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

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

Case number: 5637/2016

In the matter between:

ELIZABETH MAKUBERE LITSEO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

CORAM: DAFFUE, J

HEARD ON: 26 & 27 MARCH 2019

JUDGMENT BY: DAFFUE, J

DELIVERED ON: 2 MAY 2019

I Introduction

- [1] On 30 May 2017 the parties settled the merits of plaintiff's claim against the Road Accident Fund ("RAF") and by agreement an appropriate order was made. The RAF was also ordered to furnish the usual undertaking in terms of s 17(4)(a) of the Road Accident Fund Act, 56 of 1996.
- [2] As the parties could not reach a settlement in respect of the remaining disputes, the matter went on trial and it is now my task to write a judgment, incorporating appropriate orders.

II The parties

- [3] Plaintiff is Me Makubere Elizabeth Litseo, a 47 year old Lesotho citizen. She was 44 years old when she was injured in a motor vehicle collision which occurred on 29 November 2015. She was represented during the trial by Adv MDJ Steenkamp, duly instructed by Du Plooy Attorneys.
- [4] Defendant is the RAF represented by Adv J Nkhahle, duly instructed by Maduba Attorneys.

III The disputes

- [5] Plaintiff's claims for past and future loss of income and general damages are in dispute, mainly because the RAF was not prepared to accept plaintiff's version of her pre-morbid income as turned out during her cross-examination.

IV Plaintiff's *viva voce* evidence and an evaluation thereof

- [6] Plaintiff, a married woman and Lesotho citizen, worked as a machinist at a clothing factory in Lesotho for about ten years until

2005/2006. Since then and until the collision in which she was injured, she worked as a hawker. According to her she sold clothing which she bought in Gauteng from time to time – apparently every fortnight – as well as vegetables which she and he husband grew. She also planted sorghum which she sold.

- [7] Plaintiff's version in respect of her pre-morbid income-generating activities changed. Although not dealt with in her evidence, I cannot ignore her affidavit dated 26 January 2016, deposed to two months after the collision, which accompanied her claim documents. In this document she stated that she was a hawker selling clothing and vegetables, earning approximately R3 000.00 per month. She never mentioned in this affidavit or to any of the experts that she also grew and sold sorghum. In consultation with Mrs Kheswa, the RAF's Industrial Psychologist, she also did not refer to her clothing trade.
- [8] Plaintiff instructed her lawyer soon after the collision and I would have expected the lawyer to request her to safe-guard all documentation pertaining to her business. I accept that plaintiff, an informal trader, could not be expected to keep proper financial records, but the dearth of any records is of concern. Surely, plaintiff should have been able to obtain records from her supplier(s) in Gauteng to at least prove her costs of sales. Invoices and receipts would have served as objective and documentary evidence to support plaintiff's version, especially bearing in mind the discrepancies.
- [9] It was not easy to establish if plaintiff understands the concepts of turnover, gross profit and nett profit. Apparently she believed that her alleged 100% mark-up on the clothing constituted her nett income and for the moment forgot expenses such as *inter alia*

travelling costs. Ultimately it appeared from her evidence that she made a net profit of about R2 500.00 to R3 000.00 per month on the sale of clothing, less than R1 000.00 per month in respect of vegetable sales over a five month period per year and between R9 000.00 and R10 000.00 per year on her sorghum sales. She and her husband still grow and sell vegetables in bulk from home and their income is about R600.00 per month during a five month season. As said, there is no supporting documents to substantiate these sales.

