

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 11618/2018 P

In the matter between:

ERIC SABELO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

Shapiro AJ:

Background

[1] The plaintiff sues the defendant for damages as a consequence of the bodily injuries he sustained in a motor vehicle collision that occurred on 24 August 2017.

[2] The plaintiff was a pedestrian at the time of the collision, whilst repairing another motor vehicle, and was struck by the insured motor vehicle.

[3] The defendant has conceded that it is liable to compensate the plaintiff for the injuries he sustained in the collision.

[4] The matter was initially set down for a determination of the quantum of the plaintiff's claim, on 25 March 2024, consequent upon an order granted on 13 February 2023.

[5] On that date, the defendant sought to interrogate the plaintiff's past earnings, and the matter was accordingly adjourned to the 7 to 9 October 2024 for a determination of the quantum of the plaintiff's claim.

[6] The plaintiff seeks damages for past and future loss of earnings and general damages.

[7] The plaintiff does not pursue any claim for past medical expenses in these proceedings.

[8] The defendant has accepted that the plaintiff has suffered a "*serious injury*" and that he is accordingly entitled to general damages.

[9] The defendant has also undertaken to provide the plaintiff with an Undertaking in terms of Section 17 (4) (a) of the Road Accident Fund Act, No. 56 of 1996.

[10] The only issues that remain for determination are the quantum of the plaintiff's claim for past and future loss of earnings and an appropriate award of general damages.

Expert Witnesses

[11] The plaintiff qualified the following experts:

11.1 Dr Leon Rajah, the orthopaedic surgeon;

- 11.2 Dr Mike Du Trevou, the neurosurgeon;
- 11.3 Dr Roseanne Hardy, the neuropsychologist;
- 11.4 Ms Collene Kisten, the occupational therapist;
- 11.5 Mr Damien Askew, the orthotist and prosthetist; and
- 11.6 Ms Karin Plaatjes, the industrial psychologist.

[12] The defendant qualified the following experts:

- 12.1 Ms Ashnie Maharaj, the occupational therapist and
- 12.2 Mr Thokozo Makathini, the industrial psychologist.

[13] The occupational therapists and the industrial psychologists engaged by both parties compiled joint minutes.

[14] The parties are bound by any agreements and admissions made by their respective expert witnesses in their joint minutes¹.

The Plaintiff

[15] The plaintiff was born on 11 March 1997. The plaintiff was 20 years old at the date of the collision and is now 27 years old.

[16] The experts engaged by both parties recorded the plaintiff's history as follows:

- 16.1 the plaintiff attained a grade 12 diploma pass in 2016;
- 16.2 he currently resides in the family home with his biological siblings;
- 16.3 prior to the collision, he had been employed as a motor mechanic, general worker, truck assistant, taxi rank manager and a self-employed auto electrician (at the time of the collision);

¹ *Bee v Road Accident Fund* 2018 (4) SA 366 (SCA) at paras 64-66

16.4 post-morbidly, he had endeavoured to complete a Diploma in Management Assistance;

16.5 he had also endeavour to return to work as a taxi rank manager, but was unable to do so.

The Plaintiff's Injuries

[17] It was pleaded that the plaintiff sustained a severe brain injury, together with orthopaedic injuries, in the collision.

The Head Injury

[18] The plaintiff was assessed by **Dr Mike Du Trevou**, the neurosurgeon, on 31 July 2019.

[19] From his assessment of the relevant medical records, Dr Du Trevou recorded that:

19.1 the plaintiff was involved in a motor vehicle collision, as a pedestrian, on 24 August 2017;

19.2 the plaintiff recorded that he was repairing a vehicle on the side of the road when the incident occurred. He believed that he was rendered unconscious, as he only "*woke up*" some 6 days later;

19.3 the plaintiff was attended upon by paramedics at the scene of the collision and was eventually transferred to Addington hospital, in Durban;

19.4 he was treated at the trauma unit of Addington Hospital at 11h30 on 25 August 2017, where the nursing staff recorded that he was "*responding to pain only*" and "*appears to be disorientated*", with a Glasgow Coma Score of 14/15;

19.5 he underwent a computer tomography scan of his brain, which revealed that he had sustained “*a left frontal lobe haemorrhagic contusion*” and “*a fracture of the medial wall of the right orbit*”;

