

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

Case No: 3202/2021

In the matter between:

NOMAWETHU MPUNTSHE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BANDS J:

[1] The plaintiff, who was a pedestrian at the time, claims damages for injuries sustained by her in a motor vehicle collision, which occurred in Beach Road, Gqeberha, on 12 May 2019. She was 25 years of age at the date of the collision and 29 at the date of trial. The nature and extent of the plaintiff's injuries, as well as their *sequalae*, are common cause and include: (i) a compound open book pelvic injury (with left sacroiliac joint dislocation and left external iliac artery injury); (ii) traumatic amputation of the left leg/mangled extremity (multiple fractures involving the left distal femur, left knee and left tibia and fibula); and blunt abdominal trauma.

[2] As a consequence of the aforesaid injuries, the plaintiff suffers from severe limitations in respect of general mobility and is dependent on crutches and a prosthesis, which offers limited mobilisation. She is left with significant scarring of the right lower limb; is unable to sit for prolonged periods of time; is prone to headaches; back pain; phantom pain of the left leg; and activity related pain episodes of the right leg. The plaintiff is dependent on a colostomy bag. From a mental health point of view, she experiences mood swings; loss of concentration; disturbed sleep; stress; and depression.

[3] The defendant previously admitted its liability to the plaintiff, whereafter the issues of general damages and future medical expenses were settled between the parties and recorded in an order of court, dated 30 November 2022. The plaintiff's claims for past hospital, medical and caregiving expenses and loss of earning capacity were postponed to 17 April 2023. The defendant was further ordered to file and serve its expert reports in terms of Uniform Rule 36(9)(b) on or before 28 February 2023.

[4] When the matter came before court on 17 April 2023, the expert reports envisaged in the prior order had not yet come to hand. A further order was issued, by agreement between the parties, in terms of which the defendant was to pay an amount of R1,000,000.00 as an interim payment to the plaintiff in respect of her claim for past and future loss of income/earning capacity. The defendant was afforded a further opportunity to file its expert reports; this time, on or before 21 April 2023. The matter was postponed to 6 June 2023, on which date a further order was

granted, by agreement, directing the defendant to pay an amount of R2,000,000.00 as a further interim payment towards the same head of damages. Once more, the defendant's anticipated reports were not forthcoming, and the trial was postponed to 6 September 2023, being the first day of trial.

[5] What remained in dispute for determination before me was the plaintiff's claims for: (i) past hospital, medical and caregiving expenses; and (ii) past loss of income and loss of earning capacity. Given that the legal issue in respect of the first mentioned claim¹ was still pending before the Constitutional Court at the time of hearing, I separated the plaintiff's remaining claims in accordance with Rule 33(4) and postponed the plaintiff's claim for past hospital, medical and caregiving expenses *sine die*.² It is undisputed that the plaintiff, post-morbidly, is unemployable and accordingly, the issues, which I am called upon to resolve are limited to the plaintiff's past loss of income and her loss of earning capacity (which is limited to a determination of the present value of the plaintiff's future income but for her injuries), inclusive of the appropriate contingency deductions, to which I return in due course.

[6] Despite various expert witnesses having been engaged by both parties in several disciplines, no expert summaries in terms of Uniform Rule 36(9)(b) were filed on behalf of the defendant.

[7] Notwithstanding this, joint minutes were prepared by the parties' respective occupational therapists, Angela Dlepu and Ansie van Zyl; and orthopaedic surgeons,

¹ In matters of this nature.

² At the request of the parties.

Dr M Aslam ("*Aslam*") and Dr C.S. Veerasamy ("*Veerasamy*"). The joint minutes reflect a large degree of consensus among the experts. I was advised by the plaintiff's counsel that whilst the defendant had engaged the services of an industrial psychologist, Ms K Naidoo ("*Naidoo*"), to assess the plaintiff for the purposes of the present matter, the defendant had elected not to file her report, which had come to hand shortly before the date of hearing, on 4 September 2023.