- [10] The admitted reports and evidence of Dr Oelofse are clear: plaintiff cannot work as a hawker anymore. She cannot push a wheelbarrow containing vegetables as before or travel up and down to Gauteng to buy clothing stock. The only issue that needs to be considered is the veracity of plaintiff's evidence relating to her pre-morbid income in order to determine her past and future loss of income. The claim for loss of income was amended and increased substantially just prior to the quantum trial, leaving one with the sense that plaintiff's version to her lawyer changed with the time. Although her evidence is not contradicted, it does not have to be accepted as credible in all respects if sufficient doubt has been cast upon it. I have mentioned the lack of documentary evidence. Plaintiff testified that she and her husband worked together in order to grow the vegetables and presumably sorghum as well, if this evidence is accepted for the sake of the argument. The effect thereof is that she personally did not earn all the income from her vegetable and sorghum sales as her husband should be entitled to a portion. She failed to call her husband to confirm her version and no reasons have been advanced for such failure. Having said this, it must be accepted

that plaintiff earned some income pre-morbid. This will be dealt with again *infra*.

- [11] Plaintiff testified about her disability which I accept to be permanent based on the evidence of Dr Oelofse referred to *infra*. She must have suffered severe pain and is still suffering pain and extreme discomfort. She was hospitalised for two months until January 2016 whereafter she was bed-ridden for a further two months. Thereafter she ambulated with a wheelchair until Jun/July 2016. Since then she has been ambulating with a walking frame. She cannot sit or stand for long periods and when seated needs to elevate her legs to avoid swelling. She was healthy and enjoyed gardening before being injured. She used to transport her vegetables by pushing a wheelbarrow, but post-morbid has lost her ability to perform most of her previous income-generating activities. Although she worked as a machinist at a clothing factory as mentioned, she cannot operate a sewing machine at all. Now, her husband has to be in close proximity all the time to support her.

V The injuries of an orthopaedic nature

- [12] Dr Oelofse, a well-known orthopaedic surgeon whose expertise and evidence have not been challenged, testified about plaintiff's injuries. His detailed report, confirmed under oath, was admitted as exhibit A1. I wish to point out that Mr Steenkamp elected to refer to the paginated pages of the bundle with the title "Expert notices vol 1" whilst the report admitted as exhibit A1 is contained in the bundle with the title "Expert notices vol 3". For obvious reasons the paginated pages of the two reports differ and in order to avoid confusion I shall refer to the relevant paragraph numbers. Dr

Oelofse had little medical records of plaintiff available for perusal. It is apparent that he not only relied on the available documentation and plaintiff's version, but he had examined her in order to arrive at his conclusions. According to him plaintiff entered his consulting rooms, walking with a pronounced limp, despite an orthopaedic shoe and the assistance of a walking frame. His version was confirmed when plaintiff had great difficulty to ambulate about four metres from her seat to the witness stand.

- [13] Dr Oelofse described three separate injuries which he discussed separately in paragraphs 7, 8 and 9 of the report, *i.e.* to the right upper leg and knee, the right lower leg and ankle and the left knee and lower leg. The following extracts from his report are quoted *verbatim*:

"7. RIGHT UPPER LEG AND KNEE INJURY:

7.3 Current Symptoms and Complaints:

The patient complains of pain in her thigh.

She describes it as a nagging, daily pain.

The patient states that she experiences pain in her knee.

She struggles to bend or straighten her knee.

According to the patient, she cannot kneel or go down on her haunches.

She states that she is unable to climb stairs.

The patient states that even with the Orthotic shoe, she struggles to walk due to stiffness in her knee.

8. RIGHT LOWER LEG AND ANKLE INJURY:

8.3 Current Symptoms and Complaints:

The patient states that she experiences occasional pain in her right lower leg and ankle.

She states that the pain is aggravated by walking or standing for extended periods of time.

She sometimes experiences cramps in her calf after walking.

According to the patient, her leg gets tired easily.

9. LEFT KNEE AND LOWER LEG INJURY:

9.3 Current Symptoms and Complaints:

The patient states that she experiences pain in her knee every day.

She describes it as a stabbing pain and rates it as 8/10 on the pain scale.

According to the patient, the pain is aggravated by any form of physical activity.

She cannot sit or stand for extended periods of time.

She cannot walk without the assistance of a walking frame.

The patient states that she struggles to bend or straighten her knee.

She has to elevate her leg to alleviate swelling of her knee.

According to the patient, she is unable to function independently and needs help with most of her tasks.”

