IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Case No. A291/2025

In the matter between

HENDRIK WALLACE ROELOFSE **Appellant**

And

DEPARTMENT OF LABOUR:

COMPENSATION COMMISSIONER **Respondent**

Coram: CLOETE J and MAGONA-DANO AJ

Hearing Date: 6 February 2026, supplementary notes delivered on 16 and 23 February 2026

Judgment delivered: 5 May 2026 (electronically to the parties)

Summary: Appeal against Tribunal decision – workmen's compensation - Diagnosis of PTSD – Compensation under COIDA – psychiatric assessment tool and compensation challenged – entering the arena by the Tribunal – misdirection by Tribunal – Appeal upheld – Remittal.

ORDER

1. The application for condonation for the late prosecution of the appeal is granted.

2. The appeal succeeds.

3. The decision of the Compensation for Occupational Injuries and Diseases Act Tribunal ("the Tribunal") dated 2 July 2025 is set aside.

4. The matter is remitted to a differently constituted tribunal for reconsideration (rehearing) within 90 days from the date of this order, in accordance with the provisions of paragraphs 5 and 6 below.

5. The Appellant, Mr Hendrik Wallace Roelofse, shall undergo a further assessment by a suitably qualified professional with no prior involvement in the matter, nominated by the Chairperson of the Health Professions Council of South Africa (and at the Respondent's sole cost and expense) to determine and prepare a report, to be submitted to the Tribunal on the Appellant's Post Traumatic Stress Disorder permanent disablement score.

6. The rehearing shall be conducted by the Tribunal in accordance with section 42 and section 49(2)(b) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("COIDA"), and including by having regard to expert evidence based on the methodology prescribed in the Circular Instruction No. 172 issued by the Director-General: Labour (GoN 936, G 25132 (1 April 2003).

7. The Tribunal shall issue its decision within 30 days of completion of the rehearing before it.

8. The Respondent is to pay the Appellant's costs on Scale C (party and party) including the costs of Counsel.

JUDGMENT

Magona-Dano AJ (Cloete J concurring):

INTRODUCTION

[1] This is an appeal in terms of the provisions of s91(5) of COIDA against the ruling of a Tribunal convened in terms of s91(3) of the COIDA (the Tribunal) on 20 November 2023 and 24 October 2024.

[2] On 30 July 2025, the Tribunal, comprising a Chairperson and assessors, gave its finding upholding the Commissioner's decision to award the Appellant 20% permanent disability with no order as to costs. This is the decision that is brought before this Court on appeal.

[3] When the appeal was argued, the Appellant was represented by Mr Kruger SC, and Mr Manqina represented the respondent. I am thankful to counsel for the assistance that they provided to the Court in this matter.

Grounds of Appeal

[4] The Appellant filed a notice of appeal in terms of Section 91(5) of COIDA against the aforestated ruling, raising the following grounds:

"a. The Tribunal erred and misdirected itself in upholding the decision of the respondent awarding the appellant 20% permanent disability. It is common cause that the appellant had been discharged from service as a result of his Post Traumatic Stress Disorder;

b. In doing so, the tribunal erred in ignoring the evidence of the psychiatrist, Dr M Taljaard that regardless of the scores allocated to him in various psychological tests, he was 100% unfit and disabled to work in the South African Police Service-meaning his permanent disability amounts to 100% and not 20% as determined by the respondent;

c. The tribunal should have upset the respondent's decision and replaced it with a decision that the appellant was 100% disabled and accordingly entitled to the commensurate compensation."

[5] The appeal was filed in this Court on 24 November 2025 and served on the Respondent the following day. The Appellant also filed an application for condonation for the late filing of the prosecution of the appeal.

[6] The appeal is opposed by the Respondent. I deal first with the application for condonation.

Condonation

[7] Although there was initial opposition to the condonation application, on the day of the hearing, the Respondent's counsel stated that they no longer strongly opposed it.

[8] For completeness and to put this matter to rest, the issue of condonation for the late prosecution of the appeal falls within the discretion of this Court to grant such an indulgence where necessary. I deal briefly with this point in the paragraphs that follow.

[9] The appellant seeks condonation for the late prosecution of the appeal and has furnished an explanation for the delay.

Explanation for the delay

[10] In this matter, the Tribunal's reasons for its decision were given on 30 July 2025. The 20 days within which to note the appeal lapsed on or about 27 August 2025, and the 60 days to prosecute the appeal after noting it ended on 20 November 2025. The appeal was only issued in this Court on 24 November 2025 and served on the Respondent on 25 November 2025.

