



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: 3901/2021

In the matter between:

MOKOETSANA MOTSAMAI PETRUS

Plaintiff

and

ROAD ACCIDENT FUND
[LINK NUMBER: 5092000]

Defendant

CORAM: **P R CRONJÉ, AJ**

HEARD ON: **25 JULY 2023**

DELIVERED ON: **18 AUGUST 2023**

JUDGMENT BY: **P R CRONJÉ, AJ**

This judgment was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII. The date and time for hand-down is deemed to be 12h00 on 18 August 2023.

INTRODUCTION

- [1] Plaintiff is a major male who instituted action against the Road Accident Fund (“*the Fund*”) pursuant to a motor vehicle accident that took place on 13 December 2018 along a road at Senekal, Free State Province. Plaintiff was a passenger in one of the vehicles at the time of the accident.
- [2] The Fund accepted liability for 100% for the Plaintiff’s agreed or proven damages. The Plaintiff received an undertaking in respect of future medical expenses as provided for in s 17(4)(a) of the Road Accident Fund Act, 56 of 1996.
- [3] The only issues to be determined is the past and future loss of earnings, and general damages.
- [4] The parties agreed that it was not necessary for any experts to testify under oath and that affidavits of the experts will be admitted under Rule 38 of the Uniform Rules of Court. I requested original affidavits of the experts and same was filed with the Registrar of the High Court on 28 July 2023. I am satisfied that the affidavits comply with the requirements and same is admitted as evidence as read with their reports.
- [5] Ms Greyling-Boonzaaier (for the Plaintiff) and Ms Banda (for the Fund) referred to the various comments and findings of the respective experts and case law in support of their submissions. I am indebted to both for their considered and able arguments.

REPORT OF DR AUBREY MAKUA

- [6] He assessed the Plaintiff on 23 May 2022. The Plaintiff complained of a painful left knee and ankle. Plaintiff walks with a limp and the left knee joint had limited

flexion. The leg itself has a diminished power ratio of $\frac{2}{5}$ (two out of five). The Plaintiff reached maximum medical improvement (MMI) and in respect of the restricted knee flexion he found a 12% whole person impairment (WPI). In respect of post-traumatic mood (stress) disorder (PTSD), he found a 5% WPI. The Plaintiff's total WPI is therefore 17%. In the serious injury assessment report (RAF.4), he found that Plaintiff suffered a serious long-term impairment or loss of bodily function on the narrative test.

REPORT OF DR MICHAEL A SHER

- [7] He assessed the Plaintiff on 26 May 2022 and reviewed the Itemohen hospital notes, Dihlabeng hospital notes, biographical notes, the RAF.1 clinical notes and the RAF.1 third party claim form. The left knee's lateral tibia plateau has a fracture, which can be considered to be a severe injury. The complaints/symptoms of left knee pain is aggravated by weight bearing (the Plaintiff was markedly overweight (reported weight to be 220 kg)) leaving a walking time of 10 minutes. The Plaintiff's excessive weight would probably be considered as a compounding factor. The left knee does not bend freely. He walks with a marked left leg antalgic limp. Taking into consideration the Plaintiff's age, the knee status and his weight, the knee will probably regress in the short-term with increasing symptomatic and functional disability. A knee fusion would probably result in a measure of shortening. Conversion of the fused knee to an arthroplasty when he reaches 60 years of age would be a consideration. Due to the fact that he has limited qualifications and marketable skills, it is unlikely that he will find a full-time position.

REPORT OF MS TALITA DA COSTA

- [8] She is a clinical psychologist with a special interest in neuropsychology. A psychometric test and interview was conducted on 23 May 2022. The psychological results revealed that he suffers from mild depression, severe

anxiety, and PTSD. He had no pre-accident medical and/or psychological impairments. His quality of life has been impacted by the accident. The extent of the post-accident impairment is found in para 12.1 – 12.4 of her report. She notes that he worked as a general worker and is presently unemployed.