19.6 the computer tomography scan was discussed with the neurosurgical registrar of the Inkosi Albert Luthuli Central Hospital, who advised that the plaintiff should be admitted for neurological observation;

19.7 following admission to the Ward, the plaintiff was confirmed as being disoriented with a Glasgow Coma Score of 14/15, which deteriorated to 11/15;

19.8 he remained in an altered level of consciousness for a prolonged period, was noted as fully conscious on 3 September 2017, but was again recorded as being “*mildly disorientated*” on 4 September 2017;

19.9 the medical records also recorded that the plaintiff sustained “*compound fractures of the left tibia and fibula bones, with his lower leg being described as mangled*” and “*a closed fracture of the clavicle (collarbone)*”;

19.10 the medical records also record that the plaintiff underwent a “*below knee amputation on the left*”; and

19.11 he was discharged from hospital on 18 September 2017.

[20] Dr Du Trevou recorded that, although the plaintiff had never suffered from any seizures, nor had he been on antiepileptic treatment, a cerebral contusion carried a 23% risk for the development of epilepsy and that the plaintiff’s risk of developing epilepsy was estimated at 7-10%.

[21] In conclusion, Dr Du Trevou was of the opinion that the plaintiff suffered “*a severe brain injury*” and recorded that, given the plaintiff’s history, “*it is inevitable that he will be found by a neuropsychologist to have severe abnormalities of both personality and cognition*”.

The Sequelae of the Head Injury

[22] The plaintiff was assessed by **Dr Roseanne Hardy**, the neuropsychologist on 7 March 2019.

[23] Dr Hardy concluded, upon her assessment of the plaintiff, that the available evidence indicated that the plaintiff had suffered a severe traumatic brain injury. She recorded that this was confirmed by radiological evidence of a haemorrhagic contusion to the left frontal lobe. She recorded that his reported complaints and test findings were indicative of a significant neuropsychological impairment. As there was no report of developmental dysfunction, premorbid academic or cognitive difficulties, his level of dysfunction is attributable to the residual effects of the injury sustained in the motor vehicle collision.

[24] Dr Hardy recorded the plaintiff as having headaches, suffering from fatigue, having a phantom limb pain, pain in the left collarbone, swelling and pain in the jaw, difficulty chewing hard foods, diminished physical mobility (reliant on crutches). She also recorded that, cognitively, his complaints included memory impairment, poor attention and concentration, difficulty following instructions, mental fatigue and slow thinking. She further recorded emotional and behavioural complaints which included diminished frustration tolerance, a short temper, feelings of sadness and frustration at the loss of his premorbid capacity and independence, loss of interest, social and emotional withdrawal, feelings of worthlessness, persistent thoughts of the accident, nightmares and a fear of cars and the road.

[25] Dr Hardy's neuropsychological assessment revealed a range of deficits consistent with variable and severe impairment of neuropsychological function, which included, average motor speed, severely defective manual dexterity and fine motor coordination, average to severely defective attention, concentration

and tracking, defective to severely defective speed of processing, average to defective visuoperceptual and visuoconstructional ability, average to severely defective verbal memory functioning, average visual memory, below-average working memory, below-average to borderline verbal fluency, average to severely defective executive functioning and a below average IQ.

[26] Dr Hardy concludes that the foregoing deficits of all consistent with the residual effects of a severe brain injury.

The orthopaedic injuries

[27] The plaintiff was assessed by **Dr Leon Rajah**, the orthopaedic surgeon, on 30 October 2018.

[28] Dr Rajah confirmed the medical records recording that the plaintiff had a “*mangled left lower limb*” and “*fractured left clavicle*”.

[29] Dr Rajah also confirmed the x-ray taken on 30 October 2018 demonstrated, with reference to the left clavicle, that there is a “*healed fracture of the mid-shaft of the clavicle and this is healed with satisfactory alignment but with slight overlap of fracture fragments*”. He also confirms, with reference to the left tibia and fibula, that there was an uncomplicated below knee amputation.

[30] Dr Rajah recorded the plaintiff as having persistent pain over the clavicle on the left side, not being able to lift/manipulate heavy objects with his left upper limb and, with the use of crutches, sustaining recurrent pain/sticking at the left shoulder/clavicle.