[11] There has been a period of some four months that lapsed between the date of the written reasons in July 2025 to November 2025. A full explanation has been given by the Appellant, which involves the following:

a. He was left not knowing that he would have to appeal to this court in terms of s91(5) of COIDA after his previous attorneys withdrew as attorneys of record.

b. On receipt of the reasons on 30 July 2025 the next day he requested a transcribed record of the reasons from the Department of Labour. He received only the recording of the record (thus not the typed transcript thereof) on 1 August 2025.

c. From August and over September 2025, he sought the services of an experienced attorney in the field and eventually secured his current attorneys, based in Pretoria, who assisted in getting the full transcribed record, for which he was advised he would be required to pay for.

d. On 16 September 2025, he received the transcribed record of the proceedings, and his attorney appointed counsel who assisted in drafting the notice of appeal. A draft notice of appeal was prepared on 22 September 2025 and finalised on 25 September 2025.

e. On 1 October 2025, a Cape Town attorney was appointed to assist with the issuing and processing of the notice of appeal. Throughout this month, the Cape Town attorney was left to finalise this process; however, delays ensued. It was only on 27 October 2025 that the Cape Town attorney indicated to his current attorneys in Pretoria that the Registrar required the bundles to be bound and paginated in a certain manner before they could be accepted.

f. On 31 October 2025, after receiving a quotation, he paid for the bundles to be bound. There were further delays thereafter, as detailed in his papers, which led to the appointment of new attorneys in Cape Town, and the latter assisted in having the appeal issued on 24 November 2025.

g. On 25 November 2025, the record was served on the Respondent and on the same date, the court issued a notice of set down for 6 February 2025.

[12] The Appellant avers that the Respondent cannot be prejudiced by any delay caused in the prosecution of the appeal, but he would be severely prejudiced if he is not allowed to prosecute the appeal.

[13] For the reasons that follow, I am persuaded that it would be in the interests of justice that condonation be granted by this Court.

Prospects of success

[14] The Appellant's service with the South African Police Service (the SAPS) was terminated on 30 June 2017 as a result of his diagnosis of Post Traumatic Stress Disorder (PTSD). After six years up to 13 June 2023, he was awarded 20% compensation, and on challenging same, it took another two years before the Tribunal confirmed the decision in 2025.

[15] To the Appellant, the central ground of appeal is that his disability assessment does not accord with the medical evidence indicating that he is unable to perform any work as a police officer. The relationship between the diagnosis, its functional impact, and the percentage of impairment awarded is thus open to be challenged.

[16] The Tribunal's decision, therefore, should be set aside.

Analysis – Condonation

[17] It is trite in our law that the granting or refusal of condonation is a matter of judicial discretion. It involves a value judgment by the court seized with a matter based on the facts of the case before it.[1] An applicant to such an application must give a full explanation for the delay, which must cover the entire period of delay and be reasonable.

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1 *Grootboom v National Prosecuting Authority and Another* 2014 (2) SA 68 (CC) at para 35.

[18] In *Melane v Santam Insurance Co Ltd*[2], the Court held that the factors relevant to condonation include the extent of the delay, the explanation therefor, the prospects of success, and the importance of the case, and that these factors are interrelated and must be weighed together.

[19] This approach has been consistently applied, including in *Uitenhage Transitional Local Council v South African Revenue Service*[3] and *Brummer v Gorfil Brothers Investments (Pty) Ltd and Others*[4], where it was emphasised that condonation is to be granted if it is in the interests of justice.

[20] In my view, having regard to these principles, the explanation for the delay is reasonable. Also taking into account the decision he had to grapple with in his condition, having to consider and use more energy to continue to contest the decision.

[21] I have considered that the delay of approximately four months, in circumstances where the appeal ought to have been lodged within 60 days, is not insignificant and calls for a proper and satisfactory explanation. In my view, the Appellant has done exactly that.

[22] For purposes of considering condonation it also suffices to state that, on a preliminary consideration of the issues, the Applicant has shown that the appeal is not without prospects of success. There is an arguable mismatch between the medical findings (inability to work) and the disability percentage awarded.

[23] There is no demonstrable prejudice to the Respondent, and the matter is

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2 [1962] 4 All SA 442 (A) at page 443.
3 [2003] 4 All SA 37 (SCA) at para 6.
4 (CCT45/99) [2000] ZACC 3; 2000 (5) BCLR 465 (CC); 2000 (2) SA 837 (CC) (30 March 2000) at para 3.

of sufficient importance to both parties to warrant determination on the merits.

[24] In my view, it would accordingly be in the interests of justice to grant condonation for the late prosecution of the appeal.

[25] I turn now to deal with the background of the matter.

FACTUAL BACKGROUND

[26] It is not in dispute that the appellant is an ex-member of the SAPS. He experienced numerous trauma-related incidents, which had a psychological impact on him and presented symptoms of Post Traumatic Stress Disorder ("PTSD") since 1991 to 2014. It is in 2014 that a trigger event occurred over a period of time within his workplace which led to his diagnosis of PTSD.[5]

[27] On or about March 2017, the SAPS advised the Appellant through correspondence that he would retire on grounds of ill-health from 30 June 2017 as a result of his psychiatric condition of PTSD which arose from the performance of his official duties and Major Depressive Disorder that did not arise from the performance of his official duties.

[28] On 13 June 2023, the Respondent published an Award of compensation in favour of the Appellant, accepting and determining that his degree of disability was at 20%. The diagnosis of disability was confirmed as PTSD.

[29] The Compensation in respect of his claim was stipulated as follows:

a. the diagnosis of the disability was PTSD;

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5 Pages 63-67 of the transcribed record.

b. the date of the accident/event leading to the diagnosis was 12 November 2014;

c. the Appellant's earnings per month for the purpose of compensation were determined at R27 985.22;

d. based on the appellant's earnings, he would receive a once-off lump sum payment of R155 174.00; and

e. the degree of permanent disablement was determined at 20%.

The Objection

[30] On 14 September 2023, in terms of s91(1) of COIDA, the Appellant lodged a written objection against the Respondent's decision to limit the degree of permanent disablement to 20%.

