintiff's probable income in the latter part of 2002, is to be found therein that Dr Piro has accepted the remuneration which the plaintiff received from his uncle in the packaging business as the point of departure whilst Dr Whitehead has used the last salary earned by plaintiff at the PE Technikon in December 2001 as the point of departure. I think that the plaintiff's last employment opportunity prior to the collision should be accepted for purposes of calculating the last loss of earning capacity. I am however constrained to acknowledge that this was a short-lived employment opportunity in that his uncle's firm was liquidated shortly thereafter and that he was employed here within a family concern earning an income considerably in excess of any income which he had previously been able to command on the open market. Recognition should be given to these considerations in the application of a contingency adjustment to the calculation.

[26] I have been favoured with actuarial calculations in respect of the scenario predicted by Dr Piro and the scenario predicted by Dr Whitehead. Mr Alexander Munro, an actuary appointed on behalf of the plaintiff calculated the probable income which the plaintiff would have earned but for the accident from the date of the accident to the date

of the trial on an acceptance of the predictions of Dr Piro. His calculation reflects that the plaintiff, in his uninjured state, would probably have earned an amount of R1 285 700,00. Mr Nilen Kambaram, an actuary appointed on behalf of the defendant has similarly calculated the probable income which the plaintiff would have earned, but for the accident, but on an acceptance of the assessment by Dr Whitehead of the probable career path from the date of the accident to the date of the trial. On this basis he has calculated that the plaintiff would have earned an amount of R985 847,00 during this period, but for his injuries. Accepting, as I have done, that earnings on the Paterson B3 level as at the date of the accident should be utilized for purposes of the calculation I accept the figures prepared by Mr Munro as a point of departure. Recognizing, however, that the plaintiff may not have been in a position to secure employment in the open labour market on terms as beneficial as those offered to him by his uncle and having regard to the duration over which past loss of earning capacity is calculated in this matter, being 10 years, I am of the view that the calculation of Mr Munro in respect of probable past earnings should be adjusted downwards by 10% to allow for these contingencies and ordinary contingencies of life.

[27] I turn to the plaintiff's actual earning. At the commencement of the trial the parties indicated that they were in agreement in respect of the actual income earned by the plaintiff in his injured state from the date of the accident to the date of the trial. The agreement between the parties was to adopt the figure set out in the report of Mr Munro. Mr Munro did two calculations setting out different scenarios in respect of future

loss of earning capacity. In his two calculations, however, there is a discrepancy relating to the actual income earned in the injured state. In scenario one he has calculated the figure at R878 900,00 whilst in scenario two he reflects the figure as R875 800,00. Counsel were unable to cast light on the reason for this and I was advised that the actuary was unable to explain it either. Past loss of earnings is of course arithmetically calculable. Having regard to the general principle that defendants are to be regarded with greater favour than the plaintiffs in the assessment of damages I repose to accept the higher figure of R878 900,00.

[28] To summarise, the calculated figure of R1 285 700,00 in respect of the plaintiff's anticipated earning capacity, but for the accident, from the date of the accident to the date of the trial falls to be reduced by 10% to R1 157 130,00. The plaintiff's actual earnings over this period are accepted as R878 900,00. In these circumstances I propose to award the plaintiff the amount of R278 230,00 in respect of past loss of earnings.

Future loss

[29] In respect of the plaintiff's claim for future loss of earning capacity there is a substantial dispute between the parties. At the heart of the dispute lies the assessment of Dr Piro supported by Mr Ian Meyer and Ms Ansie van Zyl, that the plaintiff would probably have acquired a B.Comm degree by the age of 40. Dr Whitehead and Mr

Loebenstein have adopted the view that it is improbable that the plaintiff would have obtained a degree, whether at the age of 40 or at all.

[30] Mr Ian Meyer prepared a comprehensive medico-legal psychological assessment in November 2004. He subjected the plaintiff to an extensive battery of tests, including an IQ battery which Mr Meyer declares to be standardized in many countries in the world. On analyzing the scores attained in this battery of tests Mr Meyer states:

‘Based on the best performance method it is probable that the Plaintiff had a pre-morbid IQ within the high average range. This is probably supported by his scholastic results having achieved a “C” aggregate in matric despite having one paper lost and therefore not marked which detracted from his overall aggregate.’

[31] Early in 2009 Mr Meyer again assessed the plaintiff and on 20 April 2009 prepared an even more comprehensive medico-legal psychological assessment. He again administered an IQ battery of tests and again came to the same conclusion on the same basis.

