




IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 36545/2016

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: <del>YES</del> /NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED	
27/05/2026	
DATE	SIGNATURE

In the matter between:

**DLANGAMANDLA MDUDUZI LOVEOSE**

**PLAINTIFF**

and

**THE ROAD ACCIDENT FUND**

**DEFENDANT**

**LINK NO : 3667324 & 3913563**

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## JUDGMENT

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### INTRODUCTION

[1] This is a delictual claim for damages as a result of a motor vehicle collisions which occurred on the 16<sup>th</sup> March 2014 and 12<sup>th</sup> of August 2014. The matter appeared before court by a way of default judgment application on the 17<sup>th</sup> of February 2026.

### PARTIES

[2] The Plaintiff is **Dlangamandla Mduduzi Loveose** an adult male person with full legal capacity, who was born on 31<sup>st</sup> of May 1976 ("the Plaintiff") and who is currently forty-nine (49) years of age. At the time of the collision, the Plaintiff was thirty-eight (38) years old.

[3] The Defendant is the **ROAD ACCIDENT FUND**, a juristic person established in terms of section 2(1) of the Road Accident Fund Act 56 of 1996 ("*the Act*") with full legal personality and of address 38 Ida Street, Menlo Park, Pretoria, Gauteng.

### ISSUES TO BE DETERMINED

[4] Future medical expenses

[5] Loss of earnings (Past and Future)

- [6] General damages, as the Defendant has made a determination about the seriousness of the injuries in terms of the RAF 4 forms.

## APPLICATION TO ADMIT EVIDENCE BY WAY OF AFFIDAVIT IN TERMS OF

### RULE 38 (2) OF THE UNIFORM RULES

- [7] The Plaintiff made an application in terms of Rule 38(2), in order to lead evidence by a way of an affidavit. Such application was properly served and accompanied by the expert affidavits. The application was granted.

In this regard the Plaintiff evidence is unchallenged and uncontested as the Defendant's plea was struck off by the court.

The Plaintiff applied that his quantum evidence be admitted by way of affidavit.

This included:

- 7.1. The Plaintiff's quantum evidence and collateral witness evidence; and
- 7.2. In terms of the Judge President's Practice Directive 1 of 2021 (paragraph 29), evidence may be tendered by affidavit, and the Trial Judge may exercise his/her discretion to accept such evidence.
- 7.3. In the matter of ***Abraham v City of Cape Town***<sup>1</sup>, the Court held:

*"It was common cause before me that where an application for default judgment serves before a Court, it has a clear and unfettered discretion*

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<sup>1</sup> 1995 (2) SA 319

*in terms of the relevant Rule of Court to decide whether or not to hear oral evidence on any of the issues which may require to be decided in order to determine whether or not to grant the relief claimed."*

- 7.4. In ***Mnisi v The Road Collision Fund and Seven Similar Matters***<sup>2</sup>, the court held and quoted the following at paragraph 52:

*"The subrule provides a mechanism whereby the court may on application and if sufficient reason is shown, allow that evidence be given on affidavit. Firstly, there must be an application to adduce evidence by affidavit. Secondly, there must be sufficient reason for doing so and thirdly, the court may lay down the terms and conditions for the evidence to be adduced. In Madibeng Local Municipality v Public Investment Corporation Ltd 2018 (6) SA 55 (SCA) at 25, the Supreme Court of Appeal expressed itself over subrule 38(2): 'The approach to rule 38(2) may be summarised as follows. A trial court has a discretion to depart from the position that, in a trial, oral evidence is the norm. When that discretion is exercised, two important factors will inevitably be the saving of costs and the saving of time, especially the time of the court in this era of congested court rolls and stretched judicial resources. More importantly, the exercise of the discretion will be conditioned by whether it is appropriate and suitable in the circumstances to allow a deviation from the norm. That requires a consideration of the following factors: the nature of the proceedings, the nature of the evidence, whether the application for evidence to be adduced by way of affidavit is by*

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<sup>2</sup> [2022] ZAMPMBHC 23

*agreement, and ultimately, whether, in all the circumstances, it is fair to allow evidence on affidavit.*

And at paragraph 53:

*“Plaintiffs in RAF matters often request the court to accept evidence upon affidavit. Especially now where in most RAF matters there is no appearance by the RAF or where the RAF has not participated in the pre-trial proceedings or where the RAF has not defended the action and/or failed to deliver and file a plea. Of course, where the RAF does not appear at the trial, there will be no request for cross-examination as provided for in the subrule. Therefore, subject to what I sent out in paragraphs 61<sup>3</sup> and 62<sup>4</sup> below, I see no reason why Rule 38(2) may not actually be used to contribute to the speedy and cost-effective delivery of justice in RAF matters.*

