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

Reportable
Case no:20298/2013

In the matter between:

J[…] S[…] D[…] on behalf of
L[…] D[…] **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

Coram: BHOOPCHAND AJ
Heard: On the papers, scheduled date: 22 April 2025,
Arguments finalised on 15 May 2025
Delivered: 19 May 2025

Summary: Damages action, unresolved head of damages for loss of earning capacity of a minor. The requisite evidence, expert support, and differences in the proof of organic and functional brain damage. The considerations involved in deciding an action proceeding on the papers- refining the case management process before certifying trial readiness - limiting and narrowing issues for trial. Loss of earning capacity and contingencies applied if earnings projections are inappropriate.

JUDGMENT

Bhoopchand AJ:

[1] The parties referred the claim for loss of earning capacity for adjudication, having settled the liability issue, general damages, and medical expenses. The minor, L[…] D[…], was born on 6 May 2008. He is 17 years old. The minor was involved in an accident on 12 May 2012. He was a pedestrian. Thirteen years have elapsed since the accident which occurred when the minor was 4 years old.

[2] The Plaintiff's particulars of claim describe the minor's injuries as 'facial injuries'. Although the Plaintiff amended her particulars of claim, no amendments were sought to amplify the nature of the injuries sustained by the minor or the sequelae thereof. Notably, there is no reference to either a Traumatic Brain Injury (TBI) or post-traumatic stress disorder (PTSD), the significance of which will become evident.

[3] By agreement between the parties, the relevant expert reports were supported by affidavits and the unresolved claim for loss of earning capacity was submitted for determination on the papers. The Plaintiff presented the expert reports of an Orthopaedic Surgeon, two psychiatrists, a clinical psychologist, a speech therapist, an Industrial Psychologist, and an Actuary. The Defendant presented the expert reports of a Psychiatrist, an Educational Psychologist, an Occupational Therapist, and an Industrial Psychologist. The Psychiatrists and the Industrial Psychologists provided joint minutes.

[4] The clinical notes relating to the minor's hospital visit after the accident were not included in the trial bundle. The Court cannot emphasise enough how important the hospital admission notes are to determining liability and damages arising in personal injury cases. The ambulance report and a careful selection of the admission notes after an accident provide the Court with the first assessment of injuries

sustained in the damage-causing event. These documents provide a history of the injury, the medical examination details, and the diagnosis in the acute phase. Expert opinion is valuable in assessing the acute and chronic sequelae of injuries sustained.

[5] In this case, the Plaintiff relies primarily upon a brain injury, but did not instruct a Neurologist or Neurosurgeon to provide an expert report on the neurophysical injury. Neither do the amended particulars of claim allude to these injuries. The Defendant was alive to this omission. Still, it fared no better in its selection of experts, opting to appoint a Psychiatrist, an Educational Psychologist, an Occupational Therapist and an Industrial Psychologist. Yet, all experts across the board allude to the minor suffering a head injury, at least, and a psychological injury.

[6] The Plaintiff filed the report of an Orthopaedic Surgeon dated 3 February 2014, which is the earliest report The expert dealt with the serious injury assessment required by the Road Accident Fund Act 56 of 1996 to determine if the claim qualified for general damages The Orthopaedic Surgeon stated that the local hospital had made a diagnosis of a possible head injury and regretted that a CT scan of the brain was not done. There is a reference to the clinical notes, which are not part of the trial bundle, which suggests that the minor presented with a frontal haematoma. The Orthopaedic Surgeon concluded that the minor presented with mechanical neck pain in the posterior cervical area, which radiated to the interscapular region, arising from a hyperextension injury. The Orthopod expected the minor's mechanical neck pain to recover completely. Although the serious injury assessment report enquires about X-rays and CT scans, there is no evidence that any were done. Neither did the Plaintiff's legal representatives take the cue and appoint the relevant neurophysical experts.

