



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

Case No: 6158/2018

In the matter between:

BIENVENU MBOYO-IYUMA

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

Judgment Reserved: 15 April 2025

Judgment Delivered: 20 August 2025

JUDGMENT

HOLDERNESS J

A. INTRODUCTION

[1] On 26 August 2017, at Koeberg station, Western Cape, the plaintiff, Bienvenu Mboyo-Iyuma (the plaintiff or Mr. Mboyo-Iyuma), an adult male former truck driver, born on 16 November 1971, was attacked by unknown assailants on a train operated

by the Defendant. He was pushed from the train, through the open doors thereof (the incident).

[2] As a result of the incident, the plaintiff sustained an above-elbow amputation of the left arm and soft tissue injury to the lumbar spine.

B. THE MERITS SETTLEMENT

[3] The plaintiff and the defendant, the Passenger Rail Agency of South Africa (PRASA or the defendant), have settled the issues of causal negligence and causal contributory negligence, on the basis that the defendant is to pay 50% (fifty per cent) of the proven or agreed damages arising out of the incident.

[4] During the first day of the trial, the parties settled general damages in the amount of R1,500,000.

C. THE QUANTUM EXPERT REPORTS

[5] The plaintiff appointed as experts orthopaedic surgeons, Dr J Sagor and Dr B Bernstein, an orthotist and prosthetist, Dr E Rossouw, an occupational therapist, M Le Roux, an industrial psychologist, Ms K Kotze, and Munro Consulting (actuaries).

[6] The Defendant obtained the expert reports of orthopaedic surgeon, Prof GJ Vlok, orthotist and prosthetist, Mr J Brand, occupational therapist, Ms J Andrews, industrial psychologist, DG Malherbe and Fero Actuarial Consulting (actuaries).

[7] The parties obtained the following joint expert minutes:

- 7.1 Dr J Sagor and Prof GJ Vlok (orthopaedic surgeons) – dated 22 July 2024 and 3 February 2025.
- 7.2 Mr E Rossouw and Mr J Brand (orthotists and prosthetists) – dated 3 February 2025.
- 7.3 Ms M Le Roux and Ms J Andrews (occupational therapists) – dated 22 January 2025.

7.4 Ms K Kotze and Mr D Malherbe (industrial psychologists) – dated 30 January 2025.

[8] As neither party has repudiated any of the joint expert minutes, the principles set out in *Bee v Road Accident Fund*¹ apply to the agreements outlined in the joint minutes, that is, that facts agreed by experts in joint minutes are binding unless timeously and clearly repudiated; they carry the same weight as common-cause facts in pleadings or pre-trial agreements.

D. THE ISSUES FOR ADJUDICATION

[9] The issues for adjudication are:

- 9.1 Past medical expenses.
- 9.2 Future medical expenses.
- 9.3 Past and future loss of earnings.
- 9.4 Costs and the scale of counsel's fees.

E. EVIDENCE BY EXPERT WITNESSES AND THE RULE 38(2) APPLICATION

[10] The plaintiff led the oral evidence of Mr Rossouw, Ms Le Roux, Ms Kotze and Mr Boshoff, who confirmed the contents of their reports and joint minutes.

[11] The plaintiff applied under Rule 38(2) for the reports of Dr Sagor and Prof Vlok to be admitted into evidence. The application was unopposed and was duly granted.

[12] The Defendant called Mr Brand and Ms Andrews as expert witnesses.

[13] I now turn to address the heads of damages.

¹ 2018 (4) SA 366 (SCA) (BEE) at paras 64 to 66.

F. LOSS OF EARNINGS

[14] Ms Kotze (KK), the plaintiff's appointed industrial psychologist (IP), concerning the joint minute she concluded with the defendant's appointed IP, Mr D Malherbe (DM), noted the following points of agreement:

- 14.1 With regard to the claimant's unaffected earnings, at the time of the incident, Mr Mboyo-lyuma was a 45-year-old individual, in possession of a Diplôme d'Etat (DRC), equivalent to a South African Grade 12 level of education. His former work roles include that of general worker, construction worker, artisan's assistant and truck driver.
- 14.2 In October 2012, he commenced working at Driver Excellence as a Code 14 Driver. He was employed in this role at the time of the incident.
- 14.3 But for the accident, Mr Mboyo-lyuma would in all probability have been able to continue to function as a Code 14 Driver.
- 14.4 For purposes of the quantification, Mr. Mboyo-lyuma would probably have continued to earn his actual remuneration in 2017, with straight-line increases to remuneration associated with the earnings for a Code 14 driver at Driver Excellence. For 2024, i.e. R78-60 p/hour (45 hours p/week), equating to R3 537-00 p/week and R183 782-52 p/annum.²
- 14.5 This would probably have been followed by earnings inflation up to retirement age at 65 years.

