

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**CASE NO: 224/2014**

**24/02/2017**

In the matter between

**B.J M.**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

**DATES OF HEARING : 24 & 25 NOVEMBER 2016**

**DATE OF JUDGMENT : 24 FEBRUARY 2017**

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**JUDGMENT**

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**MANAMELA, A.J**

***Introduction***

[1] The plaintiff was injured in a motor vehicle accident on 03 October 2011, which occurred in Dennilton, Limpopo Province. He was being ferried as a passenger in a motor vehicle which was involved in an accident with another motor vehicle. The defendant is sued for damages arising out of bodily injuries sustained by the plaintiff in terms of the provisions of the Road Accident Fund Act 56 of 1996. Counsel advised at the trial that the defendant has fully conceded the merits in this matter and would

therefore be liable to pay 100% of the proven damages suffered by the plaintiff.

[2] The plaintiff sustained the following injuries due to the accident: left haematoma; sub scapular haematoma and abrasions to the left leg.<sup>1</sup> He was admitted to hospital for treatment and experienced pain and suffering and discomfort. It is claimed that he will experience pain and suffering in the future and also require hospitalisation and medical treatment. In the main, the plaintiff is said to have experienced a loss of earnings and earning ability and also suffered loss of enjoyment and amenities of life.

[3] The plaintiff issued summons in this Court. claiming a total amount of R300 000.00.<sup>2</sup> The significance of this amount will be relevant to the issue of costs, which I will naturally deal with at the end hereof.<sup>3</sup> On the other hand, the defendant denied liability and also pleaded reliance on the provisions of section 17(1A) of the Road Accident Fund Act<sup>4</sup> and its regulations. The matter was argued by counsel for two days on 24 and 25 November 2016, and at the end of hearing I reserved this judgment. I deal next with issues regarding the injuries and complaints of the plaintiff.

### ***Plaintiff's injuries and complaints***

[4] In terms of the report of the thoracic surgeon being Dr Freek Steyn, the plaintiff had a pneumothorax on the right-hand side with several rib fractures: had an underwater drainage tube inserted and was treated conservatively.<sup>5</sup> These injuries are admitted by the defendant.

[5] Further, Dr Steyn states under medical history that the plaintiff (obviously obtained from reports by other experts) is the sole provider for his family; he has two children and is held was very good and was on no medication. ostensibly pre-accident.<sup>6</sup>

[6] The plaintiffs current complaints alleged to be arising from the injuries sustained in the accident constitute the crux of a determination to be made in this matter.

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<sup>1</sup> See par 9 of the particulars or claim to the summons on indexed p 8 of the pleadings bundle.

<sup>2</sup> The plaintiff claimed R50 000.00 for past medical and hospital expenses: R50 000.00 for future medical, hospital and related expenses: R 100 000.00 for past and future loss of income/earning capacity and R 1 00 000.00 in respect of general damages.

<sup>3</sup> See pars 53-55 below.

<sup>4</sup> Section 17( 1A) of the Road Accident Fund reads as follows: "(1A (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 No.56 of 1974 )."

<sup>5</sup> See plaintiff's experts bundle indexed on p 97.

## ***Plaintiff's case***

### **Plaintiff as a witness**

[7] The plaintiff testified before the Court through an interpreter and confirmed sustaining injuries around both sides of his rib cage and on his back.

[8] He told the Court that he was employed at Legend Golf and Safari Resort (Legend) from March 2009. He was mostly doing construction work, which included painting of roof trusses and general maintenance work, which he described as very strenuous work. He described a typical workday at Legend as involving, among others, maintenance work, like skirting: fitting of doorstops: sanding trusses and glazing. He also performed garden work and performed duties involving pushing wheelbarrows and replacement of paving.

[9] He was still at Legend at the time of the accident. After he was injured in the accident he was hospitalised for about a month, but there was no complaint from his employer when he returned to work about his performance. He testified that his employer, knowing that he was hospitalised and understanding his position after the accident, allowed him to only perform light duties. He performed this type of work until his retrenchment. He coped well with the light duties and was not off work after the accident. His light duties involved fitting of sanitary ware, like soap dispensers. He was retrenched from Legend in 2015, after having worked there for 6 years. He was retrenched together with about 20 other people, some of whom had worked for Legend for periods of between 5 and 8 years. He was earning R4 700 monthly at Legend by the time he was retrenched.

