



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **YES**

15 July 2025
DATE


SIGNATURE

Case No. 25598/2017

In the matter between:

WALENG, MATOPA STANLEY

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

NEUKIRCHER J:

1] On 24 October 2016, the plaintiff was a passenger on a train travelling from Kaalfontein station to Lerallal station (Tembisa) in Gauteng Province when the train he was travelling in collided head-on with a stationary train, along the railway, at Esselen Park. He alleges that the collision was caused by the sole negligence of the defendant's employees. He also alleges that, as a result of this collision, he suffered various injuries and their sequelae for which he now claims damages.

2] At the commencement of the trial I was informed that the defendant had already conceded the issue of liability. Thus, the defendant had undertaken to pay to the plaintiff his proven or agreed damages. To this end, both counsel informed me that it was only the issue of quantum that stood to be decided and, in this regard, specifically the following:

- a) the amount of general damages to be awarded to the plaintiff;
- b) the amount to be awarded to plaintiff in respect of loss of earnings; and lastly
- c) the amount to be awarded to plaintiff in respect of his future medical expenses.

3] The parties main dispute centered around the actual injuries that the plaintiff allegedly suffered as a result of the collision, their *sequelae*, and the amount of damages for each head of damages to be awarded.

4] On 9 May 2025, the plaintiff delivered a Rule 28 amendment of the particulars of claim. The amended pages were delivered a day before¹. the trial was due to commence.

¹ On 23 May 2025

5] At the hearing of the matter I was informed by the defendant's counsel² that the defendant would not seek a postponement to consider the amendment or file an amended plea. The trial would continue on the basis that the defendant denies the issues now introduced by the plaintiff at the last minute. I instructed the defendant to file its amended plea to ensure that the formalities had been complied with - this is to ensure that the matter can be decided on the pleadings before me.

6] The amendment was not, as Mr Hlongwane³ originally submitted, a simple issue of amending the plaintiff's quantum: the amendment introduced important features to the matter as it expanded on the injuries allegedly suffered by the plaintiff and their *sequelae*.

7] In the original particulars of claim filed by plaintiff on 29 March 2017, the plaintiff pleaded the following injuries and their *sequelae*: a left leg fracture and a right shoulder fracture. The *sequelae* of those injuries were not set out by the plaintiff. Instead, he pleaded that "save for the particular set out hereinabove, the Plaintiff is at present, unable to set out the nature and extent of the injuries in greater detail."

8] The amendment, effected 8 years later, states that the plaintiff suffered the following injuries as a result of the collision: a fracture to the left tibial plateau, a dislocation of the right acromioclavicular joint (a/c joint), a moderate to severe head injury and emotional shock and trauma.

² Mr Opperman

³ Counsel for plaintiff

9] The minutes of the pre-trial meeting - which was held on 12 May 2025 - are important as in that minute the alleged mechanism of the plaintiff's injuries⁴ were set out. The pre-trial minute records the following:

“ **Plaintiff's version**

9.2 On the 24 October 2016 at approximately 13h00, Plaintiff was a passenger in a train no: 0653 inside coach number 13836, travelling from Kaalfontein station Leraloa Station (Tembisa), in the Gauteng Province, when the train collided head on with another stationary train, along the railways, at or near Esselen Park, and the plaintiff was thrown out of the train onto the floor.

Defendant's version

9.3 The defendant admits the negligence of the cause of the collision and denies that the plaintiff was thrown out of the train. The defendant denies that he was thrown out of the train.”

10] It is thus clear from the admitted facts of this pre-trial minute that the admission as to negligence was limited to the collision itself, but the causation element - ie the mechanism of the plaintiff's injuries - the actual injuries and their *sequelae* were not admitted.

11] The amended particulars of claim now detail the plaintiff's injuries. These include post-traumatic stress disorder, significant short-term visual memory impairments, neurological- neurocognitive and neuro-psychological impairments, severe long term

⁴ ie the causality element

mental and behavioral disturbances a decreased sensation and weak hand, tenderness over the right scapular and a/c joint, scarring and a general loss of amenities and enjoyment of life.

12] It must be emphasized that is clear from the amendment that the issue of whether the plaintiff had suffered a moderate to severe head injury was introduced on 9 May 2025 – some almost 9 years after the incident in question.

13] The consequential amendment of the quantum was not one which occupied much time. In fact, before the evidence commenced, the parties stood the matter down to discuss the possibility of settlement. The result of the discussions was that the plaintiff's loss of earnings was settled in the amount of R585 000. I was not told what factors were taken into account in the calculation of that amount.

14] The issue of liability and that of loss of earnings having been settled, the trial thus proceeded on the issues of general damages and future medical expenses only.

15] To this end the plaintiff indicated that he would be calling several witnesses: a neurologist, an orthopedic surgeon, a clinical psychologist, an occupational therapist and he would also testify. The defendant had delivered only two experts reports: that of an orthopedic surgeon and an occupational therapist. Joint minutes of both sets of experts were filed, but prior to the trial defendant delivered a notice rejecting the joint minutes of the orthopedic surgeons and disavowed reliance on its orthopedic surgeon.

16] Although none of the experts had filed a *curriculum vita*, the defendant offered no objection to their evidence being led provided that their qualifications were placed on record. On this issue I must express my displeasure at the manner in which the pre-trial conference was conducted: it is clear to me that very little thought was given to the narrowing of issues such as the issue of the proper qualification of the experts or the actual disputes regarding the injuries suffered by the plaintiff and the defining of the actual disputes regarding those and the resultant *sequelae*. This led to valuable time being wasted, especially as, at the end of the day, there was no objection to any of the experts' expertise.