[32] Mr Loebenstein was critical of this assessment on two bases. He expressed the view that the plaintiff was probably only in the average range and not the high average range. Mr Loebenstein also relied on the matriculation results and pointed out that Mr Meyer had been misinformed in both his reports and that in fact the plaintiff had

achieved and “E” aggregate in his matriculation results. At the trial it was not in dispute that the plaintiff had in fact achieved an “E” aggregate in his matriculation results. The second basis for criticism of the approach of Mr Meyer was that he had adopted the best performance method which Mr Loebenstein considered to be unreliable.

[33] Whilst it is undoubtedly true that in general the matriculation results of a particular individual may be indicative of his intellectual capacity I do not think it can carry any weight in the present matter. In the first instance there was a considerable dispute during the trial in respect of the reliability of the results. The plaintiff testified that shortly after having written his Business Management Paper in his matriculation examination he was approached by two teachers who advised that his answer script had been mislaid. His matriculation certificate handed in in evidence reflects only the subjects which he passed. There were only five subjects which, on the face of the certificate is compatible with the evidence of the plaintiff. The defendant, however, procured a letter from the Western Cape Department of Education verifying the results which the plaintiff allegedly achieved in his matriculation examinations in 1989. This the verification reflects six subjects and reflects a “G” of Business Management. This the defendant contended was indicative thereof that the plaintiff did indeed write the examination and that he had failed it dismally. I do not think that the conclusion which the defendant draws is necessarily correct and the verification from the Western Cape Department of Education is, in my view, not destructive of the version of the plaintiff. A “G” symbol appears to be the lowest symbol awarded and if a candidate achieved zero

it would be reflected in a symbol "G". It seems to me that where no script was submitted the candidate may indeed have been awarded zero. There is no evidence that a contrary inscription would have been made. In the circumstances I think that the plaintiff's evidence that the symbol "E" was achieved on the strength of only five subjects must be accepted.

[34] More importantly, however, I do not think that in this particular case the poor matriculation result should be accepted as being indicative of anything. Dr Piro in her evidence commented on the weight which Mr Loebenstein attached to the matriculation results as follows:

'I am working in the Eastern Cape since 2005. I assess 900 people in the Eastern Cape, 85 of them with 35 years and older, which means 85% of those people come from – were educated during the "apartheid" era and it was very clear, it was very clear that those people who had – some of them had a very poor matric education, very poor symbols and they demonstrated very good learning potential despite the fact that they come from a disadvantaged education system, so unfortunately during the "apartheid" era the Coloured schools, Black schools ... but particularly the Black Department of Education and the Coloured Affairs were notorious for not providing an adequate standard of education and we cannot use those matric results to say that he would not have done well at university at all.'

The plaintiff was educated and matriculated in the Bethelsdorp Senior Secondary School, what was then referred to as a "coloured school". I think that the argument of Dr Piro is compelling and I do not think that the matriculation results achieved by the plaintiff can be regarded as a true reflection of his learning potential.

[35] Mr Loebenstein further criticized the approach of Mr Meyer in adopting the best performance method. He testified that this method of assessment had fallen into disrepute internationally and is unacceptable by virtue of the spurious results which it sometimes achieves. He referred to the work of Muriel Lezak, Diane (Howinson) and David Loring, *"Neuro Psychological Assessment"*, 4th ed in support of this contention. The learned authors address the best performance method at p. 99 and state:

‘In criticizing this method for systematically producing over-estimates of pre-morbid ability, Mortensen and his colleagues (1991) give some excellent examples of how misuse of the best performance method can result in spurious estimates. Most of their “best performance” estimates are based solely on the highest score obtained by *normal control subjects* on WIS-A battery. What they found, of course, was that the highest score amongst tests contributing to a summation score (ie, an IQ score) is always higher than the IQ score since the IQ score is essentially a mean of all the scores, both higher and lower ...’

[36] The authority of the author Lezak was not disputed by Mr Meyer in his evidence. On the contrary, he acknowledges the author Lezak and her approach that one requires as much information as possible in order to make accurate deductions. He declares, however, that he did take into account all the information placed before him. This is not reflected in his report filed in terms of Rule 36(9)(b) of the Uniform Rules of Court.

[37] I have, however, recorded above that the reports filed on behalf of Mr Meyer are very comprehensive. There is indeed a great deal of collateral information contained in the reports and in defense of his conclusion he testified that he did indeed have regard to all these factors. It is therefore necessary to consider the further information relied

upon by Mr Meyer in concluding that the plaintiff was probably, pre-morbidly, in the high average intellectual category and that he would probably have graduated. Much stress was placed on the family background where his mother and both his sisters had graduated and his brother Grant has studied successfully at university although he did not complete his degree. He relies also on the plaintiff's own academic endeavours prior to the accident and subsequent to having matriculated.

