



Reportable:	Yes/No
Circulate to Judges:	Yes/No
Circulate to Magistrates:	Yes/No

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO.: 2036/2014
Date heard: 08-08-2023
Date delivered: 08-03-2025

In the matter between:

BRENDON VAN WYK

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

CORAM: WILLIAMS J:

JUDGMENT

WILLIAMS J:

1. The plaintiff, Mr Brendon Van Wyk, was 12 years old on 6 May 2006, when a motor vehicle collided with the bicycle he was a passenger on. As a result of the collision the plaintiff sustained the following injuries: a head injury with a GCS score of 10/15; a fracture of the left humerus; and an abrasion of the left gluteal area.
2. The defendant, the Road Accident Fund, conceded the merits 100% and the trial on quantum entailed the determination of the plaintiff's claims for past and future loss of earning alternatively earning capacity and general damages.

3. It is not in dispute that the plaintiff suffered at least a moderately severe head injury as a result of the collision. He spent 9 days in hospital before being discharged on 15 May 2006. At the time of the accident he was a Grade 5 learner.

Evidence

4. The following witnesses testified on behalf of the plaintiff: Ms Mignon Coetzee, a clinical psychologist; Ms Karin Trollip, an educational psychologist; Dr Everd Jacobs, an industrial psychologist; and Mr Wim Loots, an actuary. The defendant admitted the plaintiff's expert reports of the orthopaedic surgeon, Dr M Scher and the neurosurgeon, Dr S Parker. The plaintiff did not testify.
5. Ms Coetzee was requested to report on the nature, extent and severity of any psychological and/or neuro-psychological sequelae arising from the injuries sustained in the accident.
6. Ms Coetzee interviewed the plaintiff and his mother Ms Lena Van Wyk on 1 April 2021, some 15 years after the collision. The plaintiff was 27 years old at the time and in full-time employ at Pick n Pay, Postmasburg.
7. She was informed by the plaintiff's mother that he was only enrolled in Grade 1 at the age of 8 and successfully completed Grades 1 to 4 when the accident occurred in his Grade 5 year. Thereafter he failed his grades several times but managed to complete Grade 11. He discontinued his schooling during his grade 12 year.
8. Ms Van Wyk reported that the plaintiff had difficulty in sleeping and suffered from severe headaches after the accident. He had frequent nose bleeds and could not handle heat. He was more sedate and less playful and it was clear that he was not coping well at school. He had difficulty concentrating for long periods and was slower at learning. The plaintiff has become forgetful since the accident and becomes non-responsive during a conversation or activity, which Ms Van Wyk described as "*disappearing*".

9. The plaintiff reported that he still suffered from nose bleeds and headaches, though less frequently. His headaches are triggered by fatigue, loud noises and heat. He still experienced difficulty in concentrating for long periods and was forgetful.
10. Ms Coetzee conducted a neuropsychological assessment of the plaintiff which incorporated a cognitive profile and evaluations of attention, memory, perception, language and executive functions.
11. She found, based on her testing and the impression the plaintiff made during spontaneous conversation, that he is of average innate intelligence. That his verbal ability still reflects this but that other areas of his neurocognitive functioning suggest areas of relative weakness. His non-verbal perceptual organisation skills were much weaker than his verbal skills. The discrepancy would correspond with right-sided brain trauma.
12. Two primary areas of concern were identified during assessment. Firstly, the plaintiff's attention system was compromised. He had restricted mental stamina and at times presented with marked lapses in attention that had a quality of petit mal seizures, which resulted in fluctuations in performances and at times a major drop in output. Secondly, his memory showed a marked deficit, specifically retention and retrieval of information after a time delay. His capacity to encode new learning was sluggish and easily disrupted through interference by a competing stimulus and the passing of time. His incidental recall was poor.
13. Ms Coetzee obtained further collateral information from a Mr JC Le Roux, the manager at the Pick n Pay where the plaintiff was employed as well as from Mr Piet Gaotsenwe, the plaintiff's direct supervisor. Mr Le Roux reported that the plaintiff was a hard worker but sometimes complains about lower back pain. He needs instructions to be repeated, then often returns to check whether he has understood correctly. He is extremely forgetful.

and cannot be given more than one instruction at a time. His memory is a major problem. Mr Gaotsenwe reported that while the plaintiff was a willing and committed employee he is extremely forgetful. The plaintiff worked as a stripper (making meat cuts) in the store's butchery and often forgets instructions and does not retain new skills. He would often make mistakes even after being trained multiple times. He has made many expensive mistakes since he started working in the butchery section in June 2020. Prior to that he worked in the storeroom and deli where he presented with the same problems.