REPORT OF MS SHARI-LEE FLETCHER

- [9] She is an occupational therapist who conducted tests on 24 May 2022. The Plaintiff had pain in the lower left limb, was unable to bear full weight on the limb and had a significant limp. He will only be able to perform some tasks occasionally during a working day, which include standing, walking, climbing of stairs, half-kneeling and weight elevated work. He has limited education and a lack of marketable skills. Combined with his significant mobility restrictions, he would be unemployable in the open labour market. He would therefore not be able to compete with his peers. It is noted that allowance should be made for a loss of earnings in future for any recommended management procedures and rehabilitation.

REPORT OF MS LEE LEIBOWITZ

- [10] She is an industrial psychologist who assessed the Plaintiff on 23 May 2022. She took the pre-accident profile of the Plaintiff into consideration and states that anticipating the level to which an individual may have advanced in his occupation, several aspects play a role. These include familial background, developmental- and medical history, the individual's socio-economic circumstances, overall functioning, cognitive-, psychological-, physical- and vocational history, job performance and career aspirations, as well as various external factors such as labour market conditions, the availability of promotional opportunities, employment policies, etc.

- [11] His father had a Grade 8 qualification and was employed as a farmworker. His mother's highest level of education is unknown and she too was a farmworker. His sister had a Grade 10 qualification and was unemployed. He repeated Grade 2 and 3, completed Grade 11 but failed Grade 12.
- [12] He has no formal training, nor does he hold a driver's licence. When he was still able to work, it would be for 3 to 4 days per week *as needed*. Whilst working, his duties included general farm work and planting of seeds. He earned R100.00 per day for each day worked, and commencing on 1 December 2018 until date of accident. Taking his background into consideration as well as his level of education and pre-accidental employment history, he would have had to rely on his physical ability and psychological well-being to remain competitive.
- [13] With the history of his employment, she opines that he may have earned between R15 600.00 – R20 800.00 per annum if he worked 3 to 4 days per week. His earnings would have depended on various factors such as work context, hours worked, etc. If he worked on the national minimum wage scale, his earnings would have been around R54 264.60 per annum.¹ His earnings may have progressed to around R72 208.00 per annum by age 45 – 50. He would have received an annual inflated regulatory increase until retirement age of 65. She accepts that disregarding the accident, the Plaintiff would have experienced periods of unemployment and fluctuations in earnings during his career. The Plaintiff represents as an individual who has been rendered uncompetitive and vulnerable. His ability to compete for and sustain employment, has been significantly compromised and he would remain largely unemployed.

¹ The current minimum wage rate is R23.19 per ordinary hour of work effective from 1 March 2022.

REPORT OF MR WIM LOOTS

- [14] He is an actuary and took the report of Ms Leibowitz into consideration. He applied a 5% contingency deduction in respect of pre-accident loss, and a 20% deduction for future loss. It was not necessary to cap the loss.
- [15] He calculates the value of the loss of earnings as of 1 September 2022, had the loss not occurred, in an amount of R1 391 387.00 and if contingencies of 5% and 20% are applied, the loss amounts to R1 124 058.00.

SUBMISSIONS ON BEHALF OF PLAINTIFF

- [16] Mrs Greyling-Boonzaaier argues that if one considers the decisions of the SCA, a contingency amount of 0.5% per annum until date of retirement is applied. Based thereon, a contingency of 19.5% and the normal contingency of 5% should be applied. The contingency in the actuary's report of 20% is therefore in line with the SCA decisions. He had no high level of education, was relatively young and it was uncertain what may have happened in future.
- [17] If he was able to obtain employment he would probably not have sustained it. From the hospital records it appears that he sustained an injury to the same knee after the accident which exacerbates his challenge to walk. She refers to the report of Dr Sher who was of the view that future treatment would not necessarily improve his condition. The fact that he struggles with his weight was a problem *before* he sustained the injury and he now has challenges in losing weight. She argues for an alternative contingency of 25% (from 20%). The calculation would then be R329 598.75 for past loss and at a contingency of 25% for future loss, he should be granted R988 796.25. His total loss would then be R1 058 138.65.

