



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: 37078/2014

Date: 1 October 2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED
1 October 2024
DATE SIGNATURE

In the matter between:

HONEST MALABA

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

JUDGMENT

MINNAAR AJ:

INTRODUCTION:

[1] The plaintiff, an adult male born on 13 December 1981, has instituted action against the defendant for damages suffered as a result of

personal injuries sustained by the plaintiff in a train accident that occurred on 15 May 2014 at Revensklip train station, Gauteng.

[2] The merits of the action had been settled with a 70/30% apportionment in the plaintiff's favour.

[3] According to the amended particulars of claim, as a result of the accident, the plaintiff sustained serious bodily injuries consisting of:

- a. Open right humerus fracture;
- b. Right distal radius fracture;
- c. Right scaphoid fracture; and
- d. Pelvic injury.

[4] It is further the plaintiff's pleaded case that, as a result of the injuries sustained, and the sequelae thereto, the plaintiff has suffered damages in the amount of R9 430 088.59 comprising of:

a. Past medical expenses:	R0.00
b. Future medical expenses:	R1 190 460.00
c. General damages:	R1 092 047.59
d. Loss of earning/loss of earning capacity:	<u>R7 147 581.00</u>
Total:	R9 430 088.59.

[5] The parties agree that the plaintiff suffered past loss of earnings in the amount of R526 043.00 and as such, this part of the plaintiff's claim is no longer in dispute.

[6] On behalf of the plaintiff, the following experts submitted reports:

- a. Dr Kumburai (Orthopaedic Surgeon);
- b. Me Sebapu (Occupational Therapist);
- c. Mr Sechudi (Industrial Psychologist); and
- d. GRS Consultants & Actuaries.

[7] For the defendant, the following experts submitted reports:

- a. Dr Seafeane (Orthopaedic Surgeon);
- b. Me Baartman (Occupational Therapist);
- c. Me Mokhethi (Industrial Psychologist).

[8] Save for the actuary, the respective experts submitted joint minutes. The Industrial Psychologists and Occupational Therapists also submitted addendum reports to their joint minutes. Except for the plaintiff's Industrial Psychologist, the court appreciates the assistance offered by these reports and the testimony of the expert witnesses.

[9] The parties agreed to proceed with the plaintiff's actuaries' updated report, subject to consideration of the different contingencies as submitted by each party.

PLAINTIFF'S TESTIMONY:

[10] The plaintiff testified that he is a Zimbabwean national. Around the year 2000, he sought greener pastures in South Africa. He applied for asylum and started working at the Spur in Kempton Park around 2002.

[11] On the day of the accident, he was taken by ambulance to a hospital in Germiston whereafter he was transferred to the Chris Hani Baragwanath Hospital. He was in hospital for two weeks. He confirmed the injuries listed in the reports of the Orthopaedic Surgeons.

[12] At the time of the accident, he was employed as a truck driver by one Mr Ayoob at Naxatouch CC. He was employed as such for four days before the accident and lost this employment as he could not return to his occupation as a truck driver.

[13] In his earlier life, he was employed as a truck driver in Zimbabwe and also worked in the restaurant industry. After the accident, he was employed solely in the restaurant industry. His latest employment was as a restaurant manager at Andiccio 24. He has been employed as such since November 2015. He lost this employment as he was dismissed in October 2023. According to him, he was dismissed because he was not performing as required. During cross-examination, it became evident that the plaintiff was dismissed because of, amongst other things, being dishonest.

[14] After his dismissal from Andiccio 24, the plaintiff struggled to obtain employment. According to him, this is because of his injuries as he can no longer work as a truck driver. He also testified that he is not qualified to apply for administrative jobs.

[15] The plaintiff testified that the injuries impact his personal life as he can no longer go to the gym where he used to lift weights. He struggles to do his duties at home. He is being impacted by cold weather. He rates his pain as moderate but with deterioration when it is cold and rainy.

