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

Reportable / Not Reportable

Case no: A04/2026

In the matter between:

PERCIVAL PRETORIUS

Appellant

and

**THE PRESIDING OFFICER OF THE
TRIBUNAL**

First Respondent

(Constituted in terms of section 91 (2) of Act 130 of 1993)

**THE WORKMEN'S COMPENSATION
COMMISSIONER**

Second Respondent

**THE DIRECTOR GENERAL OF THE
DEPARTMENT OF LABOUR**

Third Respondent

THE MINISTER OF LABOUR

Fourth Respondent

Coram: Slingers, J et Mphego, AJ
Heard: 24 April 2026
Delivered: 08 June 2026
Neutral citation: Percival Pretorius and The Presiding Officer of the Tribunal & 3 others A04/2026 [2026] ZAWCHC (08 June 2026)

ORDER

- (a) the appeal is upheld and the decision of the tribunal (tribunal) dated 26 November 2025 that the appellant's permanent disablement remains at 21%, is set aside;
- (b) the appellant's total permanent disablement is declared to be 100%;
- (c) the costs of the appeal, including the costs of proceedings before the tribunal shall be paid by the respondents, jointly and severally, one paying to absolve the other. Such costs shall be costs on an attorney client scale, including the costs of the preparation of heads of argument and shall include the costs of two counsel where so employed

JUDGMENT

Slingers, J et Mphego, AJ

BACKGROUND

[1] The appellant was employed as a long-distance truck driver of 18-wheeler trucks with double trailers and holds a code 14 driver's licence. His duties involved not only driving long distance routes between Cape Town,

Johannesburg, Durban, and Port Elizabeth, but also physically securing loads on the trailers using tarps, ropes, belts, and ratchets.

[2] The appellant sustained three separate back injuries whilst on duty, all resulting from falls that occurred on 25 May 2010, 29 March 2012 and on 8 April 2014.

[3] Three claims were lodged with the second respondent in respect of the above incidents. The appellant testified that he did not receive feedback from the second respondent regarding any of his claims for many years, and that he only became aware of the outcome of the claims through his attorney, Mr Kemp in early 2025. This is borne out by a letter issued by the second respondent on 20 February 2025, nearly 15 years after the first accident. The second respondent confirmed in this letter that the appellant's permanent disablement had been assessed at 21% and that a lump sum amount of R95,185.76 had been approved for his lumbar spine injury. The letter references claim number 10212991 in typed form and claims numbers 10239936 and 10405486 are written in. The letter reads as follows:

'Dear Sir

**COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT,
1993**

EMPLOYER: AM TRANSPORT PTY/LTD GERVALLEY¹

EMPLOYEE NAME: PERCIVAL PRETORIUS

IDENTITY NUMBER: 6[...]

DATE OF ACCIDENT: 31 MAY 2010

¹ It is common cause that on 8 April 2014 when the appellant suffered his third injury, he was employed by Siegies Transport and not at AM Transport – see V1, pg 6, ln 5

We would like to confirm that the claim for compensation in respect of the above-mentioned accident has been processed, and the following payment(s) made, based on the information received:

*Your permanent disablement has been assessed at 215 according to the Medical Report. A lumpsum to the amount of **R95185, 76** has not been approved in your favour for the **Lumbar Spine Injury** suffered as a result of the accident.’²*

[4] In correspondence dated 30 April 2025, the second respondent set out the calculation for the appellant’s compensation as:

‘TOTAL CALCULATIONS

1. *Liability accepted for lumbar spine injury.*
2. *PD is calculated for the 3 lower back injuries.*
3. *PD:*
 - (a) *Instr 157: 2 level fusion- 15% +5% = 20%*
 - (b) *Loss of sensation- first reported on the 3rd final medical report – with insufficient detail to award PD. No PD awarded.*
 - (c) *Pain: Awarded discretionary 15 PD for moderate pain (AMA guide).*
 - (d) *Total PD: 21%’*

[5] The appellant lodged an objection against this decision of the second respondent on 17 April 2025 and the matter proceeded to be heard by a tribunal comprising Mr Mkhonto (Chairperson), Mr Phantshwa (Employer

² It was accepted that the letter should have read that the amount has been approved and not that it is *not* approved.

Assessor), Ms Adams (Employee Assessor), and Dr Gqokoma (Medical Assessor).

