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

Reportable:	**NO**
Of interest to other Judges:	**NO**
Circulate to Magistrates:	**NO**

Case no: **69/2017**

In the matter between:

JOSEPH MOFOKENG Plaintiff

And

ROAD ACCIDENT FUND Defendant

Coram: DAFFUE J
Heard: 23 AUGUST 2024
Delivered: 7 NOVEMBER 2024

Summary: On 13 December 2013 the plaintiff, a 32-year-old male person at the time, was struck from behind by a motor vehicle whilst riding his motor cycle. He sustained a right clavicle fracture and a moderate head injury. A CT scan indicated, *inter alia*, contusion haemorrhage left frontal and temporal and surrounding *vasogenic edema*. Right *otitis media* was reported whilst blood was oozing from the right ear. All other disputes having been settled, the court was called upon to adjudicate general damages only. The plaintiff is still operating his own taxi, although he is compromised. He often forgets where he is heading to and on occasion cannot work his normal shifts. The clavicle fracture healed although he still experiences pain and discomfort. He suffers from daily headaches. He experiences memory impairment, anger and poor concentration. In 2023 he was diagnosed with epilepsy, which according to the medical evidence is directly related to the brain injury. Chronic medication has been prescribed with success. According to expert

opinion the plaintiff's brain dysfunction and Post Traumatic Stress Syndrome caused his neuro-psychiatric abnormality. R850 000 was awarded in respect of general damages.

ORDER

1. The defendant shall pay the plaintiff the amount of R850 000 (eight hundred and fifty thousand rand) for general damages in respect of shock, pain, suffering, disfigurement, disability and loss of amenities of life, which amount shall be paid into the following bank account:

Symington & de Kok Attorneys
First National Bank
Account number: 5[…]
Branch code: 250 655
Reference: TR0706MXM2983.

2. Defendant shall pay interest on the aforesaid amount at the prescribed rate of interest calculated 14 (FOURTEEN) days from date of judgment to date of payment.
3. The defendant shall be afforded a period of 180 calendar days from the date of this order to effect payment herein during which period the plaintiff will not be entitled to issue a writ against the defendant.

4. The defendant shall pay the plaintiff's taxed party and party costs on a High Court scale to date of this order which shall include the travelling costs of the plaintiff, as well as counsel's fees calculated on scale B of rule 69 read with rule 67A(3) and the reasonable qualifying, preparation, reservation and appearance fees of the following experts (where applicable):

4.1 Dr M Jivan (general practitioner);
4.2 Dr JF Ziervogel (orthopaedic surgeon);
4.3 S van Jaarsveld (industrial psychologist);
4.4 L Delport (occupational therapist);
4.5 M Pienaar (neuropsychologist);

4.6 Human & Morris Actuaries;

4.7 Rikus van der Poel (clinical psychologist); and

4.8 Dr JA Smuts (Neurologist).

5. Interest shall accrue at the prescribed statutory rate in respect of:

5.1 the capital amount of the claim, calculated 14 (fourteen) days from date of this order to date of final payment, in the event that payment is not affected within the 180 days from date of this order as per paragraph 3 above;

5.2 the taxed costs, calculated from 14 (fourteen) days from date of taxation to date of final payment.

6. The plaintiff's attorneys of record shall attend to the creation of an *inter vivos* trust in order to protect the awarded funds to the exclusive benefit of the plaintiff.

7. The trust shall be created in accordance with the draft Trust Deed attached hereto as annexure "A", and the trustee of the trust shall have the powers as set out therein, duly amplified with any powers to be recommended by the Master of the High Court of South Africa (the Master), and the provisions of the draft Trust Deed are regarded as incorporated into this order.

8. The defendant shall pay the costs in respect of the creation and future administration of the said trust, which costs shall include the fees of the trustee.

9. The trustee shall, unless exempted, furnish security to the satisfaction of the Master.

JUDGMENT

Daffue J

Introduction

[1] The plaintiff is Mr Joseph Mofokeng, a major male person residing in Sasolburg, Free State Province. He was born on 25 February 1981 and was therefore 32 years old when he was injured in a motor vehicle collision on 13 December 2013. He is now 43 years old. He instituted action against the Road

Accident Fund (the defendant) to claim damages allegedly suffered as a result of the injuries sustained in the aforementioned collision.

