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**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 number: 2822/2021

In the matter between:

**ADVOCATE CHRISNA BEKKER N.O obo
(LUHETTE WESSELS)**

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

CORAM: VELE, AJ

HEARD ON: 12, 13 SEPTEMBER 2023

JUDGMENT BY: VELE, AJ

DELIVERED ON: 9 NOVEMBER 2023

INTRODUCTION

[1] The Plaintiff, in his Nominated Officio capacity, as the curator *ad litem* of Luhette Wessels (hereinafter referred to as “Ms.

Wessels”) issued summons against the Road Accident Fund (hereinafter referred to as “The Defendant”); a juristic person established in terms of Section 2 of the Road Accident Fund Act 56 of 1996 (“The Act”). He is claiming the sum of R 10 945 444 – 00, as damages suffered by Ms Wessels. The defendant failed to compensate her following lodgement of the claim in terms of the Act and its Regulations, for the personal injuries she sustained from the accident that took place on 28th of October 2019. Ms. Wessels was a passenger on the motorcycle bearing registration number “SORRY OOM” there and then driven by one, Braam Bezuidenhout (“the deceased”) that collided with a motor vehicle bearing registration number “B[...] T[....]” along the R59 between Vereeniging and Sasolburg, in the Free State.

- [2] The sole cause of the collision was the reckless driving of the motor vehicle with registration “B[..] T[..]”, as the driver overtook the motorcycle and a truck without keeping a proper lookout and was under the influence of alcoholic beverages. Resulting in Ms Wessels sustaining multiple injuries: amputation of right leg below the knee; severe traumatic brain injury; internal abdominal bleeding; a broken finger in each hand; scarring and permanent disfigurement of both her fifth fingers; severe depression, paranoia and anxiety; Post – Traumatic Stress Disorder (PTSD) and schizophrenia. Ms Wessels was 20 years old at the time.

- [3] The Defendant defended the action. After the close of the pleadings, the plaintiff filed several expert notices in support of Ms. Wessels’ claim. The defendant did not file any expert reports. The matter was certified trial-ready and allocated a date. On 12

September 2023, at the court's doorstep, the plaintiff's merits were 100% conceded. Parties further agreed to the following orders:

3.1 Past hospital expenses are postponed; as the defendant has filed two experts' Reports.

3.2 The following expert Reports were not challenged and admitted into the record:

3.2.2 Dr C Barlin, Dr L Barkowitz, Kleinsmit; Levin; AJP Botha.

3.2.3 Mr GA Whittaker, the defendant is not putting in dispute that he is an expert in the field of Actuarial Science and the correctness of the method used to calculate the amounts. The defendant is challenging the correctness of the information used in reaching the figures placed before the court.

3.2.4 The defendant conceded that all the people called were experts in their fields of Expertise in terms of Rule 36 (9) (a) and (b) notices filed. Only the summary and opinion of each of those disputed is to be tested.

3.2.5 Parties will proceed with the past and future loss of income, as well as the general damages of Ms Wessels.

3.2.6 For Future medical expenses and hospitalization expenses, the defendant to issue the plaintiff with a revised Section 17 (4) (a) of the RAF Act certificate for 100% of the costs.

3.2.7 The defendant is liable to compensate victims of motor vehicle accident in terms of the Act.

- [4] The plaintiff called the following witnesses in support of her case. Dr HERMANUS JACOBUS EDELING was the first witness, who testified as follows:
- [5] He confirmed that he was an expert in the field of Neurology medicine, admitted to the Specialist Register as a Neurologist, with HPCSA Registration number: MP 180408 and Practice number 2401002. The defendant conceded that he was an expert in this field of specialization.
- [6] He examined Ms Wessels on 12 February 2021, when the patient was 21 years old, following the motor vehicle accident that took place on 28 October 2019. He compiles two Reports. The first was a Preliminary Report, as he did not have complete medical records from the paramedics who transported her from the scene and admission records from Union Hospital. The addendum was his Final Report. Her mother gave the patient's injury history, as she had suffered a severe permanent brain impairment.
- [7] Summary of the record contents. Ms Wessels sustained injuries following a motorcycle accident on 28 October 2019. She was hospitalised at Netcare Union Hospital the same day and later moved to Netcare Rehabilitation Hospital. In his Report on Page 3 paragraph 2.2, he refers to Dr Barlin, an Orthopaedic Surgeon's Report, reflecting the following injuries: "Grade III compounded fractures of the right Tibia and Fibula with irreparable

neurovascular damage. (This resulted in a below-knee amputation). A Midshaft fracture of the right Femur. Fractures of the Right Superior and Inferior Pubic Rami of the Pelvis. Fractures of the proximal phalanges of both 5th fingers.” His observation and conclusion are; that the patient suffered a severe case of traumatic permanent brain impairment; which he classified as a complicated severe brain injury. One of the worst he encountered in his entire career (page 5 paragraph 2.12.1)

- [8] Dr Edeling’s Supplementary Report in Page 1 paragraph 2: “Prior status, circumstance, and past medical history as reported in consultation.” In para 2.1.1, reflects the following: “At the time of the accident, in October 2019, she was 19 years of age. She had matriculated in 2017. She was a Cashier. She was single and living with a friend in a townhouse at 6 Elandsberg, Sasolburg. She did not perform any household activities and did not participate in any sporting activities.” (My emphasis)

- [10] His Clinical examination findings are set out in page 13 paragraph 9.4. of the Report. - *“9.4.1. Ms Wessels is noted to be a mentally and physically disabled young woman, currently 21 years of age. 9.4.2 ..., 9.4.3 ..., 9.4.4 ..., 9.4.5. To clinical observation, major impairment of mental function and communication are apparent.”*

- [11] In court he could not dispute what Dr Maynard (Psychiatrist) contain in her Report (see Page 14), that Ms Wessels must be placed in a mental institution as a result of her injuries as she was unable to function independently. He however stated that he did not see it that way at the time of his examination, as he is not an

expert in the field of psychiatry. The Road Accident Fund 4 Form he completed for Ms Wessels; was handed in by agreement.

