

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: 5233/2023

In the matter between:

R[...] S[...]
[ID No. 0[...]]

Plaintiff

and

ROAD ACCIDENT FUND
[LINK NO: 3765424]

Defendant

Neutral citation: R S[...] v RAF (5233/2023)
Coram: Van Zyl, J
Heard: 27 & 30 August 2024
Delivered: 20 February 2025
Summary:

Damages – Motor Vehicle Accident. Loss of Earnings and General Damages. Payment of Damages Ordered. Whether SASSA Disability Grant is to be deducted from Loss of Earnings.

ORDER

1. The defendant is liable to pay 100% of the plaintiff's proven or agreed damages.
2. The defendant shall furnish the plaintiff within 180 (one hundred and eighty) days of date of this order 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% of the costs of future accommodation of the plaintiff in a hospital and/or nursing home or the treatment of or rendering of

services to her or the supplying of goods to her arising out of the injuries sustained by her in the motor vehicle collision which occurred on 28 February 2014, after such costs have been incurred and submission of proof thereof.

3. The defendant is ordered to pay the plaintiff the amount of R1 800 000.00 as general damages, which amount is to be paid into the Trust account of the plaintiff's attorneys, Mavuya Inc, account no. 6249-6861-769, held at First National Bank, pending the establishment of a trust in favour of the plaintiff.
4. The defendant is ordered to pay the plaintiff loss of earnings in the amount yet to be calculated, which calculation is to make provision for a contingency deduction of 20%.
5. The plaintiff's attorney of record is ordered to forthwith request the actuary to prepare an updated actuarial calculation in respect of the plaintiff's loss of earnings on the basis as set out in the actuarial report and with a contingency deduction of 20%, calculated as at 1 March 2025.
6. Leave is granted to the plaintiff to approach Van Zyl, J in chambers with a Draft Order once the aforesaid calculation is received to obtain a further order for the payment by the defendant to the plaintiff in the amount calculated accordingly.
7. The aforesaid Draft Order must also contain all the applicable provisions in relation to the Trust to be established in favour of the plaintiff.
8. The defendant shall pay the plaintiff's taxed or agreed party and party costs, which costs shall include, but not be limited to, the following:

8.1 The reasonable qualifying fees of the following experts:

- 8.1.1 Dr JT Seritsane (Orthopaedic Surgeon);
- 8.1.2 Dr J Swartzberg (Diagnostic Radiologist);
- 8.1.3 Dr TO Sadiki (Neurosurgeon)
- 8.1.4 Dr J van Heerden (Urologist);
- 8.1.5 Mr T Siweya (Clinical Psychologist);
- 8.1.6 Ms Moyo (Educational Psychologist);
- 8.1.7 Ms L Delport (Occupational Therapist);
- 8.1.8 Ms S van Jaarsveld (Industrial Psychologist); and
- 8.1.9 Mr JCC Sauer (Johan Sauer Actuaries)

8.2 Counsel's fees, including, but not limited to, the costs of the drafting of heads of argument, to be taxed on scale A.

8.3 The aforesaid costs are also to include the additional costs for obtaining the newly calculated and updated report from the actuary as well as any consequential costs incurred in order for it to be made an order of court.

JUDGMENT

Van Zyl, J

[1] The plaintiff issued summons against the defendant for payment of damages which she suffered as a result of a motor vehicle accident which occurred on 28 February 2014. At the time the plaintiff was a pedestrian when she was knocked over by the insured vehicle.

[2] The merits of the action have been settled and the defendant has accepted 100% liability for the damages proven by the plaintiff. I was advised by Mr Mohono, who appeared on behalf of the plaintiff, that the defendant has also accepted liability for the Future Medical Expenses of the plaintiff and has tendered an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996. The plaintiff therefore approached the matter on the basis that the remaining issues to be decided are the general damages and the loss of earnings suffered by the plaintiff. With regard to the last-mentioned issue, I am also called upon to determine the appropriate contingency deductions in respect of the plaintiff's loss of earnings.

[3] In terms of the plaintiff's amended particulars of claim, the plaintiff is claiming damages in respect of the aforesaid remaining issues in an amount of R11 000 000.00 which amount is calculated as follows:

1. [General] Damages	R2 500 000.00
2. Estimated past loss of earnings	R 500 000.00
3. Estimated future loss of earning capacity	R8 000 000.00
TOTAL	<u>R11 000 000.00</u>

[4] However, Mr Mohono indicated in his heads of argument and during his oral argument that the plaintiff is seeking an award for loss of earnings as calculated by the actuary in his report and an amount of R2 000 000.00 in respect of general damages.

[5] In chambers, before the commencement of the trial, the representative of the defendant indicated that the defendant did not instruct her to oppose the action in court and therefore she will not be appearing before me. The trial consequently continued in the absence of the defendant.

[6] At the commencement of the trial the plaintiff moved for an order in terms of an application filed by the plaintiff for leave to present expert evidence in respect of the issue of quantum in terms of Rule 38(2). I granted an order accordingly and more specifically in terms of prayer 1, 3, 3.1, 3.3 and 4 of the notice of motion, as amended.

Evidence of N[...] M[...] (plaintiff's mother):

[7] The plaintiff's mother, Ms M [...], was called by the plaintiff as her first witness. Ms M [...] testified that the plaintiff was born on 1[...] M [...] 2003 and the accident occurred when she was 12 years old.

[8] She testified that the plaintiff's head, her left leg and her left arm were injured. Her kidney and her hip were also injured. She was taken by ambulance to Botshabelo hospital whereafter she was transferred to Pelonomi Hospital. She

was admitted to ICU, where the plaintiff spent approximately two months. When she was discharged from ICU she was transferred to a normal ward and she spent approximately four months at Pelonomi Hospital. Thereafter she was again transferred to Botshabelo Hospital, where she spent a further approximately eight months.

[9] According to Ms M[...]’s understanding the plaintiff underwent an operation on her skull and also on her left leg.

[10] At the time when she was transferred to a normal ward, she was unable to speak. She was also unable to walk and she spent more or less one year in a wheelchair and thereafter on crutches for a short period of time. At the time when she was transferred to a ward she was unable to do anything for herself. She just remained on her bed and Ms M[...] fed her. The plaintiff was also wearing diapers at the time, which was the situation for about a year.

[11] Although the plaintiff previously received physiotherapy, she is no longer receiving same. According to Ms M[...] the plaintiff got frustrated with the physiotherapy, since she could not understand what the therapists explained to her.

[12] Ms M[...] testified that the left leg of the plaintiff tends to swell. Sometimes it also gets ‘stuck’ whilst she is walking. The plaintiff cannot walk long distances at a time. At times she walks with a limb and she cannot run anymore. The plaintiff previously played netball and soccer, which she is no longer able to do.

[13] Ms M[...] also testified that the plaintiff suffers from seizures from time to time, which was not the situation before the occurrence of the accident. She is taking medication by the name of Epilem to minimize the seizures. She once had a kettle in her hand when she suffered from a seizure and in the process the hot water from the kettle was spilled over her.

[14] Ms M[...] testified that the plaintiff is left-handed. Sometimes her left arm gets tired when she is working at school. Her left hand also tends to be stiff. The plaintiff is unable to pick up heavy objects with her left hand and arm. In hospital a

structure was fixed to her left arm and hand to support same – the plaintiff could only move her fingers at the time.

