

**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 43613/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED.

DATE: 21 JANUARY 2025

SIGNATURE

In the matter between:

NHLANHLA JOSEPH MASEMOLA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Summary: *Claim for non-pecuniary (general) damages against the Road Accident Fund (RAF) – determined that the making of an offer to pay such damages amounting to an acceptance by the RAF that the plaintiff's injuries are serious as contemplated in the proviso to section 17(1) of the RAF Act – plaintiff thereafter entitled to proceed to claim general damages, even if offer not accepted.*

ORDER

1. The defendant is ordered to pay to the plaintiff the amount of R 4 477 433.00 (Four million four hundred and seventy seven thousand four hundred and thirty three Rand) in damages following injuries the

plaintiff sustained in a motor vehicle accident which occurred on 13 February 2021 made up as follows (the capital amount):

General damages	R1 100 000.00
Loss of earnings	R 3 377 433.00
Total:	<u>R4 477 433.00</u>

2. The capital amount is payable by defendant to the plaintiff on or before 180 days from date hereof by depositing same into plaintiff's attorneys of record's trust account, the details of which are as follows:

Account Holder	:	ZENZELE MDLULI ATTORNEYS
Bank	:	FIRST NATIONAL BANK
Account number	:	6[...]
Branch Code	:	2[...]
Branch Name	:	HATFIELD
Reference	:	R[...]

3. Should the defendant fail to make payment of the capital amount on/or before 180 days from date hereof, defendant will be liable for interest on the amount due to plaintiff at the prescribed rate per annum, calculated from 15 days from date of this order to date of final payment.
4. The defendant shall provide the plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, to compensate the plaintiff for 100% the costs relating to future accommodation in a hospital or nursing home or treatment of or the rendering of service or supplying of goods to the plaintiff after the costs have been incurred and on proof thereof, as a result of the injuries sustained by the plaintiff in the motor vehicle accident which had occurred on 13 February 2021.
5. The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on High Court Scale B, within 14 days after taxation or agreement (whereafter it shall accrue interest as calculated in

paragraph 3 above) by depositing same into plaintiff's attorneys of record's trust account.

6. It is noted that there is a valid contingency fee agreement in existence.

J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 21 January 2025.

DAVIS, J

Introduction

[1] The central question to be decided in this matter is whether an offer of settlement made by the Road Accident Fund (the RAF) during the course of litigation can amount to an acceptance by the RAF of the seriousness of a plaintiff's injuries, entitling such a plaintiff to claim non-pecuniary (general) damages.

Factual background

[2] The plaintiff was the driver of a motor vehicle which was involved in an accident on 14 February 2021. He was 30 years old and employed as a petrol attendant at the time.

[3] The plaintiff's prescribed affidavit¹ in which he set out the particulars of the accident, corresponds exactly with the particulars set out in the relevant accident report. It reads as follows: "*I was driving to Baviaanspoort from Moloto Rd. While driving, another car came from the opposite direction, overtaking another car. It went into my lane of travel and I tried to avoid colliding with it head-on by applying*

¹ Section 19(f)(i) of the Road Accident Fund Act 56 of 1996 (the RAF Act) makes it a prerequisite for a claim against the RAF that the plaintiff furnish an affidavit "*in which particulars of the accident are fully set out*".

brakes and moving to my left side. I lost control of my car and went off the road, colliding with something”.

[4] The plaintiff sustained injuries in the accident and was taken from the scene by ambulance to the Mamelodi hospital, from where he was later transferred to the Steve Biko Academic hospital.

[5] The plaintiff suffered compression fractures of his T12-L1 vertebrae and as a consequence, experienced temporary paraplegia. After decompression and fusion of the vertebrae and after recovery and rehabilitation, he is now mobile, but ambulates with a walking stick.

Litigation history

[6] The plaintiff has delivered reports of an orthopaedic surgeon, radiologists, a plastic surgeon, a neurosurgeon, a specialist urologist, a clinical psychologist and an actuary. The RAF has delivered no reports.

[7] The minutes of a pre-trial conference held on 11 October 2023 (at which the RAF had been represented by the State Attorney), indicated that the merits of the matter was “still under investigation” by the RAF, despite no assessor having been appointed.