[12] He confirmed under cross-examination that in his Report, he recorded that Ms. Wessels was 5 months pregnant, but has no information as to what happened to the pregnancy. He confirmed that a CT Scan was conducted on the patient shortly after the accident to determine if there was brain injury and skull fractures around the brain and or bleeding, as the result of the accident. "Primary defuse brain (page 57) 3.1.1 no evidence of brain injury CT Scan. Contusions manifest themselves two to three days after the accident."

[13] He interviewed her once on 12 February 2021. He further stated that signs of improvement in brain injuries will show in the first six months after the injury. He was referred to Dr. M Sissison's Report (Pages 174 -202 and 179) Second Report 18 October 2021 which reflects that Ms Wessels shows signs of improvement in her mental capacity and is now capable of doing light chores. Compared to the initial Report on 14 December 2020. His response was he interviewed her before two years and his findings were she suffered severe brain injury; that he classified as complicated severe brain injury. He further stated that she suffered all three stages of brain injuries, serious, secondary, and defuse brain injuries. He stated that the Focal brain injury did not show but blood has flown into the area of injuries. He confirmed perusing Dr Maynard's Report. He confirms that she highlighted that there were signs of substance abuse that could have contributed to Ms Wessels' condition. He had no clear answer to

this, simply saying she examined Ms Wessels for the first time after the accident and there was no prior history.

[14] ALLETHA MATTHEUS (EDUCATIONAL PSYCHOLOGIST)

She confirmed that she was an expert in the field of Education Psychology. She is a registered Educational Psychologist with Practice number, PS0080616/PR 0110566. The defendant conceded that she was an expert in this field of specialization.

[13] She examined Ms Wessels on 12 April 2022, when she was 22 years and 11 months old, and compiled the Report on 13 June 2022. The purpose of her Report was to assist the court with the following:

13.1. To determine the impact of the accident that took place on 9 May 2009,

13.2. on her education and training possibilities,

13.3. to provide an opinion on her current cognitive functioning,

13.4. to provide an opinion on her premorbid and post-morbid scholastic performance, to give an indication of her premorbid and post-morbid emotional state,

13.5. and provide an opinion on the effect of the sequelae of the accident on the

premorbid and post-morbid education and training opportunities.

[14] She assessed Ms. Wessels and referred to Reports Dr Edeling, a Neurologist, and Dr Maynard, a Specialist Psychiatrist's Reports, whilst focusing on the educational level and training, that Ms Wessels could have achieved had it not been for the accident. In this regard, she took into consideration the academic

achievement of other family members, both her biological parents have Matric certificate and her mother is a registered – nurse. She has a sibling who dropped out of school in Grade 10. She passed Matric in 2017 but did not register to further her studies citing financial constraints, due to being raised by a single mother. Her pre–morbidity condition was that of a normal young adult. She entered work market as a Cashier at the local SPAR Vaalpark Supermarket.

- [15] Ms. Matheus' observation was she was withdrawn, struggled with self – expression looked very depressed, unable to multi–task and took some time to complete a single task. Post–morbidity condition, as related in the telephonic interview with the mother, was since the accident Ms Wessels found it hard to walk with the prosthetic leg, as she found it uncomfortable. She was struggling to adjust to the fact that she was now physically disabled. She spent most of her time in her own room, as she no longer had friends. She secured employment but could not sustain its demands and resigned. The accident heavily impacted her self–esteem. Treatment for depression did not really help as she constantly had the accident flashbacks. In page 11 paragraph 5.2, of her Report, she stated that she made several observations, Ms Wessels was severely handicapped and tried to carry out tasks, but had no confidence.

- [16] Conclusion cognitive functioning border – line, has mood swing disorder and trouble anxiety. She could completed a Higher certificate or equivalent vocational training and gone as far as NQF level 5, before entering the labour market. (Page 345 is pre-

accident and page 346 is post-accident) (Her conclusion in as far as her post-morbid position was concerned, page 16 paragraph 6. ix to x. "ix. It is noted that she is presenting with significant psychiatric difficulties. Her self-esteem has also been impacted negatively by the trauma of being left physically disabled and ongoing pain. She would benefit from psychotherapy. Provision should be made for lifelong psychotherapy and psychiatric follow-ups and probably admission to a Psychiatric Hospital for treatment.

Given the identified difficulties, the writer is of the opinion that she has been rendered a vulnerable individual. It is anticipated that she would struggle with any form of tertiary training and would remain on an NQF level 4. Her cognitive and psychiatric difficulties as well as physical disability will have a negative impact on her ability to secure and maintain employment. She may therefore be unemployed for a long period of time." Her final recommendation was that the Industrial Psychologist should quantify the loss of earnings suffered by the plaintiff.

- [17] Under cross-examination she was very evasive. She confirmed that there is no guarantee that Ms Wessels would have obtained NQF 5 level qualification, as only 5 – 8% proceed to tertiary institutions Matric. Ms Wessels passed Matric two years prior to the accident and not further her studies, meaning she falls outside the 8%. She conceded that passing Matric was no guarantee that one would be at NQF level 5. She confirmed that Ms Wessels was previously employed at SPAR Supermarket as a cashier but resigned citing long hours of 8 – 9 Hours per shift. She confirmed that she did not verify this information but merely relied on the

information from Ms Wessels and her mother, though no supporting documents were provided. There is no reason as to why the past employers were never contacted; as it was vital for her Report. She confirmed that Ms Wessels was unemployed at the time of the accident for a period of at least five months.

