



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case number: 13645/2019

In the matter between

CHRISTOPHER BRUCE GOURLAY

Plaintiff

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and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT DELIVERED ON 28 NOVEMBER 2024

VAN ZYL AJ:

Introduction

1. The plaintiff is 39 years old. On 11 September 2017, at the age of 32, he was injured in a motor vehicle collision that occurred in Main Road, Sea Point. This action was subsequently instituted pursuant to the provisions of the Road Accident Fund Act 56 of 1996.
2. The defendant has conceded liability for 80% of the plaintiff's proven or

agreed damages. The plaintiff's claims for past medical expenses, future hospital, medical and related expenses (the defendant furnished the plaintiff with an undertaking certificate as contemplated in section 17(4)(a) of the Road Accident Fund Act), and loss of earnings and earning capacity have been settled between the parties.

3. The only issue that remains in dispute is the *quantum* of the plaintiff's claim for general damages. It is common cause that the plaintiff's injuries qualify as serious, as contemplated in sections 17(1) and 17(1A) of the Road Accident Fund Act.
4. The purpose of an award of general damages is to compensate a victim for the pain, suffering, shock, and discomfort suffered as a result of a wrongful act.¹ The courts have not adopted a "functional" determination as to how general damages should be awarded, but have consistently preferred a flexible approach, determined by the broadest general considerations, depending on what is fair in all the circumstances of the case.² In *Road Accident Fund v Marunga*³ the Supreme Court of Appeal summarized the principles applicable to the assessment of claims for general damages:

"[23] ...in cases in which the question of general damages comprising pain and suffering, disfigurement, permanent disability and loss of amenities of life arises a trial court in considering all the facts and circumstances of a case has a wide discretion to award what it considers to be fair and adequate compensation to the injured party.... See Protea Assurance Co Ltd v Lamb 1971 (1) SA 530 (A) at 535A-B and the other cases cited there.

[24] ... there was no hard and fast rule of general application requiring a trial court or a court of appeal to consider past awards. ... it would be

¹ *T. P. N. v Road Accident Fund* [2024] ZAKZDHC 37 (11 June 2024) at para [17].

² *Southern Insurance Association Ltd v Bailey* NO 1984 (1) SA 98 (A) at 119D-H.

³ 2003 (5) SA 164 (SCA).

difficult to find a case on all fours with the one being heard but nevertheless concluded that awards in decided cases might be of some use and guidance.

[25] In the Protea case ... this Court in determining the measure of damages considered all relevant factors and circumstances and derived assistance from the 'general pattern of previous awards'."

5. In *De Jongh v Du Pisanie NO*⁴ the Supreme Court of Appeal dealt with issues such as fairness and the Court's discretion in the context of previously decided cases of similar facts. The comparison is not a mechanical process because the court must still exercise its discretion. Other cases only serve as broad guidelines to indicate a pattern of previous awards based on the facts of each case. On the fairness of the award the Supreme Court of Appeal cited,⁵ with approval, the following passage from *Pitt v Economic Insurance Co. Ltd*⁶ where the following was stated:

"The courts must take care to see that its award is fair to both sides-it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense."

6. In exercising my discretion, I should thus consider a broad spectrum of facts and circumstances that include the nature of the injuries, the severity thereof, and how it impacts on the quality of life of the plaintiff. Account should also be taken of the modern approach which acknowledges the rising standards of living and the fact that past awards in our courts were conservative as compared to other jurisdictions⁷ (with due regard to the warning in *De Jongh's* case).

The available evidence in relation to the nature and sequelae of the plaintiff's

⁴ 2005 (5) SA 457 (SCA) at paras [63]-[64].

⁵ At para [60].

⁶ 1957 (3) SA 284 (D) at 287E-F.

