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

JUDGMENT

Not Reportable
Case No: A167/2025

In the matter between:

DIERK ROBERT INGE RECKLIES Appellant

And

THE ROAD ACCIDENT FUND Respondent

Coram: **Da Silva Salie, J et Holderness, J et Njokweni, AJ**
Heard on: **21 January 2026**
Delivered on: **04 June 2026**

Summary:

Road Accident Fund – Loss of earnings and earning capacity – Assessment of pre-morbid earnings where income derived from salary and profits generated through

closely-held business – Significance of expert joint minutes – Majority holding business profits formed part of earning capacity and should be included in actuarial assessment – Dissenting judgment on inclusion of business profits in the assessment of the appellant's pre-morbid earnings and earning capacity – Appeal upheld in part and substituted order granted.

ORDER

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1. The appeal is upheld with costs on Scale C, including the costs of two counsel where so employed.

2. The order of the court a quo relating to the appellant's claim for loss of earnings is set aside and substituted with the following:

> "(b) The Defendant shall pay the Plaintiff the amount of R1 726 100.00 in respect of past loss of earnings arising from the motor vehicle collision which occurred on 3 October 2017.
>
> (c) The Plaintiff's claim for future loss of earnings shall be actuarially recalculated by the actuary, Mr Boshoff, within 15 days of this order, on the following basis:
>
> > (i) the Plaintiff's pre-morbid earnings comprise both his salary income and the net profits generated through Trotex;

(ii) the Plaintiff's retirement age is 65 years;

(iii) the statutory cap in terms of the Road Accident Fund Act 56 of 1996;

(iv) the contingency deductions as set out in the actuarial report dated 14 August 2024 of 2.5% and 7.5% applied on the past and future earnings respectively."

3. The actuarial recalculation shall be filed with the Chief Registrar of this Court, within 15 days of this order. Upon receipt thereof, the recalculation shall be placed before this Court for consideration, whereafter a further order determining the amount payable in respect of the appellant's future loss of earnings shall be issued.

MAJORITY JUDGMENT

DA SILVA SALIE J: (NJOKWENI, J CONCURRING)

Introduction:

[1] This is an appeal against certain findings made by Mthimunye AJ in a judgment delivered on 21 August 2024 concerning the quantification of damages arising from a motor vehicle collision which occurred on 3 October 2017. The appeal serves before this Court with leave granted by the Supreme Court of Appeal on 14 April 2025.

[2] Liability and general damages were settled between the parties before the court a quo. The dispute proceeded only in respect of the appellant's claim for loss of earnings and earning capacity. The court a quo awarded the appellant an amount of R2 437 806.00 in respect of both past and future loss of earnings.

[3] The principal issue on appeal is whether the court a quo erred in its assessment of the appellant's pre-morbid earnings, his pre-morbid retirement age, as well as his post-morbid earning capacity and retirement age. If so, this Court is to determine the extent to which such misdirection impacted upon the calculation of the appellant's past and future loss of earnings.

Factual background

[4] On 3 October 2017 the appellant was involved in a high-impact motor vehicle collision in the Paarl area. The medico-legal reports and the joint minutes of the neurosurgeons and orthopaedic surgeons, recorded that the appellant sustained extensive multi-system injuries, including a severe traumatic brain injury with a right occipital fracture, bilateral fractures of the mastoid air complexes, multiple intracranial haemorrhages including subdural, intraventricular and traumatic subarachnoid haemorrhage, fractures of the left inferior and superior pubic rami, lumbar spinal fractures involving the transverse process of L2, posterior rib fractures and associated abdominal trauma.

[5] The medical experts agreed that the appellant suffered enduring neurocognitive, physical and psychological sequelae. Although he attempted to resume work following a period of recuperation, his ability to function at his pre-accident level became materially compromised.

[6] The appellant did not testify in the trial court. His historical narrative is as set out in the expert report and the evidence led at trial. The appellant is a German national, born on 13 July 1966. He completed his secondary school education in Germany in 1982. He undertook a two-year in-service training in the German Post Office, followed by compulsory military service and a further two-year internship at a machine engineering company, where he acquired skills in fitting, turning and welding.