[2] The merits of the claim were conceded in full by the defendant as long ago as 17 October 2017. On 27 July 2021, four years later, the plaintiff's claim for loss of earnings was settled and the defendant undertook to furnish the usual undertaking in terms of s 17(4)(a) of the Road Accident Fund Act, 1996. The issue of general damages was separated from the other heads of damage in terms of rule 33(4) of the Uniform Rules of Court and postponed to be adjudicated at a later stage. A further three years later this portion of the claim was eventually set down for hearing to be adjudicated by me.

[3] On the trial date the defendant's legal representative, Ms Banda, requested to be excused from participating in the trial proceedings due to lack of instructions. This was not a surprise at all. In this case the defendant filed expert reports of Dr HL Moloto, an orthopaedic surgeon, Dr T Rapapali, a clinical psychologist, Ms Success Moagi, an occupational therapist, and M Kheswa, an industrial psychologist. A cursory perusal of these reports points in one direction only and that is that they are not in conflict in any material respects with the reports filed by like experts on behalf of the plaintiff. In fact, these reports support the plaintiff's case. Although Ms Banda mentioned that she could not make any meaningful contribution, she placed the following on record:

a. there was no evidence by a neurosurgeon that the plaintiff suffered from a brain injury, bearing in mind the Glascow Coma Score (GCS) of 14/15 on hospitalisation;
b. there was no proof that the plaintiff suffered from epilepsy and that he was receiving treatment for this condition;
c. the plaintiff was still driving a taxi notwithstanding his alleged medical condition;
d. there was no evidence that the plaintiff was still suffering from his orthopaedic injuries as the clavicle fracture had healed according to the evidence.

[4] Ms Banda indicated that she had no objection to the filing of affidavits by Dr ZF Ziervogel, Ms Mariske Pienaar and Dr JH Smuts to confirm their expert reports in accordance with the provisions of rule 38(2) of the Uniform Rules of Court. Hereafter she was excused from further attendance. Consequently, I ruled that these expert reports, confirmed by the respective affidavits, may be presented as evidence in terms of rule 38(2).

The relief sought

[5] As indicated, the only outstanding issue is the claim for general damages. The plaintiff claimed R900 000 in his particulars of claim which is the same amount that his counsel, Adv MDJ Steenkamp, submitted should be awarded to him.

The evaluation of the evidence

[6] The following witnesses testified during the trial:

a. the plaintiff, Mr Joseph Mofokeng;
b. Mr Rikus van der Poel, a neuropsychologist; and
c. Ms Letitia Delport, an occupational therapist.

[7] The reports of the following experts were handed in:

a. Dr JF Ziervogel, an orthopaedic surgeon, as exhibit A inclusive of his affidavit;
b. Ms Letitia Delport, the occupational therapist, as exhibit B;
c. Ms Mariske Pienaar, the neuropsychologist, as exhibit C inclusive of her affidavit;
d. Mr Rikus van der Poel, the neuropsychologist, as exhibit D; and
e. Dr JA Smuts, the neurologist, as exhibit E inclusive of his affidavit.

[8] After considering the evidence, I deemed it appropriate to direct Mr Steenkamp to obtain an affidavit of Dr MD Thokoane as both the plaintiff and Mr Van der Poel referred during their testimony to Dr Thokoane, the plaintiff's general practitioner. The affidavit was obtained and accepted as exhibit F. The contents

thereof will be considered when I evaluate the evidence. I am satisfied that this procedure did not prejudice any of the defendant's rights to a fair trial, or at all.

Evaluation of the evidence and submissions made

[9] It is common cause that the plaintiff sustained a right clavicle fracture and a head injury. He was admitted at the Sasolburg Hospital on 13 December 2013 and transferred to Pelonomi hospital on 17 December 2013. The GCS measured 14/15 from 15 December 2013 to 18 December 2013. On 17 December 2013 a CT brain scan was taken, indicating contusion haemorrhage left frontal and temporal and surrounding *vasogenic edema* (extra-cellular accumulation of fluid). Blood was detected in the sphenoid sinus (the hollow space in the bones around the nose), suspicious of a base of skull fracture, although no fracture lines could be detected. Right *otitis media* (infection of the middle ear) was reported and the right ear was oozing blood. The plaintiff was transferred back to Sasolburg hospital and eventually discharged on 14 January 2014.