[16] When working at Naxatouch CC, the plaintiff testified that he was earning a basic salary of R15 000.00 per month and a weekly allowance of R12 000.00 per month. This equated to R27 000.00 per month. No proof of such income was provided.

[17] Overall, the plaintiff lived up to his name during his testimony, and the court had no difficulty accepting the testimony presented by the plaintiff.

ORTHOPAEDIC SURGEONS:

[18] In terms of the join minute submitted by the Orthopaedic Surgeons, Dr Kumbirai and Dr Sefeane, the plaintiff suffered the following injuries:

- a. Open fracture of the right humerus with a radial nerve palsy which is now fully recovered.

- b. Fracture of right radius and ulna.
- c. Fracture of right scaphoid.
- d. Pelvic injury.

[19] The plaintiff received the following surgical treatment:

- a. Treatment in the form of open reduction and internal fixation of the right radius and ulna.
- b. Wound debridement and external fixator of the right humerus.
The external fixator was later removed.

[20] The plaintiff presents with the following complaints:

- a. Weakness in his right hand;
- b. Pain in the right arm/forearm: this is made worse by lifting of heavy weights and cold weather;
- c. Pain in the right hip: this pain gets worse by prolonged standing and walking;
- d. Occasional discomfort in the right hip;
- e. Difficulty in pronation and supination of the arm; and
- f. Deformity of the right arm.

[21] The following clinical findings are made:

- a. Scarring;
- b. Gunstock deformity (cubital varus) of the humerus; and
- c. Decreased grip power in the right hand.

- [22] The doctors agree on the following radiological findings:
- a. Mal-united fracture of the right humerus with 14 degrees of varus angulation on AP view;
 - b. Mal-united fracture of the right humerus with 0% apposition on lateral view;
 - c. United fracture of the right radius with plate and screws still in situ; and
 - d. United fracture of the waist of the scaphoid.

[23] In the joint minute, it is noted that the plaintiff is employed as a restaurant manager. Dr Kumbirai was informed by the plaintiff that the necessary lifting of heavy weights exacerbates pain in the right upper limb. This pain is worse during stock count. Dr Sefeane reports that the plaintiff informed him that the injuries are not affecting his job.

[24] The doctors agree that allowance be made for future conservative treatment and agreed that an allocation of R10 000.00 a year would be reasonable.

- [25] The following possible future surgeries are envisaged:
- a. Removal of implant right radius; and
 - b. Corrective osteotomy plus internal fixation of the right humerus.

OCCUPATIONAL THERAPISTS:

[26] The testimony of both Me Sebapu and Me Baartman assisted the court. I had regards to their respective reports and also their joint minute.

[27] For purpose of this judgment, I refer to what is contained in the addendum report to their minutes. In terms of the addendum report, the Occupational Therapists noted and agreed:

- a. The injuries sustained in the accident.
- b. The plaintiff requires Occupational Therapy intervention and the costs of same. Me Sebapu recommends twenty-four hours of Occupational Therapy inclusive of work visits. Me Baartman recommends six sessions of Occupational Therapy post the surgery that is suggested by Dr Sefane in his report.
- c. Me Sebapu recommended the following assistive devices: heat pack, trolley dolly, bucket on wheels, long handed broom, mop with a wringer, long handled dustpan, multi-grip, raised basin on wheels, automatic pot stirrer, stepper, Viscopaedic mattress overlay, long-handle bath mitt, long-handed duster, adjustable washing line, shoulder guard and arm sling.
- d. Me Baartman did not recommend any assistive devices. She however agrees with Me Sebapu that it is reasonable to recommend the following assistive devices: heat pack, mop with a wringer, long-handled broom, dustpan and duster and long-handed bath mitt.