[38] It is not disputed that the family performance in areas of education and employment is a relevant consideration in assessing the plaintiff's probable pre-accident prospects. I think, however, that the longer the plaintiff's own track record is, the less the significance of the performance of his parents and siblings. In this instance the plaintiff's own track record extends over some twelve years after matriculating. The major difficulty in the reliance upon other factors in Mr Meyer's medico-legal reports and evidence is that he had labored under a misapprehension in respect of a number of features and he had not been provided the full record. Thus in his first and second reports Mr Meyer's declares:

'The Plaintiff matriculated at the Bethelsdorp Senior Secondary School with a "C" aggregate matric, although the examiner has not had sight of this document because it was stolen. At present the Plaintiff is attempting to get a certified copy of his matric certificate. He informed the examiner that he was only credited with five of his six subjects because the other paper was lost. While he received a "C", he had expected to achieve "B" aggregate ...'

[39] This information was clearly erroneous and in evidence Mr Meyer recognizes this and states that he relies rather on his post matric achievements. Mr Meyer continues to record in each of his reports that “the Plaintiff first commenced reading for a B.Juris degree at UPE in 1990. He informed the examiner that he passed three of the initial six subjects but lost interest in the course”. The evidence of Dr Whitehead, which was not challenged, and which was supported by official examination results obtained, reveals that the plaintiff enrolled in 1990 for a B.Juris degree and that he passed only one subject, failed one subject and did not obtain a year mark to be admitted to write exams in the remaining subjects. The information on which Mr Meyer relied accordingly overstates the achievement considerably.

[40] Mr Meyer appears to have been of the view that the plaintiff did not attempt any study in 1991. Dr Whitehead’s researches revealed that the plaintiff was enrolled at the University of Port Elizabeth in 1991 for a BA degree. His first year comprised five subjects. He failed four subjects and did not receive admission to write the exam in the fifth subject. Mr Meyer was accordingly not in a position to consider this unsuccessful endeavour.

[41] In 1994 the plaintiff enrolled for a B.Comm degree at the Vista University and attempted five subjects. He passed four subjects being Business Management 1, 50%, Economics 1, 50%, Introduction to the study of Law 1, 53%, and Private Law 1, 50%.

This Mr Meyer was advised of and, quite correctly, did consider and it clearly represents the plaintiff's most successful academic year.

[42] In 1995 the plaintiff enrolled at Vista University on a part-time basis for a B.Comm degree registering for two subjects. Mr Meyer records that he did not obtain a DP as a result of the extended hours he was working at Woolworths, firstly as a permanent casual sales assistant and later as a clerk. That the plaintiff was employed at Woolworths is indeed so, however, the plaintiff did not testify to extended hours of employment. On the contrary, the plaintiff had very little recall of his employment at Woolworths at all and was unable to say whether the employment was limited to weekends or whether he worked at Woolworths during the week. In the circumstances the evidence does not support the justification for the poor performance which Mr Meyer advances.

[43] In 1996 the plaintiff again enrolled for a B.Comm degree, this time at the University of South Africa and registered for two subjects. Dr Whitehead points out that the diploma course is at a lower level than a degree and accordingly doubts whether this course could assist him. During the course of the year he cancelled his enrolment in respect of both and did not attempt to write the exam. This too was not considered by Mr Meyer.

[44] In 1997 the plaintiff again enrolled at the University of South Africa, this time for a Nation Diploma: Cost and Management Accounting. He registered only for one subject being Quantitative Techniques. This, Mr Meyer, states, was to consolidate his subjects towards an eventual B.Comm degree. The plaintiff passed this subject in a supplementary examination in January 1998.

[45] What Mr Meyer was not advised is that the plaintiff also enrolled at the Vista University in 1997 for a B.Comm degree. He registered only for one subject, Accountancy, which he failed achieving 19%.

[46] In 1998 the plaintiff again enrolled for a B.Comm degree at Vista University registering again only for Accounting 1. He again failed, this having been his fifth attempt at this course. Again Mr Meyer does not appear to have been aware of this enrolment.

[47] In 1999 he enrolled with the Port Elizabeth Technikon where he was at that stage employed for “occasional studies” and registered for a semester subject in Business Management 2. Dr Whitehead’s evidence in this regard is that the PE Technikon permitted students at the time to register for any isolated subjects without registering for any degree course. On this basis the Port Elizabeth Technikon permitted a student to register for a second year subject irrespective of whether he had met the requirements

which would otherwise be set for the advancement to the second year. The plaintiff successfully completed a second year Business Management Semester Course with a pass of 52%. Dr Whitehead testified however that this is merely a semester course and does not represent second year subject. This success was recognized by Mr Meyer in his assessment although it appears from his evidence that Mr Meyer was under the impression that it constituted a year course. The success was accordingly overstated.