[8] The reason furnished by the RAF why no settlement could be reached was that the State Attorney was awaiting a mandate.

[9] Regarding the issue of expert evidence, the RAF’s stance was recorded as follows: *“The defendant admits the expertise of the plaintiff’s experts and is willing to use their reports to assess the matter. The opinions and findings of the said experts are however not admitted and the defendant will conduct its own investigations and reserves its rights to appoint its own experts”.* Despite this, no such experts have been appointed by the RAF.

[10] The recordal regarding settlement attempts failed to mention that the RAF had already on 27 May 2022 made an offer, in which an amount of general damages and

the furnishing of an undertaking in terms of section 17(4)(a) of the RAF Act, had been tendered.

[11] On 8 November 2024, being the day of trial, the matter had been allocated to me as one of seven matters to be attended to from that day's trial roll. There was no appearance on behalf of the RAF, but a second settlement offer had been made on that day.

[12] This second offer, on the same standard form used by the RAF as in the first offer, in addition to an undertaking and an amount in respect of general damages, also contained an offer in respect of loss of earnings.

[13] None of the settlement offers had been accepted by the plaintiff and in the documents uploaded on the electronic Caselines file, the amounts tendered under the various heads of damages had been obscured.

[14] The matter proceeded on both the issues of merits and quantum, albeit by default of appearance on behalf of the RAF. The plaintiff's application to proceed by way of affidavit evidence as contemplated in Rule 38(2), was granted.

The merits

[15] In *Sedumemanyatela*² this court held that even when an approaching vehicle is on its incorrect side of the road, a driver on his correct side may assume that the former will return timeously to its correct side. This assumption does not, however, entitle a driver on the correct side of the road to remain passive in the face of the threat of oncoming danger. He remains under a duty of care to take reasonable steps to avoid an accident.

[16] It appears that the plaintiff had exercised the requisite care and had attempted to avoid the accident. Despite this, his car had veered off the road and damages and injuries followed. There is no evidence that this occurred as a result of any negligence on the part of the plaintiff.

² *Sedumemanyatela v RAF* (6568/2012) [2014] ZAGPPHC 445 (30 May 2014) per Molefe J (as she then was) at par 21

[17] In the absence of countervailing evidence and in the absence of any reason not to believe the plaintiff, the plaintiff is entitled to a finding in his favour on the merits³. This includes the absence of any apportionment, which, although pleaded as an alternative, was not supported by any evidence⁴.

[18] Accordingly the RAF is found to be 100% liable for whatever damages the plaintiff may prove.

Loss of earnings

[19] After having examined the reports of all the other experts, except the actuary, the industrial psychologist concluded that the impact of the injuries on the plaintiff's functionality was such that he would be likely to be unemployed in the future.

[20] Even acknowledging the plaintiff's relative youth, the industrial psychologist was further of the opinion that the plaintiff "*... has been rendered unemployable in the open labour market. The South African unemployment rate (in respect of which a table had been provided), the competitive South African labour market, the plaintiff's level of education (grade 12), limited employment history and his accident related sequelae considered*" ... rendered the plaintiff effectively unemployable. When initially reading the papers, I considered whether, taking into account the fact that the plaintiff had initially returned to work post-accident, one should take his pre- and post-accident projected income as the same but employ a higher post-accident contingency, such as 60%.

[21] However, the plaintiff has subsequently lost his job on 1 August 2023 and has remained unemployed since then. It appears that the initial re-employment of him as a petrol attendant who walks with a walking stick had been a case of sympathetic and accommodated employment. Having regard to the plaintiff's circumstances, he was reliant on his physical aptitude, which he has now lost, as his only means to secure employment. These circumstances accord with the occupational therapist's opinion that "*... without a sympathetic employer, he will not successfully be employed*".

³ See also *Baliso v First Rand Bank Ltd* 2017 (1) SA 292 (CC) at par 12.

⁴ *Roma v RAF* (2111/2020) [2023] ZAECKMHC 77 (27 June 2023).

[22] The facts therefore support the industrial psychologist's postulation. The recalculation performed by the actuary, taking into account the re-employment income as part of the past loss, but envisaging future total unemployment, resulted in a claim of R3 377 433.00. On the facts of this case, this appears to be a fair and reasonable assessment of the plaintiff's damages in this regard.