[7] After qualifying, the appellant started working in a technical position at a food factory in Germany. He later started his own business in home renovation while simultaneously working part-time at a shade installation business. As a result of a work-related injury, he suffered a broken shoulder which rendered him out of work for a period of 16 months. During this time his father passed away. He left Germany and relocated to South Africa.

[8] The appellant arrived in South Africa in August 2008. He initially secured employment at a telesales German call centre. During 2009 he commenced employment at Trotex Engineering Cape CC ("Trotex"), a German-owned business manufacturing and servicing machines used in the food processing industry. He was employed as a mechanical engineer/engineering technician and held a South African residence visa which permitted him to work at Trotex. This business was owned and operated by Mr. and Mrs. Schonau ("the Schonaus")

[9] During 2013/2014, Trotex undertook a large-scale project which resulted in significant losses to Trotex of approximately R2.4 million in the 2014 financial year. This loss was funded by loans from the owners to the business. During April 2016 the Schonaus wished to retire and offered to transfer the business to the appellant in lieu of the R100 000 debt owing to the appellant. Given that his visa condition only permitted him to work, he could not take transfer of the business into his own name. The appellant had a permanent life partner, Ms. Keenan Klinker ("Klinker") with whom he

had been in a relationship since 2010. They have one child together, born in 2011 and she has two older children from a previous relationship. Given his visa restrictions, the 100% shareholding in Trotex was transferred into the name of his life partner. She held the shares on his behalf as a nominee. However, he had complete control over the business which had since become profitable. The profits were used at the appellant's discretion. Klinker testified that she was not involved in the day-to-day running of the business and that for all intents and purposes, the business was owned by the appellant and that he had full control over the business and profits.

[10] Although the shareholding in Trotex was registered in Klinker's name, the appellant remained actively involved in and exercised effective control over the business. The business itself generated net profits. The proverbial fork in the road is whether the appellant's pre-morbid earning capacity properly comprised both his salaried remuneration and the net profits generated through Trotex, or whether, on the evidence presented, his compensatory loss ought to be confined only to the salary component reflected in his IRP5 certificates, in other words that his loss of earnings only comprises his salaried income.

[11] Following the accident, the appellant attempted to continue operating the business. The business however struggled as the appellant's injuries materially impaired his ability to perform the technical, managerial and operational functions upon which its continued success depended. Consequently, the business ceased trading during November 2019. Thereafter, the appellant engaged in limited self-employment through a smaller business known as Blue Eagle. That venture likewise proved unsustainable in light of his enduring sequelae of his injuries and ceased trading during 2020.

Issues on appeal

[12] The issues requiring determination on appeal are crisp, namely:

[12.1] Whether the court a quo erred in confining the appellant's pre-morbid earnings to his salary reflected in the IRP5 documentation;

[12.2] Whether the court a quo correctly excluded the net profits generated through Trotex from the appellant's earning capacity;

[12.3] Whether the court a quo erred in adopting a retirement age of 65 years; and

[12.4] The consequential impact of those findings on the actuarial calculation of the appellant's past and future loss of earnings.

Appellant's submissions

[13] It was submitted on behalf of the appellant that the court a quo materially misdirected itself in restricting his pre-morbid earnings to his salaried income alone. It was contended that the uncontested evidence of the forensic accountant, Mr Edwards, established that the appellant's remuneration structure comprised both a salary component and the net profits generated through Trotex.

[14] It was further argued for the appellant that the court a quo failed to accord proper weight to the joint minute of the industrial psychologists, Dr Swart and Ms Pieters, who

expressly accepted the remuneration structure analysed by Mr Edwards for purposes of assessing the appellant's earning capacity and employability.