[7] The Plaintiff submitted two reports by Psychiatrists, the first dated 5 May 2015 and the second 5 October 2024. The earlier report also contains a serious injury assessment. It refers to the minor's father. It states that the father, who was 30 years old, received a disability grant for mental problems. The report states that the minor had symptoms of aggression and stressed behaviour indicative of PTSD in a child, and has much more conflict now. The expert concludes by saying that although the minor did not suffer any physical injuries of note, it would appear that he now has

PTSD. This is likely to change the trajectory of his life. Schooling troubles, relationship problems and in the longer term, physical and psychiatric problems are sequelae of PTSD in young children. The expert states that he thinks it would be fair to say that the minor has serious, long-term mental and behavioural disorder.

[8] The second Psychiatric report refers to the minor having suffered bruises to the face and hands, haematoma to the forehead, a possible brief loss of consciousness, soft tissue neck injury and bleeding from the ears. The source of this information is not disclosed. The Psychiatrist noted complaints of behavioural changes, including irritability and oppositional aggression, restless and disturbed sleep, enuresis and regression, slow progression at school, reading and communication problems, easily startled, fear when travelling, slower, and episodic behaviours. The minor had repeated grade 1 and had difficulties in grades 2 and 3. The Psychiatrist notes the previous diagnosis of PTSD.

[9] The second Psychiatrist noted that the minor was in grade 7 in 2023, but had not attended school in 2024 due to inadequate progress in the normal schooling stream. The minor could not read or write, but had developed practical skills. He breeds pigeons as a hobby and builds cages for the birds. He sells birds for pocket money and helps an uncle repair cars. He has played soccer.

[10] The psychiatric examination revealed that the minor presented with anxiety. He was small and immature, lacked self-confidence, and sought reassurance. He has poor concentration and his attention is easily distracted. The minor mispronounces words, and a hearing problem is evident. The minor was of low normal intelligence on clinical evaluation. The Psychiatrist diagnosed the minor with TBI with neurological and cognitive symptoms, PTSD, hearing impairment and headaches. The reference to neurological symptoms remained unexplained. The expert noted that learning difficulties were present from the school entry stage. The minor had not been placed in practical training.

[11] The Defendant-appointed Psychiatrist agreed that there was a possible head injury, and there were no areas of dispute between him and the Plaintiff-appointed Psychiatrist. He also completed a serious injury assessment report in which he

identified cognitive impairment and PTSD as his differential diagnosis. The expert noted that there was no family history of mental illness, contrary to the history obtained in the other reports. The minor repeated grade 7 thrice, and his family was advised to find an appropriate school for him to attend. He failed grades 2, 4 and 6. The expert noted that there were no reports documenting a head injury at the time of the accident. He referred to the Orthopaedic Surgeon's report and the description of neck pain, which could be related to a head injury.

[12] The Clinical Psychologist provided a Neuropsychological report. She had obtained a history of the minor suffering ear infections as an infant. He required surgical repair of the eardrum twice. The expert obtained clarity from the maternal grandmother about the minor's immediate post-accident state. She described him as being quiet for about ten minutes before he began crying hysterically and uncontrollably. The mother confirmed this report and added that the minor was discharged shortly after being assessed at the hospital. The minor has been wetting the bed since the accident, until a nighttime toilet schedule was introduced in 2017. He presented with a plethora of behavioural and cognitive difficulties and deficits. His full-scale IQ was in the low average range on testing, although some subtest scores were in the average range or higher.

[13] The expert commented that, on the available information, it seemed highly probable that the minor sustained a mild concussive head injury, following which he developed post-concussive syndrome. The expert described post-concussive syndrome in general terms and referred to research on its pattern of presentation in children under five years of age. Some symptoms are those experienced by adults, like headaches, but others are more unique to younger children, e.g., regression in toilet training and behavioural changes.