7.5. The Plaintiff served all information and documentation on the Defendant.

7.6. This is a quintessential example of a matter that can be disposed of by way of affidavit to save time and costs.

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<sup>3</sup> Paragraph 61 of the judgment: *“In my view, the approach in RAF matters in circumstances set out above where there is no participation by the RAF at all or only limited participation or there is no appearance when the trial is called for hearing, the approach to be adopted should be on basis of what is set out by Froneman J Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others (CCT 39/10) [2010] ZACC 26; 2011 (4) SA 113 (CC) ; 2011 (3) BCLR 229 (CC)”*

<sup>4</sup> Paragraph 61 of the judgment: *“In my view, the approach of Froneman J applies to RAF actions where the circumstances set out in this judgment apply. The court should be extremely astute and consider all the information before it which includes the pleadings, documents that were discovered, all reports by the experts and all affidavits (if filed) before the trial commences to determine the way to approach the trial. The pleadings, the facts that appear from what is in the court file and the expert reports, (especially whether the findings therein) tally with the rest of the information ...”*

- 7.7. The Plaintiff requested that the expert affidavits and the affidavits in respect of the quantum evidence of the Plaintiff be admitted as evidence.
- 7.8. Insofar as any of the experts in their reports rely upon hearsay evidence the Honourable Court was respectfully requested to admit the said hearsay evidence as an exception to the hearsay rule.
- 7.9. The application in terms of Rule 38 (2) was granted by the court.

**[8] QUANTUM:**

- 8.1. The issues to be decided in this matter are what should be the fair, reasonable and appropriate amount for general and special damages (loss of earnings), the contingencies to be applied to the calculations and future medical expenses to be incurred by the Plaintiff in the future.
- 8.2. In quantifying its claim, the Plaintiff obtained medico-legal reports from the following experts in support of her claim:
- 8.1.1. Dr P Engelbrecht (Orthopaedic Surgeon);
  - 8.1.2. Dr H Gauche' (Radiologist);
  - 8.1.3. Dr N Adroos (Radiologist);
  - 8.1.4. Dr M Bongers (Urologist);
  - 8.1.5. W Pretorius (Industrial Psychologist);
  - 8.1.6. Dr P Peirce (Ophthalmologist);
  - 8.1.7. Dr JPM Pienaar (Plastic and Reconstructive Surgeon);
  - 8.1.8. G Cilliers (Physiotherapist);

8.1.9. Dr Mazabow (Neuropsychologist);

8.1.10. Dr PJ Nel (Specialist Surgeon);

8.1.11. Dr L Nel (Psychiatrist);

8.1.12. N Hyde (Occupational Therapist);

8.1.13. Alex Munro (Actuary)

[9] The Defendant did not appoint any medico-legal reports.

[10] The Plaintiff's reports are unchallenged, it was correctly submitted by the Plaintiff's counsel that they remain uncontested, and they should be admitted as evidence in terms of Rule 38(2). An application in terms of the said rule was granted.

Herewith follows a summary of the Plaintiff's claim based on the aforementioned reports.

### **INJURIES SUSTAINED**

Mild concussive head injury, with a Glasgow coma scale of 13/15

Facial injuries including injury to both eyes

Injury to the left elbow

According to the Orthopaedic surgeon, S36, injury of intra-abdominal organs (kidney contusion)

Injury to head and left eye

Injury to abdomen

Injury to knee

Laceration of 1.5cm above the right eye

Injury to neck, right scapula area as well as left ankle.

## **QUANTUM**

### **[11] EXPERT MEDICO-LEGAL REPORTS:**

There are twelve (12) experts for the Plaintiff. No expert reports were filed by the Defendant. Consequently, there are no joint minutes, as only the Plaintiff's expert opinions are on record.

### **[12] Past medical expenses**

The Plaintiff attended a public hospital, hence there are no past medical expenses that were incurred. The court was not referred to any medical vouchers incurred.

### **[13] FUTURE TREATMENT AND ASSISTIVE DEVICES:**

The experts foresee that future treatment will be required. It is the court's view that this head of damage should be covered from an undertaking to be awarded to the Plaintiff, in terms of section 17 (4)(a) of the Road Accident Fund Act.

### **TREATMENT ENVISAGED IN THE FUTURE:**

13.1. The Neurologist recommends conservative treatment. Total cost per annum for comprehensive pharmacological and non-pharmacological treatment of chronic post –Traumatic Headaches/Migrane Type including treatment for sequela and complications that are in private sector of RSA is R70 000-00 (seventy thousand rand) per annum

conservatively. This includes pharmacological and non – pharmacological treatment, doctors.

13.2. The Plaintiff will require surgery to his left knee (arthroscopic procedure), a decompression procedure of his right shoulder and a 3% (three percent) possibility of a cervical spine decompression, fusion and instrumentation. In addition, provision should be made for conservative treatment.

