

**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
	
SIGNATURE	DATE

15/11/2024

Case Number: 2309/2023

In the matter between:

GWEBU, NOKUTHULA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 15 November 2024.

JUDGMENT

COETZEE, AJ

INTRODUCTION:

[1] This is a third-party claim against the Road Accident Fund wherein the Plaintiff claims damages resulting from injuries sustained in a motor vehicle collision on the 8th of May 2022. At the time of the collision, the Plaintiff was 31 years old and working as a traditional healer; she is now 33 years old. The Defendant has previously conceded liability, agreeing to compensate the Plaintiff for 100% of her proven or agreed damages. The Defendant has also offered to provide the Plaintiff with a statutory undertaking for future medical expenses, in accordance with Section 17(4)(b) of the Road Accident Fund Act 56 of 1996. The matter proceeded only on the quantum portion of the claim.

EVIDENCE:

[2] The Plaintiff presented the evidence of two factual witnesses, the Plaintiff herself and Ms. Eunice Mhlanga, as well as two expert witnesses: Ms. Lesley Taylor (Occupational Therapist) and Ms. Melissa du Plessis (Industrial Psychologist). The reports of Dr. P. Engelbrecht (Orthopaedic Surgeon), Dr. G.A. Greyvensteyn (Plastic and Reconstructive Surgeon), Dr. C.F. Hoogendijk (Maxillofacial and Oral Surgeon), Dr. J.A. Smuts (Neurologist), Dr. D. Van Der Westhuizen (Ophthalmologist), Johan Sauer (Actuary), and Lindsey Hyson (Clinical Psychologist) were admitted as evidence, with the Defendant conceding the content of these reports. The Plaintiff also submitted an affidavit detailing her earnings. The Defendant did not call any expert witnesses and closed its case without leading further evidence.

ISSUES IN DISPUTE:

[3] The issues in dispute concern the Plaintiff's loss of earnings, specifically her income as a traditional healer and her alleged self-employment as a caterer and the amount to be awarded for general damages. There is contention regarding the amounts presented in the Industrial Psychologist's report, which details the Plaintiff's monthly and annual earnings. Further, there is a dispute about whether the catering business was operational at the time of assessment by the occupational therapist or if it was merely a future plan.

[4] The Plaintiff contented that the collision has significantly impaired her ability to perform her duties as a traditional healer due to a loss of smell and taste, faculties essential to her profession, and that her catering business was disrupted as a result of her injuries. The Defendant disputed the Plaintiff's claims regarding her earnings and the extent of her alleged loss of income. Specifically, the Defendant challenged the factual foundation and assumptions made in the reports of Ms. Taylor (Occupational Therapist) and Ms. du Plessis (Industrial Psychologist), contending that the Plaintiff's traditional healing practice was already in decline prior to the collision, as evidenced by reduced income in 2021, and furthermore, that the Plaintiff's catering business was merely a prospective venture that had not been realized at the time of the collision.

COMMON CAUSE FACTS:

[5] The Plaintiff's sustained severe trauma during the collision. The injuries include a frontal bone fracture with pneumocephalus, left orbital wall fracture, left zygoma

fracture, cerebral oedema, midlung contusion, severe facial lacerations, and bilateral femur fractures.

[6] Following the collision, the Plaintiff was hospitalized and initially treated conservatively for a head injury. Maxillofacial surgeons performed open reduction and internal fixation on her facial bones, while her right femur was stabilized with an intramedullary nail and locking screws. Her left foot, which sustained a degloving injury, underwent debridement followed by vacuum-assisted closure (VAC) dressings. Facial lacerations were also debrided and sutured. Additionally, the Plaintiff received psychological treatment.

