IN THE HIGH COURT OF SOUTH AFRICA

(NORTHERN CAPE DIVISION, KIMBERLEY)

CASE NO.: 1901/2021

Date heard: 20-03-2024

Date delivered: 13-06-2025

Reportable: Yes/No

Circulate to Judges: Yes/No

Circulate to Magistrates: Yes/No

In the matter between:

FRIEDA LOUW **Plaintiff**

and

ROAD ACCIDENT FUND **Defendant**

CORAM: WILLIAMS J

JUDGMENT

WILLIAMS J:

1. The plaintiff, Mrs Frieda Louw, suffered debilitating injuries when a taxi in which she was a passenger was involved in an accident on 4 August 2019. In this action against the Road Accident Fund, the only head of damages to be determined is that of general damages. The Fund has conceded the merits

100% in favour of the plaintiff. It has also given an undertaking in terms of s17 (4)(a) of the Road Accident Fund Act 56 of 1996 and has conceded the plaintiff's loss of income in the amount of R998 779, 00.

2. Only the plaintiff and one of her expert witnesses, the occupational therapist Ms Letitia Delport, testified in the trial. The further experts for the plaintiff had deposed to affidavits and these were received in evidence in terms of Uniform Rule 38(2). The Fund called no witnesses.

3. The nature and extent of the injuries suffered by the plaintiff in the accident are not in dispute. According to the report of Dr J F Ziervogel, the orthopaedic surgeon, the plaintiff sustained a moderate traumatic brain injury, an injury to her thoracic spine, a fracture of the right humerus, a chest injury (she had fractured ribs on both sides) and a fracture of the right ankle.

4. The plaintiff was unconscious for a week after the accident. During this time several operations were performed on her back, chest, right arm and right ankle. The x-rays of her thoracic spine reveals signs of posterior instrumentation with pedicle screws from the T3 to T6 levels. She had an aortic stent inserted, there are rib plates in position on both sides. There is an intra-medullary nail with proximal and distal locking screws in position in the humerus and plates and screws on both the distal tibia and fibula.

5. The plaintiff was transferred from Lenmed Hospital to KimMed Rehabilitation Centre on 16 October 2019 where she was taught how to manage her bladder and bowels and how to transfer from bed to wheelchair and back. She also received physiotherapy. She was discharged on 1 November 2019.

6. The plaintiff was left paralysed from the chest down and is a T4/T5 paraplegic as a result of the accident.

Evidence

7. The plaintiff testified that she completed Grade 7 at school and stopped schooling thereafter because she experienced difficulty getting to school by bus. Thereafter she worked as a nanny for two families where she also cleaned their homes.

8. The plaintiff is married and has three children. She lives with her husband, her three children and a grandchild in a shanty about 12 kilometres from Jacobsdal. The accommodation consists of three bedrooms, a lounge and a kitchen. The plaintiff testified that they have no running water or electricity. They collect water from a tap in the street and make use of a gas stove. They use a pit latrine in the yard.

9. The plaintiff has lost all sensation from her chest downward. She is totally dependent on assistance by others. The plaintiff was discharged with an indwelling urethral catheter. The catheter is in situ on a permanent basis, she cannot remove it or insert it herself due to her instability. She often suffers from catheter leakage and urinary infection.

10. The plaintiff has no control over her stomach muscles and manages her bowel movement with laxatives. Her husband has to press down on her stomach to help her void her bowel and has to clean her up afterwards. The plaintiff testified that this procedure is extremely humiliating for her. She has to endure it at least once a week and sometimes her stomach would void itself while she is in company or at church. She refrains from visiting friends or going out because of her erratic bowel movements.

11. She cannot lift herself from her bed due to the weakness of her right arm, which is her dominant arm. She has to utilize a transfer board with two people to assist

her from her bed to the wheelchair and *vice versa*. The same procedure is used when she in transferred from the wheelchair into a vehicle.

12. The plaintiff has developed pressure sores since her husband started working at a dairy during 2021/2022. He had previously been unemployed and was at home during the day to help her change her position to prevent pressure sores. Currently, her husband attends to her washing and assist with dressing before he goes to work, whereafter the plaintiff's eldest daughter assists her.