[15] Counsel for the appellant argued that the trial court did not apply the principle enunciated in ***BEE v Road Accident Fund 2018 (4) SA 366 (SCA)***, which holds expert witnesses bound to the agreed issues in joint minutes. On the facts of this matter, it is argued that the trial court failed to properly have regard to the agreement reached between the industrial psychologists in their joint minute that the appellant's earnings comprised both his salary income and the net profits generated through Trotex. That agreed remuneration structure was thereafter applied by the forensic accountant in quantifying the appellant's pre-morbid earnings and, so it was contended, had effectively become a settled issue before the trial court.

[16] The appellant further submitted that the court a quo erred in adopting a retirement age of 65 years and that the evidence supported a probable retirement age of 70 years.

Respondent's submissions

[17] The respondent submitted that the judgment a quo was sound and properly grounded in the evidence presented at trial and further contended that the appellant failed to establish, on a balance of probabilities, that the profits generated through Trotex accrued to him personally as opposed to the registered shareholder of the company.

[18] It was further argued that the court a quo correctly exercised caution in evaluating the expert evidence and was entitled to reject aspects thereof where the underlying factual foundation had not, in the trial court's view, been sufficiently established.

[19] The respondent also supported the court a quo's determination of a retirement age of 65 years, particularly in light of the absence of viva voce evidence from the appellant himself concerning his intended retirement trajectory.

Discussion

[20] Mr Edwards assessed the appellant's pre-morbid earning capacity as comprising two distinct components, namely a salary component reflected in the appellant's IRP5 documentation in the amount of R275 160 per annum, together with net profits derived through Trotex in the amount of R308 881 per annum. On that basis, the appellant's total pre-morbid earning capacity was assessed at R584 041 per annum.

[21] Mr Edwards explained that the net profits generated through Trotex were derived predominantly from the appellant's own labour, technical expertise, managerial oversight and active involvement in the business. His evidence in this regard was not materially contradicted. Klinker's evidence was likewise not materially challenged. She testified that the net income generated by the business was utilised by the appellant at his discretion and formed the basis of their household income. Her evidence was consistent with that of Mr. Edwards, namely that the profitability of the business was substantially dependent upon the appellant's own labour, expertise and active involvement.

[22] It is important to bear in mind that the present enquiry is not directed at determining ownership of the profits generated through Trotex as a matter of company law as holding separate juristic personality. The issue is rather whether, on the evidence before the trial court, those profits formed part of the appellant's earning capacity prior to the collision. Damages for loss of earnings are concerned with the

economic value of what a plaintiff was capable of earning before the injury and not necessarily the legal form in which such earnings were received.

[23] The *appellant* further relied heavily on the principles articulated in ***BEE v RAF***, contending that the court a quo departed from an agreed factual platform reflected in the joint minute of the industrial psychologists. In that matter, the SCA reaffirmed that agreements reached between suitably qualified experts on matters falling within their respective fields of expertise are not light to be disregarded. Whilst a court retains the ultimate responsibility of determining the issues before it, parties are ordinarily entitled to proceed on the basis that matters agreed by experts are not longer contentious, absent a proper evidential foundation for departing from such agreement.

[24] In their joint minute, Dr Swart and Ms Pieters recorded that the remuneration particulars and the interpretation thereof were clearly documented in the report of Mr Edwards and *"to be applied as indicated".* The experts further agreed that the appellant had been self-employed for a major part of his immediate pre-traumatic years and that he had been able to secure substantial work and sustain the business notwithstanding its inherited debt burden.

[25] As I see it the significance of the joint minutes lies in the fact that both industrial psychologists expressly deferred to the opinion of Mr. Edwards in relation to the appellant's remuneration. They recorded that the remuneration particulars and the interpretation thereof were documented in his report and were to be applied as indicated. The inclusion of both the appellant's salary and the net profits generated through Trotex therefore formed part of the agreed factual foundation upon which their opinions were based.