[7] According to Dr. P.R. Engelbrecht (Orthopaedic Surgeon), the Plaintiff suffers from multiple ongoing complaints: she has lost her left eye and bears extensive scarring on the left side of her face. She also has left-sided facial nerve palsy, which affects her ability to eat and drink, causing fluids to dribble from the left side of her mouth. The Plaintiff experiences weekly headaches, reports a decline in memory and continues to require regular dressings for her left foot due to incomplete healing. She reported persistent pain in her right thigh and occasional pain in her right knee, with her walking ability now limited to 30-45 minutes. She requires daily analgesics to manage pain in her lumbar spine and continues to experience facial asymmetry and extensive facial scarring. Additionally, she exhibits sequelae from a head injury, as well as soft tissue injuries to the cervical and lumbar spine.

[8] Pain from the accident has followed a trajectory from acute pain for approximately ten days post-collision, to moderate pain over the next four weeks, and

now persists as chronic pain due to the hypertrophic non-union of the right femur fracture and an extensive area of ulceration on her left foot. Since the accident, the Plaintiff has led a sedentary lifestyle and suffers a significant reduction in her work capacity. She will require substantial future medical treatment, including both conservative care and additional surgical interventions.

[9] Dr. G.A. Greyvensteyn (Plastic Surgeon), concluded in his report that the Plaintiff's facial scarring prevents her from consulting directly with clients, which directly impacts her income. Furthermore, due to trauma to her lower leg, she is unable to collect herbs in the bush as she previously did, as movement now causes her significant pain and difficulty. While scar revision surgery may improve the quality of the facial scar, the Plaintiff will nonetheless retain a visible scar extending from her right forehead to her left mandibular border, which cannot be concealed, even with make-up. Dr. Greyvensteyn noted that, from a plastic surgery perspective, conservative management would not yield any improvement in her cosmetic appearance.

[10] Dr. C.F. Hoogendijk (Maxillofacial and Oral Surgeon), opined that from a maxillofacial and oral surgery perspective, no occupational disability is anticipated. However, he noted that the Plaintiff should be assessed by an ophthalmologist regarding the loss of her left eye, which constitutes a permanent disability.

[11] Dr. J.A. Smuts, a neurologist, provided a comprehensive opinion regarding the Plaintiff's neurological injuries, concluding that she sustained a significant concussive head and brain injury with probable diffuse axonal damage. Dr. Smuts opined that this

trauma is likely to have impaired the Plaintiff's cognitive and functional capacities. He reported the Plaintiff's complaints of persistent post-traumatic headaches, memory deficits, and personality alterations, and noted an increased risk of epilepsy in the future as a direct consequence of these injuries. Dr. Smuts expressed the view that the collision adversely affected the Plaintiff's personality, observing that her memory impairment may be more pronounced than she perceives, warranting further evaluation by a psychologist or psychiatrist. He attributed both her memory loss and personality changes to the brain trauma sustained in the accident. Additionally, he observed that the Plaintiff suffers from anosmia and ageusia, which he considers permanent and irreversible. Considering her neurological condition, Dr. Smuts concluded that the Plaintiff is unlikely to achieve the level of cognitive and functional performance she might have attained but for the accident. He advised that, given her potential cognitive and emotional disabilities, protective measures for her financial assets should be considered. While Dr. Smuts suggested that a trust might be an appropriate mechanism, he deferred to the court's discretion on this matter.

[12] Dr. D. Van Der Westhuizen (Ophthalmologist), concluded that the Plaintiff's injury resulted in the loss of her left eye, with a poor prognosis. Consequently, she has lost stereopsis, requiring reliance on other depth perception cues for spatial assessment. Dr. Van Der Westhuizen further noted that the Plaintiff will not be able to obtain a Professional Driving Permit (PDP) and will be unable to work at elevated heights.