[15] According to the evidence of Ms M[...], the plaintiff has undergone emotional and psychological changes since the accident. She gets angry very easily and would cry for no apparent reason. The plaintiff then just wants to be left alone, whereafter she calms down. Her friends also used to laugh at her when she was still in a wheelchair and had to make use of diapers. The plaintiff sometimes cry and would ask the question why God allowed this to happen to her. She also struggles to fall asleep, which was not a problem before the accident.

[16] Ms M[...] testified that before the accident the plaintiff was a happy, friendly, outgoing person. She has changed completely. She no longer goes for walks in the street and she does not have friends. She is ashamed for people to see her leg and what people would say about it.

[17] As a result of the injuries she has scars on her skull and on her left leg from her knee to her foot. Underneath her lip she also has facial scars.

[18] As a result of the accident the plaintiff has also left school, since she was repeatedly failing. When the accident occurred she was in Grade 6. She had to repeat Grade 6, because she was absent from school for about a year. She was then promoted to Grade 7, which she passed, but not well. Later she failed Grade 10 twice, which led to her leaving school.

[19] Ms M[...] testified that the plaintiff is currently in what is known as a 'slow learners' school, meaning a school for learners with special needs. At the time of the hearing of the accident the plaintiff was in Level 4.

[20] Ms M[...] furthermore testified that since the accident the plaintiff is forgetful. She once forgot that she had taken her tablets and then took tablets for a second time, which caused her to become drugged.

[21] According to Ms M[...], prior to the accident, the plaintiff said that she wanted to become a psychologist, which she is even maintaining still presently.

[22] The plaintiff is receiving a disability grant in the amount of R2 180.00 per month, which she has been receiving on a permanent basis for the past year.

[23] Ms M[...] furthermore testified that the plaintiff often complains that her left leg and her head are painful. She is taking Panado, a pain stiller, for the pain.

[24] Ms M[...] testified that the plaintiff's family is supporting and assisting her at home. The plaintiff has a further problem that she urinates frequently and randomly. A bucket has now been placed where she sleeps, since if she delays to go to the toilet, she urinates spontaneously without having control over it.

Evidence of the plaintiff:

[25] The evidence of the plaintiff in essence correspond with that of her mother. She was 21 years old at the time when she presented her evidence.

[26] The plaintiff testified that the first four months in hospital she could not speak. Initially she could also not walk, but she eventually made use of a wheelchair and thereafter she made use of crutches. Before the accident the plaintiff suffered from no disability or physical impairment.

[27] The first few months when she was in hospital she could also not eat by herself and could not bath herself. She was also wearing a diaper.

[28] The plaintiff testified that her injuries make her feel ashamed of herself and she felt and still feels belittled.

[29] She testified that when she has to go to the toilet, she often urinates spontaneously when she gets up and then she has no control over it. She also confirmed that at night she is using a bucket at home.

[30] According to the plaintiff she finds it difficult to fall asleep, which was not the case before the accident. She sometimes takes sleeping tablets, but then she feels drowsy the following day.

[31] The plaintiff testified that she is suffering from seizures from time to time. She is taking Epilem to control the seizures. She is also suffering from pain on a daily basis. The pain is towards the left side of her neck/head, in her left arm and her left leg. She takes Panado for the pain.

[32] Before the accident the plaintiff did not struggle at school. This has changed since the accident. She is forgetful and cannot concentrate. She does not understand when the teachers explain the school work to her.

[33] The plaintiff testified that before the accident she had friends. She played netball and ladies soccer. Since the accident she is experiencing weak social interactions and she finds it difficult to mingle with other people, because she is ashamed of what they may think of her. She does not participate in sports anymore, since she cannot run and jump.

[34] The plaintiff testified that she has scars from her injuries on her head, her left lower leg and her left arm. She also has scars just underneath her lip.

[35] The plaintiff explained that sometimes her left hand gets 'stuck' in an open position. She is experiencing difficulty to write, to hold items like a kettle and also to pick up heavy items.

[36] The plaintiff further explained that her left leg sometimes gets 'stuck' when she is walking and then she has to stand still for about 3 to 4 minutes, before she can continue walking.

[37] The plaintiff also testified about emotional changes she has been suffering from since the accident. At times she gets angry, lonely and frustrated with the condition of her body.

[38] Prior to the accident she wanted to study to become a psychologist. However, currently she is in Itsotseng ABED training school, in Level 4. It is a special school where the teachers sit with her and explains the work to her when

she does not understand. She is able to cope at the present school, but was not able to cope at her previous school after the accident.

[39] The plaintiff testified that she will not be able to have an independent life and would not be able to work for herself, like she used to picture her future prior to the accident.

[40] According to the plaintiff she has one friend at school. This friend is the only person who understands her. Her previous friends who stay in Botshabelo are judging her and do not understand her. They make fun of her and it makes her feel hurtful and upset.

[41] The plaintiff also confirmed that she has been receiving a monthly grant and that her mother is assisting her with the manner in which to utilize the money.

Report of Dr. JT Seritsane (Orthopaedic Surgeon):

[42] According to Dr Seritsane`s report the following injuries were reported by the plaintiff:

1. Left leg injury.
2. Left elbow and arm injury.
3. Head injury.
4. Abdominal injury.

[43] The following injuries of the plaintiff were reported in the medical records:

1. Left lower leg open tibia-fibula fracture.
2. Pubic rami fracture.
3. Grade 2 kidney injury and grade 3 splenic injury.
4. Head injury.

[44] Amongst others, the plaintiff complained of elbow pain. Dr Seritsane found that the pronation and the supination of the plaintiff`s left elbow are restricted. The

dorsi flexion. The inversion and the eversion of the plaintiff's left ankle are also restricted.

[45] Dr Seritsane noted that the plaintiff was admitted for almost one year in hospital and rehabilitation centre.

[46] The plaintiff is left-handed and left-footed. With regard to scars, Dr Seritsane recorded that the plaintiff's left leg midshaft has a severe soft tissue scar and circumferential sutured lacerations.

[47] Under the heading 'outcome diagnosis and prognosis' Dr Seritsane recorded the following with regard to the plaintiff's left lower limb:

'11.1.1 Left tibia midshaft fracture.

11.1.2 She presents with a poor prognosis. Her symptoms are not expected to improve due to chronic nature of her injuries.

11.1.3 Even with surgical intervention she is likely to have continued residual pain and reduce range of motion.'

[48] Under the heading 'pain, suffering and loss of amenities' Dr Seritsane noted as follows:

'12.1.1 Ms S[...] sustained injuries to her left tibia.

12.1.2 She suffered severe acute pain for about one year following the injuries she sustained in the accident.

12.1.3 She continues to suffer from pain in her left leg and ankle.

12.1.4 Ms S[...] is likely to have difficulties in engaging normally in activities which require lower limb mobility and heavy load handling.

12.1.5 The occupational therapist report will further discuss details . . . '

[49] Dr Seritsane further found that even with the recommended treatment there are no prospects of full recovery. The plaintiff's Orthopaedic Whole Person Impairment Score is 13% and in terms of the Narrative Test her injuries qualify as serious injuries. Dr Seritsane opined that the plaintiff has serious long-term impairment or loss of body function and also permanent serious disfigurement.

