

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION – PORT ELIZABETH)**

Case No: 2922/17

In the matter between:-

PIETER JAMES VAN NIEKERK

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Coram: Beyleveld AJ

Date heard: 6th October 2021

Date Delivered: 8th October 2021

JUDGMENT

Beyleveld AJ:

[1.] The Plaintiff instituted action against the Road Accident Fund¹ claiming damages resulting from motor collision which occurred on the 27th December 2015

¹ "the Fund"

in St Francis Street, Jeffreys Bay, Eastern Cape.

[2.] The Fund filed a Plea in response to the Plaintiff's Particulars of Claim and at a Rule 37 conference² the parties settled the merits of the Plaintiff's claim³ and it was further agreed that there would be an 80/20 apportionment in favour of the Plaintiff.

[3.] At that stage the Defendant was represented by attorneys.

[4.] During October 2019⁴ an order was obtained by agreement between the parties relating to an interim payment to the Plaintiff.⁵

[5.] In such agreement, it was further recorded that the Plaintiff's claim for past and future loss of earnings and general damages be postponed *sine die*.

[6.] As a result of the collision referred to above, the Plaintiff sustained a fracture of the lateral tibial plateau of the left knee and the Fund has accepted that the injuries sustained by the Plaintiff are "*serious injuries*" as defined in terms of the provisions

² During October 2019

³ In other words settled the question as to whether the Fund is liable for any damages sustained by the Plaintiff as a result of the collision

⁴ Whilst the Defendant was still represented by an attorney and counsel

⁵ The interim payment was for the amount of R500 000.00 and an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for payment of 80% of certain costs was also furnished

of the Act.

[7.] By order dated 13th October 2020 the Fund was ordered to furnish the Plaintiff with a copy of a report from an Industrial Psychologist requested in terms of Rule 36(8)(b).

[8.] An ancillary order was sought entitling the Plaintiff to apply, on the same papers duly amplified, for an order striking out the Fund's defence should there not be compliance with the order.

[9.] On the 8th December 2020 the Fund's defence was struck out by virtue of its failure to comply with the order in respect of the report of the Industrial Psychologist.

[10.] The Fund, even after the order striking out its defence, took no steps to rescind such order and thereafter merely adopted a supine approach to the further proceedings.⁶

⁶ The original attorneys of record are no longer on record but at the date set down for the hearing of the matter on the outstanding issues a member of the State Attorney was present prior to the matter being called but indicated that she held no firm instructions regarding the hearing of the matter and any further conduct on the part of the Fund

[11.] Regrettably the matter was heard in the absence of the Fund.⁷

[12.] The Plaintiff gave evidence *viva voce*. Similar *viva voce* evidence was also given by Ms Annemarie Van Zyl, an Occupational Therapist.

[13.] In addition, affidavits were handed up by various experts, in particular affidavits by Dr Michelle Nobre an Industrial Psychologist, an affidavit by Dr Mahmood Aslam an Orthopedic Surgeon and an affidavit by Mr Wim Loots an Actuary.

[14.] Insofar as evidence on affidavit by the aforesaid professionals are concerned, I exercised my discretion in allowing such evidence to be presented on affidavit.

[15.] Inasmuch as Judgment was effectively sought by default, Rule 31(2)(a) regulates the manner in which Judgment by default may be sought in respect of a claim which is not for a debt or liquidated amount.⁸

⁷ Although in a slightly different context it appears that the Fund (at least in this division) has adopted an attitude which must be deprecated, namely to allow certain defended actions to proceed unopposed notwithstanding that they were originally defended by the Fund represented by attorneys. These attorneys have all withdrawn as attorneys of record. During this week alone, there were several matters on the trial roll where such an attitude was adopted by the Fund and where Judgment was sought by the various plaintiffs in the absence of the Fund

⁸ Rule 31(5)(a) on the other hand deals with the situation where default judgment is sought on a claim which is for a debt or liquidated demand

[16.] Rule 31(2)(a) provides that where the claim is not for a debt or liquidated demand and the Defendant is either in default of an intention to defend or has failed to file a Plea, the Plaintiff must set the matter down for default judgment and the Court may grant Judgment after hearing evidence.

