IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: **42022/2017**

In the matter between:

DELETE WHICHEVER IS NOT APPLICABLE (1) REPORTABLE: ~~YES~~ / NO. (2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO. (3) REVISED. DATE [redacted] SIGNATURE

TEBOGO PRECIOUS TSHOANE **PLAINTIFF**

and

THE ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

1.

1.1 The plaintiff, a 34 (thirty four) year old woman, instituted against the defendant for damages arising from a motor vehicle accident that occurred on 25 December 2015. At the hearing of the matter I was informed of the fact that merits has been conceded and that the defendant undertakes to pay 100% of the plaintiff's proven or agreed damages.

1.2 In the plaintiff's particulars of claim it is alleged that the plaintiff sustained the following injuries:

1.2.1 Multiple rib fractures;

1.2.2 A dislocated left pelvic bone; and

1.2.3 A deep wound on the plaintiff's left knee.

1.3 The plaintiff obtained medico-legal reports from the following experts in support of her claim:

1.3.1 Dr SM Mogaladi (Cardio Thoracic Surgeon);

1.3.2 Dr Jan DC Heymans (Orthopaedic Surgeon);

1.3.3 Sabatha Mogoane (Occupational Therapist);

1.3.4 PZ Zeeman (Chartered Accountant);

1.3.5 Dr LA Fine (Psychiatrist);

1.3.6 B Moodie (Industrial Psychologist);

1.3.7 Munro Actuaries (Actuary).

1.4 There was no appearance on behalf of the defendant when the matter commenced.

1.5 I was informed that the only dispute between the parties related to the plaintiff's claim for past and future loss of earnings. I was informed by plaintiff's counsel that he intended to call the following witnesses namely:

1.5.1 the plaintiff;

1.5.2 Mr Kgati;

1.5.3 Leonard Makole;

1.5.4 Mr B Moodie (Industrial Psychologist);

1.5.5 Willem Boshoff (Actuary).

1.6 I was informed that the remainder of the medico-legal reports were admitted by the defendant. I have not seen any express acceptance of the plaintiff's medico-legal reports by the defendant but I accept the correctness of what I was conveyed by plaintiff's counsel.

ANALYSIS OF THE MEDICO-LEGAL REPORTS:

2.

2.1 Medical Report by Dr SM Mogaladi (Cardio Thoracic Surgeon):

The salient aspects of this report are set out below:

"*According to Dr Mogaladi the plaintiff sustained the following injuries:*

1. *Blunt chest injury;*

2. *Multiple ribs fractured both sides;*

3. *Left hemothorax;*

4. *Left hip fracture dislocation;*

5. *Left hand laceration on the dorsal aspect.*

The plaintiff complains of left sided chest pains with shortness of breath and left hip pain. She walks with an antalgic gait and she has constant pain that requires *intermittent analgesia. Prior to this accident, the plaintiff sustained a left femur fracture in May 2005.*

The plaintiff is unable to lift heavy objects and walk fast. She also has disfiguring scars on her left arm and knee.

The clinical evaluation reveals good entry in both lungs bilaterally. There are no abnormal breathe sounds and the plaintiff is able to inhale deeply without eliciting pleuritic chest pain. She has no tenderness over the drain insertion site and ribs fractures laterally.

Dr Mogaladi concludes by indicating that the plaintiff sustained multiple rib fractures on the left with orthopaedic injuries. She has malunion of ribs 4 – 7 with good bone healing. This could be responsible for her chronic pain due to nerve compression by the bone callus. She will benefit from conservative management as further surgical interventions may result in more harm due to the long time period that has lapsed after her injuries."

2.2 Medical Report by Dr Jan DC Heymans (Orthopaedic Surgeon):

The salient aspect of this report are set out below:

"*According to Dr Heymans the plaintiff sustained the following injuries:*

1. *A soft tissue injury to her left hand;*

2. *A chest injury with multiple rib fractures on the left sided hemothorax;*

3. *Soft tissue injuries to her left knee and a dislocation of her left hip.*

The plaintiff was taken to the Pietersburg Hospital where her hip was reduced and she was treated conservatively.

At the time of the accident the plaintiff was self-employed as a caterer. After the accident she was on sick leave for 1 year before resuming her duties. At present the plaintiff is still employed as a caterer.

The plaintiff complains about severe chest pain. She states that she is unable to lift her left arm due to chest pain and she has difficulty talking due to chest pain. The plaintiff also complains about pain and discomfort in her left hip.