[13] Lindsey Hyson, a clinical psychologist, reported that the Plaintiff sustained a significant head injury accompanied by chronic pain and physical disability, which has

detrimentally affected her independence, mood, cognitive function, and overall quality of life. This type of injury, according to Ms. Hyson, is anticipated to result in lasting neuro-physical challenges, consistent with the neuropsychological assessment findings. Ms. Hyson explained that individuals experiencing chronic pain are at triple the usual risk of developing psychiatric symptoms, mood, or anxiety disorders, while those suffering from depression face a similarly increased risk of chronic pain. From a psychological standpoint, the Plaintiff's pain is expected to impair her motivation and reduce both physical and mental endurance. Neuropsychologically, even if employed in sedentary work, the Plaintiff's cognitive impairments are likely to impact her performance and hinder her ability to compete fairly in the open labour market. Given the combined impact of her physical and neuro-cognitive impairments, Ms. Hyson concluded that the Plaintiff is at a disadvantage as a prospective employee, struggling to compete equally with other candidates. Furthermore, she noted that the Plaintiff's pain, injuries, and scarring serve as persistent reminders of the trauma and the life she has lost, with severe facial scarring likely to further impede her competitiveness across job sectors.

SUMMARY OF ORAL EVIDENCE:

Evidence of the Plaintiff:

[14] The Plaintiff confirmed the content of her affidavit dated 26 July 2023 and testified that she has been practicing as a traditional healer since 2012. She explained that being a traditional healer requires sensitivity and the ability to receive and interact with clients appropriately. This involves undergoing specific rituals, such as the

dancing ritual, and training in identifying and using traditional fruits for various rituals and treatments, which necessitates the ability to smell and taste these fruits.

[15] She testified that due to the collision, her sense of smell and taste has been impaired, which severely impacts her ability to perform her work as a traditional healer. She indicated that she can no longer independently identify or mix traditional items and now requires assistance to fulfil her duties. She also confirmed that she trained others in initiation rituals, explaining that clients approach her for initiation based on their needs, and she performs rituals accordingly.

[16] During cross-examination, the Plaintiff was questioned about her involvement in a catering business, which she had previously described to the occupational therapist, Ms. Taylor, as a prospective venture. The Plaintiff testified that she had partnered with her sister in this business but discontinued her involvement after the accident. When pressed on why she had not disclosed this business during her assessment with Ms. Taylor, the Plaintiff maintained that she believed she had informed all relevant parties of her intentions to pursue the catering venture.

[17] The Plaintiff was further cross-examined regarding her income derived from initiation rituals. She testified that between 2018 and 2022, she initiated multiple clients: seven in 2018, four in 2019, and two in 2020. The Plaintiff explained that clients do not pay the full initiation fee upfront, and she was unable to provide documentary proof, such as bank statements, to verify the amounts received. She attributed the decline in clients during 2020 to the COVID-19 pandemic and clarified that the

reduction in 2021 was due to personal circumstances unrelated to the collision, which occurred after the relevant period.

[18] With respect to her income, the Plaintiff stated that she lacked documentary evidence to support her earnings claims. She testified that her annual income amounted to R51 600.00 from the catering business and R72 000.00 from traditional healing services. Additionally, she charged approximately R22 000.00 per client for initiation rituals, estimating that she had about three clients per year.

[19] When questioned about inconsistencies in her reported earnings to Ms. Taylor and Ms. du Plessis, particularly regarding the initiation fees, the Plaintiff acknowledged that the amounts charged could vary and that R22 000.00 was not a fixed fee. She admitted that she had not obtained any corroborative affidavits or written confirmation from clients to substantiate the amounts allegedly received. She also testified that she did not have a bank account prior to the collision and had only recently opened one, thereby limiting her ability to provide documentary evidence of her income.

[20] The Plaintiff confirmed that she began receiving a disability grant in March or April 2022. A letter from the South African Social Security Agency (SASSA), dated 21 September 2022, confirmed an initial payment of R2,640 for October 2022, followed by a monthly grant of R1,980.00.

[21] Finally, the Plaintiff conceded that her memory, particularly concerning dates and figures, had been impaired since the collision. She suggested that this cognitive difficulty might account for discrepancies in her evidence.