[10] I accept that I have to grant a globular award, bearing in mind the totality of the injuries, but I believe that it is useful to consider the orthopaedic and neurological injuries and their sequelae separately. Once that is done, I shall arrive at an amount which I regard just and fair in this specific instance.

[11] The plaintiff is a taxi driver. Prior to the collision he was the owner of four taxis, but on his return home after his hospitalisation, one taxi had been stolen and two others had been damaged in collisions. He is making use of one taxi. This taxi was not roadworthy for some time. He, being a qualified mechanic, repaired it. The plaintiff was vague during his evidence as to when he started driving his own taxi again. At a stage he even tried to convey that he did not drive his taxi for a period of ten years after the collision. This is contrary to his versions to Dr Ziervogel who examined him on 11 January 2018 and Ms Delport who examined him on 7 January 2020. He has been a taxi driver from 2004 *ex facie* Ms Delport's report.

[12] The plaintiff was a bodybuilder and a member of the Slater gymnasium prior to the collision. He cannot do any bodybuilding anymore, but keeps himself fit with aerobic exercises. He services and repairs his own taxi when required, but finds it

difficult to work for too long with tools such as spanners. He also finds it difficult to drive for a long time. According to him, he still experiences daily pain in his right shoulder and cannot sleep on his right side. When referred to the report of Dr Ziervogel dated 11 January 2018, he merely stated that he personally was the one feeling the pain daily. Fact of the matter is that the plaintiff has been operating his taxi for many years since the collision and this is still the situation. According to him, he usually conveys two loads of people in the mornings and two to three loads during the afternoons although it is not always possible to work a full day. He works every day of the week.

[13] One golden thread running through the collateral evidence relied upon by the experts and confirmed by the plaintiff in his oral testimony is the frequent and almost daily headaches from which he is suffering, as well as the pain and discomfort experienced as a result of his right shoulder injury. He, for example, finds it difficult to write. The plaintiff's evidence confirmed the behavioural changes provided as collateral evidence to the experts. There is no reason to reject his version. I accept that he incurred a loss of amenities of life.

[14] Four years after the collision Dr Ziervogel confirmed that there was no obvious deformity of the right shoulder, although there was 'tenderness when pressing on the distal third of the clavicle' and that there was 'discomfort when pressing on the acromio-clavicular joint'. The fracture had healed. Although x-rays did not reveal any obvious signs of an injury to the acromio-clavicular joint, it could be treated by infiltrating the joint with steroids. If this treatment is not providing the expected relief, the distal end of the clavicle could be excised to form a fibrous arthroplasty (a procedure to remove the outer end of the clavicle). Although more treatment was indicated, the doctor pointed out that from an orthopaedic point of view there was no reason to consider early retirement.

[15] The plaintiff testified that he could not carry heavy objects anymore, but it is apparent from Ms Delport's report that he was able to lift objects up to a maximum weight of 30 kg from the floor to his waist, as well as from the floor to the table, without any prominent difficulty, or whilst experiencing pain.

[16] It is accepted that the orthopaedic injury was a painful injury as also suggested by Dr Ziervogel, but the fracture has healed. Insofar as the plaintiff still experiences discomfort and pain, treatment as suggested by Dr Ziervogel may alleviate the problems. The plaintiff can continue operating his taxi as he has always done.

[17] At the time when the plaintiff was examined by Dr Ziervogel in 2018 and Ms Delport in 2020, he did not inform them of any seizures or epileptic attacks. They reported none. The plaintiff explained the epileptic attacks as a 'shaking' of his body, his eyes rolling, that he would faint, fall down and even bite his tongue. During these occasions someone would put a spoon in his mouth. It would take time to recuperate and he would often not know where he was or what had happened. He could not explain how often these attacks occurred. Initially he did not take the attacks seriously. Insofar as he mentioned that he had consulted a doctor and received medication from his general practitioner, Dr MD Thokoane, his version is confirmed by Dr Thokoane. Mr Van der Poel, the neuropsychologist, testified that Dr Thokoane had confirmed the history of epileptic fits and the chronic medication prescribed.