17] Be that as it may, the plaintiff bears the onus and to this end commenced with his case. Interestingly enough, the plaintiff testified last. This meant that there was no immediate context to the evidence of his experts.

The hospital records

18] In order to put the evidence in the necessary factual context, the hospital records are important. These were not disputed by either party and their content was not disputed.

The hospital records *inter alia* record the following:

- a) that the plaintiff was admitted to Edenvale Hospital on 24 October 2016;
- b) the doctor's notes state that the plaintiff was a 44-year old man involved in a train collision yesterday c/o (L) knee and (L) flank pain. On examination an antalgic gait ORD and normal vitals were observed. There were no focal signs;

- c) his knee laterally mildly tender but there was no open wound. He had full range of movement and the patella tendon intact, however an X-Ray and assessment revealed a left lateral tibia fracture;
- d) plan of action was an X-Ray, an above knee blackslab and analgesics.

19] It also appears from the hospital notes, that on 28 October 2016 the knee slab was removed as the X-ray had revealed that the plaintiff's leg was not actually fractured and the doctor noted that clinically there was no tenderness and the plaintiff had a good range of movement. A bandage was then applied and plaintiff was prescribed analgesics.

20] On 14 November 2016, for the first time, the doctor's notes state that there is an "old" injury of the a/c joint and a soft tissue injury of the left leg was noted.

The Orthopedic Surgeon – Dr Moloto

21] The plaintiff's first witness was Dr Moloto, an orthopedic surgeon.

22] He testified that the documents made available to him at the interview with the plaintiff were the bundle of clinical records from the Edenvale Hospital where the plaintiff was admitted after the collision on 24 October 2016. He also took a history from the plaintiff who informed him that he was a passenger on a train and that he had fallen off the train.

23] His evidence was that the plaintiff complained of right shoulder pain on exertion and a painful left leg. X-rays were done and revealed a Grade 1 a/c joint dislocation. The fact that this shoulder injury was classified as a Grade 1 injury simply means that it was not a severe dislocation. He opined that the plaintiff's shoulder pain was not acute, but rather chronic which is indicative of an old injury⁵. According to Dr Moloto the plaintiff's movement of his shoulder was not affected by his injury, save that he suffered from pain on exertion for which his recommended course of treatment was pain medication.⁶ The future medical treatment was limited to analgesics⁷ for the remainder of his life.

24] Dr Moloto conceded that the plaintiff's hospital records did not indicate a head injury, that plaintiff did not complain to him that he had lost consciousness, nor did he complain of headaches or any other head related pain during his consultation in 2023.

25] The scarring that was noted was in relation to a surgical scar over the right acromioclavicular joint and it appears that the plaintiff had shoulder surgery in 2017.⁸

26] The plaintiff's leg injury was a minor injury of the left tibial plateau which had resulted in pain on exertion but could be treated with analgesics.

⁵ Dr Moloto could not pinpoint when the a/c joint injury had occurred, but simply confirmed that there was indeed such an injury

⁶ The specificity of which was not provided

⁷ Being pain medication

⁸ This was not in dispute

The Neurologist – Dr Tseka

27] The plaintiff then called Dr Tseka, a neurologist. She assessed the plaintiff on 4 October 2023, some 7 years after the collision. She was in possession of the plaintiff's medical records from the Edenvale Hospital, the plaintiff's identity document and an instruction letter from the plaintiff's attorney. Her opinion is based on both the plaintiff's account and her own test results: the plaintiff reported to her that he lost consciousness after the collision and that he woke up in hospital the day after (ie on 25 October 2016). Her tests led her to opine that the plaintiff had suffered a moderate to severe head injury in addition to his orthopedic injuries to his shoulder and leg.

28] The head injury carried with it various *sequelae* that were reported to her by the plaintiff: episodic throbbing headaches which resulted in blurred vision and photosensitivity and lasted for long periods, and mild cognitive deficits. She also conducted musculoskeletal tests which revealed a decreased strength in his right arm due to the shoulder injury and she reported scarring on the vertex of plaintiff's head.

29] She opined that the plaintiff has a 15% chance of post- collision epilepsy, but had had no epileptic seizures to date. Her opinion is based on general statistics that people who suffer head injuries may only become symptomatic twenty years after the collision.

30] She has recommended that the plaintiff consult a neurologist twice a year at a cost of approximately R14 000 per annum of the rest of his life and that his pain can be managed by analgesics.

31] Although Dr Tseka conceded during cross-examination that the hospital records had not recorded a GS Scale⁹ nor a head injury, but she stated that the patient history and her clinical examination revealed the head injury. She also conceded that she had not attempted to obtain any collateral information from, for example the plaintiff's wife and children or an MRI, and had relied solely on the factual account of events provided to her by the plaintiff, and her test results¹⁰. She lastly conceded that the plaintiff had not reported a head injury to the occupational therapist (Ms Motsete).

32] Importantly, Dr Tseka conceded that although she had seen scarring on the vertex of plaintiff's head, there was no indication of a head wound in the hospital records and that the scars could have been the result of an injury sustained elsewhere.