13. The plaintiff used to enjoy cooking and baking and though she still does it, she needs assistance because the stove is too high and she cannot reach into the oven because she tends to fall forward. Although she still experiences weakness in her right arm she can wash and dress the top part of her body but needs assistance with the lower part of her body. Her right hand, which she testified was initially useless, has improved by squeezing a ball as shown by the physiotherapist.

14. The plaintiff has, since the accident, been involved with a group called Rise and Shine where she has been taught to crochet and swim, although the swimming has been put on hold due to her pressure sores.

15. Her accommodation and its surrounds are not wheelchair friendly and she cannot access all the rooms in the house. Most times she sits in the shade under a tree where she enjoys reading bible stories to the children.

16. The plaintiff testified that due to her condition, intimacy with her husband is non-existent and that she cannot help being suspicious of him having other relationships. She feels that Mr Louw has become more her helper than her husband.

17. The plaintiff still has pains in her right breast and headaches for which she takes panados. She experiences spasms in her legs especially at night time and gets short of breath at times. She has been left with permanent scarring from the operation procedures and where a breathing tube was inserted in her throat. She also has scarring from the pressure sores which she experiences.

18. Ms Delport testified after she had heard the evidence of the plaintiff and had sight of the other experts' reports. She last examined the plaintiff during 2020. She explained that because the plaintiff has suffered a complete lesion at T4/T5 level, the plaintiff will have more impairment than if she had paraplegia from the lower spine. Whilst the plaintiff has no sensation from the chest downwards and feels no pain in those regions, it increased her mortality rate since she would not feel or see if she has an infection, *in casu* caused by pressure sores, a leaky catheter or bowel movement. The shortness of breath experienced by the plaintiff is also as a result of the high lesion to her thoracic spine.

19. Ms Delport, who has more than 30 years experience as an occupational therapist and who has worked with patients across the spectrum, is of the view that persons with a higher educational level and financial means, with injuries such as that sustained by the plaintiff, adjust more easily to their new circumstances as a result of more flexible employment options and the financial means to afford assistive devices, than someone like the plaintiff who only has experience as a domestic worker and child minder. She is of the view, that though the plaintiff's physical condition will not improve much, her quality of life and daily living experiences would be improved with the necessary assistive devices.

20. As mentioned, the Fund has not called any witnesses and closed its case after the evidence on behalf of the plaintiff was led

Discussion

21. There is not much in the way of evidence regarding the sequelae of the moderate traumatic brain injury which the plaintiff sustained in the accident. Except for the evidence of Ms Delport, that in her experience people with a mild traumatic brain injury adjust more easily than those with a moderate traumatic brain injury, the only other evidence in this regard is that of the plaintiff's clinical psychologist, Mr Ben Janecke, whose evidence served before me by way of affidavit. Mr Janecke's report dated 14 June 2020 has been incorporated in his affidavit, He undertook his assessment of the plaintiff on March 2020, some 7 months after the accident and 4 years prior to this trial. According to Ms Delport, MMI (maximum medical improvement) is usually reached after 24 months.

22. At the time, Mr Janecke recorded that the plaintiff's test results indicate a moderate TBI, based on *inter alia* the following:

22.1 Problems with long term memory as well as orientation for place and time;

22.2 Her auditory registration and brief focussed attention is poor and below the level expected of her;

22.3 Her brief, focussed visual attention, scanning and processing speed is at an extremely low level and below the level expected of her;

22.4 Her expressive language skills are at an extremely low level and far below the level expected of her;

22.5 Her ability to recall conceptually related verbal information immediately is poor and far below the level expected;

22.6 Her retrieval of logical information from long term memory stores is far below the level expected of her;

22.7 Her planning ability is poor and she has significant signs of impulsive behaviour.

22.8 Her divided attention and cognitive flexibility falls within the extremely low range; and

22.9 Her cognition seems to be diffusely impaired;

23. According to a Disability Assessment Schedule which the plaintiff had to complete, Mr Janecke scored the plaintiff a moderate to severe impairment of 72% of her general ability and a moderate to severe impairment of 56% with understanding and communicating.