On examination, the plaintiff mobilises with an antalgic gait. The plaintiff has severe tenderness over the left hemothorax extending to the left shoulder. The plaintiff is unable to lift her left arm due to chest pain. Examination of the left hip reveals joint tenderness with decreased range of motion in the hip.

The plaintiff completed matric. At the time of the accident she was self-employed as a caterer. After the accident she was on sick leave for 1 (one) year before resuming her duties. At present the plaintiff is still self-employed as a caterer.

With the recommended treatment, the plaintiff's orthopaedic symptoms should clear up to such an extent that she will only be fit to do light duties only. She will not be able to handle heavy objects or to do strenuous work and should avoid standing for prolonged periods or walking on uneven surfaces. It should be noted that the plaintiff is not an equal competitor in the open labour market."

2.3 Medical Report by Dr Viller (Pulmonologist):

The salient aspect of this report are set out below:

"*Mrs Tshoane suffered chest and orthopaedic injuries in the accident that occurred on 25/12/2015. There is a nexus between the accident, treatment required, as well as long-term sequelae in terms of ongoing orthopaedic and respiratory symptoms.*

1.4 On examination, tenderness of the chest wall remains over the area affected. Although she healed well from her chest injury, long-term pain is common in the majority of blunt trauma patients.

1.6 A chest x-ray 15/04/2019 did not reveal parenchymal decease and diaphragmatic movement was normal, excluding phrenic nerve injury. No malunited rib fractures noted.

1.8 The pneumothorax parse carries a no long-term sequelae in the absence of additional chronic respiratory decease.

1.9.3 Physiotherapy and pulmonary rehabilitation will aid in decreasing pain an increasing functional status and conditioning.

2.2 It is clear that a physical ability is limited in terms of her running her own business, for which there is a physical demand (lifting, carrying and moving heavy equipment)."

2.4 Medical Report by S Mogoane (Occupational Therapist):

The salient aspect of this report are set out below:

"2.1 She reported that she was involved in a motor vehicle accident in 2005. She reportedly sustained a left femur fracture and it was managed with ORIF which remains in situ. After this accident, she struggled to stand for long or lift heavy objects due to left thigh pain. She continues to suffer left thigh pain which she states it has worsened following this accident in 2015.

5.1 SUMMARY OF ASSESSMENT FINDINGS:

a. Ms Tshoane was 32 years, 11 months old at the time of this consultation.

b. *She has a Grade 12, Business Administration and Basic Ambulance Assistance Certificates. She also has a code 10 driving licence. Other than that, she has no other vocational training and skills.*

6.2 *FUNCTIONAL CAPACITY AND EMPLOYMENT POTENTIAL:*

a) *Throughout her working life thus far, Ms Tshoane generated an income by working on self-employment basis. She started in the year 2008/9, thus after the accident in 2005. She sold food at a taxi rank, baked and sold scones from home and was a tenderpreneur. These was still the case at the time of this accident in December 2015.*

c. *Following the accident, she suffered financial loss siting that she stopped her cooking and food selling business and she also stopped baking and selling scones. She stated that she struggled to chop vegetables or cut meat due to the left hand weakness and to stand for long when cooking due to the left hip and thigh pain. Her assistant was the only person responsible for cook and as a result, the business was slow and did not make much profit. She added that she could not continue to bake to injuries sustained. She closed her other business in June 2018.*

d. *She stated that she continues to work on a self-employment basis, applying for tenders. She no longer applies for catering tenders due to her physical limitations with resultant limitations. She applies only for supplied tenders. After securing a tender, she hires a person to help her purchase and supply the requested orders.*

Given her overall physical presentation and expert opinions, Ms Tshoane is ideally suited for sedentary or light type of work and this should be done with *reasonable accommodation. She is unsuited for any type of work that requires strong ability or agility skills, sustenance of static positions such as sitting or standing constantly or sustaining dynamic positions or performance of tasks that requires gross involvement of both her upper and lower limbs as well as working above head level. Furthermore, she is not suited for tasks that require bilateral hand use, such includes her aspired work of securing an administrative work. She will need reasonable accommodation which includes frequent postural changes, taking rest breaks in between her duties and to consistently comply with joint savings principles to avoid undue strain to her affected upper and lower extremities.*

Her overall physical capacity is and would remain compromised and this is due to injuries sustained.

Given her residual functional capacity which is compromised by the sequelae of the accident sustained injuries, Ms Tshoane is considered an unequal competitor and a vulnerable employee in the open labour market.

