

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO. 2645/2010

In the matter between:

BUYISWA MDLAKA

PLAINTIFF

and

**MEC FOR THE DEPARTMENT OF HEALTH
EASTERN CAPE PROVINCE**

DEFENDANT

JUDGMENT

Rugunanan J

[1] This is an action for damages following the negligence of the defendant's employees during their treatment of the plaintiff at Bedford Orthopaedic Hospital in Mthatha.

[2] On 12 May 2010, the plaintiff, then 37 years of age, was admitted to Bedford hospital as an in-patient for a girdlestone procedure of the left hip. The ailment arose from her prior involvement in a motor vehicle accident in 1997 (the accident). Following the insertion of a drip cannula in the area of her left elbow, the plaintiff's arm darkened in colour and became grossly swollen. She was transferred on the same day to Nelson Mandela Academic Hospital, followed by a further transfer to Mthatha General Hospital. It was established that an obstruction of the brachial artery had developed in consequence of the improper insertion of the cannula and resulted in necrosis of the left forearm.

[3] The condition necessitated amputation of the left arm above the elbow on 18 May 2010 (the negligence).

[4] Though not exactly clear from the contents of the court file, I was informed from the bar that liability for the negligence was conceded by the defendant sometime during 2021. Furthermore, on 3 August 2023, by order of this court, the plaintiff received an interim payment of R1 800 000 for future medical expenses and treatment.

[5] In issue is the proof and quantification of the plaintiff's heads of damages. These include:

General damages	R2 800 000
Past and future medical expenses	R3 500 000
Loss of income	R3 500 000
Gardening assistant	R1 583 980

[6] The evidential matrix comprises of the oral testimony of two witnesses – the plaintiff (who testified in isiXhosa with the assistance of an interpreter) and Mr Lance Marais, an industrial psychologist who testified for the defendant.

[7] Mr Marais prepared a report dated 31 July 2023 in which he assessed and evaluated the plaintiff's earning potential following an interview conducted with her on 30 March 2023. His professional qualifications and experience were not disputed.

[8] He confirmed the contents of his report without deviation.

[9] Prior to having filed the report by Mr Marais, the defendant engaged an expert in a similar field, Mr Sabelo Gumede, whose report dated 25 May 2022 was filed on 23 November 2022. Relying instead on the report by Mr Marias, the defendant led no testimony from Mr Gumede. His report, contrary to the submission by plaintiff's counsel that it supported the plaintiff's case, had no evidential weight – it being untested opinion evidence.

[10] The plaintiff also filed a report by industrial psychologist, Ms Busisiwe Pepu. She prepared a joint minute together with Mr Marias. The minute contains no recordial of agreed facts and only served to accentuate their opposing views – but due to the absence of testimony from Ms Pepu, it deserves no detailed analysis.

[11] Ms Pepu was in attendance on the first day of trial when the plaintiff testified. It is the usual practice for an expert witness to be called after a witness of fact¹. To the surprise of the plaintiff's legal representatives, Ms Pepu was unavailable the following day. She belatedly notified them that she was undertaking travel abroad. Absent agreement between the parties that her report may be admitted into evidence without formal proof, her conclusions assume no weight in these proceedings, and as with those of Mr Gumede, are tantamount to untested opinion evidence.

[12] The joint minute concluded between Ms Pepu and Mr Gumede on 18 November 2022, likewise assumes no relevance save to mention that it was repudiated by the defendant as reflected in the minutes of a pre-trial conference filed on 5 December 2023.

[13] The remaining material comprising of additional joint minutes by various other experts namely, orthopaedic surgeons, psychologists, occupational therapists, and orthotists and prosthetists will be addressed where relevant to the heads of damages dealt with below – it being agreed by the parties in the minutes of a pre-trial conference that the joint findings of these experts are relevant for determining the quantum issue.

Loss of earnings

[14] The formulation of the claim under this head appears in the particulars of claim as follows:

¹ *Road Accident Fund v Madikane* [2019] ZASCA 103 para 3.

‘16.4 Estimated future and potential loss of income calculated in line with [the plaintiff’s] future income earning capacity which the injuries have negatively affected as her functional capacity, vocational potential and orthopaedic and musculoskeletal and/or neurological deficits, apparent until the last day she was expected to normally retire from employment, and such is in the total sum of R5 600 000.’