[31] He stated in the grounds of his objection, amongst others, that:

a. The accident arose in the course of his employment.

b. He is 100% disabled according to the treating doctor and s49(2) of COIDA and the guidelines set out that his disablement ought to at least be 75%; 20% is incorrect and inappropriate.

c. PTSD is a disease. The Respondent erred in not considering PTSD as a disease but as an injury. The Respondent was bound by previous judgments of the High Court.

[32] On 20 November 2023, the Tribunal hearing was then convened at George, and its judgment was delivered on 30 July 2025, upholding the Commissioner's decision to award the Appellant 20% permanent disability.

[33] It is the decision of the tribunal mentioned above that lies before this Court. At the centre of this appeal is that the decision-makers incorrectly applied 20% to his disability compensation, which resulted in him being entitled to an amount of only R155 174.00 payable to him. According to the Appellant, he should have been paid an award based on 100% total disability.

[34] The evidence presented to the Tribunal was a trial bundle which seemed to have been submitted by agreement; the Appellant's *viva voce* testimony, as well as that of the Psychiatrist Dr Taljaard, who had assessed him over time and diagnosed him with PTSD with secondary Major Depressive Disorder. No evidence was submitted on behalf of the Respondent.

Documentary Evidence before the tribunal

[35] The medical history was contained in a compiled bundle that was prepared and placed before the Tribunal. [6] It formed part of the evidence without opposition. The following documents from the bundle reflect that:

a. On 12 November 2014, the diagnosis of Post Traumatic Stress Disorder was recorded on the pro forma titled "employer's report", signed by Lieutenant Colonel K Laing, which records that the Appellant suffered from chronic PTSD. There is, however, no full information detailing what brought about the injury.

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6 Tribunal Bundle Page 1 to 58.

b. On 12 December 2014, he was assessed by Dr Taljaard, a psychiatrist, who prepared and filed a report affirming that he had poor career prospects within the SAPS.

c. On 28 January 2015, a further report contained in the bundle records that he still suffered from PTSD and his prognosis remained poor.

d. On 12 May 2015, the psychiatrist records that the Appellant was permanently medically incapable of employment in the SAPS and had no prospect of employability in the open labour market.

e. On 14 August 2015, the Appellant completed a notice of accident and lodged a claim for compensation, in which he described the nature and extent of the injury as PTSD. Attached to the notice was a further report by Dr Taljaard, recording not only that his further career prospects in the SAPS were "tans swak" but additionally his employability in the open labour market was also poor.

[36] On 9 November 2015, the psychiatrist recorded an opinion similar to that previously expressed. On the same date, the Appellant completed a statement concerning an injury form about his illness, recording it as PTSD as confirmed by Dr Taljaard's reports.

[37] The first and final medical reports in respect of an accident and the final progress medical reports in respect of the PTSD completed by the psychiatrist followed the same line in respect of the Appellant's illness.

[38] Two medico-legal reports served before the Tribunal one from the psychiatrist, Dr Taljaard, dated 14 July 2022 and from a psychologist, Pierre F.

Janse van Rensburg dated 15 July 2022. He also saw Dr Fourie, who sent him to Dr Taljaard for an opinion. She suggested that he be medically boarded.

The Appellant's case:

[39] On 20 November 2023, he testified as follows:

a. He completed his matric in 1985 and joined the police in 1986 wherein he underwent basic training for six months.

b. He spent two years as a special guard giving VIP protection to officers and the houses of ministers. This was until the end of 1993 when the change of regime in the country began.

c. Because of the political landscape at the time all security branches were shut down and those members, including the Appellant, were put at police stations doing normal police work. He did not have any knowledge of basic police work. He worked at Pretoria Central from 1993 until about September 1995.

d. In December 1995, he served as a Warrant Officer and also worked as a shift commander. After being transferred to George, he continued to do active police work, which included acting as a first responder.

e. Due to the nature and exposure to this line of work, he could not cope with it and was then transferred to the financial section of the police where he remained from 1999 until about 2017, when he was medically boarded.

f. During his time in the financial section, he dealt with various police claims, amongst others, including cash payouts to police members' various

claims; payment of overtime and allowances.

g. In 2014, due to various unscrupulous conduct within his department, which he preferred not to be associated with, he became aware of rumours regarding his potential transfer to another section. Subsequently, he observed official communication confirming the transfer and all the rumours were confirmed by his supervisor. Before the transfer took effect, he was placed on sick leave, which continued through to 2017.

h. It was during this period that he saw various doctors and was once referred and admitted to a neuro-clinic, but he could not stay for long there as he felt like a caged animal and the atmosphere was not conducive towards him getting better. He was then discharged and took treatment from home instead.

[40] The nature of his injury was detailed over a period of time by various doctors, some of whom were those of the employer. He testified about various reports and discussions he had with doctors. Their common finding was that he suffered PTSD and had to leave the SAPS.

[41] He could recall that the SAPS also referred him to Drs Van der Westhuizen & Henning, and two occupational therapists. They also confirmed that he was not suitable to stay in the police anymore.

[42] There was no Employee Assistance Programme at the time within the police; one was on their own, you were expected to cope and carry on with life as “Cowboys do not cry”.