- e. According to Me Baartman, the plaintiff should benefit from the suggested Occupational Therapy sessions where he would be taught adjustable methods for activity performance and educated on joint protection principles during activity performance.
- f. The plaintiff would require further treatment. Me Sebapu opines that the plaintiff will benefit from physiotherapy. Me Sebapu agrees with Me Baartman's opinion that the plaintiff will benefit from consultation with a Pharmacologist for pain management.
- g. No structural changes in the accommodation sphere are required.
- h. Cost of transport to and from medical appointments related to the accident would need to be allowed for at AA rates.
- i. At present, no assistance is required for gardening and maintenance. According to Me Sebapu, should the need for such assistance arise, a global amount of R36 000.00 per annum should be allowed.
- j. On life amenities, Me Sebapu and Me Baartman agree that the plaintiff suffers ongoing pain and limitations, specifically including functional limitations. The plaintiff has suffered protracted disruptions to his life. He is expected to suffer long-term functional impairment even with the recommended treatment.
- k. The plaintiff indicated that he has a Grade 12 and a diploma in Tourism.
- l. At the time of the accident, the plaintiff was working as a truck driver. The physical demands of the job were light to medium in nature. Following the accident, the plaintiff did not resume work.

- m. At the time of their respective assessments, the plaintiff worked as a restaurant manager. He reported some current work-related fallouts/limitations.
- n. The plaintiff's dismissal in September 2023 is noted. According to the plaintiff he is of the opinion that his ongoing difficulties related to the accident resulted in a breakdown in his relationship with his colleagues and his superiors.
- o. The plaintiff continued to struggle with the following duties due to pain:
 - i. Stock counting and taking.
 - ii. Receiving stock.
 - iii. Assisting with floor work (i.e. serving customers).
- p. The plaintiff's current unemployment is noted.
- q. The plaintiff will only be able to execute tasks that are within the light to medium (lower ranges) demands. The plaintiff is unsuited for full, medium, heavy and very heavy occupations.
- r. The plaintiff will struggle with tasks that require repetitive use of the right dominant upper limb.
- s. The plaintiff is a poor match for working as a truck driver or any other related occupation considering the upper limb demands of the job.
- t. The plaintiff suffered a reduction in his physical capacity because of the accident and he is considered an unequal competitor in the open labour market.

- u. The plaintiff has limited work prospects as compared to his pre-accident scenario. Having regard to his limited vocational exposure, fluidity into other areas of the occupational field would be increasingly difficult now that the plaintiff has physical limitations.

[28] The main divide between the Occupational Therapists relates to the assistance the plaintiff will require. According to Me Sebapu, the plaintiff requires eight hours of domestic assistance per week and an additional four hours daily during the recuperation period following the envisaged surgery. Me Baartman recommends six hours of assistance twice per month and an additional six hours once a week following surgery.

[29] It is difficult to comprehend what assistance the plaintiff will need as he did not testify in detail about the challenges he is facing. All he testified was that cannot do all his duties.

[30] It is however accepted that the plaintiff is involved in household chores and that he would require some assistance. The assistance will become more prevalent after the suggested surgery. As such, the proposal made by Me Sebapu will be considered.

INDUSTRIAL PSYCHOLOGISTS:

[31] I had regards to the reports submitted by the Industrial Psychologists and also to their joint minutes. For purpose of this judgment, I refer to the addendum report submitted by Me Mokhethi and Mr Sechudi. In the addendum report, they agree and note the following regarding the plaintiff's post-accident earning capacity:

- a. The plaintiff's highest education level is Form 4 (O level) which is the equivalent of Grade 10 (NQF 2) when compared to the South African education system. The plaintiff also obtained a Diploma in Tourism.
- b. At the time of the accident, the plaintiff was employed by Naxatouch CC as a truck driver, and he was 32 years old.
- c. It is agreed that for calculation purposes, the actual earnings obtained by Me Mokhethi from the plaintiff's former employer, Mr Ayob Ismail, should be utilised. It is acknowledged that the plaintiff's actual earnings were positioned between the Median and Upper Quartile of the suggested earnings for Truck Drivers as reported in 2014. Additionally, for the late-career stage, it is agreed to use the midpoint between the Median and Upper Quartile earnings for Truck Drivers, projected to be reached by the career ceiling age of 45 to 50. It is agreed that the plaintiff would have retired at the age of 65, deepening his health and per company policy.
- d. Me Mokhethi noted that the plaintiff's remuneration package included a basic salary of R8 000.00 per month, R2 100.00 for travel allowance and R1 500.00 food allowance (premised on

