

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case no: 2721/2022

In the matter between:

MOJALEFA SAMUEL LITSOANE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

Claim number: 502/[...] [Link: 524[...]]

Coram: Opperman J

Heard: 15 July 2024

Delivered: 16 October 2024. This judgment was handed down in court and electronically by circulation to the parties' legal representatives *via* email and release to SAFLII on 16 October 2024. The date and time of hand-down is deemed to be 15h00 on 16 October 2024

Summary: Claim for loss of income – past hospital and medical expenses – contingencies.

ORDER

Having considered the papers herein and having heard the parties' representatives, it is hereby ordered that:

1. The defendant shall pay 90% of the plaintiff's proven or agreed damages.

2. The defendant shall pay to the plaintiff the sum of R1 743 355.36 (One million seven hundred and forty-three thousand three hundred and fifty-five rand and thirty-six cents) within 180 (one hundred and eighty) days of this order, in respect of the plaintiff's claim against the defendant for the following heads of damages:

2.1	Past hospital and medical expenses	R206 28.09
		Less 10% R20 628.71
		R185 658.38

2.2	Past and future loss of earnings/earning capacity	R1 730 774.29
		Less 10% R173 077.44
		R1 557 696.98

3. In the event of the aforesaid amount not being paid on 180 days from date of this order, the defendant shall be liable for interest on the amount at the prevailing interest rate, calculated from the 15th calendar day after the date of this Order to date of payment in line with prevailing legislation.

4. The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale B in respect of quantum, up to and including 19th June 2024, and notwithstanding, and over and above the costs referred to in paragraph 4.2.1 below, 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 180 (one hundred and eighty) days from date of allocatur to make payment of the taxed costs; and

4.1.3 Should payment not be effected on 180 (one hundred and eighty) days from date of allocatur, the plaintiff will be entitled to recover interest at the prevailing interest rate on the taxed or agreed costs from 15 (fifteen) days from date of allocatur to date of final payment.

4.2 Such costs include, subject to the discretion of the Taxing Master:

4.2.1 Cost of counsel on Scale B, including a fee for the drafting and settling of the Heads of Argument.

4.2.2 The reasonable qualifying fees (if any) of:

4.2.2.1 Dr D Hoffmann (Plastic, Reconstructive and Cosmetic Surgeon)

4.2.2.2 Dr J Preddy (Orthopaedic Surgeon)

4.2.2.3 Drs Van Dyk & Vennote Inc (Radiologists)

4.2.2.4 Frizelna Steyn (Occupational Therapist)

4.2.2.5 Dirk Pretorius (Industrial and Organisational Psychologist)

4.2.2.6 Nilen Sunder Kambaran (Actuary);

4.2.3 The costs of and consequent to the plaintiff's trial bundles and witness bundles, including the costs of 5 (five) copies thereof;

4.2.4 The plaintiff is declared a necessary witness and therefore the plaintiff's reasonable travelling expenses to attend the trial, as allowed by the Taxing Master; and

4.2.5 The costs of and consequent to the holding of a pre-trial conference.

5. The amounts referred to in paragraphs 2 and 4 will be paid to the plaintiff's attorneys, A Wolmarans Incorporated, by direct transfer into their trust account, details of which are the following:

NAME OF ACCOUNT HOLDER:	A WOLMARANS INC	
NAME OF BANK & BRANCH:	ABSA BANK, NORTHCLIFF	
ACCOUNT NUMBER:	4[...]	
BRANCH CODE:	632 005	
TYPE OF ACCOUNT:	CHEQUE (TRUST)	
REFERENCE:	MRS	VAN
ROOYEN/MAT13150		

JUDGMENT

Opperman J

Introduction

[1] The only issues that remain alive for adjudication in this matter are the plaintiff's claims for loss of income and for past hospital and medical expenses.

[2] The claims proposed to be allowed by the court are the following:

Plaintiff:

'1. The Defendant shall pay **90%** of the Plaintiff's proven or agreed damages.