The Impact on the Plaintiff’s Employability

[31] **Ms Collene Kisten**, the occupational therapist engaged by the plaintiff, assessed the plaintiff on 12 October 2018.

[32] Ms Kistin confirmed that:

32.1 the plaintiff presented with an amputation below the left knee, with a 13 cm scar on the stump;

32.2 his balance and equilibrium reactions were reduced on the right side, that he ambulated with bilateral elbow crutches, that he was unable to lift or carry moderate to heavy weighted objects and his standing and walking tolerance was reduced;

32.3 that her test results revealed that the plaintiff presented with fluctuating ability in cognitive domains and poor perceptual ability, and that he may accordingly experience difficulty with further education and training;

32.4 that her physical assessment revealed that the plaintiff's muscle strength was reduced in the left upper limb musculature, his dynamic balance was reduced in the right lower limb, that he was able to bend with external support but could not lift, carry, push nor pull moderate to heavy weighted objects, that his standing and walking tolerance was reduced and that his endurance was reduced in physically demanding and strenuous tasks;

32.5 from a physical perspective, the plaintiff presented with residual pain and physical deficits attributed to the fracture of the left clavicle and the left below knee amputation, that the vocational avenues available to him had been narrowed and limited and that he is precluded from engaging in any physically orientated, manual occupations of moderate to heavy physical strength demands, such as an auto electrician, and that he is now limited to sedentary unskilled occupations, which are not readily available.

[33] **Ms Ashlnie Maharaj**, the occupational therapist engaged by the defendant, assessed the plaintiff on 23 February 2023.

[34] Ms Maharaj confirmed:

34.1 the plaintiff's physical limitations to be impaired mobility skills for all basic and advanced skills, including walking, running, stair climbing, repetitive squatting and advanced postures such as crouching and kneeling, that his weight handling capacity was limited to sedentary demands unilaterally, that his neurocognitive fallout required repetition of instructions and use of demonstration and that his psycho socioemotional limitations related to the collision;

34.2 that the plaintiff had suffered a loss of the amenities of life as a consequence of the injuries he sustained in the collision, which included, a head injury associated with neurocognitive fallout and perceptual limitations, increased vulnerability at work with the prospect of being unemployed by virtue of his functional limitations, a loss of limb by virtue of the below knee amputation, scarring and disfigurement and emotional suffering with a deterioration in his social ability and tendency to isolate himself;

34.3 that in his uninjured condition, the plaintiff had fulfilled his ambition of becoming a self-employed motor mechanic, with auto electrical work experience, and had planned to build his business and employ other staff members to assist him, that at the time of the collision he was self-employed as a motor mechanic and was unable to return to work due to the injury sustained in the collision; and

34.4 based on her assessment findings, the plaintiff was unlikely to be able to further his studies or cope with learning new and complex skills, that he had been disadvantaged in the open labour market and that his employment options were limited.

[35] In the joint minute concluded by the occupational therapists, they agreed:

35.1 on their assessment findings of the plaintiff;

35.2 that, pre-morbidly, the plaintiff would have remained self-employed as an unqualified auto electrician for as long as possible with anticipated growth and expansion of his business, or unless better opportunities arose;

35.3 that if he elected not to remain self-employed, he would not have been precluded from procuring similar positions in the open labour market commensurate with his education and work history and would not have been precluded from engaging in alternative physically orientated, labour-intensive, manual occupations of medium to heavy physical strength demands;

35.4 that an analysis of the plaintiff's occupation as an auto electrician revealed that it is a physically orientated, manual occupation of medium to heavy strength demands and requires intact upper and lower limb function, adequate dynamic balance, satisfactory standing tolerance and optimal low limit dynamic postures as well as the ability to lift, carry, push and pull variable weighted objects;

35.5 that in his post-morbid state, the plaintiff's vocational avenues had been narrowed and limited, and that he was precluded from engaging in labour-intensive, physically orientated, manual occupations of medium to heavy physical strength demands, such as an auto electrician, and was limited to sedentary unskilled occupations, which were not readily available, but might be able to procure employment with low cognitive demands, dependent upon a sympathetic and tolerant employer;

35.6 that the plaintiff was precluded from engaging in purely sedentary occupations, given his lack of formal education, limited work history and neurocognitive deficits; and

35.7 that the probability of unemployment exists.