⁷ *Road Accident Fund v Marunga supra* at para [27].

injuries

7. The plaintiff provided brief oral evidence. The defendant did not call any witnesses.
8. Expert reports by Dr Jaffe, an orthopaedic surgeon, Ms le Roux, an occupational therapist; Dr Hunter, an industrial psychologist, and Munro Forensic Actuaries were delivered on the plaintiff's behalf.
9. The defendant has provided an expert report by Ms Hako, an industrial psychologist. The parties' respective industrial psychologists have also discussed the matter and prepared joint minutes, which reflect full agreement between them.
10. It is clear from the expert reports delivered on the plaintiff's behalf that the plaintiff (and not disputed by the defendant) suffered serious injuries in the collision, including a comminuted fracture of the distal shaft of the left femur with an intra-articular extension involving the medial femoral condyle, and a fracture of the left patella.
11. The *sequelae* of the injuries were, and are, extensive, resulting in six operations to date. More surgery in the future is likely.
12. The plaintiff was admitted to Somerset Hospital on 11 September 2017 for treatment following the collision. The fracture was placed on traction for swelling around the area to subside. On 18 September 2017, a week after the collision, the plaintiff underwent two procedures, namely an open reduction and internal fixation of the fracture of the left femur with a plate and multiple screws; and a reduction and immobilisation of the fracture of the left patella with a screw and wires.
13. After the operation, the plaintiff received intensive physiotherapy and was taught

to walk with crutches. On 21 September 2017, he was discharged from hospital using crutches for mobility.

14. The plaintiff was seen at the outpatient department on 28 September 2017 and again in October 2017. On 8 October 2017, he was again admitted to hospital with an infection in his thigh wound. Initially, the wound was treated with antibiotics and dressings. On 17 October 2017, however, he had to undergo a debridement of the wound, and subsequently had physiotherapy to become mobile. He was discharged from the hospital on 26 October 2017 with the leg supported with a brace, with dressings on the wound and with crutches for mobility.
15. The wound remained infected, which was treated conservatively. He was subsequently seen at the orthopaedic clinic on 13 and 27 November 2017.
16. The plaintiff was again seen at the orthopaedic clinic at Somerset Hospital on 30 January 2018 and on 8 March 2018. At the latter consultation, it was suggested that he needed to have surgery for the stiff knee, and a manipulation.
17. As a result, on 11 April 2018, the plaintiff was admitted again to the Somerset Hospital. On 12 April 2018, he had a quadriceps release and manipulation of the knee and exchange of the distal screw with a smaller screw. After this operation, he received further physiotherapy and was discharged on 18 April 2018.
18. After his various hospital admissions, the plaintiff continued with physiotherapy.
19. Further surgery was advised, and he was again admitted to hospital on 9 September 2018. On 10 September 2018, he had an operation in the form of an osteotomy of the lower femur to deal with malunion with fixation with a plate and screws and a quadricepsplasty and release of the muscle. After this operation, the plaintiff was gradually mobilised and discharged a week later. He was last seen at Groote Schuur Hospital in October 2018 by Dr Hobbs, who

advised no further treatment other than physiotherapy.

20. The fracture of the left femur has united with a medical angulation deformity, causing a malalignment of the articular surface of the femur. The plaintiff walks with a significant limp. Given the problems with securing the union of the fracture, further corrective osteotomy is not recommended for the malalignment of the femur.
21. Besides analgesic medication and the possible removal of the plate and screws, there is no further treatment for this injury. The functional impairment resulting from this is permanent.
22. The fracture of the left patella is united, but there is malalignment and irregularity of the articular surface with evidence of early osteoarthritis. At this stage, there is significant restriction of knee flexion together with a fixed flexion deformity. This is a permanent feature, and is unlikely to be improved by any further surgical procedures. His left leg is now shorter and thinner than the right.
23. Should the wires and the screw be a problem, they will have to be surgically removed, after which the plaintiff will be non-functional for about ten days.
24. Dr Jaffe, orthopaedic surgeon, indicates that in the long term, because of the irregularity of the articular surface of the patella together with the malalignment of the lower femur and the fact that there is already patella-femoral and main joint osteoarthritis, it is inevitable that at some time within the next ten to fifteen years (calculated from 2021), the plaintiff will require a total knee replacement.
25. With the significant restriction of knee movement and the fact that he cannot straighten it fully, the result of the surgery is not likely to be optimal. The plaintiff will be left with significant mobility restrictions even after he has had a successful total knee replacement.

