IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 9055/2014

REPORTABLE

In the matter between:

AVIWE HOPEWELL TOBI Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA Defendant

Coram: **MOOSA AJ**

Heard: 26, 27, 28 AUGUST 2025, 9 OCTOBER 2025

Supplementary heads: 3 NOVEMBER 2025

Delivered: 2 FEBRUARY 2026 (delivered electronically to the parties)

Summary: Personal injury claim – Plaintiff sues for damages – *quantum* disputed – assessment of general damages – evaluation of expert testimony for patrimonial losses – actuarial calculations considered – Plaintiff is an adult Black African male – determining Plaintiff's life

expectancy for calculating future losses – appropriateness of Koch's life table 2 versus life table 5 – relevant constitutional grounds considered.

ORDER

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1. The Defendant shall pay damages to the Plaintiff in the sum of R6 407 053,60 with interest at the prescribed legal rate computed from 14 days after the date of this order to date of final payment, both days included.

2. Subject to the agreed apportionment, the Defendant shall, for all periods from the date of this order up to the day immediately preceding commencement of the period envisaged by the provisions in paragraph 3 below, pay Plaintiff's travel costs in relation to future medical appointments arising from any cause associated with the Plaintiff's claim including, but not limited to, medical consultations, surgery, and physiotherapy; all such costs to be calculated at the rate charged by Golden Arrow Bus Services (Pty) Ltd for a round trip by public transport from Gugulethu to or near Melomed Hospital in Gatesville (and back).

3. Subject to the agreed apportionment, Defendant shall, for the last two decades of the Plaintiff's life based on a life expectancy of 71.5 years, pay Plaintiff's transport costs to be incurred in relation to future medical appointments arising from any cause associated with the accident giving rise to the Plaintiff's claim including, but not limited to, medical consultations, surgery, and travel during the Plaintiff's recuperation after the anticipated arthrodesis (with a 50% contingency for travel costs related to the arthrodesis); all such costs to be calculated at the rate charged by Uber for a round trip from the Plaintiff's home address at the date of this order in Gugulethu to Melomed Hospital in Gatesville (and back).

4. Subject to the agreed apportionment, the Defendant shall, for the period and purpose envisaged in paragraph 3 above, pay the costs for a companion to accompany the Plaintiff to his medical appointments, which is to be calculated at current rate of R300 per trip and to be adjusted for actuarial purposes.

5. For purposes of paragraphs 2, 3 and 4 above, the sums to be paid shall be as agreed between the Plaintiff and the Defendant. If no agreement is reached within 60 days of this order, the sums shall be quantified by this Court.
6. The Defendant shall pay interest to the Plaintiff on the sums determined under paragraph 5 above, such interest to be calculated at the prescribed legal rate computed from 14 days after the date of the quantification by agreement or court order, as the case may be, up to the date of final payment, both days included.

7. The Defendant shall pay the Plaintiff’s party-party costs, including all qualifying expenses of experts, the cost of obtaining medico-legal and all other expert reports, the costs of experts who attended joint expert meetings, and the fees for two counsel where employed (on scale C for senior, and scale A for junior); save that the Plaintiff’s costs for the Rule 38(2) application shall only include one counsel’s fees and on tariff scale C.

JUDGMENT

Moosa AJ

Introduction

[1] This judgment concerns the *quantum* of a personal injury claim by the Plaintiff (“Tobi”) against the Defendant (“PRASA”). Tobi was injured on 21 November 2013 and near Bonteheuwel in the Western Cape when he was pushed from a moving Metrorail train operated at all material times by PRASA (“the accident”).

[2] Tobi and PRASA settled the merits of Tobi’s claim, including costs for the merits. They agreed that PRASA is liable to pay 50% of Tobi’s proved or agreed damages.

[3] Tobi is a Black African male, born on 19 June 1988. He is presently aged 37 years. He sustained severe bodily injuries as a result of the accident. Tobi was hospitalised at Groote Schuur Hospital from the date of the accident until his

discharge on 31 December 2013. Tobi received medical treatment for his injuries. Tobi's primary injuries were diagnosed to be: (a) a crush to his right ankle and right foot that resulted in surgery for a below-knee amputation; (b) an open wound with fractures to Tobi's left ankle and soft tissue damage that led to skin grafting surgery; (c) a laceration (i.e. cut) on Tobi's skull; and (d) multiple minor abrasions to Tobi's left shoulder and abdomen.

[4] In Tobi's amended particulars of claim, he sues PRASA for R14 564 838,70, being for delictual damages arising from his injuries and their *sequelae* computed as follows: R64 838,70 (for past hospital and medical expenses); R8 000 000 (for future medical and related expenses); R4 500 000 (for past and future loss of earnings, alternatively earning capacity); and R2 000 000 (for general damages).

[5] In its plea, PRASA avers that it 'has no knowledge of the injuries sustained by the Plaintiff or their sequelae, do not admit same, require proof thereof and reserve the right to lead evidence at the trial in rebuttal'. Therefore, as plaintiff, Tobi bears the *onus* to prove his injuries, their *sequelae*, and his *quantum* of damages as suffered.

Issues for adjudication

[6] By virtue of the settlement on the question of liability (merits), the case proceeded to trial on the issue of *quantum* of damages alone. At the trial, the disputes on *quantum* were narrowed by agreements between the parties on the one hand, and between their experts on the other. All this limited the issues for trial.

[7] PRASA withdrew its opposition to Tobi's application under Uniform Rule 38(2). Therefore, on 27 August 2025, I granted an order by consent of both parties which allowed Tobi to place before court, by affidavit, the evidence of the following witnesses contained in their respective expert reports, including any addendum reports: Dr Jason Sagor (orthopaedic surgeon); Dr Keith Louis Featherstone Cronwright (plastic and reconstructive surgeon); Eugene Rossouw (medical orthotist and prosthetist); Marleen Joubert (occupational therapist); Martinette Le Roux (occupational therapist); Esther Auret-Besselaar (industrial psychologist); and Munro Forensic Actuaries ("MFA").

[8] Prior to the trial, meetings took place between the parties' experts. Common ground was reached between certain experts on facts and opinions relevant to

assessing Tobi's *quantum* of damages. The matters on which consensus was reached were recorded in joint minutes of meetings. The minutes were signed by the experts.

[9] Neither party repudiated any agreement appearing *ex facie* a joint expert minute. At the start of the trial, counsel for both parties were *ad idem* that the trial will run on the basis that the matters agreed by the experts are no longer in issue.[1]

[10] On 27 August 2025, and by agreement between the parties, I granted an order in terms of Uniform Rule 38(2). That order admitted into evidence the joint minutes of meetings containing details of the agreements reached between the following experts:

(a) Orthopeadic surgeons: Dr Jason Sagor (for the Plaintiff) and Dr GJ Vlok (for the Defendant);

(b) Plastic and Reconstructive surgeons: Dr Keith Louis Featherstone Cronwright (for the Plaintiff) and Dr Kevin Adams (for the Defendant);

(c) Orthotists and prosthetists: Eugene Rossouw (for the Plaintiff) and Justin Rix (for the Defendant);

(d) Industrial psychologists: Esther Auret-Besselaar (for the Plaintiff) and Nomfanelo Manaka (for the Defendant); and

(e) Occupational therapists: M Joubert (for the Plaintiff) and Joan Andrews (for the Defendant); and Martinette le Roux (for the Plaintiff) and Joan Andrews.

[11] For purposes of determining the heads of Tobi's damages and their *quantum*, a perusal of the joint minutes contemplated by paras [10] (a), (b), (c), and (d) above reveals complete agreement between the relevant experts on all the material aspects falling within their areas of expertise including, but not limited to, the nature and extent of Tobi's injuries; and the nature, extent, and probable duration of the *sequelae* arising from Tobi's injuries (such as, disability, disfigurement, and scarring).

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[1] *Bee v RAF* 2018 (4) SA 366 (SCA) para 66.

[12] The joint reports contemplated by para [10] (e) above contain agreements on some material aspects and disagreements on others. The disagreements comprise disputes arising for adjudication. To resolve the disputes at hand, both parties led the testimony of their respective occupational therapists.

[13] Aligned with the parties' pleaded position, the disputes remaining for adjudication include the quantification of the following claims: (a) general damages; (b) past and future medical and related expenses; and (c) past and future loss of earnings, or earning capacity. For this reason, both parties led actuarial and other expert testimony.

[14] As appears from the discussion below under the heading 'Submissions by Counsel', the outcome of some claims necessitates the adjudication of questions of fact and/or law. The issues envisaged here are formulated in paras [95] to [100] below.

Factual matrix

[15] The Plaintiff led the testimony of four witnesses, namely, Dr Keith L.F. Cronwright ("Cronwright"), Eugene Rossouw ("Rossouw"), Martinette le Roux ("Le Roux"), and Julie Anne Valentini ("Valentini"). In opposition, the Defendant led two witnesses, namely, Geoffrey London ("London") and Joan Andrews ("Andrews").

[16] At the trial, the education, qualification, practical experience, and expertise of *all* the parties' experts were unchallenged. I find that the status of *every* person as expert in his/her field (or discipline) is proved. Nothing more need be said thereon.

[17] Cronwright was not cross-examined at all. Consequently, his evidence stands unchallenged in its entirety. Rossouw was cross-examined, but mainly on one aspect dealt with below in this judgment. Therefore, his testimony is largely unchallenged. The remaining testimony is where the key areas of disputation lie for adjudication.

[18] At the trial, documents were accepted into evidence and marked respectively as Exhibits A1 to A6, B, C, D, E, F, G, H, and I. For present purposes, the key exhibits are the actuarial reports in Exhibits B, C, D, and E; as well as extracts from *The Quantum Yearbook* (2025 ed) by Robert J Koch ("Koch") in Exhibit F.

[19] I will now summarise the salient evidence distilled from the oral testimony, including relevant expert reports. The ensuing narration contains the evidence which is germane to the adjudication of the issues contemplated by paras [11] to [14] above.

Evidence by Dr Keith Louis Featherstone Cronwright

[20] Cronwright is a specialist plastic and reconstructive surgeon. His CV is marked Exhibit A1. He consulted with Tobi. He reviewed Tobi's medical history and PRASA's medico-legal reports. Cronwright established that Tobi suffered serious bodily injuries in the accident and that Tobi received medical treatment for his injuries.

[21] Cronwright explained that he held a meeting with PRASA's expert, Dr Kevin Adams ("Adams"). They signed a joint minute. Cronwright and Adams agreed that Tobi suffered skin injuries for which he underwent reconstructive skin grafting surgery and will, in future, require further surgical treatment. Cronwright and Adams agreed on the estimated costs of Tobi's future reconstructive surgical and related medical treatment.

[22] Cronwright testified that he and Adams agreed that Tobi's injuries suffered in the accident led to severe disfigurement, particularly a below-knee amputation of the right lower leg and extensive scarring on the left lower leg. Both Cronwright and Adams agreed that Tobi suffered a cut to his scull as a result of the accident which required medical treatment. That laceration left Tobi with a scalp scar. Cronwright and Adams also agreed that Tobi's left ankle was fractured in the accident which left soft tissue damage that necessitated medical treatment through skin grafting. Cronwright and Adams both opined that the scar tissue is at risk of breakdown (i.e., ulceration), and both opined that this damage would necessitate surgical intervention in the future.

[23] Cronwright and Adams agreed that, with respect to Tobi's left leg (ankle / foot) scarring, a resurfacing procedure of 3 to 4 hours in duration will be required, and at a cost of R300 000 to R400 000. That surgical procedure will involve microvascular free tissue transfer, harvested from the posterior right thigh, to resurface the medial ankle and the lateral foot dorsum (ankle) area. Cronwright and Adams also agreed

that Tobi will require surgery under local anaesthetic for scalp scar revision, and at a cost of R17 000. They also agreed that Tobi is reasonably likely to suffer episodes of minor breakdowns to his left leg (ankle / foot) that will, in future, require ambulatory dressings, and at a cost of R2 000 to R4 000 per episode. They agreed that 10 episodes over Tobi's lifetime may reasonably be anticipated, and at a cost of R40 000.