[17.] In the present instance, and as indicated, a Plea was filed. However, the Fund's Plea was struck out and accordingly the situation is comparable to where a Defendant is either in default of a notice of intention to defend or a Plea.⁹

[18.] Rule 39(2) also provides that where a Defendant has by his default been barred from pleading and a case has been set down for hearing, the Defendant shall not, save where the Court in the interests of justice may otherwise order, be permitted to appear at the hearing.¹⁰

[19.] A Court clearly has a discretion whether or not to grant default judgment. In this regard a Court has a discretion after hearing evidence to grant or refuse

⁹ In my view, where a defendant in such an action for damages files a Plea but does not appear on the day allocated for the trial, the principles enunciated hereunder regarding evidence by affidavit or *viva voce* are similarly applicable

¹⁰ The Fund in this matter has effectively been barred from pleading as its defence has been struck out. As indicated above, no steps were taken by the Fund to seek permission to appear at the hearing

default judgment and also to make such order as it deems fit under the circumstances.¹¹

[20.] The general rule is that evidence must be led if default judgment is sought in respect of a damages claim.¹²

[21.] Furthermore, it is an accepted practice and a salutary rule that a Court should not only not dispense with the hearing of evidence relating to quantum but also not dispense with the hearing of evidence relating to the cause of action.¹³

[22.] In *Venter v Nel*¹⁴ the following was stated by Broome DJP:

*“The practice in this division is to hear some evidence on claims for damages, but inevitably the enquiry is not as detailed or controversial as it would be were the matter defended, were the Defendant represented by counsel and were evidence of the witnesses who testified for the Plaintiff tested by way of cross-examination and by the Defendant leading countervailing evidence.”*¹⁵

¹¹ See DE van Loggerenberg *Erasmus Superior Court Practice* Volume 2, Second Edition at D1-364

¹² Erasmus *supra* at D1-364

¹³ *Knight NO v Harris* 1962 (2) SA 317 (SR); *Dorfling v Coetzee* 1979 (2) SA 632 (NC). See also *Eloff v Sprintz's Executors* 1920 TPD 93 and *Mashifane v Suliman* 1931 TPD 329

¹⁴ 1997 (4) SA 1014 (D&CLD)

¹⁵ At 106A to B

[23.] What is envisaged as a general rule is the leading of some evidence.

[24.] In *Groenewald NO and Another v Swanepoel*¹⁶ Pickering J stated as follows:¹⁷

“The counsel who appeared at the hearing for Plaintiffs, Mr Pretorius, handed in certain affidavits and adduced certain viva voce evidence from both Second Plaintiff and an Auditor, a certain Mr Sahd, in substantiation of the Second Plaintiff’s claim for damages.”

[25.] The Court *a quo* declined to grant default judgment but the Full Bench reversed this decision and granted default judgment in favour of the Plaintiffs.

[26.] In *New Zealand Insurance Co. Ltd v Du Toit*¹⁸ evidence regarding the quantum of damages sustained by Plaintiff as a result of the motor collision was tendered by way of an affidavit. This affidavit set out the nature of the injuries, the pain and suffering and disabilities which that particular Plaintiff sustained.

¹⁶ 2002 (6) SA 724 (ECD) (the Full Bench overturning the decision of *Groenewald NO and Another v Swanepoel and Another* 2002 (5) SA 647 (SE))

¹⁷ At 725 I to J

¹⁸ 1965 (4) SA 136 (TPD)

[27.] The Court allowed the evidence by way of affidavit as, having regard to the particular circumstances of that matter, the damages sustained by the Plaintiff was at least R5 000.00 and in this regard stated as follows:

*“The affidavit places beyond a question that the amount of damages suffered by Fourie was, to say the least, R5 000.00 and if I insist on verbal evidence I think I would merely be causing unnecessary costs for which Defendant is liable. On the facts of this case, and bearing in mind that the Defendant was served with the Summons and combined declaration in which his attention is drawn to the fact that R5 000.00 was claimed and that he has not seen fit to seek representations to this Court, I will accordingly grant Judgment as prayed.”*¹⁹

[28.] Similarly, in *Hackert v Hackert*²⁰ the Court allowed medical evidence by way of affidavit and not *viva voce*.

[29.] In *Havenga v Parker*²¹ it was held that in the Transvaal Provincial Division and in respect of applications for default judgment in actions for damages,

¹⁹ At 137 D to E

²⁰ 1985 (1) SA 717 (CPD)

²¹ 1993 (3) SA 724 (TPD)

evidence by experts such as medical practitioners, valuers and the like may be tendered by way of affidavit as opposed to *viva voce*.

