REPUBLIC OF SOUTH AFRICA

IN THE NORTH GAUTENG HIGH COURT

PRETORIA

CASE NO: 19291/2011

DATE: 15 NOVEMBER 2013

In the matter between:

VAN ANTWERPEN NO
obo HEZEKIEL SIBUSISO PHASHA — Plaintiff

and

ROAD ACCIDENT FUND — Defendant

J U D G M E N T

TEFFO, J:

[1] Mr Hezekiel Sibusiso Phasha born on 29 May 1981 sustained multiple bodily injuries in a motor vehicle collision which occurred on 14 September 2008 at or near Haig Street, in Witbank, when a motor vehicle with registration letters and numbers DMJ 756 MP there and then driven by Mr Mkhabela *("the insured vehicle")* collided with him while he was a pedestrian at the time.

[2] The injuries sustained by Mr Phasha in the aforesaid R 1 000,00 collision are summarised as follows: An isolated injury' to his brain, a possible skull fracture in the left parietal area. The CT scan of the brain reportedly showed intracerebral haemorrhages as well as contusions to the frontal lobe or lobes of the brain, soft tissue injuries of the lumbar spine and neck. He had a Glasgow Coma Scale ("GCS") of 9/15 on admission at the hospital. His pupils were fixed and he had a lateral gaze deviation. He is reported to have suffered a head injury with Cushing's reflex and intoxication. He was placed on Dormicum IVI. He had a soft collar. His breathing was assisted by oxygen. He was restless and apparently extubated himself at some stage. A GCS of 9/15 was recorded on 15 September 2008. The same day he fell on the floor because of recurring falls and his GCS dropped to 7/15. On 16 September 2008 his GCS was recorded at 13/15 and he was reported to be restless. On 18 September 2008 the GCS was recorded at 12/15. A GCS of 15/15 was recorded on 19 September 2008. However confusion was noted, though he was responding appropriately on 21 September 2008. He was reported fully functional and aware of his surroundings on 23 September 2008. On 25 September 2008 he was discharged from the hospital.

[3] The plaintiff in her capacity as *curator ad litem* instituted a claim for damages against the defendant on behalf of Mr Phasha which damages are formulated as follows:

3.1 Past hospital and medical expenses	R 1 000.00
3.2 Future medical expenses	Section 17(4)(a) undertaking
3.3 Past loss of earnings	R 300 000,00

3.4 Future loss of earnings/ loss of earning capacity	R5 000 000.00
3.5 General damages for pain and suffering, loss of amenities of life and disability, etc	R1 200 000.00
Total	R6 501 000.00

[4] The parties have reached agreement on the following:

4.1 The defendant admits full liability for the proven or agreed damages suffered by the plaintiff.

4.2 No claim for past hospital and medical expenses could be proved.

4.3 The defendant has tendered a section 17(4)(a) of Act 56 of 1996 undertaking in settlement of the claim for estimated future hospital, medical and ancillary expenses which the plaintiff has accepted.

4.4 The plaintiff's claim in respect of general damages has been agreed to in the sum of R600 000, 00. The defendant is thus liable to the plaintiff in the sum of R600 000, 00 in respect of general damages.

4.5 The only remaining heads of damages for determination in this trial are in respect of past and future loss of earnings or loss of earning capacity.

[5] Various expert medical reports filed on behalf of the plaintiff were admitted into evidence by consent.

[6] Actuarial calculations by Human & Morris Consulting Actuaries instructed by the plaintiff were also admitted into evidence by consent.

[7] The parties agreed to argue the case for the disputed heads of damages as a stated case on the basis of the admitted facts, medico-legal evidence and opinions. Accordingly no *viva voce* evidence was led by both parties.

[8] It is common cause that when Mr Phasha was involved in an accident he was 27 years old. He was walking to his place from visiting a friend at Hlalanikahle Township in Witbank. He had just alighted from a taxi at the taxi rank in town and was crossing the road at a four way stop intersection when he saw a car approaching from the distant left side, but proceeded crossing the street because he had a right of way and was about to reach the opposite side of the street. He felt the bump and thereafter he has no recall of what transpired. He has no recall of his removal from the accident scene and trip to hospital. Witnesses informed him that the same car that he saw approaching as he was crossing the road accelerated at a high speed, beat the stop sign and knocked him down. He was transported to Witbank hospital by ambulance where he was discharged on 25 September 2008.