13.3. The Plaintiff will require 50 (fifty) to 75 (seventy five) sessions of psychotherapy.

13.4. **According to the Orthopaedic Surgeon the Plaintiff will require** conservative with NSAIDS (NONSTEROIDAL ANTI-INFLAMMATORY DRUGS) and ANALGESICS

13.5. The Plaintiff will benefit from scar revision surgery.

13.6. The Plaintiff will require occupational therapy as well as physiotherapy and biokinetic rehabilitation. Provision should be made for special adapted equipment as well as domestic assistance.

As a result, the Plaintiff is awarded future medical expenses in terms of Section 17 of the Road Accident Fund Act. In the matter of **Knoetze obo Malinga and Another v Road Accident Fund (77573/2018; 54997/2020 [2022 ZAGPPHC 819; [2023] 1 All SA 708 (GP)**, the CEO of the Defendant offered a blank undertaking for all proven future medical hospital and related expenses in all cases before the court where such are proven and therefore it is held that the Plaintiff is entitled to such an undertaking.

## GENERAL DAMAGES

### [14] The expert opinions.

#### (a) **Dr Piet Engelbrecht (Orthopaedic Surgeon)**

##### THE INJURIES SUSTAINED BY THE PLAINTIFF:

According to the expert the Plaintiff has given up on sport due to leg as well as neck symptoms. He cannot run.

The patient mentions blood in stools, occasional pain of abdomen as well as discomfort.

He remains with pain around right eye, states that right eye vision is impaired.

On daily basis he experiences neck pain, posterior aspect of neck and rotation especially to right side impaired. Pain localises in neck and upper thoracic spine area, described as cramp-like in nature.

Neck spasm noted, T6 compressing fracture with 35% anterior vertebral body height loss.

#### (b) **Dr P C Pierce Ophthalmologist:**

Following the second accident, he complains that his eyes burn when the light is bright.

He has decreased vision in bright light.

The right eye is painful when it is cold.

There was a significant scar of the right upper eyelid just below the brow area and a linear scar in the brow laterally.

The scarring below the right brow involving the upper eyelid area is cosmetically unacceptable.

(c) **Dr Mazabow Neuropsychologist:**

The Plaintiff reports experiencing pain in his abdomen when standing, sitting or when walking for long, and he says that this began after the accident of August 2014. He adds that at times he has blood in his urine.

The wife confirms this and says that it began after the accident of August 2014.

He has stiffness in his neck when turning his head to the right side, which he says has been the case since the accident of August 2014.

His neck pain is also painful when sitting for long and when sleeping at times.

He has lower back pain when walking, sitting for long or bending, and he says that this began after the accident of August 2014.

He has pain in his left ankle after walking distances, and this began after the first accident of March 2014, and this worsened after the accident of August 2014, though he says that this is improving over time.

He no longer plays soccer, which he enjoyed prior to the first accident, because of the pain in his ankle.

He has occasional pain in his left knee, which he says began in 2017.

He has occasional headaches, which are not frequent or intense.

He says that the vision in his right eye remains blurred, especially in bright conditions.

He has difficulty remaining asleep at night and he is fatigued in the daytime, and he thinks that this began in 2020. The wife describes him as "always tired, he does nothing and is always sleeping". She says that this has been the case since August 2014.

Sustained a head injury and left facial nerve palsy, lost consciousness and woke up at the hospital the same day.

Symptoms of headache, cognitive and behavioural disturbances began five (5) days after the accident.

She complains of post traumatic behavioural disturbances, post cognitive disturbance and memory loss.

She sustained a mild head injury, and it has caused chronic symptoms and impairment.

(d) **Dr P J NEL Special Surgeon:**

The Plaintiff walks with a limp.

He has daily abdominal pain and discomfort.

He has haematuria, which is unexplained except for the history of the blunt abdominal trauma.

(e) **Dr Lynette Nel Psychiatrist:**

He has post-traumatic anxiety.

He has chronic severe major depressive disorder and post-traumatic anxiety secondary to accidents of 16 March 2014 and 12 August 2014.

It is already seven years and ten months post-accident and no further significant improvement is expected within the next year.

He qualifies through the narrative test 5.3 chronic nature and impairment as per his psychiatric diagnosis and the life changing sequelae related to the injuries sustained at the time of the accident.

**APPLICABLE CASE LAW FOR GENERAL DAMAGES**

I have considered the several case law as submitted by the Plaintiff's Counsel and I am of the view that R850 000.00 (Eight Hundred and Fifty Thousand Rand) is a fair compensation for his pain and suffering.