[10] It is common cause that the plaintiff was not retrenched from Legend due to the accident and that retrenchment was solely based on operational requirements of Legend, as the employer of the plaintiff.

[11] After retrenchment, he was on the job-hunt for about 4 months or so, but only did "piece jobs" during that period. These jobs ranged from working for three times a week to fortnightly. He was, sometime during that period, without work for up to a month.

[12] He told the Court that he cannot do the heavy work he did before the accident. Although he finds those type of jobs, he cannot cope. For example, he is unable to push a wheelbarrow full of sand or bricks as he finds it too heavy; cannot lift a painting-pot full of paint without resting and can only paint for only about 5 (five) metres before getting

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<sup>6</sup> See plaintiff's experts bundle indexed on p 97.

tired. He experiences pain on both sides of his rib cage, chest and back towards the spinal cord when he performs these duties. He uses medication or pain tablets about three times a day (i.e. Brufen and Panado), but experiences some pain in those areas during the night.

[13] The plaintiff also told the Court that he is now employed by company known Edelweiss Glass and Aluminum (Edelweiss). He earns about R2 400 per fortnight and sometimes depending on the workload, perform overtime duties for which he earns additional income. For example, in November 2016, as of the date of trial, he had worked for one Sunday and two Saturdays which is normally from 07h00 to 15h00. Overtime is remunerated by Edelweiss at a higher than normal hourly rate. He says this is not a permanent position.

[14] The plaintiff attained grade 9 level of education and is now 44 years of age. He has been doing physical work for the whole of his working life, including bricklaying in his private time. He earned about R7000 per month for his bricklaying activities before the accident and finds it difficult to survive without this extra income. He can no longer do this type of work.

[15] Under cross-examination, the plaintiff told the Court that he has complaints since the accident because he cannot do heavy duty, like before. For example, when he is to carry an object like a door-glass he will need to rest about four times on the way in a distance of about 8 metres.

[16] He further told the Court that prior to the accident he worked at Thekwini (he wasn't certain of the correct name of this employer). He also conceded that he was in permanent employment from 1993 to 2016, save for those months after retrenchment from Legend. He also confirmed that he stayed at Legend for about 4 years after the accident. He estimated his salary at Legend to have been about R3000 per month in 2009 and R4 700 per month when he was retrenched in 2015. These, he agreed, indicate gradual increments to his salary during his employment at Legend.

#### Occupational Therapist (Mr Riaan du Toit)

[17] Mr Du Toit was called by the plaintiff to testify as an occupational therapist.<sup>7</sup> He told the Court with regard to the plaintiff that post-accident is distinctly different to pre-accident.

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<sup>7</sup> See Du Toit's report on pp 32-52 of plaintiff experts bundle.

[18] He further told the Court that the allocations of light duty at Legend was appropriate due to the fact that it would have been unsafe for the plaintiff to perform heavy duties. This may lead to anatomical and mechanical overloading and cause injuries due to the overloading of his capacity.<sup>8</sup>

[19] He told the Court that he examined the plaintiff and subjected him to tests, including on limitation of vocational skills. He said the plaintiff is able to safely lift and carry lightweight up to 9 kg without restriction.<sup>9</sup> His conclusion is that the plaintiff can handle mid to medium weight up to 2 hours and 45 minutes. However, the plaintiff had to jerk for weights over 16kg, which indicates internal stabilisation. There was no malingering, but fear of weights, although he completed the test battery at 22kg. He referred to the relevance of Dr Akambi's statement that the plaintiff was diagnosed with fibromyalgia and chest pain.<sup>10</sup>

[20] Regarding how the future loss of earnings are affected, he told the Court that the plaintiff is excluded from heavy duties. like pushing wheelbarrow full of sand or carrying a bucket full of water. He further told the Court that the only jobs available for the plaintiff are those of sedentary, light duty and emerging medium weights nature (like as a driver or performing administrative duties). With regard to the plaintiffs age and the relevance thereof. Mr Du Toit told the Court that he is not quite certain, but his age may relegate the plaintiff further in the line. Both age and injuries are factors, he testified.

[21] He further told the Court that at Legend, the employer was sympathetic to the plaintiff as he was compromised from the accident, which left him vulnerable. Regarding whether his current job and job conditions augour well with this condition. Mr Du Toit told the Court that it depends particularly on his capacity.