[36] **Ms Karin Plaatjes**, the industrial psychologist engaged by the plaintiff, assessed the plaintiff on 2 September 2019.

[37] Ms Plaatjes ascertained from the plaintiff that, at the time of the collision, he was self-employed as an auto electrician, working in a 50% partnership with a friend, Richard, who was tragically killed in the collision forming the subject of these proceedings. He would attend upon customers' premises and repair their motor vehicles. He was earning approximately R 1,250.00 per week from this enterprise.

[38] Ms Plaatjes was of the opinion that:

38.1 the plaintiff's reported pre-morbid earnings at the time of the collision (R 64,992.00 per annum) were "*slightly above the upper quartile*" of the reported earnings of "*people who are self-employed in the informal sector*", as published by Robert Koch (2017), of R 59,000.00 per annum;

38.2 having regard to the plaintiff's post-morbid attempt at furthering his education, the probabilities favoured that he would have also endeavoured to do so in his premorbid state and would have attained a diploma (in 2022) and would have been able to obtain employment at a semi-skilled level, as an auto electrician, earning R 2,896.20 per week (R 150,591.00 per annum);

38.3 the plaintiff would probably have qualified as an artisan/journeyman by age 30 (2027) earning R 3,311.10 per week (R 172,164.00 per annum);

38.4 the plaintiff would then reach his career ceiling by age 45, earning at the median of Paterson C1 level (R 470,000.00 per annum), with inflationary linked increases thereafter to retirement age of 65.

[39] Ms Plaatjes was of the opinion that there is a greater likelihood of the plaintiff remaining unemployable for the remainder of his working life.

[40] **Mr Thokoza Makhatini**, the industrial psychologist engaged by the Defendant, assessed the plaintiff on 28 March 2023.

[41] Mr Makhatini recorded that, from his assessment of the plaintiff, he was of the opinion that:

41.1 the plaintiff was likely to have continued in his employment as a self-employed auto electrician, and increased his earnings, in his premorbid state, that there was nothing in his vocational potential that suggested curtailment of his working life and that he was a candidate for alternative employment should he have decided to seek similar employment in the open labour market;

41.2 the plaintiff would not have been precluded from pursuing college studies, as he attempted to do post morbidly, and was likely to be able to cope with such studies until completion;

41.3 the plaintiff was likely, in his pre-morbid state, to have the earning potential of between R 236,000.00-R 455,000.00 per annum by age 45, and most probably have worked through to normal retirement age of 65;

41.4 in his post-morbid state, the plaintiff is *“no longer a candidate for any gainful employment”*.

[42] In the joint minute concluded by the industrial psychologists:

42.1 they agreed on the plaintiff's level of education, being a grade 12, that at the time of the collision, that he was self-employed as a semi-skilled auto electrician, earning approximately R 1,250.00 per week, that the business was not registered and accordingly he had no records, and that, given his age at the time of the collision, he would have opted to

study at tertiary level and would have sought more formal employment opportunities on the open labour market thereafter;

42.2 they disagreed on the plaintiff's pre-morbid career progression however:

42.2.1 with Miss Plaatjes being of the opinion that the plaintiff would have pursued a career as an auto electrician, would likely to have completed a diploma in June 2022, would have procured employment at a semi-skilled level, earning R 2,896.20 per week, would have passed his trade test by age 30 (2027) and qualified as an artisan/journeyman, earning R 3,311.10 per week, would have progressed to the median of Paterson C1 package, earning R 519,000.00 per annum by age 45; and

42.2.2 with Mr Makhatini being of the opinion that the plaintiff was not deterred from entering formal employment and also completing certificate level studies and would have reached his career ceiling earning R345,500.00 per annum (average) by age 45, but conceding that he was likely to reach a career ceiling of R 438,900.00 by age 45;

42.3 they agreed, as compromise, that the plaintiff would most probably have reached a career ceiling of earning R 478,750.00 per annum by age 45 and would thereafter receive annual inflationary linked increases until retirement age of 65;

42.4 they agreed that, in his post-morbid state, that there is a greater likelihood that the plaintiff will remain unemployable.

The evidence given at trial

[43] It was against the backdrop of the evidence described above that the plaintiff testified and led the evidence of three other witnesses.

[44] By and large, the plaintiff's evidence was consistent with what he had reported to the various professionals who assessed him over time.