[9] After his discharge from the hospital Mr Phasha fatigued easily and slept a lot. He used crutches for approximately two weeks and had to be assisted when walking.

[10] Mr Phasha had completed Grade 12, N1 and was studying N3 (Diesel Mechanic) at the time of the accident.

[11] According to J J Du Plessis (Neurosurgeon) Mr Phasha suffered a severe diffuse axonal brain injury with permanent neurocognitive and neuropsychiatric *sequelae.* He opined that no significant improvement is expected in future. Dr Du Plessis further opined that Mr Phasha sustained an intracerebral haemorrhage which has not resulted in a neurophysical deficit. According to him Mr Phasha also sustained hemorrhagic contusion to the frontal lobes or a frontal lobe which could be related to the loss of smell on the right. He opined that the frontal lobe injury could also explain Mr Phasha's irritability and that a second brain injury was unlikely.

[12] Dr D A Shevel (Psychiatrist) made the following psychiatric diagnosis:

> *"Organic Brain Syndrome - Post-traumatic with associated significant features of frontal lobe dysfunction."*

He reported that Mr Phasha sustained a severe traumatic brain injury. Dr Shevel reported that the Organic Brain Syndrome can include changes in cognitive functioning, mood and personality. He opined that Mr Phasha has limited insight into his condition, that there is an element of adynamia and that he should be considered a vulnerable individual who may be easily and unduly manipulated and influenced by outside sources.

[13] Ms Idah-Marie Hattingh (Speech and Language Pathologist and Audiologist) reported that the communication profile as obtained indicates limited functioning at

basic and low level with a lot of external support required. She opined that Mr Phasha cannot deal with abstract or complex information and that social difficulties are likely to remain present. According to her Mr Phasha will be limited to functioning only in a one to one supportive conversation situation and the communication profile is compatible with the expected *sequelae* of a significant brain injury.

[14] Ms D G Maluleke (Clinical Psychologist) reported that Mr Phasha's global intellectual capacity lies within the average range, his verbal abilities in the high average range and his practical abilities in the below average range. According to her the test results reflect a highly unbalanced personality with poor integration between the verbal and practical abilities and it is highly probable that the low practical abilities could be the primary *sequelae* of the frontal lobe contusion. She opined that this could also imply that the behavioural problems (notably temperamental problems and feelings of being worthless) are primary organic and frontal lobish.

[15] Ms Maluleke agrees with Dr Du Plessis that Mr Phasha sustained a severe diffuse axonal brain injury with permanent neurocognitive and neuropsychiatric *sequelae* and that no significant improvement can be expected in future.

[16] Ms Maluleke reported that the accident had a bad outcome on Mr Phasha and in most aspects of his neuropsychological functioning. She added that his main complaints, the observations from his mother and the test results show that he retains dysfunctions in cognitive, behavioural and emotional areas of functioning and the patterns implicate both the frontal lobe dysfunction as well as diffuse brain dysfunction.

[17] Dr Louise Olivier (Neuropsychologist) reported that Mr Phasha's cognitive functioning fluctuated from being below average to very poor due to his fluctuating attention and concentration, his erratic cognitive functioning and his cognitive deficits. According to him Mr Phasha must have had at least a high average intellectual functioning prior to the accident and reported that cognitive deficits, emotional problems, personality and sexual problems found during the evaluation are consistent with a severe diffuse axonal brain injury, coupled with focal injury to the frontal lobes.

[18] Dr Olivier also reported that Mr Phasha may suffer from a measure of clinical depression, but his anxiety level was within normal boundaries. He opined that Mr Phasha can be irritable and can verbally abuse his-family members, he is immature and self-conscious, his self-concept is poor and he is group dependent and easily influenced by others. Drs Shevel, Olivier and Ms Maluleke are in agreement that Mr Phasha's prognosis in therapy is poor.

[19] It was reported to Corlien Macdonald (Occupational Therapist) that Mr Phasha had passed Grade 12 in 2000 with the following subjects and results:

- Northern Sotho : First Language Higher Grade - E (40% to 49%), English : Second Language Higher Grade - E (40% to 49%).