[15] At the commencement of the trial counsel for the plaintiff clarified that the claim being pursued is for loss of earning capacity.

[16] In theory this refers to an individual’s ability to earn money.² In claims of this nature, the quantification of the monetary value of the loss of earning capacity presents difficulty.³ In familiar language, it involves a prediction as to the future without the benefit of crystal balls, soothsayers, augurs or oracles.⁴ The value of the loss is not determined on impulse or guesswork, but on a logical basis.⁵ Proof of probable future income is the best proof of the individual’s earning capacity.⁶

[17] In *Road Accident Fund v Kerridge*⁷ the Supreme Court of Appeal formulated the method for assessing loss of this nature in the following terms:

‘Any claim for future loss of earning capacity requires a comparison of what a claimant would have earned had the accident not occurred, with what a claimant is likely to earn thereafter. The loss is the difference between the monetary value of the earning capacity immediately prior to the injury and immediately thereafter. This can never be a matter of exact mathematical calculation and is, of its nature, a highly speculative inquiry. All the court can do is make an estimate, which is often a very rough estimate, of the present value of the loss.

² Visser and Potgieter *Law of Damages*, Juta 3rd ed at p464.

³ *Terblanche v Minister of Safety and Security* 2016 (2) SA 109 (SCA) para 14.

⁴ *Southern Insurance Association Ltd v Bailey* N.O. 1984 (1) SA 98 (A).

⁵ *Goldie v City Council of Johannesburg* 1948 (2) SA 913 (W) 920

⁶ Visser and Potgieter p464 fn 96.

⁷ *Road Accident Fund v Kerridge* [2018] ZASCA 151 paras 40-41.

Courts have used actuarial calculations in an attempt to estimate the monetary value of the loss. These calculations are obviously dependent on the accuracy of the factual information provided by the various witnesses.'

[18] The first sentence in the above quotation requires proof of: (a) the plaintiff's future income without the negligence, and (b) her future income having regard to the negligence.

[19] The standard of proof is on a balance of probabilities.

[20] It is unnecessary to extrapolate the method of assessment beyond this formulation⁸ since the plaintiff, for reasons to follow, has on her own version not discharged the requisite onus.

[21] There is no dispute that the plaintiff was involved in the accident in 1997 as a result of which she received and continues to receive a permanent disability grant. It is also not in issue that prior to the negligence the plaintiff, for most of her working life, was employed as a domestic worker in Durban.

[22] During her testimony the plaintiff disclosed that she did not resume domestic employment following the accident. She testified that it was a personal decision not to resume employment in that capacity – there was no one to look after her home in Buhlanyanga (a settlement in the Eastern Cape) and, in any event, the money that she drew from the disability grant was sufficient to maintain her. She also stated that she applied for grant assistance because the disability occasioned by the accident precluded her from resuming her employment. In the period 1997 following the accident but prior to the negligence in 2010, she was able to perform her own household chores such as cooking, cleaning and doing laundry, though at times she required assistance from her sisters. After the negligence she required use of a walking stick because the loss of her arm affected her balance and rendered her

⁸ The complete formulation is summarised in Visser and Potgieter *op cit* at p469 as follows: (a) calculate the present value of the future income which the plaintiff would have earned but for his or her injuries and consequent disability; (b) calculate the present value of the plaintiff's estimated future income, if any, having regard to his or her injuries and disability; (c) subtract the figure obtained in (b) from that obtained under (a); (d) adjust the figure obtained as a result of this subtraction in the light of all relevant factors and contingencies.

unable to function normally and to perform her chores. She now permanently employs a domestic assistant, but requires additional assistance from someone to plough her homestead which she estimates is the size of a soccer field on which maize is planted. She did not state whether the domestic assistant is employed on a part-time or full-time basis.

[23] In summary, the plaintiff's evidence indicates that prior to the accident she was employed in a domestic capacity. Since 1997 subsequent to the accident she did not resume employment and settled at home doing her own chores while receiving a disability grant. She required grant assistance because the disability occasioned by the accident precluded her from resuming her employment. Subsequent to the negligence in 2010 she is no longer able to function in the aforementioned capacity. From her own version it is evident that the plaintiff has effectively been unemployed since 1997.

[24] It is on the basis of this version, and the unconfirmed report by Ms Pepu, that the plaintiff endeavoured to present a pleaded case that her loss was occasioned by the negligence in 2010.

