



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
8/2/21	
DATE	SIGNATURE

CASE NO: 72371/2014

In the matter between:

L CHAIRIKIRA

Applicant

and

THE ROAD ACCIDENT FUND TRIBUNAL

First Respondent

THE ROAD ACCIDENT FUND

Second Respondent

**THE REGISTRAR OF THE HEALTH
PROFESSIONS COUNCIL OF SOUTH AFRICA**

Third Respondent

JUDGMENT

D S FOURIE, J:

[1] The applicant seeks to review a decision of the first respondent ("the Tribunal") determining whether injuries suffered by the applicant resulting from a motor vehicle accident qualify as a serious injury in terms of Act 56 of 1996. The Tribunal found that the applicant's injuries do not qualify as serious and therefore she is not entitled to payment of general damages. The application is opposed by the Tribunal as well as the third respondent.

INTRODUCTION

[2] The applicant was involved in a motor vehicle accident on 26 July 2012 during which she sustained certain injuries (to which reference will be made later). During December 2013 she lodged a third party claim against the second respondent and during 2014 she issued summons for payment of damages, including a claim for payment of non-pecuniary loss or general damages as it is often referred to.

[3] During June 2015 the issue of merits became settled. During July 2016 the quantum also became settled, save for the claim for payment of general damages which was rejected by the second respondent.

[4] During October 2016 the applicant disputed the second respondent's rejection. She was thereafter informed by the third respondent that her matter regarding this dispute had been placed on the agenda for consideration by the Tribunal on 18 March 2017. The Tribunal resolved that "*her injuries have healed reasonably well and does not qualify for general body damages*". Subsequent to this decision the applicant decided to institute these review proceedings.

LEGISLATIVE FRAMEWORK

[5] The RAF Act was amended with effect from 1 August 2008 to introduce provisions which brought about a whole new dispensation in the history of third party claims in this country. Of relevance to this application are the provisions relating to the Fund's obligation to compensate third parties for non-pecuniary

loss (general damages). The Fund's obligation in this regard is now limited to a serious injury contemplated in section 17(1) and (1A) of the RAF Act.

[6] Section 17(1A) provides as follows:

- “(a) Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.*
- (b) The assessment shall be carried out by a medical practitioner registered as such under the Health Professions Act, 1974 (Act 56 of 1974).”*

[7] Section 26(1A) empowers the Minister to make regulations regarding:

- “(a) The method of assessment to determine whether, for purposes of section 17, a serious injury has been incurred;*
- (b) Injuries which are, for the purpose of section 17, not regarded as serious injuries.*
- (c) The resolution of disputes arising from any matter provided for in this Act.”*

[8] Pursuant to the above powers, the Minister promulgated the Road Accident Fund Regulations, 2008 which came into operation on 1 August 2008. Of relevance to this application are the provisions of Regulation 3. It prescribes the method of assessment for determining serious injury. The relevant part of Regulation 3(1)(b) reads as follows:

- “(b) The medical practitioner shall assess whether the third party's injury is serious in accordance with the following method:*
- (i) ...*

- (ii) *If the injury resulted in 30% or more impairment of the Whole Person as provided in the AMA Guides, the injury shall be assessed as serious.*
- (iii) *An injury which does not result in 30% or more Impairment of the Whole Person may only be assessed as serious if that injury:*
 - (aa) *resulted in a serious long-term Impairment or loss of a body function;*
 - (bb) *constitutes permanent serious disfigurement;*
 - (cc) *resulted in severe long-term mental or severe long-term behavioural disturbance or disorder; or*
 - (dd) *resulted in loss of a foetus.”*

[9] Regulation 3(3) provides, *inter alia*, that a third party whose injury has been assessed in terms of these Regulations shall obtain from the medical practitioner concerned a serious injury assessment report and it shall be submitted to the Fund in accordance with the Act and Regulations. It provides further that the Fund shall only be obliged to compensate a third party for non-pecuniary loss if a claim is supported by a serious injury assessment report and the Fund is satisfied that the injury has been correctly assessed as serious in terms of the method provided in the Regulations.

[10] The manner in which an assessment may be disputed is set out in Regulation 3(4). This involves a referral of the dispute to the Tribunal. Regulation 3(11) provides for the powers of the Tribunal. This includes a determination whether in its majority view the injury concerned is serious in terms of the method set out in the Regulations.