2. The Defendant shall pay to the Plaintiff the sum of **R3 005 340.38** (Three Million and Five Thousand Three Hundred and Forty Rand and Thirty-Eight Cents) within 180 (one hundred and eighty) days hereof, in respect of the Plaintiff's claim against the Defendant for the following heads of damages:

2.1 Past Hospital and Medical Expenses	R206 287.09
	Less 10% R20 628.71
	R185 658.38
2.2 Past and Future Loss of Earnings/Earning Capacity	R3 132 980.00
	Less 10% R313 298.00
	R2 819 682.00'

Defendant: (The defendant refuses any claim for past medical expenses)

'1. The Defendant shall pay **90%** of the Plaintiff's proven or agreed damages.

2. The Defendant shall pay to the Plaintiff the sum of **R340,787.70 (THREE HUNDRED AND FOURTY THOUSAND SEVEN HUNDRED AND EIGHTY-SEVEN RAND AND SEVENTY CENTS)** within 180 (*one hundred and eighty*) days hereof, in respect of the Plaintiff's claim against the Defendant for the following heads of damages:

2.1 Past Hospital and Medical Expenses	R00.00
2.2 Past and Future Loss of Earnings/Earning Capacity	R378,653.00
	Less 10%: R37,865.30

R340,787.00

[3] The contingencies claimed by the plaintiff are:

'35. In evaluating the contingencies, the plaintiff submits that the appropriate contingency deduction, that should be applied to the plaintiff's loss of income calculation, is 17.5% and 30%.¹

The defendant maintains that:

'6.1 Having regard to the various hurdles to overcome in order to successfully be progressed or promoted to the next rank, it is submitted that it would be fair and reasonable to apply a contingency reduction of 45% in respect of the postulated pre-morbid earnings (higher than normal, as recommended by Plaintiff's Industrial Psychologist), and a contingency reduction of 30%² in respect of the postulated post-morbid earnings.'³

History: litigation⁴

[4] Summons was issued on 14 June 2022. The incident took place in 2020.

- 12, 13 and 15 March 2024: The matter was set down for trial.
- 12 March 2024: An agreement was reached in terms of which the defendant had accepted 90% liability for the plaintiff's damages.
- 13 March 2024 the following orders were granted in the present matter:

¹ Heads of argument for the plaintiff (HOA plaintiff). I am indebted to both counsel for the comprehensive heads of argument submitted to court.

² Amended on 11 October 2024 by agreement between counsel in chambers.

³ Heads of argument for the defendant (HOA defendant). The 30% contingency was included after agreement by the parties. The original HOA had a typing error that depicted 15%.

⁴ See HOA plaintiff (24 June 2024) paras 3-12.

- a) In respect of merits the order confirmed that the defendant is liable for 90% of the plaintiff's proven or agreed damages;
 - b) In respect of the plaintiff's claim for general damages the defendant agreed to pay the amount of R540 000.00 (R600 000.00 – 10%);
 - c) Further it was also ordered that the defendant will furnish the applicable undertaking in accordance with s 17(4) of the Road Accident Fund Act 56 of 1996;
 - d) The matter was then postponed, after application for postponement was brought by the defendant, as they required the plaintiff to undergo examinations by their own experts. The date for trial was 17 and 18 June 2024.
- 17 June 2024: The matter again stood down and ultimately on 18 June 2024 the matter proceeded on trial.
 - 18 June 2024: The plaintiff brought an application in terms of rule 38(2) of the Uniform Rules of Court, read together with s 3(1)(c) of the Law of Evidence Act 45 of 1988, seeking leave to present his evidence and that of his expert witnesses by way of affidavit and that the court accept into evidence the applicant's hospital and clinical records and the collateral evidence provided to the applicant's expert witnesses. The Court then granted the following order:
 - '1. The Applicant is granted leave to present his evidence in respect of the issues of quantum in terms of Rule 38(2) of the Uniform Rules of Court, read together with Section 3(1)(c) of the Law of Evidence Act 45 of 1988.
 - 2. The court admits into evidence the following:

- 2.1. Lodgement documentation delivered on 08 February 2022 and all discovered documents as per Item 1 – 21 of the Bundle;
 - 2.2. Affidavits of the Applicant's experts pertaining to the issue of quantum, specifically:-
 - 2.2.1. Dr Hoffman (Plastic Surgeon);
 - 2.2.2. Dr Preddy (Orthopaedic Surgeon);
 - 2.2.3. F Steyn (Occupational Therapists);
 - 2.2.4. NS Kambaran (Actuary).
 - 2.3. Confirmatory Affidavit of the Applicant.
 - 2.4. The collateral evidence provided to the applicant's expert witnesses.
 3. That the costs of this Application be costs in the cause.⁵
- After the aforementioned application was granted, the plaintiff proceeded to lead the evidence of his expert witness, Mr Dirk Pretorius (Industrial Psychologist) on virtual platform whereafter the defendants' representative cross-examined. The plaintiff proceeded to close his case hereafter.

[5] Judgment in respect of the claim for loss of income and the claim in respect of past hospital and medical expenses were reserved and the parties were ordered to submit heads of arguments as follows:

Plaintiff to submit heads of argument on 21 June 2024;
 Defendant to submit heads of argument on 08 July 2024; and
 Plaintiff to submit replying heads of argument, if any, on 12 July 2024.
 The parties agreed for the adjudication of the case to proceed on the heads of argument and judgment was reserved on 15 July 2024.

⁵ HOA for plaintiff (24 June 2024) para 9.

The case for the plaintiff

[6] The plaintiff is a 34-year-old male (born: [...] S[...] 1989) who was involved in an accident on 14 November 2020 at the age of 31 years old. He joined the police in March 2019 and was still employed as such at the time of the trial.⁶

[7] The injuries sustained were:

- a. Left C5 lamina fracture extending into the inferior articular surface of the facet joint;
- b. Left C6 transverse process fracture with involvement of the transverse foramen as well as the superior articular surface of the facet joint resulting in an anterior cervical discectomy and fusion with subsequent scarring;
- c. Left C5 and C6 facet joint oedema and paraspinal muscle oedema in keeping with the fractures as per 2.1; and
- d. Soft tissue injury to the right shoulder.⁷

[8] All the medical reports handed in by the plaintiff forms part of the uncontested evidence.

[9] The *viva voce* evidence by Mr Dirk Pretorius, the industrial psychologist, assisted the court, but the plaintiff did not testify. His version was not tested under cross-examination. This complicates the evidence, specifically so, on the aspect of the plaintiff joining the Special Task Force (STF) and the advantages that would have flowed from that in terms of his promotion. I will deal with it hereunder.

[10] If the plaintiff's pre-morbid vocational capacity is considered, specific reference must be made to the opinion of the medical experts. During the

⁶ HOA plaintiff at para 7.2.15.

⁷ HOA for the plaintiff at para 2.

consultations, the plaintiff noted that he did not suffer from any pre-morbid physical or psychological inhibiting factors. He specifically noted that he was a very healthy and fit individual having been an avid boxer his entire life as part of his fitness routine. He also trained other boxers. The plaintiff noted that his physical fitness was important to him as he planned to apply to serve in the STF unit.

[11] At the time of the accident in question, the plaintiff was employed as a non-commissioned officer, a constable. The non-commissioned officers are (from most senior) warrant officers, sergeants (lance sergeant, sergeant, staff sergeant), constable, and student constable who comprise the staff component at police stations.

[12] The plaintiff was promoted to the position of constable in December 2019. With regards to further promotion and progression, it is important to consider the Safety and Security Sectoral Bargaining Council (SSBC) Agreement 032011 - Agreement on Promotion and Grade Progression Policy of The South African Police Service: Requirements for Grade Progression according to the said policy includes constable to sergeant (a minimum of seven-years' service, including initial appointment as trainee); from sergeant to warrant officer (a minimum of seven-years' uninterrupted service as sergeant); from warrant officer to captain (a minimum of seven-years' uninterrupted services in the rank of warrant officer); from captain to lieutenant colonel (a minimum of seven-years' interrupted service in the rank of captain), etc.

[13] The plaintiff would also have been able to progress in his career *via* promotion. Promotion between the said levels from the position of constable could have occurred serving a minimum two-years uninterrupted service or four-years uninterrupted service on a particular level, depending on the individual's level of qualification i.e., NQF Level 4 or NQF Level 6.