[22] Under cross-examination Mr Du Toit, among others, testified as follows. Regarding the plaintiffs age as a 44-year-old male and with regard to weights that he can carry, he told the Court that age is no indicator of capacity. As to how long the plaintiff would have carried on with this type of work without the accident, he answered that this is speculative, but he may have carried on up to 55 years of age. He reiterated that the plaintiff is using compensating- lifting mechanism, like jerking when picking up heavy weights with a strain on his spine. This, he told the Court, could lead to injuries or re-injuries to the plaintiff.

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<sup>8</sup> See job description and analysis on indexed p 36 of the plaintiff experts bundle

<sup>9</sup> Sec par 4.2 on indexed p 42 of the plaintiff experts bundle.

[23] Regarding the issue of hypertension crisis, Mr Du Toit said that this was not due to injury, but the testing was stopped for safety reasons,<sup>11</sup> although people with hypertension do fatigue easily. There was no indication as to when the hypertension started and if it was hereditary it would have been gradual.

*Industrial Psychologist (Ms Christa Du Toit)*

[24] Ms Christa du Toit testified as an industrial psychologist called by the plaintiff. She had evaluated the plaintiff on 11 May 2015 and filed a report together with an addendum thereto.<sup>12</sup> However, she told the Court that she was not aware of the plaintiff's new job at Edelweiss, which was after she had compiled her addendum report.<sup>13</sup>

[25] When referred to the fact that in the actual report it is said that the plaintiff would have continued working until retirement age at 62 1/2 years of age, she told the court that average is between 60 and 65 years.<sup>14</sup>

[26] According to Ms Du Toit, after retrenchment the plaintiff was likely to experience vulnerability due to the accident. She told the Court that the plaintiff's unemployment was due to vulnerability and lower exceptional skills to market himself. She agrees with the other industrial psychologist that the plaintiff would be excluded in a range of jobs; he will have to be selective due to his current limitation.

[27] Regarding the possibility of the plaintiff reskilling himself, Ms Du Toit told the Court that due to his low scholastic achievement and age, this will pose a challenge. She suggested therefore that to address the problem the Court should award a high contingency post- accident.

***Defendant's case***

[28] As indicated above, the defendant's pleaded case simply denied liability and also raised technical defences relating to the provisions of section 17( 1 A) of the Road Accident Fund Act. However, other than expert reports filed, the defendant called Ms Cecile Nel to testify, as an industrial psychologist.

*Industrial psychologist (Cecile Nel)*

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<sup>10</sup> See par 3.2 on indexed p 37 of the plaintiff experts bundle.

<sup>11</sup> See par 3.3 on indexed p 38 of the plaintiff experts bundle.

<sup>12</sup> See indexed pp 55-64 and 71-77 plaintiff experts bundle.

<sup>13</sup> See par 6 on indexed p 120 of the plaintiff experts bundle; par 4.1.2 on indexed p 81 of the plaintiff's experts bundle.

[29] Ms Cecile Nel confirmed her assessment of the plaintiff on 24 November 2015, as documented in her filed report.<sup>15</sup>

[30] She, among others, confirmed that the plaintiff cannot work as a glazier, but only sealer; mentioned that employees of Edelweiss are employed per project and, as such, drift from job to job or project to project, as they are not permanent: conceded that the plaintiff will be excluded from heavy jobs, and agreed that WPI does not translate into job prospects. She also admitted that factors affecting productivity also affect employability.

[31] However, Ms Nel did not concede that the plaintiff now works at a slower pace, as according to her the feedback indicates that his performance is satisfactory. He had resigned a previous the job due to better offer at Edelweiss, she added. He secured the job at Edelweiss, despite having few employment options.

## ***Legal Argument***

### **Submissions on behalf of the Plaintiff**

[32] Ms M Olivier, appearing for the plaintiff pointed out that the defendant relies heavily on the unreported decision of *Sunette Liebenberg v Road Accident Fund*<sup>16</sup> per Hughes J, which she submitted is distinguishable on the facts from this matter, I agree.

[33] According to the plaintiff's counsel, there is no real dispute with regard to the facts of the matter, but only as to the spread of the contingency to be applied in respect of future loss of earnings. I don't think there is necessarily complete agreement as to *sequelae* of the plaintiff's injuries or current complaints, but I will expand on this below.