[6] On 26 November 2025 the tribunal handed down its decision confirming the second respondent's finding that the appellant was only 21% permanently disabled. This is an appeal in terms of section 91(5) against the tribunal's decision confirming the second respondent's finding that the appellant was only 21% permanently disabled (**'pd'**).

GROUNDS OF APPEAL

[7] The grounds of appeal are primarily that:

- (i) the appellant's uncontested evidence together with the medical evidence justified a finding that the appellant's injuries resulted in him being 100% permanently disabled;
- (ii) the undisputed facts and medical evidence justified a finding that the appellant was 100% disabled in respect of his ability to return to work;
- (iii) the first respondent erred in confirming the second respondent's calculation of the appellant's permanent disability which placed mechanical reliance on impermissible instruments such as the American Medical Association's Guides to the Evaluation of Permanent Impairment, Sixth Edition (**'AMA guides'**) and circular instruction 157 (**'the circular'**); and
- (iv) the compensation awarded to the appellant was so inadequate that it could not reasonably have been awarded.

THE HEARING BEFORE THE TRIBUNAL

- [8] Only the appellant and Dr Oelofse, who is an orthopaedic surgeon testified at the tribunal. The respondents presented no evidence.
- [9] The appellant testified that he had been injured on three separate occasions and that each injury resulted in him undergoing an operation.
- [10] When he attempted to return to his previous work as a truck driver after his last injury he was 'let go' because he would stop along the routes for long periods of time to mitigate the pain he experienced from sitting. He experienced numbness in his left leg describing his left leg as approximately "80% dead". This numbness has negatively affected his balance. It is noteworthy that this evidence was not challenged or disputed during the appellant's evidence.
- [11] The appellant also testified that he is unable to gain any meaningful work and survives on casual employment, such as assisting a panel beater, despite great discomfort and pain when sitting upright for a prolonged period. He also worked informally on farms earning an average of R3,500 per month. The appellant has taken up casual employment because it was the only way he could buy food as he had no other source of income.³ However, his injuries do not allow him to work full time or to work a full week. He is in constant pain and struggles to sleep.
- [12] The appellant received medical advice that he should be very careful and look after his back like it was gold.⁴ Furthermore, the casual work which the appellant undertook such as planting vines in ready-made holes would complicate the injuries he sustained.⁵

³ V1, pg 19

⁴ V1, pg 47-48

⁵ V1, pg 55

- [13] Overall, the appellant's evidence was not challenged by the tribunal. The only aspect which was interrogated was the appellant's failure to apply for a SASSA grant.
- [14] Dr Oelofse (**'Oelofse'**) testified before the tribunal and provided a medical report that was placed before the tribunal. In his medical report, Oelofse testified that he was a Master of Orthopaedics and that he qualified with a MBCHB in 1965 and obtained a MMed SCI Anatomy in 1974 and a MMed Orthopaedics Cum Laude in 1979. He also has an advanced medical professional diploma and a certified international medical examiner diploma.
- [15] In his medical report which served before the tribunal, Oelofse detailed the three operations performed on the appellant . The first operation was a laminectomy and discectomy (L4/L5 -L5-S1) performed by Dr Coetzee. Approximately two and a half years later Dr Coetzee performed a disc prolapse of L-L5 in which the disc prolapse was restored and a laminectomy was done. The third operation was a L4-L5, L5-S1 laminectomy and a spinal fusion (L4-S1) and was performed by Dr Eksteen.
- [16] Oelofse noted that the appellant had severe degeneration at the L3-L4 and also at the L2-L3. He also recorded that the appellant still experiences severe pain and that he has difficulty undressing, getting up from a chair, getting on and off the examination table and climbing stairs.
- [17] Oelofse noted that the appellant has reduced sensation L5 on the left and explain that this was the numbness of the left leg and foot as testified to by the appellant. He stated that the fact that it was on the outside of his leg places the appellant at risk of harming himself without noticing it. The appellant could

suffer a burn or a laceration, and he would not be aware of it unless he saw blood. This was a very dangerous situation for the appellant.⁶

[18] Oelofse testified that the appellant was 100% incapacitated to perform his previous work.