three trips per month). This amounts to R11 600.00 per month. Manually calculated, the plaintiff's earnings amounted to R139 200.00 per annum and fell between the Median and Upper Quartile of suggested earning for Truck Drivers as per 2014 Koch Quantum Yearbook. The earnings were provided by Mr Ayoob Ismail, owner and managing member of Naxatouch CC.

- e. Had the plaintiff not been involved in the accident, it would be reasonable to consider that the following scenario would have been applicable:
 - i. Mr Sechubi noted that taking into account the plaintiff's age and employment history, his earnings were likely to progress towards the Upper Quartile [R514 000.00] at Paterson level C4 total package of the scale as he reached his career ceiling at the age of 45 years (Koch, 2020). From the age of 46 years, any growth in his earning would have been as a result of additional inflationary-related increases until retirement age.
 - ii. Me Mokhethi noted that the plaintiff may have benefited from a relatively steady straight-line increase, reaching his earnings pinnacle at the Midpoint of Median and Upper Quartile earnings for Truck Drivers by career ceiling aged 45/50, had he continued working for the company. Thereafter, earnings would increase as per annual inflationary demand up and until he reaches retirement age of 65 contingent on his health status and employer

retirement policy. However, it should be noted that the plaintiff did not have a valid South African Code 14 Driving License. If he had lost his employment for any reason, he would not have been considered for heavy motor vehicle driving on other companies. He would have likely secured employment in the semiskilled sector of the non-corporate sector, with entry earnings comparable to the Median Quartile of Semiskilled Workers. He may have reached his earnings pinnacle at the Upper Quartile earnings for Semiskilled Workers by career ceiling aged 45-50. Thereafter earnings would increase as per annual inflationary demand up until he reaches retirement age of 65 depending on his health status and employer retirement policy.

- f. Deference is made to the plaintiff's employability as contained in the relevant specialist's conclusions regarding the plaintiff's employability and the relevant information contained therein had been considered.
- g. Mr Sechudi notes the limitations imposed may compromise the plaintiff's competitive edge when participating within the open labour market for inherently physical occupations, such as work as a truck driver. This might have offered a higher income stream. In the plaintiff's current state, he is restricted to occupations that offer reasonable accommodation from the employer as well as occupations that do not require the prolonged use of his upper

limbs. Consequently, the plaintiff is likely to be disadvantaged within the open labour market when compared to his uninjured counterparts.

- h. Me Mokhethi notes that even though the plaintiff may still suffer from residual symptoms, and his functionality is reduced, he is still capable of being gainfully competitive in the open labour market. With correct rehabilitation procedures recommended by the appointed experts, the plaintiff's pain and discomfort will be mitigated allowing him to continue participating in the open labour market with minimal difficulties.
- i. The plaintiff's dismissal from his employment, indicated by the Notice of Dismissal issued on 26 September 2023 is noted.
- j. Mr Sechudi notes that the likelihood of the plaintiff re-entering the labour market is slim due to the limitations imposed by his physical condition resulting from the accident. These limitations significantly hinder his ability to perform tasks typically required in various occupations. Moreover, the plaintiff's ongoing difficulties stemming from the accident, as noted by medical assessments, indicate that the plaintiff may struggle to reintegrate into the labour market successfully. The combination of his physical limitations and the potential reluctance of employers to accommodate these limitations could further impede the plaintiff's ability to secure employment.
- k. Me Mokhethi is of the view that the plaintiff was able to exploit work opportunities post-incident and remained active in the labour

market for nine years. This proves that he is physically and mentally capable of holding employment.