**LOSS OF EARNINGS**

(f) **Natasha Van Der Heyde Occupational Therapist:**

**Residual Work Capacity**

In her report opines that, the Plaintiff displayed the strength and endurance for work of light demand in the assessment with poor position tolerance noted and pain reported in most aspect of mobility and agility testing.

He does not meet the demand level for pre- and post-accident position as a scaffold erector that is classified as work of heavy demand when paired with similar positions in the DOT (Dictionary of Occupational Titles)

Reported work related difficulties and conflict after the accidents as reported by the Plaintiff are in line with findings noted on page 6 of Christa Du Toit report after a conversation between herself and Mr Kubayi the Plaintiff's supervisor.

He was a good worker but on return following the accident he struggled with the physical demands of the job and complained about pain in his left ankle.

He is frequently absent from work and noted that it is clear that he is experiencing some physical difficulties that is exacerbated during colder months.

Christa du Toit notes on page 9 that he will in all probability be subject to much longer periods of unemployment for the rest of his career life. In addition, she notes that workplace information confirmed pain and absenteeism which confirms that he (at least in the interim) is a vulnerable worker.

Dr Engelbrecht on page 13 is of the opinion that he has been left with some loss of work capacity, probably not more than 5%. He notes that this would indicate the ability to continue working until normal retirement age although in a lighter capacity.

(g) **CLINICAL PSYCHOLOGIST**

Dr Mazabow notes that Plaintiff was in possession of an unlicensed firearm, which he says he was using for his protection, and he was sentenced to four (4) years imprisonment. He was in prison for two (2) years before being released on parole, in May 2000.

He was unemployed for the next two (2) years and in March 2002, he found work at a steel factory in Boksburg as a steel-cutting machine - operator.

He was retrenched sixteen (16) months later, and he was then unemployed for a further 2 (two) years.

In 2005 he began working for Top Fix Scaffolding in Wadeville as a scaffold-erector. After four (4) years he moved to New Horizons scaffolding in Witbank, in a higher-salaried position, and he remained there for a year.

He then left to take up higher-salaried employment at south scaffolding in Limpopo, as a scaffold-erector, working on a contract, which ended after six (6) months. He was then retrenched and he was unemployed for a year, in 2013.

In January 2014 he began working for Stefanutti stocks in Secunda, as a scaffolding-erector, based at Sasol, working in on oil-tanks. At that time the first accident occurred in March 2014, he had been working there for only twelve months.

(h) **Ms Michelle Baig Industrial Psychologist**

**Career growth and Earning Potential – ‘But for the accident’.**

**Pre -Accident**

- (i) Mr Dlangamandla worked as a general worker for the most part of his initial career and as a scaffolding charge hand during the latter parts of his career.
- (ii) The type of work he performed is in line with his primary level education, reported to be Grade 7. His work experience includes bricklaying, machine operation, and roadworks maintenance.
- (iii) Mr Dlangamandla started gaining experience in erecting scaffolding around 2001, when he also underwent formal training in this regard. From his employment history, it appears he has established a career in this line of work. We also note that he has already experienced career growth working as team leader/ charge hand. Mr Dlangamandla has been mostly working on a contract basis since 1998.
- (iv) At the time of the first accident (6 March 2014), he worked at Consortium Personnel Consultants (labour brokers for Stefanutti Stocks). Mr Dlangamandla worked as a charge hand responsible for erecting scaffolding.

- (v) Based on Mr Dlangamandla's account of his work demands, he is placed in the semi-skilled sector, which is generally associated with physical manual labour. This is also a highly competitive portion of the labour market, saturated with many job seekers with similar profiles. We note that Mr Dlangamandla was employed on a contract basis, which would further limit his earnings and growth potential, due to potential periods of unemployment between contracts and limited career growth opportunities.
- (vi) Mr Dlangamandla was 38 (thirty eight) years old when the accidents occurred. He was thus in the achievement phase of his career. As indicated in collateral information, the nature of scaffolding work is mostly on a contract basis, and he would likely have remained working and competing for employment opportunities on a contract basis, regardless of the accident. It is probable that even if he were to secure other employment (similar to work done in the past) it would likely also have been contract work.

(l) **UNINJURED POSTULATION**

Uninjured, given the information at hand, the following is postulated:

**"But for the Accident" uninjured scenario:**

- (a) At the time of the accident, Mr Dlangamandla's gross earnings for

2013/2014 amounted to R103,350.00 (one hundred and three thousand three hundred and fifty rand) per annum as discussed in 8.6.1.