[14] On 14 April 2023, at 14h33, the expert, Mr Dirk Pretorius, had a telephonic interview with the plaintiff's superior officer, captain Shekoe. She informed the expert that prior to the accident in question the plaintiff was a healthy and fit individual. According to her knowledge he had a good pre-morbid performance record. She noted that he would have been able to continue working 'in the field', where he would have been able to progress further in his career.

[15] The expert inquired from captain Shekoe with regards to the plaintiff's ambition to join the STF of the SAPS. She noted that the process to enrol for the STF is completely voluntary and that those individuals that want to become part of the elite unit is required to undergo a very stringent selection process. There is not any evidence on record that the plaintiff's performance was above average.

[16] According to captain Shekoe only a very small group of individuals are ultimately selected each year for the said unit. She noted that once an individual has been selected, they are required to complete their National Diploma (South African Special Forces Operations) qualification as part of their development. In terms of their progression, this would have been similar to that of the normal SAPS rank structure.

[17] Captain Shekoe confirmed that the SAPS retirement age is 60-years. Captain Shekoe also confirmed and verified the Employer Certificate completed by her.

[18] The expert noted that the plaintiff was already 31-years of age at the time of the accident in question. At the time of the accident, he has not made an application yet. However, he insisted that he would have, disregarding the accident in question.

[19] Taking into consideration his medical history, he appears to have been a fit individual that did not suffer from any physical or psychological inhibiting

factors. Available information obtained from his superior indicates that he had a good performance record prior to the accident in question.

[20] If the plaintiff managed to successfully follow his ambition, he would most probably have completed the STF training over a period of one to two years. With the said training and qualification obtained, the plaintiff would most probably have been able to progress *via* a combination of grade progression and promotions throughout his career in the STF. He would have been able to apply at any stage for the next rank, given that he adheres to the minimum requirements.

[21] The onus is on the plaintiff to prove that he would have been promoted through the ranks outside the normal grade promotions; he did not do so. In the expert's opinion, it is very difficult to say with certainty if the plaintiff would have been able to apply successfully for the STF.

[22] Post-Morbid Career Progression:

- a. The plaintiff reported to the expert (Pretorius) that he returned to work following a significant period of convalescence on 11 January 2021. He was paid during the period of convalescence.
- b. The plaintiff returned to his role as constable at Trompsburg SAPS. He noted that he was accommodated on his return and placed on light-duty until approximately March/April 2022.
- c. He attempted to return to perform field work in the Crime Intelligence Unit like he did pre-morbidly. He was not able to cope. He returned to his accommodated position in the office by December 2022. He has subsequently continued to work as an analyst (rank constable) in the Crime Intelligence Unit.

- d. The plaintiff explained to the expert as constable in the SAPS that he has continued to receive notch increases to date. He noted that his biggest lost has probably been as a result of earning no or significantly less overtime than he used to.
- e. As constable the plaintiff is currently earning in-line with notch R197 880.00 per annum (2023 terms).
- f. His current gross income is equal to R18 768.37 per month (2023 terms). The expert defers to the earnings collateral received from the SAPS.
- g. The expert received several payslips from the SAPS for the post-morbid period of employment as presented.
- h. Apart from the plaintiff's physical inhibiting factors, he faces permanent scarring and disfigurement as a result of the accident. Although it is not foreseen to have a significant adverse impact on the plaintiff's physical skillset, it is likely to have an adverse impact on the plaintiff's self-image.
- i. The plaintiff noted that the scarring is a constant reminder of the accident. Dr Hoffman opines that the scarring and disfigurement is unlikely to have an impact on the plaintiff's productivity and with the necessary psychological counselling; thus, reducing the psychological effect and increasing the plaintiff's productivity.
- j. According to the Safety and Security Sectoral Bargaining Council (SSBC): The plaintiff was promoted to the position of constable in December 2019.