33] Importantly, Dr Tseka's evidence revealed

- a) inconsistencies in plaintiff's reporting of his loss of consciousness, blurred vision and headaches to the experts¹¹;
- b) she had not deferred to the opinion of an ophthalmologist to investigate the cause of the blurred vision. She did not perform any test to confirm this complaint, but relied solely on the say-so of the plaintiff;
- c) she had not conducted an MRI;

⁹ Glasgow Coma Scale which is a neurological scale used to assess a person's level of consciousness after an injury and is based on three aspects: eye, verbal and motor responses. She stated that the use of the GCS is not conclusive: sometimes it is possible to use the patient's recount, the neurological examination and sometimes the investigation, to make a diagnosis

¹⁰ Her evidence was that she "did not know" where she could have accessed further information and she did not ask either the plaintiff or his attorney for additional information

¹¹ He had not reported this to either Dr Moloto or to Ms Motsete

- d) she had no collateral information to confirm the presence or absence of any pre-existing cognitive deficits, and she did not know if the plaintiff's cognitive deficits pre-dated the collision;
- e) she had relied solely on plaintiff's version that he was "fully functional" before the collision;
- f) that her diagnosis of a moderate to severe head injury was based on plaintiff's history his complaints and the symptoms he reported. She subsequently in her evidence amended this to an opinion that the plaintiff had suffered a mild head injury.

34] Dr Tseka however opined that the plaintiff's complaints were the "normal *sequelae*" of someone who has suffered a head injury.

35] According to her, his whole person impairment (WPI) is 4% according to the AMA Guidelines¹² which she conceded does not entitle the plaintiff to general damages. She did not conduct a narrative test and conceded that she has never previously conducted a narrative test.

The psychologist – Dr Selahle

36] Dr Selahle then testified. She is a clinical psychologist. She was given an instruction letter from the plaintiff's attorney, the hospital records and the reports of Dr Moloto and Dr Tseka. She interviewed the plaintiff¹³ and conducted various tests from which she

¹² Which is based on his recurring headaches

¹³ On 5 October 2023 and again on 28 March 2025

made the following observations: that he would not sit for long periods of time and had general body pains. Following on her tests, as set out in her expert report, she opined that the plaintiff suffered from neuro-psychological sequelae with visual impairment, memory impairment and motor-related impairment. According to her findings, the plaintiff suffered a moderate to severe head injury.¹⁴ This diagnosis is based on the fact that the plaintiff was unconscious for approximately a day after the collision.¹⁵

37] Dr Selahle diagnosed the plaintiff with post-traumatic amnesia as, on his recount of events, he woke up in the hospital the day after the collision. Her opinion was that the GCS is unnecessary to determine post-traumatic amnesia. Dr Selahle was also of the opinion that a GSC of 15/15 is indicative of a mild head injury. Despite being pressed on the issue, she remained adamant in her stance.

38] According to her, her tests revealed that the plaintiff had “damaged brain tissue” which she diagnosed because of his poor performance in the tests she conducted. She however conceded that there were no records of “lesions to the frontal lobe”, nor had any MRI or CT-scan been conducted either by the hospital or the neurologist. She had also not ordered any objective tests to be done to confirm her diagnosis of either “damaged brain tissue” or “lesions to the frontal lobe”. It thus appears that her diagnosis is based only on the plaintiff’s version and her test results.

¹⁴ This is as opposed to Dr Tseka who opined that he had suffered a mild head injury

¹⁵ Her evidence and report state the duration of loss of consciousness determines the severity of the brain injury: up to 5 minutes is a “very mild” brain injury; 5 – 60 minutes is a mild brain injury; 1 -24 hours is a moderate brain injury; 1 – 7 days is a severe brain injury; 1 – 4 weeks is a very severe brain injury and more than 4 weeks is extremely severe brain injury

39] In her view, it was unnecessary to obtain any collateral information - eg through an interview with the plaintiff's wife - as regards the plaintiff's behavioral changes as the plaintiff was able to follow instructions during her interview with him. She conceded that her opinion was formed despite the absence of indication of a head injury in the hospital records; despite the absence of either an MRI or CT-scan by both the hospital and Dr Tseka; despite the absence of collateral information to confirm the plaintiff's pre- and post-collision behavior; and being guided mainly by the plaintiff's say-so. She, however, remained firm in her view that the plaintiff had suffered a head injury in the collision with resultant *sequelae*.

40] Dr Tseka's opinion was that it was "highly probable" that the plaintiff's account of his injuries would not be the same to each expert with whom he consulted¹⁶ because of what she termed his "cognitive distortion" or memory loss.

The Occupational Therapist (OT) – Ms Motsipa

41] The plaintiff's last expert was Ms Motsipa, the occupational therapist. Her evidence was that the only injuries reported to her were those of the left leg and the right shoulder,. No head related injuries were reported to her. The plaintiff reported back, neck, hand and hip pain which she could not explain. The plaintiff did report that post-collision he suffers from headaches and memory impairment.

¹⁶ He failed to report a loss of consciousness to the OT, did not report his headaches to Dr Tseka, did not report either a loss of consciousness or headaches to Dr Moloto

42] Ms Motseto did not assess the plaintiff's long-term memory function as there was nothing in the hospital records to indicate a necessity to do so. In her report she states: "The medical information perused did not indicate any brain or head injuries sustained by the plaintiff..."

43] In assessing the plaintiff's future occupational needs, she took account of the pain experienced from the orthopedic injuries and also noted that the plaintiff keeps a garden, and has done since prior to the collision. He grows vegetables and he needs to fetch water from a communal community tap. His physical strength capability is approximately 9-11kg.