[18] DR CHARMAINE GORDON CLINICAL– NEUROPSYCHOLOGIST

She confirmed that she was an expert in the field of neuropsychology medicine. She is a member of the South African Clinical Neuropsychology Association, with practice number: 8634939. The defendant conceded that she was an expert in this field of specialization. The court is satisfied that she is an expert in this field of specialization.

[19] She first examined the patient on 21 October 2021 (pages 207 – 236) and was referred to Dr Edeling, a Neurologist's Report compiled on 12 February 2021. She abided by her Report. The reason for the Report was to determine Ms. Wessels' current level of neurocognitive functioning, following a motorcycle accident that took place on 18 October 2019. History was as related by Ms Wessels and her mother. The mother stated that she was born after a normal pregnancy, without any complications whatsoever. She completed her Matric, no school Reports only the Matric certificate. She has no tertiary education. The employment history was different from that given to other experts like Ms. Matheus, in that she worked at the SPAR, both as a student and post matriculation, and also worked at OR Tambo Johannesburg International Airport with the father, but could not state when and in what capacity. It does not mention

her employment at Vodacom or any other place. See Employment History p. 5 of Report.

- [20] The post-accident history is that she was transported to Union Hospital in Alberton, in an ambulance in an unconscious state. She was unconscious for about 7 days. She sustained serious injuries, due to the accident. Dr Colin Barlin on 23 June 2020 in his medico legal Report page 2, recorded the following injuries:
- “A severe head injury with intermittent loss of consciousness, possibly induced coma and amnesia for a period of approximately a week. Grade III compounded fractures of the right tibia and fibula with irreparable neurovascular damage. (This resulted in a below-knee amputation) A Midshaft fracture of the right femur. Fractures of the right superior and inferior pubic rami. Fractures of the proximal phalanges of both 5th fingers.” Dr Barlin’s Report is in line with the medical records from Union Hospital.*
- [21] Dr Edeling (neurosurgeon) in his preliminary outcome diagnosis (page 6) reported the following: “Major impairment of Mental Function and Communication – Lack of Mental Capacity. Right leg below knee amputation with Prosthetic leg. Contractures of Matarcarpo – Phalangeal and Proximal interphalangeal joints of both fingers. Disfiguring scarring on right leg. Both fifth fingers and abdomen.” She was transferred to Netcare Rehabilitation Hospital, where she was later discharged with an initial prosthesis. She had her right leg amputated below the knee, internal stomach bleeding, multiple injuries, and loss of both hands’ small fingers.

- [22] Her clinical impression was that Ms Wessels easily gave up on the tests and often gave the reply “I don’t know” without even an attempt. Her information processing appeared to be slow and took time before responding to questions. She did not provide her full employment history and insisted on providing the CV, but never complied. Para Cognitive – intellectual performance page 13 of Report.

“As can be seen from the previous tables Ms Wessels’ global cognitive ability falls within the Low Average range. A statistically significant difference in points exists between her Verbal Scale, which falls within the Borderline Range, and Performance Scale, which falls within the Average range. Significant inter–test scatter was observed indicating erratic performance.”

- [23] Page 22 under Discussion - *“2. Following the said accident, she demonstrates symptoms of post–traumatic stress, (experiences difficulty with sleeping, experiences nightmares approximately 4 times a week, relives the accident on the television, experiences flashbacks, has become hyper–vigilant when in traffic, and has become fearful of traveling). 3. Ms Wessels experiences symptoms of a Mood disorder.”* The Mood disorder; was classified as a symptom of depression.

- [24] At (page 23) she then referred to the Report of Mr Michael Sissison’s Report - “Additionally Mr. Michael Sissison (Clinical Psychologist) diagnosed Post Traumatic Stress and a Depressed Mood as well as possible Neurocognitive Disorder if Traumatic Brain Injury is confirmed, (page 24). Mr Sissison is of the opinion

that Ms Wessels' condition might be permanent with a loss of capacity. He is of the opinion that she is not employable."

[25] She confirmed under cross-examination, that Ms Wessels appeared drugged during their consultation. She confirmed that Ms Wessels displayed mood swings. She was referred to the Report of Mr Michael Sissison that was done on 18 October 2021, which referred to possible substance abuse disorder, a factor that she too observed; but she did not have a clear answer this time around. She confirmed that her observation of mildly ruggedness could have resulted from prescription medication.

[26] ELIZABETH CATHERINA ODENDAAL (WESSELS) She is Ms Wessels' mother and confirmed her birth date as 9 May 1999. She confirmed that both parents obtained Matric certificates. She was a Registered Nurse. Ms Wessels was born a normal child, who was developing just like any other without any challenges prior to the accident. She indicated that post-Matric, her daughter did not further her studies due to financial difficulties. She joined the labour market and worked as a cashier at SPAR-Vaalpark, but left due to long working hours. She started work at Vodacom but left as she was ill-treated by her Manager. At the time of the accident in October 2019, she was unemployed. She has no proof that her daughter worked at SPAR or any other place. She could not provide any reason for not obtaining this information, though these places were in the vicinity of her home. She could not produce any proof that her daughter was earning R4 000 – 00 per month from SPAR.