- [18] She submits that the second injury is due to the primary accident that influenced his balance and made him unsteady on his feet. The lateral tib-fib injury amounts to a break into the knee. She submits that a 50% contingency would be extremely high. She submits that an amount of R600 000.00 for general damages would be appropriate.

SUBMISSIONS ON BEHALF OF THE FUND

- [19] Ms Banda, for the Fund, refers to a handwritten note of Dr Rantai, apparently dated 12 March 2020 where it is noted that *refracturing* took place and open reduction and internal fixation (ORIF) surgery was done with reinsertion of new screws. This is not a result of the accident but a self-referral. She also notes that Plaintiff is obese. The Plaintiff's employment opportunities in the open labour market will be significantly compromised because of his *limited education, lack of skills* and his *limited physical capacity*. I understood her argument to be that if he earns a low salary, he will not qualify for a minimum wage. She too refers to the report of Dr Sher who notes that Plaintiff was markedly overweight, that there was a previous left knee lateral tibia, and toe fracture that extended into the articular surface. This fracture has healed. In the report of Diagnostic Radiological Services, dated 26 May 2022 it is noted that the Plaintiff had a fixation of the upper tibia and the alignment of the underlying tibia is satisfactory. There is no fracture line identified and osteoarthritic changes are seen. Post-surgery left him with function and the pain may be improved to some extent by a rehabilitation regime under the direction of a biokineticist or physiotherapist. She submits that his career ceiling would have been at 60 years of age.
- [20] There is no certainty that there will be a measure of shortening of the left limb and if so the amount of shortening is unknown.
- [21] She too refers to the report of Ms Leibowitz who states that he only worked for

between 3 to 4 days per week and was not permanently employed. He received R23.00 per hour. The Plaintiff would have experienced periods of unemployment and fluctuations in earnings during his career and an appropriate contingency deduction should be applied for this.

ARGUMENTS ON BEHALF OF THE PLAINTIFF

- [22] Mrs Greyling-Boonzaaier, in respect of general damages, refers to the injury to the knee, the PTSD, the fact that he has a limp and the possibility of a shortened limb. He experiences severe pain. She refers to *Abrahams v Road Accident Fund*² where the Plaintiff suffered a badly commuted proximal right femur fracture, a fracture of the right patella, a fracture of the right distal fibula, a fracture of the right medial malleolus, severe soft tissue injury to the left hand, secretions in the chest, a mild concussive traumatic brain injury. He developed chronic PTSD, chronic general anxiety disorder, chronic major depressive disorder, a chronic social phobia and a pain disorder. The present value would be R800 000.00.
- [23] In *Mgudlwa v Road Accident Fund*³, the Plaintiff sustained an extremely comminuted fracture of the lower end of the left femur with significant adverse effects on the functionality of his *legs* (plural), *spine* and *hips*. The injuries left him with a *deformity* of the proximal end of the left femur, the *left leg being 5 cm shorter* than the right leg, the *left femur being 53,5 cm shorter than the left femur*, the *left tibia being 5 mm shorter than the right tibia*, the stiffness on the left knee, the left hip having external rotation at 90 degrees and its internal rotation stopping at the neutral position and the range of movement of the left leg being diminished. The plaintiff's left knee is tender, swollen and has limited flexion movement at 65 degrees. The discrepancy in the rotation of the hips is

² (1531/2010) [2012] ZACPEHC 37 (29 May 2012)

³ (818/2002) [2010] ZACMHC 13 (5 February 2010)

due to a *marked rotatory deformity at the femur*. The *spine has a left lumber scoliosis*. The plaintiff is compelled to use an axillary crutch in the right hand because he has a left sided limp. He cannot squat or drive a car. He has been subjected to a great deal of discomfort, pain and suffering. He is *no longer able to participate in soccer coaching* due to the injuries he sustained. The present award would be R631 000.00.