[19] During questioning by Ms Peter for the second respondent, Oeelfse testified that he found the appellant physically very dysfunctional. This finding was based on his physical examination during which the appellant was requested to bend down and touch the floor. The appellant could only bring his fingertips to his mid-calf and could bend no more. An average person is able to extend their back to 160 degrees. The appellant could only extend it to 10 degrees and suffered severe pain in doing so. The appellant could only get up from bending and extending his back to 10 degrees by pressing against his thighs in order to enable him to come up to a neutral position.⁷

[20] Oelofse assessed the appellant's physical permanent disability at 23% using the AMA guides and found the appellant to be 100% functionally incapacitated to do his previous work as a truck driver. Oelofse explained that the AMA guides only address physical (anatomical) impairment, not functional incapacity and that the latter requires clinical judgment.

[21] Oelofse expressly stated that there are "no guides whatsoever" for assessing functional incapacity and suggested that an industrial psychologist's input would also be beneficial. He acknowledged that he did not refer the appellant for an occupational therapy functional capacity evaluation and did not find it necessary to do so.

⁶ V 1, pg 68

⁷ V1, pg 74

- [22] Oelofse testified that if the appellant continued working and if he does anything that puts pressure on his back, it could aggravate his condition.
- [23] The first respondent ultimately found that the medical evidence presented was "*not challenged save for the issue of 21% PD versus 100% PD*". It held that the facts and medical evidence did not prove any fault on the part of the second respondent in awarding 21% permanent disablement and dismissed the appellant's objection.
- [24] In *Pretorius v Compensation Commissioner and Another*⁸ the court held that the tribunal is enjoined by the Compensation Act to apply, with the necessary alterations, sections 6, 7, 45 and 46 of the Compensation Act. It highlighted that the tribunal's role under COIDA is more inquisitorial than adversarial in nature and that it is neither a partisan nor a dispassionate spectator. On the contrary it must participate in proceedings to the extent required to reach an equitable decision.
- [25] Section 7 of COIDA empowered the tribunal to authorise any medical practitioner to investigate any matter that it may deem necessary for the performance of its functions.
- [26] Notwithstanding its inquisitorial role and the power to call for further medical evidence, the tribunal called for no evidence and determined the matter solely on the evidence presented for the appellant and legal argument.
- [27] Material aspects of both the appellant's and Oelofse's evidence were not challenged in cross-examination. Therefore, it can be accepted that their unchallenged evidence was accepted as correct and were not disputed.⁹

⁸ (2010) 31 ILJ 1117 (O)

⁹ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC) at para [61]

LOSS OF SENSATION- NO PD AWARD

- [28] As seen from the second respondent's calculations for the determination of the 21% total pd, it found that there was insufficient detail to award for pd.¹⁰
- [29] As stated above, both the appellant's factual evidence and Oelofse's expert evidence that his left leg and foot was 80% dead and that the numbness posed a danger to him were not disputed. As this evidence was not challenged or disputed, the appellant was entitled to accept that the tribunal accepted it as correct.
- [30] If the tribunal was of the view that the appellant's evidence and that of Oelofse contained insufficient detail to warrant a pd award for loss of sensation, it should have informed the appellant during his evidence. This would have provided him with the opportunity to address any concerns the tribunal had. This is inherent in the right to a fair hearing.
- [31] Furthermore, as stated in *Roelofse v Compensation Commissioner*:
"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".
- [32] Therefore, it was expected of the tribunal to set out its reasons for confirming the second respondent's finding that there was insufficient evidence to award a pd compensation for loss of sensation and for questioning Oelofse's evidence in its judgment. However, the tribunal's judgment is silent on this aspect and it appears that it did not properly apply its mind to this aspect of the award.
- [33] Consequently, in our view, the tribunal materially erred in confirming the second respondent's finding that there was insufficient evidence to grant the

¹⁰ See paragraph 4 supra

appellant a pd award for loss of sensation as this finding cannot be sustained by the evidence and the legal principles.

COIDA

[34] The preamble of COIDA states that it was enacted:

'To provide for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases; and to provide for matters connected therewith.'

[35] In *Jooste v Score Supermarket Trading (Pty) Ltd (Minister of Labour Intervening)*¹¹Yacoob J stated that COIDA:

"is important social legislation which has a significant impact on the sensitive and intricate relationship amongst employers, employees and society at large. The state has chosen to intervene in that relationship by legislation and to effect a particular balance which it considered appropriate."