- k. In the expert's opinion, the plaintiff will most probably, at best, only progress *via* grade progression in his post-morbid capacity.
- l. In the expert's opinion, promotion is not likely to take place, given the fact that the plaintiff will have to compete against several other able-bodied colleagues.
- m. It should also be noted that there are less positions or opportunities within the administrative and office realm of the SAPS compared to the field realm.
- n. He has managed to progress from the position of student constable to constable.
- o. Taking into consideration the above-mentioned policy the plaintiff's future progress will most likely be slow and vacancy-dependent. In the expert's opinion, the plaintiff's future grade progression progress will likely be approximately ten-years, progressing from constable to sergeant and from sergeant to warrant officer B1, at best. He is likely to continue earning his notch salary increases throughout his working life, until the normal age of retirement, age 60.

The case for the defendant

[23] The defendant did not adduce any evidence and closed their case immediately after that of the plaintiff. Counsel views the evidence proven differently. She correctly pointed out that whereas plaintiff's pre-morbid career progression is pitched extremely optimistic, his post-morbid career progression is pitched at the opposite side of the spectrum – extremely gloomy and pessimistic.

[24] Counsel for the defendant surmised the evidence from the following perspective:

3.2 Plaintiff's Industrial Psychologist testified that, when considering the career advancement of Police Officers, and specifically from rank to rank, it can happen by way of Grade Progression or Promotion. The circumstances in which each may take place, is set out in detail in his report and for sake of brevity not repeated here.

3.3 PROMOTION.

3.3.1 Plaintiff's Industrial Psychologist testified that one may at any time apply for a promotion to a next rank, but that the promotion is dependent on, or subject to:

- a. The availability of such a position (a vacancy);
- b. thereafter, being shortlisted for the position (as such, competing against other applicants in order to be shortlisted); and
- c. ultimately, being successful and appointed in the position.

3.3.2 It follows that there are three hurdles for an applicant (Plaintiff) to overcome, before he could be advanced to another rank.

3.4 GRADE PROGRESSION.

3.4.1 Plaintiff's counsel relayed and confirmed that after a period of 7 years, a candidate will become eligible for grade progression to the next rank.

3.4.2 However, the requirements as set out in 3.3 above, still apply.

3.4.3 A candidate is not automatically progressed to another grade (rank) after a period of 7 years, but merely becomes eligible to apply for the position.

3.5 BUT FOR THE ACCIDENT.

Industrial Psychologist's postulated pre-morbid career progression:

3.5.1 Plaintiff is postulated to have progressed to the next rank every four years.

3.5.2 He is postulated to have progressed to the rank of sergeant at the age of 35 in 2024, and warrant officer B1 at the age of 39 in 2028.

3.5.3 He is then ultimately postulated to the rank of lieutenant-colonel at the age of 51 in 2040.

3.5.4 Of great importance, is the qualification to the postulated progression:

'Without successful enrolment and completion of the STF programme, the claimant's rate of advancement within the SAPS rank structure would most probably have been slower. In the writer's opinion, given the uncertain nature of claimant's exact career path with the SAPS, higher than normal contingencies should be applied with regards to his pre-morbid career and earnings progression.'

3.5.5 Plaintiff's Industrial Psychologist conceded that the progression may have been slower.

3.5.6 Plaintiff's Industrial Psychologist conceded that, although 'junior' positions may be more readily available, as the position (rank) becomes more senior, the number of positions may be more limited. Therefore, one may be progressed / promoted to the rank of B1 quickly, but thereafter less positions would be available and the career progression thereafter may be much slower.

3.5.7 There is no evidence before Court to the effect that Plaintiff intended to, or could, move to police stations outside of Trompsburg. Plaintiff elected not to testify and as such there is no evidence before Court as to whether he had his eye set on moving away from the area in which he was working and residing.

3.5.8 Plaintiff's Industrial Psychologist conceded that the availability of positions (vacancies) differs from station to station. No evidence was advanced as to the availability of positions to apply for in the Trompsburg area in which Plaintiff was and is employed.

3.6 HAVING REGARD TO THE ACCIDENT.

Industrial Psychologist's postulated post-morbid career progression:

3.6.1 Plaintiff is postulated to progress only every seven to ten years.

3.6.2 He is postulated to have progressed to the rank of sergeant at the age of 40 in 2029, and warrant officer B1 at the age of 50 in 2039, being also then the highest rank he would obtain.