- (b) As indicated in 8.6.2 his earnings in 2018 have grown to at least an average of R12,686.00 (twelve thousand six hundred and eighty six rand) per month when employed. Mr Dlangamandla indicated that he normally had employment for 12 (twelve) months. Although he noted that he was pre-accident “most of the time” employed for 12 months a year, for conservative calculations, the Court accepts employment for 10 (ten) months a year. Based on this very conservative assumption, his annual earnings could have amounted to R126,860.00 (one hundred and twenty six thousand eight hundred and sixty rand) in 2018 (R12,686 x 10 months employed per annum).
- (c) The Court notes that (injured) in November 2018, Mr Dlangamandla was dismissed due to pain and discomfort related to the accidents which resulted in regular absenteeism. But for the accidents, he would likely not have lost his employment. (He could also have worked for 12 months a year).
- (d) For conservative calculations, accept straight-line increases from his 2013/2014 earnings of R103,350.00 per annum, to earn a conservative, probable income of R12,686.00 p/m, R126,860.00 per annum in February 2018, assuming employed 10 months per annum.

- (e) Mr Dlangamandla would likely have continued working as a Scaffolding charge hand (or similar) on a contract basis. Therefore, the Court accept at least inflation-related growth until retirement age 65. [Note the conservative assumption of 10 months per year employment].

(j) **Contingency Considerations:**

- (a) Given the nature of Mr Dlangamandla's work he may have been unemployed for periods between contracts regardless of the accident. Above the very conservative assumption of employment 10 months a year, the calculation base was suggested. The Court will apply appropriate contingencies.
- (b) As per Dr Mazabow "*Mr Dlangamandla had managed to secure employment for a large portion of his working-life, despite his very limited education (Std 3), and despite his 2 years of imprisonment (and with periods of unemployment also present during that history.) [par. 10.5.2].*
- (c) Dr Bongers indicated in his latest report, "*the kidney in the left, with its abnormality, is not the result of the accident. There are no urological sequelae related to the accident*". The potential impact of non-accident-related health factors on his work and earning capacity should not be considered.
- (k) **POST-MORBID - IMPACT ON EMPLOYABILITY AND WORK CAPACITY**

**Impairment and disability**

- (a) We refer to the previous report and addendum report section 9.1.1 to 9.1.4.
- (b) From the more recent expert reports received, it is noted that WPI ratings from the different experts remain unchanged.

**(l) Post-accident employability and work capacity**

Based on the newest available information and expert opinion, the Court notes (with reference also to the previous reports), the following:

**(m) Physical Ability to Work**

- (a) Post-accident the claimant struggles with pain. Gerda Cilliers indicated "... the claimant complained of experiencing pain to his left thigh and neck. [par 12.1] ... he struggles with left shoulder and upper arm pain as well as left ankle pain ... also struggles with frontal headaches spreading to the right eye, cervical spine pain, left knee pain and left abdominal groin/thigh pain as well as lumbar spine pain. [par 12.2].
- (b) The occupational therapist (Ms van der Heyde) supported this indicating that "Various experts are in agreement that he remains with physical limitations and pain negatively impacting on and restricting his personal and work functioning" [p15].

(c) Ms Cilliers indicated that “He most definitely does not meet the requirements needed for work in the heavy work demands level as a scaffolding erector in my opinion”. [par 12.7].

(n) **Scarring, Psychological and Psychiatric impact on work:**

(a) Dr JPM Pienaar indicated that “His facial scars subject him to social rejection and stigmatization ... This accident has left this gentleman with serious permanent scarring and disfigurement. It seriously affects his appearance and dignity. It causes social anxiety and embarrassment”.

His opinion remains unchanged in his updated report.

(b) The claimant, during the assessment, complained of emotional difficulties. Gerda Cilliers, as well as Ms van der Heyde, indicated “depressed mood”.

(c) Both Dr Mazabow and Dr Nel indicated that he at most experienced a mild head injury with no long-term impact expected.

(d) Dr Mazabow opines that “ ... the primary residual difficulties following from the accident pertain to Mr Dlangamandla’s experience of chronic pain and to the psychosocial sequelae of the accident. [par 10.2]. Dr Nel, in this regard, also indicated that he sustained a mental and behavioural disorder” [p22] and that

“During psychiatric evaluation, *he met the criteria for Major Depressive Disorder with post-traumatic anxiety secondary to the accidents*”. [p24].

- (e) Dr Mazabow indicated that the depressive symptoms include the following: “chronic sadness, discouragement about the future, anhedonia (reduced capacity to experience pleasure, a desire to cry, loss of social interest, difficulty making decisions, lowered energy, sleep disturbance, irritability and fatigue)” [par 10.2.2.2].
- (f) Dr Nel indicated that he needs “an optimised psychiatric treatment plan, ... even with optimally treated, the prognosis will be complicated by the chronic pain he still experiences due to the orthopaedic injuries and the significant scarring” [p24].
- (g) In both Dr Nel and Dr Mazabow’s updated reports of 2025, they maintain their opinions and prognosis.
- (h) An Industrial Psychologist it is noted that the relationship between pain and psychological factors and the impact this has on employment and productivity are well documented. From both a research perspective and our experience, depression and mood disorders serve as highly disruptive factors for both performance level and motivation levels (which in turn also affect performance levels).