[8] Save for the report of the plaintiff's industrial psychologist, Lani Gregor Martiny ("*Martiny*"), the remainder of the expert reports filed in support of the plaintiff's claim were admitted by the defendant, namely:

- [8.1] RAF 1 compiled by general surgeon, Dr Bogani Mabaso dated 17 March 2022;
- [8.2] RAF 4 serious injury assessment report compiled by orthopaedic surgeon, Dr M. Aslam dated 28 July 2021;
- [8.3] Medico-legal report compiled by orthopaedic surgeon, Dr M. Aslam dated 28 July 2021;
- [8.4] Radiology report compiled by specialist in diagnostic radiology, Dr Mike Eddles dated 3 November 2020;
- [8.5] Psycho-legal report compiled by educational psychologist, Mr Gerhardt Goosen dated 2 December 2021;

- [8.6] Medico-legal report compiled by specialist psychiatrist, Dr Peter Crafford dated 22 March 2022;
- [8.7] Medico-legal report compiled by plastic and reconstructive surgeon, Dr Keith Cronwright dated 23 August 2022;
- [8.8] RAF 4 compiled by plastic and reconstructive surgeon, Dr Keith Cronwright dated 23 August 2023;
- [8.9] Medico-legal report compiled by medical orthotist and prosthetist, Mr Lafras Moolman dated 21 October 2020; and
- [8.10] Medico-legal report compiled by clinical psychologist, Mr Ian Meyer dated 18 August 2022.

[9] The admission in respect of the aforestated reports (inclusive of the joint minutes to which I have referred), as recorded in a pre-trial minute, dated 4 and 5 September 2023 (*“the pre-trial minute”*), was as follows:

*“The Defendant, in respect of the... expert reports/joint minutes served and filed by the Plaintiff, **admits that the reports/joint minutes** are what it (sic) purports to be, the correctness of all the contents of the reports/joint minutes, including the opinions expressed and factual information relied upon for reaching conclusions and for the reports/joint minutes being handed up at the trial and received in evidence without any further proof thereof...”*

[10] Insofar as the plaintiff's actuary is concerned, the parties agreed that a copy of the actuarial report may be tendered into evidence without the need to call an actuary as a witness.³

[11] Whilst the defendant's pleaded case, at trial, was that of no knowledge, it recorded at paragraph [4] of the pre-trial minute that:

"The Defendant contends that Plaintiff's life expectancy has been compromised and curtailed as a result of the extent and severity of the injuries to her left lower limb and the associated medical sequelae based on paragraph 10 of the amended joint minute dated 4 July 2023 between Orthopaedic Surgeons Dr M Aslam and Dr CS Veerasamy. Plaintiff denies this contention and accordingly records that there is no agreement between the parties in this regard."

[12] Following the closure of the defendant's case (and prior to argument), both parties sought amendments to their respective pleadings, which were granted by agreement between them. The amendment to the plaintiff's particulars of claim served to bring her claim in line with the various expert reports and joint minutes, read together with the actuarial calculation, to which I have referred. The defendant's amended plea introduced two aspects of substance. Firstly, a positive assertion in respect of the plaintiff's pre-morbid earnings; and secondly, allegations

³ Such agreement being recorded in the following terms:

"The parties agree to arrangements whereby the Plaintiff's actuary not be subpoenaed and not be required to attend to the hearing of this matter in order to avoid incurring unnecessary expenses, but instead to be placed in possession of whatever factual or financial data which he may be required to assess from time to time in order to provide Certificates of Value/Actuarial calculations as required, and that these certificates can then be placed before court with the agreement that they are correctly calculated."

to bring the defendant's plea in line with what is contained in paragraph [4] of the pre-trial minute. I deal with each of these, in turn, during the course of this judgment. Ultimately however, the matter, after the hearing of all the evidence, came down to an argument in respect of the applicable contingencies to be applied.