The writer opines that Ms Tshoane should cope with managing her business or working on self-employment basis. She however will need to employ people for assistance. She will be limited to performing sedentary and light tasks only. Even in these job parameters, she will however require reasonable accommodations as discussed above."

2.5 Medical Report by Dr LA Fine (Psychiatrist):

The salient aspects of the report of Dr Fine are set out below:

"She passed Grade 12 without repeating any years, and then studied at Business Management College, and then worked for RTT Couriers for 2 years and then was self-employed.

The plaintiff presents with symptoms of post-traumatic stress order and of depression, secondary to the effects of her physical injuries, impairing her ability to perform and to enjoy her normal activities of daily living and life amenities."

2.6 Medical Report by PD Zeeman (Chartered Accountant):

The salient aspects of the report of Mr Zeeman are set out below:

"At the time of the accident the plaintiff was reportedly self-employed as a caterer preparing and selling African cuisine meals at the local taxi rank, catering at taxi association meetings and catering for a variety of clients on a tender basis.

Following the accident on 25 December 2015, the plaintiff took a period of 1 year to recuperate, earning no income during the period of recuperation. The plaintiff returned to her business some time during early January 2017.

After reopening her business, the plaintiff reportedly found that due to the sequelae of the injuries suffered by her in the accident of 25 December 2015, she could not perform her post-accident work as a caterer to the same standards or quantities she could pre-accident – as a result of which she has suffered a past loss of earnings and will suffer a future loss of earnings.

I have taken specific note of the report of Mr Moodie and his voluminous reporting of plaintiff's level of earning and earning activities, pre- and post-accident, as verbally obtained by him from the plaintiff.

The only documentation received by Mr Moodie from the plaintiff are the bank statements of Previc Trading and Projects (Pty) Ltd as reported on pages 25 to 42 of his report. To determine the broad monthly movements of the bank account, I have prepared the attached schedule 1. This schedule shows that the coverage thereof is all post-accident with large gaps in coverage that occurred – gaps which Mr Moodie explains by reporting that plaintiff only handed those bank statements which contained inflows of funds, to him.

In order to calculate a loss of income claim, it has to be determined what can reasonably be expected the likely income of the plaintiff would have been but for the accident, and what it has been and will likely be having regard to the accident.

The absence of independently verifiable information regarding the plaintiff's past and future loss of earnings, make the attainment of the above stated objectives impossible."

2.7 Medical Report by B Moodie (Industrial Psychologist):

The salient aspects of the report of Dr Moodie are set out below:

"*The plaintiff's qualifications include a one year certificate obtained in Business Administration was well as a one year Basic Ambulance Assistance Course that the plaintiff completed in 2013.*

The plaintiff previously worked as a self-employed courier / delivery person from 2008 until 2014 and she earned approximately R5,000.00 per month. In January 2014 she sold her Corsa bakkie and used the money to start up a new business under the company Previc Trading and Projects CC. She registered her company with the Companies and Intellectual Property Commission in

October 2014 using the money from selling her Corsa bakkie. She also put in a small deposit on a Hyundai i20 (2014 model) which she purchased on finance.

She cooked African cuisine at the local taxi rank in Pankop and prepared food for the taxi association meetings. She would transport the foods and necessary equipment from home to the taxi rank making use of her Hyundai i20. She set up a stand at the taxi rank and made use of portable gas stoves to prepare meals. Ms Tshoane also applied for tenders at the local municipality.

Her tenders were catering tenders which required prepare and supply food and beverages for conferences, meetings or events. She reported securing approximately 5 tenders from the municipality per annum and made use of their kitchen and equipment. According to Ms Tshoane she primarily received an income from selling meals at the taxi rank, catering for the taxi association tenders.

She reported selling approximately 50 meals per day at R30.00 each (pap and sheba).

Her average gross profit for selling meals at the taxi rank then amounted to R1,500.00 per day / R7,500.00 per week / R32,497.00 per month.

She reported that once a month she would cater for the taxi associations' meetings at R55.00 per head (meal and drink), for approximately 60 members, from which she would earn an average gross profit of R3,300.00.

Ms Tshoane furthermore reported that the tenders she secured at the municipality would be issued at R20,000.00 (gross profit) of which she would spend R12,000.00 on produce. The used the municipality's resources to prepare these meals.

According to Mr Moodie (based on the evidence provided to him by the plaintiff), the plaintiff made an average profit of R17,300.00 per month / R207,610.00 per annum.