[30.] It was stressed however that the Court retains the power to require *viva voce* evidence where necessary.²²

[31.] In *Economic Freedom Fighters & Others v Manuel*²³ proceedings in respect of a claim based on defamation and damages sustained as a result thereof were brought by way of motion proceedings.

[32.] The Court *a quo* granted the relief claimed²⁴. The matter came before the SCA and during the course of the Judgment²⁵ the Court extensively dealt with the question whether claims for damages may be brought by way of motion proceedings as opposed to instituting action proceedings.

[33.] In an extensive analysis the SCA firstly reiterated that claims for unliquidated damages by their very nature should not be brought in motion proceedings and

²² In *Mkhize v Lourens and Another* 2003 (3) SA 292 (TPD) at 298 I - J the Court referred to *Havenga's* decision *supra* and clearly, and by implication, approved the principle that in applications for default judgment for damages, and in appropriate circumstances, evidence may be tendered by way of affidavit

²³ 2021 (3) SA 425 (SCA)

²⁴ Including certain ancillary relief

²⁵ The Judgment was penned by Navsa JA and Wallis JA

secondly dealt with claims for unliquidated damages where default judgment is sought.

[34.] The SCA in dealing with the cases where default judgment was sought in respect of illiquid claims concluded as follows:

“It must be emphasized that in that case the court cautioned against not requiring verbal evidence in undefended cases and was careful to set out its reasons for the exception in that case. New Zealand does not dislodge the rationale for insisting on oral evidence, as set out earlier, so as to enable a proper determination of the damages in undefended cases and especially in opposed matters.”

[35.] The Court, although referring to default judgments, was seized with the question whether or not motion proceedings were appropriate when pursuing a damages claim as a result of defamation. The essential *ratio* of the decision is whether or not defamation proceedings²⁶ are appropriate under the circumstances.

²⁶ And where an interdict is not sought but damages

[36.] What is however apparent from the decision²⁷ is that the SCA did not discount a situation where a court in exercising its discretion could allow evidence or at least some evidence by way of affidavit where the quantum of damages in respect of illiquid claims is to be determined.

[37.] In the present instance and as indicated, the Plaintiff testified and gave evidence as to the effects of the accident²⁸ and identified to what extent his life amenities have been compromised.

[38.] Ms Van Zyl also testified regarding the Plaintiff's ability to gain employment or be economically engaged subsequent to the injuries sustained in the collision. To some extent, Ms Van Zyl also dealt with the views expressed by Dr Aslam which she corroborated insofar as it impacted on the ability to work.

[39.] Having regard to the fact that some evidence²⁹ was led to support the amount claimed in respect of the quantum, the costs involved in securing medical practitioners to attend court on a default judgment and then simply repeat what

²⁷ And more specifically as the SCA dealt with some of the decisions referred to previously in this Judgment regarding the manner of leading evidence in default judgment applications

²⁸ More particularly the effects of the injuries sustained as a result of the accident

²⁹ Extensive evidence

is stated in their summaries; the fact that some expert testimony was led³⁰ by Ms Van Zyl relating to employability of the Plaintiff and lastly the fact that the Defendant chose not to be present at the proceedings, persuaded me to exercise my inherent discretion in allowing some of the evidence to be tendered by way of affidavit.

[40.] The Orthopedic Surgeon Dr Aslam, stated in this report³¹ the following:

[40.1.] Plaintiff sustained a fracture of the lateral tibial plateau of the left knee;

[40.2.] Plaintiff was treated at Livingstone Hospital from 27 December 2015 to 14 January 2016;

[40.3.] Plaintiff underwent an open reduction and internal fixation of the left knee, tibial plateau on 11 January 2016;

³⁰ Important expert testimony

³¹ And confirmed on affidavit

[40.4.] Plaintiff has developed secondary osteo-arthritis of the left knee. There is significant crepitus present in the left knee. There is stiffness which will get worse in the near future;³²

[40.5.] Plaintiff will probably require a total left knee replacement and probably a revision at a later stage. This (the initial knee replacement) was estimated to occur at 2 to 4 years in 2018;

[40.6.] Plaintiff is at a significant disadvantage in the open labour market for strenuous work;

[40.7.] Plaintiff will probably be able to perform light jobs/office jobs in the future.