[24] Cronwright testified that a crushed foot, fractured bones, open wounds, abrasions, and a laceration to the scull as suffered by Tobi are, by their nature, painful. Cronwright testified further that the skin grafting treatment was necessitated because of an open wound that is 'seriously sore because basically the skin has been ripped off'. Cronwright testified that the below-knee amputation would also have caused pain, including during the recovery period. I pause to mention that this evidence as to Tobi's pain aligns with the evidence emerging from the 2021 medico-legal expert report by Dr GJ Vlok for PRASA. During his testimony, Cronwright referred to Dr Vlok's report.

[25] Under the heading 'Pain and Suffering', Dr Vlok recorded that Tobi suffered severe injuries which caused him physical pain and severe emotional stress. Dr Vlok also recorded that Tobi 'still reports pain in both the right and left-hand side especially with cold weather and when he is very active'.[2] These facts are common cause.

[26] In the joint minute signed by Dr Vlok and Dr Sagor, they agreed that there is a 50% likelihood that Tobi would, in future, require a left ankle arthrodesis, and at a cost of about R100 000. Cronwright explained that this is an orthopaedic surgical procedure that involves a fusion of joints so that the bones grow together. He testified that bone surgery involving an ankle arthrodesis does, by its nature, involve pain. I pause to mention that this evidence aligns with Dr Vlok and Dr Sagor agreeing that Tobi will suffer pain due to the arthrodesis, and agreed on pain medication at a cost of R8 000.

[2] Dr Vlok's report dated 26 November 2021: pg 5 of the Defendants' expert report bundle.

[27] As for Tobi's scarring caused by the injuries suffered in the accident, Dr Vlok recorded the following observations under the heading 'Surgical and Traumatic Scars':

> 'He [Tobi] has severe visible scars on the lateral scars of his left foot as well as on the medial side. There is also a scar where the skin graft was taken. All is well-healed but visible.'[3]

[28] Cronwright testified that the intended resurfacing procedure on Tobi's left foot (see para [23] above) will not materially alter the visibility of Tobi's scars, as also observed by Dr Vlok. At most, there may be a slight improvement in their aesthetics.

[29] Cronwright testified further that the resurfacing procedure will take between 4 to 6 hours and, if all goes well, it will then take, at least, 3 weeks post-operative recovery time. During that period, Tobi will be unable to place much weight on his left leg. Therefore, during the recovery period, Tobi would be even less mobile than usual.

[30] Cronwright testified that Tobi's scull injury has left him with a scar that renders his scalp hairless. The scalp scar revision surgery under local anaesthetic will involve cutting out the existing hairless scar and creating multiple hairs on Tobi's scalp using a triangular pattern. If that heals well, as is anticipated owing to the surgery's high success rate, then it will improve the aesthetics of the scarring on Tobi's scull.

Evidence by Mr Eugene Rossouw

[31] Rossouw signed two joint minutes with PRASA's expert, Mr Justin Rix ("Rix"). Both are medical orthotists and prosthetists. Rossouw's CV is marked Exhibit A3.

[32] Rossouw testified that he and Rix agreed that Tobi suffered a traumatic right below-knee amputation due to the injuries caused by the accident. Rossouw and Rix agreed that Tobi will, for the rest of his life, require a prosthesis on his right foot to support his movement. Rossouw and Rix agreed that the accident caused Tobi to sustain soft tissue injuries to his left foot which resulted in significant soft tissue and skin scarring. Rossouw and Rix agreed further that Tobi's left foot underwent

[3] Dr Vlok's report dated 26 November 2021: pg 7 of the Defendants' expert report bundle.

structural changes owing to the injuries suffered in the accident; but that foot remains functional.

[33] Rossouw and Rix concurred that Tobi will, in future, require two prostheses at intervals of 5 years, and at a cost of about R860 378,69. They agreed on all associated prosthetic components, accessory products (including periodic maintenance, prosthesis physiotherapy, and other necessary services, as well as their intervals over the remainder of Tobi's life). Rossouw and Rix agreed on cost estimates for all this.

[34] Rossouw testified that he and Rix further agreed that, for the rest of Tobi's life, he will require one pair of aluminium crutches, and at a replacement interval of every 5 years. They agreed that the crutches, including ferrules, would cost R1 319,18 each. Rossouw and Rix further agreed that, from the age of 65 years and at replacement intervals of every 7.5 years for the rest of his life, Tobi would require a wheelchair and at an agreed estimated cost of R16 692,48 each. Rossouw testified that he and Rix agreed further that Tobi's left foot will, for the rest of his life, require two custom-made orthotic insoles, at replacement intervals of every 2 years, and at an agreed estimated cost of R6 805,08 each instance.

[35] Rossouw testified that Tobi is an amputee with a permanent disability. In 2014 and again in 2024, Tobi received state-issued prostheses. Tobi's prostheses have not, however, permitted him to function optimally. Tobi is unable to walk for long distances. The prosthesis recommended for Tobi in future as part of fair compensation will improve his mobility, but will not restore normal mobility. As such, Tobi is, and will be, less mobile and less active than he would have been as a non-amputee. I pause to mention that this evidence aligns with the concurrence by the occupational therapists.

[36] Rossouw explained that the injuries caused by the accident to Tobi's right and left legs rendered him without the ability to run, and permanently so. Tobi's state-issued prosthesis cannot be used for running. This position will remain unchanged with the prostheses that Rossouw and Rix recommended be provided to Tobi as part of fair compensation. Neither Rossouw nor Rix has recommended that Tobi be provided with a prosthesis fitted with a special running blade, as seen used by Oscar Pistorius.

[37] In his practice, Rossouw deals mainly with amputees, including patients who underwent an arthrodesis procedure. Rossouw explained that the orthopaedic surgeons, Dr Sagor and Dr Vlok, opined that there is a 50% likelihood that Tobi will require an arthrodesis, a surgical procedure that will fix Tobi's left ankle after it suffers degeneration. Rossouw explained that the arthrodesis will not result in the restoration of full mobility, even after the agreed physiotherapy. Tobi will be left with reduced mobility potential. Tobi will be unable to spend as much time on his prosthesis as before, thereby causing the distances he would be able to walk being even less.

[38] Accordingly, Rossouw testified that in the years prior to the arthrodesis, Tobi will enjoy better mobility and comfort on his improved prosthetic (artificial) right leg working in conjunction with his left leg. However, Tobi's walking will still be considerably less than what he would have been able to do as a fully abled-bodied person. With a prosthetic leg before the arthrodesis, Tobi's step count would be about 8000 per day. However, after the arthrodesis, Tobi will have mobility but his step count would reduce to about 6000 per day, even with the modified orthotics footwear agreed to with Rix.

[39] Under cross-examination, Rossouw confirmed that Tobi's step count will reduce with ageing. Rossouw emphasised, however, that the effects of ageing are a separate consideration from the effects of an amputee being fitted with a prosthetic leg. The latter does not restore full mobility as would have existed with a fully functional leg.

[40] Rossouw's opinion is supported by PRASA's expert. Rix agreed with Rossouw that Tobi's prosthesis 'will never be a substitute for his lost limb and will only ever be an assistive device'. Rix also agreed that the arthrodesis surgery will still leave Tobi 'severely compromised in respect of mobility and activities of daily living'.[4]

<u>Evidence by Ms Martinette le Roux and Ms Joan Andrews</u>

[4] Rossouw and Rix's joint minute addendum dated 14 August 2025: pgs 31 - 32 of Joint Minutes' bundle.

[41] Le Roux and Andrews' CVs are marked Exhibits A4 and I respectively. They signed two joint expert minutes. It is convenient to discuss their evidence together.

[42] Le Roux and Andrews testified that, as occupational therapists, they assessed Tobi's mobility and the challenges related thereto pursuant to injuries suffered in the accident. In this regard, they agreed on the following: (i) although Tobi adapted to his prosthesis, he endures discomfort when doing weight-bearing activities, such as, standing and walking for extended periods; (ii) Tobi has mildly impaired left ankle movement and loss of toe extension; (iii) Tobi's functional mobility is diminished for endurance, balance, and agility; (iv) Tobi's physical function should improve with the new prosthesis (i.e., artificial leg) recommended by the prosthetic experts, as well as with rehabilitation consequent thereon; and (v) Tobi will, in the latter part of his life, become more wheelchair reliant to a degree.

[43] Le Roux and Andrews testified that both evaluated Tobi's employment prospects in view of the injuries caused by the accident. On this aspect, they agreed on the following: (i) Tobi is no longer suited to employment that requires extended standing, walking, crouching, carrying weights in excess of 10kg, or exposure to environmental extremes; (ii) Tobi's residual physical capacity supports sedentary and semi-sedentary work only; (iii) even with improved prostheses and rehabilitation, Tobi will be at a significant disadvantage in accessing employment; and (iv) Tobi's limited education and lack of work experience renders him less competitive in the market and has, therefore, diminished his employment prospects.

[44] Le Roux and Andrews further confirmed that, as recorded in their joint minutes, they agreed on other observations arising from Tobi's injuries caused by the accident and the impact on Tobi's life. These are: (i) that Tobi suffered extensive skin scarring with the risk of future breakdown, thereby necessitating future medical intervention(s); (ii) that Tobi is fully independent in self-care and manages most everyday chores on his own; and (iii) owing to Tobi's disability and mobility challenges, his accommodation should be located on a ground floor with minimal architectural barriers and with access to basic amenities, as well as indoor toilet and ablution facilities. These are relevant factors that will apply if Tobi relocates from his family home at any time in the future.

[45] In their joint minute dated 13 May 2025, Le Roux and Andrews agreed: (i) that compensation should be awarded for a home maintenance assistant who will perform the heavier maintenance tasks at the rate of R350 per day (at para 42); (ii) that compensation should be awarded for certain assistive devices at the costs recorded in the minute (at para 46); (iii) that compensation should be awarded for physiotherapy that relates to prosthesis rehabilitation and the potential ankle arthrodesis surgery (at para 49); (iv) that compensation should be awarded for all future travel costs related to Tobi's medical appointments for any cause associated with the accident, including travel related to orthopaedic and plastic surgery, prosthetic and rehabilitation appointments, and during Tobi's recuperation after the arthrodesis with a 50% contingency for travel expenses related to the anticipated arthrodesis (at para 52); and (v) that, for the last two decades of Tobi's life, compensation should include an award for the use of private transport (such as, Uber) for medical appointments and for a companion to accompany Tobi there (at para 56).

[46] Le Roux and Andrews deferred to other experts as regards the physiotherapy which Tobi will require in future. In an addendum to their initial report,[5] Rossouw and Rix agreed that Tobi's compensation should include provision for physiotherapy in respect of prosthesis and arthrodesis rehabilitation. Rossouw and Rix agreed on the number of physiotherapy sessions, their duration, as well as a professional fee charge rate. For the reasons advanced in para [9] above, the parties are bound by all the agreements reached between Rossouw and Rix (and between all other experts too).

[47] As emerges from the contents of both joint minutes signed by Le Roux with Andrews, they differed on key aspects. While in the witness box, both occupational therapists testified about their areas of disagreement. These are outlined here.

Employability

[48] Le Roux aligned herself with the shared opinions expressed in the joint minute signed by the parties' industrial psychologists, Esther Auret-Besselaar (for Tobi) and Nomfanelo Manaka (for PRASA), namely, that Tobi is, in effect, unemployable in the open labour market due to his limited education, his lack of transferrable skills, as

[5] Joint minute addendum dated 14 August 2025: pgs 31 - 32 of the Joint Minutes' bundle.

well as the combined impact of Tobi's physical limitations and his lengthy period of unemployment after the accident which continued up to the trial.

[49] Andrews testified that Tobi has the potential to earn income, either as an employee or through self-employment. She testified that Tobi has not persevered with job-seeking efforts to improve his circumstances and prospects for earning an income. She opined that Tobi's prospects would be enhanced if he did the following: (i) by using job placement services to seek appropriate employment for a disabled person; (ii) by improving his education at, for e.g., adult-based education centres; (iii) by approaching his erstwhile employer, Unitraco, where he worked as a packer; and (iv) by returning to the orthotic workshop more regularly for fitting and adjustment of his prosthetic leg.

[50] Under cross-examination, Andrews conceded that she and M Joubert agreed that Tobi could no longer perform his pre-accident work as a packer. Andrews testified that she changed her mind because Tobi later described his work as sedentary.