[48] In the same year, 1999, the plaintiff registered for a B.Comm degree at Vista University. He registered for four modules and was absent from the examination in respect of three of them whilst he failed the fourth module achieving merely 18%. This information too appears not to have been conveyed to Mr Meyer and Mr Meyer has not taken cognisance thereof in his assessment.

[49] In 2000 the plaintiff did not enrol for studies and in 2001 again enrolled for occasional studies at the Port Elizabeth Technikon again passing a single semester subject at third year level in Business Management. This information was passed to Mr Meyer, however, Mr Meyer was again under the impression that this represented a full year subject which it does not. Mr Meyer was not informed that during the same year the plaintiff had enrolled for a B.Comm degree at Vista University. He enrolled for sixteen modules and was absent from the examination for fourteen modules. He

passed one module. Dr Whitehead states that a single year subject consists of four modules.

[50] The difficulty, in my view, which the plaintiff faces in relying upon Mr Meyer's assessment of his pre-morbid capacity and the probability of him achieving a tertiary qualification is that Mr Meyer, recognizing that the best performance method of testing may not be reliable, labored under considerable misapprehension as to the plaintiff's academic endeavours and achievements, or lack thereof. In these circumstances I do not think that the plaintiff has established, on Mr Meyer's evidence, that he probably fell in the high average category of intellectual capacity.

[51] In as far as the pre-morbid intellectual capacity is concerned I do not think, however, that it is decisive to the conclusion of this matter and Mr Loebenstein, correctly in my view, conceded under cross-examination that even if the plaintiff had pre-morbidly been only of average intellectual capacity such would be sufficient to achieve a tertiary education from a purely intellectual perspective.

[52] There is a third area of dispute between Mr Meyer and Mr Loebenstein relating to the anatomical areas of the brain which have been affected by the injury. In particular Mr Loebenstein challenges the conclusion of Mr Meyer, which finds support in the evidence of Dr Crafford, Professor Zabow and Dr Keeley, relating to impairment of the

plaintiff's memory and the involvement of lymbic area of the brain. Again, I am not of the view that this an issue which needs to be resolved. All the experts are agreed that the plaintiff has sustained an injury to the brain with a resultant frontal lobe syndrome. Even if the plaintiff does have an unimpaired memory, the evidence is overwhelming that he is unable to apply such memory in the real world in consequence of his frontal lobe syndrome and the impact which that has upon his executive functioning. In any event, I think that the lay evidence of Mrs Potgieter, Grant Potgieter and Lester Potgieter relating to the day to day functioning of the plaintiff is strongly indicative of a dysfunctional memory.

[53] Dr Piro, the industrial psychologist who testified on behalf of the plaintiff supports the notion that the plaintiff would in all probability have obtained a B.Comm degree at the age of 40. The only foundation laid for this opinion in her report was that she consults widely in large corporate organizations and offers career counseling to many employees in their mid-life, with numerous examples of people in their late thirties and forties completing their first degree. This is undoubtedly true, however, I do not consider that this factor alone can cast any light on the prospects of the particular plaintiff in this matter achieving a B.Comm degree.

[54] During her evidence she repeated this position and, as already set out comprehensively dispelled the notion that the plaintiff's poor matriculation results should

be considered a indicator militating against the achievement. She relies, like Mr Meyer, on the plaintiff's academic results post matric. It is apparent that Dr Piro, like Mr Meyer, was informed only of the plaintiff's successes and not his repeated endeavours which were unsuccessful. She further assumed that the semester course in Business Management 2 and Business Management 3 were in fact year courses. In this regard she states:

“And within the course of the ten years after since leaving school, he had managed to finish a major subject.”

And later she states:

“He has already got 1 major subject and he just has to do another major subject.”

[55] It is apparent from the cross-examination of Dr Piro that she has assumed that all that remained for the plaintiff to do was to complete one additional major subject in order to qualify for his degree. She had not researched the extent of the various subjects which the plaintiff had passed.

[56] The evidence of Dr Whitehead was that the plaintiff would require six full first year subjects, each comprised of four modules, in order to be promoted to his second year. He would be required to pass four second year subjects and two third year subjects. As at the date of the collision the plaintiff had passed only one first year

subject in the B.Juris degree in 1990. Any credits accumulated for such success would, in his view, in all probability have lapsed by now. The plaintiff passed four first year subjects towards a B.Comm degree in 1994 and then enrolled for a national diploma. In this course he passed only one subject. Dr Whitehead points out however that the national diploma is a lower lever qualification than a degree and in his view success in this subject would not advance his progress in the degree course. In addition he has registered and passed two semester courses (one at second year level and one at third year level) in Business Administration when registered for occasional studies at the Port Elizabeth Technikon. It follows that Dr Piro had grossly over-estimated the extent of the plaintiff's academic successes.