[15] Where Ms Kotze (KK) and Mr Malherbe (DGM) parted ways was that Mr Malherbe observed that whereas the employer certificate relied upon quotes the hourly rate, the claimant may have earned less at times as a Code 10 driver or due

² These earnings are commensurate with the Minimum Wage for Code 14 Drivers. As per the attached NBCRFLI Circular to Industry, this is presented as R3 322-06 and thus R172 614-23 p/annum.

to shorter working hours as were evident in his pre-accident salary advices. The plaintiff's annual earnings may therefore have been reduced as a result of working on different contracts. This indeed may well have been so, and will be dealt with through a contingency deduction on his premorbid earnings.

[16] Concerning the plaintiff's affected or post-accident earnings, KK and DM agree/note that:

- 16.1 Mr. Mboyo-lyuma was unable to resume his work role as a truck driver or similar, or any other work roles in line with his level of education and job skills in the open labour market at the time of the incident.
- 16.2 He is however, reportedly assisting his spouse, who is an informal trader, selling fresh produce from a temporary stall on the premises where they reside.
- 16.3 Drs Vlok and Sagor, in their joint minute, agree that Mr. Mboyo-lyuma is limited to doing activities needing one arm. He cannot return to work as a truck driver, but could be trained to do alternative clerical or supervisory work, should the opportunity arise.
- 16.4 However, noting Mr. Mboyo-lyuma's age (52 years) and his previous work roles of a basic-skilled nature and his lack of administrative or supervisory skills, it seems impracticable that he could be trained in such capacities as the open labour market, or will be in a position to compete with able bodied job applicants who are already trained and experienced in in the open labour market.
- 16.5 Ms. Andrews and Mr. Le Roux, in their joint minute, agree that while the plaintiff's residual physical capacity supports the ability to perform sedentary to light physical work, involving predominantly one-handed tasks, he is essentially considered unemployable. He is no longer suitable for manual and driving work, including his previous role as a

truck driver. They concurred that he can continue assisting his wife in selling fresh produce in the informal sector.

16.6 They agreed that Mr. Mboyo-lyuma's chances of securing gainful employment in the open labour market are almost non-existent, and that he will probably remain unemployed for the remainder of his working life.

[16] Mr. Malherbe's view was that, based on the plaintiff's explanation of this venture to him, it was suggested that it is his own business since 2022, and that he plays an active part, even though his earnings are very limited.

[17] I am not persuaded that this is so. It is clear from the joint minute that the plaintiff indicated that a casual employee assists twice a day to erect and dismantle the stall and to carry produce to and from the stall, and that customers have to pack their purchases into a carrier bag. These are all tasks which the plaintiff clearly cannot attend to with only one arm.

[18] While Mr Mboyo-lyuma should be commended for his willingness to participate in his spouse's venture, it is clear that his participation, which is limited to calculating customers' purchases and handling cash, cannot be regarded as employment, but rather as familial support, which gives him a sense of purpose. It is, furthermore, noted that he is not remunerated for his participation in the venture, and the only reported benefit is that his spouse is afforded a certain time during the day to attend to household chores, whilst he mans the stall.

[19] It is apparent from the foregoing that the plaintiff is unemployable in the open labour market. In the circumstances, I am satisfied that for all practical purposes, Mr Mboyo-lyuma has remained unemployed since the accident until the present, and that a total loss of earnings has occurred from the date of the incident. For purposes of the quantification of the claim, the likely pre-incident earnings should be used as a baseline.

[20] In the Munro actuarial report dealing with loss of earnings, set forth in Exhibit 'E', the calculations are based on the IP joint minute, with scenario 1 representing KK, scenario 2 representing DGM, and scenario 3 being the average between scenarios 1 and 2.

[21] Mr Boshoff testified that the 5% applied to past earnings is the standard contingency, and that the 10% applied to future earnings in Exhibit 'E' based on the sliding scale is a conservative contingency.