The reports deals in paragraphs 7.4 – 7.8, 8.4 – 8.8 and 9.4 - 9.8 with the doctor’s examination of the plaintiff in respect of the three different injuries, the radiological examination and his diagnosis. I quote:

“RIGHT UPPER LEG AND KNEE INJURY

7.4 Examination:

Scarring noted over the knee.

Visible shortening of the right leg.

Difficult to determine any form of atrophy of the quadriceps muscles due to obesity.

Leg length discrepancy of approximately 6 (six) cm (right leg shorter).

Pain on palpation over the fracture site.

No pain on palpation over the hip joint.

Pain on palpation over the medial and lateral patella-femoral joint.

Zohlen sign negative.

Pain on palpation over the medial and lateral knee joint.

No pain on palpation over the lateral knee joint.

Medial and lateral McMurray signs positive.

Movements of the hip:

Internal rotation right 35° left 5°

External rotation right 15° left 50°

Movements of the knee restricted and painful in the extremes.

7.7 Radiological Examination:

See attached report from Burger Radiologists dated 13 April 2017.

- Deformity of the right distal femur with severe shortening, overlapping and severe posterior angulation, with a varus angulation of 20°.
- Advanced osteo-arthritic changes in the knee joint and patella-femoral joint with joint space narrowing, sclerosis and osteophytosis.

7.8 Diagnosis:

- Mal united femur shaft fracture with:
 - 1) Painful fracture site
 - 2) Severe leg length discrepancy of more than 6cm
 - 3) Severe varus malunion of 20°
 - 4) Advanced post-traumatic osteo-arthritis of the knee joint.

RIGHT LOWER LEG AND ANKLE INJURY:

8.4 Examination:

Visible scarring noted over the lower leg and ankle.

Visible atrophy of the calf muscles.

Minimal swelling noted.

Pain on palpation over the medial and anterior ankle joint.

Ligaments are stable.

Movements are normal, but painful in the extremes.

8.8 Diagnosis:

United bimalleolar fractures with:

- i. Chronic pain
- ii. Post-traumatic osteo-arthritis of the ankle joint.

LEFT KNEE & LOWER LEG INJURY:

9.4 Examination:

Multiple visible healed scars over the knee and lower leg.

No visible deformity or atrophy.

It is painful on palpation over the medial and lateral patella-femoral joint.

It is painful on palpation over the medial and lateral knee joint.

Medial and lateral McMurray signs difficult to determine due to pain.

Pseudo-laxity of the lateral-collateral ligament.

Movements are normal, but painful in the extremes.

9.7 Radiological examination:

See attached report from Burger Radiologists dated 13 April 2017.

- Advanced osteo-arthritic changes in the knee and patella-femoral joint.
- Cortical remodulation with deformity of the lateral tibial plateau due to old healed fracture.
- Depression of the lateral tibial plateau with a notch, with alteration in the articular contour.

9.8 Diagnosis:

Depressed malunited lateral plateau fracture with:

- 1) Chronic pain
- 2) Advances post-traumatic osteo-arthritis of the knee.”

[14] Dr Oelofse stated the following in respect of plaintiff's employability:

“She will require multiple surgeries for her injuries in future.

It is my opinion that her productivity will not improve regardless of treatment and successful surgeries.

Her productivity will decrease as her symptoms increase and her pathology deteriorates.

I cannot see that she will be able to return to the same level of employment. It is therefore my opinion that she should be accommodated in a sedentary/light duty environment as determined by an Occupational Therapist, with immediate effect.

The injuries of this patient make her a **VERY UNFAIR COMPETITOR** in the open labour market.

I defer to the opinions of an Occupational Therapist and an Industrial Psychologist with regards to her future productivity, working ability and employment options.”