[57] Dr Piro recognizes that universities tend to place a limit on the duration of study towards a particular degree although she is uncertain of the time span normally set. She states that in the case of long distance study through the University of South Africa the university permits one to enrol in eight separate years whilst pursuing a single three year degree. The time periods she says are not set in stone and the eight years do not need to be eight consecutive years. In the present instance the evidence of Dr Whitehead reveals that the plaintiff had enrolled in 1990 for a B.Juris degree. This has been abandoned. In 1991 he enrolled for a BA degree. This too has been abandoned. He has enrolled for a B.Comm degree in 1994 (Vista University), 1995 (Vista University), 1996 (Unisa), 1997 (Vista University), 1998 (Vista University), 1999 (Vista University) and 2001 (Vista University).

[58] On an acceptance of Dr Piro's evidence it appears overwhelmingly probable that the plaintiff's successes would have lapsed unless he completed his degree in the next year of enrolment. In fact he had not yet completed his first year. Again Dr Piro was at the disadvantage that she had not been advised of the plaintiff's repeated enrolments.

[59] Ms Ansie van Zyl also supports the view that plaintiff would have obtained a degree. She is an Occupational Therapist and I think that it is questionable whether this opinion falls within the expertise of her discipline. In any event the only basis laid by Ms van Zyl for her opinion is that "he was almost able to obtain adequate credits to obtain a degree" and she was convinced that he "would have been able to complete the final credits ...". She does not discuss his academic history in her report or in her evidence and one cannot fathom what she perceived his academic progress to have been. It appears, however, that she too, was led to believe that the plaintiff had virtually completed all the requirements for a degree.

[60] In all the circumstances I think that the evidence establishes that the plaintiff's matriculation results are not an indication of his possible future success. His family history shows a family with a measure of commitment to obtain tertiary qualifications and his mother and two sisters all have tertiary qualifications. Whether he was in the average or high average intellectual category prior to the collision is not decisive. I am

satisfied that the evidence shows that the plaintiff did have the intellectual ability to obtain a degree had he applied himself to it. His repeated endeavours over a period of twelve years prior to the collision are indicative of a strong desire to have obtained such a qualification. These endeavours persisted through difficult financial times and I think that it is a strong indication that they would have persisted after the collision. Indeed even in his injured state, the plaintiff did persist for several years, not surprisingly, without success. Despite this recognition, however, I consider that there is considerable merit in the view expressed by Dr Whitehead that the plaintiff's academic history shows little focus, was at times haphazard and undirected and did not meet with a great measure of success. This casts considerable doubt on the prospects of him obtaining a degree had the accident not occurred.

[61] Mr **van der Linde**, on behalf of the defendant, argues that the plaintiff has not established on a balance of probability that he would have obtained a degree by the age of 40 or at all. He accordingly urged me to ignore the possibility that the plaintiff may in future obtain a degree and to assess the future loss of earning capacity on the basis that the plaintiff would not have obtained a degree. Mr **van der Linde** places reliance on **Monumental Art Co. v Kenston Pharmacy (Pty) Ltd** 1976 (2) SA 111 (C) at 118E and argues that the court should not embark upon conjecture in assessing damages where a factual basis for the assessment is inadequate. **Monumental Art Company** (*supra*) concerned premises which had been flooded. The plaintiff claimed damages resulting from goods either destroyed or damaged as a result of the flooding including

certain pockets of cement. Plaintiff tendered evidence as to the cost of the cement to it but made no attempt to lead evidence as to the actual value of the cement. It was held that the plaintiff had not established its damages in respect of the pockets of cement.

[62] In the case of personal injury a plaintiff is required to claim in one action all the damages which arise from the single cause of action, both damages already suffered and of perspective damages. It is true that the general rule requires that loss must be established upon a balance of probability, however, the assessment of future loss is necessarily speculative. In ***Southern Insurance Association Ltd v Bailey NO*** 1984 (1) SA 98 (A) at 113G-114A Nicholas JA recognized this in the following terms:

“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.”

[63] I accept that the onus of showing that there is sufficient likelihood of such loss rests upon the plaintiff, however, this does not mean that where the evidence suggests a range of possibilities, the court will select the one least favorable to the plaintiff because he bears the onus, and has not proved that a more favourable possibility ought to be preferred. (Compare **Burger v Union National South British Insurance Company** 1975 (4) SA 72 (W) at 75B and **Kwele v Rondalia Assurance Corporation of SA Ltd** 1976 (4) SA 149 (W) at 152H.)