Report of Dr J Swartzberg (Diagnostic Radiologist)

[50] In his report Dr Swartzberg noted that radiographs of the left humerus and left elbow of the plaintiff showed no fractures.

Report of Dr TO Sadiki (Neurosurgeon):

[51] Dr Sadiki noted the following complaints in his report as communicated to him by the plaintiff:

- ‘● Forgetfulness that started after the accident.
- Poor concentration.
- Poor academic performance – attends a special school.
- Short-temperedness.
- Social isolation – struggles to make new friends.
- Behavioural changes – aggressive towards other family members.
- Signs of post-traumatic stress disorder.
- Insomnia.
- Urinary problems – urgency and overflow incontinence.’

[52] During the clinical examination, Dr Sadiki found that the plaintiff has multiple scalp scars, a 2 cm scar on the chin and extensive left leg scarring.

[53] Dr Sadiki found that the plaintiff suffered a severe traumatic brain injury. [My emphasis] According to his report this is supported by the following objective evidence:

- ‘a. GCS – 3/15
- b. Loss of consciousness
- c. Direct impact to the head.

- d. Post traumatic seizures.
- e. Imaging findings: haemorrhagic contusions, hygromas and diffuse axonal injury.'

[54] The subjective evidence in support of a severe traumatic brain injury is chronic symptoms of headaches and memory impairment.

[55] As post-accident sequelae, Dr Sadiki recorded the following neurocognitive and neurophysical impairment:

- The claimant suffers from post-traumatic headaches, dizziness, blurred vision, and seizures;
- She has subjective memory impairment and poor concentration affecting her academic performance negatively, however an objective assessment is deferred to the clinical and educational psychologist.
- The claimant suffers from emotional lability with aggressive behaviour towards others.
- She reported signs of PTSD, short temper and insomnia.
- She reported urinary symptoms – deferred to urologist.
- Clinical examination revealed left hemiparesis.'

[56] With regard to the prognosis, Dr Sadiki stated the following:

- The risk of developing post-traumatic epilepsy is 17%.
- Patient with moderate or severe TBI are at increased risk for seizures for 10 to 20 years post-injury.
- Patient with PTE have approximately 2 times mortality risk and increased medical burden.
- She is suffering from post-traumatic headaches with 80% chances of recovery in 2 to 3 years and 20% chance of permanent post-injury.

- New or worsening of neurocognitive and psychosocial sequelae may occur at a later stage.'

[57] Dr Sadiki also found that the average life expectancy is reduced by 9 years after inpatient rehabilitation for a traumatic brain injury and the mortality rate remains increased up to sevenfold for at least 13 years in such cases.

[58] Dr Sadiki opined that the total Whole Person Impairment of the plaintiff is 44%.

Report of Dr J van Heerden (Urologist):

[59] In his report Dr Van Heerden noted that according to the hospital records, the plaintiff had the following injuries:

1. Head injury with brain bleeding.
2. Left tibia-fibula fracture.
3. Dislocation of the left shoulder.
4. Pelvic fracture.

[60]] With regard to the urological history of the plaintiff, Dr Van Heerden stated in his report that the plaintiff's bladder function has never returned to normal after the accident. She still has urge, even urge incontinence and nocturia up to 4 times at night. She must sleep with a bottle next to her bed to prevent bed wetting.

[61] During the clinical examination of the plaintiff a urodynamic study was performed. A severe unstable bladder with a low compliance and increase in bladder pressures up to 58 cm of water was demonstrated. This is the picture of a neurogenic bladder.

[62] The clinical impression noted by Dr Van Heerden was that the neurogenic bladder follows from the head injury and pelvic fracture with intra-pelvic bleeding.

[63] Dr Van Heerden advised that medication should be taken by the plaintiff for the neurogenic bladder, which medication must be taken for an indefinite period and probably for life.

[64] Urological the plaintiff has a 15% Whole Body Impairment.

Report of Mr T Siweya (Clinical Psychologist):

[65] From the hospital records, Mr Siweya noted that the plaintiff was given a splint for her left arm to obtain bilateral elbow extension.

[66] Mr Siweya recorded in his report that the plaintiff exhibits severe symptoms of depression and anxiety. This implies that she may have trouble doing normal day-to-day activities and may trigger suicidal ideations. It is probable that the plaintiff will experience worsening symptoms of depression and anxiety, which could be brought on by academic challenges, lack of motivation, and perceived pessimistic view of the future following the accident.

[67] According to Mr Siweya, the plaintiff also presents with emotional difficulties, characterized by emotional lability and aggressive behaviour towards others. The severe brain injury the plaintiff sustained seems to cause a loss of emotional awareness. Being unable to self-regulate and lower frustration tolerance also cause extremes in her emotional feelings. These emotional disturbances compromise the plaintiff's interpersonal engagement.

[68] Mr Siweya further opined that the emotional difficulties with which the plaintiff is struggling need a full diagnostic criterion of her major depressive disorder and post-traumatic stress disorder which warrant immediate clinical attention and management.

[69] Mr Siweya concluded as follows:

‘ . . . it appears that Ms S[...] endured severe emotional, behavioural, social, and school difficulties as a result of the PVA. Her difficulties are marked by severe disturbances in mood regulation, personality changes, somatic complaints and

decline in school performance. These difficulties are causing her significant distress and are affecting her overall quality of life. Thus, it should be considered that she receives adequate compensation for the difficulties she endured which were caused by the PVA.'

Report of Ms A Moyo (Educational Psychologist):

[70] According to the report of Ms Moyo, there are no available academic records of the plaintiff prior to the accident available. However, Ms Moyo recorded that according to the plaintiff's mother, there were no reported learning difficulties or concerns. Conversely, post-accident academic records reflect below average performance across most subjects which led to her failing Grade 10 in 2022.

[71] The report confirms that the plaintiff is currently a full time student enrolled in ABED Level 3 (now in Level 4) at Itsoseng Satellite Community Learning Centre.

[72] Ms Moyo reported that from her evaluation of the plaintiff it was revealed that the plaintiff's cognitive abilities fall within the Borderline Intellectual Functioning (BIF) range. BIF positions individuals between typical intelligence and intellectual impairment. Persons with BIF often face persistent academic challenges such as underachievement, frequent absence, grade repetition and the risk of dropping out or expulsion from educational settings.

[73] In respect of Verbal Reasoning Abilities, the plaintiff displayed notably low verbal reasoning skills compared to her peers. Her Non-Verbal Reasoning Abilities were also significant below expectations of her age. With regard to Mental Control and Processing Speed, the plaintiff faces challenges in mental control and processing speed. She also demonstrated inadequate Visual Processing Speed. The educational psychologist summarized the outcome of her evaluation as follows:

'Her performance in the Bender-Gestalt-II test indicated below-average visual-motor and perceptual skills in the Copy Phase, requiring additional support . . . Ms S[...] experiences severe symptoms of anxiety and depression . . . In summary, the psycho-educational assessment has unveiled significant cognitive challenges for Ms S[...], encompassing verbal and non-verbal reasoning, mental control, processing

speed, and visual-motor skills. These challenges are compounded by symptoms of anxiety and depression necessitating a comprehensive approach to support her overall well-being and ability to manage daily life and learning demands.'