[26] The industrial psychologists, on this aspect, did not seek to formulate independent opinions regarding the composition of the appellant's earnings. To the contrary, they expressly recorded in their joint minute that the remuneration particulars and the interpretation thereof were documented in the report of Mr. Edwards and were to be applied as indicated. This must be viewed against the fact that the experts did not reach agreement on all issues and expressly recorded areas of disagreement elsewhere in the joint minute such as retirement age. Their consensus regarding the remuneration structure was therefore neither incidental nor equivocal. It reflected a deliberate acceptance of the remuneration analysis undertaken by the forensic accountant as the factual platform upon which their respective opinions concerning earning capacity and employability would be based.

Purpose of joint minutes:

[27] The purpose served by a joint minute is not merely procedural convenience. It serves as a substantive issue in that it is intended to identify and narrow issues genuinely in dispute, to promote the efficient administration of justice and to assist the court by establishing areas of agreement between suitably qualified experts. Once experts have reached agreement on matters falling within their respective fields of expertise, a trial court is ordinarily entitled to proceed on a basis that those matters are no longer contentious. Whilst a court is not bound to accept such agreements, particularly where they are unsupported by the evidence or plainly incorrect, a departure therefrom should ordinarily be approached with caution. Where a court entertains concerns regarding an agreed expert platform that has not been placed in issue by the parties, fairness may require that those concerns be raised during the course of the proceedings to afford the parties an opportunity to address them.

[28] The appellant was therefore entitled to approach the trial on the footing that the composition of his pre-morbid earnings, comprising both his salary and the net profits

generated through Trotex, was no longer a live issue requiring further evidential support. This was particularly so where the industrial psychologists, acting within their own field of expertise relating to earning capacity and vocational functioning, expressly accepted the remuneration structure identified by the forensic accountant and recorded that it was to be applied as indicated. They were not purporting to determine the appellant's remuneration themselves. Rather, they accepted the specialist accounting opinion of Edwards as the factual platform upon which their own opinions were based. In those circumstances, the appellant was entitled to assume that the composition of his earnings had become a settled issue for purposes of the trial and to conduct his case accordingly. To the extent that the trial court had reservations about the agreed platform and was minded to depart therefrom, considerations of trial fairness would ordinarily have required that the issue be raised during the course of the proceedings so as to afford the parties, and in particular the appellant, an opportunity to address the court's concerns and, if necessary, elect whether to adduce further evidence on the issue.

[29] The difficulty in the present matter is that the evidence of Edwards, concerning the composition of the appellant's remuneration, was not materially contradicted. The mere fact that the shareholding structure reflected the appellant's life partner as shareholder did not, without more, justify the exclusion of the business profits from the assessment of earning capacity, particularly where the evidence demonstrated that the appellant was central to the running of the business and the generation of its income.

[30] In these circumstances, the court a quo was entitled to interrogate the factual basis upon which the business profits were attributed to the appellant. However, the evidence of Mr. Edwards on this issue was not materially challenged. When that evidence is considered together with the agreement recorded in the joint minute of the industrial psychologists, the conclusion that the appellant's pre-morbid earnings comprised only his salary cannot be sustained. The evidence established that the appellant was the driving force behind the business, that the net profits were generated though his efforts and that those profits formed part of the remuneration structure

accepted by the experts. In the same way, without the wherewithal of the appellant, post-accident, the business failed. The exclusion of the net business profits from the assessment of the appellant's earning capacity accordingly constituted a material misdirection.

Retirement age:

[31] The position regarding retirement age stands, however, on a different footing. The appellant did not testify. Questions concerning his intended work trajectory, lifestyle choices and probable retirement beyond the conventional retirement age fell peculiarly within his own knowledge.

[32] In the absence of *viva voce* evidence in that regard, this Court cannot conclude that the court a quo misdirected itself in adopting a retirement age of 65 years. The determination fell within a reasonable range on the evidence before it and does not warrant interference.

[33] The actuarial evidence further demonstrated that the operation of the statutory cap imposed in terms of section 17(4)(c) of the Road Accident Fund Act materially constrained the extent of the appellant's recoverable future loss. As confirmed by the actuary, Mr Boshoff, the appellant's annual loss exceeded the statutory ceiling in most of the relevant years. The consequence is that increasing the magnitude of the loss or extending the retirement age does not necessarily translate into a proportionate increase in the capitalised award, particularly where the additional years arise towards the latter part of the actuarial calculation and carry diminished present value.