- [24] In *Schmidt v RAF*⁴, the plaintiff sustained *numerous fractures to all the upper and lower limbs* (both sides) involving the left humerus; the left proximal radius and ulna at the elbow; the right midshaft radius; and the left tibia and fibula, an injury to the right knee with rupture of the anterior cruciate ligament and the medial ligament as well as fractures to the midshaft of the left foot and the metatarsal bones. As a result of the collision the plaintiff *lost consciousness*, which she only regained later. She remained in hospital for six weeks until her discharge. Her treatment at hospital consisted of *ventilation in the intensive care unit*. She underwent *multiple surgical procedures including orthopaedic procedures for open reduction and internal fixation of fractures, debridement and suturing of wounds and skin grafting*. Since her discharge she has had *several further hospital admissions due to a sepsis* diagnosed in her right knee and for the *removal of pins from her left shoulder*. She was *confined to a wheelchair for approximately 14 months* following the accident and *after that has been walking with the assistance of a crutch*. She was re-admitted to hospital for treatment of an infection in her right knee. It was diagnosed as an MRSA infection and it was initially successfully treated and stabilised. After that the infection on several occasions flared up again. The present value, even if half of the damages are applicable, would be R650 000.00.

⁴ [2007] JOL 18865 (W)

ARGUMENTS ON BEHALF OF THE FUND

[25] Ms Banda argues for a contingency of 50% to be applied for past loss of income which will amount to an amount of R36 496.00. In respect of future loss, she furthermore submits that a deduction of 50% in respect of contingencies should be applied which will leave his total loss at R695 693.50.

[26] She refers to *Van Niekerk v Road Accident Fund*⁶.

[27] She argues that R400 000.00 be granted in respect of general damages. The fact that he fell after the accident, is not related to the original injury.

DISCUSSION

[28] The Fund did not file any expert notices. It elected to, as it may, accentuate some aspects in the Plaintiff's expert reports that may be of assistance to it. It can be accepted that the Plaintiff will attempt to claim as much as possible and that the Fund would attempt to pay as little as possible.⁶ Klopper, in *Motor Law*⁷, aptly captured this as follows:

"In a recently reported judgment it was found that the nature of the damages suffered by the plaintiff in his personal [...] capacity [ies] lay somewhere between the optimistic picture painted by the defendant's experts, and the pessimistic view of the experts who appeared for the plaintiff. In respect of general damages the court reiterated that these, by their very nature, were not capable of being measured in money. Comparisons with other awards granted in similar cases could be instructive but not decisive.

⁵ (2922/17) [2021] ZAECPEHC 66 (8 October 2021)

⁶ See: *Modise obo Minor v Road Accident Fund* (10329/2019) [2019] ZAGPPHC 399; 2020 (1) SA 221 (GP) (12 August 2019), para 4.11

⁷ Klopper, H.B., *RAF Practitioners Guide*, Division D Quantum, LexisNexis

Psychological injuries could form the subject of a damages claim provided that the injury was a detectable psychological injury.”

[29] The estimation, especially in respect of general damages and future loss, has notoriously been difficult.⁸ The vicissitudes of life is unpredictable.⁹ The Court nonetheless has to do its best to make that estimation.

[30] In respect of loss of income or other patrimonial damages, Klopper *supra* states:

“In the latter instance, actuarial calculations will probably be required to quantify the claim. Whether mere arithmetical calculations as opposed to actuarial calculations are required, the point to be made is that the calculations are made upon the facts of each case and that no two awards made will ever be the same. Once the facts are established the amounts involved and to be awarded can be determined without much difficulty and with utmost certainty. Previous awards may play no part whatsoever since each matter has to be resolved with reference to its own facts.”