[25] The fallacy with this approach is that it is nowhere apparent in the plaintiff's own testimony, as a primary factual witness, that she would have continued with employment to earn an income as a domestic employee had the negligence not occurred. She made a decision not to resume employment following the accident. Her choice to do so preceded the negligence. It cannot, without the relevant factual foundation being laid, translate into a likelihood that she would have continued with or resumed earning an income from such employment had the negligence not occurred. That likelihood cannot be found to be in the plaintiff's favour, even as a matter of inference. Nor can it redound to her benefit where Mr Marais indicates in his report that had the negligence incident not occurred plaintiff would have continued to have been employed as a domestic worker until retirement at age 60.

[26] Where the relevant factual substrate has not been laid by the plaintiff, the opinion by Mr Marais on the issue is not the product of logical reasoning⁹ and is speculative.

[27] On this analysis, the plaintiff has not laid the foundation for determining her future income but for the negligence. She has not overcome the first hurdle in the *Kerridge* formulation.

[28] As for the second hurdle, entailing proof of income having regard to the negligence, the plaintiff has not succeeded in surmounting it for the following reasons.

[29] In cross-examination she had no difficulty admitting that she drew on a disability grant because the accident rendered her disabled. In dealing with the plaintiff's employment history, the report by Mr Marais indicates that in the period 1995 to 1997 she worked for a family as a household baker. Following the accident, and during 1997 to 2005 she was unemployed but received a permanent disability grant. Since 2005 until 2010 she was employed at a rate of R50 per day as a domestic aide in several households. This history indicates that the plaintiff, while being the recipient of disability assistance, was employed prior to the negligence. It contradicts her evidence that she chose to stay at home. It is highly improbable that Mr Marais could have manufactured it. In the timeline since the accident in 1997, Mr Marias concluded that the plaintiff was already unemployable prior to the negligence. The negligence merely exacerbated her previously compromised condition which is ascribed to the accident for which she has, to date, been drawing a disability grant, and has therefore suffered no loss.

⁹ *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft fur Schadelingsbekampfung MBH* 1976 (3) SA 352 (A) at 371F-G where it is stated: '[A]n expert's opinion represents their reasoned conclusion based on certain facts or data, which are either common cause, or established by their own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert's bald statement of their opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert.' See also the full court appeal judgment in *Mbizo v Old Mutual Life Assurance Company (SA) Ltd*, Unreported Mthatha Case No. 3365/2017 delivered 14 May 2024, emphasising that an expert may only draw inferences from facts, and that before any weight can be given to an expert's opinion the facts upon which the opinion is based must be found to exist (paras 13-17).

[30] The facts informing the conclusion by Mr Marais are not inconsistent with the plaintiff's own version that she was disabled following the accident. In that respect there are no conflicting versions between the parties save for the plaintiff's employment history charted by Mr Marias. It is however self-evident, that the probabilities emerging from the plaintiff's evidence indicate that her earlier compromised condition has merely been further exacerbated by the negligence.

[31] On her own version, the fact is that plaintiff has since 1999 been receiving income in the form of a disability grant.

[32] It has not been shown that she has suffered loss directly as a result of the negligence.

[33] The opinion by Mr Marais that the plaintiff was rendered unemployable prior to the negligence is not anything new or revealing to advocate an argument that his report and testimony was of assistance to this court. In fact, he conceded in cross-examination that he did not have access to all the medical records of the plaintiff's application for disability assistance and could not have readily made that deduction. In my view there was no need to have called him to testify once it became clear at the close of the plaintiff's case that her evidence was materially deficient, and was unsupported by Ms Pepu.

[34] In the circumstances the plaintiff, though considered a satisfactory witness, has not discharged the requisite onus.

[35] This flows from her own evidence.

Non-patrimonial loss (general damages)

[36] In practice this is loosely referred to as general damages in terms of which compensation may be recovered for pain and suffering, discomfort, shock, disfigurement, and loss of the amenities of life.¹⁰ These are subjective

¹⁰ Visser and Potgieter *op cit* p497.

considerations, hence the role of human consciousness, sensation or emotions are not insignificant in assessing loss of this nature.¹¹ In ascribing a value to the loss, the subjective experience of a plaintiff (usually established through evidence by the plaintiff) is indispensable to the exercise.¹²

[37] In terms of rule 18(10) of the Uniform Rules of Court, a plaintiff suing for damages for personal injury (which includes compensation for non-pecuniary loss) must specify *inter alia* the nature and extent of the injuries and disfigurement as well as the nature, effects and duration of the resultant disability.¹³

[38] Quoting only where relevant in the amended particulars of claim, the material averments of plaintiff's pleaded case are set out as follows:

'11. The plaintiff's injury has resulted [in] a permanent disability of her left arm with such degenerative changes and at this point in time with or without treatment her condition cannot be salvaged ...