- [15] Dr Oelofse is of the opinion that plaintiff will have to undergo knee replacements in respect of both knees as well as an ankle arthrodesis. He concluded in his report that plaintiff’s injuries resulted in a Whole Person Impairment (WPI) of more than 30% and if accommodated in a sedentary, non-manual labour type environment as determined by an Occupational Therapist, she will be able to work to the age of 55 years, but if not so accommodated, she will not be able to work again. Consequently, in his opinion “... this patient will most probably never work again.” As mentioned, the doctor was not cross-examined.

VI The admitted evidence contained in the joint minutes

- [16] The following joint minutes were handed in by agreement:

- (a) between Drs Oelofse and HL Moloto as exhibit A, which Dr Oelofse confirmed during his testimony; an aspect to be noted is that Dr Oelofse agreed with Dr Moloto that

plaintiff's injuries did not result in a 30% WPI as stated in his report, although the experts agreed that the plaintiff qualified for compensation in accordance with the narrative test;

- (b) between the Occupational Therapists, Mrs Marli Grobler and Mrs Success Moagi as exhibit B and
- (c) between the Industrial Psychologists, Mesdames K Kotzé and M Kheswa as exhibit C.

[17] Save for the difference of opinion mentioned *supra*, the joint report of the orthopaedic surgeons, exhibit A, is in line with the evidence of Dr Oelofse.

[18] The Occupational Therapists agreed as follows in exhibit B and I quote from the second paragraph 2.2 to 2.3.1:

“2.2 Considering our evaluation findings, we agree that the consulted injured female lacks the physical residual capacity, agility and tolerance to meet the mobility i.e. walking, standing, dynamic postural – and load handling demands of work categorised as light, medium, heavy and very heavy.

2.2.1 The plaintiff in her post-accident injured state therefore lacks the physical capacity to meet the physical requirements of her pre-accident job of Hawker, with medium demands including extensive standing and walking.

2.2.1.1 Even with the recommended medical intervention and intensive rehabilitation, we do not expect that the plaintiff will ever return to her pre-accident occupational duties.

2.3 Although the plaintiff retains the physical ability to tend to seated tasks, we expect that the plaintiff will have difficulty working from a seated position with lower limb involvement i.e. *sitting while moving her*

ankle(s) and knee(s) in the operation of a foot lever as is required while operating a sewing machine because of the multi-joint degenerative changes, also excluding her from working as a factory seamstress as engaged in pre-accident.

2.3.1 Finding an office job in with only sedentary demands with a grade 9 level of education and no work experience in this regard is highly unlikely, leaving the plaintiff unemployed with he expected poor prognosis.”

[19] The Industrial Psychologists agreed as follows in paragraphs 14 – 18 of exhibit C:

- “14. We note Ms Litseo’s post-accident work history. Following the accident, she was unable to resume her pre-accident work role and remains unemployed, to date.
- 15. We note expert opinion regarding the impact of the accident on Ms Litseo’s work capacity and reference is given to their reports in this regard.
- 16. We therefore agree that Ms Litseo’s future career prospects and associated likely earnings have been nullified by the sequelae of the injuries sustained in the accident. A total loss of earnings had occurred.
- 17. We agree that for purposes of quantification of the claim, her pre-accident likely earnings should be used as a baseline.
- 18. We acknowledge that contingency deductions, if applicable, are the prerogative of the Court and/or a matter of negotiation between the legal parties.”

VII The claim for past and future loss of income

[20] Mr Johan Sauer, the actuary’s report was handed in by agreement as exhibit D. He provided two scenario’s and based his calculations on the joint minutes of the two Industrial Psychologists, exhibit C. The first calculation is based on the

version of plaintiff's expert, Mrs Kotzé, and the second on the RAF's expert, Mrs Kheswa. In the first scenario pre-morbid earnings of R70 093.00 *per annum* which equals R82 000.00 *per annum* in current monetary terms were used to calculate the loss. In the second scenario pre-morbid earnings of R34 800.00 *per annum* (R2 900.00 per month) as at the date of the injuries were used. I have often pointed out in the past when dealing with the evidence of experts, that if their assumptions are proved to be wrong, their expert conclusions become either meaningless, or subject to severe criticism. I shall endeavour to adjudicate the dispute to the best of my ability based on the accepted evidence.