[31] In respect of calculations, the Court in *M S v Road Accident Fund*¹⁰ held:

“[42] The locus classicus as to the value of actuarial expert opinion in assessing damages is Southern Insurance Association Ltd v Bailey NO^[25] where Nicholas JA said the following :

“Where the method of actuarial computation is adopted in assessing damages for loss of earning capacity, it does not mean that the trial Judge is ‘tied down by inexorable actuarial calculations’. He has ‘a large discretion to award what he considers right’. One of the elements in exercising that discretion is the making of a discount for ‘contingencies’ or differently put the

⁸ See: *Bailey v Southern Insurance Co Ltd* 1984 (1) SA 98 (A); *RAF v CK* (1024/2017) [2018] ZASCA 151 (01 November 2018) para 25; *Phiri v Road Accident Fund* (34481/2018) [2021] ZAGPJHC 848 (23 December 2021)

⁹ *Hugo v Road Accident Fund* (32007/12) [2014] ZAGPPHC 764 (2 October 2014)

¹⁰ (10133/2018) [2019] ZAGPJHC 84; [2019] 3 All SA 626 (GJ) (25 March 2019)

'vicissitudes of life'. These include such matters as the possibility that the plaintiff may in the result have less than a 'normal' expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case^[26].

[43] Zulman JA, with reference to various authorities including Southern Assurance said as follows in *Road Accident Fund v Guedes*^[27] :

"The calculation of the quantum of a future amount, such as loss of earning capacity, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature, such an enquiry is speculative and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate (see, for example, Southern Insurance Association Ltd v Bailey NO) Courts have adopted the approach that, in order to assist in such a calculation, an actuarial computation is a useful basis for establishing the quantum of damages"."

[32] When considering actuarial reports, I refer to *Morris v Road Accident Fund*¹¹:

[17] *The general principle applicable to the assessment of damages for loss of earnings capacity is that the Plaintiff must prove that the reduction in earning capacity gives rise to pecuniary loss. In Prinsloo v RAF in dealing with this principle, Chetty J stated as follows:-*

"A person's all-round capacity to earn money consists, inter alia, of an individual's talent, skill, including his/her present position and plans for the future and, of course, external factors over which a person has no control, for instance, in casu, considerations of equity. A Court has to construct and compare two hypothetical models of the Plaintiff's earning after the date on which he/she sustained the injury. In casu, the Court must calculate, on the one hand, the total present monetary value of all that the Plaintiff would have been capable of bringing into her patrimony had she not been injured, and on the other, the total present monetary value of all that the Plaintiff would be able to bring into her Patrimony whilst handicapped by her injury. When the

¹¹ (99303/15) [2018] ZAGPPHC 486 (12 July 2018)

two hypothetical totals have been compared, the shortfall in value (if any) is the extent of the patrimonial loss. At the same time, the evidence may establish that an injury may in fact have no appreciable effect on earning capacity, in which event the damage under this would be nil."

[18] On the aspect of contingencies, Nicholas JA in *Southern Insurance Association v Bailey N.O.* [3] stated the following:-

"In the case where a Court has before it material on which an actuarial calculation can usefully be made, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an 'informal guess', it has the advantage of an attempt to ascertain the value of what was lost on a logical basis."

[33] The Plaintiff presented with limited career experience and achievements (Grade 11). He worked between 3 – 4 days per week¹² as required and had limited experience and skills other than general farm work and planting of seeds. He did not enjoy any security in employment. In the letter from Mr Nel for whom he would occasionally work, it is stated that the Plaintiff was not permanently employed but was given so-called "piece jobs" from time to time. His family's achievements, although not an absolute prediction of his career prospects does not indicate that he would necessarily have achieved better. There are off course always exceptions but I can find none in his case. I believe that a higher contingency in respect of past loss should be applied. I apply a contingency of 15% in respect of his past loss.

[34] In respect of his future loss I take the same factors that I considered in the calculation of past loss into consideration. I add thereto that he suffers from obesity. This should not be construed as blame but one of the factors that not only may impede him from competing in the open market at the level where he was employed but as a factor that could contribute to further accidents and

¹² This was not confirmed in the letter of Mr Nel.

impairments. Mrs Greyling-Boonzaaier argued that at a 25% contingency, at worst (if the Court does not consider 20%), should be applied. Mr Banda argued for the 50% contingency.