- l. It is agreed that following the accident, the plaintiff did not return to work due to the accident-related sequelae. Consequently, the plaintiff was unemployed for a period of about five months while recuperating. During this time, the plaintiff had no source of income thus he suffered a past loss of income and should be compensated in this regard.
- m. It is noted that the plaintiff managed to somewhat recover and secured an alternative job at Andiccio 24 as a restaurant manager from October 2014 until he was dismissed on 26 September 2023 and has remained without employment to date. Mr Sechudi noted that the plaintiff has suffered total loss of income to date, and he should be compensated in this regard. Me Mokhethi notes that, having perused the documents regarding his dismissal, the plaintiff's dismissal from his duties as a restaurant manager is not in any way related to his injuries sustained in the accident. His dismissal was due to attitudinal and dishonesty offences.
- n. Mr Sechudi noted that after comparing the plaintiff's pre- to post-accident earning potential, it can be concluded that he has, and will continue to sustain, a loss of income due to the accident. The plaintiff would need to be compensated for this loss.
- o. Me Mokhethi noted that the plaintiff will not suffer future loss of earnings. The plaintiff would be able to reach his earnings as predicted in the pre-accident second scenario, had he not lost his

employment or if he managed to secure another employment. As noted, he was earning R15 550.84 per month on dismissal, amounting to R186 610.08 in 2023. He was 42 years old, he would have been able to reach the maximum earnings of R206 000.00 per annum, for Semiskilled Workers by his career plateau at age 45 years (using Koch Quantum Yearbook for 2023). Me Mokhethi accepts that, while the plaintiff may have suffered a past loss of earnings as a truck driver, he did not and will not suffer future loss of income as a Semiskilled Worker.

[32] Mr Sechudi's explanation, and insistence, that the plaintiff's dismissal on grounds of dishonesty relates to the accident as it would constitute a behavioural change however casts a dark shadow over the role of Mr Sechudi as an expert witness.

[33] There is no evidence that the plaintiff suffered a head injury, and no attempt was made to present any evidence by a clinical psychologist in this regard. Mr Sechudi conceded that he is not a registered clinical psychologist and as such it is untoward of him to attempt to present evidence in a field, in which he is not qualified in.

[34] The only conclusion I can come to is that Mr Sechudi attempted to create a version to justify the plaintiff's dismissal on grounds of dishonesty: and that version must have been that there were behavioural changes as a result of the accident. This version is rejected in its totality.

[35] It is further concerning that Mr Sechudi failed to conduct any investigation of his own and solely relied on what the plaintiff told him about his employability. Mr Sechudi made no proper attempt to verify the plaintiff's employment, nor discuss the nature of the plaintiff's employment with his supervisor or the impact of his injuries on his work performance.

[36] It is not the role or function of an expert to advance any particular party's case. By doing this, Mr Sechudi has flouted his role as an expert witness, namely, to provide objective opinion evidence to assist the court. Mr Sechudi became the proverbial "*hired gun*" which is frowned upon.¹

[37] It is trite law that an evaluation of expert testimony involves a determination of whether, and to what extent, their opinions are founded on logical and cogent reasoning.² It should be relevant and reliable, otherwise it is inadmissible.³ Expert evidence should be objective and unbiased. An expert does not assume the role of an advocate, nor gives evidence which goes beyond the logic which is dictated by the scientific knowledge which that expert claims to possess.⁴

[38] In *National Justice Compania Naviera S.A v Prudential Assurance (Co) Ltd* 1993 (2) Lloyd's Reports 68-81 the duty or role of an expert is set out.

¹ *Schneider NO & Others v AA & Another* 2010 (5) SA 203 WCC at 211J – 212B

² *Africa Cash and Carry (Pty) Ltd v Commissioner, South African Revenue Service* 2020 (2) SA 19 (SCA) at para 71

³ *Twine and Another v Naidoo and Another* [2018] 1 All SA 297 (GSJ) para 18.