26. The plaintiff may, in addition, need to have a revision at some time in his life to deal with the loosening that is likely to occur after the initial operation.
27. The plaintiff suffers from chronic pain in his right ankle, as well as from back pain. The pain in his ankle is due to a compensatory effect resulting from the poor gait and mobility because of the stiff knee. Besides analgesic medication, there is no further treatment for this. The lumbar backache that the plaintiff experiences is a result of the compensation necessary to deal with his mobility restrictions. It is likely to increase in severity with time. Conservative treatment and physiotherapy are all that are likely to be required for this.
28. As a result of the significant stiffness and pain in his left knee, together with the pain in his hip, right ankle and lumbar spine, the plaintiff's mobility is restricted in a significant and major way. No further improvement in his mobility is likely, and he will continue to have problems because of not being able to walk long distances, carry any heavy weights, or stand for long periods in one position.
29. Even after a total knee replacement, he will continue to have residual pain, particularly in his lower thigh, hip, and lumbar spine, as he has at present. The plaintiff has significant pain for which he requires regular analgesic medication. The plaintiff testified that he takes pain medication three times per day, and that he requires such medication every day. The pain will not improve and is likely to get worse as the osteoarthritis progresses. After a total knee replacement, he will remain with pain of a significant degree because of the associated fracture of the femur and soft tissue damage to the lower thigh.
30. The scars on his thigh and knee and the swelling and deformity of the leg and the knee are significant⁸ and are unlikely to be improved by plastic surgery.
31. According to Ms Le Roux, occupational therapist, the plaintiff displays severe functional impairment, mainly because of his left leg pain and limitations. He has

⁸ Photographs depicting the scar – which is immediately noticeable - were admitted into evidence.

been left with poor mobility, agility, balance, and tolerance for standing and walking. According to the plaintiff he can only walk or stand still for about 15 minutes at a time. He is restricted to occasional walking on level terrain, occasional standing and stair negotiation, and is essentially unable to crouch or kneel.

32. The plaintiff is confined to occasional handling of predominantly sedentary to light loads that are conveniently positioned. He can only rarely work in the medium range. Floor-to-waist lifting and ladder negotiation are unsafe and should be avoided.
33. Ms le Roux emphasizes that favouring one leg creates asymmetry and biomechanical malalignment, forcing the spine to compensate for the uneven weight distribution and resulting in additional strain on the lower back. Consequently, the plaintiff's reported lower back pain does not come as a surprise, though it is not his primary functional limitation. He experiences chronic pain, stiffness, and limited mobility in his left knee, along with lower back pain.
34. These limitations affect his ability to walk, stand and perform tasks that require mobility, agility, and handling loads. He should be able to continue working in his current position, where he is being accommodated by his employer. However, if he loses this role, he will likely face significant challenges in securing and maintaining suitable employment in the open labour market due to his physical limitations, age, and work experience, which is predominantly physical. His job options are limited, and he has become an unequal competitor. Additionally, he is permanently unable to perform private carpentry and home maintenance.
35. As indicated, the industrial psychologists, Dr Hunter and Ms Hako, have prepared a joint minute in relation to the plaintiff's loss of earning capacity. Their views are also instructive in relation to the question of general damages. As appears from the joint minute, they agree that the plaintiff's residual work capacity, career options and employability have been compromised as a result of the accident.

He presents with severe functional impairment, and his competence is curtailed, which makes him an unequal competitor in the open labour market. I have mentioned that the plaintiff is currently being accommodated by a sympathetic employer, but should he lose his current employment, it is highly likely that he will have difficulty securing and sustaining employment in the open labour market. All of this adds to the emotional pressures that the plaintiff will henceforth have to endure.

36. He can also no longer operate his private part-time business, which was woodworking. He has therefore, in addition to the loss of earnings concerning his regular job, also suffered the loss of the enjoyment that he used to derive from his woodworking jobs.
37. Considering the time that has elapsed since the accident and the multiple surgical procedures aimed at improving his function, the plaintiff's current impairment is bound to persist and may even worsen if he develops post-traumatic osteoarthritis in the left knee. This would further impact his future daily and work functioning.
38. It is accordingly apparent that the plaintiff suffered injuries which have had severe and lifelong consequences. By way of summary: he suffered severe fractures to his left leg. The fracture of the femur has united in a malunion. He has been left with significant restrictions of his left leg and cannot straighten the leg fully. He walks with a significant limp. He suffers from ongoing pain and discomfort in his hip, left leg, ankle, and lumbar spine. His mobility is permanently and significantly compromised. He is severely scarred. His condition is expected to deteriorate. He has undergone numerous operations. Further operations are foreseen.
39. The plaintiff testified that the injuries and consequences thereof have had a significant impact upon his life, and upon his enjoyment of life. He can, for example, no longer go fishing, hiking, and cycling with his wife and children. He

can also not participate in active play with his twin boys, who are currently 13 years old. He finds this upsetting.