[18] Dr Thokoane was approached by the plaintiff on 27 March 2023 regarding two episodes of epileptic fits that occurred a few days earlier. At that stage the plaintiff informed the medical practitioner that he had been involved in a motor vehicle collision and that he had 'a history of biting his tongue, body jerking and loss of consciousness' thereafter. Having considered the history provided to him, the doctor prescribed Tegretol Cr 400mg for the treatment of the plaintiff's epileptic fits. The doctor saw the plaintiff again on 20 August 2023 who then informed him that his epileptic fits had significantly decreased since taking the prescribed medicine. He renewed the prescription. On 8 March 2024 he had a further consultation with the plaintiff at which stage the plaintiff mentioned that he had not experienced any further episodes of epileptic fits. According to the doctor the plaintiff will have to use the chronic medication for the remainder of his life.

[19] Mr Van der Poel did several tests on the plaintiff. He was satisfied that the plaintiff was not guilty of malingering. In utilising the Beck Depression Inventory, he concluded that the plaintiff was placed within the moderate to severely depressed

range. The witness was persuaded that the plaintiff's problems conveyed to him such as headaches, agitation, forgetfulness, poor concentration and disorganisation, to mention a few, were all related to the collision and head injury sustained. According to him these cognitive and emotional sequelae are associated with the traumatic brain injury and the long-term effects of the plaintiff's reduced physical capacity as a result of the orthopaedic injury which still causes pain and discomfort.

[20] Both Ms Delport and Mr R Van der Poel did a Montreal Cognitive Assessment (MOCA) of the plaintiff. It is accepted that the assessments were conducted nearly four years apart, *ie* by Ms Delport on 7 January 2020 and by Mr Van der Poel on 28 October 2023. According to Ms Delport the plaintiff scored 23/30, whilst he merely scored 18/30 according to Mr Van der Poel. The witnesses were not asked to explain these differences. According to Mr Van der Poel a normal cognitive range is between 26 and 30. Although he indicated in his written report that the plaintiff was suffering from a mild cognitive impairment, he indicated in his oral evidence that the score of 18 is indicative of mild to moderate cognitive impairment. Obviously, the score of 23 reported by Ms Delport is much closer to the normal cognitive range. I also considered the report and affidavit of Dr JA Smuts, the neurologist, which was accepted as exhibit E. He was of the view that the impact to the plaintiff's head was that of a moderate concussive head and brain injury. Dr Smuts mentioned that although the plaintiff had not been diagnosed with epilepsy, clinically he clearly suffered from epilepsy. Although he was not informed by the plaintiff which medication was prescribed to him by his general practitioner, he also suggested that Tegretol Cr 400mg could be prescribed as a potential treatment option. Dr Smuts arranged for an EEG to be conducted on the plaintiff. This presented to be normal, but the expert indicated that although no epileptiform activity was recorded, this did not exclude epilepsy as the 'findings need to be correlated with the clinical and radiological findings'.

[21] Dr Smuts differed from Mr Van der Poel's expert report indicating the MOCA as 18/30 and concluding that the plaintiff was suffering from a merely mild cognitive impairment. In Dr Smuts' opinion the assessment was more in line with moderate cognitive problems and he also suggested that the court should consider to suitably protect any funds to be awarded to the plaintiff. Dr Smuts found that the plaintiff

suffered from a brain dysfunction in the form of a frontal dysfunction and that this in combination with the Post Traumatic Stress Syndrome (PTSD) was the cause of the neuropsychiatric problems detected.

[22] In conclusion pertaining to the brain injury suffered, I am satisfied that it can be classified as a moderate concussive head injury with an associated brain injury as found by Dr Smuts and eventually concurred in by Mr Van der Poel in his oral testimony.