[43] He understood medical boarding to mean that he was not suitable in his job as a police officer – a job he was trained for and worked in for about 30 years. Over a period of time prior to his boarding, he recalls how he was forced

to go back to work, ordered around in his workplace whilst he could not cope, and he was told of misconduct for not following orders. He would then be re-evaluated, and it was ascertained that he was getting worse whilst within the offices of the police.

[44] On questions about the determination of his disability, the Appellant gave his understanding of the COIDA and Schedule 2 vis-à-vis PTSD because PTSD does not appear expressly as a listed condition, he understood it to fall under the "any" impairment under point 6 of the Schedule. Therefore, according to Schedule 2, sixth classification, he is 100% unfit for Police work.

[45] He is now aware of Government Circular 172, which contains instructions and directives to the office of the Compensation Commissioner regarding the manner in which such diagnoses ought to be made. According to his understanding, there is an acceptable international diagnostic criteria for PTSD. On the application of these criteria, he contended that a 20% disablement score ought not to have been assigned. He explained that the assessment should have been conducted in accordance with the DSM-5 criteria together with the Social and Occupational Functioning Assessment Scale ("SOFAS").

[46] They never offered him tests on other scales. Paragraph 4.2 of Circular 172 on payment disablement reads:

'Payment of permanent disablement shall be made where applicable when a financial medical report and/or the report from the panel is received. Permanent Disablement shall only be determined after 24 months of optimal treatment.'

[47] From 2014 to 2017, he received optimal treatment and obtained 100% PTSD permanent disablement which would not be awarded 20% impairment. According to the legislation, he is 100% impaired.

On cross-examination

[48] It was put to him that the Compensation Fund relied on Circular 172 PTSD as the applicable policy; relying on medical evidence in the form of Dr Taljaard's report dated May 2016, he was awarded a GAF of 39%; and on the same 'policy', the applicable table provides impairment scores for various disablements and his fell under 20%.

[49] It was further put to him that, strictly speaking, Dr Taljaard gave him specifically GAF 39% disablement which would have fallen on a 15% impairment score, but the Compensation Commissioner exercised its discretion and increased the rate of his permanent disablement to fall on GAF 40-49%, so that it fell on a 20% impairment score. It was also put to him that Dr Taljaard never utilised other tools like SOFAS, SASOP scale, but only GAF.

[50] He commented that it was incorrect that the Compensation Fund depended only on the GAF, which is a global assessment scale; they should have obtained an assessment of his condition from other independent experts using other tools because the legislation and relevant case law state that the Fund is supposed to assist him and obtain more expert reports to balance the evidence before them.

[51] On a question about him having been boarded as a result of more than one impairment by the employer, it was recorded as a result of a psychiatric condition PTSD arising from the performance of his official duties and Major Depressive Disorder not arising from the performance of his official duties.

[52] He commented, and according to him, the depression developed due to the PTSD.

[53] He confirmed to have found employment through a friend as a supervisor/foreman at a factory some years after his PTSD diagnosis, which is something far from police work, but helps to sustain his livelihood and for his family. Obtaining work outside of the police is something he was also advised to do by an occupational therapist (Silkstone), a SAPS expert, when he was still in the police.

On re-examination

[54] He testified that although he is not a doctor, in his understanding, GAF originated from America, but that country stopped using it 15 years ago. He is aware of case law that disregarded the GAF system as irrelevant, and the Tribunal ought to do the same and change the permanent disability score.

Dr Taljaard's evidence

[55] On 24 October 2024, she testified and confirmed having treated the Appellant from November 2014, where she diagnosed him with PTSD. She uses the GAF scales only when completing SAPS assessments (which is a SAPS internal requirement for assessment purposes) although these scales are no longer used by mental health professionals in South Africa.

[56] The GAF scale was used to measure the Appellant for the job he was doing as a police officer, and she confirmed that there is still 100% impairment in his occupational functioning as a police officer.

[57] The Appellant's PTSD has not improved, and the symptoms remain the same, notwithstanding the fact that he is able to perform far less stressful duties as a foreman. This role is removed from the police environment and exposure.

[58] He may not be disabled to do another job, but he is permanently 100 % disabled as a policeman. Exposure to stressful circumstances in any alternative employment may exacerbate his condition, then things may start to go badly for him.

[59] She is aware of the various scales available in the psychiatric industry, such as the SOFAS, the BPRS and the PRS. although she is qualified to utilize them in assessing a patient, she does not have them available, and neither knows where she would obtain them. She uses the GAF only for the police.

[60] The problem with the GAF scale is that the score does not correlate with a psychiatric illness. There is a disconnect between what is really happening and what the score tells you; it will not tell you how that person can function in the work situation with PTSD with all triggers around him.

[61] The GAF does not only measure how a person functions at work, but it also includes measuring functioning in general life, socially, behaviorally and a lot of other similar aspects. She emphasised how inappropriate it is to place sole reliance on the GAF.

[62] She confirmed that the GAF score of 40 – 50 applied by the Commissioner includes a person with:

"serious symptoms (e.g. suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational or school functioning (e.g. no friends, unable to keep a job)."

[63] In her professional opinion the Appellant's 100% impairment score should properly be assessed in relation to his employment in the SAPS; the environment is where all the triggers are. He can cope with low income and less stressful jobs outside of the policework and that environment.

Respondent's Case

[64] No witness was called for the Respondent, and no independent evidence was led.