[34] It was further submitted that, when the plaintiff was retrenched his vulnerability became a reality, Counsel referred to the matter of *Santam Versekeringsmaatskappy Bpk v Byleveldt*<sup>17</sup> also referred to in the *Liebenberg* matter.

[35] Counsel further submitted that it is beyond contention that the plaintiff is a vulnerable employee due to his age; his vocational skills or lack thereof; level of education; the rate of unemployment in the sector; his limited job choices, and the fact that he will have to be employed in a sympathetic employment. Counsel emphasised Ms Christa Du Toit's evidence that re-skilling of the plaintiff will be a problem and submitted that the plaintiff is stuck in his current circumstances. But, it is also submitted that, the

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<sup>14</sup> See plaintiff's experts bundle at par 4.1.1 on indexed p 81.

<sup>15</sup> See defendant's experts bundle on indexed pp 45-64.

<sup>16</sup> Unreported decision of this division under case number: 56326/2011, decided on 8 May 2015.

plaintiff can be let go at any time and he has nowhere to go.

[36] With regard to the *sequelae*, counsel submitted that, these can only get worse. Further, it was submitted that the plaintiff may have lost self-confidence. With regard to hypertension (which is submitted it was not proven that it was pre-existing condition), counsel submitted that the egg or thin skull principle applies. However, she submitted that hypertension will exacerbate the plaintiffs situation in the labour market.

[37] Regarding the figures or amounts for the loss of earnings, it was submitted that, had the plaintiff stayed at Legend he would have earned more. The change of jobs after Legend may discourage prospective employers. Counsel submitted that Ms Cecile Nel says that a slighter high contingency should be applied, which counsel submitted confirms the defendant's admission that there is a loss. Counsel submitted that the actuarial calculations of R 161 928.00 for future loss, plus R36 025.00 for past loss, amounting to R 197 953.00<sup>18</sup> should be ordered as the appropriate award for the plaintiffs total loss. It is also added, but rather tentatively in my view, that there is no evidence to the contrary that an undertaking, in terms of section 17(4)(a) of the Road Accident Fund Act, ought to be given by the defendant.

[38] With regard to costs it is submitted that it should be the normal order on a party and party scale.

#### Submissions on behalf of the Defendant

[39] Ms KA Wilson, appearing for the defendant, submitted (upon heaving reliance on the Judgment in the *Liebenberg* matter above) that the Court ought to look at direct loss of earnings and that there is no case proven for past loss of income, as retrenchment cannot be past loss. Further, the plaintiff was only unemployed for about four months after retrenchment, but still did "odd jobs" during this time. It is submitted that there is no claim for brickmaking and therefore this part of the plaintiff's testimony must be ignored.

[40] With regard to future loss, counsel for the defendant submitted, among others, the following: there is no reason for awarding damages on emotions, but only on the basis of proven loss or figures (i.e. numbers);<sup>19</sup> the defendant does not dispute that the field of jobs has diminished for the plaintiff but that there is minimal loss: the plaintiff left the previous job for better work and he is skilled and was headhunted, and there is no

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<sup>17</sup> 1973 (2) SA 146 (A).

<sup>18</sup> See plaintiff's experts bundle on indexed p 126.

<sup>19</sup> See the unreported decision in the *Liebenberg* matter at par 16.



concrete evidence in the form of payslips on overtime from Legend and Legend would not pay overtime when it was retrenching employees.

[41] It is submitted that the Court ought to consider applying to the future loss figures in the actuarial report a contingency of 2.5%. equalling an amount of R20 240.90 (arrived at as follows:  $R809\,636 \times 5\% = R40\,481\,70$ ).

[42] With regard to costs of suit, Ms Wilson submitted that no costs should be awarded in this Court. as only R300 000.00 was claimed.<sup>20</sup> The plaintiff knew that he did not qualify for general damages and should therefore have approached the Magistrates Court for relief. In reply, Ms Olivier disputed that costs should be on the Magistrates Court's scale for. among others, the following reasons: the defendant's industrial psychologist Ms Cecile Nel admitted Jacobson's report and conceded all facts of the spread; the pre-trial conference minutes did not mention referral of the matter to another forum; the issue is only raised for the first time in argument, and that the matter is complicated. It was submitted, on behalf of the defendant that, there was a formal offer which included costs and the section 17 undertaking.