- Geography : Higher Grade - E (40% to 49%).

- Biology : Standard Grade - F (33,3% to 39%).

- Agricultural Science : Standard Grade - E (40% to 49%).

He entered for a three year diploma course in Human Resources Management at the Tshwane University of Technology from 2001 to 2003. He failed various subjects and was supposed to continue his studies in 2004 to repeat subjects. His grandmother agreed to pay for the 3 years that would take him to complete the diploma course, but did not have the finances to keep him there longer. He never completed the diploma course.

[20] It was also reported that Mr Phasha stayed at home in 2004 and 2005 being unemployed. He did a bridging course at Nkangala Public FET College in Witbank in 2006 to enable him to do engineering studies later. Upon completion of the course he enrolled for N1 Boilermaker and passed it. He struggled with the next block and transferred to Thibela Technical College in Witbank later in 2007. With his matric certificate he was able to enrol for N3 Electricity. He never did N2. He failed the N3 Electricity exams and registered for Diesel Mechanics in the next block. When he had to write exams he went through some personal issues including a headache lasting for two weeks for which he consulted a traditional doctor. He did not write exams in the end and went home for holidays. When he returned to the college after the holidays, he was involved in an accident. His plan at that stage was to continue with the Diesel Mechanic course which was supposed to be a 9 months course. He did not resume his studies since the accident.

[21] Mr C Macdonald opined that Mr Phasha's chances of being successful at further studies are slim due to his record prior to the accident as well as the added cognitive difficulties he displayed when assessed. He opined that Mr Phasha coped relatively well with simple memory tasks but as soon as sequences or more complicated memory demands were made, he showed difficulties. He reported that Mr Phasha made several mistakes with very simple work when concentration was required for a period of at least 40 minutes and he was slow at completing work requiring cognitive input. According to him Mr Phasha will quite likely not be successful with further studies or a career that depends on cognitive abilities like problem solving skills.

[22] He further reported that Mr Phasha did very well with tests requiring physical effort and demonstrated dynamic strength suitable to deal with heavy to very heavy work. According to him Mr Phasha's abilities on the Valpar 9 Whole Body Range of Motion test were suitable to do work in the open labour market demonstrating physical agility and good work speed. He also reported that Mr Phasha complained of mild low backache after doing the test. He opined that Mr Phasha might find increased neck and lumbar spine symptoms should he have to sustain heavy physical work for longer than the duration of the Valpar 9 Whole Body Range of motion tests. He further opined that considering the findings of the Neuro and the Orthopaedic Surgeons regarding possible injuries to the neck and lumbar spine, it is clear that Mr Phasha will have to look after his back in future.

[23] Mr Macdonald's view is that when the holistic person is considered, it appears that Mr Phasha might be able to do the physical type of work of a light to medium

nature (in order to take care of his spine), but that he might struggle with cognitive elements should such a job require it. According to him the test results of his assessment indicate that Mr Phasha will not be able to do the work of a paramedic requiring heavy lifting, fast responses, quick thinking and problem solving abilities amongst others. He did not find him to be a person who will be able to work independent in a job with cognitive demands. He opined that Mr Phasha should be able to cope with a repetitive type of physical job with light to medium physical demands in the open labour market where he is preferably supervised and instructed on a daily basis.

[24] According to Mr Macdonald the fact that Mr Phasha has not finished the Human Resource Management course, N3 Electricity or Diesel Mechanic training he enrolled for, that he had matric, the N1 as well as the bridging course but has never been employed and has no work experience, makes him a poor candidate in the competitive open labour market considering his age. His view is that the injuries compromised Mr Phasha's employability even further and he might be unsuccessful should he attempt further studies due to the cognitive *sequelae* of the brain injury. He opined that Mr Phasha is a vulnerable person in the open labour market and would require daily supervision and instruction should he manage to find a suitable job.