BUT FOR THE ACCIDENT – CONSIDERING FACTORS
RELEVANT TO CONTINGENCY REDUCTIONS

4.

4.1 When considering the pre-accident postulation, the following submissions are made:

4.1.1 But for the accident, only one scenario is postulated. Essentially, this postulation is based on the Plaintiff's successful application for and appointment to the Special Task Force (SPF).

- 4.1.2 Only a very small group of individuals are ultimately selected each year for the unit. These individuals then have to complete their National Diploma: South African Special Forces Operations qualification, as part of their development.
- 4.1.3 To apply for the STF, one must not be older than 32 years, and only 5% - 8% of applicants successfully complete the STF course.
- 4.1.4 Plaintiff repeated Grades 4 and 10 and it is respectfully submitted that the Honourable Court may infer that he was not academically strong (no evidence was presented to advance any other reason as to why he had to repeat those grades).
- 4.1.5 Plaintiff was already 31 years old at the time of the accident and had not applied for the position, and it is very difficult to say with certainty if the Plaintiff would have been able to successfully apply for the STF.
- 4.1.6 Promotion between the levels from the position of constable, could have occurred serving a minimum 2 years uninterrupted or 4 years uninterrupted on a particular level, depending on the individual's level of qualifications (NQF4 or NQF 6).
- 4.1.7 Plaintiff has only a NQF4 qualification.
- 4.1.8 Plaintiff's Industrial Psychologist conceded that the percentage of candidates who advance to a next grade every four years, is definitely on the lower side.'

The legal framework

[25] The words of Naidoo J in *Scheepers v Road Accident Fund*⁸ ring true in this case:

‘[19] I base my view on the well-established position in our law that courts need to be mindful of the current situation of the plaintiff and exercise a measure of common sense and judicious discretion in avoiding an award that would amount to a windfall to which the plaintiff would not be entitled. The purpose of a claim such as this is to compensate the plaintiff for loss that he has suffered or will suffer and not to make an award that amounts to largesse. The plaintiff, however, must first discharge the onus on him to prove the loss. I am not satisfied that the plaintiff has shown that the accident or his injuries have caused a loss of earning capacity or will cause a loss of earnings in the future, to the extent that he claims.’

[26] In recently reported judgments, ‘it was found that the nature of the damages suffered by the plaintiff lay somewhere between the optimistic picture painted by the defendant’s experts, and the pessimistic view of the experts who appeared for the plaintiff.’⁹ No two claims will ever be alike, and no two awards ever the same.

[27] The objective sought to be achieved is that the claimant must, as far as is reasonably possible, be placed in the position he would have been in had he not suffered the damages complained of. The cases¹⁰ referred to by counsel for both parties in their heads of argument place nuance on this principle.

Conclusion

[28] The proven facts and case law directs that contingencies of 31,5% and 30% to be the most reasonable and fair outcome in the case.

⁸ *Scheepers v Road Accident Fund* (893/2021) [2023] ZAFSHC 248 (20 June 2023).

⁹ H.B. Klopper, *RAF Practitioners Guide*, Motor Law, Division D Quantum, QUANTUM, 3 Quantifying a claim, last updated: April 2024 - SI 48, LexisNexis.

¹⁰ *Hendricks v President Insurance Co Ltd* 1993 (3) SA 158 (C); *Mvundle v RAF* (63500/2009) [2012] ZAGPPHC 57 (17 April 2012); *Southern Insurance Association Ltd v Bailey* NO 1984 (1) SA 98 AD at 113G; *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA) para 8.

Past medical expenditures

[29] In the matter of *Gunther v Road Accident Fund*¹¹ on 6 June 2024 and after extensive consideration of the prevailing law it was ruled that:

‘41. . . . I fully agree with the findings in the *Discovery Health* matter, which the defendant has seen fit to ignore even though in paragraphs 25 to 27 of its written submissions, it acknowledges that there are no judgments in its favour indicating that payment by it of a plaintiff’s past medical expenses “should not take place”. In the same breath, the defendant requests that I take cognizance of its arguments which were advanced in this matter, and which were much the same in the *Discovery Health* and *Van Tonder* matters. I might add that similar arguments were raised in the unreported *Malgas v Road Accident Fund*, which were also dismissed.