- [21] The two Industrial Psychologists were not *ad idem* as to what plaintiff's pre-morbid income was. I refer to paragraphs 5, 9, 11 and 12 which I have not quoted. According to plaintiff's expert, plaintiff alleged to her, without validation, that she made a profit of about R 7000.00 per month. It was not established whether this was gross or nett profit. The expert submitted that plaintiff could have earned income associated with the earnings of informal traders and spaza shop owners on the upper quartile (R82 000.00 *per annum*) based on the Quantum Yearbook, 2019. The information provided to RAF's expert is earnings of between R2 400.00 and R3 400.00 per month. This is in line with plaintiff's initial version and also as stated to her own Occupational Therapist. Mrs Kheswa stated that it is difficult to postulate an earnings structure / career earnings for informally employed people because of several external and internal factors quoted and relied upon. I am in agreement with her viewpoint. If plaintiff did not reach the upper quartile of earnings for informal traders at her age, it would be difficult to reach it at a later stage. The socio-

economic circumstances in Lesotho, a country with a much higher unemployment rate than South Africa, and in particular the town, Pheku where plaintiff lives, have not been considered. I am not prepared to accept that the figures contained in the Quantum Yearbook can be used as a proper guide *in casu*.

- [22] I reiterate that plaintiff presented different versions of her pre-morbid income to the experts and even in court during her testimony as alluded to *supra*.
- [23] Mr Steenkamp submitted that plaintiff should be regarded as a credible witness. Consequently, so he submitted, the figures relied upon by her Industrial Psychologist, Mrs Kotzé, on which the actuary made his calculations in the first scenario shall be accepted for purposes of awarding an amount in respect of loss of income. The actuary deducted a 10% contingency in respect of future loss of income. Mr Steenkamp could not present any persuasive argument why the normal figure of 15% should not have been used. Mr Nkhahle invited me to find that plaintiff's pre-morbid income was R2 900.00 per month and that the loss should be calculated based on that, *i.e* that Mr Sauer's second scenario be accepted.
- [24] I am not prepared to be as liberal as assumed by the actuary in his first scenario and submitted by Mr Steenkamp. In my view the calculation in the second scenario is more in line with the loss of income suffered by plaintiff, even bearing in mind the uncertainty with which the court is confronted as stated *supra*. I shall finalise my comments in this regard when I make my conclusions *infra*.

VIII General damages

- [25] In considering the amount to be awarded for general damages it is acceptable to have regard to awards issued in comparative cases, although it is immediately recognized that it is hardly possible to find a case or cases that are on all fours with a particular set of facts. Ultimately, in determining general damages a broad discretion is exercised by the court based on what it considers fair and adequate compensation. The nature, severity and permanency of the injuries sustained, together with pain and suffering, disfigurement, permanent disability and the effect thereof on the person's lifestyle are aspects to be considered. Although I refer to several authorities *infra*, it is apparent that there is a dearth of recent judgments dealing with similar injuries.
- [26] Mr Steenkamp submitted that an amount of R800 000.00 should be awarded. He referred me to several judgments, *inter alia Smit v Padongelukkefonds*, Corbett and Honey, *Quantum of Damages* ("QOD"), vol V at E3-11 and *Mgudlwa v Road Accident Fund*, QOD, vol VI at E3-1. In *Smit* R320 000.00 was awarded to a 24 year old pregnant person who suffered fractures to her left femur (compromising the knee), her right femur, pelvis, left arm and left ankle. Internal fixations in both femurs and left arm were conducted. She also ambulated on a wheel chair initially and thereafter on crutches. She had to learn to walk again, and would be walking permanently with a limp. Future orthopedic surgery, including total knee replacement and removal of internal equipment from both her femurs and arm, was foreshadowed. The present day value of the award is R752 000.00. In my view the injuries suffered by this plaintiff, a much younger person in full

bloom of his youth, are a bit more severe as that suffered by the plaintiff *in casu*.