24. Except for not recalling the events surrounding the accident and her scant memory of her stay in hospital, none of the cognitive impairments listed above were obvious during the testimony of the plaintiff. The plaintiff gave her evidence in Afrikaans, her home language, and was well-spoken. She, for instance, could remember the age of the Botha's elder child (4 months) when she started working for them and that 2 years later they had another child who was about 2 to 3 months old when the accident occurred. She could relate in detail the assistance she needs from her husband and eldest daughter in her daily functioning, she has learned to crochet and sells her crafts for extra money, she reads bible stories for the neighbourhood children and still cooks and bakes with physical assistance.

25. Whilst the plaintiff's physical impairment has not improved since the accident, except for her right hand which has regained some strength (she will always remain a paraplegic with all its difficulties and complications), the plaintiff appears to have improved considerably in her cognitive abilities since her assessment by Mr Janecke, at least it would appear to be the case. I will however take into

account, when determining an appropriate award for general damages, the initial cognitive impairment suffered by the plaintiff.

26. Dr Ziervogel, the orthopaedic surgeon, first examined the plaintiff on 19 February 2020 about 6½ months after the accident. At the time he gave the plaintiff a physical Whole Person Impairment (WPI) rating of 72%. On follow-up examination, which took place during February 2024, he gave the plaintiff a WPI of 75% event though the mobility in the plaintiff's right arm showed some improvement. Ms Rabie suggested that the pressure sores to the plaintiff's sacrum and both ischial bones and the subtle signs of antero-listhesis of C3 on C4 and C4 on C5 vertebrae, which Dr Ziervogel explains in his report as a phenomenon that sometimes develops in patients who lie in bed reading with the head in a propped up position for long periods of time, could explain the increase in the plaintiffs WPI since Dr Ziervogel's first report. This appears to be a reasonable explanation.

27. Dr Ziervogel opines that the antero-listhesis can be treated conservately, which should hopefully alleviate the plaintiff's neck pain. He also indicated that the intra-medullary nail inserted at the site of the fracture of the right humerus, which has been causing the plaintiff discomfort, can now be removed. Overall Dr Ziervogel recommends that the plaintiff needs further rehabilitation.

28. The physiotherapist, Ms H Venter, assessed the plaintiff on 23 November 2020. At that stage the plaintiff had received physiotherapy once a week after the accident until the COVID 19 lockdown. No further physiotherapy had been received since then. Ms Venter states in her report that physio-therapy can assist to prevent further decreases of ranges of movement and prevent permanent deformities. It will assist to maintain good posture and prevent complications such as pressure sores and osteoporosis. It would improve the plaintiff's balance and trunk control within her limits. It will improve her arm strength and her ability to assist with transfers.

29. The urologist, Dr I J Van Heerden has recommended a suprapubic catheter do be inserted under general anaesthetic. Mr Rademeyer, the mobility consultant, has also recommended several ways in which the plaintiff's quality of life could be improved.

30. Ms Rabie has contended that the recommendations of the plaintiff's experts will be covered by the Fund's undertaking in terms of s17(4)(a) of the RAF Act.

31. As far as general damages is concerned, there can be no doubt that the injuries incurred by the plaintiff and its sequelae which have been set out above are very serious and have impacted severely on the plaintiff's life.

32. As is the norm I have been referred to various decisions of our courts dealing with injuries of a similar nature. Mr Botha for the plaintiff referred to:

32.1 *Morake v RAF* (52700/15) [2017] ZA GPPHC 761 (6 November 2017). In this matter the 64 year old plaintiff was rendered quadriplegic and amongst other injuries, had head trauma with degloving injuries. He was at a rehabilitation hospital for 8 months. He had cognitive difficulties. He was dependant on his wife and son to turn him, bath him, groom him, feed him, and to relieve pressure since he had regular blackouts. Due to his state of health he did not testify. General damages was awarded in the amount of R2. 5 million which in 2024 amounted to R3.52 million.

32.2 *HKM v RAF* [2023] ZA GPHC 375; 22307/20 (31 May 2023). In this matter the plaintiff had been rendered quadriplegic. He is unable to grasp objects with his hands. He is unable to perform the basic activities of life. He was awarded R3.2 million in general damages (2024 value, R3.39 million).

32.3 *Sibanda v RAF* 2019 (7A2) QOD 13 (GP). Here the 27 year old plaintiff was rendered quadriplegic. He cannot use his upper limbs and his hands are non-functional. He has severe spontaneous spasms in both legs. He was awarded general damages in the amount of R2.8 million (value in 2024 R3.63 million).