12. Due to this permanent condition the plaintiff had to completely break off from employment as a result of her inability to hold [or] grip objects ... The condition of her left arm is the major overriding reason why the plaintiff has severe ongoing pain and the long term restrictions in performing physical activities ...

13. The plaintiff endured emotional and psychological trauma ...

...

15. [T]he plaintiff experienced severe intense pains which she continues to endure, continuous discomfort and not being able to perform daily activities and enjoyment of life giving rise to loss of amenities of life.

16. Consequently, to the extent that the injuries impacted on the plaintiff's daily and potential life activities the plaintiff claims ...

¹¹ Visser and Potgieter *op cit* p105.

¹² Visser and Potgieter *op cit* p507.

¹³ See generally Visser and Potgiter *op cit* p497-498.

16.1 General damages for pain and suffering and discomfort giving rise to loss of amenities of life, loss of ability to bath herself and perform other personal grooming as a woman and keep herself attractive to members of the opposite sex, including ability to be intimate with a partner of the opposite sex.'

[39] The expert reports by orthoptist and prosthetist, Mr Roland Toogood; orthopaedic surgeon, Dr P Olivier; and Dr M Noqamza, a clinical psychologist, all of which are attached to the particulars of claim in support of these assertions were not admitted by the defendant save for their joint minutes that were dealt with in the earlier-mentioned pre-trial conference.

[40] The evidence on which the plaintiff's non-patrimonial loss falls to be assessed is lean. Except for having testified of her inability to do her own household chores which she previously did without much assistance, no evidence was led to give content to, or to substantiate the material averments pleaded on her behalf. I accept that she must have suffered pain and discomfort as a consequence of the botched insertion of the cannula, and as a result of the amputation of her arm. The severity of her pain and discomfort and the duration for which she endured these symptoms is unknown. The plaintiff testified only that her balance is affected and that she is reliant on a walking stick.

[41] Focus shifts to the joint minutes.

[42] The occupational therapists¹⁴ document the existence of reduced left shoulder flexion and abduction with reduced strength in the relevant muscle groups. They noted further that the plaintiff is right handed and is able to execute her activities of daily living. These are not specified. The orthopaedic surgeons recommend refashioning of the soft tissue surrounding the bony stump of the plaintiff's left arm. The procedure will occasion further pain and discomfort. The clinical psychologists opine that the plaintiff presents with depressive symptoms, post-traumatic stress

¹⁴ Joint minutes, 10 October 2022.

disorder and adjustment disorder. While they opine that this may be attributed to an unspecified but pre-existing head injury, nothing of which is known, my sense is that the ‘thin skull rule’ applies.

[43] The foregoing presents the sum totality of the evidential framework for assessing damages. The exercise is discretionary, and even if the ultimate result is an informed guess, fairness is the dominant norm.

[44] I was referred to present day inflation adjusted awards¹⁵ in several cases dealing with loss of an upper limb. Some are reported in the South African Law Reports, others in Corbett and Honey’s, *The Quantum of Damages in Bodily and Fatal Injury Cases*¹⁶.

[45] The cases are:

<i>Smith v Road Accident Fund</i>	(R750 000)
<i>King v Geldenhuys</i>	(R1 033 000)
<i>Mokheithi v MEC for Health, Gauteng</i> ¹⁷	(R1 200 000)
<i>Rens v MEC for Health: Northern Cape Provincial Department of Health</i>	(R1 287 000)
<i>Cheney v Eagle Star Insurance Company Limited</i>	(R1 300 000)
<i>Blyth v Van Den Heever</i>	(R1 700 000)
<i>Pheko v Maine</i>	(R2 540 000)

¹⁵ In 2024 Rand values.

¹⁶ Volumes I, II, III, IV, V and VI.

¹⁷ 2014 (1) SA 93 (GSJ).