ISSUES FOR CONSIDERATION

[65] Whether the assessment of the Applicant's permanent disablement at 20% is lawful, reasonable and sustainable, when regard is had to the methodology employed by the Tribunal viewed against the directives contained in Circular 172 to which I refer more fully hereunder.

[66] Whether the reliance on the GAF score in isolation constitutes a material irregularity, particularly in light of the directives contained in Circular 172.

[67] Whether the Tribunal exceeded its powers and or committed a material irregularity by undertaking its own 'assessment' of the Appellant's psychiatric impairment, including by reference to PIRS and/ or BRIS, in circumstances where such an assessment falls within the domain of expert medical evidence and where the Tribunal was required to adjudicate upon such evidence without speculating and forming its own independent opinions.

[68] Whether the matter ought to be referred back for reassessment using an appropriate methodology.

[69] Whether it is necessary at this stage to determine the proper interpretation of "any work" as contemplated in Section 1 of COIDA. This issue raised its head for the first time in the Respondent's heads of argument, and the Appellant was thus taken by surprise. Counsel were accordingly afforded the opportunity to file supplementary notes on the issue. On careful consideration, given that this did not form part of the Tribunal's reasoning (which I deal with later) it is understandable that it was not raised by the appellant as a ground of appeal in his notice of appeal. While it might be attractive to the parties to obtain clarity from this court on the meaning of 'any work' in the definition, this is not appropriate in the present matter since it is not our function to give opinions on issues not pleaded. We thus decline to do so.

[70] Whether a determination on the degree of impairment should be deferred pending a proper assessment of the Applicant's functional capacity.

LEGAL POSITION

[71] Section 91(5)*(a)* of COIDA (the Act) provides as follows:

"(5)(*a*) Any person affected by a decision referred to in subsection (3) (*a*), may appeal to any provincial or local division of the Supreme Court having jurisdiction against a decision regarding—

(i) the interpretation of this Act or any other law;

(ii) the question whether an accident or occupational disease causing the disablement or death of an employee was attributable to his or her serious and wilful misconduct;

(iii) the question whether the amount of any compensation awarded is so excessive or so inadequate that the award thereof could not reasonably have been made;

(iv) the right to increased compensation in terms of section 56."

[72] Section 1 of the Act defines "permanent disablement" in relation to an employee (subject to section 49) as "[t]he permanent inability of such employee to perform any work as a result of an accident or occupational disease for which compensation is payable".

[73] Section 42 of COIDA provides for medical assessment to determine permanent disablement, while section 49(2)(b) empowers the tribunal to determine the percentage of disablement.

[74] Section 49 of the Act provides as follows:

"(1)(a) Compensation for permanent disablement shall be calculated on the basis set out in items 2, 3, 4 and 5 of Schedule 4 subject to a minimum and maximum amount prescribed by the Minister by notice in the Gazette, after consultation with the Board.

(b) The Board shall only make a recommendation to the Minister in terms of paragraph (a) if the majority of members representing employers and employees supports the recommendation.

(2) (a) If an employee has sustained an injury set out in Schedule 2, he shall for the purposes of this Act be deemed to be permanently disabled to the degree set out in the second column of the said Schedule.

(b) If an employee has sustained an injury or serious mutilation not mentioned in Schedule 2 which leads to permanent disablement, the commissioner shall determine such percentage of disablement in respect thereof as in his opinion will not lead to a result contrary to the guidelines of Schedule 2."

[75] In *Ramanand v Department of Labour: Compensation Commissioner* [7] the Court confirmed that permanent disablement must be determined on the basis of structured and reasoned medical evidence. It was held that:

"[51] The appellant contends that it is not disputed that a medical expert in the form of Dr Agambaram has determined him to be totally permanently disabled and that such disablement falls within the last category of classification referred to in the table above (the sixth classification).

[52] Schedule 2 to the Act specifically identifies those injuries that entitle a claimant to claim total disablement. The sixth classification does not specify the nature of the injury, unlike the five classifications that appear before it. The sixth classification is dependent for its applicability not on the nature of the injury, but on the effect of that injury, whatever it may be. It stands to reason that the legislature could not have thought of every type of injury that would lead to 100 percent disablement. The range of human activity is vast and the possibility for misfortune is virtually limitless. Any injury that results in 100 percent disablement thus falls within the sixth classification, irrespective of the physical nature of the injury. It must be assumed that the sixth classification was inserted in the schedule for a purpose. It seems to me that that purpose is to cater for injuries that were not initially thought of or capable of description when the Act was conceived but which result in 100 percent disablement. An excessive exposure to nuclear radiation may be one such example of this.

[53] It is so that schedule 2 was considered in *Department of Labour: Compensation Commissioner v Botha*,[8] and, in particular, the provisions of the sixth classification. Nicholls JA stated the following:

"It is inconceivable that any injury not listed in Schedule 2 should attract an award of 100% permanent disablement, irrespective of the nature of the injury. There are countless injuries which an employee may suffer in the workplace which are not listed in the Schedule. As pointed out by this Court, almost anything which unexpectedly causes illness, injury to, or

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[7] (AR 191/2022) [2023] ZAKZPHC 41; [2023] 7 BLLR 702 (KZP); (2023) 44 ILJ 1816 (KZP) (14 April 2023) at paras 51- 55.