[34] The significance of this finding should not, however, be overstated. Whilst the statutory cap operates as a limiting mechanism, the appellant's pre-morbid earnings nevertheless constitute the foundation upon which the calculation is performed. Once it is accepted that the appellant's pre-morbid earnings comprised both his salary income and the net profits generated through Trotex, the actuarial calculation necessarily falls to be revisited on the corrected basis. The recalculation must occur subject to the continued application of the statutory cap and the contingency deductions adopted by the trial court.

[35] In my view the appellant has succeeded in demonstrating a material misdirection in relation to the composition of his pre-morbid earnings, but not in relation to the retirement age adopted by the court a quo.

Order

[36] In the result, the appeal ought to succeed to the extent as proposed in the order below:

1. The appeal is upheld with costs on Scale C, including the costs of two counsel where so employed.

2. The order of the court a quo relating to the appellant's claim for loss of earnings is set aside and substituted with the following:

> "(b) The Defendant shall pay the Plaintiff the amount of R1 726 100.00 in respect of past loss of earnings arising from the motor vehicle collision which occurred on 3 October 2017.

(c) The Plaintiff's claim for future loss of earnings shall be actuarially recalculated by the actuary, Mr Boshoff, within 15 days of this order, on the following basis:

(i) the Plaintiff's pre-morbid earnings comprise both his salary income and the net profits generated through Trotex;

(ii) the Plaintiff's retirement age is 65 years;

(iii) the statutory cap in terms of the Road Accident Fund Act 56 of 1996;

(iv) the contingency deductions as set out in the actuarial report dated 14 August 2024 of 2.5% and 7.5% applied on the past and future earnings respectively."

3. The actuarial recalculation shall be filed with the Chief Registrar of this Court, within 15 days of this order. Upon receipt thereof, the recalculation shall be placed before this Court for consideration, whereafter a further order determining the amount payable in respect of the appellant's future loss of earnings shall be issued.

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G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

I AGREE:

P. NJOKWENI
ACTING JUDGE OF THE HIGH COURT

WESTERN CAPE DIVISION

IT IS SO ORDERED:

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

DISSENTING JUDGMENT

HOLDERNESS, J:

[1] I have read the judgment of the majority and cannot concur in its reasons or inclusions regarding the issue of the calculation of the quantum to be awarded to the appellant in respect of his pre-morbid earnings, in particular the inclusion of the Trotex profits.

[2] The appellant did not testify at the trial. Mr. Edwards evidence was that he was told by the appellant that he used Trotex's profits 'at his discretion' is based on his expert report. This however was not borne out by the accounting record attached to Mr. Edwards' report. There was no evidence whatsoever placed before the court a quo indicating that Trotex profits were paid to the appellant, either before or after the accident.

[3] In his report Mr. Edward opines that considering the 'evidence', which is in fact his reporting on what the appellant told him when interviewed, that:
'…it seems reasonable to conclude that the past and projected future profits of Trotex should be treated as belonging to the Plaintiff when quantifying his claim for damages. This contrary to the actual ownership of the shares, but in line with the substance of the matter as opposed to the form.

[4] The reasoning underpinning this conclusion is difficult to understand. There is no factual foundation upon which Mr Edwards could conclude that the profits should be treated as 'belonging' to the appellant, nor was there any evidentiary basis for such a finding. Mr Edwards appears to rely solely on the statement by the appellant, which constitutes unconfirmed hearsay, that he used all the profits of Trotex at his discretion to fund his personal expenses.