[46] The cases are not entirely dissimilar from the present case and are no more than a general guide as to what the courts have regarded as appropriate awards for upper limb amputees. It is rarely, if ever, that two cases are on all fours, but I think the cases define a very wide parameter (R750 000 to R2 540 000) for determining an award in this case. For the defendant it was submitted that R950 000 would be fair. On the other hand it was submitted for the plaintiff that R1 500 000 would be appropriate. The reach between these limits does not show a significant disparity between the parties' respective views for assessing the plaintiff's damages. On the one hand the paucity of evidence does not justify awarding an amount of R950 000, nor does it on the other hand justify an award at the upper limit of R1 500 000 which I think is excessive. Anything else exceeding that limit would be overgenerous.

[47] It seems to me that fixing general damages at R1 200 000 would be fair and reasonable.

Future medical expenses

[48] The plaintiff's medical and related costs under this head are not pleaded in accordance with the prescripts of rule 18(10)(a) which requires that medical, hospital and similar expenses be set out so as to enable a reasonable assessment thereof.

[49] The claim appears to be formulated on the recommendations by Mr Toogood for the supply of prosthetic and therapeutic goods. It also includes the cost of therapeutic and psychotherapeutic intervention without specifying what these entail or identifying the clinician by whom such interventions are recommended.

[50] The quantification of the claim appears in a calculation¹⁸ jointly by actuaries Ms J Valentini and Mr G Du Toit, respectively for the plaintiff and the defendant, in which the categories of future medical expenses, prosthetic requirements and assistive devices are set out in accordance with the recommendations by the

¹⁸ Dated 29 November 2022.

occupational therapists¹⁹, the orthopaedic surgeons²⁰, the clinical psychologists²¹, and the orthotists and prosthetists²².

[51] For ease of reference the relevant extract from the calculation is incorporated at the end of this judgment. It will be observed that the extract comprises of two columns incorporating comparative calculations by Ms Valentini and Mr Du Toit postulated on the recommendations by the experts aforementioned.

[52] The defendant fairly conceded the following expenses:

Orthopaedic surgeons (items 42 to 45)	R90 070 (per Ms Valentini)
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Clinical psychologists (item 47)	R56 040 (per Ms Valentini)
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Orthotists and prosthetists (items 48 to 51)	R2 305 219 (per Mr Du Toit)
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Occupational therapists (item 4 aeroplane splint)	R56 705 (per Mr Du Toit)
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Occupational therapists (item 39 domestic assistance)	R368 310 (per Ms Valentini)
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[53] In relation to the recommendations by the occupational therapists, it will be noted that the defendant's concessions are limited only to items 4 and 39. For the rest of the items incorporated in the calculations by Ms Valentini (i.e. items 5 to 39)²³, the joint minutes by the occupational therapists reflect disagreement. It was correctly

¹⁹ Ms P Mdlokolo and Ms A Vimbani, respectively for the plaintiff and the defendant.

²⁰ Dr P Olivier and Dr G Mthethwa, respectively for the plaintiff and the defendant.

²¹ Dr M Nqamza and Dr N Nkwanyana, respectively for the plaintiff and the defendant.

²² Mr R Toogood and Mr B Nothling, respectively for the plaintiff and the defendant.

²³ These being based on the recommendations by Ms Mdlokolo, the plaintiff's occupational therapist.

pointed out in argument that it is not possible to for the court to determine and assess those recommendations without the plaintiff having led evidence thereover.

[54] Their validation requires proof, of which there is none.

[55] It will be noted that some of the items allowed for by both occupational therapists are duplications (i.e. items 1, 2, 3, 39, and 40). These were never clarified by the plaintiff herself nor by leading expert evidence. The further provision for a washing machine and tumble dryer (item 9) is inherently a duplication of the award contemplated for the provision of 'domestic assistance' (item 39) and 'full-time domestic assistant' (item 40).

[56] The calculation at item 41 incorporates provision for 'gardening and house maintenance'. As correctly pointed out in argument, this is not supported by the plaintiff's evidence. She testified that she required someone to plough her land and that this is an annual expense. All indications are that this is not an expense occasioned by the negligence. It was, however, submitted for the defendant that provision for a domestic assistant three times a week calculated by Ms Valentini in the amount of R368 310 (item 39) would not be unreasonable.