Evidence of Me Eunice Mhlanga:

[22] Ms. Eunice Mhlanga testified that she was trained as a traditional healer by the Plaintiff in 2015. She stated that for a complete initiation process, she charges clients an amount of R21 000.00. In addition, she charges R6 000.00 for performing house strengthening or protection rituals.

Evidence of Lesley Taylor (Occupational Therapist):

[23] Ms. Taylor testified that the Plaintiff's occupation as a traditional healer, according to the Dictionary of Occupational Titles, falls into the medium strength category. This classification is due to the physical demands of sourcing medicinal plants and herbs in the bush, which the Plaintiff is now struggling to perform. The therapist concluded that the Plaintiff should be restricted to sedentary or light work because of her orthopaedic injuries, which prevent her from engaging in activities such as walking long distances, climbing, squatting, or crouching, all of which are required in her traditional healing duties.

[24] Ms. Taylor further opined that if the Plaintiff continues in physically demanding work, it could hasten degenerative changes, leading to early retirement, possibly around age 55. The Plaintiff, with only a Grade 9 education, will face difficulty competing in the general job market, potentially forcing her to continue in physically demanding roles, which would aggravate her injuries.

[25] Ms. Taylor also addressed the Plaintiff's significant pain, particularly in her left foot and lower back, which affects her daily functioning and ability to work. Additionally, the Plaintiff's facial scarring, including damage to her eye, would likely hinder her chances of obtaining employment, even impacting her work as a traditional healer due to its unsightly nature.

[26] Ms. Taylor observed that, following the collision, the Plaintiff has become dependent on her elderly mother for assistance in obtaining clients and conducting traditional ceremonies. The Plaintiff's sense of smell and taste, both critical to her ability to mix and identify herbs, have been impaired, further hindering her capacity to perform her duties. Ms. Taylor opined that the combined impact of the Plaintiff's physical and emotional injuries has substantially diminished her motivation to continue working.

[27] In her report, Ms. Taylor noted that the Plaintiff expressed an intention to establish her own catering business, with plans to hire staff to assist her. Ms. Taylor testified that the catering industry falls within the category of medium physical work, which would likely pose significant challenges for the Plaintiff given her current physical limitations. She would have trouble with tasks requiring prolonged standing, cooking, and handling heavy pots, necessitating the employment of staff to support her in these activities.

[28] During cross-examination, Ms. Taylor confirmed that the Plaintiff reported earning between R2 500.00 and R5 000.00 per month from her work as a traditional healer, based on information directly provided by the Plaintiff. Ms. Taylor was not made

aware of the Plaintiff being engaged in any other occupation at the time of the accident, aside from her role as a traditional healer. It was Ms. Taylor's understanding that the Plaintiff's catering business was merely a prospective venture and not an existing business at the time of the assessment.

[29] In conclusion, Ms. Taylor emphasized that the Plaintiff's multiple injuries, including orthopaedic, head, and eye injuries, combined with her limited education and physical constraints, render her largely unemployable, forcing her to rely on informal work, such as traditional healing, where her ability to compete is already significantly compromised.

Evidence of Melissa du Plessis (Industrial Psychologist):

[30] Ms. du Plessis confirmed the contents of her report. When asked about her perception of the Plaintiff's type of work before and after the accident, she stated that the Plaintiff had been working primarily as a traditional healer and supplemented her income with catering services on the side. Post-accident, the Plaintiff continued to work as a traditional healer, but with limited capacity and not to the same extent as before the accident.

[31] Regarding the Plaintiff's catering activities, Ms. du Plessis opined that the catering was secondary and served as a means of supplementing her income while she built her traditional healing practice. She observed that while the Plaintiff was primarily focused on her work as a traditional healer, the catering business helped sustain her income during the growth phase of her traditional healing practice.