⁴ *Schneider NO & Others v AA & Another* 2010 (5) SA 203 WCC at 211J – 212B

- a. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.
- b. An expert witness should provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within his expertise. An expert witness should never assume the role of an advocate.
- c. An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.
- d. An expert witness should make it clear when a particular question or issue falls outside his expertise.
- e. If an expert opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one. In the case where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report.

[39] These duties were reaffirmed in *Nicholson v Road Accident Fund* (11453/2007) 2021 SGHC (unreported). In addressing the role of expert evidence, Judge Wepener stated as a preliminary note in paragraph 3 that:

"a number of expert witnesses called on behalf of the plaintiff overstepped the mark by attempting to usurp the function of the court and to express opinions based on certain facts as to the future employability of the plaintiff and to express views on probabilities. It is the function of the court to base its inferences and conclusions on all the facts placed before it".

[40] In the unreported judgment of *Adv Claire Cawood N.O. obo Shaun Enrico Cloete v Road Accident Fund* [2017] ZAGPPHC 828, Fourie AJ noted that the plaintiff's industrial psychologist relied on the information supplied to her by the plaintiff (relating to his earnings at the time of the accident), without testing the information with reference to objective evidence which could and should have been made available to her.

[41] It is abundantly clear that Mr Sechudi has made no real attempt to obtain critically important factual information from the plaintiff's employers, which would have had a material bearing on the opinion rendered about the plaintiff's employment prospects, and which appeared to be entirely speculative, fanciful and aimed squarely at trying to achieve a loss of income award to the plaintiff.

[42] On this basis, the report of Mr Sechudi is of no assistance to the court, and it cannot in any manner assist the court in determining the loss of income for the plaintiff. In this regard, his report simply falls short

of the standard required of expert witnesses, and it entirely negates the role of an expert witness, which is to assist the court in deciding whether the plaintiff has sustained a loss of income in circumstances where the court would not be able to do so on its own.

ACTUARY:

Future loss of income:

[43] Premised on the Industrial Psychologists addendum report to their joint minute, the plaintiff's actuary, GRS Actuarial Consulting, prepared re-calculations in respect of the plaintiff's future loss of income.

[44] The actuary took into account the two scenarios as set out by Mr Sechudi and Me Mokhethi.

[45] As already indicated, the version placed before the court by Mr Sechudi is rejected and as such the court will be guided by the scenario as set out by Me Mokhethi.

[46] Regarding future loss of income, the actuary applied the following general contingency deductions:

- | | |
|-----------------------------------|----------------------------------|
| a. Had the incident not occurred: | 15% |
| b. Having regard to the incident: | 15% as suggested by Me Mokhethi. |

[47] The results of the calculations, premised on the scenario presented by Me Mokhethi are then:

Income if accident did not occur: R4 265 071.00

Less contingency deduction: R639 761.00

R3 625 310.00

Income given accident did occur: R4 139 714.00

Less contingency deduction: R620 957.00

R3 518 757.00

R106 553.00 future loss

Future medical expenses:

[48] Premised on the reports by the Orthopaedic Surgeons and the Occupational Therapists, GRS Actuarial Consulting prepared actuarial calculations in respect of future medical expenses. The report is dated 13 March 2024.

[49] According to this report, the following calculations are presented premised on the Orthopaedic Surgeons reports:

Medical consultations: R211 298.00

Removal of implants right radius: R52 210.00

Corrective Osteotomy plus internal

fixation right humerus: R83 535.00

R347 043.00.

[50] On the joint minutes, dated 8 February 2024, submitted by the Occupational Therapists, the following figures are presented:

Me Sebapu: R301 149.00

Me Baartman:

R83 990.00

[51] Gardening and maintenance tasks are set at R699 617.00.

DAMAGES:

General damages:

[52] In the amended particulars of claim, the plaintiff claimed R1 092 047.59 in respect of general damages. The plaintiff's counsel submitted that an amount of R800 000.00 would be fair and reasonable. The defendant's counsel submits that an amount of R550 000.00 would suffice.

[53] The plaintiff's injuries and the sequelae thereto are fully set out in paragraphs 18 to 25 above.