[25] Dr Dries Schreuder (Industrial Psychologist) reported that although Mr Phasha's pre-morbid academic record is unstable, Dr Olivier opined that once he settled down and had become more future orientated, he would have done well and would probably have qualified as an artisan. He relied on Dr Olivier's view that Mr Phasha could have been promoted to the position of supervisor within the course of

his career once he had gained some work experience after qualifying. He also relied on Ms Maluleke's view that Mr Phasha was a person of sound intellectual potential and was capable of completing his N3 studies. According to Ms Maluleke although Mr Phasha was not able to apply his potential before the accident due to a lack of commitment, which minimises the probability that he would have completed what he was doing, the possibility that he may have completed courses and achieved his goals cannot be ruled out completely given the fact that he continued with his studies.. She concluded that taking the qualifications of Mr Phasha's parents and his pre-morbid intellectual ability into account, he had the potential to achieve a post-school qualification, which was illustrated by his ability to pass subjects at tertiary level.

[26] Based on the above experts ' opinions Dr Schreuder suggested that Mr Phasha could have qualified as an artisan of his choice prior to the accident, or alternatively he could have completed a one year course. He then proposed the following scenarios:

> Scenario 1 - According to this scenario Mr Phasha would probably have started working as a first year apprentice in 2010 (another year is allowed to decide a career) and would have qualified as a diesel mechanic in 2013 and earned accordingly. He would probably have started working at the lower quartile of a Peromnes job level 10 (annual guaranteed package) in 2014 and progressed to the upper quartile (annual guaranteed package) in 7-10 years.
>
> Scenario 2 - Mr Phasha would probably have completed a one year certificate of his choice in 2011. He would probably have been unemployed in 2012 and

started working at the lower quartile of
Peromnes job level 13 (annual guaranteed package) in 2013 and achieved the median of a Peromnes job level 11 (annual guaranteed package). He proposed that a linear increase be applied from the entry level earnings (lower quartile of Peromnes 13) to the career ceiling (median of Peromnes job level 11) at the age of 45, with normal inflationary increases thereafter.

[26] Dr Schreuder reported that with no pre-morbid work history available, it is difficult to indicate how an individual's career would have developed. According to him the following factors should be considered when calculating Mr Phasha's pre-morbid income:

- That his academic record reflects instability.

- That he did not perform according to his ability at school. He failed either Grade 11 or 12.

- Despite lack of parental support, he managed to get involved in studies.

- Although he was not studying diligently before the accident, it is expected that he would have settled down at some stage and became more focused.

- A final career choice had not been made at the time of the accident.

[27] Dr Schreuder proposed that the average between the two scenarios should be

calculated to determine Mr Phasha's pre-morbid income and that a higher pre-morbid contingency deduction be allowed. Further that his retirement age should be taken as 65 years.

[28] As regards Mr Phasha's career option post-morbid he mentioned the following:

- *Mr Phasha sustained orthopaedic injuries as a result of the accident and has recovered well from this. Orthopaedically he has not been significantly adversely affected.*
- *He sustained a brain injury and suffers from severe cognitive deficits.*
- *He suffers from emotional problems and his prognosis in therapy is poor.*
- *He* was *studying N3 (Diesel Mechanic) at the time of the accident. He did not resume his studies after the accident and has remained unemployed."*

Orthopaedically speaking, Mr Phasha is capable of doing physical work of a light to medium nature. Dr Close suggested a 3-4% loss of work capacity. Mr Phasha's greatest loss of work capacity resulted from the sequelae of the brain injury. He suffers from severe cognitive, behavioural and personality problems, which have a significant adverse impact on his ability to work. It has now been 5 years since the accident and Mr Phasha has made no effort to study again or find employment. According to Drs Shevel, Olivier and Ms Maluleke, Mr Phasha has been rendered unemployable in the open labour market by the accident. According to Dr Du Plessis he will not fulfil his pre-morbid potential and Ms Hattingh is sceptical about his chances of securing and sustaining employment."

Dr Schreuder then concluded that Mr Phasha should be regarded as unemployable and provision for total loss of earnings should be made.

[29] Counsel for the plaintiff proposed that the average of the two amounts for Scenarios 1 and 2 should be taken as the reasonable and appropriate amount to

compensate Mr Phasha for his future loss of earnings as it is clear from the expert reports that Mr Phasha is no longer employable in the open labour market given the cognitive and emotional deficits that resulted from the brain injury and other injuries sustained in the motor vehicle collision.