[32] Pre-morbidly, Ms. du Plessis noted that the Plaintiff began her catering business in 2017, several years after she had started her traditional healing practice in 2012. Ms. du Plessis indicated that as Ms. Gwebu's traditional healing business expanded, as anticipated, the Plaintiff might have been less likely to maintain her catering services, given the increased demands on her time. This would have been the natural progression as the business grew and her mother's clients potentially transferred to her.

Pre-morbid earnings:

[33] With regard to the Plaintiff's earnings, Ms. du Plessis confirmed that pre-morbid, the Plaintiff earned approximately R51 600.00 annually from catering and about R138 000.00 annually from traditional healing. When asked to explain her methodology, Ms. du Plessis stated that the Plaintiff had provided a range for her traditional healing earnings, which were between R4 000.00 and R8 000.00 per month. Using an average of R6 000.00 per month, this was multiplied by 12 to arrive at R72 000.00 per annum. Additionally, for initiation ceremonies, the Plaintiff provided a breakdown of her charges, which amounted to R22 000.00 per client. Based on the number of clients initiated between 2018 and 2022, Ms. du Plessis took an average of three clients per year, resulting in the total of R138 000.00 from traditional healing.

[34] Ms. du Plessis also explained that her calculations accounted for the impact of external factors, such as the COVID-19 pandemic, which affected the number of clients during 2019-2021. She took a conservative approach in averaging the number

of clients initiated over five years, considering that there were several factors that could have influenced the Plaintiff's business, including economic conditions.

[35] Ms. du Plessis stated that while there is some uncertainty regarding the future trajectory of the Plaintiff's earnings, she believes the figures used are fair and conservative estimates. She further explained that her analysis compared the Plaintiff's earnings to general earnings assumptions for semi-skilled workers, and she also considered industry benchmarks for traditional healers, noting that top quartile earnings for traditional healers could be as high as R290 000.00 annually. However, given the uncertainties and the Plaintiff's relatively young age at the time of the collision (31 years old), Ms. du Plessis chose a conservative estimate that assumes modest growth in income, adjusting for inflation rather than assuming a steep upward trajectory.

[36] This approach, according to Ms. du Plessis, accounts for the possibility that if the Plaintiff had taken on more of her mother's clients, her income from traditional healing could have increased, while her reliance on supplementary income from catering would likely have diminished. Nonetheless, the projections are based on maintaining a reasonable, conservative estimate to reflect the uncertainties in her future earnings potential.

[37] During cross-examination, Ms. du Plessis was questioned on discrepancies in the Plaintiff's reported earnings to Ms. Taylor, specifically regarding figures and dates. Ms. du Plessis explained that due to memory difficulties highlighted by various specialists, the Plaintiff often struggled to recall precise amounts. As a result, the

expert employed a range-based approach, averaging the figures provided by the Plaintiff to estimate earnings.

Post-morbid earnings:

[38] Ms. du Plessis outlined two scenarios regarding the Plaintiff's post-morbid earnings. In the first scenario, with optimal rehabilitation, the Plaintiff was projected to continue working at her reduced capacity until age 55, in accordance with the occupational therapist's opinion. It was noted that the Plaintiff's mother, who had been assisting her with certain tasks, may soon be unable to help due to her advanced age. This would likely aggravate the Plaintiff's condition, leading to early retirement by age 55, with a total loss of earnings by age 65. In the second scenario, without optimal rehabilitation, Ms. du Plessis testified that the Plaintiff's physical and mental endurance would continue to deteriorate. Without her mother's assistance, the Plaintiff would likely be unable to manage the tasks her mother had been performing, necessitating the closure of her business once her mother was no longer able to assist.