- (i) Psychological and Psychiatric factors, as diagnosed and mentioned, are known and expected to influence an individual's work performance. The impact can be incremental at times and significant at others, but overall, this tends to influence the individual's ability to sustain consistent levels of workplace performance, either due to inattention, negligence, or simple loss of motivation.
- (j) Thus, Mr Dlangamandla is considered psychologically more vulnerable because of the accident in question, and his work performance and effectiveness are expected to be negatively affected as a result, should he ever engage in work again (which, from a physical perspective, appears to be unlikely).
- (k) As a charge hand (which also requires a large percentage of heavy work), he is also required to supervise others, delegate tasks, perform very basic administrative work, organise work, etc., all of which require higher levels of cognitive functioning. This is a work element in which he is much more vulnerable after the accidents.
- (l) In summary, we thus agree with Ms van der Heyde, who concluded that "Psychological issues ... (if not optimally treated – note poor prognosis expected as per Dr Nel) are expected to maintain a low mood and energy levels that in turn would keep him from seeking and maintaining gainful employment in future".

(o) **Impact on Work Choices:**

- (a) The Court notes that considering the contract nature of employment and the physical nature of scaffolding erector and charge hand work it is practically unlikely that high levels of accommodation can and will be allowed [The chance that contracted employees are accommodated is small]. Contractors (labour brokers) have a large pool of job seekers at their disposal and thus do not need to employ individuals with limitations or accommodation needs.
- (b) As was above discussed, both Ms van der Heyde and Ms Cilliers are of the opinion that from a purely physical work capacity perspective that he “does not meet the demand level (heavy) for his pre- and post-accident position as a scaffold erector in terms of strength, with poor position tolerance and biomechanical weakness noted (and pain reported in his left lower limb and spine noted as the limiting factor) in inherent job demands. [p15]. Ms van der Heyde, in fact, concludes in her 2025 report that he can be viewed as unemployable in the open labour market (p 14, conclusion).
- (c) Psychologically, psychiatrically (also due to pain and scarring), his intrapersonal functioning (motivation, drive, energy, self-regard, executive functioning, etc) as well as interpersonal functioning is limited. His work choices are therefore also severely limited in this regard.

- (d) The expert concluded that he is a very poor candidate for employment with extremely limited (if not no) real/realistic job options. The fact that he has remained unemployed since 2018/2019 after job loss, probably due to the accident) and reportedly failed medical assessments during job applications (reported but not validated; reasonable expectation), further supports this. Mr Dlangamandla can well be expected to remain uncompetitive in the open labour market and Psycho-Legal Evaluation Report Dr. W. Pretorius Confidential 25 PS0054771.
- (e) Ms van der Heyde expressed a similar opinion indicating that “He is physically deconditioned and does not meet the demand level (heavy) for his pre- and post-accident position as a scaffold erector in terms of strength, with poor position tolerance and biomechanical weakness noted (and pain reported in his left lower limb and spine noted as the limiting factor) in inherent job demands. [p15].
- (f) In her updated report (2026/02/09) Ms vd Heyde notes that he still only displayed the strength for work up to light demand in her reassessment, with poor position tolerance noted and pain reported in most aspects of mobility and agility testing (p 13, par 8.2.1), and ultimately remains of the opinion that he is unemployable in the open labour market and remain unemployed. In the unlikely event of

securing employment, it will probably be for a short contract or for limited days per month, with a considerable risk of not maintaining it.

(p) **Competitiveness**

- (a) The claimant was employed before the accident most of the time. It can be expected that he was at least an equal competitor with his peers in his uninjured state, and his experience and skills likely counted in his favour, supporting the regular employment he enjoyed and was expected to continue to secure.
- (b) Mr Dlangamandla employment pattern thus drastically changed post accident. It is not uncommon to see a pattern in which a financially motivated competitor initially secures employment, often because of pre-accident reputation and work performance. After accepting employment (that he is not suitable for and where no substantial accommodation was possible or offered) a pattern starts where the competitor struggles to retain employment (he lost employment twice), due to pain, need for treatment, physical and psychological work capacity limitations negatively impact on work performance), a pattern then develops of longer periods of unemployment between contracts, and loss of work, until the individual reaches a point where they struggle to compete for any contract work. Past contractors become aware of their limitations and inability, and the relationship deteriorates, the employers become less willing to offer new

contracts, and ultimately, the individual no longer secures employment from these contractors as they become known for their inability.

(c) As discussed above, the claimant's physical and psychological work capacity, as well as work choices, are very limited.