[8] [2022] ZASCA 38; (2022) 43 ILJ 1066 (SCA) at para 18.

death of, an employee falls within the concept of an accident. Should an injury, which is not listed in Schedule 2, befall an employee as a result of such an accident, this does not axiomatically mean that he or she is 100% disabled. The extent of the disability must be determined in light of the facts of the specific case and according to medical evidence." (Footnote omitted.)

[54] In my view, this does not create an impediment to the success of the appeal. The appellant's case is not that because his injury is not listed in schedule 2, he is automatically 100 percent disabled, as alluded to in *Botha*. *Botha* makes it plain that the extent of the disablement must be determined with reference to the facts of the case, which facts would include the opinions of the medical experts who have ventured an opinion in the matter. In this case, only the appellant presented evidence, none of which was disputed by the respondent. His injury, whilst not mentioned in schedule 2, nonetheless thus falls within the sixth category mentioned in schedule 2 by virtue of the fact that he is totally permanently disabled.

[55] I must thus find that the appellant's contention regarding the classification of his injury as falling within the sixth classification is correct." [footnotes included)

Circular Instruction 172[9]

[76] This circular was issued under the Act on 1 April 2003. The circular provides the internal guidelines required for handling and processing claims arising from a diagnosis of PTSD. It defines PTSD as an occupational injury, clarifying requirements for compensation when trauma arises from work-related accidents.

[77] Any determination by the Commissioner (and thus the Tribunal) must be in accordance with Circular Instruction 172 to ensure objective evaluation of functional impairment (COIDA Section 42; Circular 172).

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[9] Circular Instruction Regarding Compensation for Post Traumatic Stress Disorder (PTSD), GN936, GG25132,27 June 2003.

[78] The preamble of the Circular instruction reads as follows:

"The following circular instruction is issued to clarify the position in regard to compensation of claims for Post Traumatic Stress Disorder (PTSD). This circular instruction comes into effect on 01 April 2003 and supersedes all previous circular instructions in respect of Post Traumatic Stress Disorder. Post Traumatic Stress Disorder is regarded as an occupational injury in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993, as amended (COIDA); therefore, an extreme traumatic event or stressor must be an accident as defined in section 1 of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993, as amended (COIDA). An occupational injury is an injury caused by an accident arising out of and in the course of an employee's employment and resulting in a personal injury requiring medical aid or resulting in disability or death and does not include an occupational disease in any form except if that occupational disease results from an occupational injury."

[79] The Circular is instructive and further provides:

"*Clause 2 : How Diagnosis is Made*

'61.The internationally accepted diagnostic criteria for Post Traumatic Stress Disorder (at any given time) should be used to make the diagnosis of Post Traumatic Stress Disorder. The diagnostic tools available are the latest publication of the Diagnostic and Statistical Manual of Mental Disorders referred to as DSM and the International Classification of Diseases, known as ICD. All suspected Post Traumatic Stress Disorder cases must be referred to a psychiatrist for assessment within one month from the date of suspected diagnosis. Only a psychiatrist should confirm the diagnosis of PTSD. The Medical Officers in the Compensation Office will determine if the diagnosis was made according to acceptable medical standards.'

Clause 3 : Impairment

'Impairment shall be assessed on the strength of the Final Medical Report. The Compensation Commissioner shall, whenever she deems it fit, constitute a panel made up of psychiatrists, clinical psychologists, and when necessary, occupational therapists, with a view to assess impairment of the employee. An employee who claims compensation shall when so required,

after reasonable notice, submit himself at the time and place mentioned in the notice to an examination by the panel. The Compensation Commissioner shall determine the disability in consultation with the said panel whenever deemed necessary. The guide to the percentage permanent disablement shall be based on percentage as guided by Schedule 2 of the COID Act and the degree of impairment and disablement according to psychiatric scales. The impairment will be evaluated using the following:

Social and Occupational Functioning Assessment (SOFAS), and
Global Assessment Functioning (GAF) Scale, and
South African Society of Psychiatrists Management of Disability Claims on Psychiatric Grounds Second Edition (SASOP Guidelines).' (my emphasis)

Clause 4.2: Permanent Disablement

" Payment of permanent disablement shall be made, where applicable, when a Final Medical Report and/or the report from the panel is received. Permanent disablement shall only be determined after 24 months of optimal treatment. The Compensation Commissioner shall calculate the permanent disablement and 100% impairment due to PTSD shall be equivalent to 65% permanent disablement whereas impairment less than 20% will not be awarded permanent disablement."

[80] Section 42 of the COIDA mandates that an employee claiming or receiving compensation must submit to medical examinations required by the Director-General, employer, or mutual association. The party demanding the examination must pay all associated travel and examination costs.

[81] Schedule 2 of COIDA lists injuries and diseases alongside their corresponding permanent disability percentage (PD%), determining the compensation amount. It serves as a guide for calculating permanent disablement compensation, often called the "meat chart", ranging from partial to total impairment.

DISCUSSION AND ANALYSIS

SUBMISSIONS

Submissions for the Appellant

[82] Mr Kruger, for the Appellant, submitted that the Tribunal's ruling was incorrect. It unfairly criticised the psychiatrist, Dr Taljaard, for failing to give it the BPRS and PIRS scores that are listed in the AMA guidelines. The Tribunal goes on to say that the AMA Guideline' Chapter 14 has tables that instruct users on how to calculate both BPRS and PIRS scores - a point that was never discussed with the psychiatrist during her testimony.