[57] Before summarising the award to the plaintiff, there is the additional issue regarding a deduction for contingencies. The plaintiff submitted that a contingency factor of 5% to 15% should be applied whereas the defendant contended for 25% on the basis that the award for assistive devices and a domestic assistant will significantly ameliorate the prejudicial effects of the negligence and sequelae of the plaintiff's compromised state. I agree with this submission but am of the view that a 20% deduction would not be unreasonable.

[58] The plaintiff's future medical expenses including domestic assistance are awarded as follows:

Orthopaedic surgeons

R90 070

Clinical psychologists	R56 040
Orthotists and prosthetists	R2 305 219
Occupational therapists – aeroplane splint	R56 705
Occupational therapists – domestic assistance	R368 310
<i>Subtotal</i>	R2 876 344
<u>Less</u> interim payment	R1 800 000
<i>Subtotal</i>	R1 076 344
Total (less 20% contingencies)	R861 075

[59] In summary, the damages awarded to the plaintiff are in the amount of R2 061 075 calculated as follows:

General damages	R1 200 000
Future medical expenses inclusive of domestic assistance	R861 075
Total	<u>R2 061 075</u>

[60] What remains the issue of costs. The matter proceeded to trial on 13, 14 and 16 May 2024 with the plaintiff being the only witness who testified on 13 May 2024 in support of her case. The proceedings on 14 May 2024 were wholly dedicated to the claim for loss of income earning capacity when Mr Marias testified. Because the plaintiff did not establish her claim under this head, counsel for the defendant urged that the claim be dismissed with the costs of the day being awarded to the defendant. I disagree. Counsel for the defendant had conduct of the matter – they knew what the issues were, and once the plaintiff had testified it was obvious from

her own version that she did not discharge the onus on the claim for loss of earning capacity – even more, when Ms Pepu failed to testify. For reasons already dealt with, the evidence of Mr Marais did not assist this court. There was no necessity to have called him to testify once it became obvious that the plaintiff's claim under this head was not proven.

[61] The determination as to the costs for 14 May 2024 is reflected in the order below.

[62] Plaintiff's counsel, on the other hand, contended in the overall for costs on an attorney and client scale primarily because the defendant was dilatory in not initiating early settlement of the case. The argument is fanciful. A chronologically detailed rendition of the conduct of the matter with reference to developments which ought to have been dealt with in the pre-trial minutes was not proffered, nor was any indication given as to whether the question of settlement was elevated to case management. Except for excluding 14 May 2024, an award of costs on the usual scale is eminently reasonable. Last, is the question concerning the employment of Ms Pepu, for which plaintiff's counsel sought costs from the defendant. One cannot be expected to speculate on the relevance of her report or her testimony. The fact of the matter is that she did not testify. Her costs are to be borne by the plaintiff.

[63] In the result, I make the following order:

1. The defendant is ordered to pay the plaintiff the amount of R2 061 075.00 as and for damages.
2. The defendant shall pay interest on the aforestated amount at the prevailing legal rate from date of judgment to date of payment.
3. The defendant shall pay the plaintiff's costs of suit for 13 and 16 May 2024 on a party and party scale, which shall include:
 - 3.1 Counsel's fees on scale B of rule 69 of the Uniform Rules of Court.

- 3.2 The costs of reports, qualifying expenses if any, and joint minutes in respect of plaintiff's experts, barring Ms Busisiwe Pepu.
4. The costs shall include interest at the prescribed legal rate from a date 14 days after allocator to date of payment.
5. Each party shall bear their own costs for 14 May 2024.

M. S. RUGUNANAN
JUDGE OF THE HIGH COURT

Appearances:

For the Plaintiff: *D Skoti*, Instructed by SB Bavu Incorporated, c/o M Hlazo Attorneys, Mthatha 043-531 1771 (Ref: *S Bavu*).

For the Defendant: *J Hobbs* with *L Sambudla*, Instructed by The State Attorney, Mthatha (Ref 63/11-A1 *M Shumane*).

Dates heard: 13, 14 and 16 May 2024.

Date delivered: 15 August 2024.

2. Capitalised Values of Medical and Related Costs

2.1. GDT values are calculated as at 28 November 2022.

2.2. JV values are calculated as at 1 December 2022.

2.3. JV values are as per their report dated 22 November 2022. Their report dated 14 June 2021 has been revised based on the information provided in the Joint Minutes noted in 1.5.