[13] The plaintiff called three witnesses, namely educational psychologist, Mr Gerhard Goosen ("Goosen"); Industrial psychologist, Martiny; and the plaintiff's cousin, Ms Andiswa Mpuntshe ("*Mpuntshe*").⁴ The expertise of the plaintiff's experts in their respective fields was not placed in dispute. The defendant elected to call no witnesses.

[14] Notwithstanding the defendant's admission in respect of the content of Goosen's report, the plaintiff, for reasons unclear to me, elected to call him to give evidence at trial. Such evidence was, for the most part, a repetition of that contained in his admitted report and a recount of the admitted evidence of clinical psychologist, Mr Ian Meyer.⁵ The main thrust of the evidence was in relation to the plaintiff's pre- and post-morbid scholastic performance; her pre- and post-morbid intellectual functioning; and her most probable future scholastic functioning, all of which was

⁴ The plaintiff herself did not testify at trial. According to the admitted report of Dr Crafford, the plaintiff, on account of her high levels of anxiety and cognitive impairment, would be at a great disadvantage if required to testify at trial. In light of the parties' agreement in respect of the expert reports (inclusive of the joint minutes), which included an agreement regarding the factual information, the parties were in agreement that the matter could proceed before me on the admitted facts and that to call the plaintiff would only serve to place her under further unnecessary stress.

⁵ With reference to Meyer's report.

common cause and can best be described with reference to the following paragraphs contained in the report of Goosen:

“9.3 Intellectual functioning:

9.3.1 *It is estimated that Ms Mpuntshe’s pre-morbid intellectual abilities would have been within the average range. This is based on the history and her previous scholastic achievements. There is no history of prior learning disability.*

9.3.2 *Her current intellectual functioning is estimated to be within the average range. There is no evidence of a lowering of intellectual performance post-accident.*

...

9.10 Academic functions:

Ms Mpuntshe has failed Grade 12; she passed her languages and Tourism, but failed Mathematics Literacy, History and Geography. She has attempted to complete Grade 12 but has not been able to attend a college since the accident. Prior to the accident she was studying at a college and indicated that she had expected to pass and to complete the course successfully, but the lockdown due to the COVID-19 pandemic disrupted her studies.

...

10.2 *It is estimated that Ms Mpuntshe’s pre-morbid intellectual abilities would have been within the average range. This is based on the history and her previous scholastic achievements. There is no history of prior learning disability. She progressed to Grade 11, without difficulty, before failing three subjects in Grade 12. It is probable that she would have completed Grade 12 at FET college, and at least a certificate course.*

10.3 *In the post-accident scenario, her ability to function at pre-morbid levels has been severely compromised. While her intellectual functioning has not been impaired, she presents with significant and serious psychological and psychiatric disorders, the symptoms of which could negatively affect concentration, memory, motivation, reading comprehension and energy level. She has not received any*

psychotherapeutic or psychiatric assistance since being discharged from Aurora Hospital. A significant length of time has elapsed since the accident, which may cause the above symptoms and disorders to become chronic. She is expected to benefit from both psychiatric treatment and psychotherapy. However, the extent to which she would benefit from such intervention, is currently impossible to predict. Should she benefit significantly, then her coping skills and general functioning may improve, increasing their chances of successfully completing a course of study."

[15] Further perplexing is that the defendant thereafter proceeded to cross-examine Goosen's evidence. The cross-examination firstly served to canvass, in general terms, the investigative process and methodology of an educational psychologist (both as a treating educational psychologist and as a forensic educational psychologist); and secondly, was aimed at casting doubt on the admitted conclusions referred to above, with reference to academic transcripts of the plaintiff, which came to hand on the morning of the hearing⁶ and to which Goosen had not had sight of when preparing his report. Put differently, the defendant sought to test the process of Goosen's reasoning, which led to the admitted conclusions, with specific reference to the premise from which his reasoning proceeded. At no stage prior to the cross-examination did the defendant signal its intention to depart from its admission in respect of Goosen's report nor was there an amendment to the defendant's plea. I enquired from the defendant's counsel as to the relevance and permissibility of the cross examination considering the aforesaid. Ultimately, the