The jurisdictional hurdle to claim non-pecuniary (general) damages

[23] The requirements for a plaintiff to qualify to claim general damages are not only statutorily prescribed but its application has by now become trite. It is this: in terms of the *proviso* to section 17(1), the RAF shall only be liable to compensate a plaintiff for general damages if the seriousness of such a plaintiff's injuries has been assessed as contemplated in section 17(1A).

[24] Such assessment, for which the qualifying threshold is 30% Whole Person Impairment (WPI), shall be determined in a prescribed manner and shall be carried out by a medical practitioner⁵ registered as such under the Health Professions Act⁶.

[25] The "method" whereby an assessment is to be undertaken, has been prescribed in Regulation 3 of the Road Accident Fund Regulations promulgated on 21 July 2009⁷ (the Regulations).

⁵ Section 17(1A) (a) and (b).

⁶ 56 of 1974.

⁷ Regulation 3: **Assessment of serious injury in terms of section 17(1A)**

- (1) (a) A third party who wishes to claim compensation for non-pecuniary loss shall submit himself or herself to an assessment by a medical practitioner in accordance with these Regulations.
- (b) The medical practitioner shall assess whether the third party's injury is serious in accordance with the following method:
 - (i) The Minister may publish in the Gazette, after consultation with the Minister of Health, a list of injuries which are for purposes of section 17 of the Act not to be regarded as serious injuries and no injury shall be assessed as serious if that injury meets the description of an injury which appears on the list.
 - (ii) If the injury resulted in 30 per cent or more Impairment of the Whole Person as provided in the AMA Guides, the injury shall be assessed as serious.
 - (iii) An injury which does not result in 30 per cent or more Impairment of the Whole Person may only be assessed as serious if that injury:
 - (aa) resulted in a serious long-term impairment or loss of a body function;
 - (bb) constitutes permanent serious disfigurement;
 - (cc) resulted in severe long-term mental or severe long-term behavioural disturbance or disorder; or
 - (dd) resulted in loss of a foetus.

[26] A plaintiff who has undergone such a prescribed assessment, shall obtain a serious injury assessment report from the medical practitioner who has performed the assessment⁸.

[27] Should the RAF not be satisfied that the injury had been correctly assessed, it may either reject the plaintiff's serious injury assessment⁹ or direct the plaintiff to submit him or herself to assessment by a medical practitioner designated by the RAF¹⁰. Should there still be disputes thereafter as to the seriousness of the injuries, the issue shall be dealt with by an appeal tribunal appointed by the HPCSA after due exchange of notices as provided for in the Regulations¹¹.

[28] It is also trite that the above procedures are peremptory and that a court has no power to determine the seriousness of the injuries¹².

[29] The position could not have been put clearer in *RAF v Faria*¹³ (at par 35): “As *Duma* makes clear, ... the position is now that ‘unless the Fund is so satisfied [i.e. that the injuries are serious], the plaintiff simply has no claim for general damages;[it means] that “unless the plaintiff can establish the jurisdictional fact that the Fund is so satisfied, the court has no jurisdiction to entertain the claim for general damages against the Fund”.

Has the jurisdictional fact been established?

[30] Although the Regulations prescribe that a rejection of an assessment by the RAF must be in writing¹⁴, there is no similar requirement as to the acceptance of such an assessment. Despite this, one often finds that the RAF issues “letters of acceptance” in respect of a plaintiff's entitlement to claim general damages. In fact, during the course of the week in which this matter came before court, the court

⁸ Reg 3(3)(a).

⁹ Reg 3(3)(d)(i).

¹⁰ Reg 3(3)(d)(ii).

¹¹ Regulations 3(4) – 3(13).

¹² *Duma v RAF* 2013 (6) SA 9 (SCA), *RAF v Lebeko* 2012 JDR 2176 (SCA) [2012] ZASCA 159 and *Kobo M and Another v RAF* 2023 (3) SA 125 (GP).

¹³ 2014 (6) SA 19 (SCA).

¹⁴ Reg 3.

encountered a number of such letters. In the present instance, the RAF has not issued such a letter.