CASE FOR THE APPLICANT

[11] According to the applicant she sustained the following injuries:

- (a) a fracture of the medial malleolus of the right ankle;
- (b) a deep laceration wound in the right calf;
- (c) scarring and disfigurement;
- (d) post-traumatic stress disorder;
- (e) depression;
- (f) severe anxiety.

[12] On 23 January 2014 Dr Enslin, an Independent Medical Examiner, assessed the applicant's injuries as required by Regulation 3(1). He completed a Serious Injury Assessment Report and attached an addendum thereto. According to him the injuries have not resulted in a 30% Impairment of the Whole Person, but the applicant qualifies under the narrative test (Regulation 3(1)(b)(iii)). He is of the view that she has suffered serious long-term impairment and serious permanent disfigurement. He also pointed out that the applicant has symptoms of a post-traumatic stress disorder and that she should be examined by a Clinical Psychologist.

[13] On 17 February 2016 Ms Francke, a Clinical Psychologist, assessed the applicant's psychological injuries in terms of Regulation 3(1) of the RAF Act. She likewise completed a Serious Injury Assessment form and furthermore compiled a detailed neuropsychological report, in terms of which she qualified the applicant's psychological injuries as serious.

[14] According to Ms Francke the applicant suffers from symptoms associated with major depression, severe anxiety and post-traumatic stress. She is of the view that the post-traumatic stress disorder is a result of the accident in which the applicant was involved on 26 July 2012 and that *“the unique symptom presentation and long-term symptomatology has its origin in the trauma related to this accident”*.

[15] She indicated in the Serious Injury Assessment form that according to the narrative test these injuries resulted in *“severe long-term mental or severe long-term behavioural disturbance or disorder”* and she recommended (in her medico-legal report) that the applicant *“needs urgent and adequate psychiatric and psychological intervention for her severe symptoms”*.

[16] A copy of the Serious Injury Assessment form, completed by Dr Enslin as well as a copy of his addendum report attached thereto, were served on the second respondent's attorneys on 25 March 2015. Thereafter, on 15 July 2016 the applicant's attorneys also served a copy of the Serious Injury Assessment form completed by Ms Francke together with a copy of her medico-legal report. The respondent rejected both assessments in terms of Regulation 3(3)(d)(i) in a letter dated 26 July 2016. No reasons were given why the assessment by Ms Francke and her neuropsychological report were rejected.

[17] On 19 October 2016 the applicant's attorneys disputed the rejection of the Serious Injury Assessment reports in terms of Regulation 3(4) of the Act. The applicant was then informed by the third respondent that the matter had been placed on the agenda for consideration by the first respondent on 18 March

2017. On that date the first respondent resolved that the applicant does not qualify for general bodily damages. This decision was communicated by the third respondent to the applicant on 18 May 2017 and it reads as follows:

- "i. Injuries: The claimant sustained a right ankle medial malleolus fracture and left tibia/fibula comminuted fractures.*
- ii. Right ankle fracture was treated conservatively and left tibia fibula fracture was fixed with intramedullary nail.*
- iii. Outcome: Both of these fractures have healed very well without any complications. Right ankle has not developed any osteoarthritis four years down the prap.*
- iv. Finding: Panel considers that her injuries have healed reasonably well and does not qualify for general bodily damages."*

[18] The applicant relies on the provisions of section 6(2) of the Promotion of Administrative Justice Act, No 3 of 2000 ("PAJA"). In this regard it is contended that the Tribunal failed to take into account the Serious Injury Assessment form completed by Ms Francke as well as her neuropsychological report which was attached thereto. It is further submitted that the first respondent did not furnish adequate reasons for their decision to reject the claim for payment of general damages, more particularly in respect of the psychological injuries suffered by the applicant.

[19] This motivated the applicant's attorney to request further reasons as well as the record of proceedings from the third respondent in order to ascertain if Ms Francke's assessment and report was considered at all. According to the applicant her attorney's *"did not have the courtesy of a response from the third*

respondent to date". It is therefore also contended that the administrative action taken by the first respondent was not procedurally fair as the applicant's case was not considered fully and the action was therefore procedurally unfair. It is specifically pointed out that the first respondent failed to act reasonably due to the fact that they failed to consider all the information submitted by the applicant's attorneys when determining the seriousness of her injury.

CASE FOR THE FIRST AND THIRD RESPONDENTS

[20] In their answering affidavit, dated 2 February 2018, the first and third respondents raised two points *in limine*: the one is of non-joinder, stating that *"the first and third respondents are not parties to the main action"*. The main action refers to the action that was instituted by the applicant (as plaintiff) against the second respondent (as defendant) for payment of damages. The other is that the reports upon which the applicant relies *"are mere documents and not supported by evidence ... (as) there are no confirmatory affidavits from the authors of the reports"*.