[30] Counsel for the defendant submitted that the defendant agrees with all the plaintiff's expert reports that Mr Phasha is unemployable. He criticised Dr Olivier's report on the basis that there is an assumption that Mr Phasha would have progressed to get a qualification in Diesel Mechanic. He questioned the allegations in paragraph 9.7.1 on page A 351, in the second paragraph where the following was stated:

> *"The undersigned psychologist does not agree with Ms Maluleke that Mr Phasha had such behavioural problems prior to the accident. He passed all his grades at school and did not fail any grades even regardless of a very difficult situation at home with his father and stepfather."*

He argued that the allegation that Mr Phasha passed all his grades at school is not correct if one looks at other reports where it is clear that in 1998 Mr Phasha was in Grade 11 and in 2000 he was in Grade 12. He further submitted that the allegations made in Dr Olivier's report with regard what Mr Phasha was studying prior to the accident have not been proved. Dr Olivier mentions on paragraph 9.7.1 on page A351 of his report that after completing matric Mr Phasha started studying a course in Human Resource Management but did not complete it because he did not study. Further that he then studied N1 and N2 and was busy with N3 at the time of the accident.

[31] Counsel for the defendant further argued that if one looks at the reports of the Occupational Therapist on page A147 paragraph 4.5, the educational history of Mr Phasha as reported shows that he experienced problems pre- and post-accident. It is clear that in the first course that he registered at tertiary level from 2001-2003, he failed various subjects. He stayed at home in 2004 and 2005. Even in 2006 he did not achieve anything. He struggled and moved to another institution. In 2007 he had taken a third career. Counsel for the defendant disagreed with Dr Olivier's view that Mr Phasha could have progressed until he obtained a certificate in Diesel Mechanic given his educational history prior to the accident and the fact that he had pre-existing problems of headaches which made him not to write exams in 2007. He further submitted that this information by Dr Olivier has no basis as he is only a Clinical Psychologist and not an expert to advise on the educational progression of Mr Phasha. He disagreed with the plaintiff's proposal that the amount to compensate the plaintiff for future loss of earnings should be the average of Scenarios 1 and 2 and be met with high contingencies for the preaccident scenario. He maintained that the plaintiff should have obtained the report of the relevant expert to deal with the educational progression of Mr Phasha given his history pre-accident. Counsel for the defendant referred the court to page A360 where Dr Schreuder (Industrial Psychologist) mentioned that the information he worked on, did not have documentary proof and argued that Mr Phasha's academic progression would not have got him a qualification as a boilermaker. He submitted that Mr Phasha also had financial problems as his grandmother was paying for his studies. According to him from the reports it is clear that Mr Phasha had many challenges prior to the accident. His background was not right and he was not doing well with his studies. He then proposed that given all these factors the second scenario as proposed by the

Industrial Psychologist is the most appropriate.

[32] The legal position relating to a claim for diminished earning capacity is trite. In *Dippenaar v Shield Insurance Co Ltd* 1979 (2) SA 904 (A), Rumpff CJ articulated the principle as follows:

> *"In our law under the lex acquilia: the defendant must make good the difference between the value of the plaintiff's estate after the commission of the delict and the value it would have had if the delict has not been committed. The capacity to be part of a person's estate and the losses of impairment of that capacity constitute a loss, if such loss diminished the estate."*

[33] In *Southern Insurance Association v Bailey* 1984 (1) All SA 98 (A) the following was said:

> *"Where the method of actuarial computation is adopted in assessing damages for loss of earning capacity, it does not mean that the trial judge is 'tied down by in exorable actuarial calculations'. He has 'a large discretion to award what he considers right'. One of the elements in exercising that discretion is the making of a discount for 'contingencies on vicissitudes of life'. These include such matters as the possibility that the plaintiff may in the result have less than a 'normal' expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case. The rate of discount cannot, of course, be assessed on any logical basis: the assessment must be largely arbitrary and must depend upon the trial judge's impression of the case."*

[34] There is no doubt from the expert evidence tendered that Mr Phasha suffered a severe diffuse axonal brain injury with neurocognitive and neuropsychiatric *sequelae* as a result of the accident in which he was

involved and that no significant improvement can be expected in future. Mr Phasha also suffers from emotional problems as a result of the injuries sustained in the accident and his prognosis in therapy is poor. Drs Shevel, Olivier and Ms Maluleke agree that Mr Phasha has been rendered unemployable in the open labour market by the accident. Dr Du Plessis's view is that Mr Phasha will not fulfil his pre-morbid potential while Ms Hattingh is sceptical about his chances of securing and sustaining employment. Dr Schreuder opined that Mr Phasha should be regarded as unemployable and provision should be made for his total loss of earnings.