[31] The question then is, can the RAF's settlement offers, even though they have not been accepted, be deemed to constitute an acceptance by the RAF of the plaintiff's right to claim general damages?

[32] In *Mertz v RAF*¹⁵ (*Mertz*) a full court of this Division, amongst other disputes, had to determine the issue of "*whether the court a quo lacked the jurisdiction to make any award in respect of general damages because the jurisdictional facts necessary to qualify the appellant's injuries as a 'serious injury' had not been established*" (quoting from the judgment).

[33] Potterill J, speaking for the full court, held as follows (at par 29): "*Regulation 3 does not expressly require the RAF to in writing accept the injuries as serious, whereas it expressly provide that reasons for rejection must be in writing. The RAF is the decision-maker pertaining to accepting or rejecting the injury as serious. There is no doubt that in general where the RAF has offered an amount as compensation for general damages, without expressly informing the third party that the injury was serious, an implied acceptance constitutes that the injury was serious*".

[34] As authority for this statement, reliance was placed on *Chetty v RAF*¹⁶ (*Chetty*), which was similarly a decision of a full court. I shall shortly return to the decision in *Chetty*.

[35] Apart from the reliance on *Chetty*, the issue of jurisdiction was dealt with by the court on two bases. The first was that certain admissions had been made by the RAF at a series of pre-trial conferences in respect of the opinions of the plaintiff's experts contained in their reports and it was held that these amounted to sufficient satisfaction of the jurisdictional hurdle. The issue of admissions made at pre-trial

¹⁵ (A96/2021) [2022] ZAGPPHC 961 (2 December 2022).

¹⁶ (A91/2021) [2021] ZAGPPHC 848 (7 December 2021).

conferences does not feature in the present matter as it did in the recent case of *Adv Sayed NO v RAF*¹⁷ and I need not say anything more about that aspect here.

[36] The second basis on which the court relied in finding that the jurisdictional hurdle had been crossed in *Mertz*, was described in the judgment as follows: “[30] ... more importantly, Ms Le Roux [who appeared on behalf of the RAF] indicated that she has no objection to the amounts claimed and that she has recommended that these figures be paid to the appellant, but could not sign-off, but had to escalate the amount upwards for a senior signature. It was placed on record that all the issues were canvassed in the appellant’s heads of argument had to be adjudicated on by the court a quo. The general damages was part and parcel of those issues, which was a concession that the injuries were accepted as being serious. [31] The defence of lack of jurisdiction of the court is dismissed; the court a quo could adjudicate the award of general damages”. This second basis also does not feature in the present matter, due to the default of appearance of anyone on behalf of the RAF.

[37] This brings us back to the reliance on *Chetty*. In that matter, the issue of offers made by the RAF featured, similarly as in the present matter. The judgment of the full court, penned by Phahlamohlaka AJ, explained how the issue had arisen: “[17] ... the court can only deal with the issue of general damages once the provisions of Regulation 3 have been complied with. Put differently, the court may not assume the administrative duties of the Fund ... [19] Faced with the uncertainty in respect of whether the fund had accepted the plaintiff’s serious injury assessment form or not, I requested the plaintiff’s counsel to file supplementary heads of argument to address us on this aspect ... It appears from the supplementary heads that the Fund had offered an amount as compensation for general damages and therefore we are satisfied that the Fund has accepted the plaintiff’s injuries as serious. [20] The court a quo was therefore correct in dealing with the issue of general damages ...” (my emphasis). The issue was not further debated or considered.

¹⁷ (36492/2021) [2024] ZAGPPHC 1325 (18 December 2024)

[38] The “uncertainty” raised by the court on appeal, had not been raised by the RAF nor had it produced any evidence to the effect that its offer did not amount to an acceptance of the seriousness of the plaintiff’s injuries. The issues for determination on appeal in *Chetty* were only “... *whether the court a quo had erred by postponing the determination of loss of earnings for evidence viva voce to be adduced. Further, whether the award of R150 000.00 in respect of general damages was appropriate*” (quoting from the judgment). The result was that the matter was referred back to the court a quo for trial on loss of earnings before another judge. The award for general damages was increased to R450 000.00.