[41.] Ms Van Zyl confirmed her report and her evidence was to the following effect:

[41.1.] Plaintiff returned to work after the collision but could not cope and resigned from his employment;

³² The report is dated March 2018

[41.2.] Plaintiff complains of stiffness and pain in the left knee. He struggles with postures like crouching and kneeling and he finds climbing ladders and steps very challenging and walking over uneven terrain aggravates his pain. He is also limited in the time he can stand due to left knee pain;

[41.3.] Plaintiff struggles with physical demands of his job as an electrician;

[41.4.] Plaintiff's job description of work that he was doing is that of a medium strength;

[41.5.] Plaintiff demonstrated the residual capacity to manage a job with light physical demands or a sedentary position;

[41.6.] Plaintiff is thus not best suited to the work as contract electrician and it is reasonable that he resigned from this employment.

[42.] The Industrial Psychologist Dr Nobre³³ highlighted the following:

³³ Which once again is confirmed in an affidavit. The factual matter considered by Dr Nobre was testified to by the Plaintiff who of course gave *viva voce* evidence

[42.1.] Plaintiff matriculated in 1976. He completed his N3 and N4 qualifications and completed his wireman's licence trade theory and electronics qualifications. He completed an apprenticeship and qualified as an electrician on 23 January 1982;

[42.2.] Plaintiff left Telkom approximately in 1996/1997 to start his own business as an electrical contractor in Pretoria and worked as such for a period of about 14 years before relocating to the Eastern Cape;

[42.3.] Plaintiff reported that he made a profit of around R25 000.00 to R35 000.00 per month;

[42.4.] In Port Elizabeth Plaintiff secured employment as project manager for a company where he erected wind turbines. He was physically involved in the installation of wind turbines. He worked at heights both inside and outside of the turbine and earned between R30 000.00 to R35 000.00 per month;

[42.5.] Plaintiff thereafter worked for Suzlon wind turbines in Cookhouse from 2014 for a period of 4 months until the project was completed;

[42.6.] Thereafter and until the collision Plaintiff operated as an electrical contractor in the Jeffreys Bay area and earned between R20 000.00 and R25 000.00 per month;

[42.7.] Plaintiff did not have physical limitations prior to the collision. He was offered work by Azari Wind (Pty) Limited to start work in January 2016 as a maintenance and installation electrician. Due to the collision he was unable to start this new position;

[42.8.] Plaintiff worked for Azari Wind from 11 September 2016 as an electrical technician. He received a basic salary of R25 000.00 per month and lodging when he worked away from home;

[42.9.] Plaintiff was required to go up to the top to check the other installers work at least twice a week and struggled to perform this duty;

[42.10.] Plaintiff left the employment on his own accord on 23 January 2017 due to the injuries and his difficulty in performing work;

[42.11.] Plaintiff secured employment in the project management department at Elle Spec as escalator installers and manufacturers, about July 2017. He received a package of about R23 000.00 per month. He could not cope with the physical side of the work and resigned in March 2018;

[42.12.] Plaintiff has indicated that he is unable to cope physically with being self employed;

[42.13.] Plaintiff has numerous complaints;

[42.14.] From collateral information it is apparent that Plaintiff earned approximately R25 000.00 per month at Azari Wind;

[42.15.] Plaintiff had continuous employment over an extended period of time which indicates a stable career and income;

[42.16.] Plaintiff has worked as a qualified electrician throughout his working life since qualifying in 1982;

[42.17.] Work of an electrician is generally considered physically hands on and active by nature. It is considered to be work of a medium nature;

[42.18.] In the uninjured state, Plaintiff would probably have continued to work in the same role as an electrician until retirement age;

[42.19.] Plaintiff would have been able to work until age 70, health permitting;

[42.20.] In the uninjured state Plaintiff would have earned about R288 000.00 per annum (2016 terms) and would have had annual increases of CPI plus 1% to 2% per annum throughout his career until retirement at age 70;

[42.21.] In the injured state:

[42.21.1.] Plaintiff has been negatively impacted and rendered uncompetitive in the open labour market as a result of injuries sustained. He has resigned from positions due to being physically incapable of performing duties required;

[42.21.2.] He will probably not be in a position to seek alternative employment in line with his residual physical capacity;

[42.21.3.] He has to compete with able bodied persons and is unlikely to secure alternative employment in his injured state;

[42.21.4.] It is not anticipated that Plaintiff will be able to sustain employment or work until age 70.

[43.] The affidavit by Mr Loots, the Actuary is not contentious.³⁴ In summary, he stated as follows in two summaries filed on his behalf:

[43.1.]