44] Ms Motsete conceded in cross-examination that:

- a) although the plaintiff could bath and dress himself, he still experiences pain and he would require assisted devices;
- b) the plaintiff's wife presently does the daily household chores but if for some reason she was unable to fulfill this function, he would require assistance as he cannot do so himself;
- c) he requires assistance with his garden as he cannot carry water from the communal tap to the garden or do basic gardening tasks without pain and the physical limitations that his shoulder and leg put on him;
- d) a JoJo tank, set up closer to the house would greatly assist the plaintiff in his overall quality of life and functioning.

The plaintiff

45] The last witness was the plaintiff himself. He presented as a slightly built, quiet witness who barely made himself heard. His evidence was that he had boarded a train on his way home¹⁷ and his train collided with another. He woke up in hospital the following day and realized that his whole head was covered with bandages and his leg was in plaster. There was also a bone protruding from his shoulder. The doctors informed him that he had been brought to the hospital the day before and that he had been unconscious.

46] The above account of his head and shoulder injuries were not reported to his experts other than the loss of consciousness to Dr Tseka and Dr Selahle.

47] Subsequent to his discharge from hospital he was treated as an out-patient.

48] He lives with his wife and four children¹⁸ and his wife assists him with everything as he cannot do the chores he did prior to the collision. His son assists him in the garden.

49] He has always kept a vegetable garden¹⁹ where he grows spinach, tomato, potato, cabbage, green pepper, butternut and sweet potato. He needs to water the garden and he gets water from the community tap which is about 10km from his house. Prior to his injury he used to carry two 25kg buckets – his wife now assists him with household chores

¹⁷ He was looking for work

¹⁸ Who were respectively born in 2011, 2014, 2018 and 2023

¹⁹ Measuring approximately 20m x 10m

and his personal necessities (eg bathing) because of his injuries, and his eldest son helps him tend the garden. If they are not home, he waits for them. The vegetables are harvested when ready and he sells them to local community members and earns approximately R500 per week. He uses this money for stock and to buy household necessities.

50] The plaintiff's evidence was that since the collision his hand was injured, as were his leg and head; that he tends to be forgetful; his eyes are affected and blurry; he suffers from "excruciating pains from the head"; he sees "funny stuff" and gets dizzy and he has terrible headaches most of the time.

51] His evidence was that the collision has ruined his life because he cannot do the things he used to any more.

52] He takes Panado for pain as he cannot afford to buy the more expensive medicine that was prescribed to him.

53] He was previously employed on a chicken farm where he earned approximately R3 000 per month. His highest level of education is Form 2.

54] Cross-examination of the plaintiff was elucidating:

- a) it was put to him that the hospital notes do not say that his leg was fractured – they state that the leg was bruised. The plaintiff could not explain the discrepancy between his evidence and the hospital records;
- b) he testified that when he woke up he realized that his head “split open” and was bandaged and there was blood on his clothes which came from “blood oozing” from the wound on his head – this was not canvassed with any of his expert witnesses, nor was it stated in any of their reports. It was also not in the hospital records;
- c) he stated he had head surgery. I accept however, for purposes of this evidence, that he refers to his head stitches as “surgery” and there is evidence of a scar on the vertex of his head. There is, however, no hospital or doctor’s note of any head injury or stitches and there is no objective evidence that his head was sutured after the collision or because of injuries sustained in the collision;
- d) his shoulder was operated on the day after the collision – yet an “old” shoulder injury was only recorded on 14 November 2016 and, according to Dr Moloto, the shoulder surgery was performed in 2017;
- e) he conceded that the hospital admission form - dated the day of the collision - set out his personal information such as his name, identity number, date of birth, employer’s name and address. He could not (or refused to) explain how the hospital came to be in possession of that information as he was travelling alone and was adamant that he was unconscious upon admission. He also denied that it was his signature that appeared on the hospital admission form

and was insistent that he was not given any form to sign at any stage. There was no evidence presented that he provided the hospital with any personal information at any stage prior to or after his discharge;

- f) his explanation for failing to inform the OT about his loss of consciousness was that he has a "tendency to forget things now and again" and he insisted that he did inform Dr Moloto that he was unconscious after the collision. He later testified that if he did not inform the doctors about this issue, it was because "it was possible [he] forgot";
- g) he was unable to bath himself without assistance as he could not use his right hand because of the pain from his right shoulder and he could not only use his left hand.

55] The plaintiff was treated as an out-patient for several years and his evidence was that he returned to the hospital several times during 2017 and 2018 complaining about headaches. He has an out-patient file but this file was not discovered and was not before court. The plaintiff testified that he had informed his attorney of the file and could not explain why it had not been produced.

56] The plaintiff also testified about his daily life and how devices would assist him. I don't intend to linger much on this now as the OT's produced joints minutes which I will deal with in due course. Suffice it to say that the plaintiff did state that a JoJo tank closer to his house would assist him, but that the trolley²⁰, recommended by his OT would not

²⁰ Upon which he could load buckets of water for use in the home and his garden

as he would not be able to push it and that irrespective of other devices, he requires help from his wife to bath and dress himself.

The defendant's Occupational Therapist (OT) – Ms Burns

57] The plaintiff then closed his case and the defendant called its only witness, Ms Burns who is a qualified OT. Her evidence was that there was a slight language barrier as the plaintiff does not speak much English but can speak some Afrikaans and that was how the interview was conducted. He did not report either a head injury or headaches to her and therefore she did not perform any cognitive functioning tests. The plaintiff also did not appear to be in any physical distress which she would have noticed had he been sighing or grimacing during the tests conducted.