[83] The psychiatrist was solely questioned about her familiarity with the AMA instructions and her ability to conduct an assessment using those scales.

[84] The appellant was 100% incapable of performing his work as a police officer, but the tribunal found that the psychiatrist did not help it determine a different permanent disability percentage.

[85] There was no evidence presented to dispute the appellant's 100% incapacity, and the employer (SAPS) had already boarded the appellant due to total incapacity in 2017.

[86] The tribunal interpreted COIDA restrictively, contrary to its purpose of favoring workers who have no other means of compensation.

[87] Section 49 and Schedule 2 of COIDA provide that any injury causing permanent total disablement should be classified as 100% disablement.

[88] The tribunal ignored this and instead relied on tools and guidelines not supported by evidence.

[89] The tribunal erred in awarding only 20% PD; the appellant is 100% disabled based on the evidence.

[90] The court should set aside the tribunal's decision and replace it with a finding of 100% permanent disablement.

[91] Statutory interpretation and case law require a purposive, generous approach that favours employee protection and aligns with the social security purpose of COIDA.

Submissions for the Respondent

[92] Mr Manqina, for the Respondent, submitted that the Appellant was discharged from service due to PTSD and Major Depressive Disorder.

[93] Dr Taljaard, the medical expert, concluded that the Appellant was 100% permanently disabled for police work, but clarified that he could function in other jobs unrelated to trauma risk.

[94] The Appellant is currently, or at least was, gainfully employed outside the police force at the time of the tribunal hearing. The GAF score assigned by Dr Taljaard was 39, corresponding to a 15% impairment, but the Commissioner increased this to 41-50 for a 20% impairment in the appellant's favour

[95] The Act aims to support employees who cannot support themselves due to loss of earnings from an accident. Compensation is linked to the inability to earn, not just the inability to perform a specific job.

[96] Granting 100% permanent disablement compensation to employees who can still be gainfully employed elsewhere would lead to unreasonable outcomes, such as compensating someone fully even if they earn more in a new job after the injury.

[97] Therefore, if an employee loses the ability to perform their previous job but can still work in another capacity, they may not qualify for 100% permanent disablement compensation under COIDA.

[98] Compensation is determined by the overall impact on the employee's ability to work in any job, not just their former position.

[99] In the present case, since the appellant is employable, a 100% disablement award is not justified.

[100] Mr Manqina submitted further that this Court should dismiss the appeal, alternatively remit the matter for the Appellant to undergo further psychiatric assessment using alternative scales (PIRS, BPRS) in addition to GAF, to determine a more accurate percentage of disablement.

[101] The GAF scale is standard practice, and the Tribunal's use of it was appropriate given the evidence.

ANALYSIS

[102] The appellant's final diagnosis was that of PTSD. The uncontested evidence established that the diagnosis of Major Depressive Disorder was only secondary to that diagnosis, in other words, the Appellant's depression was a consequence of his PTSD and not a separate self-standing cause of the

termination of his employment as a police officer. I am thus unable to agree with the submission made by counsel for the Respondent on this aspect. As previously stated, a circular was issued in April 2003 regarding PTSD, which was an instruction regarding how a fair amount of compensation for such a diagnosis was to be arrived at by the Commissioner (and the Tribunal).

[103] It is clear from the transcript of the proceedings before the Tribunal, as well as its Determination, that it failed to adhere to its own internal Circular in this regard. Instead, the Tribunal instructed Dr Taljaard to conduct a further assessment of the Appellant using the alternative tools BPRS and PIRS, which are not mentioned in the Circular.

[104] On resumption of the proceedings, the Tribunal reported[10] in its finding that Dr Taljaard consulted and assessed the Appellant on 3 February 2025 and thereafter forwarded correspondence to it stating that she was unable to provide the scores requested because she had never received the special training that goes with using the PIRS tool.

[105] The Tribunal was not impressed by Dr Taljaard's evidence; hence it was found that she did not assist them in determining the BPRS and PIRS whose scores they wrongly assumed they also required.[11]

[106] This material misdirection was compounded when the Tribunal then proceeded to conduct its own broad assessment and determined that additional scores from other methods (not sanctioned by the Circular) would not have significantly affected the 20% PD.

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[10] Page 193 para 40-42 of the transcribed record.
[11] Page 194 para 49-50 of the transcribed record.

The Tribunal decided the matter without referral for further assessment and instead speculated with regard to what the outcome would be.

[107] Moreover, Dr Taljaard also provided testimony, clarifying that the GAF scale does not encompass the additional aspects addressed by the other tools, as well as many others available in the field.

[108] In my view, the Tribunal thus materially misdirected itself in its assessment of the Applicant's psychiatric impairment. Having regard to a GAF score, it proceeded to determine what the applicant's impairment would have been under the BPRS and the PIRS, notwithstanding that no such assessments had been conducted by independent experts and that the Circular makes no provision therefor. This approach is fundamentally flawed.

[109] It follows that a GAF score cannot be used as a proxy from which scores under the BPRS or PIRS may be inferred.[12] Any such attempt amounts to speculation and is inconsistent with the prescribed methodology.