- [27] She further testified that post-accident, Ms Wessels became very reserved and was mostly by herself. Her friends started visiting in her mother's absence, which resulted in her behaving very strangely. She laughed none – stop for no reason. The mother believed that medication was making her worse. The mother then sent her to a Christian Centre but did not get better, as the mother stopped her taking her medication and she got worse. On her return, she was readmitted to AKESO in Milpark but later discharged. She was at the time hearing at Abby Lodge, a Rehabilitation Centre in Johannesburg. She was back on medication and her condition has stabilized.
- [28] MARIANNA OLIVER – Occupational Therapist - She confirmed that she was an expert in the field of occupational therapy. She is employed by Kim Kaveberg Occupational Therapist with Practice Number: 066 000 0436828. She does not appear to have her own practice number. The defendant conceded that she was an expert in this field of specialization. The court is satisfied that she is an expert in this field of specialization.
- [29] She confirmed that she assessed Ms Wessels on 19 August 2020 and compiled a Report, following the accident that took place on 28 October 2019. The sources of her Report were the various doctors who treated Ms. Wessels at Union Hospital as per Hospital Records, various experts' Reports, and Ms. Elizabeth Wessels, the mother over the telephone.

- [30] Ms. Wessels' first consultation with Dr Eliasov was a day prior to consultation Ms Olivier, but never disclosed to her. The mother stated that Ms Wessels made her own arrangements with the various Specialist, hence her lack of knowledge of some of these sessions. Dr Eliasov's clinical Psychiatrist report "Ms Wessels' insight and judgment remain impaired. She would struggle to maintain employment in the open labour market or to manage her finances independently. Page.8 Paragraph. 5.3, 8.5 of her Report. She was not complying with Dr Eliasov's prescribed psychotropic medication; this was also of concern to Ms Du Toit. Report page 9 paragraph 5.4.
- [31] ELSIE ADRIANA ROSSOUW - INDUSTRIAL PSYCHOLOGIST
She confirmed that she was an expert in the field of Industrial Psychology. She is a registered Industrial Psychologist with HPCSA registration number: PS 0068152. The Road Accident Fund confirms that she is an expert in the field of industrial psychology. The court is satisfied that she is an expert in this field of specialisation.
- [32] She initially assessed and evaluated Ms Wessels on 19 October 2021 and compiled a Report on 20 May 2022. Background information was that, at the time of the accident on 28 October 2019, Ms Wessels has already passed her Matric examination, but never furthered her education. Though previously employed, she was unemployed at the time of the accident. "The objective of the assessment was to evaluate the effects of the accident and its sequelae on the employability and earning capacity of Ms

Wessels. Her prospects were evaluated with regard to the following two aspects:

- (a) Disregarding the accident and injuries sustained.
- (b) Having regard to the accident and injuries sustained.” Report at paragraph 1.1.1, page 2. The assessment information was by Ms. Wessels, her mother, as well as the medical and paramedical reports made available, labour market, and her particular circumstances.

[33] She gave her pre-accident circumstances as follows: She did not have any pre-morbid physical illness, psychological problems, surgeries, or operations, nor was she involved in accidents or traumatic experiences. This evidence is contradicted by Dr Eliasov in his Report at Section 4; who stated that she was treated for a possible depression at the age of 15. Mr Sissison in his Report at P.9 stated that Ms Wessels received psychological assistance at the time of her parents’ divorce.

[34] Ms Wessels’ employment history, is not supported by any documentary evidence and is only based on both her and the mother’s words. From January until June 2018, she was employed by Jeurgin International as an Administrative Assistant earning R5 000–00 per month. The reason for leaving was the company closed down. From July to the end of October 2018, she was unemployed. In November 2018, she commenced employment as a Sales Assistant at Vodacom (in Vaalpark). She earned a basic salary plus commission, though not sure of her salary per month. She resigned in early January 2019. In mid-January 2019 she took up the position of a Cashier at SPAR (in

Vaalpark) earning a basic monthly salary of R4 000–00. She resigned in June 2019, as she was unable to cope with the working hours, which varied from eight to nine hours a day. This was the only employment confirmed by the mother.

- [35] At the time of the accident, she was unemployed for about four months. This employment history is inconsistent with that provided to Ms Mariana Olivier of K Kaveberg Occupational Therapist (Page 22 Section 13). (Page 9 paragraph 2.6.8 of her Report) “Considering that her pre-accident work history evidenced periods of unemployment, it is recommended that contingencies should be applied for periods of unemployment, regardless of the accident, due to various external factors, such as the poor economic climate of the country and affirmative action policies, should these still been in place.”
- [36] Miss Rossouw conceded that there was no evidence to support that she could have reached NQF level 5, supporting that NQF level 4 was the one level she has satisfied. Though both parents completed Matric, only the mother has a post Matric qualification. She has a brother who dropped out in Grade 10. This is an indication that not everyone in the family progressed to matric and beyond. The mother was unable to say in court as to where Ms Wessels initially worked and salary earned; merely saying she was independent and conducted her own affairs. The only employment she could confirm was SPAR Vaalpark, but failed to provide the details of the contact person, at least. This was crucial, just like going to her former school to get a letter.