[36] In *Mahlangu and another v Minister of Labour and others*¹² the Constitutional Court stated that:

"[52]...To divorce COIDA from social security because it amounts to "compensation" misses the wide net of social security, which section 27 provides for and seeks to address. For the reasons that follow, COIDA

¹¹ 1999 (2) SA 1 (CC)

¹² 2021 (2) SA 54 (CC)

*must now be read and understood within the constitutional framework of section 27 and its objective to achieve substantive equality.”*¹³

*[53] In determining the scope of the right to social security, one must have regard to section 39(1)(a) of the Constitution which requires that an interpretation of the Bill of Rights must promote the values that underlie an open and democratic society based on human dignity, equality and freedom.*¹⁴

[54] In Khosa this Court held that equality is a foundational value which must inform the interpretation of the Bill of Rights, including the right to have access to social security. The Constitution itself makes it clear that socio-economic rights must be bestowed on an equal footing by declaring that those rights are held by “everyone”.

[37] It is trite that COIDA is social legislation and that the right to access social security is entrenched as a fundamental right in the Bill of Rights and that the right to compensation for occupational injuries is an important component of the right to access social security. Thus, section 27(1)(c) forms the foundation of the enforcement and regulation of the rights contained in COIDA.¹⁵

[38] COIDA defines permanent disablement as:

‘in relation to an employee and subject to section 49, means the permanent inability of such employee to perform any work as a result of

¹³ Section 27(1)(c) of the Constitution provides that *‘Everyone has the right to have access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.’*

¹⁴ Section 39(2) of the Constitution provides that *‘When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.’*

¹⁵ Jakob, O. 2014. *The regulation of temporary employment services in South Africa*. Mini-dissertation submitted in partial fulfilment of the requirements for the degree Magister Legum in Labour Law, North-West University, Potchefstroom, page 15

an accident or occupational disease for which compensation is payable.'

Material to the determination of this appeal is the definition to be assigned to the phrase '*any work*' in this definition.

[39] The appellant argues that the phrase *any work* in the definition of permanent disablement should be given a restrictive meaning and contextualised by the work performed or carried out by the employee at the time of injury. This restrictive interpretation of *any work* would be consistent with a generous interpretation to be followed when interpreting COIDA. The respondents argues that it should be given its literal wide meaning and not limited by the work performed by the employee at the time of his injury. Rather, it should be defined by employability on the open labour market.

[40] Guidance to interpreting the phrase *any work* is found in the recent decision of *Katha v Pillay NO and Others*¹⁶ that quoted the Constitutional Court decision of *AmaBhungane Centre for Investigative Journalism NPC V President of the Republic of South Africa*¹⁷which held that:

'As always, in interpreting any statutory provision, one must start with the words, affording them their ordinary meaning, bearing in mind that statutory provisions should always be interpreted purposively, be properly contextualised and must be construed consistently with the Constitution. This is a unitary exercise. The context may be determined by considering other subsections, sections or the chapter in which the key word, provision or expression to be interpreted is located. Context may also be determined from the statutory instrument as a whole. A

¹⁶ 2026 (1) SA 382 (SCA) at para [19]

¹⁷ 2023 (2) SA 1 (CC); see also *Katha v Pillay NO and Others* 2026 (1) SA 382 (SCA) at para [19]

sensible interpretation should be preferred to one that is absurd or leads to an unbusinesslike outcome.'

- [41] Further guidance in interpreting *any work*, the court is guided by the decision of *Davis v Workmen's Compensation Commissioner*¹⁸ that held that COIDA should not be interpreted restrictively so as to prejudice a workman if it is capable of being interpreted in a manner more favourable to him.¹⁹
- [42] General interpretation principles oblige the court to consider the objectives COIDA seeks to achieve as social legislation as well as the obligation imposed on it by section 39(2) of the Constitution. Any interpretation *any work* must be consistent with the purport, objectives and spirit of the Constitution.
- [43] The right to dignity is a founding value of our Constitution and is enshrined in section 7(1) thereof. In our view, the right to dignity is directly affected by the definition of the phrase *any work*. This follows because the nature of employment and the remuneration received therefrom directly affect an employee's level of comfort and lifestyle which is an integral aspect of personal dignity.
- [44] An employee, such as the appellant in this case, may be rendered unable to perform his tasks and duties associated with his employment as a result of the injuries he sustained and the sequelae thereof. However, such an employee may be employable on the open job market which remunerates him at a fraction of what he earned prior to his injuries. Such as person would on the restrictive interpretation proposed by the respondent is not 100% permanently disabled.