Post-accident the plaintiff was allegedly unable to cope with the work herself, as a result of her pain and accident related difficulties. The plaintiff allegedly battled with the pain in her left arm and chest, she experienced difficulties loading her vehicle with stock and taking it to the taxi rank to prepare the meals. The pots and stock were too heavy for her to lift and caused her pain. Standing for long periods resulted in excessive pain in her hip. She battled to rest at night as a result of the pain and discomfort and was left fatigued in the morning and throughout the day.

The physical strain made her realise that she required assistance, so she employed an assistant on a daily basis at R200.00 per day. Ms Tshoane reported that the assistant would help with the carrying goods and the cooking. They worked at the taxi rank for approximately 2 months, before people started complaining about the change of quality of the food. Ms Tshoane felt that her passion for preparing meals had declined and she received complaints from her customers. Ms Tshoane reported that with the drop in sales and the cost of her assistant it was no longer profitable for her continue at the taxi rank on a daily basis, she furthermore did not see herself being able to continue due to these psychological and physical limitations.

According to Mr Moodie the plaintiff made a profit of R63,536.34 between March 2017 and November 2019. According to the plaintiff she does not earn an income every month. She supplied Mr Moodie with bank statements only for the months she earned an income.

It is noted that the plaintiff's 2019 bank statements reflect that she is spending most if not all of the money she received. On questioning as to why Ms Tshoane *was spending was spending all of her funds she indicated that small jobs don't allow for bulk buying so her costs are higher, she furthermore indicated that for events, she pays an assistant R250.00 per day to assist (when she is available) which also takes away from her profitability.*

She reported that she mainly does the work to assist people she knows but is no longer advertising herself as a business as she is in too much pain to perform her work on a daily basis or in the same capacity as she used to."

Pre-accident income potential:

At the time of the accident (December 2015), Ms Tshoane was working in a self-employed capacity as a caterer. There is no proof regarding Ms Tshoane's earnings pre-accident. Her reported earnings based on the information she provided regarding her income and expenses amount to average profit earnings of R17,300.00 per month / R207,610.00 per annum for 12 months a year of work. According to Mr Moodie the plaintiff's business could have grown by at least 20% per annum over a period of 5 years. This would have resulted in doubling her personal income (i.e. R415,220.00 per annum / R34,601.66 per month) by December 2020.

But for the accident the plaintiff would have continued working in the said capacity, of similar earnings, receiving an increase in profit only in line with inflation until normal retirement age (65 years).

Post-accident:

Ms Tshoane returned to her pre-accident work as a caterer in 2017. She battled with pain and limitations and felt like she was not preparing meals at the best of her abilities any longer. Complaints from her regular clients made her realise that she could not cope in her pre-accident capacity.

She consequently stopped working at the taxi rank, resulting in an approximate profit loss of R13,967.00 per month / R167,610.00 per annum. Ms Tshoane now also performs as a baker or a small time caterer when work is available from people she knows. These jobs are erratic and do not provide a stable income like her previous work at the taxi rank. Her profits have decreased significantly, as per bank statements received, she also now has to pay an assistant R250.00 per day.

According to Mr Moodie it is recommended that following her treatment, she be allowed a period of 2 – 3 months to restart business and find a permanent assistant. It is predicted that now, post-accident, Ms Tshoane would start her business on profit earnings of R3,000.00 to R4,000.00 per month increasing her earnings to on par with her pre-accident earnings after 1 year, i.e., R17,000.00 per month as she had proved that she had been able to earn that amount pre-accident after a period of 1 year. it is accepted that her career and earnings growth will thereafter increase as predicted pre-accident over a 5-year period. According to Mr Moodie the plaintiff will reach the same career in earnings growth over the predicted 5 years, eventually doubling her income, and then increasing her earnings in line with inflation only until the retirement, provided that she receive the recommended treatment and be provided with an assistant.

The estimated value of her assistant would be initially R250.00 per day – 6 days per week. These earnings will eventually escalate to an amount of R320.00 per day over a period of 5 years; this amount does not account for overtime that will inevitably occur due to events usually occurring on weekends and lasting well into the evening. Ms Tshoane will have to remunerate her assistant well in order to keep him/her and prevent them from starting their own company to work as her competition. Therefore, an annual allowance of R78,000.00 (exclusive of overtime for weekend or late-night shifts) should be initially accounted for, increasing to R99,832.00 per annum over 5 years. It is suggested that Ms Tshoane's loss of *income would then be based on the grounds that she would have to employ such an assistant in order to continue with her business."*

EVIDENCE OF THE PLAINTIFF:

4.