[74] Ms Moyo presumed that pre-accident the plaintiff functioned at an average cognitive level. She opined that the accident has had a significant, adverse impact on the plaintiff's educational capacity. Ms Moyo further opined that had the accident not occurred, the plaintiff would likely have successfully completed her matric with either a Degree or Diploma pass. These anticipated achievements would have broadened her career opportunities considerably and facilitated a smoother pursuit of her desired career path.

[75] Ms Moyo stated that given the plaintiff's existing cognitive abilities and the repercussions of the accident on her adaptive and academic performance, it is anticipated that achieving the highest level of ABET education will mark the pinnacle of the plaintiff's academic accomplishments. She opined that the challenges and educational difficulties stemming from the accident will impose restrictions on the plaintiff's potential to pursue higher education. Consequently, the plaintiff will need to explore alternative avenues, such as vocational training, to facilitate her future career prospects.

Ms L Delport (Occupational Therapist):

[76] Ms Delport noted in her report the following injuries according to the plaintiff:

1. Head Injury.
2. Left elbow fracture.
3. Left lower leg fracture.
4. Left kidney fracture.
5. Broken tooth (left side).
6. Bladder injury.

[77] Ms Delport stated in her report that the plaintiff exhibited limited cognitive and physical stamina during the assessment. Engagement in any physical activity led to tiredness and shortness of breath. Moreover, cognitive tasks also induced

significant fatigue. The plaintiff frequently rested on her arms while performing cognitive tasks. By the conclusion of the evaluation, she displayed evident signs of both physical and cognitive exhaustion.

[78] From the evaluation it was evident that the plaintiff suffers from post-traumatic stress disorder and also depression.

[79] Under the heading 'loss of life amenities' Ms Delport stated, *inter alia*, the following:

- '8.6.1 ... The accident and subsequent injuries unquestionably influenced the client's development trajectory.
- 8.6.2 As a result of the accident-related injuries, she experiences residual pain in her left lower limb, as well as the left upper limb. . . . Her capacity for heavy weight lifting and carrying has been impacted, as well as her standing and walking tolerances. Furthermore, the client's left lower limb present with significant noticeable scarring and a deformed appearance. . . .
- 8.6.3 Due to the severe traumatic brain injury sustained in the mentioned accident, the client exhibits significantly impaired cognitive functioning. This includes affected areas such as memory, concentration, cognitive fluency, processing speed, visuospatial reasoning, and various other cognitive domains. . . .
- 8.6.4 During the assessment, symptoms of depression, anxiety and stress, as well as symptoms of post-traumatic stress directly related to the accident in question were perceived. . . . Additionally, the client reported that she is often teased by other people, as a result of her impairments which impacts her self-esteem. . . .
- 8.6.5 The client's leisure pursuits of running, engagement in sports and exercising have been affected by the accident-related injuries. She can no longer participate in this activity as a result of pain.

8.6.6 . . . The client is dependent on assistance from her mother with regard to household management tasks. . . .

8.6.7 The aftermath of the accident has profoundly affected the client's life amenities, particularly in the realms of education and work capacity. Prior to the accident, she was described as an exceptional learner (as indicated on Page 17 of Ms Moyo's report), but the severe traumatic brain injury has led to persistent difficulties in concentrating, remembering information, and actively engaging in learning activities. This has translated to lower academic performance. The extended absence from school and ongoing challenges highlights the substantial setbacks in her post-academic journey.

. . .

8.6.8 . . . People who have experienced orthopaedic injuries earlier in life may face compounding effects as they age. Previous injuries can result in altered biomechanics, joint instability and changes in gait patterns. These factors can contribute to an increased vulnerability to age-related degeneration and functional decline. Over time, this can contribute to the development of osteoarthritis and other degenerative conditions, further comprising joint function.'

[80] Ms Delport opined that the plaintiff has significant physical, emotional and cognitive challenges which currently limit her potential to work in the open labour market. The plaintiff's challenges with memory, concentration and cognitive fluency, combined with physical functioning issues, suggest that a sheltered employment setting, tailored to accommodate her specific needs, would provide a more supportive environment. Ms Delport furthermore opined that even with reasonable accommodations, the plaintiff will be unable to meet the inherent requirements of a sedentary job falling within even the unskilled category, in the open labour market. She may likely face discriminatory practices when compared to other candidates, particularly considering her challenges and limitations. Ms Delport therefore opined that the plaintiff is at a disadvantage in the competition for employment opportunities.

[81] In respect of pain and suffering, Ms Delport stated as follows:

‘Following the accident, the client endured a period of pain and suffering, which persists in the form of constant physical discomfort. Furthermore, she faces emotional anguish stemming from the loss of function and uncertainty about her future. Presently, she grapples with challenges in performing specific tasks due to cognitive difficulties.’

[82] The plaintiff also suffered a significant loss of independence as a result of the accident. Ms Delport opined that the plaintiff will not be able to achieve independent living in the future.

Report of Ms S van Jaarsveld (Industrial Psychologist):

[83] At the time of the accident the plaintiff was a scholar at the Batsha Primary School in Botshabelo and her academic performance was above average (80%). As indicated earlier, the plaintiff is presently a full time student at a Learning Centre for learners with special needs.

[84] The plaintiff failed Grade 6 twice and was condoned to the next grade until she left school after she failed Grade 10 twice. At the time of the evaluation the plaintiff completed ABET Level 3 but has since completed ABET Level 4 (NQF1) which is equivalent to a Grade 9 school qualification.

[85] According to Ms Van Jaarsveld, based on the plaintiff’s background and her academic progression, the assumption can be made that pre-accident she possessed over at least average intellectual abilities. Ms Van Jaarsveld opined that had the accident not taken place the plaintiff would have obtained at least a Grade 12 school qualification and a post-school qualification.

[86] With regard to the plaintiff’s pre-accident scenario, Ms Van Jaarsveld made the following postulation:

‘Scenario: post-school qualification (NQF 6):

- Successful completion of a post-school qualification at the age of 23 years, which implies at the end of the year Ms S[...] turns 23 years.
- Following the completion of the 3-year B-degree or similar qualification, Ms S[...] will probably have been employed as in Intern for a period of 1 to 2 years before securing permanent employment. During this period her earnings would have been between the lower quartile and median of a semi-skilled worker in the non-corporate sector. The remuneration of a semi-skilled worker in the non-corporate sector is as follows:

Lower quartile	R39 000.00 [per annum]
Median	R83 000.00 [per annum]

- Ms S[...] would then have entered the formal sector of the labour market at a level equivalent to the median of Paterson B1 Level and with in-house training she may have progressed to Paterson C2 as her career ceiling. For quantification purposes, Ms S[...] would probably have reached this level by the age of 45 years, following a straight-line approach. This would have represented her career ceiling until retirement. Provision should be made for annual inflationary increases until the retirement age of 65 years.
- During the calculation of loss of income it is important to note that the remuneration should consequently be calculated upon the 50th percentile.'

[87] Ms Van Jaarsveld provided estimated remuneration figures connected with specific levels of the Paterson scale.