14. As far as implications for his education and career are concerned, the plaintiff experiences ongoing physical challenges (back pains, which Ms Coetzee was not able to connect to the accident), noise sensitivity, head aches and possible epilepsy, as well as neurocognitive compromises on a daily basis. He persevered through his scholastic career and has made an effort to maintain stable employment. This entails enormous effort and he has not been able to meet the standards set by his employer. In her view the plaintiff is in a vulnerable position regarding job security.
15. In the opinion of Ms Coetzee, had the accident not happened, the plaintiff would have been capable of matriculating and attaining a tertiary, most likely skills-based, qualification. The plaintiff's neuropsychological deficits are fully in accordance with the traumatic brain injury he sustained in the accident. These deficits are permanent and irreversible.
16. Ms Coetzee conceded that she had not been placed in possession of the plaintiff's school reports in order to determine his pre-morbid educational ability, but denied that she only depended on Ms Van Wyk's say-so. She had also based her opinion on her neuro-psychological testing and the plaintiff's verbal ability.
17. Ms Trollip conducted her assessment of the plaintiff on 31 January 2023. She was requested to give an opinion on the plaintiff's educational functioning, potential and needs before and after the accident.

18. Ms Trollip had also consulted with Ms Van Wyk, plaintiff's mother, had sight of the other expert reports filed and had obtained the school reports of the plaintiff from Grade 8 to Grade 12 and certificates relating to his employment thereafter.
19. At the time of Ms Trollip's assessment of the plaintiff he was 29 years old and the father of a baby boy. He had also by that time been dismissed from Pick n Pay because, according to him, he had taken an afternoon off without permission because his baby was sick. He thereafter worked at Schoeman's Butchery from February to November 2022. He left that employment due to low wages. From December 2022 to date of the assessment the plaintiff had been working as a blockman in the butchery of Jimbo's.
20. The plaintiff and his mother conveyed to Ms Trollip the same complaints which they related to Ms Coetzee. I do not intend to repeat it.
21. Ms Trollip was also informed by Ms Van Wyk that the plaintiff had passed all his grades before the accident and that he experienced difficulties with his school work thereafter. According to the information supplied by Ms Van Wyk, the plaintiff was promoted to Grade 6, at the end of 2006, the year the accident occurred. At the end of 2007 he was then promoted to Grade 7, which he failed in 2008. He repeated Grade 7 in 2009 and was promoted to Grade 8 at the end of that year. Ms Trollip was in possession of a letter from the primary school manager, dated 14 October 2008, which stated that the plaintiff was a learner at the Postdene Primary School from 2002 and that he was in Grade 7 during 2008.
22. The plaintiff started his high school career during 2010. Ms Trollip had been supplied with the relevant school reports. At the end of 2010 the plaintiff was promoted to Grade 9. He failed Grade 9 in 2011 and repeated the grade in 2012. At the end of 2012 he was promoted to Grade 10. The plaintiff failed Grade 10 in 2013 and repeated it in 2014. He failed Grade 10 again in 2024 and repeated it in 2015 and passed on his third attempt at

Grade 10 at the end of 2015. He started Grade 11 in 2016 and failed at the end of that year. He repeated Grade 11 during 2017 and was progressed to the next grade although his report showed that he did not pass on merit but was “*bevorder*” (promoted). The plaintiff was in Grade 12 during 2018 but failed at the end of that year. He attempted Grade 12 again during 2019 but did not complete it. Ms Trollip was in possession of a letter from the high school manager which stated that the plaintiff had been a learner at the Blinkklip High school from January 2010 to December 2019.