[64] For the reasons set out above I consider that the evidence does establish that the plaintiff probably would have pursued his studies with the view of obtaining a tertiary qualification. The parties are in agreement that he did have the intellectual ability to attain such a qualification even though his track record is indicative thereof that he may very well not in fact have obtained such a qualification or that he might have obtained it at a later stage than the age of 40, as predicted by the plaintiff's experts. I think that this is clearly a case where the evidence suggests a range of possibilities. In the circumstances I think that it would be fair, for purposes of assessing the value of the plaintiff's loss of earning capacity, but for the accident, and to provide for a far greater contingency adjustment than would ordinarily be the case in order to give recognition to the extent to which his own academic track record detracts from the likelihood of him obtaining his declared goal.

[65] Even if he did obtain a degree Dr Whitehead and Dr Piro differ in respect of his likely career path had that occurred. Dr Piro postulates that the plaintiff would have been employed at the level Paterson C5 at the age of 40, progressing to the Paterson level D2 at the age of 45 and remaining at such level until his retirement at the age of 65. Dr Whitehead, on the other hand, postulates that even if the plaintiff did obtain a degree at the age of 40 one would have to take into account that in all likelihood he would now have been working for about 20 years in a semi-skilled position. Upon receiving his degree he would therefore have been at least 18 years behind in appropriate experience, compared to other colleagues who would have obtained their similar degrees in their early twenties. This being so, Dr Whitehead is of the view that even if the plaintiff was, at best, appointed at Paterson level C2 he would first have to gain experience in a skilled position before being considered for further promotions. He is accordingly not in agreement with Dr Piro in respect of the rate of progression which she envisages thereafter.

[66] Dr Piro, in her evidence, addressing this argument has alluded to the demand which there is for black graduates in South Africa in meeting the objectives of the Broad Based Economic Empowerment Act. She was accordingly unmoved in her opinion of the plaintiff's likely progression had he graduated at the age of 40,

[67] I consider that there is sufficient merit in the approach set out by Dr Piro to justify the adoption of her prediction for purposes of an actuarial calculation to form the point of departure for the assessment of the plaintiff's earning capacity but for the accident. Recognition must of course be given to the commercial reality to which Dr Whitehead alludes in a consideration of the contingency adjustment to be made.

[68] I have been provided with a calculation made by Mr Alexander Munro on an acceptance of the opinion of Dr Piro. The actuarial soundness of the calculation is admitted and Mr Munro has calculated that, but for the accident, the plaintiff's future earning capacity calculated from 2012 to his anticipated retirement age of 65 would have amounted to R7 627 800,00. For the reasons set out above I consider that this calculation falls to be adjusted by a contingency factor considerably in excess of the customary reduction for the ordinary contingencies of life. There is a very real prospect that the plaintiff's may not have obtained a degree at all and, if he did, that he would have obtained it at a later stage. Even if he did obtain a degree, whether at 40 or at a later stage, I am compelled to recognize the real possibility that his progression may not have been as rapid as Dr Piro has predicted. I propose accordingly to reduce the calculation of his assessed future loss of earning capacity by 40%.

[69] In his injured state there is no doubt that he is subjected to cognitive, socio-emotional and executive deficits which will impact seriously upon his employability. The

industrial psychologists on behalf of the parties are in agreement that in his injured state the plaintiff would, at best, be able to function in a well structured job environment at the level of Paterson B1/B2. Even at that level they are in agreement that he is at greater risk of dismissal than other employees employed at that level would be. Dr Piro and Ms Ansie van Zyl have expressed the view that the typical career path of an individual with frontal lobe syndrome shows that initially he is able to obtain employment but that he is unable to retain his employment. As time passes he develops a record of serial dismissal and a checkered career history which diminishes his chances of obtaining employment. Dr Piro and Ms van Zyl in evidence went to the plaintiff's post-morbid employment record as confirmation of their opinion.

[70] Post accident the plaintiff first took up employment in 2004 with his uncle in a construction business. Initially it was only a half day position and later, in approximately 2005, the plaintiff took up a full-time position. He was employed in this position until 2006. Initially he did mostly deliveries and banking and from 2006 he performed office work and did some of the business accounts. He moved on of his own volition to take up a position with Austell Laboratories as a medical representative. He was only employed in this position for a month or two whereafter he was dismissed for making "ghost calls".

[71] Plaintiff testified that at Austell he was employed to sell the products of his employer. He was to set up appointments with doctors and call upon the doctors providing them with details of his employer's products. At the conclusion of the interview he would be required to obtain the signature of the doctor and, upon departure, to record his comments in respect of the call. He had been issued by his employer with an electronic device which he referred to as a "PBA". Upon recording his comments of the call he would immediately transmit that to his head office.