### ***Damages to be awarded (a discussion)***

[43] The nub of the determination to be made in this matter regarding the plaintiffs past and future loss is whether the plaintiff is still able to perform his duties as he did prior to the accident. This is a factual enquiry facilitated by witness testimony, including by experts, as well as, the particular circumstances of this matter. I am also grateful for oral submissions by counsel.

[44] Although the plaintiff's injuries are common cause between the parties, the effect thereof on his earning capacity is contested. The evidence points to the fact that after the accident the plaintiff reverted to his then employer. Legend and continued working there for another four years when he was retrenched together with a number of other employees, due to the employer's operational requirements. According to the actuarial report there was no accrued loss or past loss of earnings in this regard, as the plaintiff continued working until he was retrenched on 19 March 2015.<sup>21</sup> The plaintiff says his employer was sympathetic and even allocated him duties that were lighter (in effort) than before. However, save for about four months, he was still able to secure some employment and is currently employed. Therefore, he was not without income.

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<sup>20</sup> See pleadings bundle on p 12.

[45] It is further submitted on behalf of the plaintiff that, every employer after the accident, including Legend, were or are sympathetic employers. But, this is contested by the defendant on the basis of the positive performance feedback regarding the plaintiff and the fact that the plaintiff was able to change jobs to his current employer on the basis of his skills and performance. I also do not agree that all the employers, particularly the current employer, retained the plaintiff on sympathetic or compassionate grounds. The plaintiff is clearly able to perform some duties although he may not be able to do everything he did before the accident.

[46] I also do not agree that the status of the plaintiffs employment, being whether he is employed on a temporary or permanent basis, is exclusively determined by the facts that he can no longer lift heavier objects that he did before the accident. The plaintiff's job or employment history states more than two employers and including his retrenchment from Legend, which clearly confirms the vulnerability of his job sector. The plaintiff began working as a general labourer on building or construction sites doing heavy duty work in 1992 after he completed grade 7. He continued in this field of work over the years doing medium to heavy duties until in 2009 when he was employed by Legend as a maintenance worker.<sup>22</sup> Between 2000 and 2009 the plaintiff had at least two other employers before joining Legend. Actually, this number ought to be higher as no details are provided for the employers between 1992 and 2000. Not much has changed in this regard, as the plaintiff was able to secure jobs after the accident.

[47] I agree that what the plaintiff can or cannot currently do differs from his pre-accident duties. However, the only change in his abilities is with regard to degree of heavy objects he can carry due to his chest and back pains. However, his current complaints do not completely shut him out of the job market, as he was able to secure employment albeit not necessarily in the same areas as before the accident. Therefore, the accident has had some bearing on his level of performance and therefore will affect his earning capacity in the future.

[48] I do not intend to consider overtime pay as a factor to the plaintiffs loss. Overtime is discretionary, fluctuates and depends on the availability of additional work. Besides, the plaintiff is still able to perform overtime duties, whenever there is an opportunity, including with his current employer.

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<sup>21</sup> See plaintiff's experts bundle on indexed p 80.

## **Conclusion**

[49] Gerard Jacobson Consulting Actuaries delivered a report dated 18 November 2016.<sup>23</sup> I do not intend crisscrossing every aspect of the actuarial report. Although I have considered its contents in their entirety, I will discuss the summary of the loss of income and the suggested award against the principles that actuarial reports, like other expert reports. Actuarial reports, although based on actuarial expertise and of immense benefit to the Court, just like other expert reports, are only a guide and part of all of the other evidence before the Court.<sup>24</sup>

[50] With regard to past loss. I do not accept that the plaintiff suffered complete loss of income, as he did odd jobs and had some income. He was completely without income for a month or so after he was retrenched. It is common cause that his retrenchment was not due to factors relating to injuries sustained in the accident. I am also not certain as to what effect, if any, his condition due to the accident, had on his employment prospects. Therefore, I will only allow damages for two months' worth of his Legend salary of R4 723.92 in an amount of R9447.84 rounded off to R9 500.00.

[51] For the above-mentioned reasons and regarding the plaintiff's future loss, I will accept the calculations by the actuary, save that instead of applying a contingency of 35% post- accident, I will apply 25%. This would result in a contingency deduction in an amount R202 409.00 from R809 636.00 (income having regard to accident) and a balance of R607 227.00 (net value of income having regard to accident). The result is a net future loss of R80 964.00. Therefore. I will award to the plaintiff an amount of R90 464.00 (i.e. R9 500.00 for past loss and R80 964.00 for future loss) as past and future loss of income.