- [37] GREGORY ANGUS WHITTAKER: - Mr Whittaker did not take the witness stand, as his Actuarial Report was one of those admitted into the record by agreement between the parties. Upon perusal of the said Report, it was clear that he was an expert in the field of actuarial science. He has 24 years of working experience in the field of quantification of damages for bodily injuries or death of a person and miscellaneous calculations used in civil litigation. The court is satisfied that he is an expert in this field.
- [38] During September 2022, he prepared a report for Ms Wessels after referring to the Report prepared by Industrial Psychologist, Ms Rossouw dated 20 May 2022. Ms Rossouw gave the background and earning capacity as of the date accident. Ms Wessels completed obtained her National Senior Certificate in 2017. At the time of the accident was unemployed. Her employment history was set out as follows: From January until June 2018, employed at SPAR Vaalpark as a cashier. She earned a salary of R4 000 – 00 per month. Her future earnings progression based on Ms Rossouw's report as per her pre-accident earnings is page 3 - Future Earnings Progression: -
- “1. She would have recommenced working on 1 January 2020 earning R4 000 – 00 per month. Working at a grocery store such as SPAR we have assumed that she would have continued working during the National lockdown.*
 - 2. Her earnings would have gradually increased in line with inflation only until the end of 2021.*
 - 3. On 1 January 2022 she would have obtained employment at the median early career stage with a Grade 12/NQF level 4 earning R74 000 per annum.*

4. *Her earnings would have increased in line with inflation only until 1 January 2024.*
5. *In 2024, she would have commenced studying towards a Higher Certificate (NQF level 5) on a part time basis for 2 years.*
6. *On 31 December 2025 she would have been employed at between the median and upper quartile early career stage with Grade 12/NQF level 4 earning R96 000 per annum July 2022 money terms)*
7. *The straight–line increases have been assumed between her earnings as at January 2024 and 31 December 2025.*
8. *On 1 January 2026 she would have progressed to the median earnings early career stage with Grade 12 and Certificate/NQF level 5 earning R111 000 per annum (9 July 2022 money terms).*
9. *At age 45 she would have reached her ceiling at the average of the median and upper quartile earnings late career stage with a Grade 12 and certificate (NQF level 5) earning R384 000 per annum (July 2022 money terms).*
10. *Straight-line increases have been assumed between her earnings from January 2026 and her ceiling at age 45.*
11. *Upon attaining her career plateau inflationary increases only are allowed until her retirement at assume age 65.”*

[39] Her pre–accident earnings value on 1 January 2020 will be R48 000 and on 31 December 2021, she would be earning R52 382 per annum. He referred to Ms. Rossouw’s Report for post–accident earnings at P.4 para.2.2.2 his Report. She expressed the following opinion: “Considering the severity of Ms. Wessels’ accident–related impairments, it is evident that she has been compromised from a cognitive, psychological, and physical/

functional perspective due to the accident. It is thus concluded that Ms Wessels is probably unemployable due to severity of her injuries. Therefore, she will in all probability remain unemployable for the rest of her working life.”

[40] He compiled the Report relying on the actuarial present value method and assumptions. Assumption are both economic and demographic. He took into consideration tax provision from March 2022 to 28 February 2023 Tax season onwards. His calculation also took into consideration general contingency deductions like loss of earning due to illness, saving in relation to travel to and from work, and risk of future retrenchment and resultant unemployment. Report page 5. paragraph 4.1. He made deductions of 21% in the damages amount awarded.

[41] He considered the limitation of R160 000 per year in case of claim for loss of income as set out in Section 17 (4) (c) of the Road Accident Fund Amendment Act 19 of 2005 (Hereinafter referred to as “Amendment Act”), which came into operation on 1 August 2008. Section 17 (4A) (a) of the Amendment Act provides for the R160 000 – 00 to be adjusted quarterly, limiting the loss to R286 125 per year. Loss limit has been applied in line with the unreported decision of the SCA in *RAF v Sweatman (162/2014) [2015] ZASCA 22*.

[42] His calculations were as follows: -

PAST LOSS: - Value of the income uninjured: R 151 730, less 5% contingency deduction is R 144 144. Value of the income

injured: Nil, less 0% contingency deduction is Nil. Net past loss of income is R 144 144;

FUTURE LOSS: - Value of the income uninjured: R 5 824 432, less 21% contingency deduction of R1 223 131 is R 4 601 301;

Value of the income injured: - Nil, less 0% contingency deduction is Nil. Net future loss of income is R 4 601 301;

TOTAL NET LOSS: - R 144 144 plus R 4 601 301, which is R4 745 444.

[43] Mr. Whittaker confirmed that he relied on the data provided by the others. In this regard, he is referring to amongst others Ms Alletha Mattheus, Educational Psychologist, and Ms Elsie Adriana Rossouw, Industrial Psychologist. The latter relied on the data supplied by Ms Mattheus in her Report; which was based on general information and ignored the facts. This is the very Report that the court found to be unreliable.

[44] Dr. Edeling in paragraph 2.1.1, of his Final Report reflects the following: *“At the time of the accident, in October 2019, she was 19 years of age. She had matriculated in 2017. Was employed as a Cashier. She was single and living with a friend in a townhouse at 6 Elandsberg, Sasolburg. She did not perform any household activities and did not participate in any sporting activities.”* (My emphasis). This is in direct contradiction with the letter from the former School Principal obtained after his Report and which is not accompanied by any supporting documents. It is hard to ignore this fact, which appears in one of the early expert Reports. Surely, Dr. Edeling has no interest in the matter, to be able to formulate information not provided to him. The question is why sudden

change of information in this regard? This has serious repercussions for the plaintiff as it goes to the core of whether she could have gone as far as the NQF level 5 as motivated by Ms Rossouw, who said she relied on information as supplied in the letter by the School Principal, to adjust the amounts.

- [45] How accurate is the mother's evidence regarding where she resided immediately prior to the accident, as Dr Edeling's report reflect that she was residing with a friend? Dr Gordon's Report reflect plaintiff's employment as being continuous at SPAR both as a student and after leaving school and also worked at OR Tambo Johannesburg International Airport with the father, but could not state when and in what capacity. Dr Gordon's Report does mention her working for Jeurgin International as an Administrative Assistant earning R5 000 – 00 per month, from January to June 2018, which is her first job.
- [46] Ms. Mattheus, Educational Psychologist did not verify the employment history of the patient and failed to give any reason for not doing so. She conceded that it was vital for report purposes. The curriculum vitae she referred to, reflects two other places that not even the mother who was residing with patient at the time had a clue of, despite the fact that she was earning R5 000 – 00 per month at Jeurgin International from January until June 2018, her highest paying job so far. Her Report contradict that of Dr Gordon, though alleging to have seen the patient's CV in a memory stick. It does not mention her employment at Vodacom or any other place, like Jeurgin International. The employment history differed depending on whom the information

was provided to and in all instances, no confirmation in the form of a payslip or the employer's confirmation letter.