[72] In this particular instance the plaintiff explained that there were two doctors with the same initials and the same surname, one practicing in Port Elizabeth and the other in Queenstown. He had called upon the doctor in Port Elizabeth obtained the signature of the doctor, added his comments and transmitted same to his head office. When he left the surgery he realized that he had obtained the signature of the doctor alongside the particulars of his namesake who practices in Queenstown. He accordingly reverted to the doctor and requested the doctor to sign again, this time alongside the particulars of his Port Elizabeth practice. This too the plaintiff transmitted to his head office, however, he did not advise his head office that he had not called upon the doctor in Queenstown. It was naturally readily apparent that he could not have called upon the doctor in Queenstown and the doctor in Port Elizabeth on the same day. This error, though does not emerge from the evidence, was no doubt seen as an offence of dishonesty by his employer whereas the plaintiff ascribes it to his defective memory.

[73] Upon his dismissal from the position at Austell he remained unemployed for approximately five months before taking up a position with Media 24 as an advertising representative. He remained with Media 24 from August 2007 to March 2008. In this position he was remunerated at a rate of R6 500,00 per month plus the use of a company vehicle. There is no evidence of any unsatisfactory performance in this position and the plaintiff was not dismissed from this position. In April 2008 he resigned from his position to take up employment with Grobir, as a surgical representative. In this position the plaintiff was remunerated at a rate of R16 500,00 per month plus the use of a company vehicle, a medical aid benefit, and a pension fund benefit. In this position he was stationed in East London from April 2008 to August 2008. Again there is no evidence as to unsatisfactory performance and again he resigned of his own free will, he says, because he wished to return to Port Elizabeth. He applied for a position as a market development manager at Appletiser. After his interview he was subjected to psychometric testing and thereafter awarded the position. This position was remunerated at a rate of R31 458,00 per month. He remained with Appletiser from September 2008 to September 2009 when ultimately he was dismissed for poor performance. Upon his dismissal he remained unemployed for approximately a year whilst initiating proceedings in the CCMA to be reinstated. The matter was ultimately settled. In October 2010 the plaintiff again took up employment this time with Onemed, as a sales executive. This position was remunerated at a rate of R24 964,00 per month. Again he was dismissed for poor performance in November 2011.

[74] In February 2012 the plaintiff took up employment with Pharmaco Services and Marketing CC as a medical sales representative where he is currently still employed at a remuneration of R20 000,00 per month. In August 2012, however, a performance assessment was carried out. The provisional report was presented in evidence by his superior, Mr Soobramoney. The report is a provisional report and Mr Soobramoney testified that the plaintiff had not yet had the opportunity to deliver any input and to debate the provisional findings of Mr Soobramoney. The report may accordingly still change. What it does clearly reflect, however, is that Mr Soobramoney assessment of the plaintiff shows considerable weakness in those areas where planning, goal setting and execution are required. There is no indication currently that the plaintiff is at risk of dismissal and Mr Soobramoney testifies that a process will be initiated to assist the plaintiff. The indications are however clearly there that the plaintiff is at risk of dismissal from this position at some future stage.

[75] Dr Piro testified that upon enquiring the plaintiff confided in her that he had not advised any of these employers of his injury. Furthermore, the plaintiff acknowledged in his evidence that in obtaining the positions at Media 24 and at Appletiser he had submitted a fraudulent curriculum vitae. At Appletiser he had represented that he had in fact completed a B.Comm degree in December 2007. He declared that he had been the brand development manager for King Neptune Foods from January 2002 to December 2003 and sets out a host of duties and responsibilities which he performed in this position. All of which on his own admission, is pure fabrication. It emerges from his

evidence that prior to the accident he had submitted a tender to erect certain advertising boards in Port Elizabeth and Durban for King Neptune Foods. Post accident he was unable, from a physical perspective, to perform this work himself and acquired the assistance of others to simply erect these boards. He was never employed by King Neptune Foods at all. His curriculum vitae proceeds to allege that he was the area sales manager for King Neptune Foods from February 2002 to June 2007. Again he set out a host of duties and responsibilities which he allegedly performed which, it transpires, is all fabrication. In respect of his employment with Media 24 he declared to Appletiser that he had been the head of advertising at Media 24. It is on this basis that he obtained this employment.

[76] The evidence does not establish what was represented to Onemed at the time that he obtained such employment. The job description was however tendered in evidence. It required a grade 12 qualification with a degree or diploma in a medical or sales environment with at least three to five years sales or medical experience. The plaintiff did not have either of these qualifications.