[39] The upshot of the above is that in *Chetty*, the mere making of an offer in respect of general damages was accepted as a sufficient concession of the jurisdictional requirement, but without that aspect having been specifically considered as an issue on appeal. In *Mertz*, the general comment quoted in par 32 above, was made with reliance on *Chetty*, while the final decision regarding the crossing of the jurisdictional hurdle had been fortified by other conduct on behalf of the RAF, both in the court a quo and on appeal. The issue which arose in the present matter (and which frequently comes before the court in this Division) has therefore not definitively been resolved. Had it been, this court would have been bound by the full court decisions and that would have been the end of the matter.

[40] The pertinent question therefore still remains as to whether the making of an offer, which includes an offer to pay a certain amount in respect of general damages, on its own provides proof that the jurisdictional requirement imposed by the RAF Act and its Regulations had been satisfied.

[41] Counsel on behalf of plaintiffs often argue that the obvious answer must be an emphatic “yes”. They argue that the RAF could not have made such an offer, had it not been satisfied that the plaintiff to whom the offer is made, is entitled to claim general damages.

[42] In view of the apparent unassailable logic of the above contention, is there room for the opposite contention (only occasionally) expressed, that an offer might simply be made to bring an end to the litigation, without necessarily thereby

amounting to any concession? In other words, was the offer not simply an attempt to reach a compromise, which “... *may be more ... advantageous than litigating the original cause of action* ...” as it has been described by the Constitutional Court¹⁸ in the context of settlement agreements?

[43] In my view, this opposite contention might have held some water, had the offers been made in a globular or composite manner, without any reference to general damages. If the RAF had, for example offered an amount of R3 million in respect of all the monetary claims¹⁹ of a plaintiff as a compromise of the totality of the plaintiff’s action.

[44] As already pointed out, in terms of the proviso to section 17(1), the RAF has no obligation to compensate a plaintiff for general damages unless it is satisfied as to the seriousness of the injuries. The converse should then also hold true: the RAF has no enabling statutory authority to pay compensation in instances where it is not satisfied as to the seriousness of a plaintiff’s injuries. To put it differently, where a plaintiff has not established a right to claim general damages, the RAF cannot pay such damages.

[45] It must follow from the above interpretation that, should a plaintiff not be entitled to general damages, no such damages may even be offered. To do so, would amount to *ultra vires* conduct on the part of the RAF.

[46] In similar fashion as this court has found that the RAF should be deemed to have acquainted itself of the facts or legal bases when making concessions at pre-trial conferences²⁰, so it should be deemed to have satisfied itself that the jurisdictional requirements of its enabling statute have been fulfilled before offering to pay general damages.

[47] One should also have regard to the manner in which these offers are made. The standard format in which the RAF makes its offers is in the form of a letter,

¹⁸ *Mafisa v RAF* 2024 (4) SA 426 (CC) par [34].

¹⁹ In excluding the statutory undertaking contemplated in section 17(4) in respect of future claims for medical and ancillary expenses.

²⁰ *Adv Sayed NO v RAF* at footnote 10 above.

containing a table, providing for amounts to be inserted therein in respect of various items. These are labelled “hospital/medical expenses”, “loss of support”, “loss of earnings”, “funeral costs” and “General Damages (Pain & Suffering, Permanent disability, etc.)”. The table also allows for the insertion of particulars regarding apportionment, interim payments and Workmens Compensation Commissioner payments. This same form has been used in the present instance. No apportionment had been inserted in the form and the only amounts inserted, were in respect of loss of earnings and general damages.

[48] Notably, the standard form also makes provision for a possible deduction in respect of “risks”. It is not indicated what this may refer to, but the only inference is that it refers to the risks of litigation and might relate to the RAF’s assessment of the prospects of success. Be that as it may, in the present instance, the percentage risk was indicated as 0%/R0.00.

[49] Where, as in the present case, a specific amount had been offered in respect of the plaintiff’s claim for general damages (apart from a separate amount offered in respect of loss of earnings), that amount was not part of a globular settlement offer, taking the risks of litigation into account. It could therefore only have been validly offered once the RAF had satisfied itself that, as a result of the seriousness of the plaintiff’s injuries, the RAF was statutorily authorised to pay an amount in respect of general damages. In other words, the RAF must be deemed to have accepted that the jurisdictional requirements in respect of this separate claim as part of the cause of action had been met when it offered an amount of general damages to be paid. I interpose to point out that the term “offer” appears to be the preferred parlance in RAF litigation and is also expressly used in the RAF letters.