⁶ Handed to the defendant's legal representative on the morning of the first day of trial in a bundle referred to as "Plaintiff's bundle of collateral documents". Once it became clear that the documents had not previously been discovered by either of the parties, the plaintiff's legal representatives placed on record that: (i) the plaintiff had no intention of relying on the documents; and (ii) the evidential value of the documents and the evidence elicited therefrom was being placed in dispute.

issue was taken no further than to elicit the following two facts from Goosen: (i) that he was not in possession of the academic records at the time of his investigation and report; and (ii) that had they been in his possession, he would have explored the content thereof with the plaintiff, which may have served to supplement his report. In the absence of having consulted thereon, any views expressed would amount to speculation. Having said that, Goosen was in any event of the view that nothing contained in the documentation, to which he was referred, was of such a nature as to prompt a change his opinions and conclusions reached.

[16] Goosen impressed me favourably as a witness. His opinion, apart from having been admitted, was not only well reasoned and logical but also consistent with the common cause facts. This view was in no way altered by his cross-examination.

[17] Given that Naidoo's report had only come to hand two days prior to trial, she (whilst awaiting instructions from the defendant) and Matiny, in consultation with each other and in an endeavour to assist the court, attended to the compiling of a joint minute on 5 September 2023. As previously stated, the defendant elected not to file the report of Naidoo, for reasons known only to it. Insofar as I make reference to the content of the joint minute prepared by Martiny and Naidoo, I do so only in light of the fact that the joint minute formed the basis of Martiny's evidence at trial. My reference to the joint minute is not to be misunderstood as binding the defendant to the content thereof, which for obvious reasons, it is not.

[18] Martiny, with reference to the joint minute, testified that the plaintiff, at the date of the collision, was 25 years of age. She was a student at the Russel Road TVET College, attempting her second year as a NCV (National Certificate Vocation) student. She engaged in part-time work, employed in various promotional positions, from Friday to Sunday on a weekly basis. It is likely that she would have been earning approximately R6,202.50 per month,⁷ up until 25 March 2020. Thereafter, due to the restrictions imposed, nationally, in reaction to the Covid-19 pandemic, it is likely that the plaintiff would have been unemployed until 2022 when she is likely to have engaged in part-time employment up until 2025.

[19] But for the collision, the plaintiff would have proceeded to obtain a grade 12 equivalent in 2020 and would probably have commenced with studies towards a level 5 and level 6 certificate/diploma qualification/s. It is likely that the plaintiff at the age of 32 years (in 2025) would probably have been able to enter employment taking into consideration in-service training, as was a requirement, earning approximately R172,566.00 per annum. The plaintiff would probably have experienced career development, with her income increasing gradually up to the age of 49 years, earning approximately R413,891.00 per annum. It was postulated that she would probably have received average annual increments of CPI + (1% - 2%) up until the retirement age of 65.

[20] Insofar as the plaintiff's past loss of income is concerned, Martiny testified that she: (i) was not remunerated during her period of hospitalisation and recovery; (ii) did not return to her pre-accident employment; (iii) remained unemployed following

⁷ Which was the average of the reported income as was reported to Mr Martiny (R2,750.00 per month) and to Ms Naidoo (R9,655 per month).

the collision; and (iv) is dependent upon a state social disability grant since 2019 to date.

[21] The brief cross-examination of Martiny in respect of the plaintiff's academic records was of no moment. He remained steadfast in his opinion regarding the plaintiff's pre-morbid career path, which was unchallenged.