(d) Ms van der Heyde, in this regard, notes that "His low level of education (Grade 6) limited skills repertoire and current displayed physical ability (light demand work) is expected to significantly limit his employment options in the open labour market. His low level of education is expected to exclude him from sedentary to light positions (he is physically suited for), and his physical ability would exclude him from physical manual labour (medium/heavy demand) *within his field of experience/skill*". She ultimately concludes in her 2025 report that he is unemployable, and the writer is inclined to agree with this assessment as the most likely scenario. His physical capacity and prolonged unemployment support the view that he has probably become uncompetitive for the work associated with his profile, leading to the expectation that he will simply remain unemployed.

(q) **Career prospects and residual work and earning capacity**

- (a) It is concluded that Mr Dlangamandla is post-accident not suited to work in his pre-accident position of scaffolding erector or charge hand [Note: post-accidents, he twice lost his employment in this capacity]. He is also not a candidate for the work that meets his residual capacity.
  - (b) The current writer agrees with the opinion of Ms van der Heyde and that he will probably remain unemployed.
  - (c) From a considerably optimistic possible scenario perspective, it is possible that he could secure some form of highly accommodated and sympathetic employment for a short contract period or “piece job” employment for limited days per month. In this scenario, he will, however, remain with a considerable risk of not maintaining such employment.
- (r) **“Having regard to the accident” (Injured) postulation.**

With reference to the discussion in sections 8 and 10.2 we conclude as a basis for the injured earnings postulation:

- (a) As indicated by the occupational therapist, he will not be suitable for other manual worker jobs such as “... driver, cleaner, security guard, etc.” The Court agrees with Ms van der Heyde that he is probably uncompetitive and unemployable in the open labour market.

- (b) Considering Mr Dlangamandla's level of education (Grade 7), current age (42) and past work experience (physical labour positions) as well as considering the discussion in section 10.2 it seems that the most probable future scenario for the claimant is that he will remain uncompetitive and unemployed.
- (c) From a very optimistic perspective, it seems possible that he could benefit from treatment. If it is further considered that he may be able to secure some or other highly accommodative and sympathetic employment, then it is theoretically possible that he can secure employment (accept very optimistically for 20% of the time with earnings comparable to the national minimum wage), growing with inflation to age 60 when he will become totally unemployable. [Note this is considered a considerably optimistic postulation].
- (s) **"Having regard to the Accident" (Injured) Calculation:**
- (a) After the accidents Mr Dlangamandla resigned 9 March 2015 as he was unable to cope with the job demands. [Accept that he at the time was earning gross earnings for 2013/2014 which amounted to R103,350.00 per annum as discussed in 8.6.1].
- (b) All information indicates a period of unemployment following Mr Dlangamandla's resignation.

- (c) He secured employment on 24 February 2017 until 31 May 2017 when he lost his employment due to ill health. [Employment confirmed per employer certificate. Remuneration, however, is not confirmed. In the absence of validated earnings, he accepted that he earned in line with postulated earnings for the uninjured scenario, what he was expected to earn during this period, uninjured. Accept (very optimistically), he earned at a value comparable to the 2018 value of R12,686.00 per month during this period.]
- (d) He signed a new contract on 2018/02/07 until he was dismissed on 2018/11 (as per the last payslip received 11 November 2018). As reported by Mr Dlangamandla he was dismissed due to being frequently absent from work as a result of accident-related injuries. As was discussed in section 8.6.2), based on the payslip dated 2018/11/11 (see also table 8-7 with summarized YTD totals), Mr Dlangamandla's year-to-date earnings was R114,174.51 (note it was over a 9-month period) thus indicating an average total monthly salary of R12,686.00 (R114,174.51 over 9 months). This includes overtime, public holidays and leave pay.
- (e) Since he lost his employment in November 2018, he has reportedly remained unemployed to date (2026).

- (f) From a future earnings perspective: Except for optimistic calculations two potential scenarios:

**1. Very optimistic possible injured scenario A (Accept a 25% chance to realise):**

- (a) Mr Dlangamanda is currently unemployed, and he will most likely remain unemployed at least until conservative treatment has been received.
- (b) The Court accepts that he can (possibility), by 2028/01, at best only be able to secure part time employment, depending on the type of work opportunities he is presented with. Taking into consideration his limited skills and the type of employment (based on job requirements and restrictions), his job choices will be significantly limited. He will be a poor competitor, seeking employment that is not in line with his residual work capacity or profile.
- (c) The Court accepts that it is possible that he can secure a short contract or part-time employment (accept very optimistically for 20% of the time) with earnings comparable to the national minimum wage.
- (d) The Court accepts these earnings from 2028/01 of R12,575.68 p/a (20% of NMW, 2026 rate of R62,878.40, 40-hour work week).