[88] With regard to the post-accident scenario, Ms Van Jaarsveld again referred to the history of the plaintiff's academic record and the concentration problems and forgetfulness she is presently suffering from. Ms Van Jaarsveld then concluded that she is of the opinion that it is highly unlikely that the plaintiff would progress any further than ABET Level 4 (NQF 1) which is equivalent to a Grade 9 school qualification.

[89] Ms Van Jaarsveld dealt with the conclusions by the medical experts regarding the functional and procedural work ability of the plaintiff. She concluded that the plaintiff's career options are thus significantly narrowed down due to the

cognitive and psychological challenges she experiences as a result of the injuries she sustained in the accident.

[90] Based on the opinion of the medical experts as a result of the accident, the possibility exists that the plaintiff will not be able to progress further than a NQF Level 1 and as such it is highly unlikely that she will secure employment as a result of the abovementioned factors, inclusive of her behavioural problems and anger outbursts.

[91] In respect of the calculation of monetary compensation for the plaintiff, Ms Van Jaarsveld opined as follows:

- ‘● The writer is of the opinion that Ms S[...] is functionally unemployable now and in the future.
- Ms S[...] must thus be compensated for loss of income from the age of 24 years until the retirement age of 65 years, based on what she could have earned as indicated in paragraph 6.7.’

Loss of income:

[92] The actuary, Mr Johan Sauer, based his actuarial calculations of the plaintiff's loss of income on Ms van Jaarsveld's postulations. He determined the value of the plaintiff's pre-morbid future income, on the basis of retirement at age 65, as R8 371 189.00.

[93] Considering the conclusion of the industrial psychologist, Ms Van Jaarsveld, that the plaintiff is functionally unemployable now and in the future, the post-morbid future income of the plaintiff is nil.

[94] The plaintiff's loss of income as a result of the accident is consequently R8 371 189.00, calculated without the consideration of any contingency deduction.

Contingency deduction:

[95] As correctly pointed out by Mr Mohono, the determination of a suitable contingency deduction falls within the discretion of the court.

[96] Contingencies discount the vicissitudes of life and it is a method used to arrive at fair and reasonable compensation. The question of contingencies was dealt with in *Southern Insurance Association Ltd v Bailey* NO 1984 (1) SA 98 (A) at 113G and 116G to 117D:

‘Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.

. . .

Where the method of actuarial computation is adopted, it does not mean that the trial Judge is “tied down by inexorable actuarial calculations”. He has “a large discretion to award what he considers right” (*per* HOLMES JA in *Legal Assurance Co Ltd v Botes* 1963 (1) SA 608 (A) at 614F). One of the elements in exercising that discretion is the making of a discount for “contingencies” or the “vicissitudes of life”. These include such matters as the possibility that the plaintiff may in the result have less than a “normal” expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case. See *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) at 114 - 5. The rate of the discount cannot of course be assessed on any logical basis: the assessment must be largely arbitrary and must depend upon the trial Judge's impression of the case.

. . .

It is, however, erroneous to regard the fortunes of life as being always adverse: they may be favourable. In dealing with the question of contingencies, WINDEYER J said in the Australian case of *Bresatz v Przibilla* (1962) 36 ALJR 212 (HCA) at 213:

“It is a mistake to suppose that it necessarily involves a ‘scaling down’. What it involves depends, not on arithmetic, but on considering what the future may have held for the particular individual concerned... (The) generalisation that there must be a ‘scaling down’ for contingencies seems mistaken. All ‘contingencies’ are not adverse: All ‘vicissitudes’ are not harmful. A particular plaintiff might have had prospects or chances of advancement and increasingly remunerative employment. Why count the possible buffets and

ignore the rewards of fortune? Each case depends upon its own facts. In some it may seem that the chance of good fortune might have balanced or even outweighed the risk of bad.’”

[97] In *Gillbanks v Sigournay* 1959 (2) SA 11 (N) the following was stated at 17E – F in respect of contingencies in an estimation of a plaintiff’s claim for loss of earnings:

‘In any estimate of a person’s loss of earning capacity allowance must be made for all contingencies including the accidents of life and certain deductions must be made from the estimated gross income to allow for unemployment benefits, insurance and so on. These contingencies would include -

- (i) a possibility that plaintiff’s working life may have been less than sixty-five years;
- (ii) a possibility of his death before he reaches the age of sixty-five years;
- (iii) the likelihood of his suffering an illness of long duration;
- (iv) unemployment;
- (v) inflation and deflation;
- (vi) alterations in the cost-of-living allowances;
- (vii) an accident whilst participating in sport such as hockey or cricket, or at any other time which would affect his earning capacity; and
- (viii) any other contingency that might affect his earning capacity.’

See also: *Road Accident Fund v Reynolds* (A5023/04) [2005] ZAGPHC 19 (18 February 2005).

[98] In *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) at 115C – D the court held that it has a discretion in allowing contingencies. The said discretion must be based upon the circumstances of the particular case.

[99] In *Dlamini v Road Accident Fund* (59188/13) [2015] ZAGPPHC 646 (3 September 2015) at paras 30 – 31 the court dealt with and applied some guidelines referred to by Koch in *The Quantum Year Book*:

'[30] Koch refers to the following as some of the guidelines as regards contingencies:

"Normal contingencies" as deductions of 5% for past loss and 15% for future loss.

"Sliding scale": 1/2 % per year to retirement age, i.e. 25% for a child, 20% for a youth and 10% in the middle age and relies on *Goodall v President Insurance* 1978 (1) SA 389.

"Differential contingencies" are commonly applied, that is to say one percentage applied to earnings but for the accident, and a different percentage to earnings having regard to the accident.'

[100] The actuary applied a 20% contingency deduction to the aforesaid pre-morbid future income. As already indicated, I am not bound to apply the same contingency. However, 20% is in accordance with the guidelines provided by Koch in *The Quantum Yearbook*, as referred to in *Van der Plaats, supra*. On a sliding scale this is a 'normal' contingency for a youth and in the present matter there are, in my view, no material basis to depart from same.

[101] I consider a contingency deduction of 20% as fair and reasonable in the circumstances. Mr Mohono also submitted accordingly.

[102] In accordance with the actuary's report the plaintiff's total loss of income therefore amounts to R6 696 951.00, calculated at the date reflected in the actuary's report, being 1 March 2024.

[103] The calculation is consequently to be updated. The actuary is therefore to be requested to prepare an updated actuarial calculation in respect of the plaintiff's loss of earnings on the basis as set out in the actuarial report and with a contingency deduction of 20%, calculated as at 1 March 2025. Once the calculation is available, I am to be approached in chambers with a Draft Order to make an order accordingly.

General damages:

Legal principles:

[104] In *D v Road Accident Fund* (15/24390) [2017] ZAGPJHC 61 (3 March 2017) at para 17 the court confirmed the following principle:

‘[17] In determining general damages the court is called upon to exercise its discretion to award what it considers to be fair and adequate compensation having regard to a broad spectrum of facts and circumstances connected to the plaintiff and the injuries sustained by him including their nature, permanence, severity and their impact on his lifestyle.’

[105] In *Road Accident Fund v Marunga* 2003(5) SA 164 (SCA) at para 23 the court also stated this principle as follows:

‘[23] This Court has repeatedly stated that 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. . . .’