23. Ms Trollip testified that the school reports of the plaintiff which she had sight of correlated with the information she had received from the plaintiff and his mother. The plaintiff had spent 5 more years at high school than the average learner and had been considered to be an over-age learner. He started working at Saverite (now Pick n Pay) at the end of 2019. A certificate welcoming him to the supermarket was also made available to Ms Trollip.
24. Ms Trollip performed various tests on the plaintiff: an IQ test; scholastic functioning test; and a socio-emotional assessment.

24.1 The IQ test consisted of observation, visual–motor integration and cognitive functioning. The plaintiff’s composite scores ranged between 73 and 100, which indicated scatter, indicative of attention, concentration and learning difficulties.

24.1.1 The plaintiff’s highest score was obtained for processing speed, which at 100 was in the average range.

24.1.2 His weakest score achieved was 73 for working memory, which score lies in the borderline range.

24.1.3 His composite verbal score was 79 – within the borderline range. Generally the verbal scores ranged between average, average (low), low average and borderline. The borderline score was obtained in

the information test where he was unable to maintain and sustain mental control, energy and recall general knowledge from memory. He obtained a borderline cognitively handicapped score, illustrating his difficulty with memory retrieval.

24.1.4 The plaintiffs three highest scores in the cognitive profile post-accident were in the average range, indicative of average cognitive functioning and ability pre-accident.

24.1.5 Because the plaintiff's working memory is in the borderline range, he cannot multitask and cannot think on his feet. But because he is average in other spheres, more would be expected from him, which he would not be able to cope with, creating the impression of laziness.

24.2 As far as the plaintiff's scholastic achievement test is concerned, he was quite good at basic reading skills although his reading comprehension was average to good.

24.2.1 His spelling was good.

24.2.2 His mathematics was below expectation, although he was not given complex problems. His difficulties with attention, concentrating and mental speed plays a role in the low scores obtained.

24.3 The socio-economic functioning and behaviour test showed that the plaintiff is mostly happy and feels good about himself. He manages positive relationships with his family and others. He has always aspired to do greater things but gets nervous when faced with new situations and challenges. He experiences frustration when he does not get around to do everything he has to do and wishes to have more time in the day.

25. Ms Trollip postulated two pre-accident training scenarios for the plaintiff. Firstly, completing a tertiary qualification, such as a certificate (NQF5) level of educational training in a field of his choice, probably as an artisan. Secondly, if he left school with an NQF4 level and entered the work arena, he would have benefited from work-related skills training.
26. Post-accident, Ms Trollip is of the opinion that the plaintiff will probably always need to work under supervision, under a sympathetic employer, as his neurocognitive and neuropsychological difficulties and deficits will render him unfit to work independently without hazard. He has been rendered a vulnerable individual and learner by the accident-related injuries and its sequelae.
27. Dr Jacobs compiled 3 reports, dated September 2017, April 2021 and April 2023. When his first report was compiled Dr Jacobs had the report of the orthopaedic surgeon, Dr M Scher and that of the occupational therapist, Ms B Crouse. At the time Dr Scher reported that there were no significant sequelae nor future treatment consequent to the accident related musculoskeletal injuries anticipated. An assessment relating to the plaintiff's brain injury had not been conducted yet. Dr Jacobs made no recommendations in his first report.
28. When Dr Jacobs compiled his second report he had sight of two more expert reports, that of Dr S Parker, neurosurgeon and the clinical psychologist, Ms Coetzee. Dr Jacobs second report made recommendations for loss based on the further reports received.
29. The third report of Dr Jacobs encapsulated his final recommendation after the report of the educational psychologist, Ms Trollip, had been received.