[22] As Nicholas JA said in *Southern Insurance Association Ltd v Bailey NO (Bailey)*³ deduction for contingencies is meant to account for the 'vicissitudes of life'⁴. These include:

'[T]he possibility that the plaintiff may in the result have less than a "normal" expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions.'

[23] The court referred to *Singh v Ebrahim*,⁵ in which a 15 per cent contingency deduction was approved, and *PM obo TM v MEC for Health* in which 20 per cent was deducted.⁶

[24] It is well established in our law that the Court has 'a large discretion to award what it considers right.'⁷ One of the elements in exercising that discretion is the making of a discount for contingencies or the 'vicissitudes of life.' These include such matters as the possibility that the plaintiff may in the result have less than a 'normal' expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic

³1984 (1) SA 98 (A) at 113 G-H. *Bailey* At 119D-H, as cited with approval in *NK obo ZK* at para 15.

⁴ *Bailey* at 116H-117A.

⁵*Singh & another v Ebrahim* (413/09) [2010] ZASCA 145 (26 November 2010); 2010 JDR 1431 (SCA).

⁶ *PM obo TM v MEC* at para 51.

⁷ Per Holmes JA in *Legal Assurance Co Ltd v Botes* 1963 (1) SA 608 (A) at 614F; *Bailey* at p116.

conditions. The amount of any discount may vary, depending upon the circumstances of the case.⁸

[25] In *Road Accident Fund v Kerridge*⁹ ('*Kerridge*') the Court noted that 5% and 15% for past and future earnings (or earning capacity), respectively, have become accepted as 'normal contingencies'.¹⁰ This generality notwithstanding, the assessment remains 'largely arbitrary' and must depend upon the trial Judge's impression of the case. As pointed out by *Bailey*, the vicissitudes of life may be either adverse or favourable.¹¹

[26] I am satisfied that, taking into account the plaintiff's age and the circumstances of this case, the contingencies proposed by Mr. Boshoff are fair, and that an average of the scenarios proposed by the two IP experts is appropriate. This is calculated, after applying contingencies of 5% on past and 10% on future earnings, as follows:

26.1	Scenario 1 (KK):	R3,132,930.00
26.2	Scenario 2 (DGM):	R2,849,085.00
26.3	Scenario 3 (Average):	R2,990,960.00

[27] The past earnings as reflected in the actuarial calculation, is R1,183,200. Applying a contingency deduction of 5% to this amount would yield R1,124,040. The future uninjured earnings amount to R2,232,100. Applying a contingency deduction of 15% to this amount would yield R1,897,285. The loss of earnings in the injured state is accordingly R3,021,325. The court accordingly awards damages for the plaintiff's loss of earnings and earning capacity in the amount of R1,495,480.¹²

THE PROSTHESIS QUESTION

⁸ See *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) at 114 – 5 as cited in *Bailey* at 116.

⁹ 2019 (2) SA 233 (SCA) at para 30.

¹⁰ *Road Accident Fund v Kerridge* 2019 (2) SA 233 (SCA) at para 30; *Esso Standard SA (Pty) Ltd v Katz* 1981 (1) SA 964 (A).

¹¹ *Bailey* at p116.

¹² $R2,990,960.00 \times .5 = R1,495,480$.

[28] By far the most vexing and contested issue in this matter, which has been very difficult to decide, is the issue of which prosthesis is most appropriate for the plaintiff. The orthopaedic surgeons and OTs deferred to the orthotists and prosthetists on which prosthetic would ultimately be best used and provide the greatest benefit to the plaintiff.

[29] The prosthetists appointed by the plaintiff and the defendant, respectively, Mr E Rossouw (ER) and Mr J Brand (JB) (the prosthetists)¹³, both provided oral testimony and extensive written input, which has been of great assistance to the court. The following appear to be the only points of agreement that can be gleaned from their joint minute dated 3 February 2025:

29.1 The selection, application, fitting and costing of a prosthesis for an individual with unique needs and expectations fall within their domain as prosthetic specialists, and are not within the scope of other experts.

29.2 That Mr. Mboyo-Iyuma is a medically suited candidate for both the myo-electronic (ME) prosthesis recommended by ER and the cosmetic prosthesis recommended by JB.

[30] In the joint minute and in his evidence, ER suggested a dual approach in which the plaintiff is provided with both the ME and the cosmetic prosthesis (the dual approach).