[22] The plaintiff's loss of earning capacity was calculated by Arch Acturial Consulting, which postulated one scenario based on the assumptions contained in the joint minute, which, as stated, was consistent with the evidence of Martiny. That this is so, was confirmed by Martiny in evidence. Confusion on this aspect arose during cross examination, with reference to the figure utilised by the actuary in respect of the plaintiff's pre-morbid earnings per month. It was put to Martiny that whilst the postulated earnings of R74,430.00 per annum (R6,202.50 per month) was consistent with the evidence of Mr Martiny, it was contrary to the amount contained in the joint minute (upon which he relied). This contention was based on a misreading of the joint minute; the relevant paragraph, recording as follows:

"7. Pre-morbid career scenario:

7.1 We agree that at the time of the MVA she was a student and she was doing part time work. It is likely that she would have been earning approximately R6 202.50 per month (average of reported income to LGM & KN). However, given the lack of collateral to motivate the said earning, KN proposes the earning as per Table 1 below to be considered, where the claimant is likely to have earned between R48 000 to R55 000 per annum. It is further suggested that a contingency can be applied given the lack of collateral. Such contingencies are to be determined by the relevant Legal Counsels and the Court.

..."

[Table omitted for the purposes of this judgment.]

[23] Immediately apparent is that whilst an agreement was reached as to the plaintiff's likely monthly earnings (approximately R6,202.50), Ms Naidoo had proposed a lower annual income (between R48,000.00 and R55,000.00 per annum) given the lack of collateral to motivate the plaintiff's earnings. This proposed lower annual income formed the basis for the amendment to the defendant's plea, to which I have referred, in which it was recorded, at paragraph 7.2 thereof that "*the plaintiff's average pre-morbid part-time monthly income, before applying contingencies, would have been R4,291.66 on the basis of the condition appearing at paragraph 7.1 of the joint minute by the industrial psychologists LG Martiny and K Naidoo, dated 5 September 2013.*"

[24] The confusion that arose was later cleared up in re-examination. Whilst a lower annual income was proposed by Naidoo, the agreement between the parties (and the scenario ultimately postulated by Martiny) was that the plaintiff had historically likely earned an income of approximately R6,202.50 per month. However, given the lack of collateral, it was to this figure that contingencies would be applied. This is consistent with the clear wording of paragraph 7.1 of the joint minute. The evidence on behalf of Martiny, which I accept as reasonable and correct, was unambiguous; clear; well-reasoned; logical; and factually corroborated in all material respects. In the absence of any evidence to the contrary by Naidoo, there is no basis upon which to depart from the figure, postulated by Martiny as the likely starting point for the plaintiff's pre-morbid monthly income, or from his opinion as a whole, which scenario falls to be accepted.

[25] Notwithstanding the defendant's assertion that a lower average historical pre-morbid monthly income be utilised, prior to the application of contingencies, this aspect was correctly not persisted with on behalf of the defendant during argument.

[26] The evidence of Mpuntshe was uncontroversial and in all material respects, undisputed. It gave credence to the plaintiff's likely pre-morbid career path, which in any event was common cause. Accordingly, for the purposes of this judgment, it suffices to summarise her evidence in brief.

[27] Mpuntshe, who is the plaintiff's older cousin,⁸ grew up with the plaintiff in the same household up until the date of the collision in 2019. Mpuntshe described the plaintiff as 'driven'. She, as did the plaintiff, failed grade 12 on her first attempt. She thereafter went on to pass grade 12 as well as various short courses. Whilst she was enrolled at Russel Road College, working towards a diploma in tourism, she was offered a permanent position at Woolworths during October 2016. Having worked within the organisation as a seasonal employee since 2015 and seeing the protentional for growth, Mpuntshe elected to terminate her studies in favour of the opportunity which presented itself. She initially started off as a till operator whereafter she progressed to a supervisor. Later, she took up a higher position in administration and currently earns approximately R7,650.00 after deductions. She described the family unit in which she and the plaintiff grew up in as supportive, with value being attached to education. Her cross examination served to elicit further

⁸ Referred to as 'my cousin's sister' by Mpuntshe in evidence.

information about the current position held by Mpuntshe and her future prospects for growth within the organisation.

[28] I accordingly proceed on the basis that the calculation of the plaintiff's past loss of income is to be approached on the accepted evidence as set out above (subject to the application of appropriate contingencies), with her future loss of earning capacity based on the scenario described in paragraphs [18] and [19] of this judgment. The actuarial report, which is unchallenged as to its calculation, is based on the (now) accepted evidence. I accordingly turn to the appropriate contingency deductions.