[14] The minor had achieved his normal developmental milestones before the accident and had not presented with any obvious neurodevelopmental or neuropsychological difficulties. The difficulties became pronounced once he began schooling. The attention and concentration testing revealed a variable response from normal to average. His complex or alternating attention or working memory, which allows the shifting of focus of attention when moving between tasks with different

cognitive requirements, revealed noticeable compromise. His motor functioning was average.

[15] Regarding speech and language, his receptive communication skills were an area of concern, especially when confronted with verbal information of greater volume or complexity. The minor had a fairly wide vocabulary but returned poor scores on testing. His visuo-perceptual and visuo-spatial information processing returned low average scores. The minor performed in the average to above average range on verbal memory testing and low average to average in visual memory testing. His executive functioning revealed impaired testing scores in the visual domain, but average to low-average scores in other areas of executive testing.

[16] The expert also elicited symptoms of PTSD, anxiety and reduced self-esteem. PTSD in minors progresses with behavioural changes over time. She found that the minor presented with a significant deficit in terms of attention, especially complex attention or working memory. The Clinical Psychologist commented that the minor had gradually developed symptoms of anxiety and reduced self-esteem, which negatively impacted his psychosocial development and his quality of life. The minor's trauma and anxiety, in conjunction with his reduced self-esteem, hamper his ability to engage in exploratory activities that form an integral part of any child's mastery of age-appropriate skills. His psychological problems interfere with his scholastic progress and compound his learning and attention difficulties.

[17] The Clinical Psychologist did not comment on whether the basket of psychological symptoms could have caused the neuropsychological deficits elicited on testing. She did say that the trauma left the minor more susceptible to mental disorders such as anxiety and depression in adulthood. The report is well-reasoned and supported by references to the relevant literature.

[18] The Speech Therapist found that the minor had relatively sound language skills but presented with specific and significant cognitive-communicative deficits, significant expressive and receptive communication impairments, and a failure to have acquired basic literacy. The deficits identified by the Speech Therapist included mispronunciations, word retrieval, initiation of cognitive-linguistic processes,

sustaining focussed auditory attention, complex attention, mental tracking, verbal working memory, organisation and planning thoughts, auditory attention, verbal selection attention, auditory attention processing and immediate recall of longer and more detailed auditory verbal information, gestalt processing, central auditory dysfunction and basic literacy and generation of novel written sentence difficulties. The minor's deficits manifested in compromised conversational skills both as a speaker and a listener within his daily socio-communicative interactions.

[19] The Speech Therapist found support for her findings in those of the Clinical Psychologist on the latter's neuropsychology assessment as far as attention, complex attention, and working memory were concerned. The Speech Therapist found it highly probable that the minor's cognitive-communicative deficits and expressive and receptive communication impairments, as well as his disturbances in the acquisition of basic literacy, are attributable to TBI sustained in the accident, which seems to have been missed. The expert explained why she considered the deficits to be accident-related and permanent. She suggested that the minor would have attained grade 12 and continued in tertiary education if the accident had not occurred. She believed that the minor would be best placed to pursue his education in a school of skills, as his post-accident educational opportunities are severely compromised and will translate into restricted future vocational opportunities. His speech impairments will further compromise him in any form of employment and in sustaining it. She concludes by saying that the minor is another case illustrating that a mild head injury does not necessarily imply a mild outcome.

[20] The Educational Psychologist appointed by the Defendant found that the minor's strengths were fluid reasoning, visual motor speed, construction skills, spatial reasoning, and visual memory. He struggled with English vocabulary. His visual abstract reasoning and auditory memory were his weaknesses. He had a variable processing speed. The minor met the criteria for a specific learning disorder with impairment in reading. His auditory memory was insufficient to support learning. He met the minimum requirements for PTSD.

[21] In assessing the minor's pre-accident potential. The expert noted that the minor was born in a milieu-impeded environment, but had attained his

developmental milestones appropriately. The father was unemployed and had a mental illness. He completed grade 10 and was a welder. The mother completed grade 12 and had a secure job as a general worker until she resigned. The minor's sister completed grade 12 and enrolled for a four-year teaching diploma. The minor's pre-accident potential was considered within the low average range. If not for the accident, the minor would have been selected to attend a school for learners with special needs, where he could have been accommodated until 18. After leaving school, he could have followed in his father's footsteps to become a welder and a respectable community citizen.