40. In cross-examination the defendant made the point that the hobbies mentioned by the plaintiff were of the type that are only occasionally enjoyed, at locations outside of Cape Town, and that are therefore not part of the plaintiff's daily life (unlike, for example, a football enthusiast who would play every afternoon or every weekend). I understand the defendant's argument but I do not think that it makes a significant difference in view of the evidence as a whole. The fact remains that the plaintiff can no longer participate in activities that were clearly enjoyable to him, and that used to pose opportunities for the plaintiff, his wife, and twin sons to spend time together as a family over holidays. He has lost not only his favourite leisure activities, but also the family camaraderie that arose from the participation in those activities by his wife and sons.

Awards in comparable cases

41. Counsel for the plaintiff referred the Court to various comparable awards previously made. I am grateful for the assistance.
42. In *Road Accident Fund v Marunga*⁹ the claimant, who was 19 years old at the time, suffered a fracture of the left femur. He sustained a fractured femur, soft tissue injuries and bruises. An open reduction and fixation were performed on the femur and he initially spent five months in hospital recuperating. Thereafter he walked with clutches. He was readmitted four years later for removal of the plate and screws when it was discovered that there was a mal-union of the femur. His left leg was 3,5 cm shorter than the right leg. Corrective surgery was required although the left leg would never revert to its pre-collision length. The Supreme Court of Appeal noted¹⁰ that the plaintiff spent his life in and out of hospitals for several years "...at a time when he ought to have been in the full

⁹ *Supra*. See also Corbett and Honey's *Quantum of Damages* (QOD) E3-1.

¹⁰ In para [29] of *Marunga*. See also the discussion of *Wright v Multilateral Vehicle Accident Fund* 1997 NPD QOD Vol. 4 E3-31, at paras [26] and [30] of *Marunga*.

bloom of youth.” The experts agreed that whilst the claimant would ultimately walk freely and without pain, his left leg would permanently be 20% weaker than the other. The Supreme Court of Appeal awarded R175 000,00 as general damages, which has a 2024 value of R609 000,00.¹¹

43. The defendant argued that *Marunga* is of no assistance in the present matter because of the victim’s young age, and the fact that he had spent months in hospital. This may be so, but I nevertheless think that *Marunga* serves as a good guideline. Despite the age difference (the plaintiff in the present matter was 32¹² when the collision occurred) and time spent in hospital, the *sequelae* in the present case are more severe than in *Marunga*’s case. In the present case, ongoing disability and further degeneration are expected, whilst in *Marunga* it was expected that the claimant would ultimately walk freely and without pain.
44. In *Roe v Road Accident*¹³ a 44-year-old man suffered fractures of both legs and the left humerus, as well as facial injuries. The claimant had to undergo several surgical procedures, as in the present case. His leg and ankle remained symptomatic, and he suffered from pain in the right lower leg, left arm and lumbar spine. The court awarded R650 000,00 as general damages, which has a 2024 value, according to Koch, of R1.3 million. On consideration, *Roe*’s case dealt with a more severe scenario than the present case.
45. In *Ramolobeng v Lowveld Bus Services*¹⁴ a 34-year-old man suffered injuries to the cervical and lumbar spine. He was initially treated conservatively, but later underwent spinal surgery at the levels L3/L4. He suffered from reduced power in his left lower limbs and from related dysfunctions. The court awarded R550 000,00 as general damages, which has a 2024 value, according to Koch, of R870 000,00.
46. The age of the victim in *Ramoboleng* is similar to that of the present plaintiff, but

¹¹ According to Koch *The Quantum Yearbook* (2024).

¹² Which is in any event still quite young.

¹³ 2010 (6) QOD J2-59 (GSJ).

¹⁴ 2015 (7C5) QOD 29 (GNP).

the orthopaedic injuries were not as severe as in the present case. The defendant contends that the case is not comparable, but I do regard *Ramoboleng* as a useful guideline. In *Ramoboleng* the victim did spend months in hospital, but in the present matter the plaintiff had to undergo multiple surgeries (with more predicted in the future) on many occasions, with the concomitant hospital stays on each occasion.