[21] The first and third respondents also addressed the merits of this application. In paragraph 62 of the answering affidavit a general explanation is given regarding the process which is followed by the Tribunal when considering appeals. It reads as follows:

"The analysis also includes a perusal of the prescribed forms, namely the RAF1, RAF4 and RAF5. The most significant of the three is the RAF4. The Tribunal would also analyse photographs, actuarial reports (if available) and all other reports from other health care professionals (e.g. occupational who have performed a physical examination of the third party) in order to supplement the primary medical diagnosis and highlighted the impact of the injury on the third party's daily activities."

[22] In paragraph 75 a further explanation is given regarding the evaluation process. It reads as follows:

“The Tribunal discusses each case and evaluates all clinical reports and other related reports contained in each appeal. Included in the discussions are matters relating to key findings and any inconsistencies between the clinical reports provided. The Tribunal evaluates the data provided on the RAF 4 form and correlates it with objective clinical studies and reports provided by the various specialists who examined the third party.”

[23] With regard to the applicant's appeal that was put before the Tribunal, the following explanation is given (par 80):

“Prior to the meeting as above, I together with other members of the Tribunal were provided with a pack of documents, containing among others, the applicant's appeal application and its supporting medical reports. The applicant's appeal application included all the documents referred to in annexure ‘H’ of the founding affidavit.”

[24] Annexure “H” is a letter by the applicant's attorney dated 15 October 2016 which was addressed to the third respondent. The documents referred to include, among others, the RAF 4 form (serious injury assessment report) completed by Dr Enslin together with his addendum report, a report by Dr Liebenberg as well as the RAF 4 form completed by Ms Francke together with a copy of her neuropsychological report. It is then explained by the Tribunal that *“we all independently considered the content of the application and analysed all the reports”*.

[25] It is denied by the Tribunal that the conclusions reached by Dr Liebenberg, Ms Francke and Dr Enslin *“regarding the applicant qualifying in*

terms of the narrative test are correct conclusions". It is then also alleged (in par 98.3) that the applicant in any event *"did not refer the psychological injuries to the first respondent according to annexure 'H'"*. In addition thereto it is further explained that:

"The irregularity of Ms Eide Francke completing the serious injury assessment did not influence our decision as the Tribunal. In law, there was no need to note a formal objection relating thereto. We, as the Tribunal considered all the relevant factors to be taken into account when making the decision ... the referral of the dispute was never about the psychological injuries that the applicant now attempts to make it about. We, as the Tribunal did not need to obtain experts in other areas of expertise."

(Paragraphs 102.2, 102.3 and 103.3.)

[26] In response to an allegation by the applicant that the Tribunal failed to take a decision in respect of the alleged psychological injuries as well as the serious injury assessment report completed by Me Francke, the following answer is given (paragraph 106.2):

"I deny that a decision in law was required to be taken in respect of the psychological injuries as well as the serious injury assessment by Ms Eddie Francke".

[27] According to the answering affidavit the members of the Tribunal have the necessary expertise to have made conclusions relating to whether or not the applicant qualified for general damages under the narrative test, that the Tribunal applied its mind and considered all the relevant factors that ought to have been considered and that there *"is a rational connection between the decision we made and the documents that were before us"*. It is then contended that the applicant has failed to make out a proper case.

THE RECORD OF PROCEEDINGS

[28] According to the record of proceedings it appears that various documents had been made available for consideration by the Tribunal. These documents include, among others, the following:

- (a) a letter by the applicant's attorneys dated 15 October 2016 (annexure "H" referred to above) referring to certain annexures attached thereto;
- (b) the RAF 4 form completed by Dr Enslin and his addendum report attached thereto;
- (c) a medico-legal report by Dr Liebenberg (orthopaedic surgeon);
- (d) a medico-legal report by Dr Theron (orthopaedic surgeon);
- (e) a medical-legal report by Dr Gordon (plastic and reconstructive surgeon);
- (f) reports by radiologists;
- (g) the RAF 4 form completed by Ms Francke together with her neuropsychological report attached thereto.