[31] Mr Boshoff calculated the costing of the dual approach, based on the assumption that the plaintiff would use the ME until 70 years of age, and thereafter the cosmetic prosthesis for the remainder of his life. It was contended on behalf of the plaintiff that the dual approach would be a 'fair and reasonable compromise' in this matter.

[32] Ms Masupye argued that where the plaintiff claims future medical expenses, the court will be guided by the principle that a plaintiff must mitigate his damages –

¹³ They are in fact expert orthotists and prosthetists. For the sake of brevity, I shall refer to them as the prosthetists.

he cannot claim the most expensive treatment and expect the defendant to bear the costs thereof.¹⁴

[33] The defendant argued that because the plaintiff would not have been able to afford the ME but for the incident, he is not able to claim the same due to the injuries resulting from the incident.

[34] The trite delictual principle referred to by Mr Laubscher to counter this argument is as follows:

‘The basic principle underlying an award of damages in the Aquilian action is that the compensation must be so assessed as to place the plaintiff, as far as possible, in the position he would have occupied had the wrongful act causing him injury not been committed. This is done by comparing the plaintiff’s ‘property’, here meaning a universitas or complex of legal relations, including rights and duties, as it is after the commission of the wrongful act with its projected state had the wrong not been committed.’¹⁵

[35] The defendant questioned how, in circumstances where ER testified that the plaintiff does not understand the benefits of a ME prosthesis and has never had the opportunity to use it, he claims a ‘luxury he never had before the incident at the expense of the taxpayer?’. This, of course, loses sight of the fact that before the incident he had both upper limbs and did not need a ME or a cosmetic prosthesis.

[36] In determining whether the plaintiff has shown that applying the delictual principle above, I have had regard to the evidence of both ER and JB’s evidence and the points raised for and against the ME prosthesis, both in their respective reports and their joint minute. I shall also refer to the reports of the other experts only insofar as they are relevant to the prosthesis question.

¹⁴ *Mogano v Passenger Rail Agency of South Africa* (2013/43052) [2023] ZAGPJHC 1069 (26 September 2023) at para 34.

¹⁵ *The Quantum of Damages in Bodily and Fatal Injury Cases*: 2024 revision service by Potgieter C, Corbett MM, Gauntlett JJ, Buchanan JP, Honey DP, Corbett P, Potgieter C and Daffue J 2024.

[37] An issue which I raised with the plaintiff's counsel was the failure to call the plaintiff himself to give evidence to testify *inter alia* regarding whether he required the ME prosthesis for his daily activities and whether he would use it, as the plaintiff must establish as a matter of probability that this expense is reasonable and/or necessary. The failure to call the plaintiff was never satisfactorily explained.

[38] In his report, ER stated that the intention of the prosthetic prescription in his report is to be in the best interest of the plaintiff concerning the best possible functional and cosmetic restoration of his arm amputation, and is not based on a suggested or requested budget and an alternative and compromised prosthetic prescription will only be provided if so requested.

[39] Mr. Rossouw listed *inter alia* the following gains with a ME prosthesis:

- 39.1 During food preparation, the plaintiff could hold a piece of food with a fork while cutting it.
- 39.2 He could hold a bottle or jar whilst opening it, provided it is not closed too tightly.
- 39.3 He could hold a book while paging through it, or a wallet while taking money out of it.
- 39.6 He could open a door whilst carrying an object. Or hold a shopping basket while packing groceries in the basket.

[40] Mr. Rossouw stated that the plaintiff would require both a primary and secondary prosthesis, and that to optimise the best possible outcome and integration with the prosthesis into activities of daily living. Denser formal training should be provided by an occupational therapist who is trained and experienced in upper limb prosthetic rehabilitation.

[41] The cost of a primary and secondary prosthesis, excluding cosmetic gloves, at the time of his report (in 2019) was R1,155,182. If the plaintiff is provided only with a primary prosthesis, the primary prosthesis would need replacement once every four to five years. If provision is made for a secondary prosthesis, the primary and secondary prosthesis would need to be replaced once every eight to ten years.

[42] The OTs deferred to the prosthetists, however there are observations in their report which bear relevance to the prosthesis question.