[22] Following an accident at a fragile age, the post-accident position is that a lack of intervention to address emotional and auditory delay, and his socio-economic background, clouded his pre-injury cognitive ability. The minor left school at grade 6. He is illiterate and has few skills to secure employment. He may obtain work as a labourer from a sympathetic employer. She concluded that the sequelae of the accident curtailed the minor's enjoyment of life, sociability, dignity, and potential to reach self-actualisation. He cannot go to a school where he is with peers competing in sports. He feels inferior and sees himself as worthless, and he will find it extremely challenging to reach self-actualisation. The expert considered the other expert reports in her conclusions about the minor. Her report was well-reasoned, and her conclusions were supported by sufficient literature.

[23] The Defendant appointed an Occupational Therapist, who provided a useful reference for the minor to seek a skills program to prepare him for employment once he turns 18. Chris Steytler Industries in the Stikland Industrial area offers a suitable work preparation program free of charge. It assists with learning about working, employers' expectations about employees, preparation and updating of curriculum vitae, job seeking and interviewing skills

EVALUATION OF THE EXPERT TESTIMONY RELATING TO THE MINOR'S INJURIES

[24] The Court has examined the psychiatric, psychological, speech and communicative, and educational expert reports in detail to emphasise certain

principles that emerge from the adjudication of this case. These opinions expressed in these reports inform the opinions of the Industrial Psychologists who are experts in projecting potential careers and earnings for the uninjured and injured scenarios.

[25] The Plaintiff's experts contend that the minor's claim for loss of earning capacity arises primarily from the sequelae of the TBI and, to a lesser extent, from the chronic PTSD attributable to the accident. The Plaintiff particularised the accident-related injury as 'facial injuries' and did not provide direct elaboration of that injury or its sequelae. The report of how the accident occurred was that a vehicle being attended to for ignition problems suddenly surged forward and knocked the minor. The narrative thereafter varies from the minor falling onto the ground to the minor landing on the vehicle's bonnet. The minor appeared to be shocked for about ten minutes before he began crying hysterically. He was taken to the hospital and discharged shortly thereafter with analgesia and creams to apply to his wounds. The hospital notes were not included in the trial bundle.

[26] Although there is a reference to a possible head injury, no CT scan, neurology referral, or a return assessment date is referred to. The Court would expect experts to deal with the ambulance report and the hospital notes to document how the accident occurred, the minor's level of consciousness, the tests performed, and the extent of the injuries sustained, or have the opportunity to scrutinise these notes for itself. The Court notes that the minor was conveyed by private transport to the hospital in this case. Yet, for the extent of the brain injuries attributable to the accident, a Court would expect that a CT scan would have been done on admission or later to exclude structural brain damage in circumstances where the sequelae are attributed to both general and local brain damage. The Plaintiff did not appoint neurophysical experts; neither a Neurologist nor a Neurosurgeon to provide expert opinion on any physical or structural brain injury. The Claimant who fails to attend to these basic preparatory principles risks being non-suited. In the absence of proof of organic injury, greater scrutiny of the claim of this nature is required. The proof of functional sequelae has to be sufficiently compelling to attribute it to brain damage arising from the injury-causing event.

[27] In these circumstances, it would neither be anticipated nor logical for the minor to have suffered a brain injury, even a TBI, let alone the florid and extensive sequelae that have been attributed to it. Yet, the Clinical Psychologist and Speech Therapist express sufficient security in their opinion that the cognitive fallout conveyed to them on the minor's history and from their testing and assessment is probably attributable to a TBI. They go further and explain that a mild TBI may have serious consequences. Neither suggested a referral to a Neurosurgeon or a Neurologist, the appropriate experts to deal with structural brain damage. The Defendant's submission that this opinion is absent is well taken.