[35] Expert evidence proves that Mr Phasha's pre-morbid educational history was not stable. Although no Educational Psychologist report has been furnished, the Occupational Therapist deals with Mr Phasha's educational history pre-accident extensively. From his report it is stated that Mr Phasha was in Grade 11 in 1998 and in 2000 he passed matric. Nowhere in all the reports furnished has it been mentioned what Grade was Mr Phasha doing in 1999. It has never been reported whether he was in Grade 11 or in Grade 12 in 1999. All what we are certain about is that in 1998 he was in Grade 11 and he passed Grade 12 in 2000. This means that the submission by counsel for the defendant has merit in that the conclusion by Dr Olivier that Mr Phasha had passed all his Grades at school without failing any of them is not correct.

[36] It is also not correct that Mr Phasha had completed N2 pre-accident.

According to what was reported to the Occupational Therapist, Mr Phasha never did N2 because based on the fact that he had matric, after completing the N1 when he transferred to Thibela Technical College he was able to register for N3 Engineering which course of study he did not pass. After failing the exams for N3 Engineering, he registered for the next block of N3 Diesel Mechanic of which he did not write the examinations as he had headaches which lasted for two weeks.

[37] From all the expert reports furnished, no documentary proof of what Mr Phasha had passed or achieved at tertiary level pre-accident was attached except proof of his registration at all the institutions he attended. This is evident from Dr Schreuder's report where he deals with Mr Phasha's achievements at tertiary institutions he attended. As regards the years 2001 to 2003 he mentions what has been stated in other expert reports that Mr Phasha was registered as a student at Technicon North Gauteng for a Diploma in Human Resource Management. Mention is made that he passed seven subjects and discontinued his studies due to financial constraints. He states that no academic record was available, except incomplete statements to confirm that Mr Phasha was registered for the diploma. He even stated that he defers to documentary proof. The same concern was also raised with regard to the achievements mentioned in the subsequent years, viz the bridging course allegedly obtained at Nkangala FET College in 2006, N1 Boilermaking obtained in 2007 and the fact that in 2008 mention was made in Ms Malukeke's report that Mr Phasha failed the first semester, did not

register for the second semester and registered the N3 Diesel Mechanic in the third semester when he was involved in an accident.

[38] Another concern that was raised by counsel for the defendant that I found to have merit was that Dr Olivier was not competent as a Clinical Psychologist to deal with the educational progression of Mr Phasha pre-accident as that lies within the competence of an Educational Psychologist. It is clear from all the expert reports submitted that the pre-educational history of Mr Phasha was not certain and clear in that he had not made a final career choice at the time of the accident. Prior to the accident he was moving from one course to another without completing any of them. There were instances where he had registered for a course, did not complete it and after three years at an institution without a qualification, he had to stay at home for two years due to financial reasons. When he resumed his studies in 2006 he changed institutions, obtained a bridging course and N1 in 2007 but struggled to pass the subsequent blocks in the courses he had started. While he was supposed to repeat them, he changed to other courses which he also did not complete. Given the uncertainty in Mr Phasha's career choice, his academic record's instability pre-accident it was important for the plaintiff to have also obtained an Educational Psychologist's report to give expert opinion regarding Mr Phasha's educational progression pre-accident. The opinion given by the Industrial Psychologist based on all expert reports of the plaintiff although not contested by the defendant is not complete for the reasons advanced above. The Industrial Psychologist relied on amongst

others, the opinion of Dr Olivier which was not supported by any documentary proof as discussed *supra.*

[39] Having taken all these factors into account and having considered all the expert opinions I agree that Scenario 2 is a better scenario to compensate Mr Phasha for the loss. I find the proposal of 5% contingency deduction for the past loss of earnings fair and appropriate under the circumstances. As regards the future loss I am of the view that a contingency deduction of 40% will fairly compensate the plaintiff for the reasons advanced above.