[43.1.1.] Based on the report of Dr Nobre Mr Loots calculated the claims for past and future loss of earnings;

³⁴ Save to the extent of contingencies which I deal with hereunder

[43.1.2.] Mr Loots was instructed to apply a 5% contingency deduction to past loss of earnings. It is submitted that this is the usual contingency deduction to past losses;

[43.1.3.] Mr Loots was instructed to apply a 7 ½ % contingency deduction to future loss of earnings. It is submitted that this is reasonable in view of the fact that Plaintiff is 61 ½ years of age and future losses are for a period of 8 ½ years only;

[43.1.4.] Mr Loots applied the apportionment and calculated the claims³⁵ as follows:

[43.1.4.1.] Past loss of earnings R 934 536.00

[43.1.4.2.] Future loss of earnings R1 703 127.00

Total R2 637 663.00,

³⁵ After applying contingencies and the apportionment

[43.2.]

[43.2.1.] Subsequent to Dr Nobre's report, dated 10 July 2019, and which report Mr Loots utilised in performing his calculations, Plaintiff has been able to earn about R150 000.00, which work was facilitated for him by a family member;

[43.2.2.] The claim for past loss of earnings is accordingly reduced to an amount of R784 536.00;

[43.2.3.] The total loss of earnings is accordingly in the sum of R2 487 663.00.

[44.] Insofar as far as general damages are concerned the primary evidence was the *viva voce* evidence of the Plaintiff which highlighted the disruption in his social, sporting and work related life. In this regard, his evidence on these factual issues which were contained in the report of Dr Aslam were confirmed by the Plaintiff in his testimony and he confirmed that he had read such report and that he confirms the correctness of the factual content.

[45.] Dr Aslam's report³⁶, *inter alia*, records the following:

[45.1.] Plaintiff sustained a fracture of the lateral tibial plateau of the left knee and was hospitalised from the date of the collision until 11 January 2016.

[45.2.] Plaintiff has numerous complaints. These include activity related pain episodes of the left knee, residual stiffness of the left knee, difficulty with prolonged standing and walking, related swelling episodes of the left knee, difficulty walking on stairs/steps and uneven surfaces and inability to run.

[45.3.] Plaintiff has mild valgus deformity present in the left knee.

[45.4.] Plaintiff has muscle wasting present in the left knee.

[45.5.] Plaintiff has tenderness present of the left knee and crepitus in the left knee.

³⁶ Corroborated by the Plaintiff

[45.6.] Plaintiff has oesteo-arthritis of the left knee joint;

[45.7.] Plaintiff sustained a severe injury to the left knee joint and received an open reduction and internal fixation and would have suffered from severe pain for a period of 3 to 4 weeks and a lesser degree of pain for a further 4 to 6 weeks;

[45.8.] There is residual deformity of the lateral tibial plateau articular surface with mild residual valgus deformity of the left knee which is also secondary to the fracture injury;

[45.9.] Plaintiff has oesteo-arthritis, significant crepitus and residual stiffness of the left knee. This is likely to get worse and he will require a total knee replacement 2 to 4 years from the date of his report.

[45.10.] The procedure will require 5 days in hospital and about 3 months for recovery time.

[45.11.] There is a possibility that Plaintiff might require a revision knee replacement procedure.

[46.] On the aspect of general damages Ms Van Zyl recorded the following in her report³⁷:

[46.1.] Plaintiff reports stiffness and pain in the left knee. He struggles with postures like crouching and kneeling and his pain is worse during colder weather conditions. He finds climbing ladders and steps challenging and walking over uneven terrain aggravates his pain;

[46.2.] Plaintiff used to be a marathon runner and did cycling and enjoyed open water swimming. He is no longer able to participate in these activities;

[46.3.] Plaintiff was noted to walk with a limp of the left leg;

[46.4.] There is wasting of Plaintiff's left thigh;

³⁷ Once again confirmed in oral evidence

[46.5.] Plaintiff reports activity and weather related pain in the left knee with occasional swelling of the knee;

[46.6.] It was noted that Plaintiff struggled with uneven terrain and walking uphill/downhill. He was able to jog for a couple of metres but his limp was exacerbated in doing so;

[46.7.] Plaintiff is unable to drive for long distances. Depressing the clutch pedal also aggravates pain.

