



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case Number: 4832/2016

In the matter between:

MARIUS MITTON

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Mitton v Road Accident Fund* (4832/2016) [2025] ZAFSHC 245 (15 August 2025)

Coram: Reinders J

Heard: 9 December 2024

Delivered: This judgment was handed down in open court on 15 August 2025 and distributed to the parties via electronic mail communication.

Summary: Loss of earnings or earning capacity – plaintiff employed in the mining industry – court making a determination of what is fair and just in the circumstances in awarding a lump sum.

ORDER

1 The defendant is ordered to pay the plaintiff the amount of R5 000 000.00 (FIVE MILLION RAND ONLY) in respect of the plaintiff's past and future loss of earning capacity.

2 Interest *a tempore-morae* on the amount in para 1 above shall be calculated in accordance with the Prescribed Rate of Interest Act 55 of 1975, read with s 17(3)(a) of the Road Accident Fund Act 56 of 1996, 180 days from the date of this order.

3 The defendant shall pay the plaintiff's agreed or taxed cost on the High Court scale (inclusive of the wasted costs incurred on 3 October 2023), such costs to include:

3.1 The costs of two counsel on Scale C.

3.2 The reasonable qualifying fees of the following experts:

3.2.1 Dr SJ Greyling - Orthopaedic surgeon;

3.2.2 Dr SJ Ziervogel - Orthopaedic surgeon;

3.2.3 Ms S Maree/N Paul - Occupational therapist;

3.2.4 Dr EJacobs - Industrial psychologist;

3.2.5 Munro actuaries - Actuary

4 All payments shall be deposited into the bank account of the plaintiff's attorney of record with the following banking details:

Bank:	ABSA
Account Name:	P JOUBERT INCORPORATED
Branch Name:	SANTYGER BRANCH
Branch Code:	632 005
Account number:	4076931756

5 The party and party costs, as agreed or taxed, shall be paid by the defendant directly into the trust account of P Joubert Inc. Attorneys for the benefit of the plaintiff and payment shall be made within 180 (ONE HUNDRED AND EIGHTY) days from the date of the allocator.

JUDGMENT

Reinders, J

[1] On 21 May 2014 the plaintiff, 23 years of age at the time and employed as a bolter operator in a mining company, was involved in a motor vehicle accident (the accident). He sustained serious injuries, amongst others to his left shoulder, pelvis, and lumbar spine. He issued summons against the defendant, claiming damages under several headings. On 27 February 2018, the defendant was ordered to pay 80% of the plaintiff's agreed or proven damages resulting from the collision. The parties agreed, on 4 October 2023, that the defendant would furnish the plaintiff with an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996 for future medical expenses (limited to 80% thereof) and R800 000 in respect of general damages (apportionment of 80% taken into account). I was called upon to adjudicate the remaining claim, namely the plaintiff's claim for loss of earnings/earning capacity.

[2] Counsel appearing for the plaintiff, Mr W Coetzee SC was assisted by Mr JD Jankowitz, whilst the defendant was represented by Ms J Gouws. The plaintiff submitted expert reports of an occupational therapist (Ms S. Maree/N Paul), industrial psychologist (Dr E Jacobs), orthopaedic surgeons (Drs JF Greyling and JF Ziervogel) and actuaries (Munro Actuaries). The contents of the reports of Dr Greyling, Ms Maree/Paul and Munro were handed in by agreement between the parties. The defendant did not employ the services of any experts, nor did it call any witnesses.

[3] The uncontested evidence gleaned from Dr Greyling's report (compiled in 2022) is that the plaintiff sustained the following injuries which he recorded as follows:

Ruptured bladder; pelvis injury; inferior rami pubic; superior rami pubic involving acetabulum; large retro peritoneal hematoma; diffuse scrotal oedema; developed acute renal failure and CT scan pelvis: non displaced right sacra ala fracture.

Dr Greyling opined that the plaintiff suffered from serious orthopaedic injuries to wit those to his pelvis, left shoulder, lumbar spine and right foot drop due to a sciatic nerve injury. He added that the work duties of the plaintiff include drilling, safety support underground and the operation of mining machines. He concluded: 'It is expected that

the client should not be able to perform his occupation anymore and should be considered permanently disabled for work in the open sector.'

In the report of Ms Maree/Paul (compiled in 2019) a functional capacity assessment was performed on the plaintiff. She recorded that the plaintiff experiences difficulty with balance in his lower limbs while on uneven surfaces and has a decreased ability to sustain postures like standing/stooping/squatting. Despite her remark that the plaintiff overstated and emphasized the residual symptoms and impairments he is suffering, she concluded that '... the most probable projection regarding Mr Mitton's ability to work, would be sedentary work demands, although he demonstrated high levels of discomfort during prolonged sitting and postural breaks as indicated.'

[4] To prove his case, the plaintiff tendered the *viva voce* evidence (supported by their expert reports) of Drs Ziervogel and Jacobs. The plaintiff himself testified via a virtual platform as he was employed in the mining industry abroad at the time of the hearing.

[5] Dr Ziervogel confirmed the contents of his reports, the latest of which was compiled on 12 June 2024. He examined and thoroughly evaluated the plaintiff. His report confirmed the injuries sustained by the plaintiff to be in accordance with that recorded by Dr Greyling, as well as the complaints by the plaintiff to be, amongst others: impaired sense of balance; pain in the left shoulder, right hip and back; inability to sit down for a long time on either side of his buttock and his legs sometimes numbing. Dr Ziervogel noted in his report that:

" The patient works as a mining consultant.

He must be able to go underground and do heavy physical labour.

With his back problem he should not do that.

Therefore, it is probable that he will ask for early retirement.

His problem with balance may also make him unfit for underground work."

The *viva voce* testimony of Dr Ziervogel concentrated on the back pain experienced by the plaintiff and whether it was as a result of injuries sustained in the accident. An initial comment of the radiologist that signs of Scheuermann's disease (a deformity of the vertebrae during childhood) could be noted on X-rays of the plaintiff's spinal

vertebrae, was corrected in the subsequent report which did not confirm such deformities. Dr Ziervogel explained that 'wedging' of the vertebrae of the plaintiff's back (where the vertebrae show signs of compression) is noted from X-rays. Dr Ziervogel confirmed that the plaintiff suffers from a so-called 'drop-foot' as a result of the accident.

[6] During cross-examination he conceded that, although the plaintiff experiences back pain, signs of degeneration in his spine (the wedging) are not accident-related. However, Dr Ziervogel testified that the plaintiff has a problem with his balance when in darkness as his vestibular system (inner-ear) was negatively affected. He made the concession that, provided the plaintiff has proper sight (where he is not operating in darkness) the balancing constraint would not pose a problem, and the plaintiff would thus be able to manage and train people as a consultant in the mining industry.

[7] The plaintiff is currently 34 years of age. He testified on his career path, and confirmed the information given by him to the industrial psychologist, to be correct. I find it apposite to mention at this stage the so called 'red ticket' to which reference was made during evidence and ultimately in closing submissions. Suffice it to say that in compliance with mandatory legislative prescriptions in South Africa, any person working underground in the mining industry, must pass a medical examination which ensures that a person is mentally and physically capable to perform such work. The examination includes, *inter alia*, a heat tolerance test (HTT). In the mining industry this certificate is informally referred to as a red ticket. The testimony of the plaintiff in his evidence-in-chief was summarised by Mr Coetzee SC in able heads of argument prepared for purposes of closing arguments. The plaintiff testified that:

- '(a) If it was not for the accident, he would've seen himself in middle management [in the mining industry] at this point in time.
- (b) currently he wouldn't be able to pass the medical examination in South Africa
- (c) he wouldn't pass the aforementioned because of his back problems and his lack of balance.
- (d) he would not be able to continue with his current work for a period exceeding 5 years.
- (e) he is not capable of keeping up with a person that is doing the same job as himself.
- (f) the situation is getting worse every time he goes back [to mining oversees]
- (g) the work that he is doing is of a physical nature and against the medical advice.

- (h) he poses a risk for other employees working with him.
- (i) he has never broken a bone in his body before the accident.
- (j) as a result of the drop foot, he has since broken his ankle multiple times.
- (k) he is not able to pass his heat tolerance test.
- (l) he is qualified in trackless mining.
- (m) even if he keeps performing this job for another 5 years he wouldn't be able to do anything he is qualified for, in South-Africa.'

[8] During cross-examination, the plaintiff conceded that he had successfully passed the red ticket in South Africa after the accident to work underground – not only once, but twice, with two different employers. He likewise conceded that the red ticket tests made provision for evaluation of each case on its own merits, and adaptation of the tests.

[9] Dr Jacobs confirmed the correctness of the collated report compiled by him on 14 June 2022. It is evident from this report that Dr Jacobs performed a thorough assessment of the plaintiff and his circumstances, the first of which was on 25 April 2019. Further assessments were done in 2021 and continuously via social media whilst the plaintiff was working abroad, and finally on 8 February 2022. The following notes of Dr Jacobs are gleaned from his report in respect of the plaintiff:

- (a) He obtained grade 10.
- (b) He has a code 14 driver's license;
- (c) He attended a mining school where he acquired a mining diploma, N1-N3;
- (d) He was in the process of getting his 'blasting ticket' when the accident occurred;
- (e) His gross income was R19 122 in May 2014 (month of accident), which consisted of a basic salary and various allowances as is common practice in the mining industry;
- (f) At the time of the accident he already studied, completed various mining courses and gained experience (also international experience);
- (g) He was not able to return to mining for about three months post-accident as he did not receive medical clearance to work in his prior occupation;

- (h) He lost his overtime payment in this period and was given alternative work in the storeroom in a half day post, which also proved to be too strenuous. This caused him to become frustrated as he was unable to perform his work as he did prior to the accident.
- (i) He then chose to resign in February 2016 due to his social adjustment problems and his physical struggles as, whilst working in the mine, he was anxious and afraid of losing his balance which could cause him to fall whilst at work.
- (j) He has no sedentary experience which causes him concern about his future. However, although knowing that he should not be performing physical work, he needs the income and is thus still working as he has no choice.
- (k) It would have been highly likely that he would have become a mine captain in South Africa, however, it was always his plan to work overseas.
- (l) He was not able to pass the heat tolerance test.
- (m) When applying for new contracts he did not give much information about the accident and the injuries, hence he had been fortunate to 'get away with it to date.
- (n) The work he does is physically very hard work.
- (o) Dr Jacobs mentioned that he has seen videos of the plaintiff performing the work. In his opinion it is physically very demanding, as the plaintiff has a lot of controls to handle whilst in a standing position.
- (p) Dr Jacobs indicated that it is difficult to see, from a work perspective, how a person with serious orthopaedic injuries can perform this work.
- (q) The implications of all above is that the plaintiff is restricted to sedentary work demands and, practically from a medical point of view, he has to leave the mining industry, and he might remain unemployed.
- (r) He cannot compete for positions on an equal basis.
- (s) He might face periods of unemployment because his opportunities are curtailed.
- (t) He would not be able to revert to sedentary jobs as he has no experience in such an environment.
- (u) In Dr Jacobs view, the plaintiff would have been able to work in the capacity of a miner and even a mine captain with no physical restrictions until the age of 63 years.
- (v) The plaintiff receives his salary per fortnight and only when he works. He does not receive remuneration when he is on leave.

(w) According to the plaintiff mining “runs in his blood”, and both his father and brother holds the (sought-after and aspired by him) position of a mine captain (overseer).

[10] The difficulty in postulating the career path which the plaintiff would have followed as a miner (as opposed to for example a teacher) had it not been for the accident, was not only generally acknowledged by both parties, but is evident from the testimony of Mr Jacobs. A career in mining is dependent on securing contracts, and the terms and conditions of the contracts vary. Miners often change jobs; it is not a stable career and it cannot be predicted with certainty how a career would have unfolded. It is characteristic of a mining career to work in South Africa or abroad – miners can work anywhere globally. There is a period of ‘unemployment’ faced by a miner between contracts.

[11] In comprehensive and able heads of argument, Ms Gouws submitted that ‘challenges’ arose which cast doubt on the accuracy and reliability of the pre-morbid postulation suggested by Mr Jacobs, alluding to the following:

‘a. Plaintiff’s Industrial Psychologist, having heard the evidence of the Plaintiff, acknowledged that irrespective of the accident, Plaintiff would have wanted to return to South Africa at some time in the future, for sake of his family.

b. In postulating Plaintiff’s pre-morbid salary, which was said to be a postulation covering income *whether in South Africa or abroad*, there was no certainty as to which position in South Africa Plaintiff would have secured and within which period of time, to have allowed him to immediately and continuously earned the postulated monthly salary of around R177,000.00 per month.

c. Plaintiff’s Industrial Psychologist conceded that it is a possibility that Plaintiff could have returned, again as a Jumbo Drill Specialist (and perhaps advanced his career from there), however could not give an indication as to what a Jumbo Drill Specialist currently earns. Plaintiff’s monthly salary as a Jumbo Drill Specialist for August 2017 was around R30,000.00 per month. His salary advice reflects a ‘year to date’ salary of R165,070.60 (calculated over a period of 6 months – the salary slip shows ‘Period 6’), which is then R27,511.77 per month for the 6 months and which, calculated over a period of 12 months even when utilizing R30,000.00 per month, is R360,000.00 per annum). The probabilities of the salary having increased by

2024 to R177,000.00 per month (and therefore R2,124,000.00 per annum) (being 6 times more than what it was in 2017), are submitted to be very slim.

d. There is also no evidence before Court as to what a Jumbo Drill Operator currently receives, or any position higher than that of the Jumbo Drill Operator, for possible consideration.

e. Probabilities therefore favour Plaintiff rather returning on a much lower income, with his income gradually increasing over time, and no certainty when and it would have reached the level of R177,000.00 per month.'

f. No alternative scenarios were postulated (with return to South Africa and a gradual increase in salary over the years) to provide the Court with an alternative scenario, probably more likely, to consider.

g. Plaintiff's Industrial Psychologist testified that the Court should consider the '*capacity to earn*' (R177,000.00 per month). However, in adjudicating the case, the Honourable Court will consider probabilities (Plaintiff must ultimately prove his case on a balance of probabilities). From cross-examination of Plaintiff's Industrial Psychologist, it is clear that the capacity to earn is irrelevant, if there are no position, advertisement, short-listing and ultimate appointment. Plaintiff's Industrial Psychologist stated that he, himself, does not want to speculate on availability of positions and ultimately appointment in the position. He conceded that there is a great extent of uncertainty in this regard – even if positions are available, there is always 'competition' in the form of other applicants.

h. As to Plaintiff pre-morbidly returning to South Africa and immediately being appointed as a mine overseer (which may perhaps allow him to earn the postulated R177,000.00 per month), Plaintiff's Industrial Psychologist conceded that Grade 12 is a requirement for such a position. He could not provide certainty as to whether the absence of a formal Grade 12 qualification, would immediately disqualify Plaintiff for such an appointment. He rightly conceded that he is not an expert in the mining industry, that the legislation is complex and that he cannot comment as to whether the formal Grade 12 qualification is a rigid requirement to be met. Again, even if the requirement is not rigid, one cannot disregard the fact that Plaintiff will be competing with other applicants who may, simply by meeting all the formal requirements of the position (for example, a Grade 12 with further qualification and experience), be put forward as the recommended candidate, instead of Plaintiff.

i. Plaintiff's Industrial Psychologist could not comment on whether Plaintiff's 'further qualifications' abroad, will be recognized in the South African mining industry.

j. Plaintiff's Industrial Psychologist, although trying his best to remain neutral and provide the Court with an objective opinion and pre-morbid postulation was not realistic in his expectations of Plaintiff's ability to generate the same income, immediately, upon his inevitable return to South Africa. It is important to acknowledge the the limits of promotion opportunities, whether due to organizational hierarchy, market saturation, or industry-specific constraints.'

[12] It became common cause that, save for the loss of overtime that the plaintiff could have earned in the short period following the accident when he was recuperating, the plaintiff did not prove any past loss of income. This was correctly reflected in the actuary's report to which I shall refer infra.

[13] Mr Jacobs is a well-known and reputable industrial psychologist who frequently testifies in this Division. I do not have any reason to doubt either his expertise or the unbiased truthfulness of his evidence. He was honest that he, himself, as a seasoned expert witness with many years of experience, could not provide answers for all unanswered questions, particularly the glaring uncertainties emanating from the totality of evidence before Court.

[14] I did not form the impression that the plaintiff was blatantly disrespectful towards the decorum of the court (as suggested by the defence) during his testimony, despite his erratic demeanour. However, I find the plaintiff's eventual testimony during cross-examination, that he had passed the red ticket test on two occasions at different mines in South Africa (where he managed to secure employment after the accident) despite his injuries, problematic in my assessment of the truthfulness of his evidence and the consequences thereof. I say so because the plaintiff attributed his averred inability to obtain employment in South Africa, to this aspect. I might also add that the plaintiff did not give any explanation for the reason why he would specifically not pass the heat tolerance test which forms part of the complete medical examination. He evidently failed to inform his legal team, and more importantly, his expert witness Mr Jacobs, of this crucial aspect which ultimately led to Mr Jacobs accepting, for purposes of his postulation on the plaintiff's pre- and post-morbid career development, that the plaintiff would factually not be able to procure a position in a supervisory/training/assessor capacity because of his inability to obtain a red ticket to perform work underground.

[15] Ms Gouws argued that, having regard to the plaintiff's evidence and irrespective of the accident, he finds himself in the same situation – not wanting to move his family abroad to where he is working, wanting to be involved in his family's lives and the desire to have more children at some point in the future, having returned to work in South Africa: the accident and injuries did not change this position. She argued that, in light of the evidence which unfolded in court, the plaintiff retained a residual working capacity as he has been working for ten years post-accident and has acquired several skills and qualifications, submitting that the plaintiff is not postulated to be unemployable in the future and on the evidence before Court, he has, post-accident, passed the red ticket test for employment at two different mines. She also suggested that, although the plaintiff's evidence is that he will only be able to work abroad for another five years, it may very well be longer, or should he return to South Africa, he may very well work abroad again later in his life.

[16] Whilst I accept that the uncontested evidence of the plaintiff's experts is that the plaintiff has sustained serious orthopaedic injuries and their advice to the plaintiff that he should refrain from performing heavy duty work, especially underground, the totality of the evidence presented before me does not lead me to conclude that the plaintiff does not have any residual working capacity at all and should be considered for all purposes and intention, to be unemployable.

[17] Munro Actuaries compiled two reports to, per their instructions, 'estimate the capital value of the potential loss of earnings suffered' by the plaintiff. In the report of 23 June 2022, it was assumed that the defendant is 100% liable for losses. This was corrected in the report of 11 November 2024 to allow for 80% apportionment after the parties so agreed. The plaintiff's uninjured earnings (pre-morbid scenario) were calculated from the date of calculation (11 November 2024) based on a monthly income of R177,708.00, with earning inflation until retirement age 63. The pre-morbid calculation makes provision for Plaintiff remaining employed abroad until the age of 63 years old, and it also makes provision for Plaintiff possibly having returned to South Africa at some time, or possibly a combination of the two scenarios, as testified by Dr Jacobs. Contingency deductions of 15% to the post-morbid uninjured scenario and 50% to the injured scenario, were applied by the actuaries. The capital value of loss of earnings (excluding the RAF cap and before apportionment) calculated by the

actuary, amounted to a total of R 19 545 095. Eventually, the capital value of loss of earnings (including the RAF cap, after contingencies and after apportionment) was reduced to R 6 561 600.

[18] The defendant submitted that, in calculating and ruling on the plaintiff's claim for loss of earnings or earning capacity, the reasonable, fair and logical approach should be that the plaintiff suffered a loss of earning capacity - his injuries may have reduced his ability to earn in the same capacity as he would have, had it not been for the accident. Mr Coetzee indeed argued that cross-examination by the defendant was an attempt to create the impression that the plaintiff was still able to work as he had held various occupations post the accident and submitted that, even in such event, the plaintiff's 'working capacity' is still diminished which ought to be addressed by way of higher contingencies. I agree with the view that the plaintiff's loss is in respect of his earning capacity, in line with the instructions to plaintiff's actuary to make a calculation on such a loss.

[19] In the actuarial report of 11 November 2024, the total amount constituting compensatory damage to the plaintiff (calculated as indicated in para 17 above), is R6 561 600-00. The plaintiff requested me to grant such amount. Ms Gouws, however, submitted that the facts of the case are unique in nature, making it difficult to postulate as argued by her (and for the court to rule upon), a realistic pre- and post-morbid scenario in respect of the plaintiff, with application of relevant contingency deductions. Indeed, Mr Jacobs responsibly conceded this much that his answers eventually boil down to speculation due to the unique facts and uncertainties of this case.

[20] Ms Gouws submitted that this case is one where it is impossible to quantify loss of earning capacity with any degree of accuracy, with the actuarial calculation is not of great assistance to this Court. She argued that 'mathematical calculations contained in the actuarial report, will not result in arriving at a fair and reasonable award, as the basis on which the assumptions contained in the report of Mr Jacobs and subsequently the plaintiff's actuarial report rests, is problematic and even speculative to some extent. I am in agreement with her. She therefore suggested and invited me to determine the plaintiff's loss by awarding a lump-sum.

[21] As far back as 1941, Watermeyer JA in *Sandler v Wholesale Coal Suppliers*¹ stated:

'The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending upon the Judge's view of what is fair in all the circumstances of the case.'²

[22] In *Road Accident Fund v Guedes*³ the court held:

'It is trite that a person is entitled to be compensated to the extent that the person's patrimony has been diminished in consequence of another's negligence. Such damages include loss of future earning capacity . . . The calculation of the quantum of a future amount, such as loss of earning capacity, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature, such an enquiry is speculative and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate . . . The court necessarily exercises a wide discretion when it assesses the quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right. Courts have adopted the approach that, in order to assist in such a calculation, an actuarial computation is a useful basis for establishing the quantum of damages. Even then, the trial court has a wide discretion to award what it believes is just . . .'⁴ (emphasis added)

[23] In *Southern Insurance Association Limited v Bailey NO*⁵ the court set out two approaches open to a court in calculating an award for future loss of earnings, as follows:

'Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.

It has open to it two possible approaches.

One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown.

¹ *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194.

² *Ibid* at 199.

³ *Road Accident Fund v Guedes* 2006(5) SA 583 (SCA).

⁴ *Ibid* 586 para 8.

⁵ *Southern Insurance Association Limited v Bailey NO* [1984] 1 All SA 360 (A); 1984 (1) SA 98 (A)

The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. (emphasis added)

[24] Mr Coetzee SC, relying on *Road Accident Fund v Kerridge*⁶ submitted that where loss of income has been established but proof thereof cannot be produced in the usual manner, the court must still make a determination. I am in agreement and intend doing so as will be reflected in my order below.

[25] My attention was invited by Ms Gouws to *E.S.L obo N.O.L v Road Accident Fund*⁷ where Daniso J recently followed the approach of awarding a lump-sum for monetary damages suffered by the plaintiff. In that matter, the plaintiff had sustained a brain injury as a minor and the actuary (based on the expert reports) suggested an amount in excess of R8 million as compensatory damages for the minor's future loss of earnings. Daniso, J concluded that '[t]aking into account consideration of the facts of his matter I find that the amounts suggested by the plaintiff as compensatory damages are indeed excessive' and awarded a lump-sum amount of R5 million.⁸

[26] I am satisfied that the plaintiff has proven on a balance of probabilities that he has suffered a loss of earning capacity. In my view the circumstances of this case persuade me to follow the route of awarding a rounded estimate (lump-sum) to the plaintiff for his loss. Considering the actuarial calculations by Munro Actuaries as a useful basis for assessing what amount would be fair and just in awarding a lump-sum, I am of the view that an amount of R5 000 000 would be appropriate, taking into account all the circumstances as dealt with herein above.

[27] There is no reason why costs should not follow the successful party. Mr Coetzee SC submitted that this matter warranted the employment of two counsel to be taxed on Scale C. Both parties addressed me on the costs that stood over on 3 October

⁶ 2019 (2) 233 (SCA) at paras 25-27

⁷ *E.S.L obo N.O.L v Road Accident Fund* [2023] ZAFSHC 497.

⁸ *Ibid* para 28.

2025, and in exercising my discretion I am satisfied that the plaintiff is entitled only to the wasted costs occasioned by the postponement of the matter on the said day.

[29] Accordingly the following order is made:

1 The defendant is ordered to pay the plaintiff the amount of R5 000 000.00 (FIVE MILLION RAND ONLY) in respect of the plaintiff's past and future loss of earning capacity.

2 Interest a tempore-morae on the amount in para 1 above shall be calculated in accordance with the Prescribed Rate of Interest Act 55 of 1975, read with s 17(3)(a) of the Road Accident Fund Act 56 of 1996, 180 days from the date of this order.

3 The defendant shall pay the plaintiff's agreed or taxed cost on the High Court scale (inclusive of the wasted costs incurred on 3 October 2023), such costs to include:

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3.2 The reasonable qualifying fees of the following experts:

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4 All payments shall be deposited into the bank account of the plaintiff's attorney of record with the following banking details:

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Branch Code:	632 005
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5 The party and party costs, as agreed or taxed, shall be paid by the defendant directly into the trust account of P Joubert Inc. Attorneys for the benefit of the plaintiff

and payment shall be made within 180 (ONE HUNDRED AND EIGHTY) days from the date of the allocator.



REINDERS J

Appearances:

On behalf of the plaintiff:

W Coetzee SC

D. Jankowitz

Instructed by:

P Joubert Inc.

c/o Rosendorff Reitz Barry

BLOEMFONTEIN

On behalf of the defendant:

J Gouws

Instructed by:

State Attorney

BLOEMFONTEIN