58] According to her he managed to lift 13kg in weight and thus, whilst the Ms Motsete opines that the plaintiff is able to do sedentary to light tasks, she is of the opinion that he is able to perform light to borderline medium weight tasks. She explained that a medium task is whether a person can carry 4,5kg weight, which the plaintiff definitely can do.

59] She also opined that the plaintiff has good range of movement in his upper limbs and should be self-care independent and he had not complained to her of any issues bathing himself. She also opined that the plaintiff would not need assistance to do home chores. He is able to garden but may need some assistance because of a weak grip.

60] It was put to Ms Burns in cross-examination that her testimony was at odds with the plaintiff's evidence. Her response was that the plaintiff had not reported the same injuries and symptoms to all the experts. It was put to her that this is because he was forgetful. Her response was that the plaintiff had not reported being forgetful to her and that his variable memory could also possibly be explained by the fact that the plaintiff was not being entirely truthful.

61] At the end of the day Ms Burns conceded that the plaintiff was capable of pushing a trolley but with pain, and depending upon how many buckets of water were on the trolley and how heavy they were. She also ultimately conceded that a JoJo tank situated closer to the plaintiff's house would assist him. Furthermore, she stated that although she does not deny that the plaintiff needs physiotherapy, she has not made any recommendation as she defers to the orthopedic surgeon as to whether this is necessary or not as this does not fall within her field of expertise - Dr Moloto did not recommend physiotherapy for the plaintiff.

The joint minutes of the Occupational Therapists

62] As stated supra, the OT's filed a joint report. They agreed that:

- a) the plaintiff may benefit from 6 – 8 hours' occupational therapy to address mainly joint care principles and musculo-skeletal limitations;
- b) no structural adjustments to the plaintiff's accommodation was required;
- c) travelling costs to and from any collision related appointments should be covered per the recommended AA rate.

63] The OT's disagreed on the following:

- a) whether the plaintiff would benefit from biokinetics and physiotherapy: Ms Motseto recommended this, but Ms Burns deferred to the orthopedic surgeon for physiotherapy and the psychologist for psychotherapy as she viewed those aspects to be outside of her field of expertise;
- b) the assisted devices plaintiff would require to improve his daily functioning: however, both eventually agreed that a JoJo tank would improve the plaintiff's quality of life;
- c) that the plaintiff would require domestic assistance: Ms Motseto recommended 8-16 hours of domestic assistance per week and 8 hours of gardening assistance bi-monthly for heavy garden tasks. She also made allowance of R5 000 per annum for assistance with heavy home management tasks. Ms Burns was of the opinion that the plaintiff requires no domestic, gardening or home maintenance assistance;
- d) Ms Motseto opined that the plaintiff suffered a loss of enjoyment of life amenities;
- e) insofar as the plaintiff's injuries were concerned, the two experts noted the following:

"8.5 Ms Motseto noted musculoskeletal limitations to the right shoulder and right hand which impacted Mr Waleng's ability to bilaterally lift and carry medium to heavy items as well as reported pain in the left lower limb which impacted standing endurance, walking speed and climbing stairs.

8.6 Ms Burns noted discomfort/pain in both arms when working at above shoulder levels, balance impairment standing on one leg as well as evidence of

discomfort during squatting and kneeling tasks. There was also severe weakness noted in bilateral grip strength although there was possibility of self-limiting behavior. His demonstration of carrying capacity suggested ability to perform work up to medium physical demand”;

- f) Ms Motseto was of the view that the plaintiff has a residual work capacity that falls within a sedentary to light category, whilst Ms Burns was of the view that the plaintiff demonstrated an ability to perform work up to medium category.

64] At the end of the trial the parties provided the court with an agreed list of costs²¹ (Annexure A) pertaining to interventions and assistive devices for the plaintiff. In this regard the line items were not common cause, but the cost of each line item (if ordered by the court) was agreed.

65] Annexure A is broken up into 5 main groups:

- a) therapy, treatment and assistance which totals R461 614;
- b) transport costs which totals R1 972;
- c) recommended treatments by the joint minutes of the orthopedic surgeons which totals R70 000;²²
- d) recommended treatments by the clinical psychologist which totals R38 833;
and
- e) recommended treatment by the neurologist which totals R264 393.

²¹ Which is referred to as Annexure “A” to the actuarial report authored by Ekhaya Risk Services in respect of the plaintiff’s loss of earnings

²² And in respect of which it must be pointed out that the defendant has rejected the joint minutes and they were not referred to in evidence

66] All in all, the total amount claimed for the plaintiff's future medical expenses is R836 812. One must, at all times, bear in mind that this calculation is based on the assumption that the plaintiff indeed suffered the injuries and sequelae pleaded by him.

67] The issue of the amount to be awarded to plaintiff for general damages and future medical expenses can only be determined after the central dispute has been adjudicated. Simply put, the dispute is: what injuries were suffered by the plaintiff as a result of the collision? Once that is determined, the court must decide what were the *sequelae* of those injuries were. Only after these determination, can the court exercise its discretion insofar as an award of general and special damages is concerned.

The plaintiff's injuries

68] It is immensely unfortunate that no evidence at all was led surrounding the mechanism of plaintiff's injuries. The extent of the evidence was that he was on a train, that it collided with another train and he woke up in hospital the following day. There was no evidence from the plaintiff or any witness that (for example) the plaintiff fell and bumped his head.