30. Based on all the reports in his possession and two interviews with the plaintiff during 2016 and 2021, the following recommendations and opinions were made by Dr Jacob:
- 30.1 That the plaintiff's earning capacity in this uninjured state be considered on an NQF level 5 (grade 12 plus 1 year certificate), from age 21 until retirement at age 63 years.
- 30.2 As far as the plaintiff's future injured career was concerned Dr Jacobs had been informed by the plaintiff that he earned a basic salary of R3 999, 00 and with overtime R4 900, 00 per month at Pick n Pay during 2021.
- 30.3 The plaintiff is left post-accident with an NQF 3 with no merit and will not be able to gain further education. He is currently an unskilled worker.
- 30.4 The plaintiff is a vulnerable employee in the labour market and his employment is merely sympathetic in nature and he could lose it at any time.
- 30.5 He will not progress beyond his current capacity of earning R58 800, 00 per year in 2021 (R4 900, 00 x 12). Calculations should be considered on this income from May 2023 to January 2057, when the plaintiff attains 63 years of age.
- 30.6 Lengthy periods of unemployment and the risk of losing his job could be compensated with considerably higher contingencies on the plaintiff's post-morbid earnings.
31. The actuary, Mr Wim Loots, based his final report on the information obtained from the final report of Dr Jacobs. The plaintiff's projected pre-accident earnings were calculated from January 2015 based on Grade 12 plus a certificate from early career stage to late career stage, on the median quartile as per Stats SA 2023 until 63 years of age in 2057. The plaintiff's

post-accident earnings were based on his earnings at Pick n Pay (with overtime) from 1 December 2019 until retirement in 2057. The usual actuarial assumptions such as mortality, taxation and inflation were taken into account and the plaintiff's total loss of earnings as at 17 April 2023 amounted to R3 971 057, 00.

32. No contingencies were applied to the calculations.
33. The defendant did not call any witnesses on its behalf.

Arguments/Discussion

34. With regard to the issue of general damages, Mr Van Tonder, who appeared for the plaintiff contended that the expert witnesses have established a moderate to severe brain injury and that the evidence of Ms Coetzee and Ms Trollip is in accordance with such an injury and its sequelae. Their assessments confirmed pre-accident potential with a conservative rating of average. The plaintiff's difficulties have originated after the accident. Mr Van Tonder contended that general damages in the amount of R800 000, 00 as claimed in the amended particulars of claim would be a fair award. He referred to the matters of *Tobias v RAF* 2010 (vi) QoD B 4065 and *Mohale v RAF* 2015 (7A4) QoD15, in support of the general damages claimed.
35. Mr Mogano, on the other hand, based his argument with regard to general damages on the report of Dr Parker and to some extent that of Dr Scher. I do not intend to deal any more with the report of Dr Scher other than what is stated in paragraph 27 herein because the plaintiff is not relying on the orthopaedic injuries sustained for his general damages claim.
36. Dr Parker consulted with the plaintiff and his mother on 29 January 2013, 6½ years after the accident, at which stage the plaintiff was 19 years old. The report is however dated 30 March 2021, 7 years after the consultation.

Dr Parker appears to have had in his possession *inter alia* the MMF1 form, a referral letter by a doctor from Postmasburg, the plaintiff's Kimberley Hospital clinical notes as well as various school reports from the Postdene Primary School.

37. From the MMF1 form Dr Parker gleaned that the doctor who had seen the plaintiff on the day of the accident coded his head and upper injuries as "severe" and the lower limb injuries as "minor". The plaintiff had a head injury with a GCS of 10/15 with intracranial bleeding.
38. The referral letter from Postmasburg Hospital noted the plaintiff's head injury as "*subdural on the right*".
39. The Kimberley Hospital notes consisted of one page, basically a summary with not much detail. The plaintiff's GCS was 10/15 with pupils equal and reacting to light. A CT scan of the brain had shown no intracranial bleed, neither any subdural or extradural haematoma. The plaintiff was discharged on 15 May 2006 and was clinically stable at the time.
Dr Parker bemoaned the fact he did not have the plaintiff's original file and that he had to complete his report on the basis of what he had.
40. Dr Parker's clinical examination of the plaintiff showed nothing abnormal except for accident-related scarring – his cerebellar (motor function) system revealed excellent function. From his consultations with the plaintiff Dr Parker noted that the plaintiff could not remember his hospitalization which would suggest that he suffered a post-traumatic amnesia period of at least 9 days, which would place his head injury in the "severe" category. Although the doctor noted that he did not depend entirely on PTA for assessing the severity of a head injury. More important for such an assessment would be information on sequential GCS that the plaintiff had on a day to day basis, which Dr Parker did not have.