General damages

[23] It is desirable that there should be some measure of uniformity of awards in similar cases, but this is often difficult to achieve. Judicial officers should consider previous awards in comparable cases, but in practice it is not easy to find cases that are in material respects similar to the damages suffered by the particular plaintiff before the court.[1] Mr Steenkamp referred to four cases which he believed should be considered in order to come to a just award. I shall deal with these briefly, where after I shall refer to judgments researched by myself.

[24] *Smit v Road Accident Fund*[2] is the first judgment referred to by Mr Steenkamp. The plaintiff in that case sustained moderate to severe brain damage and post traumatic epilepsy. He also sustained a femur fracture that was treated by open reduction and internal fixation, causing a 3.5 cm shortening of the leg. He was unable to continue his work as a gardener. The award at its present day value amounted to R1 203 000. Both the neurological and orthopaedic injuries were much more severe than *in casu*.

[25] *Mngomezulu v Road Accident Fund*[3] was the second judgment relied upon by Mr Steenkamp. Again, as in the previous case, the plaintiff sustained a moderate to severe brain injury as well as compound fractures of the right tibia and fibula. He also sustained a closed chest injury with lung contusion. The plaintiff's future employment was compromised. The value of the award in 2024 is R1 166 000. Again, the injuries are not comparable with those *in casu*.

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[1] *Marine and Trade Insurance Co. Ltd v Goliath* 1968 (4) SA 329 (AD) at 334B-D.
[2] 2013 (6A4) QOD 188 (GNP).
[3] 2012 (6A4) QOD 95 (GSJ).

[26] *Van der Mescht v Road Accident Fund (Van der Mescht)*[4] was third judgment referred to by Mr Steenkamp. In that case a female cyclist merely sustained a moderate brain injury, unlike in the previous two cases, together with various fractures of her thoracic vertebrae, pelvis, left ankle and left scapula. The neuro-psychological consequences manifested in a changed personality and diminished functioning in her work environment. The value of the award in 2024 is R811 000. *Van der Mescht's* orthopaedic injuries were more severe than *in casu*, but it is the most comparable of the four cases referred to by Mr Steenkamp.

[27] The last case referred to by Mr Steenkamp is *Tobias v Road Accident Fund (Tobias).*[5] The plaintiff sustained a moderate brain injury as well as several fractures of both tibia and her dorsal vertebrae. At the time of her trial there was non-union of the right tibia and also signs of spondylosis in the dorsal vertebrae. Save for the usual neuro-psychological deficits, as also experienced in this case, the plaintiff was unable to walk long distances and to stand for long periods. The award, calculated in 2024, amounts to R912 000. The orthopaedic injuries in *Tobias* were far more severe than *in casu*.

[28] In *Nepgen NO v Road Accident Fund*[6] the court awarded R900 000 which is equal to a present day value of R1 666 000. The plaintiff sustained an extremely severe brain injury as well as fractures of the right tibia and fibula and the left clavicle. Although he recovered well, he suffered from permanent cortical blindness and a degree of intellectual compromise. His brain injury presented in severe concentration and tracking problems, learning and memory problems, diminished verbal fluency and slowed mental processing. He was held to be unemployable. This judgment is referred to merely to show that it cannot be compared with the matter at hand. Both the neurological and orthopaedic injuries are much more severe than *in casu*.

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[4] 2010 (6J2) QOD 42 (GSJ).
[5] 2011 (6B4) QOD 65 (GNP).
[6] 2012 (6A4) QOD 129 (ECP).

[29] In *Protea Assurance Co Ltd v Matinise*[7] the plaintiff suffered a severe head injury, developed post-traumatic epilepsy which resulted in a personality change. On appeal the Appellate Division accepted the trial court's findings that the injury resulted in severe disabilities. It accepted the gloomy picture presented in the expert evidence in respect of the plaintiff's future in the open labour market. It is apparent that no evidence was presented pertaining to the possibility of prescribing medication to possibly curtail epilepsy attacks. R9 000 was awarded which is equal to a present day value of R466 000.