[45] The plaintiff explained how he came to work with the late Richard as an auto electrician, starting part time whilst he was still at school and then becoming full-time after he matriculated.

[46] He testified that he and Richard divided their earnings equally and that he usually worked about three days week with some weeks being more lucrative than others. On average, he earned approximately R1250 per week.

[47] The plaintiff testified of his attempts to study further after the accident and to obtain sedentary employment. None of these attempts were successful and the reasons that he gave not only are consistent with what he told the experts, but also consistent with his brain injuries and their sequelae.

[48] Although the plaintiff did get confused at times, I found him to be a truthful and reliable witness. He was forthright in his evidence and did not attempt to over-elaborate or exaggerate.

[49] The plaintiff's evidence was also consistent with the evidence of three taxi owners who testified, namely Messrs Nkululeko Nopakela, Simphiwe Mlindazwe and Lizalise Noxhaka.

[50] All three gentlemen testified that they knew the plaintiff and had made use of his services with Richard to repair their vehicles at the taxi rank from which they operate. Their independent versions of how the business was run and what was charged were all consistent and corroborated the plaintiff's version in all material respects.

[51] They testified that Richard and the plaintiff would charge them approximately R600 as a labour charge to repair, for example, a starter motor

and that they would be required to purchase the spares themselves. Quotations were given orally, and payments were made in cash.

[52] After the plaintiff closed his case, defendant did not seek to lead any countervailing evidence and closed its case as well.

The assessment of the evidence and the probabilities

[53] It is therefore against that evidence, and its probabilities, that I am required to assess the plaintiff's claim for general damages and loss of earnings.

[54] Ms Dlamini, who most ably represented the defendant, argued that the plaintiff's evidence about his earnings was neither of sufficient quality nor quantity to be reliable.

[55] She argued that the plaintiff would not necessarily work all day every day, and that the kinds of repairs described by his witnesses (replacing starter motors, vehicle wiring and repairing indicator lights) were not regular repairs that would have kept either him or Richard busy with any regularity.

[56] Ms Dlamini argued that it was therefore entirely uncertain whether the plaintiff's business would have sustained itself or grown in the manner canvassed by the expert witnesses.

[57] I do not agree. The plaintiff was obviously a skilled auto electrician and was building a business repairing taxis at an exceptionally busy taxi rank. The impression that I got from the evidence led was that Richard (whose surname plaintiff could not recall and which the other witnesses did not know) were the "go-to" auto electricians at the taxi rank and I am inclined to accept that their

business would have continued generating at least the relatively modest amounts on which the plaintiff's claim was predicated.

[58] Given the plaintiff's obvious interest in the field of auto electrical repairs, and his ability in that regard, there is no reason to reject the views of the experts that the plaintiff would have sought to better himself and would have advanced in his chosen field in the matter and at the remuneration agreed between them.

[59] I therefore accept both the quantification of plaintiff's earnings and the agreed opinion of the expert witnesses about his professional advancement.

[60] For the reasons already explained, I do not agree that a higher-than-normal contingency should be applied to the plaintiff's future earnings. Given the reliance of most South Africans on road transport in general, and on the taxi industry in particular, there is every likelihood the plaintiff would have continued in his chosen field and would have advanced as predicted. His career choice was not dangerous or risky and will always be in demand.

[61] I therefore agree with Mr Topping SC that it is appropriate to apply the general guideline of 0.5% per year of remaining employment life as a contingency in respect of the plaintiff's future loss of earnings claim. As the plaintiff has 38 years until the retirement age of 65, I will apply a contingency of 19% to the future loss of earnings claim and, in keeping with practice, I will apply a 5% deduction to the plaintiff's past loss of earnings.

The plaintiff's disability grant

[62] The plaintiff has been in receipt of a disability grant since 2018 and, to date, has received an amount of R166,207 from that source.

[63] Mr Topping SC argued that this amount should not be deducted from the plaintiff's loss of earnings claim because it was a collateral source of income paid by the State to anyone with a disability.

[64] As support for this argument, Mr Topping SC relied on judgement of **Moropane v RAF**², which came to the same conclusion.

[65] Ms Dlamini submitted that the amount received from the disability grant should be deducted from the plaintiff's claim as it was compensation arising out of his disability and relied on the judgement of **Kapa v RAF**³.