DISCUSSION

[29] The main thrust of the argument presented on behalf of the applicant is that the Tribunal failed to take into account the serious injury assessment form

completed by Ms Francke and her neuropsychological report attached thereto. Therefore, so it was contended, the decision taken by the Tribunal should be reviewed and set aside as relevant considerations were not considered and the action itself is not rationally connected to the reasons given for it by the Tribunal.

[30] Counsel for the respondents wisely decided not to persist with the points *in limine* for reasons which are quite obvious. In terms of the provisions of section 17 of the Road Accident Fund Act it is the second respondent who is obliged to compensate a third party and not the first and third respondents. It was therefore not necessary to have joined them as they had no interest in that litigation.

[31] Second, the serious injury assessment reports as well as the documents attached thereto comprise the records of proceedings. These are the documents which served before the Tribunal and which were apparently considered by the Tribunal without them having been confirmed under oath. The same documents have now been put before this Court for consideration. Section 6(1) of PAJA provides that any person may institute proceedings in a Court for the judicial review of an administrative action, i.e. the decision that was taken by the first respondent. It is not the duty of the applicant to prepare the record of proceedings, neither was it necessary for purposes of this application to ensure that the serious injury assessment reports and other reports attached thereto, are confirmed under oath. Put differently, it is the manner in which the decision of the Tribunal was taken which should now be considered and not the correctness of the reports. In the result I conclude that there is no merit in the points *in limine*.

[32] Returning to the merits, counsel for the Tribunal pointed out that a Court, in review proceedings, cannot interfere with a decision simply because it disagrees with it, as long as the purpose sought to be achieved by the exercise of public power was within the authority of the functionary and is, viewed objectively, rational (*Pharmaceutical Manufacturers Association of South Africa and Another: In re: Ex parte President of the Republic of South Africa and Others* 2000 (2) SA 647 (CC) at par 85). It was further submitted that the Tribunal, in performing its functions, had considered all of the reports which served before it, including all of the documents referred to in annexure "H" to the founding affidavit.

[33] The first question to be considered is whether or not the serious injury assessment form ("RAF 4 form") which was completed by Ms Francke, a clinical psychologist, together with her neuropsychological report, were indeed part of the documents that served before the Tribunal. According to the record of proceedings these documents, together with all the other reports referred to above (par 28) were indeed part of the appeal record that served before the Tribunal. This also appears from annexure "H", to which these documents were attached, and which is included in the record of proceedings. This is further confirmed in the answering affidavit where it is stated that the applicant's appeal application "*included all the documents referred to in annexure 'H' of the founding affidavit.*"

[34] The allegation by the Tribunal that the applicant "*did not refer the psychological injuries to the first respondent*" (the Tribunal) and "*the referral of the dispute was never about the psychological injuries that the applicant now*

attempts to make" is not correct. First, the serious injury assessment report completed by Dr Enslin (with annexures thereto) as well as the serious injury assessment report completed by Ms Francke (and the annexures thereto) were both served on the second respondent's attorneys of record on 25 March 2015 and 15 July 2016 respectively (annexure "E" and "F" to the founding affidavit). Thereafter, on 26 July 2016 the second respondent's attorneys of record notified the applicant, with reference to the reports completed by Dr Enslin and Ms Francke, that her injuries had not been correctly assessed and that the claim for payment of general damages is therefore rejected in terms of Regulation 3(3)(d)(i).

[35] Second, it is clearly stated in annexure "H" dated 15 October 2016 which was addressed to the third respondent for purposes of the appeal, that the applicant *"wishes to dispute the Road Accident Fund's rejection of the serious injury assessment report done by Dr Enslin and Dr Eide Francke"*. Furthermore, a copy of the serious injury assessment report completed by Ms Francke, together with her medico-legal report, were attached to this letter.

[36] Third, the applicant also filed a Notification of Dispute (RAF 5) which is part of the record of proceedings. In the annexure thereto (paragraphs 9,10 and 11 thereof) reference is again made to the RAF 4 form completed by Ms Francke, her medico-legal report attached thereto as well as the alleged psychological injuries suffered by the applicant. No doubt, it was made perfectly clear to all three respondents that at all times the applicant also relied on the serious injury assessment form completed by Ms Francke as well as her medico-legal report attached thereto, for purposes of the appeal.

[37] The next question to be considered is whether or not the Tribunal had taken into account the contents of the serious injury assessment form completed by Ms Francke as well as her neuropsychological report which was attached thereto? According to the answering affidavit it is explained that *“we all independently considered the content of the application and analysed all the reports”*. It is also pointed out that it was not necessary to have obtained experts in other areas of expertise. The deponent on behalf of the Tribunal then states (par 93.1) that *“I further deny that the conclusions reached by Dr Liebenberg, Ms Eide Francke and Dr Enslin regarding the applicant qualifying in terms of the narrative test are correct conclusions”*.