Domestic assistance care and home maintenance services

[51] Le Roux and Andrews testified that, as a result of Tobi's injuries caused by the accident, he suffers from permanent physical and functional limitations which render him unable to perform 'heavy' domestic duties and home maintenance activities (such as, moving furniture, scrubbing floors, painting, digging, clearing gutters, and climbing a ladder). Both Le Roux and Andrews testified that Tobi's situation will likely become worse as he grows older. Moreover, if Tobi undergoes the ankle arthrodesis surgery foreshadowed by the orthopaedic surgeons, then his abilities will likely be worse off.

[52] Le Roux opined that Tobi's inability to perform domestic functions reflects a loss of independence. That loss has an economic value, being the reasonable cost of making the relevant services available to Tobi so that he does not become dependent on anyone to perform unpaid domestic assistance and care roles.

[53] On this basis, Le Roux opined that fair compensation should include provision for Tobi to receive domestic assistance for the rest of his life. Using the charge rates of Care Champs as a yardstick, she recommended compensation as follows: (i) one to two visits per week at R699 per day; alternatively, R399 per 'quick assistance'

visit; alternatively, R599 per three-hour assistance; and (ii) once Tobi becomes wheelchair reliant later in life, then his compensation should include one daily 'quick assistance' visit and an additional three-hour visit for two to three times per month. Le Roux also opined that Tobi will require domestic care for 6 weeks at R18 899 per month during his recovery following the anticipated arthrodesis surgery.

[54] Andrews testified that she agrees with Le Roux that a temporary or permanent loss of functional independence may well merit compensation for domestic assistance and care. Andrews testified that whether this is needed in any instance must be decided on a case-by-case basis. Andrews opined that Tobi will likely require domestic care and assistance in the last two decades of his life, but that such assistance and care would likely be provided by Tobi's partner or spouse at that time. On this basis, she opined that an award of compensation in this regard is unnecessary.

[55] Andrews expressed the view that prior to the last two decades of Tobi's life, his situation does not warrant compensation for a carer or for domestic assistance. Her view is predicated on the consideration that if the accident had not occurred, then Tobi would not have been in a position to employ a domestic assistant or carer and would have relied on family and friends for assistance and/or care at home in times of need. As support for her view, Andrews pointed to the fact that, some time before the accident, Tobi was bed-ridden after being injured when he was stabbed. Tobi did not employ the services of a carer or domestic assistant.

[56] Andrews also opined that Le Roux's recommended monetary compensation (see para [53] above) does not, in the circumstances of this case, reflect basic notions of fairness and reasonableness. This opinion is based on the consideration that, in ordinary circumstances, Tobi would not have been able to afford Care Champs, or any other provider of care or domestic assistance. Therefore, so Andrews reasoned, it is unfair and unreasonable to award Tobi the compensation recommended by Le Roux.

[57] Andrews testified that compensation for domestic care and assistance should not, in this case, be awarded as a separate head of damages. Andrews opined that it may, if deemed necessary, be factored into the award for general damages.

[58] Under cross-examination, Andrews conceded that after the arthrodesis surgery, Tobi will require temporary care and assistance at home. However, she was steadfast in her view that this fact does not, in and of itself, merit an award of compensation. Andrews reiterated that Tobi has access to free care and assistance from family and community healthcare service providers (such as, personnel from local hospitals, and day hospitals or clinics). On this basis, Andrews opined that an award for temporary homecare and assistance would be unfair compensation.

Transport

[59] As recorded in para [45] above, Le Roux and Andrews agreed on certain matters related to Tobi's future transportation needs. The key disagreement between them pertains to the computation of the award. That disagreement, in turn, stems from Le Roux favouring private transport immediately, while Andrews favours public transport for the foreseeable future and the use of private transport services during the last two decades of Tobi's life (and during the temporary period of his recuperation after the arthrodesis surgery, whenever that may occur). The basis for the different approaches by Le Roux and Andrews requires consideration.

[60] Le Roux opined that fair compensation entails Tobi being awarded money for private transport services that would enable him to be collected at home for medical appointments and to be returned there afterwards. Le Roux explained that, as a disabled person, Tobi is vulnerable to attack by criminals.

[61] Le Roux also explained that it is common cause among the experts that Tobi's walking endurance is reduced as a consequence of the injuries suffered in the accident. She opined that this objective fact has compromised Tobi's ability to walk long distances from his home. This includes Tobi walking far distances to and from the places where public transport is available in Gugulethu (such as, the taxi rank and/or bus terminus; or the nearest bus and/or taxi pick-up and drop-off points).

[62] Le Roux testified that she did not know the actual distance from Tobi's home to where public transport is available in Gugulethu. She explained that Tobi had informed her that the distance was far.

[63] Le Roux opined that Tobi should be awarded compensation of approximately R145 per round trip. She explained that, in computing this cost estimate, she first ascertained the nearest hospital from Tobi's current home. She stated that the Vincent Pallotti Hospital in Pinelands is the nearest medical hospital. Using that information, she then ascertained the charge rate of an Uber for a trip from Tobi's home in Gugulethu to Vincent Pallotti Hospital, and back to Tobi's home. Le Roux referred to this as 'point to point transport'.

[64] Le Roux opined that provision should be made for compensation in the first year for between 60 to 95 round trips, and thereafter 6 to 8 round trips per year for the rest of Tobi's life. Le Roux explained that this estimate of the number of round trips is based on information available in the expert reports placed before this Court pertaining to agreed surgery, physiotherapy, and other medical treatment which Tobi will need in the future. Le Roux made provision for pre- and post-operation consultations.

[65] Under cross-examination, Le Roux conceded that her computation of the approximate award for transportation is 'not perfect'. She explained that her calculation is the best that she was able to compile in the circumstances that confronted her.

[66] Andrews disputed the correctness of Le Roux's computation. Andrews testified that she conducted a search on Google and found that Melomed Hospital in Gatesville is the closest hospital to Tobi's home. Andrews testified that she ascertained that, using an Uber, the cost of a round trip from Tobi's home to that hospital and back home is R88 (not R145 computed by Le Roux using Vincent Pallotti as a destination point).

[67] Andrews opined that, in the years leading to the last two decades of Tobi's life, he is capable of using public transport for medical related appointments. She opined that Tobi's disability does not render him unable to walk the distance to and from the nearest taxi rank. Andrews opined that Tobi's ability to walk will improve when he receives the anticipated new prosthetic leg.

[68] Andrews opined that Tobi is a competent walker based on an application of the community mobility assessment method. As such, she opined that Tobi is competent to walk the distance to the nearest taxi rank. She explained that the distance is such that Tobi would complete it in about seven (7) minutes. That time is within Tobi's endurance limits. Andrews opined that a walk of about seven minutes to and from the taxi rank would be beneficial for Tobi. That exercise would enable Tobi to remain active.

[69] Andrews opined that the use of private transport from Tobi's home would be fair compensation in the last two decades of Tobi's life. She explained that Tobi would then be affected by usual factors like general ageing, slowing down, physical challenges, reduced confidence, and possible health-related issues. Andrews explained that these considerations do not currently affect Tobi and, thus, do not hinder his walking ability.

[70] Andrews explained that she did not determine the cost of public transport, nor computed the award that should be made for transport based on her opinions. Andrews testified that these are not matters within the realm of an occupational therapist's expertise. On this basis too, she criticised Le Roux for her calculations.

[71] Under cross-examination, Andrews maintained that compensation should not include provision for the cost of transport incurred for social purposes. Andrews disagreed with Le Roux who opined that Tobi should be compensated for transport costs incurred for such non-medical purposes. Le Roux's opinion is grounded in the same reasoning as her opinion that compensation should be awarded for transport costs related to medical appointments. See paras [60] to [63] above.

[72] Andrews opined that Tobi would have a social life even if the accident did not occur. As such, he would have travelled to social gatherings that were not within walking distance from his home. Consequently, Andrews opined that transport costs incurred in a social context are not causally linked with the accident and Tobi's injuries suffered as a result thereof. This is unlike the position with transport costs incurred for Tobi to attend medical appointments linked to injuries suffered by him in the accident.

<u>Evidence by Julie Ann Valentini</u>

[73] Valentini's formal qualifications, experience, and background as an actuary appear from her CV marked Exhibit A6. Her testimony centred on two actuarial reports co-authored by her as a member of MFA. The reports are marked Exhibits B and C respectively. Exhibit B, dated 21 August 2025, embodies a calculation, as at 1 September 2025, of the capital value of the potential future medical costs to be incurred by Tobi as a consequence of the accident. Exhibit C, dated 18 August 2025, embodies a calculation, as at 1 September 2025, of the capital value of the potential past and future loss of earnings suffered by Tobi as a result of the accident.

[74] The capital value of the future medical expenses forming the subject of Exhibit B are calculated in annexure A thereto. The basis for the calculations is the recommendations outlined in the joint minutes, updated where applicable, as executed by the parties' experts. The joint minutes used by MFA for purposes of Exhibit B are those envisaged by paras [10] (a) to (e) above. Valentini testified that the aggregate capital value of the potential future medical costs to be incurred by Tobi is R9 932 810.

[75] Le Roux conceded that compensation need not include the cost of a washing machine. That concession had the effect of reducing the capital sum of R9 932 810 to R9 919 140.[6] Based on annexure A to Exhibit B and the conspectus of evidence, the latter sum is computed, after provision for certain contingencies, as follows:

(a) R54 990, being the future medical costs to be incurred arising from the joint recommendations of Dr JS Sagor and Dr GJ Vlok in their joint minute of 15 June 2023;

(b) R22 410, being the future medical costs to be incurred arising from the joint recommendations of M le Roux and J Andrews in their joint minute of 13 May 2025;

(c) R7 069 610, being the future medical costs to be incurred arising from the joint recommendations of E Rossouw and J Rix in their joint minute of 22 May 2025;

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[6] The sum of R22 410 is the nett remaining after Le Roux's concession that no provision needs to be made for a washing machine every 10 years at an estimated future capital cost of R13 670.

(d) R314 270, being the future medical costs to be incurred to implement the joint recommendations of Dr K Cronwright and Dr K Adams in their joint minute of 6 August 2025;

(e) R151 350, being the future medical costs to be incurred arising from the joint recommendations of E Rossouw and J Rix in their joint minute of 14 August 2025; and

(f) R2 306 510, being the future capital costs to be incurred for domestic care and assistance arising primarily from the recommendations of M le Roux, supported by J Andrews (where applicable) as recorded in their joint minute dated 19 August 2025.

[76] Valentini testified that the items comprising the R7 069 610 claim is calculated based on Tobi's present age of 37 years and a further life expectancy of 34.57 years per Life Table 2 of the South African Life Tables 1984 to 1986 (male group). She explained that the same life expectancy table was used when Tobi's future loss of earnings was assessed. Valentini explained that Life Table 2 was used for Tobi because this accords with case law (for e.g., *Singh v Ebrahim*). Also, the World Health Organisation reported that worldwide, even in developing countries, people are living longer. Valentini explained that this upward trend strengthened the case for using the lighter mortality in Life Table 2 instead of the life expectancy in any other table.

[77] Valentini computed Tobi's loss of earnings based on the agreements recorded in the joint minute of the parties' industrial psychologists dated 15 August 2025, and on the assumption that Tobi will remain unemployable in the future. Valentini computed Tobi's past loss of earning to be R777 575 (using a 5% contingency). She calculated his future loss of earnings to be R2 904 620 (using a 15% contingency). I pause to mention that these contingencies were accepted by PRASA. Having regard to the usual practice on contingencies for loss of earnings, I also consider them as fair.

[78] Under cross-examination, it was put to Valentini that Life Table 5 should have been used because, so counsel framed his proposition, that table, as modified by Koch in *The Quantum Yearbook* (2025 ed), measures a claimant's future life

expectancy based on his/her socio-economic status as reflected by the income bracket into which a claimant falls. Life Table 5 applies to persons with annual earnings ranging from R170 001 to R330 000. Counsel put it to Valentini that since her calculations, like that of London in Exhibit D, show that Tobi's earnings in January 2036 at age 47½ would have been R228 000 p.a. if the accident did not occur, Tobi's future life expectancy should be pegged at 29.07 years per Life Table 5 (not 34.57 years per Life Table 2).