69] But the fact is that the defendant, in offering to pay the defendant an amount for loss of earnings, has conceded that the plaintiff was, as a fact, injured. No evidence was put before me how that calculation was made, what assumptions were made in the calculation (eg that the plaintiff was rendered unemployable by the extent of his injuries) or even what those injuries were. This is important as the plaintiff alleges that he suffered

a fractured left leg, an a/c joint dislocation and a mild head injury. The defendant, however, alleges that the plaintiff's only injury was a soft tissue injury of the leg.

Analysis

70] The experts' evidence cannot be adjudicated in isolation. It is as against the background of the plaintiff's own evidence and the documentary evidence – the hospital records – that their evidence must be adjudicated. I can also not lose sight of the fact that the experts evaluated the plaintiff approximately 7 years after he was injured. Thus, the only objective contemporaneous evidence is that of the hospital records which must be viewed against the evidence of the plaintiff.

71] I have already set out the recordal of the plaintiff's injuries by Edenvale Hospital. At best for plaintiff, it indicates that the initial diagnosis of a left leg fracture was found to be incorrect after an x-ray was performed; furthermore, an "old" a/c joint injury was recorded three weeks after the collision. There is no recordal at all of a head injury or any sequelae in the hospital records, in the report of Dr Moloto or that of Ms Motsete. The account of the plaintiff's head injury is thus inconsistent.

72] The plaintiff's version is that he woke up in hospital with his head bandaged and his clothing full of the blood that was oozing from the wound on his head. This was not put to any of his experts for their comment. It is also not in dispute that his account of his injuries to the various experts, and the extent of his physical complaints, varied. In my view, the

plaintiff was not a very good witness. His version in the witness stand became increasingly embellished the longer he testified and the more he was cross-examined.

73] The plaintiff's version is, given all the inconsistencies when viewed over the entire conspectus of the evidence he put before me, unsatisfactory and improbable. In my view, given the embellished version of his head injury and shoulder injury, there is a strong possibility of malingering.

74] One of the most crucial elements that the plaintiff failed to prove is the causation element. Other than the plaintiff's disputed version as set out in the pre-trial minutes²³, there is not one shred of evidence of the nexus between the collision and his head and shoulder injury. As his version is in dispute, he bears the onus to prove the causation, extent and *sequelae* of his injuries. All of his experts only assessed him in 2023, some seven years later, and so the hospital records thus play a vital role in establishing causation.

75] I agree with Mr Hlongwane that the hospital records, on their own, are not determinative of the plaintiff's injuries, but where there is a dearth of other objective information, these records become more important in establishing the causal link between the collision and the injuries.

²³ Par 9 *supra*

76] I must also take into account that is that there is no explanation whatsoever how the plaintiff's personal information was recorded on the date of his admission to Edenvale Hospital.

77] The improbabilities of the plaintiff's case lie in the following:

- a) his version of his head injury²⁴ was not recorded by any of his four experts, nor was it put to them in their examination-in-chief. This meant that the defendant was denied the opportunity to cross-examine on this crucial evidence;
- b) the plaintiff's version as regards his shoulder injury is, similarly, and for the same reason, improbable;
- c) it is also improbable that the plaintiff's leg injury and treatment would be recorded in the hospital records in some detail, but not one word written about either a head injury or a shoulder dislocation especially of the nature described by the plaintiff in his evidence;
- d) an "old" shoulder injury was recorded on 14 November 2016 – some three weeks after the plaintiff's discharge and Dr Moloto could not explain what this meant;
- e) despite the plaintiff's evidence that he had received out-patient treatment during 2017 and 2018 for his injuries, and that an out-patient file had been opened in his name, this was not produced;
- f) it was not in dispute that he had undergone a shoulder operation in 2017, but no records were produced for this either.

²⁴ Ie the bandages and oozing blood

78] As a result, and given the inconsistency and improbabilities of the plaintiff's version as a whole, his experts' evidence must be viewed with caution.

79] In *Bee v Road Accident Fund*²⁵ the following was stated:

"[22] It is trite that an expert witness is required to assist the court and not to usurp the function of the court. Expert witnesses are required to lay a factual basis for their conclusions and explain their reasoning to the court. The court must satisfy itself as to the correctness of the expert's reasoning. In *Masstores (Pty) Ltd v Pick 'n Pay Retailers (Pty) Ltd and Another* 2016 (2) SA 586 (SCA) ([2015] ZASCA 164) para 15, this court said:

'Lastly, the expert evidence lacked any reasoning. An expert's opinion must be underpinned by proper reasoning in order for a court to assess the cogency of that opinion. Absent any reasoning the opinion is inadmissible.'

In *Road Accident Appeal Tribunal and Others v Gouws and Another* 2018 (3) SA 413 (SCA) ([2018] 1 All SA 701; [2017] ZASCA 188) para 33, this court said:

'Courts are not bound by the view of any expert. They make the ultimate decision on issues on which experts provide an opinion.'

See also *Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another* 2001 (3) SA 1188 (SCA) ([2002] 1 All SA 384) para 34.

[23] The facts on which the expert witness expresses an opinion must be capable of being reconciled with all other evidence in the case. For an opinion to be underpinned by proper reasoning, it must be based on correct facts. Incorrect facts militate against proper reasoning and the correct analysis of the facts is paramount for proper reasoning, failing which the court will not be able to properly assess the cogency of that opinion. An expert opinion which lacks proper reasoning is not helpful to the court. See also *Jacobs and*

²⁵ 2018 (4) SA 366 (SCA)

Another v Transnet Ltd t/a Metrorail and Another 2015 (1) SA 139 (SCA) ([2014] ZASCA 113) paras 15 and 16; see also *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämpfung mbH* 1976 (3) SA 352 (A) at 371F.”