[66] Ms Dlamini's submissions were well made. As was stated in **Kapa**:

“[12] The grant is not paid to the plaintiff a result of the generosity, benevolence or charity of the state, but as financial assistance by the state due to the injuries sustained which caused a loss of income, but also in terms of the constitutional obligation to render social security to everyone in need of such assistance. That, is of course, what her claim for compensation is all about. Thus, there is very close causal link between the reason for the disability grant and the claim for loss of income. There is no doubt in my mind that the payment of the disability grant leads to double compensation.

[13] In addition, it must be taken into consideration that the public carries a heavy financial burden towards the state. The ongoing financial woes of the RAF is notorious and well known. The funds utilised by the RAF and the funds allocated for social grants originates from public by means of fuel levies on the one side, and taxes, on the other. Public policy, fairness and justice demands that overcompensating motor vehicle

² Unreported decision North Gauteng High Court Case no 39680/2012 dated 27 August 2018

³ **Kapa v Road Accident Fund** (1414/2013) [2018] ZALMPPHC 67 (7 December 2018)

accident victims from public funds should be avoided. Fairness and justice demands that the disability grant be deducted from the award to be made.”

[67] I agree with this reasoning and respectfully decline to follow the judgement of **Maropane**.

[68] In my view, the full amount received by the plaintiff from the disability grant payments to date must be deducted from his loss of earnings claim.

General damages

[69] The plaintiff suffered life changing injuries, both physically and mentally.

[70] He not only lost a leg at a very young age but, because of his brain injuries and their sequelae, he lost the chance to follow his chosen profession, at which he was already beginning to succeed.

[71] The plaintiff has tried to obtain employment and to better himself, but to no avail. According to the agreed expert evidence, this is due to his injuries.

[72] Relying on cases such as **Mazibukwana**⁴ and **Mthetwa**⁵, Ms Dlamini that I should award general damages in an amount of approximately R 1 million. In **Mthetwa**, the plaintiff sustained an amputation at the knee with difficult and painful consequences and a concussion.

⁴ *Mazibukwana v Road Accident Fund* (41150/13) [2016] ZAGPPHC 2 (5 January 2016)

⁵ *Mthetwa v Road Accident Fund* (2011/34424) [2012] ZAGPJHC 70 (20 April 2012)

[73] Ms Dlamini rightly conceded that the plaintiff's brain injury was more severe than a concussion, but she argued that the amputation in **Mthetwa** was more traumatic and difficult than in the current case.

[74] Whilst there may be some merit in this argument, it also understates impact and consequences of the plaintiff's brain injury.

[75] Mr Topping SC has relied on cases such as **WV**⁶, **Zarrabi**⁷ and **Mnguni**⁸ to argue that I should award general damages in an amount above R1.8 million and below R2 million.

[76] He submits that an award of R1.9 million would be appropriate given the plaintiff's various injuries and their impacts.

[77] The plaintiff's injuries are not as severe as those in **WV** where the plaintiff could not walk unaided, was permanently disabled and could not live on his own, requiring constant supervision.

[78] In **Zarrabi**, the plaintiff was a medical doctor who, after suffering a severe brain injury, would only be able to manage some form of employment on a voluntary basis and in a sympathetic environment.

[79] To my mind, the plaintiff's injuries and their consequences or more analogous to those in **Mnguni**, where the plaintiff was awarded R1.8 million in general damages.

⁶ *WV v Road Accident Fund* 2019 (7A4) QOD 113 (FB)

⁷ *Zarrabi v Road Accident Fund* 2006 (5B4) QOD 231 (T)

⁸ *Mnguni v Road Accident Fund* 2010 (6E2) QOD 1 (GSJ)

[80] In my view, an amount of R1.8 million in respect of general damages is appropriate, considering the plaintiff's injuries and the catastrophic consequences they wrought.

Quantification of the plaintiff's claim

[81] Based on the agreements between the experts set out above, and applying the deduction/contingencies to which I have referred, the plaintiff will be awarded:

81.1 R641,160 in respect of past loss of earnings (R674 905 less the 5% deduction of R33 755);

81.2 R5,957,714 in respect of future loss of earnings (R7,355,203 less the 19% contingency totalling R1,397,489);

81.3 a total in respect of loss of earnings of R6,432,847 (being the total of the two amounts set out above less the deduction of R166,027 in respect of the plaintiff's disability grant); and

81.4 R1,800,000 in respect of general damages.

Costs

[82] The parties agreed that costs should follow the result and given the nature of the claim, I consider that those costs should be taxed on Scale C as contemplated in Uniform Rule 69(7).