The “without prejudice” aspect

[50] The RAF’s offers in the fashion as aforesaid, are all introduced by the sentence: “*The RAF hereby offers, without prejudice or admission of liability, in full and final settlement of your claim, the amounts set out hereunder ...*”. The letters containing the offers also contain a similar “without prejudice” heading.

[51] Does the without prejudice nature of the offer detract from the conclusions reached above? In my view, not.

[52] Firstly, the incantation that a missive is sent “without prejudice”, contains “... *no particular magic* ...”²¹. If an offer forms part of genuine negotiations for the compromise of a dispute, it will be privileged, even if the words have not been used²². By parity of reasoning, the opposite must, however, be equally true.

[53] The reason for this, as explained in *Ward v Steenberg*²³ (*Ward*), quoting *Wigmore*²⁴, is as follows: “*The true reason for excluding an offer of compromise is that it does not ordinarily proceed from and imply a specific belief that the adversary’s claim is well-founded, but rather a belief that the further prosecution of that claim, whether well founded or not, would cause such annoyance as is preferably avoided by the payment of the sum offered*”.

[54] The position of the RAF is, however, different from that of an ordinary litigant to which the above proposition would apply. It is statutorily obliged to recompense plaintiffs who had suffered damages in motor vehicle collisions, but it is also not authorised to pay compensation where plaintiffs do not qualify to claim damages. There is therefore no “nuisance” to be avoided – a plaintiff qualifies or not, but the extent of the damages, i.e. the quantum of what his qualifying claim may be worth, is what may be proven, or, as is most often the case, be settled by negotiation.

[55] In my view, the approach adopted in *Ward* is the correct one, namely that although “*an offer to pay money in settlement or compromise*” is generally inadmissible, in some “... *cases the conduct may be relevant and in such cases, the evidence should be regarded as admissible and its value should be considered* ...”²⁵.

²¹ Hoffman & Zeffent, the South African Law of Evidence, 4th Ed at 197.

²² *Millward v Glaser* 1950 (3) SA 547 (W) at 554.

²³ 1951 (1) SA 395 (TPD) at 400 F-G.

²⁴ *Wigmore*, Evidence, 3rd Ed, Vol 4 par 1061

²⁵ At 401 A – B. See also *Patlansky v Patlansky* (2) 1917 WLD 10 and the treatment of an exceptional circumstances” in *Naidoo v Marine and Trade Insurance Co Ltd* 1978 (3) SA 666 (A) per Trollop JA at 681B – C. the offering of payment which can only be made once the requirements of an act had been satisfied, is an “exceptional circumstances” in this context.

[56] The above statement was made in circumstances where the respondent, being the alleged negligent driver of a motor vehicle, had handed the appellant a note which read “*please send account to me*”. This evidence was admitted as part of the evidence to prove liability. The extent of the damages was however found not to have been proven and the order of absolution from the instance granted by the court a quo was upheld on appeal.

[57] In similar fashion as in *Ward*, the evidence that the RAF had tendered payment of an amount of general damages, thereby admitting that the plaintiff qualified to claim such damages, should be admissible (and not be privileged). The extent of the offer however, should remain privileged as part of the “genuine offer to compromise” the extent of that head of damages. In the present instance, that has been done by obscuring the amounts inserted in the table containing the RAF’s offers.

The quantum of general damages

[58] The plaintiff has sustained some scarring on his left scapula and surgical scarring on his back. It cannot, however, as the plaintiff’s counsel argued, be described as “severe”. The plaintiff also suffers from PTSD and, according to the experts, a major depressive disorder and a general anxiety disorder. His T12 compression fracture resulted in temporary paraplegia only but left him with left lower limb nerve palsy and reduced power, making it difficult to walk. He uses a walking stick. He also suffers from a neurogenic bladder with associated erectile dysfunction.