[54] The plaintiff did suffer some pain and discomfort from his injury and there is a possibility that, in future, he might encounter repercussions thereof. The aftermath of the accident caused the plaintiff pain and suffering and loss of amenities of life. It negatively impacts on the plaintiff's quality of life. For this, the plaintiff must be compensated in the form of general damages.

[55] I had regard to the authorities referred to by both counsels regarding comparative cases and awards being made. In cases in which

the question of general damages comprising pain and suffering, disfigurement, permanent disability and loss of amenities of life arises a trial Court in considering all the facts and circumstances of a case has a wide discretion to award what it considers to be fair and adequate compensation to the injured party.⁵

[56] On the evidence before me, general damages is awarded in the amount of R675 000.00.

Future medical and hospitalisation costs:

[57] In his amended particulars of claim the plaintiff claimed R1 190 460.00 for future medical and hospitalisation costs.

[58] The plaintiff's counsel submits that a 15% contingency deduction should be applied whilst the defendant's counsel submits a 50% contingency fee deduction.

[59] The big divide relates to gardening and home maintenance. On 1 July 2024, when the trial proceeded as a part-heard matter, the plaintiff's counsel submitted that, since the plaintiff is residing in a rented flat, gardening services should be cut in half. Based on this concession, and the evidence presented, a 50% contingency deduction will apply.

⁵ *Road Accident Fund v Marunga* 2003 (5) SA 164 (SCA) at par 23

[60] Having regard to the actuarial report on future medical expenses, and the reports by Me Sebapu and Me Baartman, R817 655.00 is awarded for future medical expenses: this amount comprise of:

a. Future surgeries:	R347 043.00
b. Occupational therapy:	R19 000.00
c. Heat pack:	R2 536.00
d. Long handled broom:	R1 300.00
e. Mop with wringer:	R1 246.00
f. Long handled dustpan:	R542.00
g. Long handled bath mitt:	R542.00
h. Long handled duster:	R650.00
i. Shoulder guard:	R1 733.00
j. Arm sling:	R3 900.00
k. Domestic and personal assistance:	R77 182.00
l. Post-operative domestic assistance:	R12 172.00
m. Gardening and maintenance tasks:	<u>R349 809.00</u>
	R817 655.00

Past loss of earnings and earning capacity:

[61] The plaintiff claimed an amount of R7 147 581.00 in this regard.

[62] The parties agree that the plaintiff suffered past loss of earnings in the amount of R526 043.00

[63] On future loss of earnings, the plaintiff's counsel submits an amount of R727 510.00 would be awarded whilst the defendant's counsel submits an amount of R106 553.00.

[64] As the reports by Mr Sechubi are being disregarded, loss of earnings is awarded in the amount of R632 596.00 comprising of:

Pass loss of earnings:	R526 043.00
Future loss of earnings:	<u>R106 553.00</u>
	R632 596.00

[65] In the premises, the plaintiff is awarded R1 487 676.00 comprising of:

a. General damages:	R675 000.00
b. Future medical and hospitalisation costs:	R817 655.00
c. Loss of earnings:	<u>R632 596.00</u>
	R2 125 251.00
d. Less apportionment of 30%:	<u>R6375 756.00</u>
	R1 487 676.00

COSTS:

[66] There is no reason why costs should not follow suit. I agree with both counsels that Scale C should apply.

ORDER:

The following order is made:

1. The defendant shall pay the plaintiff the sum of R1 487 676.00.
2. Interest on the aforesaid amount a tempore morae from the date of summons.
3. The defendant shall pay the plaintiff's costs of the action on Scale C.

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Minnaar AJ

Case number	: 37078/2014
Heard on	: 13 and 14 March 2024, 1, 2 and 5 July 2024
For the Plaintiff	: Adv A Masombuka
Instructed by	: Mashapa Attorneys
For the Defendant	: Adv F F Opperman
Instructed by	: Padi Incorporated
Date of Judgment	: 1 September 2024