Order

[83] I grant judgment in favour of the plaintiff and against the defendant as follows:

1. The defendant is directed to make payment of the sum of R8,232,847.00 to the plaintiff in respect of his claim for:

1.1. loss of earnings, in the sum of R6,432,847.00; and

1.2. general damages, in the sum of R1,800,000.00.

2. Payment of the amount in paragraph 1 hereof is to be made within 180 (one hundred and eighty) calendar days from the date of the grant of this order.

3. The defendant is directed to pay interest on the amount in paragraph 1 hereof at a rate of **11.5%** *per annum* calculated from 181 (one hundred and eighty) calendar days from the date of the grant of this order to date of payment.

4. The defendant is directed to make payment of the plaintiff's taxed or agreed party and party costs on the scales as prescribed in Rule 70 and Scale C of Rule 69 (7) of the Uniform Rules of Court, such costs to include, but not be limited to:

4.1. the reasonable and necessary costs of senior counsel, including senior counsel's reasonable costs for his preparation for trial, such costs to include preparation of any written submissions, attendance at trial on 7 & 8 October 2024, the consideration of any settlement proposals, as well as the reasonable costs of counsel and the plaintiff's attorney for attending upon any necessary consultations with the undermentioned expert witnesses and the plaintiff;

4.2. the fees and expenses reasonably incurred by the undermentioned witnesses for, *inter alia*, the preparation of their

reports and any supplementary reports, deposing to affidavits, joint minutes, the experts' reasonable qualifying fees, their reasonable reservation fees, and their reasonable fees of attending upon any necessary consultations with the plaintiff's counsel and attorney to testify at the trial (with the quantum of their fees to be determined by the taxing master) namely: -

- 4.2.1. Dr Leon Rajah, the orthopaedic surgeon;
- 4.2.2. Dr Mike Du Trevou, the neurosurgeon;
- 4.2.3. Dr Roseanne Hardy, the neuropsychologist;
- 4.2.4. Ms Collene Kisten, the occupational therapist;
- 4.2.5. Mr Damien Askew, the orthotist and prosthetist;
- 4.2.6. Ms Karin Plaatjes, the industrial psychologist; and
- 4.2.7. Mr W Loots, the actuary (reports only).

4.3. The reasonable attendance fees of the following expert witnesses for their attendance at Court on 7 October 2024:

- 4.3.1.1. Ms Colleen Kisten, occupational therapist;
- 4.3.1.2. Ms Karin Plaatjes, industrial psychologist;

4.4. The reasonable travelling expenses for the following witness for their attendance at Court on the 7th & 8th October 2024

- 4.4.1. Nkululeko Nopakela
- 4.4.2. Simphiwe Mlindazwe
- 4.4.3. Lizalise Noxhaka

4.5. The reasonable costs for the interpreter's attendance at Court for the trial on 7 and 8 October 2024.

4.6. Any and all reserved costs become costs in the cause as set out above.

5. The plaintiff is directed, in the event of the aforementioned costs not being agreed to:

5.1. serve the notice of taxation on the defendant's attorneys of record; and

5.2. allow the defendant 180 (one hundred and eighty) calendar days to make payment of the taxed costs.

6. The defendant is directed to make the payment of the amount referred to in paragraph 1 hereof directly to the Trust Account of the plaintiff's attorneys, with details:-

ASKEW MARTIN & ADRAIN INC. – TRUST ACCOUNT

BANK : N[...]
BRANCH: S[...] STREET
BRANCH CODE: 1[...]
ACCOUNT NO: 1[...]
REF: R[...]

7. It is recorded that the Defendant's link number is 4[...].

SHAPIRO AJ

JUDGMENT RESERVED: 8 OCTOBER 2024
JUDGMENT HANDED DOWN: 14 OCTOBER 2024

Appearances:

For plaintiff: Mr I Topping SC

Instructed by: Askew Martin and Adrain Inc.

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For defendant: Ms Dlamini
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