[106] Previous comparable awards, adjusted to reflect current values, are also considered as guidelines as to what would be a fair and reasonable award. However, although comparable cases offer some guidance in assisting a court to arrive at its award, it should not be viewed as an absolute standard. In *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 535H – 536A it was stated that the comparison of the plaintiff’s general damages with that of previous awards need not take the form of a meticulous examination of awards made in previous cases in order to fix an amount of compensation and nor should the process be allowed to dominate the enquiry so as to fetter the general discretion of the court. See also *De Jongh v Du Pisanie* NO [2004] 2 All SA 565 (SCA) at para 64.

[107] In the **Marunga**-judgment *supra*, at paras 27 to 28, the Supreme Court of Appeal also considered the following approach as instructive:

‘[27] In the *Wright-case* (*Corbett and Honey Vol. 4 E3-36*) Broome DJP stated:

‘I consider that when having regard to previous awards one must recognize that there is a tendency for awards now to be higher than they were in the past. I believe this to be a natural reflection of the changes in society, the recognition of greater individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significant lower than those in most other countries.’

[28] The Wright-case at E3-34 – E3-37 is instructive . . .’

[108] In *Du Pisanie-supra*, the court held at para 56 that a plaintiff is entitled to fair compensation, but that the amount of such compensation must also be fair towards the defendant.

Comparative awards:

[109] From the totality of the expert reports, it is evident that the plaintiff sustained the following injuries:

1. Severe traumatic brain injury (GCS 3/15)
2. Abrasions on forehead.
3. Fracture of the left tibia and fibula.
4. Fracture of the pubic rami.
5. Injury to the left arm and elbow.
6. Kidney injury.
7. Neurogenic bladder.
8. Broken upper tooth.

In addition, the plaintiff suffers from severe and permanent scarring and disfigurement.

[110] Mr Mohono referred to comparative cases and I also performed my own research for case law on general damages awarded in respect of a mild to severe traumatic brain injury.

[111] In *Kruger v Road Accident Fund* (27383/2009) [2022] ZAGPPHC 73 (14 February 2022) the plaintiff suffered a skull fracture which resulted in a moderate to severe traumatic brain injury resulting in deficits in his neuro-psychiatric, neuro-behavioural and neuro-psychological functions. He also suffered injuries to his cervical and lumbar spine. The plaintiff in that matter also experienced drastic personally changes as he was aggressive and anti-social. General damages in the amount of R1 400 000.00 were awarded, the present value of which is R1 577 800.00.'

[112] In *Claassens v Road Accident Fund* (35716/2017) [2019] ZAGPPHC 471 (24 July 2019) a 34-year old male was involved in a motor vehicle accident. He suffered several severe injuries including a moderate to severe traumatic brain injury, rib fractures, lung contusions and lung infection developed in ICU. He suffered from chronic headaches, traumatic brain injuries sequelae with loss of short-term memory, chronic chest pain, severe surgical scarring, chronic lumbar back ache and an altered ability to work in the open labour market. The court awarded general damages in the amount of R1 200 000.00, the present value of which is R1 531 200.00.

[113] In *Anthony v Road Accident Fund* (27454/2013) [2017] ZAGPPHC 161 (15 February 2017) a 22-year old female law student was involved in a motor vehicle accident as a result of which she sustained a significant traumatic brain injury, scarring and disfigurement, an inferior blowout fracture, facial lacerations and open wounds. She also sustained bruising to the upper arm, broken and lost teeth, a split palette, a fracture of the nose, and a soft tissue injury of the right knee. Prior to the accident, the plaintiff had above average intellectual capability, but as a result of her accident her intellectual functioning falls within the average range. She also suffered from neuro-psychological sequelae as a result of the brain injury. In that instance the court awarded general damages in the amount of R1 600 000.00, the present value of which is R2 249 600.00.

[114] Mr Mohono also referred to comparative cases on pubic rami fractures.

[115] In *Kgopyane v Road Accident Fund* (43235/2014) [2016] ZAGPPHC 872 (22 September 2016) a 22-year old female was involved in a motor vehicle accident. She sustained a pelvic fracture, a fracture of the right superior rami fracture, as well as a left inferior rami fracture, a chest contusion, injury to her right foot and soft tissue injuries to her neck and shoulder. The court awarded general damages in the amount of R600 000.00, the present value of which is R897 000.00.

[116] In *Masemola v Road Accident Fund* (53419/2014) [2017] ZAGPPHC 1202 (3 April 2017) a male was involved in a motor vehicle accident. He sustained a left compound tibia fracture, a closed injury of the pelvis, a fracture of the right acetabulum, a fracture of the pubic rami, an injury to the left knee and an unspecified soft tissue injury of the neck. General damages in the amount of R1 102 000.00 were awarded, the present value of which is R1 195 100.00.

[117] In *MM v Road Accident Fund* (4119/2015) [2019] ZAFSHC 5 (4 March 2019) a 35-year old female was involved in a motor vehicle accident. She sustained a fracture of the right pubic rami and ischium, a fractured right tibia and fibula, a compression wedge fracture of the L2 – L4, as well as a moderate traumatic brain injury. The court awarded R850 000.00, the present value of which is R1 084 600.00.

Conclusions on general damages:

[118] I have come across a case which, in my view, is also comparable to the present matter, except that there is no pubic rami fracture and no mention is made of scarring or disfigurement either. The summary of the facts in *Alexander v Road Accident Fund* 2021 (8A4) QOD 1 (GNP) is the following as contained in Koch's *The Quantum of damages in Bodily and Fatal Injury Cases*:

'Head injuries: bilateral epidural hematoma, subdural hematoma, subarachnoid haemorrhage and multiple brain contusions as a result of direct trauma to the head. His hospital admission GCS was 6/15 and three days later it remained 12/15. These are features of a severe traumatic brain injury with multifocal brain damage. Blow out fracture of the right orbit with entrapment of the right inferior rectus muscle. Orthopaedic injuries: multiple facial fractures and open fracture of the right tibia and fibula. He suffers from chronic post-concussion headaches localised

to the frontal region. He has poor vision of the right eye and experiences diplopia which interferes with his daily functioning. He suffers from chronic pain of the right shoulder, right knee and right leg which is aggravated by prolonged standing, walking, lifting of heavy weights and cold weather. He has noticeable muscle wasting in the right shoulder girdle muscles; he walks with a slight limp on the right side after long distance walking; and there is tenderness over the right acromioclavicular joint and supraclavicular region. He has right hemiparesis. The risk of developing epilepsy has increased to 8%. He presented with depressive symptoms and post traumatic anxiety with emotional and psychological implications. The fracture of the right tibia and fibula has united with intramedullary nail and locking screws in situ. He will have to undergo surgery in the future for the removal of the internal fixation. He will furthermore need surgery to correct the oculomotor synkinesis. He is unemployable in the open labour market.'

The court granted R1 200 000.00 in general damages, the present value of which is R1 470 000.00.