[52] The order will also reflect that the defendant furnish an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, for payment of costs of future accommodation of the plaintiff in a hospital or nursing home, or his treatment or for services rendered or goods supplied to him arising out of injuries sustained in the motor vehicle accident and their *sequelae*. Payment of these costs will be made once incurred and proven to the defendant.

## **Costs**

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<sup>22</sup> See plaintiff's experts bundle indexed p 35.

<sup>23</sup> See the actuarial report on indexed p 123-127.

<sup>24</sup> See Potgieter et al *Visser & Potgieter Law of Damages* 3<sup>rd</sup> ed (Juta Cape Town 2012) at p 467; See Klopper HB

[53] Counsel for the defendant submitted that, even if successful, the plaintiff ought not to be granted costs on scale of this Court, but Magistrates' Court's scale. Submissions made by counsel for the defendant in this regard included that the plaintiff all along knew that its claim for general damages was not meritorious and overall sued for an amount of R300 000.00. On the other hand, the counsel for the plaintiff submitted that there was justification for suing in this Court due to the complexity of the matter and complained that the issue was never raised before, including in the pleadings and at the pre-trial conference, but rather belatedly in argument at the trial. Counsel for the plaintiff submitted that costs ought to be awarded at normal party and party scale of this Court.

[54] In my view, damages claims are by their nature considerably difficult to manage in as far as court jurisdiction is concerned. This is particularly a challenge at the stage when a litigant has to decide whether to go to the Magistrates' Court or approach a Court, at this level. Therefore, it does not become an automatic determination for a Court when deciding on what the appropriate scale of costs should be and always depends on a consideration of facts in the matter.<sup>25</sup> In this matter, the plaintiff issued summons in early 2014. The monetary jurisdiction for the Magistrates' Courts was increased to R200 000.00 at the district level and R 400 000.00 for the regional court only with effect from 01 June 2014.<sup>26</sup> Therefore, in my view, it was always going to be difficult for the plaintiff to firmly decide on which court to approach when monetary jurisdictions were as aforesaid. I do not find the choice of this Court unreasonable under the circumstances.

[55] Further, I am concerned by the fact that the issue was only raised at this late stage, as this deprived the plaintiff of an opportunity to reconsider his position as to the appropriate forum, including making submissions to this Court regarding an appropriate costs order to be granted or referring the matter to the Magistrates Court. Therefore, on these considerations, I consider it justified to grant costs in favour plaintiff on a party and party scale of this Court.

### **Order**

[56] I therefore make the following order:

1. The Defendant shall pay to the Plaintiff the sum of **R90 464.00 (ninety thousand**

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*Law of Third-Party Compensation* 3<sup>rd</sup> ed (LexisNexis Durban 2012) at p 177.

<sup>25</sup> See Van Loggerenberg *Erasmus Superior Court Practice* Vol. 2, 2<sup>nd</sup> ed (Juta Cape Town 2015) at D5-14 to D5-16.

<sup>26</sup> See Government Notice 2017 in Government Gazette 37477 of 27 March 2014.

**four hundred and sixty-four rand).**

2. In the event of the aforesaid amount not been paid timeously, the Defendant shall be liable for interest on the amount at the rate of 10.5% per annum, calculated from the 15<sup>th</sup> calendar day after the date of this order to date of payment.
3. The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for payment of costs of future accommodation of the Plaintiff in a hospital or nursing home, or his treatment or for services rendered or goods supplied to him arising out of injuries sustained in the motor vehicle accident that occurred on 03 October 2011, to compensate the Plaintiff in respect of the said costs after the costs have been incurred and upon proof thereof, limited to 100%.
4. The Defendant shall pay the Plaintiffs taxed or agreed party and party costs on the High Court scale subject to paragraphs 4.1 and 4.2 of the draft order marked "X" and initialled with other corrections in manuscript. The same draft reflects the other parts of this order.
5. The amount referred to in paragraphs 1, 2 and 4 hereof will be paid to the Plaintiff's attorneys Gustav Smit Attorney by direct transfer into their trust account, details of which are as follows:

|                |   |                           |
|----------------|---|---------------------------|
| Name           | : | Gustav Smit Attorney      |
| Bank           | : | ABSA Bank                 |
| Account number | : | [...]                     |
| Branch code    | : | 632005/ABSA Menlyn Square |
| Reference      | : | AM1086                    |
6. No contingency agreement existed in this matter.