[39] Regarding the Plaintiff's reported income in both post-accident scenarios, Ms. du Plessis relied on averages based on the Plaintiff's statements. The Plaintiff reported seeing 3 to 4 clients monthly, charging between R250.00 and R500.00 per consultation. Ms. du Plessis averaged these figures to estimate an annual income of R15 750.00. Additionally, the Plaintiff reported performing one house-strengthening ritual for R5 000.00, resulting in a total post-accident income of R20 750.00 per annum or R21 533.00 in current monetary terms. No documentary evidence, such as bank statements or proof of payment, was provided to substantiate these earnings, but Ms.

du Plessis emphasized that the estimates were based on the Plaintiff's affidavit and salary scales used to compare her reported earnings to industry norms. Ms. du Plessis furthermore confirmed that the Plaintiff had been receiving a disability grant since September 2022, as evidenced by documentation provided.

[40] In response to further questioning, Ms. du Plessis clarified that fluctuations in the Plaintiff's business prior to the collision, particularly the decline in clients from 2018 to 2022, could not be attributed to the accident, as these fluctuations were likely caused by external factors such as the COVID-19 pandemic. Therefore, it was difficult to assess whether the business decline was linked to the collision. Ms. du Plessis however maintained her projections was conservative.

LOSS OF EARNINGS:

[44] Upon review of the evidence, it is clear that the Plaintiff has suffered a significant loss of income as a direct consequence of the severe injuries sustained in the collision. The Plaintiff's loss of smell and taste, critical senses required for her role as a traditional healer, has substantially compromised her ability to perform her professional duties. This impairment is further supported by the occupational therapist's evidence, which emphasized the medium physical demands associated with traditional healing. Due to the Plaintiff's orthopaedic limitations and chronic pain, she is no longer capable of independently meeting these physical requirements.

[45] The Plaintiff also testified regarding her involvement in a catering business jointly operated with her sister; however, there was no corroborating evidence

presented to support this claim. There were no records of income, bank statements, business documentation, or any collateral information indicative of formal business operations. Importantly, aside from the Industrial Psychologist, none of the Plaintiff's other expert witnesses—including the orthopaedic surgeon, plastic surgeon, neurologist, or occupational therapist—were made aware of any involvement in a catering business. On the available evidence, it appears that the catering business was, at most, an undeveloped prospect, and any claimed income from this venture has not been proven.

[46] The Industrial Psychologist further testified that, as the Plaintiff's traditional healing business expanded, particularly with the potential transfer of clients from her mother, the increasing demands on her time would have made it unlikely for her to sustain any involvement in a catering business. Consequently, any anticipated future income from catering would likely have been short-lived in any event. The initial actuarial calculation provided to the Court on 1 November 2023 assumed that the Plaintiff earned R4,300.00 per month from catering at the time of the collision and that she would continue earning this amount, adjusted for inflation, until the age of retirement at 65. However, this assumption was inconsistent with the evidence of the Industrial Psychologist, who opined that any such income, if any, would have ceased as the traditional healing practice grew. Considering this, the Court requested a revised calculation which was submitted on 29 July 2024.

[47] The revised actuarial calculation considered only the Plaintiff's income from traditional healing in the pre-morbid scenario and provided two scenarios for the post-morbid scenario. In the first scenario, optimal rehabilitation is assumed, with some

residual earning capacity post-accident. Applying contingency deductions of 5% for both past pre- and post-morbid earnings, and 15% and 35% for future pre- and post-morbid earnings respectively, the total loss of earnings was calculated at R2,476,806.00. In the second scenario, it is assumed that the Plaintiff does not receive optimal rehabilitation and remains largely unemployed post-accident. With the same contingency deductions, the total loss of earnings was determined to be R2,703,017.00.

[48] It is well established that assessing damages for loss of earnings and earning capacity is inherently speculative. In *Southern Insurance Ass Ltd v Bailey* 1984 (1) SA 98 (A) at 113-114, two quantification methods were outlined: first, a judge may award a rounded estimate that appears fair and reasonable, which is often an intuitive rather than evidentiary approach. Alternatively, quantification can be achieved through mathematical calculations based on evidence-based assumptions, where the value of this method relies on the "soundness of the assumptions." The court in "Bailey" recommended the latter approach as it provides an informed, logical attempt at quantification, contrasting with the less reliable "gut feeling" of the first method. This preference for actuarial calculation over intuition was later upheld in *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA) at 586.