42. Having regard to the above, I am satisfied that the plaintiff has neither unduly benefitted from receipt of the benefit from GEMS in respect of past medical expenses incurred as a result of being injured in the collision, nor will she receive double compensation. Secondly, the benefit she received from her medical aid as described above is excluded from the reckoning of the calculation of the amount of compensation due by the defendant to her in terms of the RAF Act. I say this because as indicated in *Rayi*, the plaintiff’s obligation to her medical aid only arises once there is a successful recovery of her past medical expenses from the defendant.; (Footnotes omitted.)

[30] This division has also ruled in support of the *Discovery Health (Pty) Ltd v Road Accident Fund and Another*¹² in *Bereng v Road Accident Fund*,¹³ *Bezuidenhout v Road Accident Fund*¹⁴ and *Sondiyazi v Road Accident Fund*.¹⁵

[31] The opposition of the defendant to the claim for past medical expenditures is dismissed.

¹¹ *Gunther v Road Accident Fund* (24228/16) [2024] ZAWCHC 84.

¹² *Discovery Health (Pty) Ltd v Road Accident Fund and Another* (2022/016179) [2022] ZAGPPHC 768 (27 October 2022).

¹³ *Bereng v Road Accident Fund* (2218/2022) [2024] ZAFSHC 25 (1 February 2024).

¹⁴ *Bezuidenhout v Road Accident Fund* (1284/2012) [2024] ZAFSHC 224 (1 August 2024).

¹⁵ *Sondiyazi v Road Accident Fund* (1092/2021) [2023] ZAFSHC 162 (8 September 2023).

[32] As to costs; the parties are agreed on scale B. Costs as such is indeed appropriate in the circumstances.

ORDER

[33] In light of the above the following order is made:

1. The defendant shall pay 90% of the plaintiff's proven or agreed damages.

2. The defendant shall pay to the plaintiff the sum of R1 743 355.36 (One million seven hundred and forty-three thousand three hundred and fifty-five rand and thirty-six cents) within 180 (one hundred and eighty) days of this order, in respect of the plaintiff's claim against the defendant for the following heads of damages:

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3. In the event of the aforesaid amount not being paid on 180 days from date of this order, the defendant shall be liable for interest on the amount at the prevailing interest rate, calculated from the 15th calendar day after the date of this Order to date of payment in line with prevailing legislation.

4. The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale B in respect of quantum, up to and

including 19th June 2024, and notwithstanding, and over and above the costs referred to in paragraph 4.2.1 below, 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;

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4.2 Such costs include, subject to the discretion of the Taxing Master:

4.2.1 Cost of counsel on Scale B, including a fee for the drafting and settling of the Heads of Argument.

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- 4.2.2.4 Frizelna Steyn (Occupational Therapist)
- 4.2.2.5 Dirk Pretorius (Industrial and Organisational Psychologist)
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4.2.3 The costs of and consequent to the plaintiff's trial bundles and witness bundles, including the costs of 5 (five) copies thereof;

4.2.4 The plaintiff is declared a necessary witness and therefore the plaintiff's reasonable travelling expenses to attend the trial, as allowed by the Taxing Master; and

4.2.5 The costs of and consequent to the holding of a pre-trial conference.

5. The amounts referred to in paragraphs 2 and 4 will be paid to the plaintiff's attorneys, A Wolmarans Incorporated, by direct transfer into their trust account, details of which are the following:

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ACCOUNT NUMBER:	4[...]		
BRANCH CODE:	632 005		
TYPE OF ACCOUNT:	CHEQUE (TRUST)		
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ROOYEN/MAT13150			

Opperman J

APPEARANCES

PLAINTIFF:

I SANDER

Bloemfontein

Instructed by A Wolmerans Inc.

Bloemfontein

DEFENDANT:

J GOUWS

Office of the State Attorney:

Bloemfontein