[43] Ms. Andrews noted in her report dated 18 May 2024 that the plaintiff wears a cosmetic prosthesis irregularly, due to discomfort because of its weight. The plaintiff has developed a habit of only wearing the prosthesis when going out and is likely to continue with this habit. The plaintiff reported that 'he is frustrated easily and tends to give up'. Ms. Andrews observed that learning to use a ME prosthesis is a reasonably lengthy and time-consuming process, with ongoing use and practice to master it. She envisioned that he may react similarly to learning to use the ME prosthesis.

[44] She expressed the view that, based on her assessment and input from his wife, the plaintiff may no longer be as mentally sharp, and ultimately may be unable to learn to use the ME prosthesis or cope with maintenance and repair requirements.

[45] Ms. Andrews questioned the need for a ME prosthesis, as in her view the functions described by ER are significantly limited for the plaintiff, and while some may be useful, he has developed alternative ways of coping with many bilateral activities. She noted that it will not help him tie his laces, dye his beard, wash his back, or drive, which are the activities he reports to have difficulties with.

[46] Lastly, she noted that the plaintiff seems to be motivated to continue with the home-based business of buying and selling vegetables, and a ME prosthesis is unlikely to enable better functioning within the business and may be a hindrance rather than a help. It may also attract unwanted attention, with risk of theft, given the higher value and electronic parts.

[47] Ms. Andrews concluded that the OT assessment indicates that given his age, his level of independence, his habits, behaviours and future plans, the provision of a ME prosthesis is unlikely to improve the plaintiff's situation significantly and leading him to believe it will, may be doing him a disservice or giving him false hope of significantly improved abilities.

[48] Ms. Le Roux, the plaintiff's OT expert, supports a ME prosthesis, as in her view, it aligns with the plaintiff's needs and goals and has the potential to notably enhance his functional independence and quality of life, particularly for bimanual tasks, will enable him to contribute more to household and store activities.

[49] Ms. Le Roux further supported rehabilitation and prosthesis training for the ME prosthesis by a Certified Hand Therapist (with either an OT or physiotherapist), and opined that allowance should be made for 20-30 sessions at a current cost of R950 – R1,000 per hour.

[50] In this regard, Ms. Andrews observed that Prosthetic training differs significantly from the tendon transfer training, owing to multiple factors, of which the most significant is the lack of sensation of movement felt in the ME hand. She noted that the plaintiff would require a French interpreter for training, which would add further complications. Considering his age, cognitive difficulties (as noted in her report, as well as difficulties understanding the interpreter and his tendency to be impatient), as well as his established abilities, Miss Andrews remains doubtful that he will benefit from a ME prosthesis.

[51] In his report dated 25 January 2025, which he confirmed in his evidence, Mr. Brand noted as follows:

51.1 The plaintiff uses his prosthesis when he goes out in public but does not use it at home.

51.2 It has been 7 years since his amputation, and he has managed to become right-handed, does everything with his right hand and uses his stump as support.

51.3 He would be able to control a ME prosthesis, but at this stage of his life, it would not contribute to quality since the effort outweighs the reward.

- 51.4 He has adapted to using his right hand, and if he were fitted with an ME prosthesis early in his rehabilitation, it might have been a different outcome.
- 51.5 Abandonment rates in upper limb prosthetic rehabilitation worldwide are higher than 50%. Clinical reality still shows high rejection rates of cost-intensive prosthetic devices.
- 51.6 His current needs are for a lightweight cosmetic Prosthesis with a silicone cosmetic finish. It would be fair to cater for two cosmetic prostheses replaced every 10 years, since he will only use it on certain occasions and not full-time.
- 51.7 His greatest challenge in public is vulnerability, and that he does not look like an easy target.
- 51.8 Due to the changes in the stump, it is normal to refit both these prostheses once in a 10-year cycle. He would need 2 silicone suspension liners initially and one replaced annually. 8 hours must be allowed per annum for routine maintenance and prosthetic socket tweaking. The cosmetic hand and glove will be replaced during fitting.

[52] According to Mr. Brand the cost of a primary and secondary prosthesis is R385,007.12 each. A refit will cost R256,312 per prosthesis and skincare kits, and maintenance will cost R9,063 and R21,144 per annum, respectively.

[53] In the joint minute, Mr. Rossouw agreed that early fitting of a ME prosthesis would have been beneficial. However, he went on to say that the ME prosthesis, which he recommended, specifically the dynamic arm with vary speed hand, controlled by single electrode and linear potentiometer harness pull switch, features remarkably simple and intuitive operation.

[54] Mr. Brand did not take issue with the abandonment rate statistic of 50%, however, he noted that it is essential to consider that the plaintiff may fall with and

the percentage of individuals who successfully adapt to and benefit from a ME prosthesis. In his view, it would be prudent to give the plaintiff the benefit of the doubt.

[55] Mr. Brand's view is that it is crucial to prioritise the plaintiff's potential for future improvements and adaptation, rather than solely relying on its current adaptation. A ME prosthesis can offer a new dimensional functionality, which may lead to notable improvements in his overall quality of life.

[56] In considering Mr. Brand's contention that the plaintiff's greatest challenge in public is vulnerability and that he does not look like an easy target, Mr. Rossouw noted that the natural-looking appearance of the ME prosthesis when used with a skin-toned glove addresses such concern.

[57] Mr. Brand noted that the dual approach would address the plaintiff's current needs as a relatively young and economically active individual, providing him with the necessary tools to navigate various situations confidently. The combination of functional and cosmetic prostheses would cater to his physical, emotional and social well-being. He concluded by noting that Mr. Brand's approach may be more suitable for the plaintiff's later years, a dual approach at this stage would be beneficial in addressing his immediate and long-term needs.

[58] It is unfortunate that the plaintiff was never called to give evidence as to why he needs the ME prosthesis to complete the tasks of daily living and whether he would, in fact, use the arm if allowance were to be made for it. It is clear that the plaintiff has learnt to adapt to one arm and that his sound limb has become his dominant limb.

[59] After carefully considered the evidence of the respective experts, weighing up the benefits and utility of the ME prosthesis against the costs thereof, and taking into account the fact that the possibility exists that the plaintiff may indeed use the ME prosthesis, I will make provision for the primary and secondary prosthesis (combined

or dual approach)¹⁶, but intend to apply a higher contingency of 30%, because of the factors set out above, the plaintiff's age and the fact that he is no longer employed.

[60] The actuarial calculation by Mr. Boshof in respect of the cost of the prostheses based on the dual or combined approach, is a total amount of R8,778,170. The amount awarded is R3,072,360.¹⁷

[61] Regarding other medical expenses, it appears to be a common cause that Mr. Mboyo-Iyuma will require the future medical expenses provided for by the orthopaedic surgeons in items 1 and 2 of Annexure A. I am satisfied that these expenses are both necessary and reasonable and will make provision, therefore, in a total amount of R28,720.¹⁸

[62] Concerning the future medical expenses provided for by the OTs, and on a consideration of the evidence presented in respect of items 3 to 21, and considering that provision has been made for the ME arm, I intend to make allowance for items 3, 5, 7, 18, 20 and 21. A contingency of 15% will be applied to these expenses. The total amount is R128,758.¹⁹

[63] The total amount to be awarded for future medical expenses is accordingly R3,229,838.

[64] No evidence was presented in respect of the plaintiff's past medical expenses, nor were these expenses dealt with in argument by either the plaintiff or defendant, and I accordingly do not intend to make any award under this head of damages.

COSTS

¹⁶ As per Annexure A of the Munro report (Exhibit 'F')– Items 33 to 40 (Annexure A).

¹⁷ 50% of R8,778,170 = R4,389,085 x .70 = R3,072,360.

¹⁸ R57,440 x 0.5 = R28,720.

¹⁹ R302,960 x .50 = R151,480 x .85 = R128,758.

[65] The plaintiff is entitled to his party and party costs. In my view, the appropriate scale for the costs of counsel, considering the issues which fell to be determined and the complexity of the matter, is Scale B.

ORDER

[66] The following order shall issue:

1. The defendant shall pay to the plaintiff through the plaintiff's attorney, the sum of R5,475,318.
2. The defendant shall pay the plaintiff's party and party costs and counsel's taxed or agreed fees on the B scale.
3. The Defendant shall pay the qualifying expenses and reasonable and necessary fees and disbursements of the following expert witnesses:
 - 3.1 Dr J Sagor
 - 3.2 Mr E Rossouw
 - 3.3 Ms M Le Roux
 - 3.4 Ms K Kotze.

M Holderness
Judge of the High Court
Western Cape Division

For the Plaintiff: Adv A Laubscher
Instructed by: Ms N Stockdale
Adendorff Attorneys

For the Defendant: Adv K Masupye

Instructed by:

Ms L José

Jose Associates