47. *Masemola v RAF*¹⁵ concerned a claimant who had suffered a pelvic fracture as well as a tibia fracture and an injury to the left knee. A total hip replacement in the future was foreseen. He suffered from ongoing pain in the hip and left knee. He could no longer work in the building industry. The court considered several comparable awards and awarded R850 000,00 as general damages. Applying CPI, it has a present-day value of approximately R1,2 million. *Masemola's* case is, in my view, more severe than that of the plaintiff, because of the extent of the injuries suffered in that case. It is however more similar to the plaintiff's case than *Roe* is.
48. I had regard to a few other cases. In *Mgudlwa v Road Accident Fund*¹⁶ a sum of R300 000.00 (which has a 2024 value of R617 000.00) was awarded to a 34-year old plaintiff. That plaintiff suffered from fractures to the femur and tibia, causing the left leg to be 5 cm shorter than the other leg due to deformity of the proximal end of the femur. Surgery in the form of a total knee replacement and realignment of the femur was anticipated. The severity of this plaintiff's injuries is far less than that of the plaintiff in the present matter.
49. In *Ncama v Road Accident Fund*¹⁷ the court awarded R500 000.00 to a female cleaner in November 2014. The 2024 value of the award is R827 000.00. The plaintiff sustained a fracture of her right femur causing an open reduction and internal fixation to be performed whereafter she acquired crutches to ambulate. She also sustained a skull fracture, a neck injury and soft tissue injuries to her

¹⁵ [2017] ZAGPPHC 1202 (3 April 2017).

¹⁶ QOD Vol. VI at E3-1.

¹⁷ 2015 (7E3) QOD 7 (ECP).

pelvic ring and sacro-iliac joints. It was predicted there was a 30% chance that a fusion at C5/6 will be required. Clearly, this plaintiff sustained further injuries to her pelvis, neck and head, but the extent of her lower limb injuries was less severe than that of the plaintiff in the present matter.

50. In *Abrahams v Road Accident Fund*¹⁸ the sum of R500 000.00 was awarded to a 41-year old spray painter. The 2024 value of the award, according to Koch, is R928 000.00. The court found that the head injury complained by the plaintiff in that case was minimal, and no cognisance was taken thereof in considering the amount to be awarded for general damages. The plaintiff had sustained a badly comminuted fracture of the right proximal femur as well as fractures of the right distal fibula, patella and medial malleolus. Open reductions were performed on all three areas with internal fixation. The lower right leg was shortened and plaintiff had to wear an assistive device. The injuries in this case are not too dissimilar to those of the present plaintiff.
51. I agree with the submission made on the plaintiff's behalf that we are fast approaching 2025, and that the present-day value of the abovementioned awards would therefore probably be more than set out above.
52. Having considered all these factors, as well as the *dicta* in the judgments referred to, I am satisfied that plaintiff should be awarded R1 million in respect of general damages. This means that the defendant will have to pay a sum of R800 000,00 to the plaintiff.¹⁹ I believe that the compensation is fair and adequate. It strikes a fair balance between the abovementioned awards, without being over-generous to the plaintiff at the expense of the defendant's purse.

Costs

53. The parties are agreed that costs on the scale as between party and party should be awarded in favour of the plaintiff. There is a difference of opinion between the

¹⁸ 2014 (J2-1) QOD 7 (ECP).

¹⁹ The defendant having conceded liability for 80% of the plaintiff's proven or agreed damages.

parties' legal representatives about the scale upon which counsel's fees should be taxed in this matter.

54. It is trite that the award of costs falls within the discretion of this Court. Rule 67A(3), which came into effect on 12 April 2024, requires that counsel's fees in the context of party-and-party costs in the High Court be awarded on Scale A, B or C, as the case may be. This amendment applies prospectively in relation to work done on a matter after 12 April 2024. Rule 67A addresses itself only to awards of costs as between party-and-party with the purpose to exercise control over the rate at which counsel's fees can be recovered under such an award.²⁰
55. Rule 67A(3)(b), in relation to the scale of counsel's fees, refers to considerations which may include the complexity of the matter, the value of the claim and the importance of the relief claimed. This is clearly not a closed list of considerations.
56. The plaintiff's counsel submitted that the most appropriate scale which ought to be awarded was Scale C, given the nature of the issues argued, namely that of general damages, the serious nature and extent of the orthopaedic and other injuries suffered by the plaintiff, the large amounts involved, and the importance of the matter to the plaintiff.
57. Counsel submitted too that the award of scale C was warranted because a factor adding to the complexity of the matter was the defendant's conduct of this litigation. The plaintiff had to be prepared to present evidence on and argue each of his claims effectively to the very end. It was only shortly before the trial that the question of liability was settled. The issues of loss of earnings and earning capacity (which were to have been determined by the Court together with general damages) were settled at court on the day of the trial, after the defendant's attorney had initially indicated that the defendant required evidence to be led in