4.1 The catering business of the Plaintiff was conducted in a Close Corporation namely Previc Trading and Projects CC. No evidence was initially presented at to who the members are of this Close Corporation and what the respective members interest is.

4.2 At the end of the Plaintiff's evidence, I sought clarification from the bench and was then informed that the Close Corporation in fact had two members but that she had bought out the other member. No documents were discovered or presented in evidence in this regard.

4.3 The bank statements of the business accordingly do not reflect her own personal income but reflects the income of the business.

4.4 The plaintiff was unaware of what she spent per month in terms of expenses for this catering business.

4.5 She was also unsure about the income she received per month.

4.6 The figures that she mentioned did not accord with the figures recorded in the comprehensive report of Mr Moodie.

4.7 It further became evident during the plaintiff's evidence that the plaintiff already had an assistant on a daily basis prior to the accident and the plaintiff paid this assistant an amount of R1,000.00 per month. This was not addressed in any of the expert reports. The plaintiff's claim for loss of earnings is premised on the fact that the plaintiff requires an assistant after the accident in question.

4.8 Prior to the accident in question, this assistant helped the plaintiff with the carrying of heavy pots as well as the cleaning thereof as well as other heavy work. This is similar to the work that the plaintiff requires assistance for post-accident.

4.9 In the report of Mr Moodie it is alleged that the Plaintiff earned a fairly significant amount of profit per month for a food caterer/hawker. The plaintiff could however not provide any meaningful response as to why there was a complete lack of proof of the plaintiff's pre-morbid income.

4.10 The plaintiff alleges to have made an average net profit of R17,000.00 per month. When I asked her what she did do with all this extra income every month, she laughed inappropriately. When this question was repeated, she responded vaguely by indicating that she put this money in her "secret place".

4.11 The plaintiff could provide no meaningful answer why all this extra money was not banked as she did have a bank account at the time.

4.12 In response to her question why she failed to present bank statements, she indicated that because she was in hospital "*they say my bank is closed*". This response makes no sense as the plaintiff was only hospitalised for a period of 3 (three) weeks according to the medico-legal reports.

4.13 As far as the plaintiff's annual tax returns are concerned, she indicated that she has filed a tax return every year except for the last year. None of these tax returns were presented to court during evidence. According to the plaintiff, she returned to employment after 4 (four) months. This evidence is at variance with what is recorded in all the medico-legal reports where it was alleged that the plaintiff only returned to work in 2017, i.e. more than a year after the collision occurred.

4.14 The plaintiff further testified that the business had a Nedbank bank account. According to the plaintiff, the bank just closed this account in 2016. She did not ask for statements.

ANALYSIS OF THE PLAINTIFF'S EVIDENCE:

5.

5.1 The plaintiff's evidence was vague and contradictory. During her evidence in chief she failed to disclose that she was only a partner in the catering business. This had to be elicited from further questions posed by the court.

5.2 The plaintiff's entire claim is premised on the fact that she would need an assistant post-accident to help her with the carrying of pots as well as the lifting of other heavy equipment. She failed to disclose in her evidence in chief that she in fact already had an assistant pre-accident. This once again was elicited by the court.

5.3 The plaintiff could provide no meaningful answer as to why she failed to produce the bank statements of the business or all of her own personal bank statements (as opposed to the limited bank statements that were discovered). The plaintiff's evidence with regard to what she earned per month was at variance with what was contained or what was reported to Mr Moodie. The plaintiff further could not give an accurate indication of what she spent per month on stock.

5.4 No evidence was presented whatsoever about the alleged growth of the business pre-morbidly. Moreover, no evidence was presented of what amount (if any) the plaintiff paid her business partner when she took over the business in 2015. It stands to reason that if the business was as profitable pre-accident as the plaintiff alleges, then the plaintiff's business partner would have been entitled to some compensation after he sold his share of the business to the plaintiff.

5.5 In **Southern Insurance Association v Baily N.O at 116 G to 117 A** where Nicholson JA held:

"Where the method of actuarial computation is adopted, it does not mean that the trial judge is "tide down by inexorable actuarial calculations." He has a "large discretion to award what he considers right" (per Holmes JA in Legal Insurance Company Ltd v Botes 1963 (1) SA 608 (A) at 611 F). One of the elements in exercising that discretion is the making of a discount for "contingencies" or the "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 to general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case. See Van der Plaats v South African Mutual Fire and General Insurance Co Ltd 1980 (3) SA 105 (A) at 114 - 115. The rate of the discount cannot of course be assessed on any logical basis – the

assessment must be largely arbitrary and must depend upon the trial judge's impression of the case.