41. The plaintiff mentioned to Dr Parker that he had no problems currently, that he failed the year of the accident because he could not concentrate well. His mother mentioned that he had improved since then. At the time the plaintiff was in Grade 10 and had mentioned that he had failed Grade 9. On asking why he failed, the plaintiff said that he did not study for the exams.
42. Dr Parker was of the opinion that the plaintiff had no neuropsychological problems. He was however certain that the plaintiff suffered neurocognitive problems as he had failed at school twice at the time of the consultation and recommended that the plaintiff be fully evaluated by a neuropsychologist.
43. The argument by Mr Mogano was that since Dr Parker's report evinced a head injury without any sequelae an award of about R500 000, 00 would be appropriate for general damages.
44. It would however not be correct, in my view, to state that Dr Parker's report indicates no sequelae to the plaintiff's head injury. He did not have the plaintiffs' complete hospital notes, he did not have other expert reports, he did not have the full scholastic history of the plaintiff, but was nevertheless certain that the plaintiff had suffered neurocognitive problems and recommended evaluation by a neuropsychologist.
45. Ms Coetzee and Ms Trollip who interacted with the plaintiff at a later stage in his life presented a more complete picture of the sequelae of the head injury. Ms Coetzee's finding, upon assessment of the plaintiff, that his verbal ability reflects and is evident of average innate intelligence was not challenged by the defendant. Ms Trollip's finding of scatter in the composite and scale scores in the cognitive assessment of the plaintiff, and it being indicative of average cognitive ability in the pre-accident scenario, was likewise also not challenged by the defendant. I have to accept in these circumstances that the plaintiff was of average cognitive ability before the

accident and that the head injury had left him with neurocognitive and neuropsychological sequelae as testified to by Ms Coetzee and Ms Trollip.

46. That being said, previous comparable cases serve as a useful guideline in determining an appropriate award for general damages. It nevertheless remains a guideline as each case should be determined on its own peculiar facts.
47. In the *Mohale* matter *supra*, which was incidentally also referred to by Mr Mogano for the defendant, the plaintiff was a 10 year old girl when the accident occurred. She suffered a moderately severe brain injury with sequelae being: headaches; back and neck pain; poor concentration and memory; poor performance at school; and permanent behavioural, neuro-cognitive and psychiatric changes. She was considered unemployable. The award for general damages in 2014 was R650 000, 00 (current value R1 075, 000, 00).
48. In the *Tobias* matter *supra*, the plaintiff incurred a brain injury of moderate severity. He also suffered serious orthopaedic injuries which required future surgery in the form of intra-medullary nailing and bone grafting as well as a total knee replacement. The plaintiff was 37 years old at the time of trial and had completed Grade 9 at school whereafter he did a 2 year apprenticeship as fitter and turner but did not obtain the formal qualification. His brain injury left him with neurocognitive and neuropsychologic deficits associated with poor memory and concentration, word retrieval difficulty, moodswings, inappropriate behaviour and depression. The extent of his orthopaedic injuries would most likely compel him to a sedentary existence. Compensation was awarded for general damages in the amount of R450 000, 00 (current value R926 000, 00).
49. Whilst it is clear that the injuries and sequelae in the *Tobias* matter and the sequelae in the *Mohale* matter are more severe than in the present matter,

there can be no doubt that the nature and sequelae of the plaintiff's brain injury have limited his quality of life. He suffers from permanent neurocognitive and neuropsychological impairment. His career prospects have been limited and his ability to learn new skills have been compromised. In my view an award of R750 000,00 would be fair compensation for general damages.