32.4 Mertz v RAF (A96/2021) [2022] ZA GPPHC 961 (2 December 2022). The plaintiff had been left a C5/C6 quadriplegic. She has decreased motor function in the upper and lower limbs, specifically fine hand co-ordination tasks. Through sheer willpower, physiotherapy and occupational therapy she has become independent with toiletries, transfer, washing, grooming and has a bowel regime. She uses a bladder catheter. She has nerve pain in her hands and legs. She has lost rotation on her neck of about 30%. Her right hand is in a fully flexed position of the fingers. She has no control of this hand and cannot use it for any useful function. Her left hand has spasticity of the wrist, but she manages to use it for the computer. The plaintiff is depressed, suicidal and suffers from post-traumatic stress syndrome. Before the accident she exercised at a local gym 5 days per week, participated in mountain biking, played golf, jogged and did motorcycling and swimming. The court awarded her R3.5 million) (2024 value of R3.9 million).

32.5 *Macwale v RAF* (2021/53692) [2023] ZA GPJHC 1236 (6 October 2023) In this matter the plaintiff was also rendered quadriplegic. Before the accident he played soccer. He can stand, but not for long periods. He cannot walk or use his hands to take care of himself. He is in constant pain and is depressed and suicidal. He is dependent on others for daily life tasks. He was awarded general damages in the amount of R3. 5 million (value in 2024, R3.7 million).

32.6 *RAF v Delport* 2006(3) SA 172 (SCA). The plaintiff, a 36 year old woman, was rendered totally disabled as a result of injuries incurred in a collision.

She is unable to speak, has no control over her bladder and bowels, not able to swallow and is fed by means of a gastronomy feeding tube. She has very little movement of the right side of her body and only limited control of her left hand. She suffers from headaches, abdominal cramps, numerous bladder infections, spastic contractions of the right arm, pain of the left hip and general body stiffness. She has however not lost any significant sensory function, meaning that she experiences pain but has no independent way of alleviating it. She needs 24 hour care and is essentially confined to bed. She is described in the judgment as *"a person with an alert and active mind trapped in a non-responsive body."* Before the accident she had a happy and dynamic lifestyle, and enjoyed cycling, competitive dancing and travelling. The plaintiff was awarded general damages of R1. 25 million (2024 value of R3. 76 million).

33. Ms Rabie for the Fund referred to the following cases:

33.1 *Mosupi v RAF* 2013 (6A3) QOD 43 (GSJ) (10 May 2013). In this matter the plaintiff, a 19 year old female student, was left paralysed from the chest downward. She had become wheelchair bound, with bladder and bowel incontinence. She suffered from constant headaches, sitting upright too long caused abdominal pain, she was unable to attend to her personal needs and required permanent assistance. She experienced loss of self confidence, sexual drive and function. She had also attempted suicide. This plaintiff was award R1 million in general damages (2024 value of R1.75 million).

33.2 *Mafiri v RAF* [2024] JOL 63163 (GP). The plaintiff, a 41 year old self-employed managing director of an engineering services company, was left paraplegic after a collision and is wheelchair bound. He was awarded R1.8 million in general damages during 2024.

33.3 *Maholela v RAF* [2006] (SA 3) QOD 3 (O). The plaintiff who was 40 years old at the time of the accident was rendered a paraplegic with the concomitant bladder and bowel incontinence due to loss of sensation in his lower limbs. He was determined not to be wheelchair bound and *"walked"* by using crutches and attempting to drag his feet by using his hips. It was however undisputed that he had no function of his lower limbs. General damages were awarded in the amount of R600, 000 (2024 value of R1. 64 million).

33.4 In *Nokomane v RAF* [2010] ZA ECGHC 24 (ECG) 2011 (A2) QOD, the plaintiff who was in his early thirties when the accident occurred was rendered paraplegic and wheelchair bound, with no sensory or motor function below the mid chest. He was left with mild spasticity, a restricted range of movement of his right shoulder and right little finger, lack of bladder and bowel control, erectile dysfunction, backpain and diminished respiratory function. Before the accident he was employed as a full-time driver at a canning entity, trained at a gym and in his spare time ran a taxi business and spaza shop with his wife. He was awarded R800 000 in general damages (2024 value of R1. 64 million).