[49] Having considered the evidence and the guiding principles from the authorities, the Court is persuaded that the second calculation (that assumes that the Plaintiff does not receive optimum rehabilitation) represents a fair and reasonable award for the Plaintiff's loss of earnings and earning capacity. This results in an amount of R2,703,017.00. This calculation, incorporating only normal contingency deductions,

adequately accounts for any conservative estimates regarding the growth of the Plaintiff's traditional healing practice. The awarded sum reflects the Plaintiff's post-accident financial reality, limited to modest income from occasional and restricted traditional healing activities, supplemented by a disability grant. Given the Plaintiff's physical and emotional impairments, combined with her limited educational qualifications, it is evident that her capacity to earn income—whether as a traditional healer or in any other field—has been permanently diminished.

GENERAL DAMAGES:

[50] The Defendant has conceded the seriousness of the Plaintiff's injuries. The Plaintiff cited various precedents in support of an award between R1,000,000.00 and R1,200,000.00, while the Defendant referred to only the matter of *De Jong v Du Pisanie NO (obo JG Rabie)* 2004 (5) QOD J2-103 (SCA) to support a proposed award of R750,000.00.

[51] In *De Jongh v Du Pisanie NO (obo JG Rabe)* [2004] (5J2) QOD 103 (SCA)], the plaintiff, a 35-year-old employee of Escom, sustained multiple serious injuries, primarily a head injury with brain damage leading to intellectual impairment and personality changes, and significant orthopaedic injuries. The head injury involved complex fractures of the frontal skull extending to the orbits, zygomatic arches, and jaw, resulting in an extradural hematoma requiring surgical intervention. Brain damage included extensive focal damage to the frontal and temporal lobes and moderate diffuse concussive injury, leading to intellectual impairment (IQ of 70), loss of smell and taste, and personality changes, including aggression, apathy, and lack of

judgment. Despite some retained social functionality, the plaintiff developed epilepsy, with seizures controlled to two monthly episodes, and was declared permanently unemployable, requiring a *curator bonis* and a part-time caregiver. Orthopaedic injuries included a dislocated right shoulder, soft tissue injuries to the neck and back, and internal damage to the right knee and ankle. These injuries resulted in permanent pain, reduced mobility, and a lifelong need for medical intervention. The court, accounting for inflation, awarded R858,000.00 in 2024 values for general damages. In this case, the inflation adjusted amount already exceeds the amount proposed by the Defendant. Furthermore, this case is distinguishable from the precedent cited, as the Plaintiff has suffered more significant injuries, including a severe head injury, the loss of an eye, and extensive scarring.

[52] The court also considered the following matters:

- [a] In *Dlamini v Road Accident Fund* [2012] (6A4) QOD 68 (GSJ)], the plaintiff, a 37-year-old male Corporal employed in the Technical Department of the South African National Defence Force (SANDF), sustained a brain injury along with a fractured mandible, tooth loss, and soft tissue injuries to the cervical and lumbar spine. Following approximately three months of hospitalization, the plaintiff was left with neuropsychological impairments resulting from the head injury, including an elevated risk of developing seizures and significant personality changes. Due to these sequelae, he was deemed unfit for employment in the open labour market. In 2012, the court awarded R850,000.00 for

general damages, which, adjusted for inflation, equates to R1,573,000.00 in 2024 values.