[27] In *Mgudlwa* R300 000.00 was awarded to a 34 year old plaintiff which is equal to a present day value of R482 000.00. That plaintiff suffered from fractures to the femur and tibia causing the left leg to be 5 cm shorter than the other leg due to deformity of the proximal end of the femur. Surgery in the form of a total knee replacement and realignment of the femur was anticipated. The severity of this plaintiff's injuries is far less than that of the plaintiff *in casu*.

[28] I considered further judgments. In *Ncama v RAF* 2015 (7E3) QOD 7 (ECP) Eksteen, J awarded R500 000.00 to a female cleaner in November 2014. The present day value of the award is R650 000.00. The injuries are dissimilar to those *in casu*. The plaintiff sustained a fracture of her right femur causing an open reduction and internal fixation to be performed whereafter she acquired crutches to ambulate. She also sustained a skull fracture, a neck injury and soft tissue injuries to her pelvic ring and sacro-illiac joints. It was predicted there was a 30% chance that a fusion at C5/6 will be required. Clearly, this plaintiff sustained further injuries to her pelvis, neck and head, but the extent of her lower limb injuries is much less severe than that of the plaintiff *in casu*.

[29] In *Abrahams v RAF* 2014 (J2-1) QOD 7 (ECP) Eksteen, J awarded R500 000.00 to a 41 year old spray painter. The present day value of the award dated 29 May 2012 is R727 000.00. Although the judgment is found in segment J, it is apparent that the plaintiff did not really suffer multiple injuries.

The court found that the head injury complained of was really minimal and no cognisance was taken thereof in considering the amount to be awarded for general damages. In that case the plaintiff sustained a badly comminuted fracture of the right proximal femur as well as fractures of the right distal fibula, patella and medial malleolus. Open reductions were performed on all three areas with internal fixation. The lower right leg was shortened and plaintiff had to wear an assistive device. The injuries in this case, as in the case of *Smit supra*, are not too dissimilar to that of the plaintiff *in casu* and will be duly considered in adjudicating the plaintiff's claim.

[30] In *Ndaba v RAF* 2011 (6E3) QOD 14 (ECB) R300 000.00 was awarded to a female informal hawker who was 42 years old at the time of the injury. This is equal to a present day value of R456 900.00. This plaintiff sustained multiple orthopaedic injuries including a pelvic fracture, and fractures to the right femur and tibia as well as a left knee injury. Open reductions and fixation were performed on the hip joint, femur and tibia. Injuries to her shoulder and hip might require hip and shoulder replacement over time. The plaintiff was bound to have a knee replacement in future due to degenerative changes. The plaintiff also suffered a ruptured bladder. The court held that she could no longer trade as a hawker. Although the injuries differ from those *in casu*, the judgment cannot be excluded as a yardstick.

[31] In *RAF v Marunga* 2003 (5) SA 165 (SCA) the Supreme Court of Appeal reduced the award made by the trial court in 2001 for general damages to R175 000.00. The present day value is R492 275.00. The plaintiff was 19 years old when he was injured. He sustained a fractured femur, soft tissue injuries and bruises.

An open reduction and fixation were performed on the femur and he initially spent five months in hospital recuperating. Thereafter he ambulated with clutches. He was readmitted four years later for removal of the plate and screws when it was discovered that there was a mal-union of the femur. His left leg was 3,5 cm shorter than the right leg. Corrective surgery was required although the left leg would never revert to its pre-collision length. The SCA held in paragraph [29] that the plaintiff spent his life in and out of hospitals for several years "...at a time when he ought to have been in the full bloom of youth." Obviously, these injuries are dissimilar to those *in casu*, but the judgment serves as a good guideline.

- [32] Mr Nkhahle did not refer the court to any authorities, but submitted that the award should be between R400 000.00 and R550 000.00. As indicated *infra*, he eventually made an open tender in excess of these amounts.