[28] However, in the absence of proof of structural brain damage, a neuropsychological assessment, as was done by the Clinical Psychologist, supported by the findings of the Speech Therapist and Educational Psychologist, can provide valuable insights into functional brain impairment. The history of developmental milestones, like walking, talking, and toilet training being attained at the expected ages, assists in delineating a pre- and post-accident phase of the injury-causing event.

[29] The expert opinions need to be scrutinised to determine whether the claim is substantiated by reliable evidence. The evidence's reliability will require considering the expert's formal training, experience, and recognised credentials in the relevant field. An expert must demonstrate specialised knowledge beyond that of a layperson or general practitioner. Their opinions must be evaluated to determine whether they are based on scientifically accepted methods, peer-reviewed research, and logical reasoning. The Court may reject the opinion if the methodology is flawed or lacks empirical support. The expert's testimony must directly apply to the legal issues in dispute. Courts may reject opinions too speculative or outside the expert's domain.

[30] If confirmation of TBI is absent, a Court may question whether the impairments stem from TBI or another condition. In the latter respect, the experts identified a severe long-term mental disorder which has been presented as a parallel sequel of the accident.

[31] A differential diagnosis is required to determine whether the minor's cognitive deficits stem from TBI or PTSD. The Court also required guidance on whether the cognitive, communicative, executive dysfunction, attention and concentration deficits, identified in this case and attributed solely to TBI, could have been caused by the minor's PTSD or any of the other psychological ailments, like anxiety or depression. The problem, restated, is that of differentiating between functional and organic experts when it concerns brain injuries. Functional impairments refer to impairments that affect how the brain operates, and organic impairments occur from structural damage to brain tissue. Psychiatrists and Clinical Psychologists can diagnose PTSD, may suggest organic brain injury, but cannot confirm TBI without the expertise of a neurophysician.

[32] However, in this case, the circumstantial evidence is sufficiently overwhelming that the minor suffered a TBI in the accident. If multiple experts independently conclude that the minor exhibits neurocognitive and communicative deficits, the Court may consider this circumstantial evidence of TBI. If an expert's opinion contradicts established medical facts or other expert testimony, courts may question its reliability. The latter does not arise in this case. The three Psychiatrists agree on the diagnosis of PTSD. The Clinical Psychologist, Educational Psychologist, and Speech and Language Therapist tick the boxes identified in the previous paragraph. Their reports are supported by empirical evidence and sufficient literature.

[33] Adjudicating a case on the papers that lack the perspective of certain experts compounds the problem, which may be better suited for resolution with oral testimony and cross-examination. However, the parties agreed to the Court's suggestion that the unresolved claim for loss of earnings could be decided on the papers as supported by written argument. Every delictual case goes through the Rule 37A case management process. In matters involving claims for brain damages, it would be helpful if the parties and the case management Judge ensure that discovered documents like the ambulance report and a modicum of the hospital or clinical notes are included in the trial bundle. The parties should ensure that the appropriate experts support their cases premised upon structural brain damage. The latter goes to adequate, appropriate, knowledgeable, and meticulous preparation of cases presented to the Court for adjudication. In personal injury cases, practitioners

should be guided by their experts and case precedents to determine whether the claims are supported by the appropriate expertise or risk being unsuited.

[34] A matter should not be certified as trial-ready until the parties agree to a concise statement of the unresolved issues. Merely stating that the claim for loss of earnings remains unresolved is insufficient. As is evident in personal injury matters and the judgment thus far, a claim for loss of earnings requires a consideration of the nature of the injuries that inform the claim and the opinions of the medical and paramedical experts on the long-term or chronic sequelae of those injuries. The statement should identify the material facts agreed to and those that are of common cause. The parties should also address the extent to which the disputes between the experts have been addressed in the respective joint minutes and whether there are other expert opinions, like those of the Clinical Psychologist, the Speech Therapist and the Educational Psychologist, for whom there are no corresponding experts, that may impact the adjudication of the matter. The case management process should also identify those matters that can be disposed of on the papers or submitted to trial on limited issues. All relevant expert opinions on unresolved issues should be supported by affidavits to facilitate the expeditious and efficient disposal of those matters that remain unresolved.