[47] Ms. Wessels in a short space of time; is said to have worked in Sasolburg, Vaalpark area, OR Tambo Johannesburg International Airport and somewhere else, depending on which report one is dealing with. The time she worked in different places would at times overlap. The mother Ms Odendaal attempted to sidestep this aspect, alleging that Ms Wessels was independent making her own arrangements, but contradicted herself as she stated that she drove her around. Surely, she would be able to say, she was away from home, from this period to that period.

[48] Ms. Mattheus alleged in the report that Ms. Wessels could have completed a Higher Certificate or equivalent vocational training and gone as far as NQF level 5, before entering the labour market. She conceded that she did not collect sufficient information to compile her report. She did not consult with the mother at length, but a brief telephonic discussion. She conceded that looking at her Matric Results; she could have struggled in obtaining an NQF Level 5 qualification. Not a single School Report is provided to substantiate the fact that she was an above-average achiever at school, which is contradicted by the only academic record in the form of a Matric Certificate. Surely, school progression Reports are critical in this regard, for her portrayal as an above-average achiever and the court is being persuaded to ignore the Matric results.

- [49] Ms. Mattheus did not verify any of the information that she received from Ms Wessels, though alleging that she was not in a mental state to have her word relied on. Her Report was based on general information, which ignored the facts. It would make sense to rely on the general formula if the child did not pass matric, not post-matric. She could not substantiate her NQF level 5 submission for Ms Wessels. The Court finds that her Report was not helpful in this regard.
- [50] Dr Edeling the Neurosurgeon, in his evidence, described this as one of the worst cases he experienced, which is not in line with the other experts' Reports, who indicated that was still able to operate normally especially if she took her prescribed medication. Post-accident, she still managed to secure employment at the nursery school after the accident, helping the children with their homework. (P.13 para 3.4.2 Rossouw Report.), if this is the case, was she rendered unemployable by the accident, or just had her occupational progress significantly affected?
- [51] Dr D. Eliasov, Specialist Psychiatrist in his report Section 5 – “in terms of her psychiatric presentation, Ms. Wessels appears to be suffering from the following: Neuro-cognitive Disorder due to traumatic brain injury, Substance use disorder. A psychotic disorder: possible psychosis due to substance use and/or traumatic brain injury, post-traumatic stress disorder. Ms Wessels' level of functioning is severely impaired when off treatment and psychotic. Her level of functioning does improve on treatment, however, she has defaulted to treatment on more than

one occasion. Even on medication, she is able to display mild impairment in function and remains vulnerable. She is able to independently, perform activities of daily living. Her insight and judgment remain impaired.” This support Dr Edeling’s statement that he did not think she will have to be confined to an institution as suggested by Dr Maynard, the psychiatrist.

- [52] Mr M Sissison, a Clinical Psychologist – 2021.11.02 – Page 17 paragraph 3 – “Ms Wessels’ psychological functioning has been compromised by her motorcycle accident.” Page 22 paragraph 8 - *“Ms Wessels’ occupational progress has been significantly affected by the accident. ... She is forgetful and moody and will struggle to cope with workplace stressors. Industrial psychologist is to comment further.”* A clear assessment is Ms Wessels is not rendered completely unemployable, but has her occupational progress significantly affected.
- [53] Plaintiff’s Counsel attempted to avoid reference to Mr. Sissison’s Report, as it was not favorable to their case, but was unable to do so, as other Experts referred to it. Ms Rossouw, page 22 paragraph 3.6.1.12 – “Based on the findings of the various experts, it is evident that Ms Wessels has been severely compromised from a cognitive, psychological, and physical/functional perspective due to the accident.” Various experts have confirmed that her chances of employment were compromised, not completely unemployable, as stated in Dr Edeling’s Report. This was proven by the fact, that in less than two years post the accident she secured employment at a local crèche in 2021, in contradiction to Dr Edeling’s findings on page 6 paragraph 3.1

“These impairments have rendered her unemployable on the open labour market.” Her substance abuse challenge is dotted through a number of Reports, another aspect that the court will focus on as the possible contributory factor of her condition.

[54] In as far as Ms Rossouw was concerned, she merely said that she accepted that Ms Wessels earned R4 000 - 00, as it was industry standard at the time. It is clear that before considering the salary, a person must first have secured employment. There is no proof of her employment at any of the places that appear in the various Reports. One would also realise that information is inconsistent depending on the report. The chronology of where she worked first between SPAR and Vodacom as provided by the mother; also differed on various Reports. Ms Rossouw conceded this factor, as she confirmed that she never verified if indeed Ms Wessels was employed at any of the places that appeared in the various Reports including her own. Ms Rossouw should have been more cautious when accepting this information, as this was the core of her Report.

[55] Though the Plaintiff's attorneys deemed it fit to secure a letter from her previous High School Principal, they did not regard School Reports in the same manner, just like with employment history, provided no reason for not availing this crucial information. Surely this is elementary as our law requires whomsoever alleges a fact, to prove it. Can we say this was the case in this instance?