[79] Under the rigours of cross-examination, Valentini was steadfast in her reliance on the South African Life Tables as originally prepared, rather than Koch's modified version. Her starting point is the common cause fact that the original life tables were prepared based on race. Whereas Life Table 2 reflected the life expectancy of persons classified as White, Life Table 5 reflected that of Coloureds. The latter racial group had a much heavier mortality expectancy than the former because access to economic opportunities, healthcare, and other factors that generally improved life expectancy were hindered for Coloureds under apartheid, but not so for Whites. As such, Life Tables 2 and 5 were rooted in apartheid-era unfair discrimination based on race.

[80] Valentini testified that the life expectancy calculations used by Koch is exactly the same as in the original corresponding tables based on data of 1984 to 1986, except that Koch modified the subject of each life table. Valentini explained that Koch removed the offending race-based subject in each table and replaced it with a differentiation that is based on the socio-economic status of the subject to which a life table relates. That status is, in turn, reflected by a subject's annual earnings.

[81] Valentini opined that a decision to use Life Table 2 or 5 cannot be informed by a claimant's income bracket. She reasoned that the life expectancy calculations were not created with reference to earnings. Rather, the mortality expectancy of each race was calculated based on factors that affected each racial grouping to whom a particular table related. Valentini opined that Koch's reference to earnings did not alter the underlying racial basis on which life expectancy in the tables was calculated.

[82] Valentini testified that a mortality table that measured the life expectancy of Black Africans, being the racial group to which Tobi belongs, was not published during apartheid. Consequently, she opined that Life Table 2 should be used for Tobi. She emphasised that her reasons appear in Exhibit E, as amplified during her testimony.

Evidence by Geoffrey London

[83] London's formal qualifications, experience, and background as an actuary appear from his CV marked Exhibit H, except he testified that his CV wrongly records his practical experience as 32 years. It is actually 40 years.

[84] London's testimony centred on his actuarial report dated 25 August 2025 marked Exhibit D. It embodies calculations as at 31 August 2025 of the capital value of the potential future medical costs and of Tobi's loss of earnings (past and future) to be incurred as a consequence of the accident. Owing to concessions made at the hearing and submissions by counsel (see the discussion under the next heading), the actuarial computations in Exhibits B, C, and H are now largely undisputed.

[85] The key disputed issue among the actuaries is whether Life Table 2 or 5 should apply. London's evidence will be summarised so far as it is relevant to that issue.

[86] London testified that Tobi's current age is 37 years. Based on this age, his life expectancy based on Life Table 5 (male group) is an additional 29.07 years. Using that information and applying similar assumptions as Valentini, London calculated the following: (i) Tobi's nett future loss of earnings is R2 953 774 before contingencies (not R3 417 200 per Valentini); (ii) Tobi's uninjured past loss of earnings is R726 472 before contingencies (not R818 500 per Valentini); and (iii) Tobi's future medical costs to be incurred based on the joint recommendations of Rossouw and Rix in their minute of 22 May 2025 is R6 007 793 (not R7 069 610 per Valentini).

[87] London acknowledged that Life Tables 2 and 5 have their genesis in unfair discrimination during apartheid. He testified that Life Table 2 was created for Whites and showed that persons in that racial group across both genders had, based on their privileged position under apartheid, a higher life expectancy than Coloureds

(males and females) as calculated in Life Table 5. London confirmed that the life expectancy calculations in each table was not based on the earnings of the relevant groups. He acknowledged that the reproduction of Life Tables 2 and 5 along the lines of earnings is an adaptation (i.e., modification) introduced by Koch in *The Quantum Yearbook*.

[88] London testified that Valentini's choice of Life Table 2 is incorrect for two reasons. First, he opined that the judgments cited by Valentini in Exhibit E (at para 4), and discussed by Rogers J (as he then was) in the judgment marked Exhibit G, are factually distinguishable from that in the present case. Consequently, London opined that the judgments concerned do not support Valentini's decision to use Life Table 2 here. Secondly, London opined that there is no available data which justifies the use of Life Table 2 across the board for all persons in South Africa, regardless of context.

[89] London criticised Valentini's use of the life tables in their original form, rather than with Koch's modification based on a person's socio-economic status reflected by annual income (see para [80] above). London opined that Koch's modified life tables brings about a more reasonable approach because race is removed as the factor that differentiates one person's life expectancy from another, and is replaced by a differentiation based on socio-economic factors (such as, earnings, and access to education). London opined that, for purposes of the life tables, the socio-economic status of a subject is, unlike race, an acceptable basis for differentiation.

[90] Under cross-examination, London conceded that he did not know the basis on which Koch determined that the life expectancy calculations in Life Table 2 applies to persons with annual earnings ranging between R1 100 001 to R1 600 000; nor did he know the basis on which Koch determined that the life expectancy calculations in Life Table 5 applies to persons with annual earnings between R170 001 to R330 000. London testified that he accepted Koch's modified tables owing to his trust in Koch, a person who London viewed as a highly distinguished and renowned expert in the field of actuarial science.

[91] Under cross-examination, London agreed with Valentini's observation that the life expectancy calculations in Life Tables 2 and 5 of Koch's *The Quantum Yearbook*

(2025 ed) is exactly the same calculations as appeared in the original tables produced during the apartheid era, except for Koch's insertion of the income brackets to which each table now relates (instead of the different racial groups). London testified that he did not know, nor could he explain, how Koch determined that the life expectancy of Whites and Coloureds in apartheid South Africa, as reflected in Life Tables 2 and 5 respectively, mirror the life expectancy of anyone who, in present day terms, earns R1 100 001 to R1 600 000 (Life Table 2) and R170 001 to R330 000 (Life Table 5).

[92] London also agreed that, as testified by Valentini, the research data available from the World Health Organisation shows that, across the globe, life expectancy is generally higher, even in developing countries like South Africa. However, London opined that Valentini is wrong to rely on this global trend as justification for using the higher life expectancy in Life Table 2 rather than the reduced one in Life Table 5.

[93] During cross-examination, London conceded that Valentini did not use the highest life expectancy (i.e., the lightest mortality) contained in Life Table 1. Rather, she used the second highest life expectancy reflected in Life Table 2. London also conceded that, by a parity of reasoning, his choice of Life Table 5 reflects a preference to apply the second lowest life expectancy (i.e., the second heaviest mortality), even though his calculation assumes a normal life expectancy for Tobi. London admitted that this choice is based exclusively on Tobi's socio-economic status as reflected by his annual earnings according to Koch's modified Life Table 5.

Submissions by counsel

[94] Relying on well-known *dicta (*see paras [198] to [199] below), Adv Laubscher, for Tobi, and Adv Ramatsekisa, for PRASA, agreed that an award of general damages is a matter entirely within judicial discretion. Each case stands on its own footing. Precedents of prior awards serve merely as guides. These are settled principles which, as discussed more fully later in this judgment, I apply in this case. Counsel parted ways on the application of the relevant principles to the facts of this case. Whereas Adv Laubscher submitted that an award of R2m would be fair compensation, Adv Ramatsekisa submitted that R1 152 000 would be fair.

[95] Accordingly, the issue for adjudication is whether fairness to both sides justifies general damages in the sum of R1 152 000 or R2m, or an amount in-between.[7]

[96] As for loss of earnings, Adv Laubscher submitted that Tobi is entitled to an award of R3 682 195 as computed by Valentini on the basis that Tobi is not employable. The disputed issue in this regard pertains to whether Tobi is employable. That dispute affects the computation of Tobi's claim for future loss of earnings.

[97] Adv Ramatsekisa submitted that PRASA accepted that, based on vouchers disclosed in support of Tobi's claim for past medical expenses, the sum of R64 838,70 was fair and reasonable. As such, I conclude that Tobi proved his claim for this sum.

[98] Adv Ramatsekisa submitted that PRASA has accepted liability for certain medical costs calculated by MFA. The relevant ones are the future capital costs indicated in paras [75] (a), (b), (d), and (e) above totalling R543 020. An appropriate order to that effect will be granted, but subject to any contingency and apportionment.

[99] As for future domestic care and assistance, Adv Laubscher submitted that R2 306 510 should be awarded (see para [75] (f) above). Adv Ramatsekisa submitted that the award should be limited to items agreed by Andrews and Le Roux in their joint minute, subject to the use of Life Table 5 for items where mortality is relevant.

[100] As for Tobi's future orthotic and prosthetic costs, Adv Laubscher submitted that an award of R7 069 610 should be made on the basis of the computation in Exhibit B (see para [75] (c) above). Adv Ramatsekisa submitted that R6 007 793 should be awarded based on the computation in Exhibit D (see para [86] above). The difference in computation stems from the disputed anticipated life expectancy for Tobi.

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[7] See *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (D) at 287E-F.

[101] Counsel for both parties are *ad idem* that the quantification of Tobi's claim for future medical expenses depends largely on whether Life Table 2 in its original form is appropriate for use here, or whether Life Table 5 as modified by Koch is to be used. Both parties' counsel relied, in the main, on the thrust of the basis advanced by their experts, Valentini and London, which informed their respective choice of Life Table 2 or 5 (as the case may be).

[102] The issue of whether Life Table 2 in its original form or Life Table 5 as modified by Koch is to be used is untested terrain in case law. It also gives rise to constitutional considerations concerning a claimant's right to equality and to human dignity when the life tables are utilised to quantify damages. I am grateful to the parties' legal teams for their insightful submissions at the hearing and in post-hearing heads of argument.

[103] Relying on *S v Makwanyane*[8] and relevant provisions in the United Nation's *Universal Declaration of Human Rights*, Adv Laubscher submitted that the use of the lower life expectancy in Life Table 5 rather than that in Life Table 2 would violate Tobi's constitutional rights to equality and to human dignity entrenched in s 9(1)[9] and s 10[10] of the Constitution, 1996 respectively. He submitted that the modified Life Table 5 is rooted in unfair discrimination that violates s 9(4) and s 9(5) of the Constitution.

[104] Adv Ramatsekisa conceded that the application of Life Tables 2 and 5 for purposes of quantifying Tobi's damages are intertwined with his constitutional rights to equality and to human dignity. Adv Ramatsekisa submitted that the socio-economic factors which influence any claimant's standard of living and, by extension, his/her life expectancy directly impacts the claimant's rights in s 9 and s 10 of the Constitution. In this context, he submitted that '[t]he realization of these rights affects life expectancy by shaping an individual's socio-economic status, access to

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[8] 1995 (3) SA 391 (CC) para 329.

[9] In relevant part, s 9 reads:

> '(1) Everyone is equal before the law and has the right to equal benefit and protection of the law ... (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including ... marital status, ethnic or social origin, … age, disability, ... and birth. (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). ... (5) Discrimination on one or more grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.'

[10] Section 10 reads:

> 'Everyone has inherent dignity and the right to have their dignity respected and protected.'

healthcare, living conditions, and overall quality of life'.[11] He added that '[t]he ability to access quality healthcare is a fundamental determinant of life expectancy'.[12]

[105] In my analysis below, I assess and evaluate the different strands of both counsels' arguments so far as doing so is necessary for adjudicative purposes *in casu*.

Discussion (analysis)

[106] Central to the quantification of Tobi's claim for certain future patrimonial losses is the issue as to his life expectancy. Owing to the importance of that controversy, I engage with it at the onset. Thereafter, to the extent necessary, I discuss the quantification of Tobi's claims under various heads of damages, including for transport.

Determination of Tobi's life expectancy

[107] Life expectancy is not a prediction of when death will occur.[13] In a damages' claim, life expectancy refers to the additional years that a claimant is expected to live as computed from the claimant's age on the date when the claimant's expected mortality age is assessed. The latter age is determined by adding the anticipated additional years to the claimant's actual age as at the date of the mortality calculation.[14]

[108] Unless agreement is reached *inter partes*, life expectancy is a matter for judicial determination. This is a complicated and imprecise exercise.[15] It involves pondering the imponderable; then, like an oracle, divine a person's mortality age somewhat speculatively.[16] To assist, expert evidence is used; but it is not decisive. The nature of testimony is also case-specific. For e.g., when a claimant suffers from a condition (such as, cerebral palsy), then evidence of clinical factors (positive and

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[11] Para 2.4: Supplementary heads of argument.
[12] Para 2.5: Supplementary heads of argument.
[13] RJ Koch *The Quantum Yearbook* 2025 ed at 109.
[14] *AD and Another v MEC for Health and Social Development, Western Cape Provincial Government* (27428/10) [2016] ZAWCHC 181 (7 September 2016) para 87; *PM obo TM v MEC for Health, Gauteng Provincial Government* (A5093/2014) [2017] ZAGPJHC 346 (7 March 2017) para 5.
[15] *Singh and Another v Ebrahim* (413/09) [2010] ZASCA 145 (26 November 2010) para 152.
[16] *Singh v Ebrahim supra* (n 15) paras 66, 128, 152.

negative) that may influence life expectancy would be necessary.[17] This case is not such an instance.