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**K. La M. Manamela**  
**Acting Judge of the High Court**  
**24 FEBRUARY 2017**

**Appearances:**

For the Plaintiff : Adv M Olivier  
Instructed by : Gustav Smit Attorneys, Pretoria

For the Defendant : Adv KA Wilson  
Instructed by : Diale Mogashoa Attorneys, Pretoria

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

**Before The Honourable Judge Manamela AJ**  
**On the 24<sup>th</sup> of February 2017**

Case no: **224/2014**

In the matter between:

**B.J. M** Plaintiff

and

**ROAD ACCIDENT FUND** Defendant

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|--------------------|
| <b>DRAFT ORDER</b> |
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**AFTER HEARING THE PARTIES, THE DEFENDANT IS ORDERED:**

1. The Defendant shall pay to the Plaintiff the sum **R90 464.00 (ninety thousand four hundred and sixty four rand).**
2. In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the rate of 10.5% per annum, calculated from the 15th calendar day after the date of this Order to date of payment.
3. The Defendant shall furnish the Plaintiff with an undertaking in terms of Section

17(4)(a) of Act 56 of 1996 for payment of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him/her resulting the injuries sustained by the Plaintiff in the motor vehicle accident that occurred on **3 October 2011**, to compensate the Plaintiff in respect of the said costs after the costs have been incurred and upon proof thereof, limited to 100%.

4. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, subject thereto that:

4.1 In the event that the costs are not agreed:

4.1.1. the Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;

4.1.2. the Plaintiff shall allow the Defendant 14 (fourteen) Court days from date of allocatur to make payment of the taxed costs.

4.1.3. should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the rate of 10.5% per annum on the taxed or agreed costs from date of allocatur to date of final payment.

4.2. such costs shall include:

4.2.1. the costs incurred in obtaining payment of the amounts mentioned in paragraphs 1 and 3 above;

4.2.2. the costs of counsel, including counsel's charges in respect of her full day fee for **24 and 25 November 2016**, as well as reasonable preparation;

4.2.3. the cost to date of this order, which costs shall further include the costs of the attorney, which include necessary travelling costs and expenses (time and kilometers), preparation for trial and attendance at Court which shall include all costs previously reserved, reasonable costs of consulting with plaintiff to consider the offer, the cost incurred to accept the offer and make the offer an order of Court to the discretion of The Taxing Master;

4.2.4. the costs of all medico-legal, radiological, actuarial, addendum reports obtained by the Plaintiff, as well as such reports furnished to the Defendant and/or to the knowledge of the Defendant and/or its attorneys, as well as all reports in their

possession and all reports contained in the Plaintiff's bundles, i.e. all reports that have not been paid for yet;

4.2.5. the reasonable and taxable preparation, qualifying and reservation fees, if any, in such amount as allowed by the Taxing Master, of the experts as in 4.2.4 above;

4.2.6. the reasonable costs incurred by and on behalf of the Plaintiff in, as well as the costs consequent to attending the medico-legal examinations of both parties.

4.2.7. the costs consequent to the Plaintiff's trial bundles and witness bundles, including the costs of 5 (five) copies thereof;

4.2.8. the costs of holding all pre-trial conferences, as well as round table meetings between the legal representatives for both the Plaintiff and the Defendant, including counsel's charges in respect thereof;

4.2.9. the costs of and consequent to compiling all minutes in respect of pre-trial conferences;

4.2.10. the reasonable travelling costs of the Plaintiff, who is hereby declared a necessary witnesses;

4.2.11. the cost of an interpreter.

5. The amounts referred to in paragraphs 1, 2 and 4 will be paid to the Plaintiff's attorneys, **Gustav Smit Attorney**, by direct transfer into their trust account, details of which are the following:

**Name: Gustav Smit Attorney Trust Account**

**Bank: ABSA Bank**

**Account Number: [...]**

**Branch code: 632005 / ABSA Menlyn Square**

**Ref: AM1086**

6. No contingency agreement exists in this matter.

**BY ORDER OF THE COURT:**

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**REGISTRAR OF THE HIGH COURT PRETORIA**

Counsel on behalf of Plaintiff: **Adv. M. de Meyer (Olivier) (012-303-7696)**

Counsel on behalf of Defendants: