

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case number: 2009/18952

Date of hearing: 21 July 2025 to 7 August 2025

Date delivered: 18 August 2025

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 18/8/2025

SIGNATURE:

In the matter between:

IZAK BOSHOF FOSTER

First Plaintiff

GUILLAUME HENRI BOSHOF FOSTER

Second Plaintiff

and

**MEC OF THE EXECUTIVE COMMITTEE
FOR EDUCATION: NORTHWEST PROVINCE**

First Defendant

THE LEOPARDS RUGBY UNION

Second Defendant

KOSH SPORT & TRAUMA SERVICES

Third Defendant

JUDGMENT

SWANEPOEL J:

INTRODUCTION

[1] On the morning of 6 May 2006 the first plaintiff, a healthy 18 year-old learner at Hoerskool Lichtenburg, participated in a rugby match against Die Hoer Volkskool Potchefstroom. During the match the first plaintiff executed a tackle on an opponent. They both fell to the ground and a third player, having also been tackled, fell onto the first plaintiff's neck injuring the first plaintiff.

[2] The first plaintiff says that when he collapsed the match was stopped. He was unconscious for a brief while. When he came to, he had no sensation in, nor control over his legs, but he could still move his arms normally. The first aiders were standing at his feet. The first plaintiff tried to stand up but his lower limbs would not respond and he knew that something was terribly wrong. The first plaintiff heard the first aiders discussing the fact that they did not have the necessary equipment to move him safely. He then told them repeatedly to leave him be, and not to attempt to move him. His repeated entreaties went unheeded, and eventually they carried him off the field, one on each side, by picking him up by his legs and under his back.

[3] As he was being carried off, the first plaintiff had difficulty in controlling his head which flopped from side to side. He literally heard his neck break, and he then lost sensation in his upper limbs also.

[4] There was no ambulance available to transport the first plaintiff to hospital, and he was left to lie on the ground for quite a while. He says that he had difficulty in breathing, and he could not move. He had to physically make an effort to breathe. (It was later explained that some of the muscles required for normal breathing had been paralyzed and the first plaintiff had to re-learn how to breathe.) The first plaintiff realized that he had been seriously injured, he was highly anxious about his injuries, and he did not know whether he was going to die. The anxiety that the first plaintiff must have suffered, lying on the ground unable to move, having difficulty breathing, with no help in sight, and not sure whether he would survive, is unimaginable.

[5] Eventually an ambulance arrived. The paramedics confirmed that the first plaintiff had no feeling nor movement from the nipple line downwards. The first plaintiff was stabilized on a trauma board and transported to the Mediclinic in Potchefstroom. There he was assessed and then transported by helicopter to the Eugene Marais Hospital in Pretoria.

[6] The first plaintiff was operated on at the Eugene Marais Hospital, but it soon became clear that he was a C 5 quadriplegic. He was treated in intensive care for two weeks. After he was discharged, he was transferred to the Muelmed Hospital where he underwent rehabilitation for some months. He says that at some point during his rehabilitation, reality set in and he realized what future lay in store for him.

[7] It has been determined that the first plaintiff had first suffered a fracture of the spine in the initial rugby incident at the C 7 vertebrae level, which had been aggravated by the manner in which he was carried from the field, resulting in a C5 vertebrae fracture. The first plaintiff's original C7 fracture was the result of an accident for which the first defendant has no liability. However, the first plaintiff's claim against the first defendant is for damages arising from the aggravation of the injury to a C5 fracture due to the negligent manner in which the first plaintiff was treated on the field. The first plaintiff claims:

[7.1] General damages: R 10 million

[7.2] Loss of earning capacity: R 15 million

[7.3] Past medical expenses: R 5 million

[7.4] Future medical expenses: R 50 million

[8] The merits of the matter have been resolved and that Court order reads as follows:

"The first defendant is liable for 100% of the proven or agreed damages as suffered by the first plaintiff as a result of the manner in which the first plaintiff

was carried off the field on 6 May 2006, which aggravated an existing cervical spine injury with a neurological fallout at C7, to become an effective C5 motor deficit.

[9] The claim of the second plaintiff was abandoned subsequent to the above order being granted, and the parties have recorded that each party shall pay its own costs in respect thereof. The second and third defendants are not before Court.

THE PLAINTIFF'S EVIDENCE

[10] The consideration of the quantum of the first plaintiff's claim requires a comparison to be made between a C7 and a C5 injury, and the resulting sequelae of each injury. The first defendant is liable for the sequelae that follow upon the aggravation of the C 7 injury to a C 5.

[11] The major difference between a C7 and a C5 injury lies in the lack of mobility consequent upon a C 5 injury. I say this as a generalization, because each case is different, and no C5 injury has exactly the same outcome as every other C5 injury. In principle, however, a C7 injury leaves the person still mobile, to an extent. The person so injured can move his/her arms, can propel a wheelchair, and can move from bed to wheelchair, from wheelchair to commode, and so forth. A person who has suffered a C5 injury cannot do so. The C 5 patient requires full-time care whereas the C 7 patient is much more independent. The C 7 patient can complete a number of tasks for himself whereas a C 5 patient is utterly reliant upon his caregivers for assistance.

[12] In the case of the first plaintiff, for instance, he has no sensation or movement in his lower limbs, and only some limited movement of his arms and his left wrist. He has regained some sensory feeling below the level of the injury, but he cannot gauge temperature. He breathes using his diaphragm. His bicep muscles are strong, but he has little control over his arms. He can push a wheelchair with difficulty, but cannot grasp anything, such as the wheel of the wheelchair. He has no control over his tricep muscles. The result is that the first plaintiff cannot propel himself from his bed to a wheelchair, into a car or onto a commode. He has to be assisted to move

wherever he wants to be. He cannot roll over in bed and he has to be assisted in doing so. The first plaintiff also suffers from muscle spasms, for which he is massaged.

[13] The first plaintiff is able to make limited use of a computer, using a stick attached to a glove (that his caregiver applies) to move the mouse. The same applies to the use of his cellular telephone. He is also unable to flex his arms.

[14] The first plaintiff now resides on his parents' pecan nut farm where he is dependent upon two caregivers who work two 12-hour shifts per day each. Effectively, without their assistance, the first plaintiff is immobile. Therein lies the crux of the difference between a C5 and a C7 quadriplegic. The C7 quadriplegic is still able to move him/herself and he has some independence and privacy, whereas the first plaintiff, as a C5 quadriplegic is utterly reliant on others to assist him with virtually everything that he needs to do. A C7 quadriplegic can move his or her hands, write, catch a ball, hold onto items and so forth, all of which the C5 patient is unable to do.

[15] Moreover, the first plaintiff is incontinent, which requires him to spend every second day in a bowel program. His schedule, on every second day is the following: In the evening before the bowel program the first plaintiff is given a laxative. At 06h00 the following day his mother administers a suppository to assist with bowel movement. Because he has no control over his bowels, he is then left to wait for the bowels to function. He remains in bed for some hours until he feels the need to be moved to the toilet. He is then placed on a commode and moved to the toilet where he spends up to 45 minutes. Afterwards he has to be cleaned and showered. The only way that the first plaintiff can be moved from bed to commode, and from the commode to a shower, is with the assistance of a hydraulic hoist. The bowel program takes up most of the day.

[16] I felt the need to explain the above process for two reasons. Firstly, the first plaintiff's circumstances leave him unable to do anything else, every second day, other than to undergo a bowel program. That has an effect on his ability to lead a normal life and means that the pursuit of a career is practically impossible. Secondly,

the daily circumstances of the first plaintiff's life, and his loss of enjoyment and amenities of life, are relevant to the claim for general damages. The bowel program is also demeaning and impacts the first plaintiff's dignity and privacy.' He has to do the most private bodily functions in the presence of a caregiver.

[17] On the alternative days, which are not taken up by the bowel program, the first plaintiff is woken at 06h00. His preparations for the day, include washing, checking for pressure injuries and receiving body care, takes some three hours. After breakfast the first plaintiff is accompanied by his caregiver to the pecan nut orchard. The first plaintiff experiences the need to remain useful, and he has taken it upon himself to manage the orchard. The first plaintiff has used a motorized Quicky F 55 wheelchair that is now 19 years old, has broken down, and is not manufactured any longer.

[18] After returning from the orchard in the early afternoon, the first plaintiff has to be assisted to stretch his muscles. This exercise takes some 60 to 90 minutes, by which time the afternoon has passed.

[19] The first plaintiff has a permanent suprapubic catheter that requires twice-daily cleaning, and every month a new catheter has to be inserted. He has a hole in his abdomen through which the catheter is inserted into his bladder. On occasion, when the catheter cannot be inserted, the first plaintiff must be urgently rushed to hospital where a doctor has to insert the catheter. The first plaintiff has difficulty in maintaining a normal body temperature. In winter he is cold and in summer he is hot. Therefore, he requires an air conditioning unit in his quarters.

[20] Despite these major stumbling blocks, the first plaintiff commenced tertiary studies in environmental management at the University of Pretoria in 2010, and in 2012 a Bachelor's degree was conferred upon him. He also obtained two Honour's degrees, one in psychology and one in environmental management, and a Master's degree in environmental management. He started working towards a PhD, but due to the time constraints resulting from his disability, he was unable to complete his studies.

[21] The first plaintiff has used a relatively old laptop computer for his studies, assisted by a Dragon voice activated system. The extensive therapy that he has received over the years has strengthened his muscles to the point where he is now able to operate a computer manually, to a limited extent, using the glove and a stick.

[22] The first plaintiff demonstrated his (very limited) ability to self-propel his wheelchair. He is able to move the wheelchair on a level surface for a very short distance by pushing down on the wheels. He cannot negotiate an incline, and the movement of which he is capable, is ponderous. He testified that if he were to sit in a wheelchair for too long, he would be at risk of pressure injuries. He requires a wheelchair with a seat that tilts so that his weight can be redistributed. He requires assistance to move approximately once an hour.

[23] The first plaintiff has limited ability to feed himself. His caregiver places a glove on his hand attached to which is a spoon. His plate has a surround that prevents food from being pushed off the plate. He has to be positioned accurately so that he can feed himself. He requires assistance to dress himself.

[24] The first plaintiff explained that he has modified a vehicle for use on the farm, so that he has a modicum of independence. However, his ability to drive (with his caregiver's assistance) is limited, and he seems to be a danger to himself.

[25] The first plaintiff explained that his life had radically changed after his injury. From being a sporting young man with love of the outdoors, he has become a virtual recluse. It is extremely difficult to socialize as he is virtually immobile without his caregiver's assistance. He has no prospect of finding a partner, although he yearns for a partner in his life.

[26] The first plaintiff was unable to complete his evidence in one sitting, and he was asked to return on Monday 28 July. Under cross-examination the first plaintiff explained that after he was operated on at the Eugene Marais Hospital he underwent extensive rehabilitation consisting of occupational therapy and physiotherapy over a period of months. He has not received occupational therapy in recent months, but he

has exercised with the assistance of his caregiver. When he requires new assistive devices he has to consult an occupational therapist.

[27] The first plaintiff says that the room that he occupies in his parents' home has already been adapted for his use. His caregivers live close by and are on duty 24 hours per day. The first plaintiff explained that he uses a Dragon voice activated software program that has not been updated since he purchased the program in 2015. The first plaintiff has never explored alternatives such as Microsoft voice activated software.

THE EXPERTS

[28] The parties have prepared expert reports running into hundreds of pages. They have also filed joint minutes of the following experts: mobility consultants, architects, clinical psychologists, occupational psychologists, physiotherapists, neurosurgeons, biokineticists, psychiatrists, quantity surveyors, general surgeons, and industrial psychologists.

[29] The experts have reached agreement between them regarding a wide range of aspects. It is important to mention the agreement that the parties reached regarding the experts' joint minutes, as during the trial the first defendant argued that some of the agreements reached by the experts should be disregarded, and some should be found to be unreasonable.

[30] The pretrial minute of 18 July 2025 records the following:

"3. First plaintiff proposes the following specific discussion points/agenda in order to specifically limit the issues in dispute:

Reaching an agreement that the following joint minutes, where the respective experts are in full agreement, will be - upon mere production - admissible as evidence of the contents thereof on a hearsay basis, as contemplated in section 3 (1) (a) of the Law of Evidence Amendment Act 45 of 1988.

Answer: The first defendant agrees that where experts recorded in their joint minutes that they are in full agreement such joint minute will be regarded as admissible as proposed, and referring to the experts mentioned under paragraph 3.1 below.

[31] All of the joint expert minutes referred to in paragraph [28] above were listed under paragraph 3.1 of the pre-trial minute. Furthermore, the first defendant conceded the following:

"Firstly, the first defendant agrees that those opinions which the respective experts agree with (either expressly or through non disputation) and the status of joint records of such opinions recorded in the respective joint minutes, is to be accepted on the same basis as 3.1 above. Secondly, agrees that the opinions on issues which the experts are not in agreement as indicated, are to be determined."

[32] The first plaintiff's counsel placed the above on record at the commencement of the trial, and the first defendant's counsel accepted, that where there was agreement between the experts on any aspect, such agreement would stand as evidence. The first defendant also accepted that where there were disputes between the experts, oral evidence would be required to resolve the dispute.

[33] During cross-examination of Ms. Van der Walt, the first plaintiff's occupational therapist, Mr. Klopper, acting for the first defendant disputed aspects of the agreement reached between Ms. Van der Walt, the first defendant's occupational therapist and Ms. Basson, the first plaintiff's occupational therapist. I pointed out to Mr. Klopper that according to the pre-trial minute his client was bound by the agreement, and I invited him to advise the first plaintiff's team whether he intended to renege on any of the agreements reached by any of the experts. Mr. Klopper assured me that the first defendant would not repudiate any of the agreements, but would argue in due course that some of the joint recommendations of the parties were unreasonable. In argument at the end of the trial Mr. Klopper did just that.

[34] Not only is the first defendant bound by the agreement that it would accept the joint recommendations of the experts, it is also, as a matter of law bound to accept what the experts agree upon, unless cogent reasons are provided why the agreement should be disregarded, and only if notice of the repudiation of the agreement is given timeously.

[35] In *BEE v The Road Accident Fund*¹ the Court outlined the approach to be taken on expert reports: Expert witnesses are expected to lay a factual basis for their conclusions and that they must explain their reasoning. The Court must then satisfy itself as to whether the reasoning is correct or not. As far as agreements reached by the parties' experts are concerned, the Court approved of the following dictum in *Thomas v BD Sarens (Pty) Ltd*²:

"where two or more experts meet and agree on an opinion, although the parties are not at liberty to repudiate such an agreement placed before the court, it does not follow that a court is bound to defer to the agreed opinion. In practice, doubtlessly rare, a court may reject an agreed opinion on any of a number of grounds all amounting to the same thing; i.e. the proffered opinion was unconvincing."

[36] In *M obo L v The Member of the Executive Council for Health: Gauteng Provincial Government*³ the Court was faced with the evidence of an expert for the defendant, which evidence had the effect of negating a previous agreement reached by the parties' respective experts. The Court said:

"36 The court in *BEE* emphasised that effective case management requires, at the very least, that expert agreements be adhered to, unless they are clearly and timeously repudiated. However, I think the value of expert agreements goes much further than the facilitation of effective case management. Because of the role expert agreements play in framing the ultimate issues for decision, the repudiation of those agreements creates

¹ *BEE v The Road Accident Fund* 2018 (4) SA 366 (SCA) at para [22]

² *Thomas v BD Sarens* (2007 6636) [2012] ZAGPJHC 161 (12 September 2012)

³ *M obo L v The Member of the Executive Council for the Department of Health: The Province of Gauteng* [2021] ZAGPJHC 501 (8 October 2021)

substantial problems of fairness. It also begs the question of just how far a court can be expected to accept that the facts in issue are truly capable of expert analysis.

37 There will no doubt be difficult cases in which, having accepted an agreed fact as true, a party will in good faith wish to change tack, perhaps because of the emergence of a series of factors or complications which were not considered by the experts previously, or because of new information about the qualifications or expertise of a particular expert, or because of the emergence of new learning on a subject that might be particularly relevant to the facts at hand. This is not a closed list. There may be a variety of other reasons for re-visiting expert agreements, capable of motivation by one of the parties (see, for example, *Thomas*, paragraph 11).

38 However, given the importance of expert agreements, their repudiation should, in my view, be rare. When necessary, it should be motivated, on application to the trial court, and that application should be granted on good cause shown. In seeking to show good cause, a party ought, at the very least, to identify the specific agreements sought to be repudiated, and the facts to which they relate; to set out, clearly and succinctly, the new facts sought to be proved; to explain why those facts are so material to the issues at trial that they justify the undoing of the relevant expert agreements; and to demonstrate that the need to introduce those facts overcomes any prejudice caused to any other party by setting aside the expert agreements already reached."

[37] Therefore, the first defendant is bound by the agreements made by its experts. It cannot, as of right, simply disregard the agreements and put up a different case. But also, the first defendant confirmed in court that it was standing by the agreements. As will become clear below, there are no facts from which I can infer that any of the agreements are "unreasonable", as I am urged to find in certain instances. I am not entitled simply to substitute my own opinion for that of an expert unless I am unconvinced by the expert's opinion, and thus I shall decline to do so.

[38] The first plaintiff called nine expert witnesses, Dr. Viviers, a pulmonologist, Dr. Leask, a general surgeon, Mr. Eybers, an architect, Ms. G Basson, an occupational therapist, Ms. Botha, an industrial psychologist, Ms. Van Rooyen, a nursing expert, Mr. Venter, a biokineticist, Ms. Rich, a mobility expert, and Mr. Potgieter, an actuary. The first defendant called Ms. Van der Walt, an occupational therapist, to testify.

[39] Dr. Viviers testified that he is a pulmonologist and specialist physician. He said that although the first plaintiff's health is relatively good, not all of his associated muscles that assist with breathing function properly. The first plaintiff has had to learn to breathe with his diaphragm. Dr. Viviers said that the major difference between a C 7 injury and a C 5 injury is that the former's diaphragm and associated muscles are not affected, whilst in the case of the latter, the muscles used for breathing are affected. This causes an inability in a C 5 patient to cough in order to clear the lungs, leading to respiratory problems. The first plaintiff's lung capacity was measured at 41% of the predicted capacity. Dr Viviers predicts that the first plaintiff will require future medical treatment, most likely for respiratory problems.

[40] Dr Viviers met with the defendant's pulmonologist, Dr. M Chohan, and they prepared a joint minute. In the joint minute they opined about the first plaintiff's life expectancy. They agreed that the first plaintiff's life expectancy was reduced by his injury, and that the C 5 injury reduced his life expectancy more than a C 7 injury would have done. Dr Viviers testified that he had considered data from the national Spinal Cord Injury Statistical Centre, that postulated that if a person suffered a C 5 injury at age 20, the further life expectancy would be approximately 40.1 years. Based on those statistics, Dr Viviers postulated the first plaintiff's life expectancy at 58 years, which he said was already a conservative estimate given the fact that the first plaintiff had led a relatively healthy life since his injury. Dr Chohan, who conceded in the joint minute that he is not an expert at estimating life expectancy, postulated a life expectancy of 48 years.

[41] Dr Viviers said that he was not familiar with the data upon which Dr Chohan relied, and Dr Chohan's promise to forward the data to him did not come to fruition. In a first joint minute it was recorded that they had agreed to apply a median between the two estimates, translating to a life expectancy of 53 years. Dr Viviers

says that he never agreed to such an estimate, and when he became aware of the mistake in the joint minute, he demanded that it be corrected. Ultimately, the parties accepted 58 years as the first respondent's expected life span.

[42] In cross-examination Dr Viviers testified that it is impossible to state, as a rule, how a C 7 patient would compare to a C 5 patient, as each case has to be considered individually. One major difference lies in the functioning of the C 5 patient's respiratory system. He said that if a C 5 patient fell ill, his prognosis would be more severe than that of a C 7 patient. Therefore, Dr Viviers said, a C 5 patient will definitely require pulmonary rehabilitation and home oxygen. He said that an annual consultation with a pulmonologist would be justified for both a C 5 and C 7 patient at R 7 000 per annum, and both would require annual maintenance medication at R 18 000 per annum. He said that whilst the first plaintiff has not had pneumonia to date, it is most likely that he will do so at some time in future, the cost of which he agreed with Dr Chohan would amount to R 75 000 every five years.

[43] Dr. TJ Leask testified that he is a general surgeon. He said that the injury has had a profound impact on the first plaintiff's life. The major difference, he said, between a C5 and C7 injury is that the latter allows the patient relative independence, whilst the former requires the patient to be constantly assisted by a care giver. He says that the first plaintiff's bowel issues have the result of limiting the first plaintiffs time to such an extent that he has little time for other activities. His report states:

"Possibly the greatest constraint upon Mr. Foster performing gainful employment is the sheer quantity of time that he is forced to dedicate to his routines. Each week, he dedicates far more time than an uninjured person (or a lower-level quadriplegic) would, to performing basic activities of daily living, as well as the additional hours for activities like exercise and bowel routines that are required to maintain his health. (In short, this man has to work hard, for many hours each week, just to avoid dying.) The time (and energy) he has each week is simply not enough to make him readily employable."

[44] In a joint minute prepared by Dr Leask and Prof. Becker (on behalf of the defendant), they agreed that the first plaintiff is completely immobile without

assistance, and that he requires full-time assistance to maintain his current level of functioning and to prevent complications. They agree on the medication that will be required to maintain his life-long bowel care. They agree that his ability to secure employment has been severely curtailed. His longevity has also been affected, although they do not express an opinion as to his life expectancy. Dr Leask and Prof Becker agree that the first plaintiff requires a full-time caregiver.

[45] In cross-examination Dr Leask testified that the medication that he has listed in his report, save for a hydraulic hoist and the harness, would be required by both C 5 and C 7 patients.

[46] Mr. Len Eybers, an architect, testified that he prepared a report on the changes required to the first plaintiff's home. He has prepared architectural plans. Mr. Eybers testified that the calculation of the cost of the modifications took into consideration the difference between the cost of a modification for a C 5 as opposed to a C7 injury, and that the amount calculated by the quantity surveyors was the difference between the two scenarios.

[47] Mr. Eybers explained that in his view the first plaintiff is an exceptional case. He needs independence (which is also the evidence of other experts). He has, for instance, modified an old car with which he tries to drive on the farm, dangerously, I must add, in an attempt to do something for himself. It was also clear from the first plaintiff's evidence that the one thing that the first plaintiff craves is independence, and he intensely dislikes being dependent on others.

[48] Two aspects of Mr. Eybers' report were contentious: Firstly, his suggestion that the first plaintiff required automatically opening doors, and secondly, that electrically operated window blinds were required. The defendant's architect disagreed with Mr. Eybers regarding these items, but otherwise the experts were in agreement. The question must be: if provision is made for him to move through his home in a motorized wheelchair without assistance, why should he not be able to open doors for himself. Similarly, why should he have to call upon others to do a simple task such as opening blinds, if he can do it for himself (at a very low cost to the first defendant). I believe that these items are reasonably required.

[49] Mr. Maritz, for the plaintiffs, placed on record that the first plaintiff accepts the evidence of Dr. Capitani, the first defendant's clinical psychologist. She reported that the first plaintiff had been an active sportsman at school, playing rugby, cricket, and participating in athletics, swimming and biathlons. His life revolved around physical outdoor activities.

[50] She reports that post-injury, and once the first plaintiff had regained some strength, he enrolled and completed a BA degree at the University of Pretoria, and then two Honours' degrees, in psychology and environmental management respectively. He enrolled for a PhD degree, but due to the time demands of his daily care program, he was unable to complete the degree. The first plaintiff's failure to complete his studies has caused him much distress, and he feels that he is a failure. Post-accident the first plaintiff had planned to seek work as a lecturer, but the reality of his daily existence made him realize that his prospects of holding employment were slim. Dr Capitani and the first plaintiff's clinical psychologist, Ms. Hearne, agree that the first plaintiff's condition has a far-reaching impact upon his life. They agree that the first plaintiff suffers from depression, and that, given his circumstances, that is to be expected. They both believe the first plaintiff to be at risk of suicide.

[51] Dr Capitani reports that the first plaintiff had always yearned for a romantic partner, and although he has had brief romantic interludes during his time at University, his prospective partners were not able to accept his condition, and the relationships invariably ended. Both psychologists believe that the profound psychological impact that his injury has had on the first plaintiff could be ameliorated by him having an active group of friends, a life partner and receiving supportive therapy. Unfortunately, according to the first plaintiff, it is not possible for him to socialize freely due to his immobility, and he sees no prospect of any partner accepting his circumstances.

[52] Dr. Capitani recommends that allowance should be made for 600 therapy sessions, amounting to 2 sessions per month for 20 years. An additional 120 sessions should be allowed for times of crisis, when the first plaintiff might require weekly sessions.

[53] Ms. G Basson testified that she is an occupational therapist instructed by the first plaintiff. She conducted an inspection of the farm on which the first plaintiff resides. She witnessed firsthand the first plaintiff's ability (or rather, inability) to drive the modified vehicle. The first respondent has tried to keep busy by managing the pecan nut orchard. She opined that, due to the terrain which the first respondent has to traverse when he inspects the pecan nut orchard, the first respondent's Quicky 55 wheelchair (which is no longer available) was inadequate. She is also of the view that a Frontier V6 self-propelled wheelchair, with six wheels, at a purchase price of R 668 502.05 is more appropriate for outdoor use. Ms. Basson recommends a back-up electric wheelchair, a CE Velocity Tilt, at a price of R 120 095.65.

[54] Ms. Basson opined that the first plaintiff should be reimbursed for his Melrose Rhino rugby wheelchair, the Quicky F55 wheelchair, a hydraulic hoist, a Turny Eva car seat (used to move the plaintiff into and out of a vehicle), an eating glove, a plate guard, and a computer glove and typing stick. As far as communication devices are concerned, Ms. Basson recommended a Microsoft Surface Pro 9 computer and a Nokia push-button cellular telephone, together with adaptors to use the computer and cellular telephone in different circumstances. Ms. Basson also opined that it would be necessary for a case manager to be appointed to manage the first plaintiff's condition and treatment. I shall deal hereunder with the disagreements between Ms. Basson and the first defendant's occupational therapist.

[55] Ms. M Botha testified that she is an industrial psychologist. She agreed with Ms. Janene White, the first defendant's industrial psychologist, that the first plaintiff would have entered employment, pre-morbid, some 6 months after completing his tertiary studies. He would have commenced internship or similar for a further two years in the corporate sector, at Patterson Job Grade B1/B 2. Given his academic abilities and qualifications, he would have reached Patterson level D4/D5 at age 55, retiring at age 65. Currently he is regarded as unemployable in the open labour market.

[56] The industrial psychologists postulate and agree that as a C 7 quadriplegic, the first plaintiff would have taken longer than an uninjured candidate to secure

employment, and they say that, despite legislation that promotes the employment of disabled persons, there is a low level of representation of such persons across all occupations. However, they agree that as a C 7 quadriplegic the first plaintiff would have had prospects of a good career.

[57] A nursing expert, Ms. Van Rooyen, testified that she is a registered nurse. She had a meeting with the first defendant's expert, Ms. Tladi, and then reached common cause on all aspects save one. Ms. Van Rooyen considered various expert reports and formed the view that the first plaintiff requires a visit by a qualified nurse every week. Ms. Tladi is of the view that nursing support is not necessary. It was put to Ms. Van Rooyen that the first plaintiff has permanent caregivers that can see to his care, and that he has strict protocols in place that dictate that he does not require weekly nursing care. Ms. Van Rooyen's opinion was that the caregivers are not experts, cannot check vital signs, and cannot foresee when complications may arise. She disagreed strongly with Ms. Tladi's suggestion that nursing care was not necessary at all. Ms. Tladi did not testify.

[58] Mr. K Venter testified that he is a biokineticist. He has evaluated the first plaintiff. He met with the first defendant's biokineticist, Mr. D Pillay, and they reached agreement on a number of issues relating to the functional differences between a C 5 and a C 7 injury. They also agreed on the assistive devices and adaptations required by the first plaintiff. However, Mr. Venter proposed a DBC back/spine Clinic treatment with one session per week. Mr. Pillay did not agree with this plan. He also did not testify. As far as proposed costs are concerned, Mr. Venter calculated the cost of treatment based on an average of the allowed costs of the seven major medical aids, whilst Mr. Pillay applied the costs allowed by the Government's GEMS medical aid. Mr. Venter's opinion stands uncontroverted, and I see no basis to reject it.

[59] It was put to Mr. Venter that the first plaintiff's caregiver can fulfil the same function as a biokineticist. He disagreed and said that not only had the first plaintiff employed a large number of caregivers over the years, the exercises that they assist with cannot be equated with the services of a biokineticist. It was also put to Mr. Venter that these treatments were not required as the first plaintiff had done without

them for many years. He pointed out that he had agreed with Mr. Pillay that the biokinetic rehabilitation was justified by the first plaintiff's progressive muscle atrophy, deconditioning, cardiometabolic health and postural imbalance. He opined that a C 7 injury would require hydrotherapeutic sessions twice per week, whilst a C 5 injury would require 5 sessions per week.

[60] Ms. Roslyn Rich testified that she is a mobility expert. She compiled a joint minute with the first defendant's expert, Ms. R Milne on the transportation needs of the first plaintiff. She compared the transportation requirements of a C 5 and C 7 quadriplegic, and they agreed that the difference in cost between the two amounts to R 9 480 per annum for operating costs, and R 20 000 per annum for adaption costs.

[61] Mr. Johan Potgieter is the first plaintiff's actuary. He compiled a joint minute together with the first defendant's actuary, Mr. Mavimbela. He testified on the contents of his report and on the joint minute. He said that both he and Mr. Mavimbela had used the same actuarial methodology and had applied the same net discount rate of 2.5% per annum compound, and the same interest and inflation assumptions.

[62] The actuaries differed on the postulated pre-morbid retirement age. Mr. Mavimbela used a retirement age of 61, while Mr. Potgieter used 65 as the retirement age. The calculations were later changed to reflect the mutually accepted life expectancy of 58 years. When the actuaries applied the same retirement age, they achieved virtually the same results. Mr. Potgieter's evidence stood down for Mr. Mavimbela's report to be completed.

[63] When Mr. Mavimbela's report became available, its assumptions differed from the assumptions agreed upon in the joint minute. Mr. Mavimbela applied different inflation rates for medical, salary and price inflation. Moreover, Mr. Mavimbela applied different discount rates to the 2.5% agreed upon in the joint minute.

[64] In cross-examination Mr. Potgieter disagreed with Mr. Mavimbela's approach relating to the inflation rates applied, and the discount rates. He was of the view that

Mr. Mavimbela had applied different inflation rates to similar items. He has also, according to Mr. Potgieter, applied medical inflation rates to services, which is incorrect. Mr. Mavimbela did not testify and therefore Mr. Potgieter's evidence is uncontroverted. I have no reason to doubt the correctness of Mr. Potgieter's opinion.

[65] Mr. Potgieter prepared a spreadsheet that reflected each item regarding the future medical expenses. He redacted items that the first plaintiff conceded had not been proven, and he corrected a calculation error in respect of the travelling costs proposed by the biokineticists, eventually reaching the conclusion that the total future medical costs amount to R 20 935 595, which is made up as follows:

Pulmonology:	R 1 393 032
Nursing care and medical supplies:	R 8 368 250
Physiotherapy and rehabilitation equipment:	R 2 195 089
Biokinetics:	R 582 961
General surgery:	R 547 487
Clinical psychology:	R 1 022 846
Psychiatry:	R 1 436 954
Orthotics:	R 59 767
Quantity surveyor and architects:	R 632 318
Occupational Therapy:	R 2 448 503
Mobility:	R 476 495
Orthopaedic surgeons:	R 450 363

[66] That concluded the evidence for the first plaintiff. The first defendant called Ms. W. Van der Walt, an occupational therapist, to testify. She testified that she agreed with Ms. Basson on a number of aspects relating to the functioning of a C 5 patient as opposed to a C 7. They agreed on the occupational therapy that the first plaintiff will require, the frequency thereof, and the cost. They also agreed on the travelling costs that would be incurred, albeit in a general manner.

[67] Ms. Basson and Ms. Van der Walt differed on whether a case manager should be appointed to manage the first plaintiff's care. Ms. Basson believed that it was necessary to ensure timeous intervention in the event of problems arising with the first plaintiff's care. Ms. Van der Walt was of the view that, whilst the first plaintiff would require a case manager, a case manager would have been required in any event if the injury had been a C 7 lesion.

[68] Ms. Basson was of the view that the first plaintiff required reimbursement for specific assistive devices, including a hydraulic hoist, a Turny Evo car seat, a Quicky Electric wheelchair, and a number of other items relating to the first plaintiff's use of his computer, and devices that assist him to eat. Ms. Van der Walt's view was that all of these devices would have been required by a C 7 patient in any event.

[69] Considering the difference in functioning of a C 7 patient who is able to use his hands and to eat unassisted, Ms. Van der Walt's opinion was patently incorrect, and she was forced in cross-examination to concede that in respect of at least five of the items (the car seat, a glove and spoon for eating with, drinking straws, a plate guard and a stick for typing on the computer), her opinion was incorrect and should be withdrawn.

[70] Ms. van der Walt also disagreed with Ms. Basson about the need for a voice operated computer, and, she says, the first plaintiff would as a C 7 patient have used a Dragon voice program in any event. Ms. Van der Walt had to concede that she had

not explored the features of the computer that Ms. Basson proposed. She did not know, for instance, that it could be transformed into a tablet for use in the wheelchair. Her view was that the first plaintiff "got by" with the old computer so he did not need the one proposed by Ms. Basson. Ms. Van der Walt did, however, concede that the needs of a C 5 patient as regards the use of a computer differ vastly from that of a C 7 patient.

[71] Ms. Basson had recommended that the first plaintiff should be provided with a Frontier V6 All-terrain wheelchair at a cost of R 668 502.05 as well as a backup CE Velocity Tilt wheelchair at a cost of R 120 095.65. Ms. Van der Walt was of the view that the first plaintiff would have required these devices in any event as a C 7 patient.

[72] In cross-examination Ms. Van der Walt agreed that she had initially recommended that the first plaintiff should be awarded the cost of a CE Electric wheelchair at R 575 987.85 and a CE Quicky Nitrum manual backup wheelchair at a cost of R 155 346.20. However, when she was told that the evaluation required a comparison between C 7 and C 5 patients' needs, she withdrew the recommendation on the basis that both scenarios required the same assistive devices.

[73] Ms. Van der Walt had not been to the farm, and did not know what circumstances the first plaintiff had to deal with there. Nevertheless, she opined on the nature of the terrain in the pecan nut orchard. Under cross-examination, and after being faced with Ms. Basson's recommendation regarding the wheelchairs, Ms. Van der Walt conceded that she could not find fault with Ms. Basson's views. She also agreed that the first plaintiff would require two electric wheelchairs, a robust one to traverse the orchard, and a smaller one for use in the home.

[74] A further point of difference between the occupational therapists was the issue of a bed. Initially the first plaintiff claimed, on the basis of Ms. Basson's evidence, for a Tempur mattress and an electrically operated base. The claim for a mattress was abandoned and the only question remaining on this aspect was whether the first plaintiff required an electrically operated base. The first plaintiff is prone to pressure injuries as he cannot change position when he is in bed. An electric base would allow him to adjust the height of the bed in various ways, thus

relieving some of the pressure and alleviating bedsores. An adjustable bed would also assist the first plaintiff with his respiratory system. In my view it is self-evident that this is a device that the first plaintiff requires.

[75] I was perturbed by certain aspects of Ms. Van der Walt's evidence. She conceded that she had incorrectly disagreed with Ms. Basson on five assistive devices that seem to me were self-evidently necessary. One of the most vital aspects of the first plaintiff's care is his respiratory functioning. In this regard Ms. Van der Walt had not even had sight of Dr Viviers' report in which the dangers of the first plaintiff respiratory issues had been fully canvassed. Ms. Van der Walt was reluctant, it seemed to me, to make concessions when she clearly should have done so. On the other hand, I have no qualms in accepting the views of Ms. Basson.

[76] Ms. Van der Walt's evidence was the end of the evidence for the first defendant.

PAST MEDICAL EXPENSES

[77] The first plaintiff claims for four items under this head of damages. The first is the cost of caregivers, which the first defendant has conceded, and which amounts to R 1 220 272.

[78] The other three items are more contentious. After the close of the first defendant's case, the first plaintiff applied to reopen his case. The first plaintiff's counsel submitted that in respect of three items relating to past medical expenses, he had omitted to lead evidence and hand up relevant documents. The items in question were the costs of the repair of the hydraulic hoist in the sum of R 21 126 95, the purchase of a Turny Evo car seat at R 82 150, and repairs to the Quicky wheelchair in the sum of R 25 112.50.

[79] The first defendant opposed the reopening of the first plaintiff's case. It pointed out that the documents that the first plaintiff sought to submit in evidence had not been discovered. However, it emerged that the documents had been handed to the first defendant on 14 July 2025, and at the pre-trial meeting of 18 July 2025 the

first defendant had specifically been asked to admit the contents of the documents. The first defendant had been aware, therefore, that these documents would form part of the first plaintiffs claim for past medical expenses.

[80] The first plaintiff could not tell me whether the documents had been discovered or not, and I assumed therefore that they had not. My view was that one should not treat litigation as if it were a game. Given the fact that the first defendant had had knowledge of the documents in advance, and given the absence of prejudice to the first defendant, I admitted the documents with the proviso that if the first defendant so wished, I would allow it to reopen its case in order to address anything arising from the new evidence. I must point out that I repeatedly asked Mr. Klopper what prejudice the first defendant would suffer in these circumstances, but he was unable to point to any.

[81] The first plaintiff testified as to the invoices underlying his claim for past medical expenses, and he testified that the invoices had been settled. It was never disputed in cross-examination that the invoices had been paid. After the first plaintiff again closed its case the first defendant elected not to lead any further evidence. In its heads of argument the first defendant contended that the documents are inadmissible. They are not. I had a discretion whether to admit the documents, and I elected to exercise that discretion. The first defendant also argued that the invoices were paid by the first plaintiff's parents, and that I should not award those expenses. The point is that they were the first plaintiff's expenses, and where he sourced the money from to pay the invoices is of no consequence.

[82] The first plaintiff's claim for past medical expenses is thus R 1 348 661.45 of which amount the first defendant has conceded R 1 220 272.

FUTURE MEDICAL EXPENSES

[83] As I pointed out above, in coming to an amount for future medical expenses, Mr. Potgieter analyzed the various joint minutes, and he compiled a spreadsheet comprising all of the different items as recommended by the experts. The first

defendant has raised a number of concerns that it has regarding some of the items in the spreadsheet. I shall deal with those concerns hereunder.

Travel costs:

[84] The actuary had been instructed to include travelling costs for a pulmonologist, a physiotherapist, a biokineticist, a clinical psychologist, and a psychiatrist at R 7 per kilometer and for varying distances. The first defendant argues that an actuary cannot simply "on instructions" insert the cost of travel. The specific travelling costs must be dealt with by an expert, says the first defendant.

[85] The joint minute of Ms. Basson and Ms. Van der Walt is the only report that deals with travelling costs, albeit in general terms (although Mr. Potgieter's report says that Drs. Viviers and Chohan also referred to travelling costs, my copy of their joint minute is silent thereon). The occupational therapists recommend that provision be made for travel costs at AA tariffs for 120 km per visit. I have no evidence what the AA tariff might be.

[86] In respect of pulmonology, physiotherapy and clinical psychology the actuary has calculated a cost at R 7 per km for 160 km, which appears to be the distance between Ottosdal and Klerksdorp. For visits to a biokineticist, he has calculated at R 7 per km for a 300 km (round trip) to Potchefstroom. For psychiatry he has calculated a 600 km round trip to Pretoria at R 7 per km.

[87] I have no doubt that there will be costs associated with travel with regard to the items listed in the schedule. However, I have no evidence on why the specific distances were applied, nor on what basis the rate of R 7 per kilometer was applied.

[88] It is so that Mr. Klopper did not cross-examine Mr. Potgieter on the travel costs, the distances and the rates applied, and I assume that is because the first defendant accepts that there will be travel costs involved with the various treatments. In *Southern Insurance Association Ltd v Bailey NO*⁴ the court said:

⁴ Southern Insurance Association Ltd v Bailey NO 1984 (1) SA 98 (A)

"Where the method of actuarial computation is adopted, it does not mean that the trial Judge is "tied down by inexorable calculations". He has "a large discretion to award what he considers right" (per Holmes JA in Legal Assurance Co Ltd v Botes 1963 (1) SA 608 (A) at 614 F)."

[89] In my view, it is a certainty that travel costs would be required, but there is uncertainty regarding the extent of those costs. In order to deal with that uncertainty, I intend to apply a 30% contingency deduction to the travel costs. The result is that the following amounts stand to be deducted from the total future medical expenses:

Travelling costs for pulmonology: R 18 103 X 30% = R 5 430.90

Travelling costs for physiotherapy: R 956 042 X 30% = R 286 812.60

Travelling costs for biokineticist: R 294 241.95 X 30% = R 88 272.58

Travelling costs for clinical psychologist: R 458 602 X 30% = R 137 580.60

Travelling costs for psychiatry: R 789 432 X 30% = R 236 829.60

Total to be deducted: R 754 926.28

[90] The first defendant raised various concerns regarding Mr. Potgieter's calculations. The first defendant contends that Item 89, maintenance of an orthotist device, is not supported by the expert reports. That is not so, and the cost of maintenance is specifically dealt with in the final paragraphs of the orthotists' joint minute. The first defendant's argument that the cost of pulmonary rehabilitation would apply equally to a C 7 patient has been conceded by the first plaintiff, and the total amount for pulmonary care should be reduced by R 290 940 to a total of R 1 102 092.

[91] Items 3, 4 and 6 relate to the pulmonologists' postulation that the first plaintiff will require pulmonary care in future. The first defendant contends that a 50% contingency should be applied to this amount as the first plaintiff has been healthy for 18 years and future pulmonary problems will most likely be avoided. I do not agree. The evidence is clear, that as the first plaintiff ages, the chances of pulmonary problems occurring increase. Furthermore, the first defendant's own pulmonologist agreed with the postulation. As I said above, unless I find that the experts' opinion is clearly flawed, I shall accept it, as I do now.

[92] The first defendant argued that Ms. Van Rooyen, the nursing expert's base amount for nursing care was inaccurate. In a joint minute the respective experts agreed on most aspects, save for the need for weekly visits to the first plaintiff by a registered nurse. Ms. Tladi was of the view that the caregivers could see to the first plaintiff's care. In evidence Ms. Van Rooyen explained that a qualified nurse could anticipate possible problems, determine the first plaintiff's health status and whether his care regime was in order. A lay caregiver cannot do so. Ms. Tladi did not testify and I have no reason to reject Ms. Van Rooyen's evidence. The first defendant's suggestion that I should accept its actuaries postulation on this aspect is rejected. Mr. Mavimbela did not testify, and I have no reason to accept his untested opinion. I accept the agreement of the nursing experts, and in view of Ms. Tladi's failure to testify on areas of disagreement, I accept Ms. Van Rooyen's evidence.

[93] In respect of Item 147, the cost of a mattress, there is consensus between the parties that the amount should be removed. There is also a concession that nursing care should be reduced to R 8 323 218.

[94] In respect of Items 9, 14, 16, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30. Mr. Klopper has argued that these costs are excessive. However, the two nursing experts agreed upon the need for these items, as did the physiotherapists. I have already said that I do not intend to substitute my opinion for that of experts who have reached agreement unless their opinion is, in my view, flawed. Mr. Klopper is also not entitled to simply disregard the agreement reached by his own expert. The same applies to the allegation that Items 49, 51, 53, 54, 56, and 58, 70, 71, 77, 78 and 126

to 149 are allegedly excessive. The experts agreed on these costs and Mr. Klopper confirmed that his client stood by the agreements.

[95] Following on criticism of costs allowed for general surgery, the first plaintiff has conceded that the medications under items 62, 63, and 66 would also have been used by a C 7 patient, and thus should be deducted. That concession reduces general surgery costs to R 378 174 (and not R 350 799 as the first plaintiff contended).

[96] The first defendant also chose to raise, for the first time in argument, the fact that the architects had allegedly designed an entire new home for the first plaintiff. That is not the case. The design is for an apartment adjoining the first plaintiff's parents' home, adapted to his needs, which would give the first plaintiff a modicum of privacy. Given the first plaintiff's circumstances, the agreement by the experts that such a building would be of benefit to the first plaintiff seems sensible to me, and the criticism is unjustified.

[97] Mr. Klopper also criticized the costs in Items 154, 156, 159, and 160 to 174 on the basis that the costs associated with these items would also have applied to a C 7 patient. Not only was there no such evidence, this aspect was never disputed, and in almost all cases, these costs are the result of agreement between the experts. I find no reason to discount their opinions.

[98] The amounts to be awarded (after deducting a 30% contingency from the travel costs) are thus as follows:

Pulmonology: R 1 102 092 less R 5 430.90 travel = R 1 096 661.10

Nursing and home care: R 8 323 218

Physiotherapy: R 2 195 089 less R 286 812.60 travel = R 1 908 276.40

Biokinetics: R 582 961 less R 88 272.58 travel = R 494 688.42

General Surgeons: R 378 174

Clinical psychologists: R 1 022 846 less R 137 580 travel = R 885 266

Psychiatrists: R 1 436 954 less R 236 829 travel = R 1 200 125

Orthotics: R 59 767.65

QS and architects: R 632 318

Occupational therapy: R 2 448 503

Mobility: R 476 495.25

Orthopaedic surgeons: R 450 363

Urologists: R 1 321 530

Total: R 19 675 385.80

CONTINGENCY DEDUCTION

[99] The remaining question under this head of damages is whether the future medical expenses should be subject to a further contingency deduction. The rationale behind contingency deductions is to take account of the uncertainties of life, or, as it is described in *Van der Plaats v SA Mutual Fire and General Insurance Co*⁵:

"Hazards that normally beset the lives and circumstances of ordinary people."

[100] The first plaintiff has presented me with heads of argument in which it dealt with various scenarios in which different contingency deductions were applied.

⁵ *Van der Plaats v SA Mutual Fire and General Insurance Co* 1980 (3) SA 105 (A)

[101] Contingency deductions are not capable of mathematical determination, but are a reflection of what the trial judge believes is fair, given the peculiar facts of the matter.⁶ In some cases, individualized contingency deductions have been applied to different services or devices, depending on the nature of each item, the likelihood that it will not be required, and the possibility of cost increases occurring.⁷

[102] In some cases, no contingency deductions were applied, and in others the same general contingency deduction was applied to all the medical costs throughout.

[103] In *Van der Merwe (supra)* the court said the following regarding the application of contingencies to future medical expenses:

"Daarteenoor is gebeurlikheidsaftrekkings by eise vir toekomstige hospitaal-, mediese- en aanverwante kostes en eise vir hulpmiddels, assistant, huisverbeterings, ens nie noodwendig gebruiklik nie. Soms is dit glad nie van pas om 'n gebeurlikheidsaftrekking ten opsigte van hierdie skadehoofde te maak nie. Dit hang egter telkens af van 'n verskeidenheid van faktore en die spesifieke feite van die geval. Alhoewel daar geen vaste reel in hierdie verband is nie sal die toepassing van byvoorbeeld verdiskontering (in teenstelling met 'n nul verdiskonteringskoers), gewoonlik geen gebeurlikheidsaftrekking verg nie. Aktuariele berekeninge maak ook dikwels voorsiening vir die bepaalde eiser se lewensverwagting, wat opsigself 'n toelating vir vervroegde afsterwe is. Gebeurlikheidsaftrekkings word ook soms gebruik om 'n ietwat liberale toekenning te temper vir die kans dat die volle bedrag nie benodig mag word nie. Daarteenoor is daar 'n verskeidenheid van positiewe gebeurlikheidsfaktore watjuis 'n aftrekking mag weerle soos byvoorbeeld 'n onderskatting van die aantal of tipe behandelings of hulpmiddels wat benodig word, die feit dat koste teen 'n veel hoer tempo mag eskaleer as wat voorsien is, dat inflasie teen 'n hoer koers mag plaasvind, ens. Leiding moet in sulke omstandighede gevind word in sake waar daar uitgebreide reekse hulpmiddels en verwante kostes toegelaat is wat oor 'n betreklike lang tydperk strek."

⁶ *Wessels v AA Onderlinge Assuransie Assosiasie* 1989 (4A3) QOD 19 (T)

⁷ *Van der Merwe v Premier of Mpumalanga* 2005 (5) (513) QOD 15 (T)

[104] The experts have agreed that the first plaintiff's life expectancy has been reduced to 58 years. In Dr. Viviers' view, that estimate is already conservative, and he predicts a greater longevity. Mr. Potgieter, the actuary, has calculated the future medical expenses based on a lifespan of 58 years. Furthermore, he has discounted the expenses at a rate of 2.5%, which I believe to be fair. Also, it must be remembered that the majority of the expenses have been agreed upon by the respective experts. Furthermore, given the fact that the first plaintiff has been successful in maintaining his health through a rigid health regime for nineteen years, it is quite possible that he will live longer than 58 years.

[105] In my view the factors relating to contingencies in this case are similar to those in *Rabie v MEC for Education, Gauteng*⁸ where Koen J said the following⁹:

"Some of the future medical expenses are spread over a very long time. A fair net discount rate has been built into the calculations. The prospects of earlier death have been provided for. All the procedures are required. In many instances an element of compromise has already been built into the claims (as much as I appreciate that compromises have also been made by the defendant). Very little remain in the form of general vagaries of life, which might justify the application of some contingency; certainly considerably less than in respect of the claim for loss of earnings and earning capacity where there are more unknowns and contingencies such as unpredictable economic conditions, unemployment and the like, which would justify a contingency deduction."

[106] It bears repetition that the vast majority of the items claimed for were agreed by the respective experts to be required. In these circumstances, I believe that it would be inappropriate to make any further contingency deductions.

LOSS OF EARNING CAPACITY

⁸ *Rabie v MEC for Education, Gauteng* 2013 (6A4) QOD 227 (GNP)

⁹ At para [29]

[107] As a starting point, the experts all agree that the first plaintiff is unemployable in the market place. The question is what income he may have earned as a C 7 patient, which would then equate to the loss of income that he has suffered. The parties' respective industrial psychologists ("IPs") considered all of the expert reports, and went to some trouble to attempt to differentiate the sequelae of a C 7 injury from those of a C 5 injury. In principle, they say, a C 7 injury is "associated with more physical functionality, allowing for more independence in terms of independent living, wheelchair mobility, transport, performing transfers and consequently allowing for gainful employment. They took note of Ms. Van der Walt's concerns regarding the possibility of the first plaintiff as a C 7 patient suffering muscle spasms, which would limit his employment options. However, Ms. Van der Walt's opinion on this aspect seems speculative, in my view.

[108] The IPs postulate that were it not for the injury, the first plaintiff would have completed his tertiary studies at the end of 2023. He would have commenced with formal employment at Patterson Grade B4/C1 level, and would have progressed to Patterson level 04/05 earnings at age 55. He would have retired at age 65. Taking a C 7 injury into account, they postulate that the first plaintiff would have taken longer to secure employment, and as a result, he would have taken longer to reach his maximum postulated income. They point out that despite legislation aimed at promoting disabled persons in the workplace, there are still low levels of representation of disabled persons across all occupations and managerial levels. However, those disadvantages are somewhat offset by higher educational levels, being in a high income household, and general support in the form of assistive devices and transport.

[109] The IPs recognize the opinion of Ms. Basson that the first plaintiff would, as a C7 patient, have been able to work longer hours and would most likely have been gainfully employed. They also point out the resilience that the first plaintiff has shown that would have stood him in good stead as a C 7 patient:

"We take our hats off to the plaintiff for attaining such high level academic qualifications in his post-accident state. Considering the vast amount of motivation and determination it must have taken to attain such high level of

qualifications in his physical state, we acknowledge that had the injury been limited to a C 7 spinal cord injury, allowing for more physical functionality, that he would probably have excelled even more in his obvious determination and motivation to succeed, i.e. making him more resilient towards unfavourable fortunes of life.