[109] Tobi has a permanent disability. There is no evidence that he suffers from any condition (such as, HIV) that would affect his life expectancy.[18] Consequently, it was appropriate that expert evidence took the form of statistical information and actuarial calculations that would assist in fairly and reasonably estimating Tobi's anticipated life expectancy and on the assumption that he would have a 'normal' mortality age.

[110] Owing to the statistical nature of the expert evidence led on the computation of Tobi's life expectancy, this is not a case where the court is, by reason of a lack of specialist knowledge and skills, insufficiently informed so that it should not lightly deviate from the conclusions drawn by the specialists. Compare, for e.g., *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft Für Schädlingsbekämpfung MBH.*[19]

[111] As stated in para [76] above, Valentini determined that, based on Life Table 2 (male group), Tobi's (age 37) has an additional life expectancy of 34.57 years. Thus, Tobi's expected mortality age is computed at 71.5 years (i.e. 37 + 34.5). On the other hand, as stated in para [86] above, London determined that, based on Koch's modified Life Table 5 (male group), Tobi has an additional life expectancy of 29.07 years. On that basis, Tobi's expected mortality age is estimated to be 66 years (i.e. 37 + 29).

[112] At the trial, both parties accepted that Tobi's additional years is 29.07 at a minimum and 34.57 at a maximum. Accordingly, I will proceed to assess Tobi's life expectancy for purposes of quantifying his future damages' claims on this basis.

[113] While the difference between Valentini and London's estimates seems marginal at only 5.5 years, the difference in monetary terms is not insubstantial. As is evident from para [86] above, the difference in damages would, for e.g., be R1 061 817 (for future orthotic and prosthetic costs). Therefore, the parties remained steadfast in their respective positions.

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[17] *PM obo TM v MEC for Health, Gauteng supra* paras 27 - 29.
[18] Compare, for e.g., *Seme v RAF* (13917/04) [2008] ZAKZHC 47 (11 July 2008).
[19] 1976 (3) SA 352 (A) at 370G-F.

[114] When computing life expectancy, Valentini and London took account of the following: (i) Tobi is a Black African male; (ii) Tobi is now 37 years of age; (iii) Tobi is assumed to have a normal life expectancy; and (iv) the South African Life Tables 1984 to 1986 provide an appropriate basis for calculating Tobi's additional life expectancy. Therefore, all this is common cause when adjudicating Tobi's life expectancy.

[115] As emerges from the summary of evidence in paras [78] to [82] and [87] to [89] above, the experts reached different results is calculating Tobi's capital losses because they have divergent views on the applicable life table. Thus, a judicial decision must be made whether Valentini or London's methodology is to be preferred, if either at all.

[116] Owing to their status as experts testifying on a matter requiring their special expertise for this Court's benefit, the basis on which Valentini and London decided to adopt their respective methodology requires careful scrutiny. A rejection of one expert's methodology and opinions stemming therefrom does not, in and of itself, mean that the other expert's methodology and opinion automatically prevails (and *vice versa*). The opinions expressed by each expert, and their underlying rationale, must be examined through a critical judicial lens.

[117] An expert is not a hired gun.[20] The guiding principles that apply when a court engages with expert testimony are fairly settled. As such, those trite principles are not restated, but are applied here. For a useful iteration of the relevant principles, see *Twine and Another v Naidoo and Another.*[21] In that case, Vally J aptly remarked that 'the landscape of expert evidence has been expansive and its topography uneven'.[22]

[118] When engaging with the multiple expert opinions before me, both written and oral, I am mindful that I am not obliged to embrace any particular opinion. An expert cannot usurp a court's function in the administration of justice; nor is it permissible

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[20] *Schneider NO and Others v Aspeling and Another* [2010] 3 All SA 332 (WCC) at 342.
[21] [2018] 1 All SA 297 (GJ) para 18. Also, see *Schneider NO v Aspeling supra* (n 20) at 341.
[22] *Twine v Naidoo supra* (n 21) para 18.

for a judicial officer to abdicate his/her constitutional responsibility by yielding to an expert, no matter how esteemed he/she may be in a specialist field or discipline.[23]

[119] In view of the foregoing, the cogency of the expert opinions before me must be subjected to critical assessment as may be necessary to resolve factual disputes extant in this case. To enable proper judicial analysis to occur, an expert must ground his/her opinions in sound reasoning.[24] In the absence of cogent reasons, an expert's opinion is unhelpful to a court and would be inadmissible.[25] This is a salutary principle.

[120] The reasons for Valentini's opinion that Life Table 2 is appropriate to the assessment of life expectancy is outlined in para [76] above. Her grounds for using Life Table 2 are susceptible to criticism. The reasons for her opinion that Life Table 5 is inappropriate are outlined in paras [78] to [82] above. There is merit in that opinion.

[121] Valentini's reliance on certain court judgment as a basis for the use of Life Table 2 was reiterated by Adv Laubscher in his closing argument. While it is acceptable for an expert to find some grounding in case law for his/her approach to life expectancy, when a court evaluates whether the expert's approach is reliable, it cannot be ignored that interpretation of, for e.g., court judgments is a matter of law. Interpretation is not an evidential issue, or so-called jury matter, that requires witness testimony.

[122] The latter point is important here. Valentini's evidence traversed the judgments in *Singh v Ebrahim supra* and *AD v MEC supra*. Indeed, extracts of the latter judgment by Rogers J (as he then was) was tendered into evidence and marked Exhibit G. Based on trite principles relating to expert testimony, all that was largely unnecessary.

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[23] *Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another* [2002] 1 All SA 384 (A) para 34; *Masstores (Pty) Ltd v Pick 'n Pay Retailers (Pty) Ltd and Another* 2016 (2) SA 586 (SCA) para 15.
[24] *Michael v Linksfiled Park Clinic supra* (n 23) paras 34 – 40.
[25] *Bee v RAF supra* (n 1) para 22.

[123] In my view, a reading of both judgments does not indicate that they serve as authority for the proposition that Life Table 2 is the default life table to be used in every context for the benefit of Black Africans generally to prevent racial discrimination.

[124] *Singh v Ebrahim supra* involved a claim for damages by the parents of Nico, a child who was disabled by cerebral palsy caused at birth by the negligence of Mrs Singh's gynaecologist. While the law report does not, on my reading thereof, explicitly record Nico's gender and race, I am prepared to assume, as Valentini and Adv Laubscher did, that Nico was, like Tobi, a male. But that is where the similarities in their personal profiles end, so far as is relevant to estimating life expectancy. The material factual differences were that Nico was Indian and a child with cerebral palsy.

[125] In *Singh*, reference to the South African Life Tables 1984 to 1986 appear in para 65 (per Conradie JA for the majority) and para 199 (per Snyders JA for the minority). However, in all matters of law, context is vital. Snyders JA affirmed that it was reasonable for the trial court to use the White male life table 'to exclude any racial component from the calculation'. Conradie JA, on the other hand, used the 1984/1986 life tables in an entirely different way. Conradie JA held as follows (at para 58):

> 'How the court arrived at its finding that Nico's life expectancy was 30 years is not entirely clear. The judge did not put Nico into any particular category or even attempt to do so. He did not arrive at a figure suggested by a statistical category and add or deduct a contingency allowance.'

[126] At para 64, Conradie JA held that Nico should be in category 3(a) of a specialised table developed by the California Group of Dr D Strauss for determining the life expectancy of someone who suffers with cerebral palsy. Using that specialised table, Conradie JA held that Nico's life expectancy would have an additional 20.3 years. However, at para 65, Conradie JA held that the evidence showed that Nico was an unusually high functioning child compared to others falling into category 3(a).

[127] To take account of Nico's higher functioning and to ensure that the estimate of his life expectancy is individualised, Conradie JA undertook what he termed a

‘substantial adaptation’ of the baseline 20.3 years by adding a further 25% to arrive at a final estimate of 26 years. Conradie JA stated that he did so ‘on the basis of the 1984/86 life tables’. Conradie JA did not mention that he used Life Table 2.

[128] The highwater mark of the decision in *AD v MEC supra* is that *Singh supra* established a legal policy, namely, that the 1984/1986 life tables for White persons may be used to exclude a racial bias when estimating life expectancy. Rogers J held that this is a binding policy ‘in the absence of new data’ (at para 190). The Learned Judge then held, at para 191, that 2015 data by Statistic South Africa (“SSA”) of life expectancies (“LE”) at birth is new data that should be deployed, where appropriate.

[129] Rogers J estimated the life expectancy of IDT, a Coloured child, aged 7, who suffered with cerebral palsy. The learned Judge did not use the 1985/1986 Life Table 2 for this purpose. At para 192, Rogers J used the SSA birth LE and made necessary adjustments thereto. At para 193, Rogers J then compared the resultant estimate with that which would have emerged if Koch’s modified Life Table 2 was used.[26]

[130] Based on the foregoing, I conclude that neither *Singh v Ebrahim supra* nor *AD v MEC supra* provide support for the utilisation of the White male 1985/1986 Life Table 2 for all Black African males in all instances, regardless of context. Consequently, the question that arises is whether this judgment should establish that foundational principle. Owing to the view I take on how Tobi’s life expectancy should be estimated, that legal issue is deferred to another occasion in the future.

[131] Adv Ramatsekisa submitted that Life Table 2 should not be used in a way that would allow it to operate as a one-shoe fits all circumstances. I agree. Naturally, the same would apply to any of the other life tables too. Regardless of which life table is used, the statistical result achieved is not necessarily an end-point. Rather, it is a point of departure that serves as a guide in the overall life expectancy assessment process. Unfortunately, neither of the actuaries appreciated this methodological principle.

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[26] This judicial approach has been criticised. For e.g., Whitaker argues that ‘it is erroneous to make a comparison between a complete life population table and a demographic estimate of life expectancy at birth which is not based on census data’ (G Whitaker ‘A history and forecast of the South African life tables No. E1 to No. E9’(2021) *South African Actuarial Journal* 1 at para 1.5).

[132] Valentini and London calculated Tobi's estimated mortality age based on Life Tables 2 and 5 respectively. Both experts applied the tables as if they are ends in and of themselves. They are not. Neither expert made, or even attempted to make, any adjustment to their calculation to arrive at an individualised estimation that would be contextually appropriate to Tobi. Neither expert explained his/her failure to do so.

[133] I now deal briefly with London's evidence. Apart from my aforementioned criticism, London did not fare well under cross-examination when challenged on his choice of Life Table 5. See the contents of paras [90] and [91] above. London did not fully understand Koch's model; nor did he understand the factors that influenced Koch when he determined the income bracket for the group to whom Life Table 5 applied.

[134] London testified as an expert. However, he relied on Koch's expertise. For this Court to rely on London's expert testimony on the appropriateness of Koch's reworked Life Table 5, it is incumbent on London to demonstrate in-depth knowledge of Koch's model and the inner-workings of Life Table 5. He failed in that regard.

[135] In *AD v MEC supra*, Rogers J held that 'the 2010 census and the SSA birth LE constitutes new data which does not suffer from the racial bias implicit in the use of K3 – K6'.[27] The 'K3 - K6' mentioned is a direct reference Koch's modified Life Tables 3, 4, 5 and 6. Rogers J described them as an attempt 'to "de-racialise" the 1985 tables by recasting them according to assumed income brackets'.[28] Rogers J held that, despite Koch's attempt at de-racialising the apartheid-era life tables, they remain underpinned by a racial bias, albeit implicitly so. On the face of it, that decision appears to bolster Adv Laubscher's submission that Koch's reworked Life Table 5 should not be used in relation to Tobi because it promotes unfair discrimination.