[47.] Mr Loots the Actuary applied a 7.5% contingency deduction in respect of future loss of earnings. The Plaintiff testified that post the accident, he intermittently was able to perform some work related activities for short durations.

[48.] Having regard to the Plaintiff's age and the frequency of such opportunities for short periods and bearing in mind the restricted activities that could be performed I consider it more appropriate under the circumstances to apply a 10% contingency deduction in respect of future loss of earnings.

[49.] Accordingly and insofar as loss of earnings are concerned, and having further regard to some remuneration received as a result of occasional work performed, and applying a 10% contingency, the following constitutes a reasonable amount in respect of this heading:

[49.1.] Earnings had the collision not occurred – R2 301 523.00

[49.2.] Less contingency of 10% - R2 071 370.00

[49.3.] Loss of earnings – R2 071 370.00

[49.4.] Less apportionment of 20% - R414 274.00

[49.5.] Nett loss of earnings – R1 657 096.00

[50.] Insofar as past loss of earnings are concerned the amount advanced in argument on behalf of the Plaintiff (which took into account the apportionment) was the amount of R784 436.00 which is borne out by the evidence adduced orally and by affidavit.³⁸

³⁸ The amount also made allowances for some amounts received for work performed intermittently

[51.] Lastly, and insofar as general damages are concerned, it is submitted on behalf of the Plaintiff that the appropriate amount under the circumstances would be the sum of R560 000.00 (after applying apportionment). In this regard Mr Schubart SC on behalf of the Plaintiff referred to the decision of *Sofute vs RAF*³⁹.

[52.] In last-mentioned matter the Plaintiff also sustained similar injuries to the injuries sustained by the Plaintiff in the present matter and the medical evidence there suggested that there was a 60% to 70% chance of knee replacement. In the present instance, the probability of a knee replacement is more a likelihood and a further revision procedure would in all probability also be required.

[53.] The general damages awarded in *Sofute* was the amount of R220 000.00 which in present day value amounts to R506 000.00.⁴⁰

³⁹ Reported in *Corbett & Honey: Quantum of Damages in Bodily and Fatal Injury Cases*, Volume 5 at E6 – 1 – (2007 (5E6) QOD1 Ck))

⁴⁰ Robert J Koch *The Quantum Yearbook 2021*

[54.] I consider an amount of R450 000.00 to be adequate in respect of general damages.⁴¹ Accordingly, I am of the view that the amounts to be awarded⁴² to the Plaintiff are as follows:

[54.1.] The amount of R784 536.00 in respect of past loss of earnings.

[54.2.] The amount of R1 657 096.00 in respect of future loss of earnings.

[54.3.] The amount of R450 000.00 for general damages.

Total – R2 891 632.00 less R500 000.00 interim payment =
R2 391 632.00

[55.] Having regard to the above I make the following order:

[55.1.]

[55.1.1.] Defendant shall pay to Plaintiff the sum of R2 391 632.00.

⁴¹ The nett amount after deduction of the apportionment

⁴² Once again after deductions in respect of the apportionment

[55.1.2.] Such amount to be paid into Plaintiff's attorneys banking account being:

Goldberg & De Villiers Inc. Attorneys

Bank: ABSA

Account No: 712 743 638

Branch: Govan Mbeki Avenue

Branch Code: 630616

Ref: MAT6698

[55.2.] Interest shall accrue on the said amount at the legal rate of 7% per annum payable as from 14 days from date of this Court until date of payment.

[55.3.] Defendant shall pay Plaintiff's costs of suit, together with VAT thereon, as taxed or agreed, on the party and party scale, within 180 calendar days from date of taxation or agreement. Such costs to include:

[55.3.1.] The qualifying expenses, if any, of the following:

[55.3.1.1.] Dr Aslam.

[55.3.1.2.] Ms Ansie van Zyl.

[55.3.1.3.] Dr Nobre.

[55.3.1.4.] Mr Loots.

[55.3.2.] The costs of Plaintiff's counsel, including one day's trial
fee for 6 October 2021.

[55.3.3.] The costs of the preparation of the heads of argument.

[55.4.] Interest shall accrue on the costs at the legal rate of 7.00% per annum
payable as from 14 days from date of taxation or agreement, until
date of payment.


A BEYLEVELD

Acting Judge of the High Court of South Africa

Appearances:

For Applicant: Adv. Schubart SC, instructed by Goldberg & De Villiers Inc.

For Respondent: No appearance.