80] It is in this reconciliation of all the evidence that some of the plaintiff's experts fell short.

81] I found Dr Moloto's evidence to be considered, measured and helpful. I accept that his objective evaluation of the plaintiff had revealed that the plaintiff had, at some stage, suffered an injury to the a/c joint. He conceded that the hospital records recorded only the leg injury on the date of the collision and that the shoulder injury was only recorded some three weeks later on 14 November 2016.

82] It is clear that his examination revealed that the plaintiff's should had suffered a malalignment as a result of a chronic dislocation which he diagnosed also from the X-rays received. But importantly, Dr Moloto did not attempt to justify the hospital records of 14 November 2016. I also accept his diagnoses that shoulder injury was a mild one (a Grade 1 injury) and that the injury to the leg was a soft tissue injury.

83] Dr Moloto confirmed that he did not notice a scar on the vertex of the plaintiff's head during his consultation with him on 17 January 2023. Had he seen this, he would have recorded it in his notes. He testified that the only scar he saw was the one on the plaintiff's left shoulder. The failure to record this is somewhat puzzling as the vertex scar was

recorded by Dr Tseka in her consultation with the plaintiff on 4 October 2023, but not by the Occupational Therapist in her report of 20 January 2023.²⁶

84] This leads one to an ineluctable inference that the injury was sustained somewhere between January 2023 and October 2023, especially as there is no recordal of it at all in the hospital notes of 2016.

85] Unfortunately, I cannot find that either Dr Teska's or Dr Selahle's opinions should be accepted. This is because, as was clear from their evidence, they had simply accepted the say-so of the plaintiff's account of his injuries as those resulting from the collision. They did not confirm his injuries either with an MRI, or a CT- scan or by obtaining any independent collateral information regarding the plaintiff's pre-collision cognitive or physical functioning and had simply assumed that his account was correct when performing their tests and forming their opinions.

86] In *L.Z.D obo T. K v Road Accident Fund* ²⁷ the plaintiff was a pedestrian and was knocked down by a motor vehicle. In her suit against the RAF, she alleged that she had suffered a head injury, but this was not recorded in the hospital records. She relied on expert evidence to prove this injury but led no factual evidence in court. The Full Court held as follows:

"[18] In *A M and Another v MEC for Health, Western Cape*, the SCA put it thus:

"The opinions of expert witnesses involve the drawing of inferences from facts. The inferences must be reasonably capable of being drawn from those facts. If they are

²⁶ She only recorded a healed scar of the a/c joint

²⁷ (A2023-0691885) [2024] ZAGPJHC 175 (23 February 2024)

tenuous, or far-fetched, they cannot form the foundation for the court to make any finding of fact. Furthermore, in any process of reasoning the drawing of inferences from the facts must be based on admitted or proven facts and not matters of speculation. As Lord Wright said in his speech in *Caswell v Powell Duffryn Associated Collieries Ltd*: s 'Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish ... But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture."

[19] Similar statements have been made in the SCA in *RAF V SM* and *MV Pasquale*.

[20] In the current matter, the only factual evidence which exists to establish that DTK was injured at all on 3 May 2016 are the medical records obtained from the Bheki Mlangeni Hospital. No direct evidence was given by the plaintiff or any other person who witnessed any injury having been sustained on 3 May 2016. The hospital records reflect an injury to the patient's right leg and do not reflect any head injury. No application was made to admit the hearsay evidence relied on in the expert reports and it was not suggested that the plaintiff or the driver (who appears from the police statements to have been known to the plaintiff) were unavailable to give evidence of the injuries sustained...

[23] In my view, there is a fundamental problem with the plaintiff's case. Whether the hospital records are admitted into evidence or not, there is no evidence in the record that DTK suffered a head injury in the collision. The plaintiff cannot succeed to recover damages from the RAF purely on the opinion evidence of experts who examined DTK five years after the collision occurred, where there is no factual evidence showing that a head injury (on which all of their views rely) was actually sustained in the collision.

[24] All of the expert reports refer to statements made to them (or to another expert) by the plaintiff when recording the factual assumptions underpinning their reports. None of the experts had any personal knowledge of the injuries DTK suffered in the collision and none of the experts had any personal knowledge of DTK's abilities or the challenges she faced before the collision. This is because, as the Supreme Court of Appeal has cautioned, before any weight can be given to an expert's opinion, the facts upon which

the opinion is based must be found to exist. An opinion based on facts not in evidence has no value for the Court. “²⁸

87] The plaintiff argues that in this case *in casu*, factual evidence was led before the court by the plaintiff himself: that is that he testified how the collision happened and that he lost consciousness and only regained it the following day in hospital. However, I have already found the plaintiff’s version to be unreliable and improbable and his version must be rejected as well the opinions of these experts.²⁹ There is no objective evidence before me whatsoever that the plaintiff suffered a head injury in the collision.

88] The shoulder injury must suffer the same fate as the head injury. Whilst Dr Moloto confirmed a Grade 1 shoulder injury and that the plaintiff had a shoulder operation in 2017, there is no objective evidence that the shoulder injury resulted from the collision. The fact that an “old” shoulder injury was reported on 14 November 2016 is also, in my view, insufficient to prove that the injury was suffered as a result of the collision. At best for the plaintiff, this court is uncertain when the injury came about and thus I find that the plaintiff has failed to acquit his onus in respect thereof.