33.5 In *Webb v RAF* [2016] ZACPHC (GNP) 2016 (7A3) QOD 24 (6P), a 20 year old man was severely injured in an accident resulting in paraplegia. As a young man he has difficulty adjusting to his condition which resulted in him losing most of his friends and having little participation in social events. He was in his 2nd year of a B Comm degree at the time of the accident. He is now wheelchair bound, experiences chronic backpain, incontinence of his bowel and bladder and suffers from PTSD. He was awarded R1. 5 million in general damages (2024 value of R2. 3 million).

34. As can be seen from the above, Mr Botha for the plaintiff, has focused on matters where the plaintiffs were rendered quadriplegic and Ms Rabie on the plaintiffs

who had become paraplegics. The injuries and its sequalae suffered by the various plaintiffs would in certain cases be more serious than that of the plaintiff *in casu* and in others less so.

35. Whilst it is useful to make a comparison to past awards granted by our courts, no two cases are the same and past awards serve no more than a useful guide as to what was considered to be appropriate given the facts of a certain case.

36. Having regard to all the circumstances of this matter and also taking into account the lapse of time since the matter was heard, I am of the view that an appropriate award for general damages would be R3 million.

37. With regard to the costs, Mr Botha has requested that the issue of costs stand over for later consideration. I have not been informed of the reason for this, but will accede to the request.

The following order is made:

1. **The plaintiff's claim with regards to past medical expenses is postponed *sine die.***

2. **As agreed the defendant is ordered to pay the plaintiff the amount of R998 779.00 (Nine Hundred and Ninety Eight Thousand Seven Hundred and Seventy Nine Rand) with regards to loss of income.**

3. **The defendant is ordered to pay the plaintiff R3 000 000 (Three million Rand) with regards to general damages.**

4. **The defendant is ordered to pay the plaintiff's taxed or agreed costs on the High Court scale up and until the date of this order, which costs will include:**

4.1 The qualifying fees of the following experts:

Dr E Jacobs
Dr J F Ziervogel
Ben Janecke
Letitia Delport
Hester Venter
Dion Rademeyer
Dr Izak Van Heerden
Michelle Barnard

4.2 In the discretion of the taxing master, the reasonable travelling costs of the Plaintiff from Jacobsdal to Kimberley, Welkom, Pretoria and Bloemfontein, and back, to consult with the experts of the Plaintiff.

4.3 The qualifying fees and the reservation fees for 18 to 20 March 2024 of Dr J F Ziervogel, Dr I Van Heerden, Letitia Delport, Ben Janecke, Dr E Jacobs, Deon Rademeyer, Michelle Barnard and Hester Venter.

4.4 The costs of plaintiff's counsel for 18, 19 and 20 March 2024

5. It is declared that the witnesses of the Plaintiff referred to in paragraph 4.1 above were necessary expert witnesses.

6. The plaintiff shall in the event that costs are not agreed, serve the Notice of Taxation alternatively the notice contemplated in Rule 70 (3B) of the Rules, whichever is applicable, on the Defendant's attorneys of record.

7. **The plaintiff shall allow the defendant 14 (fourteen) court days to make payment of the taxed costs.**

8. **The defendant will pay interest on the above amounts at the applicable statutory rate of interest per annum, if the Defendant fails to make payment referred to in paragraph 4 above.**

9. **The defendant will pay interest on the amounts in paragraphs 2 and 3 at the applicable statutory rate of interest per annum, if the Defendant fails to make payment within 14 days of date of this order.**

10. **The defendant will supply the Plaintiff with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, for the costs of the future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service to her, supplying of goods and assistive devices to her and the costs of a caregiver and domestic assistant arising out of the injuries sustained by her in the motor vehicle collision on 4 August 2019 and as envisaged by the experts of the plaintiff in their reports.**

11. **The defendant will pay the above amounts into the following trust account of the plaintiff's attorneys"**

    ELLIOTT MARIS WILMANS & HAY
    STANDARD BANK TRUST ACCOUNT
    ACCOUNT NUMBER 0[...]
    BRANCH CODE 0[...]
    REF M[…]

12. **The scale of the costs payable by the defendant stands over for later determination.**

CC WILLIAMS
JUDGE

For Plaintiff:	Adv C Botha Elliott Maris Attorneys
For Defendants:	Ms B Rabie Office of the State Attorney