[35] I am of the view that a 15% contingency would be fair in respect of past loss of income. In respect of future loss of income, I apply a 35% contingency. This means that he is awarded R62 043.20 in respect of past loss of income and R856 956.75 in respect of future loss of income.

[36] I am satisfied that the Plaintiff qualifies for general damages on the narrative test and I did not understand Ms Banda to argue otherwise.

[37] In arriving at a fair and reasonable amount for general damages, the Courts have applied a method that has been summarised by Klopper *supra* as follows:

"The nature of a non-patrimonial loss has been explained with reference to the judgment in Hoffa NO v SA Mutual Fire & General Insurance Co Ltd 1965 (2) SA 944 (A) in paragraph 1.1.1 supra.

It follows, if one has regard to the nature of the loss sought to be redressed, that no two claims will ever be alike, and no two awards ever the same.

The objective sought to be achieved in, and the underlying principle of making, an award of damages is that the claimant must, as far as is reasonably possible, be placed in the position he or she would have been in had he or she not suffered the damages complained of. It is not an easy task to assess general damages in the form of non-patrimonial loss.

In arriving at what is regarded as a fair amount, when considering the principle involved regard could be had to previous awards made in comparable cases.

In order for the comparisons to be valid, the following principles are applied:

- only the general award and not a comparison of every detail are taken into account to determine an appropriate amount; [Protea Assurance v Lamb 1971 (1) SA 530 (A).]*
- comparison to previous awards is not the method of assessing non-patrimonial damage and only serves as a guide, and cannot be used in such a manner so as to exclude or fetter the discretion of the court; [Protea Assurance*

v Lamb 1971 (1) SA 530 (A); Lessing v Sentraboer 1981 3 Corbett and Buchanan 272 (O) 281; Krugell v Shield Versekeringsmaatskappy 1982 (4) SA 95 (T); 3 Corbett and Buchanan 287 299; Van Niekerk v Constantia Insurance 1983 3 Corbett and Buchanan 386 (E) 390 ff; De Jongh v Du Pisanie NO [2004] 2 All SA 565 (SCA), 2005 (5) SA 457 (SCA) par [64].]

- *the facts of the cases compared must be identical to the extent that the comparison is valid;*
- *despite any previous award the principles that apply to the assessment of non-patrimonial damage should nonetheless be applied in the assessment;*
- *the conclusion arrived at after reference to prior awards can be tested using the pattern of other previous awards provided that the injury is of a comparable nature;*
- *the awards made in previous cases should be adjusted for inflation to reflect present monetary values; [Protea Assurance v Lamb 1971 (1) SA 530 (A).]*
- *non-comparable cases can be used to test the award resulting from the use of awards in prior cases; [Lessing v Sentraboer 1981 3 Corbett and Buchanan 272 (O) 281; Krugell v Shield Versekeringsmaatskappy 1982 (4) SA 95 (T); 3 Corbett and Buchanan 287 299; Van Niekerk v Constantia Insurance 1983 3 Corbett and Buchanan 386 (E) 390 ff; De Jongh v Du Pisanie NO [2004] 2 All SA 565 (SCA), 2005 (5) SA 457 (SCA) par [64].]*
- *although a court is not bound by previous comparable awards, an award may not be strikingly disparate to prior awards without sufficient justification; [Road Accident Fund v Delport NO 2006 (3) SA 172 (SCA).]*
- *a court of appeal will only interfere with an award if such award is excessive having regard to the pattern of previous awards. [Road Accident Fund v Marunga 2003 (5) SA 164 (SCA); Road Accident Fund v Delport NO 2006 (3) SA 172 (SCA).]*

[38] A Court is entitled to take cognisance of the fact that the treatment and management of impairments improve as time goes by. Klopper *supra* states:

"Where previous comparable awards are considered, regard should be had to the

improvement of medical services and equipment, medicine and care etc which may impact upon awards in respect of loss of amenities, life expectancy and pain and suffering. Larger amounts will probably be awarded in respect of the patrimonial elements of the award, by reason of the effect of inflation and also as a result of the more expensive, but at the same time, more sophisticated and effective treatment, which will render the victim's existence less intolerable and more endurable. The non-monetary value of modern equipment and treatment is to be found in the victim's improved existence and the enjoyment of life's amenities and in an appropriate case will have the effect of reducing the amount of a previous award, since the loss of amenities might not then be as great as it had been previously."