2.4. The table below indicates the results produced by GDT and JV:

DESCRIPTION	GERT DU TOIT (IAC)			JULIE VALENTINI (MUNRO)		
	EXPERT	INFLATION	CAPITALISED VALUE	EXPERT	INFLATION	CAPITALISED VALUE
Occupational Therapists						
1 Occupational therapy	Joint Minute (AV)	Medical	12 861	Joint Minute (AV)	Earnings	12 660
2 Occupational therapy, initial	Joint Minute (PM)	Medical	9 354	Joint Minute (PM)	Earnings	7 190
3 Occupational therapy, thereafter	Joint Minute (PM)	Medical	84 968	Joint Minute (PM)	Earnings	44 090
4 Airplane splinting	Joint Minute (PM)	Medical	56 705	Joint Minute (PM)	Earnings	50 730
5 Thermoregulatory heat/cold packs	AV	Price	4 655			
6 Long-handled bath sponge	AV	Price	931			
7 Dressing aid/stick	AV	Price	1 011			
8 Non-slip towel wringer/wringing aid (cloth press)	AV	Price	2 831			
9 Washing machine and tumble dryer	AV	Price	40 440			
10 Customised domestic trolley	AV	Price	6 470			
11 Shopping bag on wheels	AV	Price	1 618			
12 Laundry basket on wheels	AV	Price	607			
13 Electric peeler and tap or bottle opener	AV	Price	3 235			
14 Shower chair				PM	Price	4 760
15 Dressing stick				PM	Price	1 160
16 Shoe horn with soft plastic handle				PM	Price	640
17 Mitt with pocket for soap				PM	Price	3 270
18 Lower extremity kit				PM	Price	4 760
19 Long handed body creamer				PM	Price	2 790
20 Easy-reach back and body washcloth				PM	Price	3 250
21 Long handled foot brush				PM	Price	1 830
22 Curved bath brush				PM	Price	4 210
23 Tap turner				PM	Price	2 910
24 One handed nail clipper				PM	Price	930
25 Long reach toe nail cutter				PM	Price	900
26 Button hook				PM	Price	400
27 Sock aid				PM	Price	1 400
28 Multi-purpose reacher				PM	Price	1 160
29 Two level trolley				PM	Price	2 850
30 Key turner				PM	Price	180
31 Trolley bag				PM	Price	2 110
32 Kitchen spread board with spikes				PM	Price	2 680
33 One handed grater				PM	Price	1 420
34 Battery powered can opener				PM	Price	4 240
35 Push on pegs				PM	Price	850
36 Long handled broom and dustpan				PM	Price	2 190
37 Telescopic mop				PM	Price	1 340
38 Bucket on wheels				PM	Price	530
39 Domestic assistance	Joint Minute (AV)	Earnings	384 963	Joint Minute (AV)	Earnings	368 310
40 Full-time domestic assistant	Joint Minute (PM)	Earnings	737 221	Joint Minute (PM)	Earnings	1 101 000
41 Gardening and house maintenance	AV	Earnings	1 501 057			1 636 720
Orthopaedic Surgeon						
42 Amputation stump refashioning: Orthopaedic surgeon fee	P Mthethwa	Medical	20 880	Joint Minute	Medical	20 020
43 Amputation stump refashioning: Anaesthetist fee	P Mthethwa	Medical	10 440	Joint Minute	Medical	10 010
44 Amputation stump refashioning: Hospital costs	P Mthethwa	Medical	52 201	Joint Minute	Medical	50 040
45 Amputation stump refashioning: Physiotherapy	P Mthethwa	Medical	5 220	Joint Minute	Medical	5 000
46 Amputation stump refashioning: Pain management medication	P Mthethwa	Medical	9 220	Joint Minute	Medical	9 070
			93 961			
Clinical Psychologists						
47 Psychological intervention	Joint Minute	Medical	58 525	Joint Minute	Medical	56 040
			58 525			
Orthotist and Prosthetist						
48 Primary prosthesis	Joint Minute	Medical	1 366 331	Joint Minute	Medical	1 430 600
49 Refits of prosthesis	Joint Minute	Medical	635 296	Joint Minute	Medical	668 040
50 Maintenance	Joint Minute	Medical	184 352	Joint Minute	Medical	189 870
51 Maintenance costs / consultations	Joint Minute	Medical	119 240	Joint Minute	Medical	123 030
			1 305 219			2 411 540