[119] In the aforesaid case, the age of the plaintiff is unknown, but it is stated that he was 'relatively young'. In the present matter, the plaintiff was only 12-years old when the accident occurred. She is currently 21-years of age, which means that the plaintiff has already been suffering for an extended period of time from her injuries and the sequelae thereof and she has many years ahead of her during which she will be experiencing the tremendous negative impact the accident had on her, on a daily basis. Her life expectancy has been reduced by 9 years as opined by the neurosurgeon. As mentioned earlier, in the present matter the plaintiff also suffered from a pubic rami fracture and severe, permanent scarring and disfigurement and a neurogenic bladder.

[120] I have duly considered the comparative awards the plaintiff referred me to and the ones I came across during my own research. One should be mindful of the fact that the plaintiff has a total Whole Body impairment of 44%. The plaintiff has serious long-term impairment or loss of body function and also permanent disability, scarring and disfigurement. The severe impact the plaintiff's injuries have had in the past and will have in future, is evident from the evidence. Considering that an award of general damages comprises the consideration of the pain and suffering, disfigurement, permanent disability and loss of amenities of life

a plaintiff suffered, I consider the present case as very serious in respects of all these aspects. The injuries had a profound impact on the plaintiff's life amenities and will continue to do so. It resulted in functional limitations that are severely impacting her daily life and her future, also in respect of her future employment. It has also impacted upon her emotionally and psychologically and has affected her self-esteem and confidence. The plaintiff's condition cannot be eradicated by surgical revision and she will be on medication for life and will also have to undergo further medical procedures in future.

[121] Taking into consideration all the facts and circumstances of this matter, I consider and award of general damages in the amount of R1 800 000.00 to be fair and reasonable to both the plaintiff and the defendant.

SASSA disability grant:

[122] Mr Mohono submitted that the SASSA disability grant which the plaintiff is currently receiving, should not be deducted from the damages to be awarded to her in respect of her loss of income.

[123] In *Coughlan NO v Road Accident Fund* 2015 (4) SA 1 (CC) the court dealt with the question whether foster child grants should be deducted from damages awarded to a child for loss of support as a result of the death of a parent/parents in a motor vehicle accident. The court also made its conclusions applicable to child support grants. The court found as follows at paragraphs 34 and further:

'[34] The state is obliged in terms of ss 27(1)(c) and (2) of the Constitution to take reasonable legislative measures, within its available resources, to provide everyone with access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

. . .

[50] . . . the purpose of the RAF is to step into the shoes of the wrongdoer and therefore should be liable the same as any wrongdoer.

[51] In sum, the payment of compensation for loss of support to foster children does not amount to double compensation: the nature and purpose of the grant are different from compensation — these grants arise from the constitutional obligations

of the state to provide for children in need of care, they are not paid to the children and they are not predicated on the death of a parent. In the light of the conclusion that there is no double compensation, it is not necessary for me to deal with whether the payments are *res inter alios acta*.

. . .

[55] The import of the means test is that foster child grants are payable for as long as the child is placed in foster care, irrespective of the level of income of the foster parent. On the other hand child support grants are payable only to parents below a certain level of income. Other than that, there is no other distinguishing feature between those two kinds of grant. Their nature and purpose are to provide for children in need of care, and in both instances the grant is payable to the foster parent or the primary caregiver who then utilises it as a contribution for the purpose of caring for the child. In both instances the grants are not predicated on the calamity of death of the parent.

[56] That then brings me to whether *Timis* was correctly decided. In *Timis* the Supreme Court of Appeal stated:

‘In this matter, the state assumed responsibility for the support of the children as a result of the breadwinner's death. The moneys paid out in terms of the Road Accident Fund Act and the Social Assistance Act are funded by the public through two State organs. Not to deduct the child grant would amount to double recovery by the respondent at the expense of the taxpayer and this is incapable of justification. In my view, it was not the intention of the Legislature to compensate the dependants twice.’

[57] That reasoning is not sustainable. It fails to acknowledge the different roles that the state assumes when it makes the payments. In cases of child support grants, the state assumes the role of a caregiver as enjoined by the Constitution. When it pays compensation for loss of support through the RAF it steps into the shoes of the wrongdoer. It is irrelevant that the money is paid by two state organs because its objectives are completely different and the state, when it makes the payment, does so to fulfil a myriad of obligations. Thus the fact that child support grants, foster child grants and damages from the RAF are paid from National Treasury is of no moment.

[58] Like foster child grants, child support grants are not predicated on the death of a parent. The fact that the state assumed responsibility for the support of the

children after the death of the breadwinner should not have been held to be a determining factor on whether the caregiver qualified for the child support grant or not.

[59] The purpose of the RAF is to give the greatest possible protection to claimants. A deduction of either foster child or child support grants would undermine that purpose. A reading of the RAF Act suggests that those grants should not be deductible. The RAF Act expressly provides that double compensation for persons who are entitled to claim under the Compensation for Occupational Injuries and Diseases Act should be deducted from compensation by the RAF but there is no equivalent reference to social grants.

[60] I conclude that the outcome in *Timis* was incorrect. Child support grants are for the reasons stated above on the same footing with foster child grants and should not be taken into account when an award of damages for loss of support is made.'

[124] I duly take into consideration that some of the principles referred to in the *Coughlan*-judgment are not applicable to disability grants. However, in my view, from a proper consideration of the Social Assistance Act, 13 of 2004 ('the Act'), read with the Regulations thereto published under GN R2119 in GG 46459 of 31 May 2022 ('the Regulations'), the payment of disability grants also stems from the Constitutional obligation in terms of sections 27(1)(c) and (2) of the Constitution, as referred to in para 34 of the *Coughlan*-judgment.

[125] The Preamble to the Act explicitly expresses the aforesaid Constitutional obligations of the state and states that the Act was enacted for purposes thereof:

'SINCE the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), provides that everyone has the right to have access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance [my emphasis], and obliges the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights;
AND SINCE . . .
THEREFORE . . .

AND in order to assist in securing the well-being of the people of the Republic and to provide effective, transparent, accountable and coherent government in respect of social assistance for the Republic as a whole,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows – ‘

[126] ‘Social assistance’ is defined in section 1 of the Act to mean ‘a social grant, social relief of distress or an additional payment contemplated in Section 12A’. In terms of the said section 1 ‘social grant’ means ‘a child support grant, a care dependency grant, a foster child grant, a disability grant, an older person’s grant, a war veteran’s grant and a grant-in-aid’. The ‘social assistance’ referred to in the Preamble to the Act therefore includes a disability grant.

[127] Disability grants are dealt with in section 9 of the Act:

9 Disability grant

A person is, subject to section 5, eligible for a disability grant, if he or she-

- (a) has attained the prescribed age; and
- (b) is, owing to a physical or mental disability, unfit to obtain by virtue of any service, employment or profession the means needed to enable him or her to provide for his or her maintenance.

[128] Regulation 3 determines which persons are eligible for a disability grant and, *inter alia*, provides that such a person must have attained the age of 18 years and ‘be unable to enter the open labour market or to support himself or herself in light of his or her disability’.

[129] Regulation 20 determines the financial criteria for, *inter alia*, a disability grant. Sub-Regulation 20(1) reads as follows;

‘(1) The financial criteria in terms of which applicants for an older person’s grant, a disability grant, a war veteran’s grant, a child support grant, a foster child grant and a care-dependency grant, respectively, qualify are set out in Annexures A, B, C and D, respectively.’