[40] The award to be made for past loss of earnings is as follows:

Past loss	R46 709, 00
Less 5% contingency	R2 335. 45
Total past loss	R44 373, 55

[41] The award to be made for future loss of earnings or loss of earning capacity is as follows:

Future loss	R3 619 151, 00
Less 40% contingency	R1 447 660, 40

Total loss of earning capacity	R2 171 490, 60

[42] The award to be made to the plaintiff is calculated as follows:

Future hospital and medical expenses	An undertaking in terms of section 17(4)(a) of Act 56 of 1996
Past loss of earnings	R 44 373, 50
Future loss of earnings/loss of earning capacity	R2 171 490,00
General damages	R 600 000, 00
	R2 815 863, 50

[43] Accordingly I grant judgment in favour of the plaintiff against the defendant as follows:

43.1 The defendant is ordered to pay the plaintiff an amount of R2 815 863, 50 in full and final settlement of the plaintiff's claim.

43.2 The defendant is further ordered to pay interest on the said amount of R2 815 863, 50 at the rate of 15,5% per annum 14 days from date of judgment to date of final payment.

43.3 The amount as mentioned above is payable into the trust account of the plaintiff's attorney of record with the following details:

Marais Basson Incorporated

Standard Bank Trust account: 030029430

Branch Code 052750

43.4 The defendant is ordered to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996 for the costs of future accommodation of Hezekiel Sibusiso Phasha in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him arising out of the injuries sustained by him in the motor vehicle accident of 14 September 2008 after which such costs have been incurred and upon proof thereof.

It is noted that the section 17(4)(a) undertaking covers the full costs of a single trustee of the Hezekiel Sibusiso Phasha Trust referred to hereunder, as if he/she were a *curator bonis* under the Administration of Estates and/or Property Control Act.

43.5 The defendant is ordered to pay the plaintiff's costs of suit, such costs include:

43.5.1 the costs of senior counsel,

43.5.2 the reasonable taxable fees for consultation and preparation for trial, qualifying and reservation fees (if any) and on proof thereof as well as the .costs of the reports, addendum reports of the 'following experts:

- Dr J J du Plessis;
- Dr D A Birell;
- Dr Callaghan;
- Dr Liezel van der Merwe;
- Corlien Macdonald;
- Ms Gladys Maluleke;
- Dr D A Shevel;
- Ms Ida-Marie Hattingh;
- Dr Louise Olivier;
- Dr Dries Schreuder;

43.5.3

43.5.3 the costs of the various calculations by the Actuaries Human & Morris;

43.5.4

43.5.4 the reasonable costs incurred by the plaintiff’s attorneys in transporting Mr Phasha to all medicolegal consultations;

43.5.5 Mr Phasha's reasonable hotel accommodation, as well as reasonable transportation for attending court;

43.5.6 the costs of the application for the appointment of a *curator ad litem]*

43.5.7 the costs of the *curator ad litem.*

[44] It is noted that Hezekiel Sibusiso Phasha is incapable of managing his own affairs.

[45] Jacobus Frederick De Beer is appointed as trustee for Hezekiel Sibusiso Phasha.

[46] It is noted that after deduction of disbursements and attorney and client fees due to Marais Basson Incorporated and their correspondent, the net amount of the claim is to be paid to the Hezekiel Sibusiso Phasha Trust (a copy of the draft Deed of Trust is attached hereto and marked Anneure "X").

[47] The plaintiff is ordered to furnish the defendant with at least 7 (seven) days written notice of taxation.

M J TEFFO

JUDGE OF THE NORTH GAUTENG

HIGH COURT, PRETORIA

COUNSEL FOR THE PLAINTIFF	J O WILLIAMS SC
INSTRUCTED BY COUNSEL	MARAIS BASSON INC
FOR THE DEFENDANT	F J KOKELA
INSTRUCTED BY	A P LEDWABA INC