[59] It is trite that, in assessing general damages, a broad discretion is exercised by a court, based on what it considers fair and adequate in the circumstances. The nature, severity and permanence of the injuries sustained and the consequences thereof, be it pain and suffering, disfigurement or lack of amenities of life, are all considered. Courts also obtain guidance from awards made in comparable cases²⁶.

²⁶ *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (SCA) at 536A – B.

[60] On behalf of the plaintiff, the court was referred to the following cases and the current values of the awards made therein: *Mashigo v RAF*²⁷ (*Mashigo*) where R600 000.00 had been awarded in a case of severe disfiguring scarring; *CDL v Minister of Safety and Security*²⁸ where the current value of an award for a plaintiff suffering from PTSD and severe depression was R92 000.00; *Majiet v Sanlam Ltd*²⁹ where the current value of the award in respect of a major depressive order was R155 000.00; *De Barros v RAF*³⁰ where the current value of an award in respect of incapacity due to lower back pain, coupled with PTSD and associated symptoms was R279 000.00; *Maholela v RAF*³¹ where the current value of an award as a result of a plaintiff suffering from paraplegia was R1.6m; *Robyn v RAF*³² where the current value of an award, also in respect of paraplegia was R1.6m and *Webb v RAF*³³ where the plaintiff's paraplegia left him wheelchair-bound, with a neurogenic bladder, and was, in current terms, awarded R2.3m.

[61] It needs to be stressed that the plaintiff no longer suffers from paraplegia and is not bed-ridden or wheelchair-bound. His case is to be distinguished from those where plaintiffs suffered such higher degrees of immobility with accompanying bed-sores and other impairments.

[62] Furthermore, his scarring was for less than that encountered in *Mashigo* and although debilitating, his psychological conditions would, according to the experts, benefit from proper therapy and treatment.

[63] Assessing all of the above and, having revisited the reports of the experts filed by the plaintiff, I am of the view that an amount of R1.1 million would be a fair and reasonable amount of general damages.

Order

[64] In the premises, an order is made in the following terms:

²⁷ (2120/2014) [2018] ZAGPPHC 539 (13 June 2018).

²⁸ 2016 (7k6) QoD 286 (GNP).

²⁹ 1997 (4k3) QoD (1) (K).

³⁰ 2001 (5) C & B C4 - 13

³¹ 2006 QoD A3 – 3 (O).

³² 2013 (6A3) QoD 32 (GNP).

³³ 2016 (7A3) QoD 24 (GNP).

1. The defendant is ordered to pay to the plaintiff the amount of R4 477 433.00 (four million four hundred and seventy seven thousand four hundred and thirty three Rand) as damages following injuries the plaintiff sustained in a motor vehicle accident which occurred on 13 February 2021 made up as follows (the capital amount):

General damages	R 1 100 000.00
Loss of earnings	R 3 377 433.00
Total:	<u>R 4 477 433.00</u>

2. The capital amount is payable by defendant to plaintiff on or before 180 days from date hereof by depositing same into plaintiff's attorneys of record's trust account, the details of which are as follows:

Account Holder	:	ZENZELE MDLULI ATTORNEYS
Bank	:	FIRST NATIONAL BANK
Account number	:	6[...]
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Reference	:	R[...]

3. Should the defendant fail to make payment of the capital amount on/or before 180 days from date hereof, defendant will be liable for interest on the amount due to plaintiff at the prescribed rate per annum, calculated from 15 days from date of this order to date of final payment.
4. The defendant shall provide the plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996, to compensate the plaintiff for 100% the costs relating to future accommodation in a hospital or nursing home or treatment of or the rendering of service or supplying of goods to the plaintiff after the costs have been incurred and on proof thereof, as a result of the injuries sustained by the plaintiff in the motor vehicle accident which had occurred on 13 February 2021.
5. The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on High Court Scale B, within 14 days after taxation or

agreement (whereafter it shall accrue interest as calculated in paragraph 3 above) by depositing same into plaintiff's attorneys of record's trust account.

6. It is noted that there is a valid contingency fee agreement.

N DAVIS

Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 8 November 2024

Judgment delivered: 21 January 2025

APPEARANCES:

For the Plaintiff:

Adv Z Mahomed

Attorney for the Plaintiff:

Zenzele Mdluli Attorneys, Pretoria

For the Defendant:

no appearance