[5] In examination in chief Mr. Edwards testified, when asked what the appellant's future loss of earnings (should be earning capacity) would be:

'*MR EDWARDS: Yes, the future loss of earnings is essentially just based on the continuation of this. So, it is based on the assumption that were it not for the accident his salary as well as the profits of the business would continue being earned until his eventual retirement in the uninjured and inured scenarios respectively…'*

[6] In his report, Mr. Edwards, seemingly alive to the flaw in this finding, noted that '*this finding is possibly contrary to the relevant case law in respect of these matters, Rudman/RAF* in particular. He went on to say, *'I therefore defer to the courts to make a final determination in regard to the treatment of these profits in determining the Plaintiff's loss of earnings.'*

[7] The court a quo, after carefully assessing the evidence of Mr Edwards and the submissions advanced in argument, found that the appellant's statement to Mr Edwards that he was using the profits of the company at his discretion is contrary to the evidence of the financial statements attached to his report. Put differently, the facts which appear from source documents upon which Mr. Edwards relied do not support the findings he made.

[8] There was no evidence showing that Trotex's profits were in fact paid to or 'used by' the appellant. The court a quo's factual findings in this regard, in particular that there is no evidence of any fringe benefits or business profits having been paid to the plaintiff, are, in my view, unassailable.

[9] It is trite that a private company is a distinct legal entity separate from its owners, the shareholders. The assets, liabilities, and profits belong to the company, not to the individuals or entities holding its shares. *In casu* the appellant was not even a shareholder. He was merely an employee of Trotex who alleged that his partner, Ms Klinker, held 100% of the shareholding on his behalf as his nominee. Even if he was a shareholder, the appellant would have no direct proprietary right or claim to the profits generated by Trotex's business activities.

[10] In terms of section 46 of the Companies Act, before 'profits' can be paid to shareholders the board of directors must formally declare a distribution and ensure that there is compliance with the further provisions in section 46.

[11] The only facts supporting the appellant's claim to the profits of Trotex arise from the hearsay statements made by the appellant to the various experts, including Mr Edwards and Dr Swart, who merely repeated what he told them. The failure by the appellant to testify in this regard (or at all) is unexplained.

[12] I respectfully disagree with the finding by the majority that because the industrial psychologists (Dr Swart for the appellant and Ms Pieters for the RAF) experts in their joint minute expressly accepted the remuneration particulars contained in the forensic accountant report the appellant was entitled to assume that the composition of his earnings had become a settled issue for purposes of the trial and to conduct his case accordingly.

[13] There was no joint minute filed by forensic accountants. The agreement by the IP experts merely deferred to the finding of Mr Edwards.

[14] It is well established that courts are not bound by an expert's opinion. In *Bee v Road Accident Fund (Bee*)[1] the Supreme Court of Appeal held that even where expert evidence is proffered, the court has a duty to satisfy itself that the opinion is supported by accurate facts and sound reasoning.

[15] The legal position is the same in respect of a joint expert minute, save that the parties are not at liberty to repudiate the agreement if placed before the court. The expert opinion or evidence, whether uncontested or by agreement, is still subject to the court's scrutiny.

[16] To properly evaluate expert evidence, the court must be apprised of and analyse the process of reasoning which led to the expert's conclusion, including the premises from which that reasoning proceeds.[2] The court must be satisfied that the opinion is

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[1] *Bee v Road Accident Fund* 2018 (4) SA 366 (SCA).
[2] *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schadlingsbekampfung mbH* 1976 (3) SA 352 (A) at 371F – G.

based on facts and that the expert has reached a defensible conclusion on the matter. [3] Even a purported admission by the other party cannot, and does not, absolve the court from this duty. Even if experts agree on a matter within their joint expertise, that is merely part of the total body of evidence. The court must still assess the joint opinion and decide whether to accept it.[4]

[17] In ***NSS obo AS v MEC for Health, Eastern Cape Province*** the SCA held that if the court was bound by a party's admission regarding the correctness of an expert's opinion, then:

'*Despite being the arbiter of the dispute, the court may then not reject the expert's opinion, even if it is wholly indefensible. Such an approach is untenable, and at odds with the rule that experts have a principal and overriding duty to the court, not to the party by whom they are retained, to contribute to the just determination of disputes.'*[5]