[136] The latter submission is at odds with Adv Laubscher's contention that Life Table 2 should be used. That table is itself rooted in racial discrimination. To counter this, Adv Laubscher submitted that he was obliged to rely on Life Table 2 because there was nothing better available. That is not entirely correct. Rogers J, in *AD v MEC supra*, held that the 2015 life expectancy data should not be overlooked – it is

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[27] At para 191.
[28] At para 177.

free of racial bias. I am alive to the fact that the 1985/1986 tables are preferred by experts because they give life expectancy for every age from 1 to 99 years, not merely at birth.

[137] In addition to the deficiencies in London's testimony mentioned in paras [132] to [134] above and the implied racial bias in Life Table 5 highlighted in para [135] above, I find merit in Adv Laubscher's submission that the socio-economic basis underpinning Koch's modified Life Table 5 is itself constitutionally offensive.

[138] A mortality table that determines life expectancy based on the categorisation of groups of persons according to their socio-economic status reflected in earnings creates a model for the quantification of damages that is skewed against the majority of people living in South Africa. It is indisputable that the majority of its inhabitants find themselves in difficult socio-economic circumstances that adversely affect their access to healthcare, education, employment and other economic opportunities, all of which influences life expectancy on Koch's reworked model. Tobi typifies this.

[139] Tobi is a Black African male living in a township, namely, Gugulethu. Like many others in South Africa, Tobi did not have the fortune of being born into privilege. By accident of birth and social origin, Tobi found himself in socio-economic circumstances that adversely affected his access to better educational and other opportunities. As a result, he became a packer. At age 25, before Tobi could work his way into a job that pays better and would improve his socio-economic conditions, he suffered the misfortune of a life-altering accident. Tobi now claims damages for his losses.

[140] At the time of the accident that gave rise to his claim, Tobi lived in the socio-economic conditions attributable to his place of birth and origin in a Black African family from a local township. His claim would be diminished by Koch's reworked table that categorises Tobi, and other similarly positioned persons, into a group with a lower life expectancy precisely because of socio-economic status. In his effort to de-racialise the life tables, Koch contaminated them in another constitutionally offensive way.

[141] PRASA used Tobi's socio-economic status reflected in his anticipated earnings to compute Tobi's life expectancy for purposes of calculating some of his

future damages. PRASA did so by its actuary utilising Koch's modified Life Table 5. In that way, PRASA engaged in differential treatment of Tobi that is tantamount to unfair discrimination on the grounds of his birth, social origin, and/or socio-economic status.

[142] While birth and social origin are grounds of discrimination expressly outlawed in s 9(3) of the Constitution (see footnote 9 above), discrimination on the basis of socio-economic status is analogous to the grounds listed in s 9(3).[29] Under s 9(5), PRASA bore the *onus* to establish the fairness of the discrimination. It failed to do so.

[143] The South African Life Tables 1985/1986 unfairly discriminates, both in their original form and in their form as modified by Koch. However, our courts have used the tables, while acknowledging its constitutionally offensive nature and/or effect. This judgment must not be misunderstood: it does not hold that the life tables cannot be used for judicial purposes, whether in their original form or as modified by Koch.

[144] Consistent with *stare decisis*, this judgment recognises that the life tables, while constitutionally offensive, play a useful role in assisting courts in the difficult task of estimating life expectancy when other relevant statistical data are unavailable, or for comparative purposes in cases where other statistical data is available.[30] However, in my view, whenever any of these offensive life tables are used then a court should, as part of its constitutional responsibility to resolve disputes fairly, take into account any prejudicial effect which a particular table may have on the fairness of the damages to be quantified for a particular claimant, and then adapt the life expectancy computation in a way that would address the prejudice in a fair manner.

[145] The adaptation envisioned here is aimed at ensuring that, in the pursuit of a just outcome, the adjudicative process does more than merely recognise the offensiveness of a particular life table. The life expectancy assessment exercise

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[29] The court in *Harksen v Lane NO and Others* 1998 (1) SA 300 (CC) para 46 held that '[t]here will be discrimination on an unspecified ground if it is based on attributes or characteristics which have the potential to impair the fundamental dignity of persons as human beings, or to affect them adversely in a comparably serious manner'.

[30] See *AD v MEC supra* (n 14) para 193.

should also off-set some of its practical effects. It is to this aspect that I now turn my attention.

[146] Tobi's case is that his additional life expectancy is estimated to be 34.57 years; PRASA's case is that this should be estimated at 29.07 years. This Court is not required to choose one of these estimates. These computations are not hard and fast determinations of invariable application. The calculations concerned are, if needs be, open to adjustment so that they are harmonised with the evidence viewed in their totality and personalised (i.e., individualised) to the claimant, namely, Tobi.

[147] A fair and reasonable life expectancy for Tobi must be determined. In this case, the parties' estimations provide defined parameters for this Court's ultimate estimation. Put differently, by virtue of the parties' cases as presented at trial, Tobi's additional life is estimated to be 29.07 years at minimum and 34.57 years at maximum.

[148] Each party's estimate has its genesis in the 1985/1986 Life Tables, albeit that PRASA used Koch's reworked Life Table 5. While the latter is impliedly race-based;[31] it is expressly based on socio-economic status.[32] At the very least, this provides a basis for the principle used in this case, namely, that a person's future life expectancy is influenced by clinical factors and non-clinical ones too.

[149] I hold that the estimation of 29.07 additional years requires adaptation in an upward trajectory. This is so for various reasons. First, Koch's modified Life Table 5 gives rise to a result that is unfairly discriminatory against Tobi. To mitigate against that effect, some adaptation is needed. Secondly, Tobi does not suffer from any condition that negatively impacts his normal life expectancy. Therefore, Koch's statement that '50% of claimants will live beyond their expectation of life'[33] as calculated on the basis of the tables published in *The Quantum Yearbook* assumes

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[31] *AD v MEC supra* (n 14) para 191.

[32] Koch *The Quantum Yearbook* (2025 ed) at 109 wrote:

> 'I believe the best method for classifying persons is according to socio-economic factors, such as earnings and level of education, rather than race. … The tables appearing in this publication are modified life tables, based on the official tables, which are designed to reflect mortality of different socio-economic groups. ... Socio-economic status is in some measure reflected by an individual's earnings. The earning's criterion, however, should be seen only as a preliminary guide. Judgement should be applied where individual circumstances, revealed by the evidence, indicate a different approach.'

[33] *Ibid*.

heightened significance here. It must also be remembered that Valentini and London both testified that available research on life expectancy statistics and trends in developing countries support a conclusion that favours an increased life expectancy for Tobi.

[150] Thirdly, a higher additional life period for Tobi than 29.07 years is supported by Andrews, being PRASA's expert. When testifying about her recommendations for Tobi's domestic care and assistance in the last two decades of his life, Andrews stated that the additional 29.07 years is low and she could not fathom why Tobi is estimated to have a total life expectancy of only 66 years. Andrews testified that this estimate, in her view, did not align with the fact that Tobi's father is alive at age 73 years and Tobi's mother is alive at age 78 years. As such, Andrews opined that 66 years is low for Tobi.

[151] It is noteworthy that an additional life for Tobi of 34.57 years would result in an estimated life of 71.5 years. Factually, that estimated age would be more consistent with Andrews's view based on the objective ages of Tobi's parents. I emphasise that I only refer to this factor as a consideration to justify my deviation from the 29.07 years.

[152] Fourthly, the import of London's evidence is that it would not be unreasonable to use the average between his and Valentini's calculations as the estimated additional years for Tobi, namely, 31.82 years {(29.07 + 34.57) divided by 2}. Therefore, London's evidence itself provides support for my conclusion favouring a higher estimated life expectancy for Tobi than that which would apply if Life Table 5 was rigidly used.

[153] Fifthly, an inflexible approach to the calculation of Tobi's overall life expectancy emerging from Koch's modified Life Table 5 would lead to a skewed result and, concomitantly, unfairness in the quantification of Tobi's claims for future damages. London placed Tobi in Life Table 5 based on an estimate of his earnings as an uninjured person from the age of 47.5 years, being R228 000 p.a. Life Table 5 assumes that Tobi would enjoy a particular socio-economic standard with access to an assumed level of, inter alia, healthcare that would be commensurate with the assumed level of earnings. All that leads to an assumed additional life span.

[154] However, Adv Laubscher submitted that a computation of life expectancy based on an assumed socio-economic standard after the award of damages that includes agreed damages for future medical care which would be better than the standard of healthcare assumed for persons on Life Table 5 leads to a diminished life expectancy on the one hand, and reduced compensation on the other. Adv Laubscher submitted that such an outcome is inherently unfair and unjust. I agree.

[155] Based on the foregoing, I find that it would be fair and reasonable to make a material adjustment upwards to Tobi's minimum expected additional life computed at 29.07 years. For reasons traversed in para [108] above, the number of years that the evidence and personal circumstances concerned should add, individually and collectively, to Tobi's anticipated future life cannot be determined with mathematical or scientific precision. Their positive effect, both individually and collectively, is largely a matter of prediction to be guided by a judicial officer's sense of fairness as to what would, in the particular case at hand, be reasonable and bring a just outcome.

[156] Based on the evidence and personal circumstances discussed above, I hold that it would be fair and reasonable to increase the additional 29.07 years, but limit that increase to 5.5 years. In this way, the aggregate additional years does not exceed that sought on behalf of Tobi at the trial in accordance with Life Table 2. See para [147] above. The resultant life expectancy for Tobi, being age 71.5 (i.e. 37 + 34.5), is, in my view, contextually appropriate and will bring fairness in the computation of damages.

[157] Owing to the approach adopted by Valentini and London, the parties' legal representatives focussed much attention on the Life Table that should be used. In doing so, sight was lost of the fact that the calculation emerging from a particular life table is not necessarily an end-point. Rather, it should serve as a guide.

[158] While there may conceivably be instances where the result flowing from the use of a specific life table may be contextually appropriate, that will not necessarily be so in all cases. A rigid approach should be averted to avoid injustice. Put

differently, the use of the life tables should involve some flexibility to bring about a just result.

[159] In my view, when assessing a person's life expectancy, a court should, first, evaluate whether the methodology employed by an expert is well-motivated, credible, and reliable. If not, then the expert's opinion should have little value for adjudicative purposes. Secondly, a court should assess whether the life expectancy as estimated harmonises with the evidence and is sufficiently individualised with the personal circumstances of the party whose life expectancy is sought to be estimated. This is important to enable a court to conclude that the resultant estimation is contextually appropriate. If not, then an expert's estimation may be rejected or adapted, as the court deems necessary in the case concerned. *In casu*, the latter route was followed.

[160] As a consequence of my finding on the issue of Tobi's life expectancy, the plaintiff has proved that he is entitled to an award for future medical and related costs on the basis computed by MFA in annexure A of exhibit B. See para [211] below.

Assessment of Tobi's claim for future loss of earnings

[161] As pointed out in paras [49] to [50] above, Andrews testified that Tobi's loss of earnings claim should be quantified on the basis that he is employable. I reject her opinion to that effect. I do so for the ensuing reasons.

[162] First, PRASA is bound by the agreement reached in the joint minutes on this issue. Secondly, I endorse Le Roux's opinion to the opposite effect. On the basis appearing from para [48] above, I find Le Roux's opinion to be well-motivated.

[163] As pointed out in para [48] above, the parties' industrial psychologists, namely Esther Auret-Besselaar (for Tobi) and Nomfanelo Manaka (for PRASA), agreed in writing that Tobi is unemployable. As stated in para [50] above, the same agreement was reached in a joint minute signed by Andrews and M Joubert. As stated in para [9] above, the parties' counsel recorded upfront that neither the Plaintiff nor the Defendant repudiated any agreement reached by their experts. The trial was run on this basis.

[164] That Andrews changed her mind after reaching agreement is, on its own, of no consequence *inter partes*. In her capacity as an expert, Andrews reached consensus with her counterpart on a disputed fact. Their agreement had the effect of limiting the issues. In the absence of PRASA giving fair warning of a repudiation on its part, the fact in question is undisputed. Tobi was entitled to run the trial on that basis, as he did.