[39] Injuries that has played a major role in awarding higher damages to Plaintiffs has consistently been, inter alia, shortening of limbs, severe and chronic pain, severe impairment of movement, spine injuries, severe psychological dysfunction, and brain injury.

[40] The Plaintiff suffers from pain that appears to be manageable, mild depression, PTSD, and impairment of mobility. There is a change that his left limb may be shortened. The Fund's urgent attention to its obligation to perform, pursuant to an offer of a s 17 undertaking, is of critical importance to a Plaintiff's experience of the sequela of the accident and recovery.

[41] In *Modise obo Minor v Road Accident Fund*¹³ Davis J held:

"I have often, both in judgments and in judicial case management meetings conducted in court, expressed the view that, the sooner merits are conceded in circumstances where they should properly be conceded, such as in the present case and the sooner an undertaking to cover medical and related costs is furnished in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 in instances where it is clear that the injured person would be in need of future medical care and attention, the sooner such a person, be it a Plaintiff or, as in this case, a minor, can receive such treatment or afford to do so. This will not only benefit the injured person and fulfil some of the

¹³ (10329/2019) [2019] ZAGPPHC 399; 2020 (1) SA 221 (GP) (12 August 2019)

objects of the Act, but it will also enable a plaintiff to begin to satisfy the general onus of mitigating one's Damages. In that way, not only will plaintiffs and injured persons experience beneficial relief in respect of their compromised or diminished amenities of life, but they might be assisted on the road to recovery, be it by way of surgical or scar-removing procedures, or psychiatric or remedial educational therapy, to name but a few examples. (own emphasis)

[42] Having considered the injuries, the case law, and the submissions made by the respective parties, I am of the view that general damages in the amount of R450 00.00 would be fair.

[43] The Plaintiff was successful in his claims and should be awarded his costs.

[44] I am satisfied that the use of experts was justified and necessary and the Fund should be liable for those costs.

[45] I therefore make the following order.

ORDER

1. The Defendant pays R62 043.00 in respect of past loss of income to the Plaintiff.
2. The Defendant pays R856 956.00 in respect of future loss of income of the Plaintiff.
3. The Defendant pays R450 000.00 in respect of general damages to the Plaintiff.
4. The Defendant pays the costs of obtaining the reports, including addendum reports and joint minutes, if any, of the following experts:

4.1 Dr Aubrey Makua

4.2 Dr Michael A Sher

4.3 Ms Talita Da Costa

4.4 Ms Shari-Lee Fletcher

4.5 Ms Lee Leibowitz

4.6 Mr Wim Loots

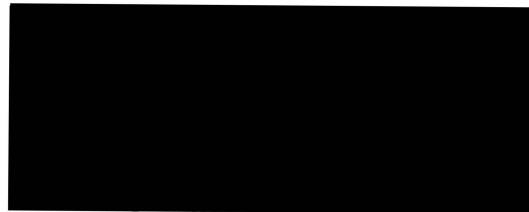
5. The Defendant pays the reasonable taxable reservation and/or preparation fees, if any, of the experts referred to in paragraph 4 above.

6. The Defendant pays Plaintiff's taxed or agreed costs.

7. In the event that the amount in respect of costs is not agreed upon, then:

7.1 The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record; and

7.2 The Plaintiff shall allow the Defendant 14 (Fourteen) court days to make payment of the taxed costs.



PR CRONJé, AJ

On behalf of the Plaintiff: Adv Greyling-Boonzaaier
MED Attorneys
Bloemfontein

On behalf of the Defendant: Adv P Banda
State Attorney
Bloemfontein