[b] In *Cawood NO v Road Accident Fund* [2023] (8A4) QOD 195 (GNP)], the plaintiff, an adult female, sustained a substantial head injury resulting in fractures to the skull, skull base, and facial bones. A CT scan confirmed a frontal extradural hematoma, necessitating surgical drainage. While her current neurological examination revealed no focal deficits, she reported ongoing issues with memory, concentration, and behavioural changes. Although the traumatic brain injury has not physically limited her capacity to work, her cognitive impairments have markedly impacted her ability to maintain gainful employment. She experiences psychological and cognitive disturbances, limitations in daily activities, persistent headaches, dizziness, and sensitivity to light and noise, necessitating lifelong supervision and support. In 2023, the court awarded R1,400,000.00 for general damages, which, adjusted for inflation, amounts to R1,471,000.00 in 2024 values.

[c] In *Nsibande v Road Accident Fund* [2022] (8B3) QOD 1 (GNP)], the plaintiff, an adult male plant attendant and mineworker, sustained significant injuries in a motor vehicle collision, including a skull base fracture and fractures to the nose and facial bones. The injuries resulted in a moderate diffuse traumatic brain injury, leading to a minor neurocognitive disorder, predominantly affecting memory. Additionally, he suffered nasal deformation, causing airway obstruction, along with

permanent facial scarring and disfigurement. The plaintiff, who had completed Grade 12 and obtained an N5 Electrical Engineering Certificate, had intended to pursue an electrical apprenticeship to qualify as an electrician. However, as a result of his injuries, he was considered a vulnerable employee, requiring a supportive work environment to retain employment. Dissatisfied with the initial award, he appealed to the full bench, which revised the compensation for loss of earnings in line with the admitted actuarial calculations. The full court also granted general damages, which had not been awarded at trial. In 2011, the court awarded R750,000.00 for general damages, which, adjusted for inflation, equates to R1,457,000.00 in 2024 values.

[53] Having considered the Plaintiff's injuries, necessary future medical treatment, prognosis, expert assessments, and applicable case law, the court finds that an award of R1,200,000.00 is fair and appropriate in the circumstances.

COSTS:

[54] It is well-established that a court has a wide discretion in the awarding of costs, which must be exercised judicially, considering the specific circumstances of each case. As of 12 April 2024, Rule 67A of the Uniform Rules of Court has come into effect and applies prospectively, meaning that the scale specified in any cost order will apply only to work undertaken after this date. Rule 67A(3)(a) of the Uniform Rules now prescribes that a cost order for the recovery of counsel's fees on a party-and-party basis must be made on one of three scales: "A," "B," or "C." Rule 67A(3)(b) further

grants the court the authority to consider factors such as the importance, value, and complexity of the matter when determining the appropriate scale.

[55] The Plaintiff's counsel contended that an award of costs on scale "C" is justified, given the substantial quantum involved and the absence of a reasonable settlement offer, which necessitated comprehensive preparation and a full trial. Counsel argued that the Plaintiff should not bear the financial burden resulting from the Defendant's inadequate conduct and maintained that the large volume of claims against the Defendant should not be interpreted as diminishing the complexity of the damages claimed. The Defendant, in response, simply argued that the costs should be awarded on scale "A", as the matter did not present significant complexity.

[56] Having considered the submissions of both parties, the court is of the view that recovery of counsel's fees on Scale "B" for work performed after 12 April 2024 is both fair and appropriate. It is noted, however, that the Plaintiff's counsel engaged in excessive drafting, producing a 56-page practice note and 76-page heads of argument, which include extensive quotations from medico-legal reports, blank pages, and pages with only partial text, creating unnecessary paperwork rather than aiding in concise case presentation. Accordingly, the costs for drafting the practice note are limited to 2 hours, and the costs for drafting the heads of argument are limited to 5 hours.

[56] As a result the following order is made:

ORDER:

The draft order marked "X" is made an order of court.

A black rectangular box redacting a signature.

L. COETZEE
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances:

Counsel for the Plaintiff: Adv. H. Percival

Instructed by: Philip Meyer Attorneys Inc.

Attorney for the Defendant: Mr. F. Siliga

Instructed by: State Attorney, Mbombela

Date heard: 29 July 2024

Judgment delivered: 15 November 2024