[165] As between the litigants, the unilateral change in Andrews' view had no effect on the parties' prior agreements. For a dispute to become extant again on the issue of Tobi's employability, PRASA would need to repudiate both the consensus between Andrews and M Joubert on this aspect, and between E Auret-Besselaar and N Manaka. See *Bee v RAF supra* paras 64 - 66. PRASA did not do so. Therefore, the consensus on the fact in question remained binding on the litigants. In the circumstances, Tobi proved his claim for loss of earnings on the basis computed by MFA in exhibit C. See para [96] above and para [207] below.

<u>Evaluation of Tobi's claim for transport costs</u>

[166] As is evident from paras [45] and [46] above, Le Roux and Andrews agreed on key aspects relevant to determining the award pertaining to transport costs. However, as is evident from paras [59] to [72] above, disagreement exists on the use of private versus public transport, and the quantification of Tobi's claim for transport costs.

[167] There is insufficient evidence before me that would enable a proper quantification to be undertaken of the claim for transport costs. For example, there is an absence of actuarial evidence on the capital value of the claim concerned.

[168] In the light hereof, I will resolve the disputes germane to quantification and craft an appropriate order that would enable the parties to calculate the value of transport costs to be incorporated into a court order; alternatively, for the matter to be referred back to this Court for determination, if agreement cannot be reached.

[169] As regards transport costs for social visits, I dismiss that claim. I do so on the grounds that Tobi failed to prove a sufficient causal nexus between the injuries that he suffered due to the accident on the one hand, and the need for the incurrence of

transport costs pertaining to social visits on the other. To the extent necessary, I endorse the opinion expressed by Andrews. See para [72] above. It is well-reasoned.

[170] The next issue is whether Tobi is entitled to an award for private transport from his home immediately in relation to medical visits (as recommended by Le Roux), or only in the last two decades of his estimated life (as recommended by Andrews). I find in favour of the latter position. Andrews' opinion is well-reasoned. The reasons underpinning Le Roux's opinion on this aspect is, in my view, flawed and unconvincing.

[171] There is not an iota of evidence that Tobi has been a victim of crime, let alone a victim due to his physical disability. Rossouw and Le Roux opined that Tobi's use of a prosthetic leg makes him more susceptible to attack by criminals. That vulnerability does not, in law, establish a basis for private transport compensation. In South Africa, all persons are, to some degree, susceptible to crime. In my view, a justifiable basis in law for delictual compensation requires evidence of Tobi's lived experience(s) after the accident as a victim of crime that, at least, *prima facie* appears to be the result of his increased vulnerability owing to his disability caused by the accident. There is none.

[172] Moreover, Le Roux did not know the distance which Tobi would need to walk to the public transport facility nearest to his current home in Gugulethu. Le Roux also did not know the approximate time that it would take Tobi to walk to the taxi rank or bus stop nearest to his home. Despite this, Le Roux opined that Tobi would require private transport from his home (and back) for medical visits to prevent the effects that he would suffer if he is required to walk long distances to the nearest public transport facility. The shortcomings identified here taint the reliability of Le Roux's opinion.

[173] In this regard, I find Andrews' opinion to be reliable. See the factors listed in paras [67] to [68] above that underpin her opinion. Andrews' opinion is reinforced by the common cause fact that Tobi's ability to walk longer distances and for a longer time would be enhanced by the improved prosthesis that Tobi will receive as compensation.

[174] For all these reasons, I find that Tobi failed to prove that, due to the accident, he reasonably requires point-to-point private transport from his home for medical visits prior to the last two decades of his mortality age as determined in this judgment.

[175] In the years preceding the last two decades of Tobi's anticipated life, he is entitled to compensation limited to the cost of public transport for a round trip from Gugulethu to the hospital nearest to his current home, and back to Gugulethu. I accept Andrews' evidence in chief (see para [66] above) that Le Roux was incorrect when she testified that Vincent Pallotti Hospital in Pinelands is the closest medical facility to Tobi's home in Gugulethu. Andrews' testimony that Melomed Hospital in Gatesville is the closest medical hospital to Tobi's home is unchallenged.

[176] Consequently, the correctness of Andrews' testimony on these factual aspects is established, as well as her opinions arising therefrom. At the same time, the incorrectness of Le Roux's testimony on these aspects is also established and, concomitantly, the unreliability of her opinions arising therefrom.

[177] In view of the foregoing findings, I hold that compensation shall, in the period prior to Tobi's last two decades of his anticipated life, be quantified with reference to the charge levied by Golden Arrow Bus Service for a round trip from Gugulethu to or near Melomed Hospital in Gatesville, and back to Gugulethu. I take judicial notice that Golden Arrow buses are a public transport system generally used in Cape Town.
[178] As regards the cost of private transport for the last two decades of Tobi's life, Le Roux and Andrews used Uber as a benchmark for their calculations. They testified that Uber is available in Gugulethu and may even be the transport of choice at the relevant time. In the present context, I am persuaded with the use of Uber as a basis.

[179] Accordingly, I hold that the transport costs for the relevant period in Tobi's anticipated life be calculated using the current charge levied by Uber for a round trip from Tobi's current home address in Gugulethu to Melomed Hospital in Gatesville (and back again). That cost must be adjusted during the actuarial calculations.

[180] In addition, in accordance with the agreement between Le Roux and Andrews, I hold that compensation for transport in the last two decades of Tobi's life must include the cost of a companion. I direct that compensation in this regard must be computed at the current rate of R300 per trip. This figure must be adjusted for actuarial purposes.

[181] As for the number of round trips to be compensated, Le Roux testified that provision should be made for 60 to 95 round trips in year 1, and for 6 to 8 round trips per year for the rest of Tobi's life. See para [64] above. That evidence was not challenged. I find the evidence concerned to be convincing. I agree with Adv Laubscher that an average (or middle point) between these estimates should be used so far as may be necessary for computation purposes. Therefore, it is so directed.

[182] The terms of the agreement between Le Roux and Andrews are recorded in para [45] above. I hold that they are to be used in the calculation envisaged here.

[183] In an addendum to their initial report, Rossouw and Rix agreed that Tobi's compensation should include provision for physiotherapy in respect of prosthesis and arthrodesis rehabilitation. They also agreed on the number of physiotherapy sessions, their duration, and the professional fee charge rate to be used for calculation purposes.

[184] In accordance with my finding in para [46] above, I hold that the terms of the agreement between Rossouw and Rix for physiotherapy in respect of prosthesis and arthrodesis rehabilitation are to be used when Tobi's transport cost claim is quantified, subject to the use of a 50% contingency in relation to the arthrodesis rehabilitation.

[185] On the bases indicated here, Tobi's award for transport cost is to be quantified.

Evaluation of Tobi's claim for domestic care and assistance

[186] The parties' experts agreed that, as a result of his injuries, Tobi is unable to perform various 'heavy' domestic duties. See para [51] above. Consequently, Le Roux and Andrews agreed that compensation should be awarded for an assistant

who would perform the heavy maintenance tasks. As stated in para [45] above, Le Roux and Andrews agreed that compensation should at the current rate of R350 per day.

[187] The experts differed on whether the compensation should take effect immediately (as recommended by Le Roux), or only in the last two decades of Tobi's life (as recommended by Andrews). In my view, Le Roux's opinion on this issue is more sensible and leads to just compensation. First, Tobi suffered a compensable, economic loss owing to his inability to perform heavy-duty maintenance tasks. Since that inability is immediate and extant, it would be unfair and irrational to postpone compensation until the last two decades of Tobi's life. Secondly, the award is for six (6) domestic assistance visits per annum. That is not excessive.

[188] Therefore, Tobi is entitled to an award for six (6) maintenance visits per annum computed at the current rate of R350 per day from age 37 until his anticipated mortality.

[189] On the question of an award of compensation for domestic care and assistance generally once per week, I dismiss that part of Tobi's claim. As stated in para [44] above, it is common cause that Tobi is independent in self-care and manages most daily chores on his own, except for heavy-duty maintenance. On this factual basis, I find that there is insufficient foundation to plausibly justify a conclusion that Tobi is reasonably in need of domestic care and assistance generally. However, this finding is subject to the award discussed in the next paragraph for the reasons given there.

[190] As stated in para [54] above, Andrews conceded that Tobi will likely need domestic care and assistance in the latter part of his anticipated life. I reject her opinion that this need should not be compensated because the care and assistance can be provided free of charge by Tobi's spouse or partner. It would be unfair to deny Tobi compensation on the assumption that he will have a spouse or partner. The need in question is a consequence of the accident. My view that damages must be awarded is fortified by the common cause fact that Tobi will, as a result of his injuries, be more wheelchair reliant in the latter part of his life. See para [42] above.

[191] I hold that Tobi is entitled to compensation for domestic care and assistance from age 57 ½ years until his anticipated age of mortality. Furthermore, I hold that fair compensation would be R399 per day for five (5) visits per week, duly adjusted for actuarial purposes. See para [53] above.

[192] In making this award, due consideration was given to Tobi's future domestic needs, including the fact that he would be wheelchair reliant to some degree later in life. Tobi would be awarded double compensation if, as recommended by Le Roux, he was to be granted damages in the form of additional domestic care and additional home maintenance assistance owing to him becoming wheelchair reliant. Doing so would, in my view, be over-compensation.

[193] In addition, as stated in para [58] above, Andrews conceded that Tobi will require temporary care and assistance at home if the arthrodesis surgery takes place. That operation is causally linked to the injuries suffered by Tobi in the accident. I reject Andrews' opinion that this need should not be compensated. She opined that care and assistance can be provided free of charge by Tobi's family and/or by community healthcare service providers. That opinion is rooted in an assumption, namely, that free care and assistance will be available to Tobi at the relevant time in the future.

[194] Even if the aforementioned assumption is correct, it does not mean that Tobi should be deprived of compensation that would place him in a financial position as close as possible to that which he would have enjoyed if the delict had not occurred. Put differently, the fact that free care and assistance services may be available would not, in and of itself, render an award of damages for same unfair. I am persuaded that a once off cost of R18 899 per month for six weeks is fair. To promote fairness and a just outcome, a 50% contingency will be applied.

[195] For all the reasons outlined above, Tobi's claims are dismissed in respect of the following items quantified by MFA in annexure A of Exhibit B: item 14 (R873 240), item 17 (R127 450), item 18 (R320 830), item 19 (R101 770), and item 21 (R14 890).

[196] For purposes of Tobi's claim envisaged in para [75] (f) above, his award is limited to R868 330, being an award in relation to item 15 (R9 230), item 16 (R812 150), and item 20 (R46 950) of MFA's computation in annexure A of Exhibit B.

Assessment of Tobi's claim for general damages

[197] PRASA argued that, based on past awards, Tobi should be awarded general damages of R1 152 000. See paras [94] to [95] above. The issue for determination is whether Tobi should be awarded the R2m as claimed, or R1 152 000 as contended by PRASA, or an amount in-between R1 152 000 and R2m.

[198] When quantifying general damages, a trial court has a wide discretion to award what it considers to be fair and adequate compensation, having regard to all the relevant facts and circumstances of the case.[34] There is no prescribed formula by which general damages can be quantified with mathematical or scientific exactitude. As a result, based on policy considerations, a conservative approach should be adopted when awarding general damages (and other kinds of damages too).[35]

[199] This salutary approach takes account of the fact that, first, assessing general damages entails pondering that which is considered, largely, imponderable. Secondly, a conservative approach recognises that awards have some precedential value for future cases and may foster an unhealthy appetite for claims grounded in delict.[36]

[200] In the succeeding paragraphs, I outline various key factors and circumstances which weighed in my assessment that an aggregate award of R1 850 000 would be fair and adequate compensation for general damages comprising Tobi's pain and suffering, loss of amenities of life, disfigurement, scarring, and permanent disability.[37]

[201] First, PRASA argued that Tobi is entitled to general damages of R1 152 000 based on its survey of prior awards in, for e.g. *Phephetho v RAF*;[38] and *R.S.M v RAF*.[39] Past awards, duly adjusted for the current value of money, provide some guidance for comparative purposes. However, each new award should be quantified

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[34] *RAF v Marunga* 2003 (5) SA 164 (SCA) para 23.
[35] The same principle applies to future loss of earnings. See *Singh v Ebrahim supra* (n 15) para 128.
[36] *Singh v Ebrahim supra* (n 15) para 128.
[37] *RAF v Marunga supra* (n 34) para 33.
[38] (416/2019) [2024] ZANWCHC 224 (27 August 2024).
[39] (A137/2018) [2023] ZAGPPHC 641 (31 July 2023).

based on the facts applicable to the case at hand.[40] No two cases are likely to be on all-fours. Indeed, neither counsel pointed to a precedent that is identical to the facts before me.