[110] Based on the opinions of the IPs, Mr. Potgieter has calculated the first plaintiffs past loss of earnings as follows (applying a 7.5% contingency deduction pre-morbid):

Past loss of income:	R 285 588
----------------------	-----------

Less contingency deduction (7.5%)	R 21 419
-----------------------------------	----------

Total past loss:	R 264 169
------------------	-----------

[111] Mr. Potgieter's calculation for future loss of income is as follows:

Future income:	R11318857
----------------	-----------

Less contingency deduction (15%)	1 697 829
----------------------------------	-----------

Total future loss:	R 9 885 197
--------------------	-------------

[112] The calculations themselves are not disputed, (save that Mr. Klopper included an incorrect amount in his heads of argument). The first defendant's submission is that a higher contingency of 25% should be applied to the future loss (the first plaintiff has proposed a 20% deduction). It says so for the following reasons:

[112.1] As a C 7 patient working in environmental management the first plaintiff would have had difficulty with the outdoors challenges of the work, especially with site visits;

[112.2] The first plaintiff would have had limited opportunities as opposed to an able-bodied person;

[112.3] The first plaintiff's physical abilities, potential ill health and his condition generally would have acted as a brake on his career.

[113] In my view there is merit to the first defendant's submission. There is great uncertainty as to what the sequelae would have been if the first plaintiff had only suffered a C 7 injury. There are a range of possibilities, and his abilities may have been greatly affected, or perhaps not. It is impossible to say how such an injury would have impacted his mobility and his general ability to function in the workplace. As I have said above, not every C 7 injury is similar to another C 7 injury.

[114] On the other hand, one has to take account of the first plaintiff's resilience under incredibly difficult circumstances. I have no doubt that had his physical condition been somewhat better, he would have made the best of his circumstances and he would likely have achieved much. For the above reasons it seems appropriate to me that one should apply a contingency midway between the suggestions of the parties, i.e. 22.5%.

[115] That would bring the first plaintiff's future loss of income to R 8 772 114.18, and the total loss of income to R 9 036 283.18.

GENERAL DAMAGES

[116] That then brings me to the final head of damages, general damages, which is possibly the most difficult of all to determine. General damages¹⁰:

"...are intended to compensate a victim in a case such as this one for physical pain, mental pain, loss of amenities of life, the handicap of disability, and the like. I should add that in our law the compensation is a conservative amount. No amount of money could ever compensate someone such as the plaintiff for

¹⁰ Sibanda v RAF 2019 (7A2) QOD 13 (GP)

the injuries he sustained. He was a healthy, active person, who worked and lived as able-bodied persons do. The plaintiff's injuries were catastrophic: He has been rendered quadriplegic."

[117] The above words may well have been written about the first plaintiff. I am not to determine what compensation the first plaintiff should receive for his C 5 injury, but to determine what compensation he should receive for the aggravation of his injury from a C 7 to a C 5. That makes the exercise even more speculative. However, in the words of Watermeyer JA in *Sandler v Wholesale Coal Supplies Ltd*¹¹:

"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."

[118] It is settled law that a trial Judge has a wide discretion to award what he deems to be proper in the circumstances. However, it is also settled that a Court should, in considering what award is appropriate, have regard to previous awards, bearing in mind the warning given in *Marine Trade Insurance Co Ltd. v Goliath*¹²:

"In theory it may sound well that regard should be had to previous awards in comparable cases, but in practice, as was pointed out by this Court in *London Assurance v Cope*, 1963 (1) P.H. J6, the difficulty is to find comparable cases. Moreover, to ascertain whether particular cases are similar in material respects the facts in regard to the degree of pain suffered by the claimant in each particular case and the amenities of life of which he was deprived must be known before a comparison is justified."

[119] In *Protea Assurance Co Ltd. v Lamb*¹³ pointed out that a comparison between the case at hand and similar cases, although useful, has limited value:

¹¹ *Sandler v Wholesale Coal Supplies Ltd* 1941 AD 194 at 199

¹² *Marine Trade Insurance Co Ltd. v Goliath* 1968 (4) SA 329 (AD) at 334B

¹³ *Protea Assurance Ltd v Lamb* 1971 (1) SA 530 (A) at 536

"The above quoted passages from decisions of this Court indicate that, to the limited extent and subject to the qualifications therein set forth, the trial Court or the Court of Appeal, as the case may be, may pay regard to comparable cases. It should be emphasized, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases to fix the amount."

[120] The facts in this case are unique. I have not been pointed to any comparable cases, nor do I believe that there are any. The first plaintiff's counsel's emphasis in argument revolved around the staggeringly difficult circumstances in which the first plaintiff finds himself, his loss of privacy, dignity and independence, and his resulting isolation from friends particularly and from society in general.

[121] The first defendant's approach was to take previous cases of C 7 injuries and to calculate a general average for the awards handed down in such matters. It has done the same in respect of awards for C 5 injuries, and has suggested that the difference between the two averages, approximately R 1.2 million, is the award that should be made. That is, in my view, an erroneous approach. The award of general damages does not entail a slavish consideration of previous awards, nor does it entail a mathematical process. A Court has to rather consider the actual fall-out from the aggravation of the injury, and attempt to place a value on the pain, suffering and loss of amenities of life resulting from the exacerbation of the injury. The appropriate way to approach this issue, in my view, is to consider what the first plaintiff's life is like, and to compare it to what his life would have been as a notional C 7 patient, and then to attempt to compensate him for the additional loss of amenities, pain and suffering.

[122] I apologize for the repetition, but it is important to highlight the facts that are, to my mind, relevant to this aspect. The first plaintiff's greatest challenge is perhaps his lack of independence and privacy. He is constantly surrounded by people who have to see to his every need. Without assistance he is immobile, he cannot eat, drink, clean himself, write without assistance, use a computer without a glove being fitted to his hand, use a smart phone, and perhaps most distressing and undignified of all, he has to have assistance with his bodily functions. His mother has to assist

with the application of suppositories in ways that are demeaning and embarrassing. As I have said, his ablutions on alternate days take up virtually the entire day, leaving him unable to do anything else.

[123] The first plaintiff's injury has isolated him entirely. He says that it is difficult to visit friends as he is immobile. Such visits are strained as he constantly needs assistance. I gained the impression that the first plaintiff felt that his condition created an imposition on his friends.

[124] In order to remain useful and busy the first plaintiff has taken to managing the pecan nut orchard on the farm. I gained the impression that the purpose was more to keep the first plaintiff occupied and motivated than it was necessary for the management of the farm. The first plaintiff clearly has the need to remain occupied, engaged and involved with his family business.

[125] It was also very clear to me that the first plaintiff yearns for a partner in his life. He says that although he has had relationships of short duration at University, none of his prospective partners could accept his condition and the relationships ended. He also has clearly given up on the prospect of ever finding a partner, and I could see that the prospect of a lonely life was distressing to the first plaintiff. The clinical psychologist thought that the first plaintiff appeared "depressed, sad, and lonely, as well as frustrated and trapped that he is forced to live such a life and is unable to reach his potential". She believes that the first plaintiff experiences suicidal ideation, and is at risk of suicide were he to suffer a major setback.

[126] In contrast, a C 7 quadriplegic would likely have been able to move himself around, from bed to wheelchair, to a commode, into a car. He would have been able to eat by himself, wash himself, and his ablutions would have been easier to deal with and of shorter duration. The C 7 quadriplegic would have been able to use a computer and a smart cellular telephone. The C 7 quadriplegic would have been able to maintain a social life, perhaps even entering into a romantic relationship. He would not have been 'trapped' as the first plaintiff is, with little prospect of doing anything with his life. He would have a career and be able to advance socially and economically.

[127] A C 5 quadriplegic is much more prone to health setbacks. Because the first plaintiff is unable to breathe properly, nor to clear his lungs by coughing, he is likely to be prone to pulmonary problems. A C 7 patient will have similar problems, but not to such a degree. The first plaintiff's general healthcare regime is also far more extensive than that of a C 7, requiring the cleaning of his catheter twice daily, and particular attention to pressure sores that result from the first plaintiff's inability to move himself.

[128] There is thus a stark contrast between the first plaintiff's life, and that of the notional C 7 quadriplegic.

[129] If one considers previous awards, it is clear that the trend in recent years has been to grant higher awards, as Navsa JA recognized in *Road Accident Fund v Marunga*¹⁴. In *Sgaty v Road Accident Fund*¹⁵ the plaintiff sustained a C 5 dislocation resulting in paralysis from the neck down. He had no useful hand or arm function and he had a loss of bladder and bowel function. He had a permanent catheter, and had to undergo a bowel program on alternate days. He had full-time caregivers and his life expectancy was curtailed. He suffered from depression due to a feeling of meaninglessness and purposelessness. The Court awarded R 800 000 in general damages which equates to R 2 795 000 in current terms.