[130] The mentioned Annexure A sets out the formula to be applied in the instance of, *inter alia*, a disability grant:

'20 Determination of Financial Criteria for Older Persons Grant, Disability Grant and War Veteran's Grant

(1) The maximum amount of an older person's grant, disability grant or war veteran's grant shall from time to time be determined by the Minister with the concurrence of the Minister of Finance by notice in the *Gazette*.

(2) The formula for the determination of the value of the older persons' grant, disability grant and war veterans' grant to be paid to an applicant is-

$$D = 1.6A - 0.4B$$

where-

- (i) A = the maximum social grant payable per annum as approved;
- (ii) B = the annual income of the applicant in accordance with regulation 19, which shall include the income from assets as determined in regulation 21(3), permissible deductions contemplated in regulation 22 are effected; and
- (iii) D = annual social grant amount payable, which must not exceed the amount equal to A.'

The maximum amount of a disability grant is presently determined in the amount of R2 190.00.

[131] For the determination of 'means', Regulation 21 determines, *inter alia*, as follows:

'(1) For the purposes of determining means, in respect of social assistance, except for a grant in-aid and the foster child grant, the income of the applicant is deemed to be the annual income for an applicant not in a spousal relationship, or half the annual income of the applicant and his or her spouse, where the applicant is in a spousal relationship, and **'income'** means-

- (a) any compensation payable to an applicant or his or her spouse in cash or otherwise;
- (b) . . .
- (c) any payment which an applicant or his or her spouse receives from a trust or inheritance or as an employee;
- (d) . . . ' [My emphasis]'

[132] From the totality of the above-mentioned Regulations it is in my view evident that once the plaintiff receives the compensation for her loss of future income in this matter, she will no longer qualify for a disability grant since her 'means' will 'disqualify' her when the 'financial criteria' in Annexure A to the Regulations is applied, read in conjunction with Regulation 21. It will be considered that she can support herself and she will no longer be eligible for a disability grant.

[133] The Regulations make provision for the right of the South African Social Security Agency ('the Agency') to review social assistance and to suspend, increase or decrease the amount of social assistance. Regulation 30(2)(a) determines as follows;

'(2) The Agency must review social assistance-

(a) at any time where it has reason to believe that changes in the beneficiary's financial circumstances may have occurred;'

[134] In addition Regulation 30(10)(a) specifically provides for the review of the social grant of a permanently disabled person 'where evidence exists that changes in the medical or financial circumstances' of such a person may have occurred.

[135] Regulation 33 determines that a financial institution, must, at the request of the Agency, furnish the Agency with information in respect of, *inter alia*, cash investments etc made in favour of an applicant (for a social grant). Regulation 1 provides for a wide definition of a 'financial institution'.

Conclusion on SASSA disability grant:

[136] Therefore, in my view, the disability grant which is currently being paid to the plaintiff is not to be deducted from the damages in respect of loss of income to be awarded to her, for two reasons.

1. Firstly, like with a foster child grant and a child support grant, a disability grant is paid to a person as a result of the Constitutional obligations of the state; it is not predicated on the commission of a delict which caused the disability of the person. Contrary thereto, in the instance of

the payment of damages by the Road Accident Fund of loss of income to a person, such compensation is paid since the Road Accident Fund 'steps into the shoes of the wrongdoer'. See *Coughlan*-judgment, *supra*.

2. Secondly, it is probable that the plaintiff will not qualify for and will therefore not be receiving a disability grant in future.

Trust to be established:

[137] It was indicated on behalf of the plaintiff that a Trust is to be established in favour of the plaintiff for purposes of administering the compensation which is to be paid to the plaintiff by the defendant in the present action.

[138] A suggested Draft Order was handed to me by Mr Mohono, which suggested Draft Order contains provisions, *inter alia*, in respect of the establishment of the said Trust. However, when reading paragraph 3 over to the subsequent paragraphs 3.1 to 3.3 thereof, they do not make sense. It seems that the intention may be that the plaintiff's attorney of record is to establish the Trust etc, but it is not worded that way. The Draft Order in respect of the loss of earnings referred to earlier with which I am to be approached in chambers once an updated calculation becomes available (paragraph 103, *supra*), is therefore to also contain all the applicable provisions in relation to the Trust to be established in favour of the plaintiff (paragraphs 3, 6, and 7 of the present suggested Draft Order).

Costs:

[139] There is no reason why costs should not follow the outcome of the case.

[140] In view of the totality of the facts to be considered in terms of Uniform Rule 67(A)(3)(b), as well as the facts and circumstances of the present matter, I consider scale A to be the appropriate scale for counsel's fees. Mr Mohono also indicated accordingly in the suggested Draft Order.

Order:

[141] The following order is made:

1. The defendant is liable to pay 100% of the plaintiff's proven or agreed damages.
2. The defendant shall furnish the plaintiff within 180 (one hundred and eighty) days of date of this order 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% of the costs of future accommodation of the plaintiff in a hospital and/or nursing home or the treatment of or rendering of services to her or the supplying of goods to her arising out of the injuries sustained by her in the motor vehicle collision which occurred on 28 February 2014, after such costs have been incurred and submission of proof thereof.
3. The defendant is ordered to pay the plaintiff the amount of R1 800 000.00 as general damages, which amount is to be paid into the Trust account of the plaintiff's attorneys, Mavuya Inc, account no. 6[...], held at First National Bank, pending the establishment of a trust in favour of the plaintiff.
4. The defendant is ordered to pay the plaintiff loss of earnings in the amount yet to be calculated, which calculation is to make provision for a contingency deduction of 20%.
5. The plaintiff's attorney of record is ordered to forthwith request the actuary to prepare an updated actuarial calculation in respect of the plaintiff's loss of earnings on the basis as set out in the actuarial report and with a contingency deduction of 20%, calculated as at 1 March 2025.
6. Leave is granted to the plaintiff to approach Van Zyl, J in chambers with a Draft Order once the aforesaid calculation is received to obtain a further order for the payment by the defendant to the plaintiff in the amount calculated accordingly.

7. The aforesaid Draft Order must also contain all the applicable provisions in relation to the Trust to be established in favour of the plaintiff.

8. The defendant shall pay the plaintiff's taxed or agreed party and party costs, which costs shall include, but not be limited to, the following:

8.1 The reasonable qualifying fees of the following experts:

8.1.1 Dr JT Seritsane (Orthopaedic Surgeon);

8.1.2 Dr J Swartzberg (Diagnostic Radiologist);

8.1.3 Dr TO Sadiki (Neurosurgeon)

8.1.4 Dr J van Heerden (Urologist);

8.1.5 Mr T Siweya (Clinical Psychologist);

8.1.6 Ms Moyo (Educational Psychologist);

8.1.7 Ms L Delport (Occupational Therapist);

8.1.8 Ms S van Jaarsveld (Industrial Psychologist); and

8.1.9 Mr JCC Sauer (Johan Sauer Actuaries)

8.2 Counsel's fees, including, but not limited to, the costs of the drafting of heads of argument, to be taxed on scale A.

8.3 The aforesaid costs are also to include the additional costs for obtaining the newly calculated and updated report from the actuary as well as any consequential costs incurred in order for it to be made an order of court.

C. VAN ZYL, J

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No appearance