[30] In *Sibanyoni v Mutual & Federal Insurance Co Ltd*[8] the Supreme Court of Appeal increased the award for general damages to R15 000. The present day value thereof is R80 000. The plaintiff (the appellant on appeal) sustained a head injury, causing disabilities as a result of which he was medically boarded by his employer. Over and above the head injury he also sustained a dislocated left shoulder and compound fractures of the metacarpals of his left hand.

[31] In *Silombo v Road Accident Fund (Silombo),*[9] a much more recent judgment, R425 000 was awarded which equals a present day value of R479 000. The plaintiff sustained a fracture of the right clavicle and shoulder blade. The fracture of the clavicle was treated surgically with implants. According to the evidence he will experience chronic pain in the shoulder for the rest of his life. The plaintiff did not sustain any brain injury.

[32] In *Modisaotsile v Road Accident Fund*[10] a 19 year old female sustained a displaced right clavicle fracture and some other orthopaedic injuries. As in *Silombo* the plaintiff also complained of pain in her clavicle during cold and inclement weather. The plaintiff could not continue playing netball on social level and as a result of the collision she suffered from psychological disturbances, including severe depressive mood order, post-traumatic anxiety disorder and an inclination to self-harm. R400 000 was awarded which is equal to R420 000 in today's terms.

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[7] 1977 (2B2) QOD 693 (A); 1978 (1) SA 963 (A).
[8] 1995 (4B2) QOD 12 (SCA).
[9] 2022 (8D3) QOD 1 (MM).
[10] 2023 (8D3) QOD 8 (NWM).

[33] In *Vukeya v Road Accident Fund*[11] the full bench awarded R330 000 in respect of general damages on appeal. The present day value thereof is R578 000. The appellant (the plaintiff in the court *a quo*) sustained a mild to moderate frontal lobe brain injury as well as orthopaedic injuries such as a whiplash injury of the neck, a lower back injury and a fracture of the one metacarpal bone. Her short term memory and personality were impaired whilst she was suffering from chronic headaches and depression. There was a risk that the plaintiff might lose her employment.

[34] In *GB v Road Accident Fund*[12] the plaintiff sustained a mild traumatic brain injury which caused a major neuro-cognitive disorder, presenting in headaches, depression, poor concentration and fatigue. She also struggled to control anger and cried easily. Over and above the brain injury, she suffered a severe degloving injury of the scalp, fractures to both mandibles, a contusion of the brachial plexus of the right shoulder with a possible rotator cuff injury. Notwithstanding plastic surgery, she sustained permanent disfigurement. The award of R500 000 is equal to R703 000 in 2024.

[35] In *Monaisa v Road Accident Fund (Monaisa)*[13] the plaintiff suffered a concussive brain injury with subdural bleeding and a basal skull fracture, as well as further injuries to his face and cervical spine. He suffered from constant headaches, memory loss and verbal aggression to such an extent that he could not cope with his work and resigned. He experienced severe pain in the mid and lower cervical vertebrae, both shoulders and his neck. He walked with a limping gait. The court accepted that his occupational prospects had been compromised as a consequence of the head injury and ongoing intellectual difficulties. The award of R625 000 is equal to a present day value of R934 000. The orthopaedic injuries in *Monaisa* are much more severe than *in casu*.

[36] In *MM v Road Accident Fund (MM)*[14] R850 000 was awarded which equals a present day value of R1 085 000. The plaintiff suffered a moderate brain injury and serious orthopaedic injuries, *inter alia* a compression wedge fracture of the L2, L3

[11] 2014 (7B4) QOD 1 (GNP).
[12] 2017 (7B4) QOD 31 (ECP).
[13] 2017 (7B4) QOD 55 (GJ).
[14] 2019 (7B4) QOD 92 (FB).

and L4, fractures of the tibia, fibula, right pubic rami and ischium. The plaintiff's social life changed completely insofar as she became anti-social, irritable and short-tempered. The court accepted the diagnosis of post-traumatic neuro-cognitive/neuro-psychological disorder. The orthopaedic injuries in *MM* are much more severe than *in casu*.