50. With regard to the plaintiff's loss of earnings claim, the argument for the defendant is that firstly; without the evidence of the plaintiff and his mother the evidence of the expert witnesses that the plaintiff was of average intellectual ability and passed all his grades pre-accident is hearsay. The plaintiff has therefore failed to place any admissible evidence before court to prove the causal link between the brain injury sustained and his loss of earning capacity; secondly, that the difficulties the plaintiff have experienced in the workplace, in the absence of evidence from his employer, is also hearsay; and thirdly, that no salary advices or any other proof of income have been discovered or even provided to Dr Jacobs and that the information provided for the actuarial calculations was therefore also based on hearsay. In short the argument is that there is no factual evidence to support the expert witnesses' conclusions that the plaintiff has suffered a loss of earning capacity or loss of earnings as a result of his injury sustained in the accident. Mr Mogano relied on the matters of *RAF v Madikane* [2019] JOL 45495 (SCA) and *Mphunyetsane v RAF* [2019] JOL 46051 (FB), for his contentions.
51. The alternative argument on behalf of the defendant is that due to the lack of corroborative evidence, higher contingencies be applied (35 % to 45 %) to the plaintiffs pre-morbid past and future loss of earnings as was done in *RAF v Kerridge* [2018] JOL4 0588 (SCA).
52. Mr Van Tonder for the plaintiff, argued that there is no basis for the court not to rely on the evidence of the expert witnesses. Ms Coetzee and Ms

Trollip are in accordance that the plaintiff was of average intellect pre-accident, a finding which is consistent with their assessments, and which is a conservative rating. That their provision for plaintiff's achieving a QFN5 level of education pre-accident was also conservative. In addition the defendant has called no expert witnesses to prove the contrary. It was submitted that the defendant should have called for the discovery of proof of salary from the plaintiff, if such was required and not wait until argument to raise such issues. In any event the argument is that the plaintiff's salary details provided to Dr Jacobs and subsequently Mr Loots have been capped at R58 800, 00 per annum as in 2021, until age 63 since Dr Jacobs was of the opinion that the plaintiff would not progress beyond this earning capacity. There can therefore be no question of overreaching as far as the plaintiff's claim for loss of earnings is concerned.

53. Mr Van Tonder argued that the contingencies applied should reflect the conservative career path postulated by the experts pre-accident and the fact that the plaintiff will not progress and will only be employed intermittently post-accident.
54. I have already dealt with the findings of Ms Coetzee and Ms Trollip as to the plaintiff's pre-accident cognitive ability which were based on their assessments of the plaintiff and not merely on the hearsay evidence of his mother. In addition Ms Trollip was in possession of a letter from the primary school manager, which confirmed that the plaintiff started school a year late in 2002. To have been in Grade 5 at the time of the accident in 2006 is indicative of the fact that he had not failed a grade pre-accident. The argument that the plaintiff's pre-accident cognitive ability is based only on hearsay, has no merit in my view.
55. The plaintiff's assumed career development pre-accident (NQF 5), as proffered by the experts appear to be reasonable, based on his tenacity and perseverance in attempting to complete his high school education despite

his difficulties. There can in my view be no doubt that the brain injury has caused the plaintiff to suffer a loss of earning capacity.

56. The situation *in casu* is different from that in *Madikane* where the claimant who was 12 years old at the time of the accident suffered a mild brain injury and proceeded to complete his matric with five distinctions and achieved two distinctions in his first year of studying Actuarial Science. The SCA found that the subsequent decline in Madikane's university results had not been shown to be a result of his brain injury incurred many years prior. The failure of Madikane or his mother to give evidence in relation to his present condition left a deficit in his case and that he had failed to prove the causal link between the brain injury and his present problem.
57. The present case also differs from that of *Mphunyetsane*. In that matter the plaintiff had worked in the informal sector as a hawker pre-accident. He did have a bank account but failed to provide bank statements to prove that he indeed earned the amount he claimed to have done. The court found that the information before it was insufficient to help estimate the plaintiff's past loss of income and future loss of earnings.
58. *In casu* it is not in dispute that the plaintiff has managed to obtain employment after leaving school. The type of work he is confined to is also not in dispute. Dr Jacobs testified that the plaintiff is currently in essence an unskilled worker. Based on the evidence of Ms Coetzee and Ms Trollip, the plaintiff will not be able to acquire new skills. The information given to Dr Jacobs regarding the plaintiff's current income, though hearsay, is in conformity with the salary of an unskilled worker. In the absence of any evidence to the contrary, there is no reason why I should not rely on the figures submitted to Mr Loots and his actuarial calculations based thereon.
59. The only issue left with regard to the claim for loss of earnings is the contingencies which should be applied. Given the fact that the plaintiff was

only 12 years of age when the accident occurred he has a greater chance of being subjected to the vicissitudes of life. His assumed career path at an NQF level 5 would also put the plaintiff at greater risk of periods of unemployment. Taking these factors into account I am of the view that a contingency deduction of 25% should be applied to his pre-accident earnings. A contingency deduction of 20% to his post-accident earnings would in all the circumstance be reasonable.