[77] Whilst I have no doubt that the plaintiff's frontal lobe syndrome would have contributed to his inability to perform the functions required of him at Appletiser and Onemed, I think that the opinion of Dr Piro and Ms Ansie van Zyl that his dismissal should be attributed to his frontal lobe syndrome is considerably undermined by the

manner in which he obtained these positions. With or without a head injury it could reasonably be anticipated that he would not have been able to perform the functions required of the position as he had neither the qualification nor the experience which was necessary. In these circumstances, I do not think that too much weight should be attached to the plaintiff's dismissal from these two positions. Nevertheless the general import of the evidence of Dr Piro and of Ms van Zyl that a pattern of repeated dismissal is typical of a victim of closed head injury with frontal lobe dysfunction remains valid and the parties are in agreement that even if he were to obtain employment at the level of the Paterson B1/B2 category he would remain at increased risk of dismissal. Mr Munro has calculated the plaintiff's anticipated earnings at Paterson B1 from the date of trial to his anticipated date of retirement at 60 in the amount of R1 561 200,00. Giving recognition to the increased risk of dismissal discussed above I think that this figure should be reduced by 30%.

[78] In the circumstances, to summarise, I propose to accept the calculation by Mr Munro as a point of departure. The calculated figure of R7 627 800,00 in respect of the anticipated future earning capacity, but for the collision, is reduced by 40% to R4 576 680,00. The calculated figure of R1 561 200,00 in respect of the plaintiff's anticipated earnings in his injured state falls to be reduced by 30% to R1 092 840,00. The latter figure falls to be deducted from the R4 576 680,00 and accordingly I consider it fair that the plaintiff be awarded the amount of R3 483 840,00 in respect of his future loss of earning capacity.

General Damages

[79] In determining the quantum of general damages the court is called upon to exercise a broad discretion to award what it considers to be just compensation in the light of the circumstances connected with plaintiff and his injuries, including their nature, permanence, severity and impact. In recent years there has been an tendency for awards to be higher than what they previously were, as a result of changing values in society, improvements in standard of living and the fact that awards have traditionally been lower in this country than in many others. I shall have regard to this trend in seeking guidance from previous awards. I am alive too to the effect which the ravages of inflation has upon the value of money and I shall accordingly be guided by the inflation adjusted calculations of previous awards as set out in "*The Quantum Yearbook*" of Robert Koch.

[80] In considering the previous awards as a guide to what is just compensation in this matter I am mindful thereof that the determination of non-patrimonial damage remains in the discretion of the court. (Compare ***De Jongh v Du Pisanie*** NO 2005 (5) SA 457 (SCA) para [64].) I have been referred to a number of cases by counsel as comparisons. I have had regard to these cases, however, each case is determined on its facts. Each of the matters to which I have been referred differs in certain respects to

the present. I have however had regard to the general trend of awards which emerged from these cases as adjusted by the actuary Koch to have regard to inflation.

[81] The injuries and sequelae of the plaintiff have been fully set out above. There are undoubtedly serious. The weight of the expert evidence is supportive of a severe closed head injury involving the frontal-limbic area of the brain. This has resulted in a significant change in personality and has impacted severally on the plaintiff's lifestyle, in particular upon his executive functioning. I consider that an award of R650 000,00 represents fair compensation in respect of the plaintiff's general damages.

[82] Consequently, the following order is made:

The defendant is ordered:

1. To pay to the plaintiff the amount of R4 422 593,10 as and for damages;
2. To pay to the plaintiff interest on the above stated amount calculated at the legal rate from a date fourteen (14) days after judgment to the date of payment.
3. To furnish to the plaintiff an undertaking in terms of the provisions of section 17(4)(a) of the Road Accident Fund Act 56 of 1996.

4. To pay the plaintiff's costs, including the qualifying expenses, if any, of the following expert witnesses:

- (i) Mr Ian Meyer
- (ii) Dr R J Keeley
- (iii) Ms Amanda McBean
- (iv) Dr J H Black
- (v) Dr J Enslin
- (vi) Dr S Bemath
- (vii) Dr E Marx
- (viii) Dr Peter Crafford
- (ix) Ms Ansie van Zyl
- (x) Dr Karen Piro
- (xi) Dr M Aslam
- (xii) Dr V Gardiner and
- (xiii) Mr Alexander Munro.

5. To pay interest on the above costs calculated at the legal rate from a date fourteen (14) days after taxation to the date of payment.

J W EKSTEEN

JUDGE OF THE HIGH COURT

Appearances:

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

For Defendant: Adv H van der Linde SC instructed by Cliffe Dekker Hofmeyr Inc,
Cape Town c/o Friedman Scheckter, Port Elizabeth