[35] Section 173 of the Constitution affirms the High Court's inherent power to protect and regulate its own process. Personal injury claims arising from accidents, medical malpractice, police interventions, public transport incidents, and others are amenable to effective case management scrutiny and precise narrowing of the unresolved issues before being submitted to trial. The parties' implementation of Rules 37(6) and judicial intervention with Rules 38(2) concerning affidavit evidence and 39(20) regulating the conduct of the trial can ensure that these matters do not clog the court roll. Multiple cases can be set down and adjudicated by a single Judge on a given date or during a week reserved for these matters.

[36] A case decided on the papers, partially or completely, attracts certain requirements to ensure fairness and proper adjudication. The Plaintiff's attorney must check the Court file to ensure that it is in order and that all documents relevant to a specific determination are included. The same considerations apply when the

parties agree to the contents of a trial bundle. Counsel's written submissions must be clear, complete and well-structured to avoid ambiguity. The submissions must identify the relevant part of an expert's report relied upon. If a dispute of fact arises that cannot be resolved on the papers, the Court may, as in applications, refer a limited issue to oral evidence or dismiss the case. The Court should exercise its discretion if required at any stage to refer complex matters to trial. The parties should ensure, from an early preparatory stage, that their expert opinions sufficiently address complex issues. If one party requires an oral hearing, the Court may consider whether denying it would be procedurally unfair. Disputes involving credibility assessments or raising novel or constitutional issues should generally proceed to a full trial.

LOSS OF EARNING CAPACITY

[37] To adjudicate the claim for the minor's loss of earning capacity, the Court proceeded on the basis that the minor suffered a mild TBI with sequelae and PTSD with chronic symptoms. The accident caused them both, and their long-term effects will affect the minor's earning capacity.

[38] The Industrial Psychologists (IPs) provided a joint minute on the minor's earning capacity. For the uninjured scenario, the IPs agreed that the minor would have completed his schooling and entered the open labour market as a semi-skilled worker. The Court takes note of the Educational Psychologist's opinion that the minor's uninjured potential was considered within the low average range, and he would have attended a special needs school. In this regard, the Court cannot accept the Speech Therapist's opinion that the minor would have obtained a grade 12 pass and completed a tertiary qualification in the uninjured state. The Educational Psychologist is the most qualified expert to make this recommendation. The Court notes with disapproval the gratuitous comment attributed to both IPs that in the absence of a Plaintiff-appointed Educational Psychologist, the Court should strongly consider the reports of the Speech Therapist and one of the three Psychiatric reports. Apart from being illogical, the recommendation falls beyond the duty of an expert to the Court. Had it been the recommendation of one of the IPs, they could have been accused of bias.

[39] The IPs agreed that the minor's future career progress would depend on developing job skills, gaining relevant work experience, and developing a career propensity. He would have retired at either 60 if he had obtained work in the public sector or 65 in the private sector. The Plaintiff-appointed IP suggested earnings at the commencement of the minor's work on average between the lower and median quartile and reaching the upper quartile at age 45. The lower quartile earnings for 2025 from the Quantum yearbook are R39 000, the median is R83 000, and the upper quartile is R218,000 per annum.

[40] The minor would have had a career spanning at least 40 to 45 years.

[41] For the injured scenario, the IPs differ on certain points. They agree that the minor would remain with a grade 6 level of education. He would be regarded as an unskilled worker. He is also compromised in terms of physical capacity. The Plaintiff-appointed IP predicted a total loss of earnings, but suggested that the minor's loss of earnings potential should be premised upon his uninjured earnings. The Defendant appointed IP accepted that the minor's future career prospects and probable earnings had been truncated to at least a moderate to even severe degree by the sequelae of the accident-related injuries.