²⁰ See the discussion in *Wanga v Road Accident Fund* (case number 4503/2021, unreported judgment of the Western Cape High Court (per Adams AJ) delivered on 19 November 2024) at paras [7]-[11].

respect of the claim.²¹ The plaintiff and his witnesses therefore had to be ready at all times, and counsel had to be prepared to lead evidence, cross-examine and argue. Given that the parties' respective industrial psychologists had agreed on a joint minute in March 2024 already, there was no reason why the issues could not at least have been partly settled months ago.

58. Senior counsel who represented the plaintiff appeared on his own, unassisted by a junior.
59. The defendant argued, with reference to *Wanga*,²² that there was nothing complex about the matter, and the injuries, although severe, were not out of the ordinary. The appropriate scale would thus be the "default" Scale A, and certainly not higher than Scale B. In *Wanga* the Court granted counsel's costs on Scale B,²³ on the basis that the defendant's conduct was not the focus of the inquiry and the plaintiff had, in any event, not sought a punitive costs order. The amount involved was large, but not out of the ordinary.
60. As counsel for the plaintiff pointed out, however, it would appear that in the *Wanga* matter all of the issues had been settled between the parties prior to the hearing, save for the issue of the scale of counsel's costs. In the present matter, all the issues remained in dispute up to the day of trial or shortly before the trial date. The defendant's legal representative effectively disputed, on the morning of the hearing, the agreement reached between the industrial psychologists regarding the claim for loss of income earned by the plaintiff from part-time work. The defendant also required *viva voce* evidence to be led. The *Wanga* judgment is therefore distinguishable.
61. The *Mashavha*²⁴ judgment relied upon by the Court in *Wanga*²⁵ has been

²¹ The plaintiff had, prior to the trial date, suggested arguing the matter on the expert reports and the industrial psychologists' joint minutes. The defendant did not demur at that stage.

²² At paras [12]-[14] of the judgment.

²³ At para [14].

²⁴ *Mashavha v Eanex Africa (Pty) Ltd* [2024] ZAGPJHC 387 (22 April 2024).

²⁵ At para [13].

subjected to criticism.²⁶ Rule 67A(3)(b) simply provides that in determining an appropriate scale of counsel's costs, the court "may" have regard to the factors set out in the sub-rule. Any other relevant factor may be considered – the Court's discretion has not been curtailed or circumscribed. Awarding counsel's fees on Scale B or C Scale has nothing to do with a punitive goal. Scale A is, on a proper reading of the Rule, not intended to be "default" position as far as complexity is concerned – it is simply the default where a costs order fails to indicate the relevant scale.

62. In the exercise of my discretion on the available facts as a whole, I agree with counsel for the plaintiff that an award of counsel's fees on Scale C is warranted in the present matter.²⁷

Order

63. In the circumstances, the following order is granted:

- 63.1. The defendant shall pay to the plaintiff the sum of R800 000,00 in respect of general damages.
- 63.2. The defendant shall pay interest on the sum of R800 000,00 at the prevailing rate of interest, calculated from 14 days after date of judgment to date of final payment.
- 63.3. The defendant shall pay the plaintiff's costs of suit on the High Court scale, including the qualifying expenses of the expert witnesses in respect of whom expert reports have been delivered, as well as counsel's fees taxed on Scale C in respect of work done after 12 April 2024.

²⁶ See Erasmus *Superior Court Practice* D1 Rule 67A-8.

²⁷ See *Potgieter v Road Accident Fund* (case number 5677/2021, unreported judgment of the Western Cape High Court (per Carolissen AJ, delivered on 18 November 2024) at paras [49]-[51].

P. S. VAN ZYL
Acting judge of the High Court

Appearances:

For the plaintiff:

Mr J-H Roux SC, instructed by DSC
Attorneys

For the defendant:

Mr G. Cerfontyne, State Attorney