[110] Moreover, it is well established that a court or tribunal is required to evaluate expert evidence and the reasoning underlying it and is not permitted to substitute its own opinion in matters requiring specialised knowledge. In *Michael v Linksfield Park Clinic (Pty) Ltd and Another*[13], the Supreme Court of Appeal emphasised that medical conclusions must be grounded in proper expert evidence and reasoning.

[111] In my view, by purporting to determine, in the absence of expert assessment, what the Applicant's scores would have been under the BPRS and PIRS, the Tribunal also impermissibly assumed the role of an expert.

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12 SASOP/PsychMg Guidelines.

13 (1) (361/98) [2001] ZASCA 12; [2002] 1 All SA 384 (A); 2001 (3) SA 1188 (SCA) (13 March 2001).

[112] The Tribunal was required, under the framework of the COIDA, to determine psychiatric impairment on the basis of proper medical evidence. In the absence of any evidentiary foundation for the inferred scores, it materially misdirected itself. I would find that its conclusion is accordingly unsustainable.[14]

[113] In my view, and to avoid belabouring the point, the Tribunal's failure to procure, or direct, a further assessment where such evidence was plainly required amounts to a material misdirection. In the absence of proper expert evidence, its determination of psychiatric impairment was not only unsupported but resulted in an unfair and unreliable outcome, consistent with the concerns articulated in *Turnbull-Jackson v Hibiscus Coast Municipality*[15] .

[114] The Appellant was thereby deprived of a fair evaluation of his condition in accordance with the full applicable standards.

[115] In these circumstances, the error is material and outcome-determinative. The Tribunal misdirected itself in both its method and approach to the assessment of psychiatric impairment.

[116] Accordingly, its finding cannot be sustained and falls to be set aside. The question of the degree of the Appellant's psychiatric impairment must be reconsidered on the correct legal and methodological basis. I am thus unable to agree with Mr Kruger's submission for a setting aside and substitution of the decision to a 100% PD by this court. That would be putting the proverbial cart before the horse. It will remain open to the Appellant to challenge any

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14 Ibid.

15 2014 (6) SA 592 (CC)

impugned finding made by the reconstituted Tribunal in due course, possibly including its understanding of 'any work' in the definition of 'permanent disablement' in the Act. I accept that this may cause yet further delay in the finalization of the Appellant's claim. However, this is something beyond this court's control.

[117] Put differently, this court cannot attempt to substitute an obscure finding; there needs to be a properly determined assessment and experts' reports on it first.

Appropriate Remedy

[118] Therefore, given that the defect lies in the absence of a proper evidentiary foundation, the matter ought to be remitted for reconsideration following a proper psychiatric assessment conducted in accordance with the recognised medico-legal framework.

COSTS

[119] The usual rule is that an award for costs should follow the result. There is no reason to deviate from this in the present matter.

[120] The Appellant seeks costs on the attorney-and-client scale in light of the Tribunal's material misdirection and its failure to obtain necessary expert evidence, resulting in a determination devoid of any evidentiary foundation.

[121] In my view, such conduct is not sufficient to warrant a punitive costs order. There is no indication of *mala fides* or conduct so unreasonable as to attract a punitive costs order, unlike that found in the *Public Protector v South*

African Reserve Bank[16]. Moreover, the Appellant's former legal representative should have objected to the Appellant being cross-examined at length on technical aspects which clearly fell outside his knowledge, and which unnecessarily lengthened the proceedings before the Tribunal; and it cannot be laid solely at the door of the Tribunal that Dr Taljaard was seemingly not made aware of what was required by the Circular for assessment purposes. It is however my view that costs should be awarded on the highest party and party scale, including the costs of counsel.

CONCLUSION

[122] In the result, I would make the following order:

1. **The application for condonation for the late prosecution of the appeal is granted.**

2. **The appeal succeeds.**

3. **The decision of the Compensation for Occupational Injuries and Diseases Act Tribunal ("the Tribunal") dated 2 July 2025 is set aside.**

4. **The matter is remitted to a differently constituted tribunal for reconsideration (rehearing) within 90 days from the date of this order, in accordance with the provisions of paragraphs 5 and 6 below.**

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16 2019 (6) SA 253 (CC)

5. **The Appellant, Mr Hendrik Wallace Roelofse, shall undergo a further assessment by a suitably qualified professional with no prior involvement in the matter, nominated by the Chairperson of the Health Professions Council of South Africa (and at the Respondent's sole cost and expense) to determine and prepare a report, to be submitted to the Tribunal on the Appellant's Post Traumatic Stress Disorder permanent disablement score.**

6. **The rehearing shall be conducted by the Tribunal in accordance with section 42 and section 49(2)(b) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("COIDA"), and including by having regard to expert evidence based on the methodology prescribed in the Circular Instruction No. 172 issued by the Director-General: Labour (GoN 936, G 25132 (1 April 2003).**

7. **The Tribunal shall issue its decision within 30 days of completion of the rehearing before it.**

8. **The Respondent is to pay the Appellant's costs on Scale C (party and party) including the costs of Counsel.**

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P MAGONA-DANO

ACTING JUDGE OF THE HIGH COURT

I agree

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J I CLOETE

JUDGE OF THE HIGH COURT

Appearances

For Applicant:	Mr TP Kruger SC
Instructed by:	Bares Basson Attorneys c/o Hayes Inc
For Respondent :	Mr A Manqina
Instructed by:	State Attorney LRaphasha