[29] The plaintiff's counsel submitted that a contingency deduction of 5% ought to be applied to the plaintiff's past loss of income, with 20% being appropriate, in the circumstances of this matter, in respect of her future loss of earning capacity. The submissions on behalf of the plaintiff mirrors the contingency deductions, which have been applied in the actuarial calculation. On behalf of the defendant, it was submitted that a larger than usual contingency deduction ought to be applied to the plaintiff's past loss of income, without advancing what this would be, with a contingency deduction of 25% to be applied to the plaintiff's future loss of earning capacity.

[30] It is settled law that the provision for contingencies is a matter of judicial discretion, which of necessity is a rough estimate.⁹ They are arbitrary and highly

⁹ *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA) at paras 5 and 8.

subjective,¹⁰ with the often-quoted passage in *Goodall v President Insurance Co Ltd*¹¹ being illustrative of this fact:

“In the assessment of a proper allowance for contingencies, arbitrary considerations must inevitably play a part, for the art or science of foretelling the future, so confidently practiced by ancient prophets and soothsayers, and by authors of a certain type of almanack, is not numbered among the qualifications for judicial office.”

[31] It was argued, on behalf of the plaintiff, that the contingency deduction to be applied in this matter (with reference to the so-called sliding scale to contingencies), for future loss of earning capacity, is 17.5% and accordingly, the application of a higher contingency deduction of 20% (as suggested on her behalf) was generous in the circumstances. It has become customary for the court to apply the sliding scale to contingencies, as referred to by Koch as follows:

“Sliding Scale: ½ per cent per year to retirement age, ie 25% for a child, 20% for a youth, and 10% in the middle age...”

[32] The application of the sliding scale is of course not an exact science, and by no means operates to usurp the adjudication of contingency deductions, which falls squarely within the court's discretion.

[33] In advancing its argument that a higher than 'normal' contingency deduction ought to be applied to the plaintiff's future loss of earning capacity, the defendant

¹⁰ *RAF v Kerridge* (1024/2017) [2018] ZASCA 151 (01 November 2018) at para 42.

¹¹ 1978 (1) SA 389 (W) (*Goodall*) at 392H-393A.

placed reliance on paragraph 10 of the joint minute compiled by the respective orthopaedic surgeons, which reads as follows:

“10. Life expectancy

We agree to the following:

Amputation patients are at a relatively higher risk of early mortality (due to cardiovascular abnormalities and other medical problems post amputation). We defer to the option of a life expectancy expert/physician in this regard.”

[34] Whilst I accept that no evidence of a life expectancy expert has been placed before me, I cannot close my eyes to the admitted opinion of the orthopaedic surgeons that amputation patients are at a relatively higher risk of early mortality. This, in any event, was the plaintiff's pleaded case if regard is had to paragraph 9.30 of her amended particulars of claim, which records that the plaintiff, *“being an amputee, now has a diminished life expectancy.”* This in no way detracts from the admitted fact that the plaintiff, pre-morbidly, would have worked up until the normal retirement age of 65, as postulated by Martiny (and taken into account in the actuarial calculation). The aforesaid risk, *albeit* that the extent of it is uncertain, is a factor which falls to be included in the assessment of the contingency deduction applicable to the plaintiff's future loss of earning capacity.

[35] On a consideration of the facts particular to the matter at hand and considering the usual factors which find application in the determination of contingency deductions, as well as the various arguments submitted on behalf of the respective parties, I am of the view that the application of a 7.5% contingency deduction in respect of the plaintiff's past loss of income is fair in the circumstances, particularly if regard is had to the lack of collateral. Insofar as the plaintiff's future

loss of earning capacity is concerned, I am of the view that there is merit in Mr Gajjar's submission that a reduction for contingencies ought to be applied, taking into account not only the usual vicissitudes of life, but also the plaintiff's diminished life expectancy. Having said that, I am further of the view that, but for this factor, the appropriate contingency deduction to be applied on the facts of this matter, would more appropriately have been in the region of 17.5%. Accordingly, in considering the overall contingency deduction to be made (inclusive of the plaintiff's diminished life expectancy on the basis of which it is before me), and in the absence of further evidence, I am satisfied that a contingency deduction of 20% as suggested by the plaintiff is fair and reasonable in the circumstances. I can see no reason as to why a higher contingency deduction ought to be applied.