IX Conclusions

- [33] In concluding his oral submissions Mr Nkhahle made an open tender, duly instructed by the RAF's attorney, in respect of loss of income and general damages. In terms hereof the RAF offered R563 942.61 and R600 000.00 in respect of loss of income and general damages respectively.
- [34] I am not certain how the RAF arrived at the first amount, but it appears as if it applied a 17.5% contingency on future loss as calculated in Mr Sauer's scenario two. Insofar as the second scenario appears to be a fair calculation of the loss of income, I am not convinced that a contingency percentage higher or less than the customary 15% should be applied. In my view the

plaintiff suffered loss of income in the amount of R577 812.00, calculated as follows:

The total future loss of earnings

calculated in scenario two	R 539 883.00
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Less 15% thereof	<u>R 80 982.00</u>
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Future loss of earnings	<u>R 458 901.00</u>
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Add past loss of earnings	<u>R 118 911.00</u>
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Total loss of earnings	<u>R 577 812.00</u>
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[35] Having considered all factors mentioned *supra*, and also in particular the *Smit* and *Abrahams* judgments, I am satisfied that plaintiff shall be awarded R700 000.00 in respect of general damages. This is less than awarded in these judgments, but I would rather err on the conservative side than being over-generous to plaintiff to the detriment of the RAF's purse. I believe that the compensation is fair and adequate.

[36] The total amount to be awarded for loss of earnings and general damages is R1 277 812.00.

X Orders

[37] Consequently the following orders are made:

1. The defendant shall pay to plaintiff the sum of **R1 277 812.00**, (one million two hundred and seventy seven thousand eight hundred and twelve Rand);
 - 1.1 The above amount shall be paid into the plaintiff's attorney's trust account with the following details:

ACCOUNT HOLDER : VZLR INC

BRANCH : ABSA BUSINESS BANK HILLCREST
BRANCH CODE : 632005
TYPE OF ACCOUNT : TRUST ACCOUNT
ACCOUNT NUMBER : [....]

- 1.2 In the event of default on the above payment, interest shall accrue on such outstanding amount at 10.25% *per annum* (the *mora* rate of 3.5% above the repo rate on the date on this order, as per the Prescribed Rate of Interest Act, 55 of 1975, as amended), calculated from due date as per the Road Accident Fund Act until the date of payment;
2. Defendant shall pay the plaintiff's taxed or agreed party and party costs into the above mentioned account for the instructing and correspondent attorneys, which costs shall include, but not be limited to the following:
 - 2.1 The fees of senior junior counsel;
 - 2.2 The costs of obtaining all expert medico-legal, actuarial, and any other reports of an expert nature which were furnished to the defendant and/or its experts;
 - 2.3 The costs of obtaining documentation / evidence, scans, considered by the experts(s) to finalise their reports;
 - 2.4 The reasonable taxable qualifying, preparation, reservation and attendance fees of all experts, including the costs of consultation fees with the legal teams, if any;
 - 2.5 The reasonable travelling and accommodation costs, if any, incurred in transporting the plaintiff to all medico-legal appointments;

- 2.6 The reasonable costs for an interpreter's attendance at court and at the medico-legal appointments for translation of information, if any;
- 2.7 The above-mentioned payment with regard to costs shall be subject to the following conditions:
- 2.7.1 The plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the defendant's attorney of record; and
- 2.7.2 The plaintiff shall allow the defendant 14 (fourteen) calendar days to make payment of the taxed costs;
- 2.7.3 In the event of default on the above payment, interest shall accrue on such outstanding amount at the prescribed *mora* rate on the date of taxation / settlement of the bill of costs, as per the Prescribed Rate of Interest Act, 55 of 1975, as amended calculated from due date until the date of payment.

J P DAFFUE, J

On behalf of plaintiff : Adv MDJ Steenkamp
 Instructed by : Du Plooy Attorneys
 BLOEMFONTEIN

On behalf of defendant : Adv J Nkhahle
 Instructed by : Maduba Attorneys
 BLOEMFONTEIN