[130] In *Joko v Road Accident Fund*¹⁶ the plaintiff suffered a fracture of the 6th and 7th vertebrae resulting in tetraplegia. He was unable to use his hands and he required assistance to move. He had a permanent catheter and he required assistance with his bowel movements. He was spastic in his lower limbs, and, although he could eat unassisted, he required assistance with most activities. He was confined, as a 32 year old, to watching sport on television in the old-age home where he resided. The Court awarded R 2 000 000 in 2016, which equates to R 2 972 423 in current value.

¹⁴ *Road Accident Fund v Marunga* 2003 (5) SA 164 (SCA)

¹⁵ *Sgaty v Road Accident Fund* 2001 (5A2) QOD 1 (E)

¹⁶ *Joko v Road Accident Fund* 2016 (7A2) QOD 1 (WCC)

[131] In *Malatji v Road Accident Fund*¹⁷ the plaintiff suffered injuries that left her a quadriplegic. She was permanently wheelchair bound and was completely dependent upon the help of others. She suffered numerous infections. She had urinary and faecal incontinence. She suffered from depression, and as the Court remarked, she had been rendered a spectator of life. The Court awarded R 2 650 000, R 3 350 000 in current terms.

[132] In *Mertz v Road Accident Fund*¹⁸ the plaintiff was injured in a motor vehicle collision as a result of which she was left with C 5/C6 quadriplegia. She had decreased sensation from the chest down, she suffered from muscle weakness and decreased motor function in her upper and lower limbs and specifically with fine hand co-ordination tasks. She was able to use her left hand to operate a computer and to hold a spoon. She could not use her right hand at all. She had some control over her legs but she often fell. She could change her position at night and she could transfer herself from her wheelchair to a recliner. She was able to dress herself. To an extent, therefore, the plaintiff in *Mertz* was more mobile and able to care for herself than the first plaintiff. As in this case, the plaintiff in *Mertz* suffered from depression, suicidal ideation and was unable to maintain her outdoor lifestyle. In *Mertz* the Full Court awarded R 3.5 million (R 3 691 000 in today's value), for general damages, which also took into consideration extensive scarring.

[133] In *Manzimela v Road Accident Fund*¹⁹ the plaintiff suffered a spinal injury that left him a quadriplegic with paralysis in all limbs. He also suffered a mild head injury. He was wheelchair bound and suffered from bladder and bowel incontinence. Moreover, his life expectancy had been reduced. The Court awarded general damages in the sum of R4 500 000.

[134] In my view the appropriate amount for general damages in this case is R 4 500 000. However, I must also consider that as a C 7 quadriplegic the first plaintiff would nevertheless have suffered pain and suffering and loss of amenities of life. For

¹⁷ *Malatji v Road Accident Fund* 2020 (8A2) QOD 1 (GNP)

¹⁸ *Mertz v Road Accident Fund* 2023 (8A2) QOD 6 (GNP)

¹⁹ *Manzimela v Road Accident Fund* (2024/62241) 2025 ZAGPJHC 484 (16 May 2025)

that reason, I have to appropriately discount the amount to be awarded. In my view an award of R 3 500 000 is appropriate.

[135] The award is thus as follows:

Past medical expenses:	R 1 348 661.45
Future medical expenses:	R 19 675 385.80
Loss of earning capacity:	R 9 036 283.18
General damages:	R 3 500 000
Total award:	R 33 560 330.40

[136] I make the following order:

[136.1] The first defendant shall pay the first plaintiff the sum of R 33 560 330.40 (thirty three million five hundred and sixty thousand, three hundred and thirty rand, forty cents) ("the capital sum").

[136.2] The aforesaid sum shall be paid to the first plaintiff's attorney, to the following account:

Gildenhuys Malatji, ABSA Bank Ltd Brooklyn branch, account no. 4[...], branch code 335 345, with reference G Erasmus/01704095.

[136.3] The capital sum shall be paid to the first plaintiff within 30 (thirty) days, failing which the first defendant shall pay interest thereon at the rate of 10.25% from the first day after this order, to date of payment.

[136.4] The First Defendant is ordered to pay all Plaintiff's instructing and correspondent attorneys' costs of suit, in respect of quantum, on

the High Court scale up to date hereof, which costs include (but not be limited to) the services of the following experts:

[136.4.1] Dr LF Oelofse, Orthopaedic Surgeon, inclusive of addendums and joint minutes;

[136.4.2] Dr JJ Labuschagne, Neuro-Surgeon, inclusive of addendums and joint minutes;

[136.4.3] Mr. Kobus Venter, Biokineticist, inclusive of addendums and joint minutes;

[136.4.4] Dr TJ Leask, General Surgeon, inclusive of addendums and joint minutes;

[136.4.5] Dr M Motsisi, Physiotherapist, inclusive of addendums and joint minutes;

[136.4.6] Dr PJ Viviers, Pulmonologist, inclusive of addendums and joint minutes;

[136.4.7] Ms. C Hearne, Clinical Psychologist, inclusive of addendums and joint minutes;

[136.4.8] Ms. Rosslyn Rich, Mobility Expert, inclusive of addendums and joint minutes;

[136.4.9] Ms. Nicolette van Rooyen, Nursing Expert, inclusive of addendums and joint minutes;

[136.4.10] Dr I van Heerden, Urologist, inclusive of addendums and joint minutes;

[136.4.11] Mr. C Louw, Orthotist, inclusive of addendums and joint minutes;

[136.4.12] Dr K Roux, Psychiatrist, inclusive of addendums and joint minutes;

[136.4.13] Mr. S Sermon, Quantity Surveyor, inclusive of addendums and joint minutes;

[136.4.14] Mr. L Eybers, Architect, inclusive of addendums and joint minutes;

[136.4.15] Ms. G Basson, Occupational Therapist, inclusive of addendums, home visits and joint minutes;

[136.4.16] Ms. Monica Botha, Industrial Psychologist, inclusive of addendums and joint minutes;

[136.4.17] Mr. Johan Potgieter, Actuary for all their calculations, inclusive of addendums and joint minutes.

[136.5] The following experts are declared necessary for trial purposes and their reservation and attendance fees are allowed and will be taxable:

[136.5.1] Mr. Kobus Venter, Biokineticist;

[136.5.2] Dr PJ Viviers, Pulmonologist,

[136.5.3] Dr TJ Leask, General Surgeon;

[136.5.4] Ms. Rosslyn Rich, Mobility Expert;

[136.5.5] Ms. Nicolette van Rooyen, Nursing Expert;

[136.5.6] Mr. L Eybers, Architect;

[136.5.7] Ms. G Basson, Occupational Therapist;

[136.5.8] Ms. Monica Botha, Industrial Psychologist;

[136.5.9] Mr. Johan Potgieter, Actuary.

[136.6] The costs shall include:

[136.6.1] The costs of two counsel, one counsel being senior counsel with senior-junior counsel and with both allowed fees on scale C;

[136.6.2] The costs of the preparation of 4 sets of trial bundles as requested by Judge Swanepoel;

[136.6.3] The costs of the attendance and preparation for trial and for the pre-trial conference as well as the service of the various discovered documents in terms of the provisions of Rule 35(9);

[136.6.4] All the costs associated with the evaluation and attendances to all the defendant's medico-legal appointments inclusive of travel time and expenses as well as accommodation costs;

[136.6.5] The reasonable costs of consultation with counsel, witnesses, first plaintiff and the minor and experts for trial purposes;

[136.7] The First Plaintiff is declared a necessary witness for trial.

[136.8] Should the First Defendant fail to pay the First Plaintiff's party & party costs as taxed or agreed within 30 (thirty) days from the date of taxation or agreement, the First Defendant shall be liable to pay interest at a rate of 10,25% per annum, such costs as from and including the date of taxation, alternatively the date of settlement of such costs up to and including the date of final payment thereof.

[136.9] The First Defendant shall pay the agreed or taxed party & party costs, within the period of 30 (thirty) days from taxation or agreement along with all interest incurred, into the trust account of the Plaintiff's Attorneys of Record, Messrs. Gildenhuys Malatji Inc, ABSA Bank, Brooklyn Branch, Account Number 4[...], Branch Code 335345 under Reference: G ERASMUS / 01704095.

**SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

Counsel for the First Plaintiff: Adv. J.D. Maritz SC
Adv. P.L. Uys
Instructed by: Gildenhuys Malatji Inc

Counsel for the first defendant: Adv. J.C. Klopper
Instructed by: The State Attorney,
Pretoria

Heard on: 21 July 2025 to 7 August 2025
Judgment on: 18 August 2025