[36] It is common cause that the plaintiff has received a disability grant in the sum of R90,731.00, which amount the parties agreed to have deducted from the plaintiff's past loss of income. In the result, the plaintiff's past loss of income amounts to R124,993.00. The actuarial calculation in respect of future loss of earning capacity in the amount of R5,286,894.00 falls to be accepted. Given the interim payments, to which I have referred, an amount of R3,000,000.00 is to be deducted from the plaintiff's overall award.

[37] There is no reason to depart from the usual cost order, that costs should follow the event. I am further of the view that the matter justified the employment of two counsel.

[38] In the result, the following order shall issue:

1. The defendant is directed to pay to the plaintiff the amount of R2,411,887.00 as damages for past and future loss of income and earning capacity, because of the injuries sustained by the plaintiff.
2. Payment of the aforesaid amount in paragraph 1 above shall be made directly to the plaintiff's attorney of record, Meyer Inc., trust account, details of which are as follows

Account Holder: M[...] I[...]
Bank: S[...] B[...]
Branch: P[...] E[...]
Branch code: 0[...]
Account Number: 0[...]

3. The defendant is directed to pay the plaintiff's costs of suit, including:

3.1 The reasonable qualifying and travelling expenses, if any, for:

- 3.1.1 Dr B Mchayo;
- 3.1.2 Dr M Aslam;
- 3.1.3 Dr M Eddles;
- 3.1.4 Mr G Goosen;
- 3.1.5 Dr P Crafford;
- 3.1.6 Mr I Meyer;
- 3.1.7 Ms A van Zyl;
- 3.1.8 Mr L Martiny;
- 3.1.9 Dr K Cronwright;
- 3.1.10 Mr L Moolman;
- 3.1.11 Arch Actuarial Consulting.

3.2 The costs of all joint minutes and supplementary reports of:

- 3.2.1 Dr M Aslam;
- 3.2.2 Ms A van Zyl;
- 3.2.3 Mr L Martiny;

3.2.4 Arch Actuarial Consulting.

3.3 The attendance and testifying fees of:

3.3.1 Mr L Martiny, for 6 and 7 September 2023;

3.3.2 Mr G Goosen for 6 September 2023.

3.4 The travelling costs, including flight tickets and accommodation, incurred by or on behalf of the plaintiff for Mr L Martiny's attendance at trial.

3.5 The reasonable costs of consultations involving plaintiff's counsel, attorneys and witnesses, in preparation for trial.

3.6 The costs of trial for 6, 7 and 8 September 2023.

3.7 The defendant is directed to pay the costs of two counsel, where so employed.

3.8 The defendant is directed to pay interest on the above amounts, at the prescribed legal rate calculated from:

3.8.1 14 calendar days after the date of this order until date of payment, in relation to paragraph 1 above; and

3.8.2 14 calendar days after the date of allocatur or written agreement until date of payment, in relation to paragraph 3 above.

4. The issue of the plaintiff's claim for past hospital and medical expenses be and is hereby separated in terms of Rule 33(4) from the remainder of the plaintiff's claim for damages, the determination thereof being postponed *sine die*.

I BANDS

JUDGE OF THE HIGH COURT

Heard: 6 to 8 September 2023

Delivered: 18 March 2024

Appearances:

For the Plaintiff: Adv A Frost (together with Adv K Pask)

Instructed by: Meyer Inc.

29 Bird Street

Central

Gqeberha

For the Defendant Adv GJ Gajjar

Instructed by: State Attorney, Gqeberha

29 Western Road, Central, Gqeberha