COST OF AN ASSISTANT:

6.

6.1 According to the Occupational Therapist, the plaintiff sustained a left femur fracture in a motor vehicle accident in 2005. This fracture was managed with an open reduction internal fixation which remains *in situ*. After this accident the plaintiff struggled to stand for long or lift heavy objects due to left thigh pain. The plaintiff continues to suffer left thigh pain which she states was worsened following the accident in 2015.

6.2 It therefore seems clear that even prior to the accident in question, the plaintiff struggled to stand for long or to lift heavy objects due to left thigh pain as a result of the femur fracture that she sustained in a previous accident. It is for that reason that the plaintiff already required an assistant pre-accident.

6.3 During the plaintiff's evidence in chief, it was also confirmed that the plaintiff in fact employed an assistant on a daily basis and that this assistant was paid approximately R1,000.00 per month. This assistant helped the plaintiff with heavy lifting as well as the cleaning of pots, etc.

6.4 The plaintiff's case against the defendant is premised on the fact that the plaintiff will require an assistant on a daily basis for the rest of her life to enable the plaintiff to achieve her pre-morbid level of earnings. As set out above the plaintiff already required an assistant pre-accident as well.

6.5 I requested the plaintiff to provide me with an actuarial calculation that only deals with the cost of an assistant. In terms of the actuarial calculation provided, the cost of an assistant until the plaintiff reaches the retirement age of 65 (sixty-five) years, amounts to R1,997,300.00. The cost of this assistant is calculated at the monthly salary of R2,500.00 that ultimately growths to R3,200.00 per month coupled with inflationary increases. This amount is significantly more than the amount of R1,000.00 that the plaintiff paid for her previous assistant.

6.6 The only question that remains is what contingency deduction ought to be applied, keeping in mind that the plaintiff already employed an assistant pre-accident to assist the plaintiff with heavy lifting as well as the cleaning of pots, etc.

6.7 I am of the view that a contingency deduction of 50% is fair and reasonable.

6.8 Once a contingency deduction of 50% is applied, a future loss of earnings in the amount of R998,650.00 is calculated.

PAST LOSS OF EARNINGS:

7.

7.1 With the generally vague, unreliable and contradictory evidence of the plaintiff, it is impossible to establish with any degree of certainty what the plaintiff's pre-morbid earnings were.

7.2 Mr Moodie in his evidence seeks to overcome this hurdle by suggesting that the plaintiff could have earned an amount of R17,000.00 as an ambulance assistant and accordingly that figure should be used. During closing argument counsel for the plaintiff raised a similar argument. In quantifying the plaintiff's past loss of earnings, it is entire irrelevant to suggest that the plaintiff in an entirely different occupation could have earned a similar amount to the amount alleged by the plaintiff.

7.3 In my view the plaintiff's claim in respect of past loss of earnings cannot be quantified by the actuarial calculation proposed on behalf of the plaintiff.

7.4 Prior to commencing the catering business, the plaintiff earned approximately R5,000 per month. The Plaintiff returned to work approximately four months after the collision occurred. I accept that the plaintiff post-morbidly was not as productive as before.

7.5 Due to the contradictory and unreliable evidence I am unable to agree with the actuarial calculation pertaining to past loss of earnings. In my view this is a matter where a lump sum ought to be awarded. Given the plaintiff's previous earnings of R5,000 per month in 2014 and given the fact that the plaintiff earned some money post-accident.

7.6 I am of the view that an amount of R200,000 is a fair and reasonable amount in respect of past loss of income.

7.7 I am of the view that the plaintiff did not discharge the onus of showing that the catering business would have grown as postulated in the report of B Moodie. Accordingly save for the costs of the assistant and the lump sum awarded in repsect of past loss of earnings no additional amounts are awarded in respect of future loss of earnings.

7.8 I have been provided with a copy of a draft order by plaintiff's counsel. I have inserted the total figure of R1,198,650 (R998,650.00 + R200,000) in the draft order and I hereby make the draft order marked "X"an order of court.

SIGNED AT PRETORIA ON THIS 21st DAY OF JANUARY 2021.

[redacted]

MARITZ AJ

Counsel for Plaintiff: Adv. Phathutshedzo Tshavhungwe

On behalf of the Defendant: Unrepresented