- [56] In determining the loss of earnings, the court has follow the approach of Stratford, J in *Hersman v Shapiro and Co* 1926 TPD 367 at 369 “Monetary damage having been suffered, it is necessary for the court to assess the amount and make the best use it can of the evidence before it. There are cases where the assessment by the court is little more than an estimate; but even so, if it is certain that pecuniary damage has been suffered, the court is bound to award damages.”
- [57] In *Anthony and Another v Cape Town Municipality* 1967 (4) SA 445 (A), *Holmes JA* at 451B – C held the following: “*I therefore turn to the assessment of damages. When it comes to scanning the uncertain future, the court is virtually pondering the imponderable, but must do the best it can on the material available, even if the result may not inappropriately be described as an informed guess, no better system has been devised for assessing general damages for the future loss*”.
- [58] The main challenge that is facing the court, is information provided in various Reports; that is not the same when it comes to loss of earning capacity or potential thereof. Dr Edeling was of the opinion that she was unemployable, whilst other experts found that her chances of employment were there, but compromised. The court is to assess the amount based on the evidence before it, which is not an easy task in the circumstances due to the challenges regarding her schooling and employment history, and make the best of it. There is no evidence to support that she could have reached NQF level 5, the court will have to keep her in NQF level 4 and compensate her at that level. The

court will also have to work with the higher level of contingency, in this regard. Evidence before court is, she is employable, though her chances are lessened, and has at one stage secured employment post the accident.

[59] It common that the RAF did not file any Reports to counter those filed by the plaintiff. However, upon perusal of same, it becomes obvious that these Reports differed materially. Dr Edeling gave evidence that this was one of the worst cases of his career, as the accident left her with serious brain damage that rendered her unemployable and permanently dependant on others. This is not the case when going through other experts Reports, as evidence is in less than two years after the accident she secured employment at a crèche, helping children with their homework. She herself was keen to go back to the cashier – job at a supermarket or do any other light – duty work. An indication that her chances of employment were not wiped out, but merely minimized.

[60] Ms Mattheus in Kaveberg P. 28 para 17.2 has the following to say in this regard: “Ms Wessels demonstrates the physical capacity to perform work of sedentary to light physical demand nature. (i.e work where she interchanges between seated and standing and which entails carrying of light objects of less than 5KG on a frequent basis. Ms Wessels will not cope with work with high standing and walking requirements. In this regard, I am of the opinion that she is best suited to work which is mainly sedentary in nature, with interment light carrying and occasional

standing and walking.” This was relied on by Ms Rossouw in her Report at P. 21 para 3.6.1.7 “Functional/ physical perspective”.

- [61] There is no doubt that she suffered pain and discomfort as the results of the accident. She had her right leg amputated just below the knee and now uses a prosthetic leg. She lost both hands’ Fifth finger. It was never explained as to how this has impacted the functioning of her hands. She could no longer do some of the activities she enjoyed like dancing with friends and family. It came to the fore for the first in the Principal’s letter, that she was a keen sportswoman and nowhere else. This is in direct contrast to Ms Rossouw’s Report, at page 12 paragraph “*Social withdrawal*”, wherein she summed up the pre – accident position as follows: “*She noted that before the accident, she had enjoyed socialising with her family and friends. ... She also reported a fractious relationship with her mother at home. According to Ms Wessels, her mother is critical of her not working and not earning an income, and she reportedly compares her to her siblings. As a result, she wants to leave home and be independent.*”
- [62] She was in a much better position compared the plaintiff in *WV v Road Accident Fund 2019 (7A4) QOD 113 (FB)*, as he was permanently disabled. He could not live on his own and would need permanent constant supervision and nursing services. Mbhele, AJ (as she was then) awarded R2 100 000 damages.
- [63] Further comparison will be with *Seme v Road Accident Fund 2008 (5A4) QOD 33 (D)*, wherein Tshabalala, JP awarded R1 000 000 which has current value of R2 303 000, as the plaintiff was

unemployable in open labour market, which is not the case in the current matter.

[64] Her case is further distinguishable to *Khokho NO obo MG v Road Accident Fund 2019 (7A4) QOD 125 (FB)*, Moeng, AJ, made an award in the sum of R1 500 000 – 00 in 2019, as the plaintiff therein, was rendered permanently disabled, immobile and total dependant on family members. He suffered from severe neuropsychological deficiencies severely impaired attention; working memory; information processing and mental tracking deficiencies. He was unable to plan what to do and how to do it. He could not take care of personal hygiene like bathing on his own. Ms Wessels is capable of taking a bath unassisted, do light domestic chores, and “*do work which is mainly sedentary in nature, with interment light carrying and occasional standing and walking.*” She in fact managed to securing employment, though she found it hard to retain.

[65] The new actuarial calculation cannot be considered as it did not comply with the provisions of Rule 36 (9) (a) and (b) as it was not made available to the Fund for its consideration beforehand, nor was it handed in by agreement, but merely attached to the heads of argument. Mr Whittaker confirmed that his calculations took into consideration the Reports of others. Ms Mattheus and Ms Rossouw; did not verify the information used to compile their Reports, which he based his on. He worked on his report on the basis that she was unemployable, which is not the case. He further relied on the fact that she could have reached NQF level 5, which Ms Rossouw conceded in court that it was not the case.

Though he suggested the lower contingency of 22.5%, the court comes to the conclusion that the appropriate percentage taking into consideration all the aspects cumulatively, will be the higher one of 25.5%, as opposed to the suggested figure of 22.5%.

- [66] The court finds that the following award taking into consideration contingency at the higher 25.5% will be appropriate in the circumstances: -

Past loss: Value of the income uninjured: R 151 730 – 00, less 5% contingency deduction is R 144 144 – 00. Value of the income injured: Nil, less 0% contingency deduction is Nil. Net past loss of income is R 144 144 – 00.