60. The plaintiff's damages can thus be quantified as follows:

General damages – R750, 000.00

Pre-accident earnings	R5 613 777
Less 25%	<u>R1 403 444</u>
	R4 210 333
Post-accident los of earnings	R1 642 720
Less 20%	<u>R328 544</u>
	R1 314 176
	R4 210 333 less R1 314 176
Total loss of earnings -	R2 896 157

61. With regards to costs there is no reason why plaintiff should not be entitled to his costs including the qualifying costs of his experts.

The following order is made:

- The defendant is to pay the plaintiff the sum of R3 646, 157, 00 (three million six hundred and forty six thousand one hundred and fifty seven Rand), the capital amount, made up as follows:**
General damages: R750 000, 00

Loss of earnings: R2 896 157, 00 (Two million eight hundred and ninety six thousand one hundred and fifty seven Rand)

2. The defendant is to provide an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, No 56 of 1996 (*"The Undertaking"*), to compensate the plaintiff for 100% of the costs arising from the collision which occurred on the 6th day of May 2006 relating to the future accommodation of the plaintiff in a hospital or nursing home, or treatment of, or rendering of a service, or supplying of goods to plaintiff, after the costs have been incurred and on proof thereof.

3. The defendant is to pay plaintiff's taxed or agreed costs on the High Court scale as between party-and-party, including for the sake of clarity but not limited to, the costs as further set out hereunder:

3.1 Plaintiff's taxed or agreed costs incurred after date hereof attendant upon obtaining payment of the capital amount referred to in paragraph 1 above and/or any costs incurred in finalising the matter after date hereof;

3.2 The reasonable qualifying fees of the experts listed hereinbelow ("the experts"), as taxed or agreed, including the costs attached to the procurement of such medico-legal reports, the costs of X-rays, if applicable and on proof thereof and subject to the taxing master's discretion. The reasonable costs also include the costs to the plaintiff of attending all medico-legal examinations, travelling, accommodation, and food, subject to the taxing master's discretion;

3.2.1 Dr Scher, Orthopaedic surgeon;

3.2.2 Dr Parker, Neurosurgeon;

3.2.3 Benita Crouse, Occupational therapist;

3.2.4 Mignon Coetzee, Clinical and neuropsychologist;

3.2.5 Karin Trollip, Educational psychologist;

3.2.6 Everd Jacobs, Industrial psychologist;

3.2.7 Wim Loots Actuaries

3.3 The taxed or agreed fees of plaintiff's Counsel in accordance with the High Court tariff;

4. In the event that costs are not agreed, the plaintiff will be entitled to have the costs provided for in the Order taxed by the Taxing Master of the Northern Cape Division of the High Court and the plaintiff shall serve a Notice of Taxation on the defendant's attorneys of record.

4.1 The plaintiff shall allow the defendant 21 (twenty one) court days to make payment of the taxed costs.

5. The payment provisions in respect of the foregoing as follows:

5.1 Payment of the full capital sum set out in paragraph 1 above, shall be paid by electronic transfer directly into the plaintiff's attorneys' Trust account, details to be supplied by P Joubert Inc.

5.2 Payment of the taxed or agreed costs shall be paid within 21 (twenty one) court days of agreement or taxation ("*the due date*") and shall likewise be effected by electronic transfer to the plaintiffs' attorneys Trust account.

5.3 The plaintiff will not authorise and issue a warrant of execution against the defendant for non payment before the expiry of the 21 (twenty one) court days.

5.4 Interest will start running from 22 (twenty two) court days of this court order at the current prescribed statutory rate.



CC WILLIAMS

JUDGE

For Plaintiff:

Adv A Van Tonder
P Joubert Inc

For Defendant:

Mr M A Mogano
Office of the State Attorney