[38] At first glance it appears that there is *prima facie* evidence indicating that the serious injury assessment form completed by Ms Francke, together with her neuropsychological report attached thereto, were apparently considered by the Tribunal as part of *“all the reports”*. It was further concluded, according to the explanation given, that the conclusions reached by Ms Francke are not correct and they were thereafter supposedly rejected. If the Tribunal was of the view that Ms Francke's conclusions are not correct and should be rejected, what are the reasons for having taken such a decision?

[39] No reasons for the rejection are provided in the answering affidavit or in the record of proceedings. The view that Ms Francke's conclusions are incorrect is a bald statement without any explanation. The Tribunal's decision in this regard, as more fully set out in annexure “A” to the founding affidavit, only relates to the orthopaedic injuries suffered by the applicant. There is no reference

whatsoever to her alleged psychological injuries or to the documents submitted by Ms Francke.

[40] According to the Tribunal's decision and reasons therefore (annexure "A" to the founding affidavit) it appears as if they were totally unaware of these alleged injuries, or if they were aware of it, that they failed to take it into account. Furthermore, the fact that the Tribunal is of the mistaken view that *"the referral of the dispute was never about the psychological injuries that the applicant now attempts to make"* creates the impression that they had never seen the RAF 4 form completed by Ms Francke (and her medico-legal report attached thereto), or that they never took the time to read these documents.

[41] Was it necessary to have taken into account the alleged psychological injuries as described by Ms Francke? According to the serious injury assessment form completed by Ms Francke and her neuropsychological report attached thereto, she qualified the applicant's psychological injuries as serious. In her opinion the applicant suffers from symptoms associated with major depression, severe anxiety and post-traumatic stress, all as a result of the accident in which the applicant was involved on 26 July 2012. She then concluded that according to the *"narrative test"*, these injuries resulted in *"severe long-term mental or severe long-term behavioural disturbance or disorder"* and that the applicant *"needs urgent and adequate psychiatric and psychological intervention for her severe symptoms"*.

[42] In Mngomezulu, Zamokwakhe Comfort v Road Accident Fund (04643/2010 [2011] ZAGP JHC (8 September 2011) Kgomo J said the following with regard to this narrative test (par33):

“The narrative test calls for an enquiry into various components of the persona including the physical, bodily, mental, psychological and even aesthetic features of an injured Plaintiff. It is inappropriate for a single medical expert to express himself or herself with any authority on the point of a finding in terms of the narrative test on all such facets of diminished capacity. On the contrary, it is appropriate and desirable if not proper that a RAF4 form be produced with regard to every particular and applicable medical discipline that is called for by Regulation 3(1)(b)(iii) in respect of each claimant individually detailing his specific and individual injuries and/or complaints.”

[43] I fully associate myself with this *dictum*. It would be nonsensical and irrational to exclude other expert reports in other fields of discipline (e.g. that of a Psychiatrist, Occupational Therapist, Clinical Psychologist, Educational Psychologist, etc), under circumstances where a RAF 4 form, duly completed by a medical practitioner and filed in terms of the Regulations, are also presented for consideration where necessary.

[44] This approach is clearly contemplated by the formulation of the narrative test (Regulation 3(1)(b)(iii)), also read with, for instance, Regulation 3(2)(b) where reference is made, not only to a “*medical practitioner*”, but also to a “*health care provider*” for purposes of collecting and collating information to facilitate an assessment. Another example is Regulation 3(8)(c) which provides that the Registrar (third respondent) may appoint an additional independent “*health practitioner*” with expertise in any “*health profession*” to assist the appeal tribunal in an advisory capacity. The reason for this approach is quite simple and fairly obvious: I think it can safely be assumed that not all medical practitioners in

this country are also registered, for instance, as Educational or Clinical Psychologists. Therefore, other reports by other experts practicing in other fields of discipline may also be relevant and necessary, if required, for purposes of an assessment in terms of the narrative test.

[45] In the present matter a RAF 4 form was completed by a medical practitioner, Dr Enslin (Regulation 3(1)(b)) who recommended that the applicant should also be examined by a Clinical Psychologist for purposes of the narrative test. This was done and further reports compiled by Ms Francke were also filed.