¹⁸ 1995 (3) SA 689 (c)

¹⁹ See also *Healy v Workmen* 2010 (2) SA 470 (E)

- [45] However, the reduced remuneration would compromise and reduce that employee's level of comfort, quality of life and lifestyle which in turn would negatively affect that employees personal dignity.
- [46] Such an interpretation would offend against section 39(2) of the Constitution and would undermine COIDA being an instrument of social justice.
- [47] A wide definition of *any work* would contextualise it by work performed by the employee at the time he sustained his injuries. In determining whether an employee is permanently disabled, a court should inquire whether and to what extent an employee is still useful for the labour market in line with his employment, and the disablement should be assessed in light thereof.²⁰
- [48] This wide definition would, in our view, discharge our obligation in terms of section 39(2) of the Constitution, would recognise the objectives of COIDA and would give effect to the spirit, purport and objectives of the Constitution.
- [49] The undisputed evidence in this case is that the appellant cannot continue working as a long-distance truck driver. The tribunal dismissed the appellant's objection because it found that he *'remained capable of undertaking other tasks which as tribunal heard include working on a far which is not an office or "soft skill" activity does not support the conclusion of 100% PD.'* (sic)²¹
- [50] It is evident from the above excerpt that the tribunal assigned a wide meaning to the phrase *any work*. However, this definition is not compatible with the general interpretative principles and is contrary to decision of *Davis* and section 39(2) of the Constitution.

²⁰ Jakob, O. 2014. *The regulation of temporary employment services in South Africa*. Mini-dissertation submitted in partial fulfilment of the requirements for the degree Magister Legum in Labour Law, North-West University, Potchefstroom.

²¹ Paragraph 23 of the tribunal's judgment

- [51] Therefore, we are of the view that a more restricted interpretation of *any work* is appropriate. On the application of this definition of *any work* the appellant would be entitled to a pd award of 100%.
- [52] Even if the wider interpretation of *any work* was applicable, the tribunal's finding that the appellant remained capable of undertaking other tasks is not supported by the uncontested evidence that the appellant was severely functionally compromised that that he was undertaking casual employment because there was no other source of income. Therefore, this finding by the tribunal is irrational and not supported by the uncontested evidence.
- [53] In our view, this finding is contrary to the objectives of COIDA and is manifestly unfair to the appellant, who out of desperation, acted against medical advice at great risk of future harm to earn an income. The tribunal's finding confuses the question of desperation with that of employability.

AMA AND INSTRUCTION 157

- [54] In its analysis of the evidence the tribunal stated that:

'18. The only contention in the evidence was the Respondent's submission that AMA guide cannot be excluded as a guide even if not a deciding factor in the calculation of PD. The medical evidence presented was not challenged save for the issue of 21% PD versus 100% PD.

19. The Respondent submitted that the 21% PD awarded was correct and that it was based on the correct calculation and AMA guide.'

and

'22. A submission was made by the Respondent that internal policy Circular 157 should be disregarded as there is no law that it is to

be used. Adv. Peter in respect of circular 157 which is an internal policy, conceded that Circular 157 is a guide only and not lawfully bound, but that the guide that governs the Act is contained in the Act under Schedule 2, which is what the fund relies on.'

- [55] It is clear from the above that Circular 157 and the AMA guides featured prominently in the second respondent's calculations of the pd award, which was endorsed and confirmed by the tribunal.
- [56] While AMA has direct applicability to Road Accident Fund (**'RAF'**) claims²² its application to COIDA has been questioned.
- [57] In *Botha v FEMA and Others*²³ (**'FEMA'**) the court held that it was unfathomable and impermissible to use the models used in RAF claims for damages to purportedly determine the level of permanent disablement in terms of COIDA.²⁴
- [58] As is made clear in the AMA guides itself, impairment is not disability and whole person impairment ratings under the AMA guides does not automatically translate to the same percentage of permanent disablement in terms of COIDA. Therefore, caution should be applied if and when applying the AMA guides to COIDA as it is clear that the AMA guides cannot simply be transplanted to COIDA.
- [59] In the present matter it appears as if the AMA guides were applied mechanically as evidenced by the tribunal's award of 1% for moderate pain. This award is contrary to the appellant's evidence that he is in constant pain

²² The AMA find statutory application to claimants under the Road Accident Fund Regulations published under GN R770 in GG 31249 of 21 July 2008

²³ [2022]JOL 574047 (GSP)

²⁴ See also *Healy v Workmen* 2010 (2) SA 470 (E) at para [21]

and Oelofse's unchallenged evidence that the appellant suffers constant severe pain.