[18] No explanation was proffered for why the appellant did not testify in his own case and in particular with regard to how the 'profits' of the business were treated by him and the payment of the fringe benefits included in his remuneration by Mr Edwards. There was no indication that he was not available or competent to testify, and these facts could clearly have been elucidated by him. This leads to the ineluctable inference that such evidence would expose facts unfavourable to him.[6]

[19] In my view the opinion expressed by Mr Edwards, namely that the appellant's earning capacity included the profits of Trotex, is not grounded in fact and is indefensible. Mr Edwards himself appeared to recognise this shortcoming in his own report. The deference by the industrial psychologists to the opinion of Mr Edwards is not

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[3] *HAL obo MML v MEC for Health, Free State* 2022 (3) SA 571 (SCA) ([2021] ZASCA 149) (*HAL*) para 220.
[4] Id para 229. This however is subject to the qualification that where experts agree on factual issues and the applicable approach to technical analysis, the litigants are bound by such agreement, unless it has been withdrawn and no prejudice results, or any prejudice caused can be cured by a postponement or an appropriate costs order. See *Bee* para 73; *HAL* above n13 para 229. See *NSS obo AS v MEC for Health, Eastern Cape Province* 2023 (6) SA 408 (SCA) at para 25.
[5] At para 26. Citing *National Justice Compania Naviera SA v Prudential Assurance Co Ltd: 'The Ikarian Reefe'* [1993] 2 Lloyd's Rep 68 at 81 – 82.
[6] *Elgin Fireclays Ltd v Webb* 1947 (4) SA 744 (A) at 749 – 750; *Munster Estate (Pty) Ltd v Killarney Hills (Pty) Ltd* 1979 (1) SA 621 (A) at 624B – H, cited with approval in *HAL*.

binding on the court. There is no joint minute by forensic accountants which is sought to be repudiated and for this further reason the principles in *Bee* are inapposite to the present matter.

[20] The court *a quo,* correctly in my view, found that the joint minute of the industrial psychologists, insofar as it purported to accept Mr Edwards' finding that all business profits of Trotex accrued to the appellant) was based on an incorrect factual premise, and was unpersuasive in the absence of further evidence or documentary proof.

[21] An appeal court should proceed on the presumption that the trial court's factual findings are correct in the absence of demonstrable error. To overcome this presumption, an appellant must convince the appellate court on adequate grounds that the trial court's factual findings were plainly wrong. If the appellate court is merely left in doubt as to the correctness of a factual finding, then it will uphold that finding.[7]

[22] In ***Road Accident Fund v Guedes***[8] the SCA confirmed that an appeal court is generally slow to interfere with the award of the trial court where the quantum of damages is a matter of estimation and discretion, and may only interfere once it concludes that there has been an irregularity or misdirection, for example taking into account irrelevant facts or ignoring relevant ones, or where the appeal court is of the opinion that no sound basis exists for the award made by the trial court or where there is a' substantial variation or a striking disparity between the award made by the trial court and the award which the appeal court considers ought to have been made'.

[23] The trial court's wide discretion in assessing the quantum of damages due to loss of earning capacity[9] should not really be interfered with save for any circumstances outlined above.

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[7] *HAL* at para 72.
[8] *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA) at para 8.
[9] See *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) at 114f-115D.

[24] In my view the trial court's finding that the appellant's remuneration comprised only his salary from Trotex in the calculation of his pre-injury earnings and that the profits of Trotex were excluded in the calculation of his patrimonial loss cannot be faulted.

[25] For the reasons set out above, I would have upheld the award of damages by the court *a quo* in respect of the appellant's pre-morbid earnings.

M. HOLDERNESS
JUDGE OF THE HIGH COURT
WESTERN CAPE PROVINCE

Appearances

For Appellant:	Adv. JH Roux SC
	Adv. E Benade
Instructed by:	DSC Attorneys
For Respondent:	Adv. A Montzinger
Instructed by:	The Office of the State Attorney