Future loss: Value of the income uninjured: R 5 824 432 – 00, less 25.5% contingency deduction of R1 485 230 – 00 is R 4 339 201 – 90. Value of the income injured: Nil, less 0% contingency deduction is Nil. Net future loss of income is R 4 339 201 – 90. Gross net loss is R 144 144 – 00 plus R 4 339 201 – 90 equals to R4 483 345 – 90 loss of earnings.

- [67] The court will turn to her ability to conduct her own affairs and making decisions that involve financial management. Looking at the conflicting information in the various Reports, it is uncertain as to what is the plaintiff's ability to take major decisions. In her best interest, the plaintiff's funds will need to have some form of preservation.

COSTS

[69] The cost of all the plaintiff's experts who presented evidence at trial including the costs of their charged expert fee, reservation and qualifying fee as well as all travelling expenses and accommodation expenses. These experts are:

69.1 Dr Edeling (neurosurgeon);

69.2 Dr C Gordon (neuropsychologist);

69.3 Dr Maynard (psychiatrist);

69.4 Mariana Olivier (occupational Therapist);

69.5 Ms. Rossouw Incorporated (industrial psychologists); and

69.6 Ms A. Mattheus (educational psychologist).

ORDER

[70] The orders are as follows:

1. The defendant is ordered to pay the plaintiff an amount of R 6 064 079, 90 (Six million and sixty – four thousand and seventy – nine rand and ninety cents) [hereinafter referred to as the capital] for both past and future loss of income resulting from the accident that occurred on 28 October 2019.

2. The defendant shall furnish the plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for 100% of the costs of the future accommodation of the minor child in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to the plaintiff arising out of injuries sustained by her in the motor vehicle collision mentioned above, in terms of which undertaking the defendant will be obliged to compensate her in respect of the said costs after the costs have been incurred and on proof thereof.

3. The Attorneys CN Sweatnam are ordered to create a trust document in line with the Trust Property Control Act 57 of 1988. Attorneys Sweatnam ordered to make payment of the aforesaid amount to the so created Trust after deduction of their fees, disbursements and other expenses.

3.1 The Trust instrument to provide the following information:

3.1.1 The patient to be the sole beneficiary of the trust;

3.1.2 The First trustee to be Keshma Vallabh in her capacity as nominee of Standard Trust Limited and hereby authorised to act as trustee or failing her, such an employee of Standard Trust Limited as they may nominate;

3.1.3 Trustee(s) are to provide security to the satisfaction of the Master;

3.1.4 The cost of the trust and remuneration of the trustee shall be paid by the defendant and the defendant is also liable for the yearly audit fees of the trust;

3.1.5 The trustee shall be entitled to charge the following tariff:

3.1.5.1 The 1.25% on all the value of the capital assets under administration;

3.1.5.2 1% acceptance fee on the value of the assets placed under management;

3.1.5.3 1% distribution fee on capital;

3.1.5.4 Fees exclude VAT.

- 3.1.6 Trustee(s) has the duty disclose any personal interest in any transaction involving the trust property;
- 3.1.7 The ownership of the trust property vests in the trustee(s) of the trust in their capacities as trustee(s);
- 3.1.8 Procedures to resolve any potential disputes, subject to the review of any decision made in accordance therewith by this Honourable Court;
- 3.1.9 The trust be authorised to recover the remuneration of and costs incurred by the trustee(s), in administering the undertaking in terms of Section 17(4) (a) of Act 56 of 1996 in accordance with the certificate of undertaking to be provided by the Defendant;
- 3.1.10 The suspension of the patient's contingent rights I the event of the cession, attachment or insolvency, prior to the distribution or payment thereof by the trustee(s) to the patient;
- 3.1.11 The amendment of the trust instrument be subject to the leave of this Honourable Court;
- 3.1.12 Termination of the trust upon the death of the patient, in which event the trust assets shall pass to the estate of the patient;
- 3.1.13 The trust property and the administration thereof be subject to an annual audit;
- 3.1.14 The trustee(s) shall in consultation with the patient and/or her family utilize such income of

the

trust as may be identified for the maintenance of the patient.

4. The defendant to pay the plaintiff's taxed or agreed party and party costs, until date of this order, including but not limited to the costs set out hereunder:

- 4.1 The reasonable qualifying and reservation fees of the following experts:

- 4.1.1 Dr Edeling (neurosurgeon);

- 4.1.2 Dr C Gordon (neuropsychologist);

- 4.1.3 Dr Maynard (psychiatrist):

- 4.1.4 Mariana Olivier (occupational Therapist);

- 4.1.5 Ms. Rossouw Incorporated (industrial psychologists); and

- 4.1.6 Ms A Mattheus (educational psychologist).

5. The payment provisions in respect of a foregoing are ordered as follows:

- 5.1 Payment of the capital amounts shall be made without set-off or deduction, within 180 (hundred and eighty) calendar days from date of the granting of this order, directly into the trust account of the plaintiff's attorneys of record.

- 5.2 Payment of the taxed or agreed costs shall be made within 180 (hundred and eighty) days of taxation, and shall likewise be effected into the trust account of the plaintiff's attorney.

6. Interest shall accrue at 11.75% (the statutory rate per annum), compounded, in respect of:

6.1 The capital of the claim, calculated from 14 (fourteen) days from date of this order.

6.2 The taxed or agreed costs, calculated from 14 (fourteen) days from date as set out above.

S.O. VELE, AJ

On behalf of the plaintiff:

Adv. J C Prinsloo
Instructed by:
Honey Attorneys
BLOEMFONTEIN

On behalf of the defendant:

Ms C Bornman
Instructed by:
State Attorney
BLOEMFONTEIN