[60] In FEMA the court held that:

'[68] The application of the guidelines contained in the Circular Instruction 157, is arbitrary and contrary to the mechanisms set in place by and for the determinations intended in the provisions of COIDA. A determination based thereon undermines the categorisation of injuries in terms of COIDA as a means to determine the level of permanent disablement of an injured employee.

[61] The court drew a critical distinction between the statutory mechanism and the circular instructions:

"The provisions of the Act envision the individual medical assessment of the injuries sustained for purposes of; the identification and placing thereof in the correct category in order to facilitate the determination of the percentage of compensation payable, based on the earnings of the injured at the time the injury was sustained. The circular instructions on the other hand, though often asserted to factor in medical evidence, provide an abstract and arbitrary mathematical calculation of the extent of permanent disablement."

[62] We agree with the above criticism levelled against circular 157 and agree that it is arbitrary and contrary to the objectives of COIDA. A mechanical approach of the AMA guides and circular instruction 157 is contrary to the decision of *Department of Labour: Compensation Commissioner v Botha*²⁵ which held *inter*

²⁵ (2022) 43 ILJ 1066 (SCA)

alia that the extent of an employee's disability must be determined by the facts of the specific case and according to medical evidence.

[63] Even if we are wrong in this regard, the pd award of 15%

[64] In the present matter it is common cause that the appellant underwent three level 2 laminectomies.

[65] Instruction 157 is an internal policy document and acts as a guideline for the assessment of permanent disablement. These guidelines include the following:

(a) fusion- 15% plus 5% for each additional level; and

(b) laminectomy- 10% plus 5% for each additional level

[66] This resulted in the second respondent awarding and the tribunal endorsing an award of 15% plus 5% for 2 level fusion. However, it appears that this award of 20% pd was only in respect of a single laminectomy. Had an award been made in respect of all three laminectomies the appellant underwent, it would have been expected that a higher pd award would have been made.

[67] The second respondent's letter of 20 February 2025 supports the proposition that the appellant was only awarded for a single injury. The letter only references the appellant's employee at the time of his injury on 31 May 2010. The body of the letter references '*claim for compensation in respect of the **above-mentioned accident***', which is singular (our emphasis). The letter goes on to state '*...approved in your favour for the **Lumbar Spine Injury***'- again it references as singular injury.

[68] No explanation was furnished to explain the content of the letter of 20 February 2025.

COSTS

[69] The appellant's first injury occurred in 2010. His claim with the second respondent and first respondent was finalised close onto 15 years later. No explanation for this delay was furnished.

[70] Furthermore, as in *Felix* the Tribunal's misdirection and their consequences to the appellant, coupled with the delay in finalising his claims with the obvious attendant prejudice to him warrants a punitive costs order.

ORDER

[71] After considering the factual evidence and legal principles, we find that:

- (a) the appellant's uncontested evidence together with the medical evidence justified a finding that the appellant's injuries resulted in him being 100% permanently disabled;
- (b) the undisputed facts and medical evidence justified a finding that the appellant was 100% disabled in respect of his ability to return to work;
- (c) the first respondent erred in confirming the second respondent's calculation of the appellant's permanent disability which placed mechanical reliance on impermissible instruments such as the American Medical Association's Guides to the Evaluation of Permanent Impairment, Sixth Edition (**'AMA guides'**) and circular instruction 157 (**'the circular'**); and
- (d) the compensation awarded to the appellant was so inadequate that it could not reasonably have been awarded.

[72] In the circumstances we make the following orders:

- (a) the appeal is upheld and the decision of the tribunal dated 26 November 2025 that the appellant's permanent disablement remains at 21%, is set aside;

- (b) it is declared that the appellant's total permanent disablement is 100%;
- (c) the costs of the appeal and the costs of the appellant involving the proceedings before the tribunal shall be paid by the respondents, jointly and severally, one paying to absolve the other. Such costs shall be costs on an attorney client scale, including the costs of the preparation of heads of argument and shall include the costs of two counsel where so employed.

H M Slingers
Judge of the High Court

R Mphego
Acting Judge of the High Court

Appearances

For Appellant: Adv. P Rabie / Adv. P Coston

Instructed by: KG Kemp Attorneys

For Respondent/s: Adv. T Masuku / Adv. L Moahloli

Instructed by: State Attorney, Cape Town.