[37] In *Bismilla v Road Accident Fund (Bismilla),*[15] a 21 year old engineering student with an above average IQ, sustained a concussive brain injury of moderate severity. His academic results suffered as a result and he had to repeat several subjects. The court dealt with the problems experienced by the plaintiff and held that his conduct made him unreliable and would have a negative effect to his employability as well as his expectations in the labour market and career progression. R700 000 was awarded which is equal to R984 000 in 2024. In my view the sequelae of the brain injury in *Bismilla* are far more serious than *in casu*.

[38] As indicated above, the range between the minimum and maximum awards is quite large. It is possible to refer to several other judgments which are more or less comparable with the facts *in casu*. However, caution must be exercised to blindly follow previous awards. It is expected of the judicial officer to exercise their discretion based on the relevant facts in each case. It is also impossible to rely on any kind of mathematical approach by awarding specific amounts for particular injuries as the injuries should be considered *in toto*.

Conclusion

[39] Having considered the extent of the plaintiff's injuries, their sequelae and the authorities quoted, I am satisfied that an amount of R850 000 shall be awarded. The plaintiff as the successful party is entitled to his costs. Fees of counsel shall be calculated on scale B of rule 69 read with 67A(3).

[40] This is an appropriate case where the funds to be awarded to the plaintiff shall be properly protected. The draft order presented to the court makes provision for the creation of a trust in terms of the draft deed of trust attached thereto. I am satisfied

[15] 2018 (7B4) QOD 64 (GSJ).

with the terms thereof. Consequently, the draft order, amended in compliance with the outcome of this judgment, shall be made an order of court.

Order

[41] The following order is made:

1. The defendant shall pay the plaintiff the amount of R850 000 (eight hundred and fifty thousand rand) for general damages in respect of shock, pain, suffering, disfigurement, disability and loss of amenities of life, which amount shall be paid into the following bank account:

Symington & de Kok Attorneys
First National Bank
Account number: 5[…]
Branch code: 250 655
Reference: TR0706MXM2983.

2. Defendant shall pay interest on the aforesaid amount at the prescribed rate of interest calculated 14 (FOURTEEN) days from date of judgment to date of payment.

3. The defendant shall be afforded a period of 180 calendar days from the date of this order to effect payment herein during which period the plaintiff will not be entitled to issue a writ against the defendant.

4. The defendant shall pay the plaintiff's taxed party and party costs on a High Court scale to date of this order which shall include the travelling costs of the plaintiff, as well as counsel's fees calculated on scale B of rule 69 read with rule 67A(3) and the reasonable qualifying, preparation, reservation and appearance fees of the following experts (where applicable):

4.1 Dr M Jivan (general practitioner);
4.2 Dr JF Ziervogel (orthopaedic surgeon);

4.3 S van Jaarsveld (industrial psychologist);
4.4 L Delport (occupational therapist);
4.5 M Pienaar (neuropsychologist);
4.6 Human & Morris Actuaries;
4.7 Rikus van der Poel (clinical psychologist); and
4.8 Dr JA Smuts (Neurologist).

5. Interest shall accrue at the prescribed statutory rate in respect of:

5.1 the capital amount of the claim, calculated 14 (fourteen) days from date of this order to date of final payment, in the event that payment is not affected within the 180 days from date of this order as per paragraph 3 above;
5.2 the taxed costs, calculated from 14 (fourteen) days from date of taxation to date of final payment.

6. The plaintiff's attorneys of record shall attend to the creation of an *inter vivos* trust in order to protect the awarded funds to the exclusive benefit of the plaintiff.

7. The trust shall be created in accordance with the draft Trust Deed attached hereto as annexure "A", and the trustee of the trust shall have the powers as set out therein, duly amplified with any powers to be recommended by the Master of the High Court of South Africa (the Master), and the provisions of the draft Trust Deed are regarded as incorporated into this order.

8. The defendant shall pay the costs in respect of the creation and future administration of the said trust, which costs shall include the fees of the trustee.

9. The trustee shall, unless exempted, furnish security to the satisfaction of the Master.

DAFFUE J

Appearances

For plaintiff:	Adv MDJ Steenkamp
Instructed by:	Symington & De Kok
	BLOEMFONTEIN.
For defendant:	Ms P Banda
Instructed by:	Road Accident Fund
	BLOEMFONTEIN.