89] It is as a result of the above conclusions that the head and shoulder injuries, and their *sequelae* must be excluded from any award in respect of general damages and future medical expenses.

²⁸ Footnotes excluded

²⁹ Dr Tseka and Dr Sehlale

90] Thus, it would appear from the objective and opinion evidence of Dr Moloto (who is the only expert who is qualified to diagnose the plaintiff's leg injury) that the plaintiff has suffered a minor leg injury.

General damages

91] Although the plaintiff has claimed in a separate head of damages for the pain and suffering caused as a result of his injuries, in my view this must all be considered together for the purpose of determining general damages. Unfortunately, it appears that De Selahle has linked any PTSD and psychological sequelae to her diagnosis of a head injury, and thus it is excluded from consideration in the determination of the amount of general damages to be awarded to plaintiff in respect of the leg injury.

92] In *Maele v Road Collision Fund*³⁰ the plaintiff was a 7-year old child who had suffered a mild concussive brain injury and a fractured left tibia. She was hospitalised for five days post collision, and had a plaster of Paris cast applied to her leg. She endured acute pain for four to five days after the collision a moderate pain for a few weeks. She experienced discomfort when running, walking or standing for long distances and when kneeling. She also experienced learning difficulties prior to the collision and had a dismal school record which was not exacerbated by her injuries. The court awarded R330 000 in general damages (R569 000 in 2025).

³⁰ 2015 (7E4) QOD 1 (GNP)

93] In *Abrahams v Road Collision Fund*³¹ a 41-year old man suffered a badly comminuted fracture of the right proximal femur; fracture of the right distal fibula and patella; fracture of the right medial malleolus; severe soft tissue injuries to the left hand; secretions in the chest and a mild concussive traumatic brain injury. Various orthopedic surgeries were conducted and the plaintiff was eventually left with a shortened right lower limb with a need to wear an assistive device. She suffered secondary osteoarthritis in the left knee, a limitation of the range of movement and pain in the right hip, knee and ankle and her pre-existing generalized anxiety disorder and social phobia were exacerbated. The court awarded R500 000 (R826 573 in 2025).

94] In my view, the plaintiff's injuries cannot be compared to the above-mentioned cases. It is so that no two matters are ever the same, and that a court uses previous decisions as a guideline. Given the facts before me, at best, the plaintiff's leg injury was a mild one and an amount of R80 000 will more than fairly and adequately compensate him for any pain, suffering and loss of amenities of life.

Future medical expenses

95] Both of the OT's have agreed that the plaintiff will require 7 sessions of occupational therapy at a cost of R9 285. I see no reason to deviate from this recommendation.

96] They have also agreed that a JoJo tank will greatly alleviate the plaintiff's burden of fetching and carrying water to his house. This carries with it an estimated cost of R10 547.

³¹ 2014 (7J2) QOD 1 (ECP)

97] I am also of the view that the cost of ice and heat packs (of R790) and warm packs (of R2 045) should be granted as they will assist the mitigate any pain and discomfort plaintiff suffers resulting from the leg injury.

98] Insofar as analgesics are concerned (these recommended by Dr Moloto to manage the plaintiff's pain), it is unfortunate that the heading to the quantification of R70 000 is "consultations/surgery/rehabilitation and analgesia". It is so that the evidence is that the plaintiff has required follow-ups from the clinic especially in 2017 and 2018 for his pain. There was no evidence regarding whether this bore a cost. It is unlikely to have done, as there is no claim for past medical expenses. Be that as it may, Dr Moloto did not testify that any surgery would be required for plaintiff's leg injury. However, I accept that he will require consultations and analgesics³². There was no evidence from a physiotherapist regarding any "rehabilitation" and Ms Burns evidence was that she would defer to a physiotherapist in this regard as an OT is not qualified to opine on this issue. I thus am of the view that an amount of R35 000 would suffice for any consultations and analgesics.

99] Thus, the quantification of the plaintiff's damages is the following:

- | | | |
|----|-------------------------|-------------------------|
| a) | general damages | R80 000 |
| b) | future medical expenses | R57 667 |
| c) | future loss of earnings | R585 000 (by agreement) |

TOTAL	R722 667
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³² Which Dr Moloto opines will cost approximately R3 000 per annum life-long

100] Counsel were in agreement that costs should follow the result and be taxed in accordance with Scale B.

ORDER

The order I make is the following:

1. By agreement, the defendant is ordered to pay to the plaintiff his proven or agreed damages.
2. The quantum of damages to be paid by the defendant to the plaintiff is the amount of R722 667 which is quantified as follows:
 - a) general damages R80 000
 - b) future medical expenses R57 667
 - c) future loss of earnings R585 000 (by agreement)
3. The defendant is ordered to pay the plaintiff's costs of suit which costs are to be taxed in accordance with Scale B.



**B NEUKIRCHER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

This judgment was prepared and authored by the judge whose name is reflected, and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 15 July 2025.

For the plaintiff	:	Adv Hlongwane
Instructed by	:	Nkuna Rose Attorneys
For the defendant	:	Adv Opperman
Instructed by	:	Norton Rose Fulbright South Africa
Matter heard on	:	26 May 2025 – 30 May 2025
Heads of argument submitted	:	2 June 2025
Judgment date	:	15 July 2025