[46] The conclusion reached by Ms Francke clearly falls within the ambit of Regulation 3(1)(b)(iii)(cc) or the narrative test as it is also referred to. The opinion and conclusion of Ms Francke appear to be, at least *prima facie* and without deciding whether she is correct or not, to be important and therefore relevant for purposes of deciding whether or not the applicant qualifies under the narrative test for the payment of general damages, more particularly in respect of the alleged psychological injuries suffered by her. It was therefore necessary, in my view, for the Tribunal to also have considered the applicant's alleged psychological injuries as stipulated in the serious injury assessment form completed by Ms Francke and further motivated in her psychological report.

[47] Finally, after having considered all the evidence, can it really be said that the serious injury assessment form completed by Ms Francke, together with her neuropsychological report attached thereto, were in fact taken into account by the Tribunal? According to the evidence presented by the deponent on behalf of Tribunal, this question should, in my view, be answered in the negative.

[48] In summary, the reasons for this conclusion are the following: First, there is no reference whatsoever to the alleged psychological injuries suffered by the applicant in the Tribunal's reasons for their decision (annexure "A" to the founding affidavit). Second, the suggestion that these injuries were taken into account is a vague bald statement without any factual support. There is no indication in the record of proceedings or elsewhere (save for the bald statement itself) that it was indeed considered. Third, the Tribunal's denial now, long after the decision was taken, that the conclusions reached by Ms Francke are correct, is also a vague bare denial, again without any reasons given. Fourth, it is clear that the Tribunal laboured under the incorrect impression that the applicant "*did not refer the psychological injuries to the first respondent*" (the Tribunal) and "*referral of the dispute was never about the psychological injuries*". This mistaken view, twice expressed, unfortunately creates the impression that the Tribunal was totally unaware of those injuries or that they never took the time to consider the documents completed and filed by Ms Francke. This impression is further strengthened by the unsubstantiated and belated denial that "*a decision in law was required*" with regard to the psychological injuries as well as the assessment done by Ms Francke.

[49] In short, the objective facts and lack of reasons do not support the vague, bald, sketchy and to some extent contradictory explanations now given in the answering affidavit regarding Ms Francke's assessment. This manner of dealing with a relevant and important issue is unacceptable. In my view, and for these reasons, this *ex post facto* (afterwards) suggestion, given approximately 8 months after the decision was taken, that the alleged psychological injuries as explained by Ms Francke were indeed properly considered, without any written

record thereof, can therefore, on the Tribunal's own version, safely be rejected as an incorrect or mistaken recollection and conclusion about this issue (without suggesting any untruthfulness or dishonesty).

[50] In conclusion, I am of the view that the applicant has made out a proper case for the review and setting aside of the first respondent's decision in terms of the provisions of section 6(2)(e)(iii) of PAJA, as relevant considerations, such as the serious injury assessment report by Ms Francke and her neuropsychological report, were not considered by the Tribunal.

[51] Should the matter be referred back to the same Appeal Tribunal consisting of the same members? Taking into account the possibility that these members might already have compromised themselves (without deciding so) it is, in my view, preferable that the third respondent should appoint a new Appeal Tribunal consisting of other members.

ORDER

In the result I make the following order:

1. The finding and decision of the first respondent (Tribunal) dated 18 March 2017, to the effect that the applicant's *"injuries have healed reasonably well and does not qualify for general body damages"* in terms of section 17(1)(A) of the Road Accident Fund Act No 56 of 1996, are both reviewed and set aside;

of section 17(1)(A) of the Road Accident Fund Act No 56 of 1996, are both reviewed and set aside;

2. The third respondent is directed to appoint a new Appeal Tribunal to consider and decide whether or not a serious injury, as contemplated by section 17(1)(A) of the Road Accident Fund Act, read with the Regulations promulgated in terms thereof, has been suffered by the applicant, taking into account at least all the documents referred to in the letter by the applicant's attorney dated 15 October 2016 (annexure "H" to the founding affidavit), as well as those documents completed by Ms Francke (RAF 4 form and neuropsychological report);
3. The decision of the Appeal Tribunal referred to in paragraph 2 above must be taken by the Tribunal and conveyed by the third respondent to the applicant's attorneys of record, within 45 days from date of service of this order;
4. The first and third respondents (not in their personal capacities) are ordered to pay the costs of this application, jointly and severally.


D S FOURIE
JUDGE OF THE HIGH COURT
PRETORIA 8/2/21