[202] Secondly, I considered the nature and extent of Tobi's injuries, and the degree of pain and discomfort that he would have endured. Tobi's injuries included a crushed right ankle and right foot, bone fractures, abrasions, and scarring. All this involved significant pain. See paras [24] to [25] above. Tobi's pain is on-going and will continue. Thus, the experts included pain medication in their provision for future medical needs.

[203] Thirdly, I considered that the accident caused a major disruption in Tobi's life. It occurred when Tobi was in his twenties. At that time, he was in the full bloom of life as a young man. The accident left him hospitalised for seven (7) weeks. During that time, Tobi endured the trauma of surgery for skin grafting and for a below-knee amputation on his right leg. See paras [21] to [22], and [32] above. Tobi's enjoyment of life has been severely curtailed by the discomfort stemming from the condition of his right leg. This will worsen. Later in life, he will need wheelchair assistance. See para [42] above.

[204] Fourthly, the accident left Tobi disabled with a permanent restriction on his mobility. See para [40] above. Tobi has lost the full use of his right leg and wears orthotic insoles. Tobi is unable to run (see para [36] above), and perform everyday tasks, such as, move furniture, scrub floors, paint, dig, clear gutters, and climb a ladder (see para [51] above). From 2013 to the trial, Tobi has struggled to stand for a long time and walk long distances (see para [35] above). His prosthesis is problematic. As a result, Tobi requires a new prosthesis. This replacement will be repeated at least twice. See paras [33] to [34] above. In the latter part of Tobi's life, he will become more wheelchair reliant. The use of a wheelchair will restrict Tobi's mobility even further.

[205] Fifthly, in the future, Tobi will undergo scalp scar revision surgery (see para [30] above) and a resurfacing procedure on his left foot (see para [23] above). There is a good chance Tobi will undergo a right ankle arthrodesis. See para [37] above.

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[40] *RAF v Marunga supra* (n 34) paras 24 - 27; *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) para 7.

For all this, Tobi will endure substantial pain and discomfort. The resurfacing procedure and arthrodesis will render him immobile for some weeks and unable to care for himself.

[206] Finally, an award of R1 850 000 accords with the modern approach to awarding damages.[41] Also, this sum is not indicative of a pouring out of largesse from the horn of plenty at PRASA's expense. See *Pitt v Economic Insurance Co supra* at 287E-F.

Contingencies and final computation of award

[207] I find that Tobi proved the accident caused him to suffer the following losses which PRASA is liable to compensate: R64 838,70 (for past medical expenses); R1 850 000 (for general damages); and R3 682 195 (for past and future loss of earnings). The latter sum constitutes Tobi's nett aggregate loss of earnings, being R777 575 (for past losses after deducting an agreed contingency equal to 5%) plus R2 904 620 (for future losses after deducting an agreed contingency of 15%).

[208] Based on this judgment read in its entirety and the quantification by MFA in annexure A of exhibit B (<u>before</u> applying any contingencies), I hold that Tobi proved an entitlement to compensation for future medical expenses as follows:

Source and/or nature of expense	Amount
(a) Orthopaedic surgeons	R 97 100 (items 1 – 3)
(b) Occupational therapists	R 22 410 (items 4 - 12)
(c) Occupational therapists	R 877 560 (items 15, 16, 20)
(d) Orthotists and prosthetists	R 7 069 610 (items 22 - 30)
(e) Orthotists and prosthetists	R 153 630 (items 31 - 34)
(f) Plastic, reconstructive surgery	R 314 270 (items 35 - 38)
TOTAL (a) to (f)	**R8 534 580**

[209] As regards Tobi's future medical expenses claim, the parties' medical experts agreed that all items are to be treated as if there is a 100% chance that they will be incurred, except in relation to the right ankle arthrodesis where the likelihood of incurrence is 50%. It is necessary to subject Tobi's claim for future medical expenses to contingencies that are fair and reasonable in the circumstances of this case.

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[41] *RAF v Marunga supra* (n 34) para 27.

[210] Except for three items to be incurred immediately as a once-off,[42] all future medical expenses are items that are spread across the rest of Tobi's anticipated life. Therefore, provision should be made for the normal contingencies of life.[43] I will apply the usual one-half (1/2) percent per year, but limited to 30 years of Tobi's remaining life. Thus, a 15% contingency will be used, except in relation to the once-off expenses as well as the ankle arthrodesis. Owing to a 50% chance of the ankle arthrodesis being required, a contingency of 50% will be applied to costs associated therewith.

[211] Applying the 15% and 50% contingencies referred to in the preceding paragraph, Tobi's claim for future medical expenses is reduced as follows:

Description	**Amount**
Total proved future medical expenses	R 8 534 580 (see para [208] above)
Less 50% contingency for arthrodesis (items 1 (R42 110), 15 (R9 230), and 32 (R2 280) in annex. A of exhibit B)	(R 53 620)
Less contingency for items 2 - 8, 10 - 12, 16, 20, 22 - 30, 33 - 35, 37, 38 (excluding once-off expense items 9, 31 and 36): 15% x R8 425 910	(R1 263 886,50)
NETT FUTURE MEDICAL COSTS	**R7 217 073,50**

[212] In view of all the foregoing and applying the parties' agreed 50% apportionment (see para [2] above), PRASA is liable to pay Tobi compensation computed as follows:

Nature of damages	**Amount**
General damages	R 1 850 000
Loss of earnings (past and future)	R 3 682 195
Medical expenses Past: R64 838,70 Future: R7 217 073,50	R 7 281 912,20
Gross sum of damages proved	**R12 814 107,20**
Less 50% apportionment as agreed	(R 6 407 053,60)
Nett sum of damages awarded	**R 6 407 053,60**

[42] The once-off expenses are aluminium elbow crutches (item 9: R590); prosthesis rehabilitation (item 31: R11 500); and episodes of minor breakdown (item 36: R3 010). See annexure A of exhibit B.

[43] For a useful discussion of the rules applicable when evaluating contingencies, see *JPDB obo JPDB and DKDB v RAF* (262/22) [2025] ZANWHC 270 (23 December 2025).

[213] Tobi proved that PRASA is also liable to compensate him for the fair and reasonable transport costs to be incurred for future medical appointments pertaining to Tobi's injuries and their *sequelae* as are causally linked with the accident. Appropriate orders will be crafted below to direct the methodology for the quantification of Tobi's damages related to transport, including costs for a companion.

Costs

[214] This part of my judgment in no way affects the parties' settlement on costs pertaining to the merits of this case. I deal only with all other cost related issues.

[215] As stated in paras [7] and [10] of this judgment, Tobi succeeded in his application under Uniform Rule 38(2). The issue of costs in relation thereto was held over for determination at the end of the trial. PRASA withdrew its opposition at a late stage. By then, Tobi's legal team had already prepared for argument. They were obliged to prepare owing to the litigious posture adopted by PRASA.

[216] The application was beneficial to this case. It avoided unnecessary expert evidence being led on matters which were largely common cause. In my view, the application should have been welcomed, rather than opposed. Ultimately, sense prevailed and PRASA withdrew its opposition. But this occurred after Tobi incurred unnecessary costs. I hold that Tobi is entitled to his costs for the opposed Rule 38(2) application on a party-party-scale, but only including costs for one counsel on scale C.

[217] Adv Laubscher and Adv Ramatsekisa submitted that costs should follow the result in the trial, with counsel's fees to be awarded on tariff scale C. I agree, but subject to what is stated below as regards the fees for the 'junior' counsel employed.

[218] Tobi employed two counsel. Before me, Adv Laubscher led a junior, namely, Adv N Mjiyako. In his particulars of claim, Tobi sought an order for the cost of counsel briefed in this matter. This raises the question whether Tobi's costs should cover two counsel, or only one. In my view, the answer is the former (i.e., two counsel).

[219] The case proceeded to trial on a significant number of disputed issues. Tobi briefed two counsel based on the issues that remained alive for determination as agreed *inter partes* during the pre-trial conference process.

[220] I am mindful that PRASA employed a single counsel for the trial. That is, of course, a relevant consideration when determining if the costs of two counsel (or only one) should be awarded. The fact that PRASA briefed a single counsel does not, in and of itself, justify denying Tobi the costs for employing two counsel, if doing so was warranted. In my view, it was warranted.

[221] This was not a run-of-the-mill case. My judgment reveals that the case involved considerable complexity. Multiple expert witnesses were involved whose evidence covered a wide array of complex, technical issues across a multiplicity of disciplines, including medical and actuarial. In addition, this case raised significant questions of law with vital constitutional implications in certain respects.

[222] The question arises whether Tobi is entitled to costs for two counsel on the same tariff, being scale C. In my view, the answer is 'no'. The general practice is to award junior counsel's fees on a lower scale than that awarded for an advocate acting as his/her senior. Accordingly, I will award costs for the junior counsel on tariff scale A.

[223] However, I emphasise that the order pertaining to the junior counsel's fees is limited to the costs for the trial days and the hearing for closing argument, as well as the junior's costs for trial related preparation and consultations, and the junior's costs for attendances in relation to the main heads and supplementary heads of argument. The contents of this paragraph are important when a bill of costs is prepared.

[224] Tobi is also entitled to the costs incurred in relation to his various experts.

Order

[225] In the result, the following orders are made:

(a) The Defendant shall pay damages to the Plaintiff in the sum of R6 407 053,60 with interest at the prescribed legal rate computed from 14

days after the date of this order to date of final payment, both days included;

(b) Subject to the agreed apportionment, the Defendant shall, for all periods from the date of this order up to the day immediately preceding commencement of the period envisaged by the provisions in paragraph (c) below, be liable to pay Plaintiff's costs for travel in relation to future medical appointments arising from any cause associated with the accident giving rise to the Plaintiff's claim including, but not limited to, medical consultations, surgery, and physiotherapy; all such transport costs are to be calculated at the rate charged by Golden Arrow Bus Services (Pty) Ltd for a round trip from Gugulethu to or near Melomed Hospital in Gatesville (and back);

(c) Subject to the agreed apportionment, the Defendant shall, for the last two decades of the Plaintiff's life based on a life expectancy of 71.57 years, be liable to pay Plaintiff's transport costs to be incurred in relation to future medical appointments arising from any cause associated with the accident giving rise to the Plaintiff's claim including, but not limited to, medical consultations, surgery, and travel during the Plaintiff's recuperation after the anticipated arthrodesis (with a 50% contingency for travel costs related to the arthrodesis); all such transport costs to be calculated at the rate charged by Uber for a round trip from the Plaintiff's home address at the date of this order in Gugulethu to Melomed Hospital in Gatesville (and back);

(d) Subject to the agreed apportionment, the Defendant shall, for the period and purpose envisaged in paragraph (c), pay the costs for a companion to accompany the Plaintiff to his medical appointments, to be calculated at the current rate of R300 per trip and to be adjusted for actuarial purposes;

(e) For purposes of the orders in paragraphs (b), (c), and (d) above, the sums to be paid shall be as agreed. If no agreement is reached within 60 days of this order, the sums concerned shall be quantified by this Court;

(f) The Defendant shall pay interest to the Plaintiff on the sums determined under paragraph (e) above, such interest to be calculated at the prescribed legal rate computed from 14 days after the date of the quantification by agreement or court order, as the case may be, up to the date of final payment, both days included; and

(g) The Defendant shall pay the Plaintiff's party-party costs, including all qualifying expenses of experts, the cost of obtaining medico-legal and all other expert reports, the costs of experts who attended joint expert meetings, and the fees for two counsel where employed (on scale C for senior, and scale A for junior); save that the Plaintiff's costs for the Rule 38(2) application shall only include one counsel's fees and on tariff scale C.

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F. MOOSA

ACTING JUDGE OF THE HIGH COURT

Appearances

For Plaintiff: A Laubscher (with N Mjiyako)

Instructed by: Adendorff Attorneys Inc (N Stockdale)

For Defendant: T Ramatsekisa

Instructed by: Mthimunye Hluyo Attorneys (D Mthimunye)