[42] The Defendant appointed IP projected that the minor's injured career path would progress slowly, reaching a ceiling at the median earnings of an unskilled worker by 45-50 years. The IP considered several factors, namely sporadic employment, his interpersonal relationships, experiencing difficulties in any form of employment and being unable to sustain work. The IPs agree that early retirement is not indicated in the injured scenario.

[43] The Actuary performed two calculations, the first based on the minor remaining unemployable and the second on finding lower-paying jobs in the injured state. For the first scenario, the uninjured earnings amount to R3 609 100. There are no injured earnings, and the loss is R3 609 100. In the second scenario, the uninjured earnings are R3 609 100, the injured earnings are R931 000, and the loss of earnings is R2 678 100. The Court has considered the minor's practical

inclinations, namely his interest in pigeons, how he has built boxes to house and sell them, his curiosity in motor mechanics, and the expert's opinions. The Court does not consider the minor unemployable in the injured state.

[44] In this case, the second part of the uninjured earnings is simply too optimistic if the Court considers the opinion of the Educational Psychologist as adjusted by the educational outcomes projected by the other experts and the direct family's career progressions. The Court can provide a more realistic earnings projection for the 45-year to retirement period and require the Actuary to do a further calculation or deal with the actuarial calculation at hand by applying a higher contingency deduction. The Court shall use the latter option.

[45] The normal contingency deduction of ½ per cent per year applicable to each year of employment would be between 20 and 22.5% for uninjured earnings. The Court agrees with Defendant's submission that a higher deduction should apply. Applying a deduction of 32.5% to the calculated earnings potential in the uninjured state would yield R2 436 142.50. If the earnings potential for the injured scenario is considered and a contingency deduction of 40% is applied, considering the bleak outcomes predicted by the experts across the board, the earnings in the injured state would amount to R558 600. The loss of earnings would thus amount to R1 877 542.50. The Court has considered the submissions made by both parties but is satisfied that its application of contingencies yields a fair outcome.

[46] The Plaintiff has argued for party and party costs and Counsel's fees on the B scale. The Defendant argued that costs are within the Court's discretion, but that it should not be held liable for the costs occasioned by the postponements of the 24 October 2024 and 22 April 2025. The Court is not persuaded that the Defendant should avoid the latter costs. In the premises, the Court makes the order that follows.

ORDER

1. The Defendant shall pay the Plaintiff's attorneys the sum of R1 877 542.50 (one million, eight hundred and seventy thousand, five

hundred and forty-two rand and fifty cents) ('the capital') by way of electronic transfer to the trust account, the details whereof are set out hereunder,

2. The Defendant shall pay the Plaintiff's party and party costs as taxed or agreed, and Counsel's fees as taxed or agreed on scale B, as well as any costs expended in obtaining the capital,

3. The Defendant shall pay the capital within 180 days of this order, and all other costs within 180 days of them being taxed or settled, with interest accruing from 14 days respectively,

4. The Defendant shall pay the costs and related costs of the following experts:

4.1 Dr P.A. Olivier,

4.2 Dr K Le Fevre,

4.3 Professor T Zabow,

4.4 Dr D Ogilvy,

4.5 Ms M Coetzee,

4.6 Mr P De Bruyn,

4.7 Munro Forensic Actuaries.

5. The account details of the Plaintiff's attorneys are as follows:

Bank: F[…] B[…]
Account Holder: D[…] V[…] S[…] C[…] I[…]
Branch: P[…]
Account Number: 6[...]
Branch Code: 2[…]

BHOOPCHAND AJ
Acting Judge
High Court
Western Cape Division

Judgment was handed down and delivered to the parties by e-mail on 19 May 2025

Applicant's Counsel: E Benade
Instructed by: De Vries Shields Chiat Inc
Defendant's Legal Representative: Claireese Thomas

Instructed by: State Attorney