- (e) The Court accepts inflationary earnings growth to age 60 when he will become totally uncompetitive and unemployable.
- (f) The Court accepts the very optimistic nature of the above postulation and that, in this regard, considerably high post-accident contingencies should be applied.

**2. Probable injured scenario B: (Accept 75% chance to realize).**

- (a) For calculations of this scenario, accept that the claimant remains uncompetitive and unemployable in future.
- (b) For calculations of the injured earnings scenario, accept the weighted average between injured scenarios A and B as the basis for calculations. Appropriate higher post-accident contingencies are to be applied. [Note the injured calculation table A-1-2 as a summary for injured calculations].

**3. LOSS OF EARNINGS**

For loss-of-earnings purposes, the following is postulated for calculation:

**4. Past loss of earnings**

In terms of past loss of income, the following is noted;

During the claimant's recuperation period;

- (a) Based on the employer certificate, Mr Dlangamandla was not absent

from the first accident, and therefore, no loss of earnings is noted. This was also confirmed in the collateral information.

- (b) Mr Dlangamandla indicated that following the second accident, he was absent for one month/4 weeks without payment. This could not be confirmed with his employer at the time of the accident. The Court defers to validation of earnings. The writer notes that even if he was paid during his absence, he probably incurred a loss in terms of overtime income. Appropriate contingencies to be applied considering the risk/ probability of some loss of earnings during this period.

#### **5. Past Loss of Earnings or Employment**

- (a) Compare the uninjured postulation (9) with the injured postulation (11.2) from the date of the accident to the current date as a basis for calculations.
- (g) Apply appropriate contingencies considering the assumptions made.

#### **6. Future loss of earnings:**

The impact of the accidents on Mr Dlangamandla and his career has been discussed in section 10.2 and 11 of this report.

**It is thus recommended that:**

- I. The “but for the accident” uninjured scenario as discussed in section 9 remains applicable and should be used as uninjured calculation base.
- II. Accept “having regard for accident” injured scenario, as discussed in section 11.2 as post-accident earning potential.
- III. It is recommended that he be compensated for future loss of earnings due to the difference between the “but for the accident Scenario” and the “having regard for the accident Scenario”.

An appropriate higher post-accident contingency is recommended for the probability that he will remain unemployed in future. Apply appropriate contingency considering the assumption to postulate a weighted average. Also consider the considerably high risk that the injured optimistic postulation will not play out as postulated.

The Court acknowledges that applying appropriate contingencies is the court's prerogative. It is thus acknowledged that our opinion regarding the application of the contingency is the prerogative of legal argument and court adjudication. The use of a specific phrase indicates our opinion regarding the risks and vulnerabilities to earn less than what was postulated. As reference, we (see Annexure A) note a copy of a slide “*Contingency – The phrase that pays*”, presented at an SIOPSA presentation on 12/05/2018. [It is noted that Mr G Whittaker (the presenter who used the slide) made it clear that the slide does not represent his own opinion or any form of research, but phrases he noted used by Industrial Psychologists. Considering the information at hand, we suggest, based on our interpretation and assumptions, the following phrases to indicate our opinion.

### **Contingency Recommendations**

#### **Phrase Percentage spread / Recommended**

**Contingency Value**

Slightly Higher	5%
Moderately Higher	10%
Higher	20%
Substantially Higher	35%
Considerably Higher	45%

**CONTINGENCIES:**

In assessing the value of the income allowance may be made for the various contingencies of life that occur such as sickness and unemployment. For the reason stated above, the industrial psychologist recommends a higher-than-normal post-accident contingency adjustment.

For illustrative purposes the actuary provide for a 25% differential on future earnings. Uninjured 7.5% on future earnings. An injured 32.5% on future earnings. For past loss of earnings contingencies were not applied.

It is the court's view that under the circumstances of this particular case, a 15% spread between pre- and post-morbid contingencies on future earnings is reasonable. Uninjured future 15% and injured future 30%. For past loss of earnings uninjured 5% and injured 5%.

**THE CALCULATION:****(a) Limitation of Compensation (CAP):**

- The expert confirms that the CAP is not applicable on these calculations. Thus, the loss of income does not exceed the Statutory Limit during every year, and the appropriate adjustment is set out in actuary's report.

(b) **SUMMARY OF LOSS:**

Capital value of loss of earnings:

	Uninjured Earnings	injured Earnings	Loss of Earnings
Past	R1 532 200	233 600	-
Less 5%	R 76 610	11 680	
	<b><u>R1 455 590</u></b>	<b><u>221 920</u></b>	<b><u>1 233 670</u></b>
Future	R1 997 100	21 500	
Less 15%	R 299 565	30% 6 450	
	<b><u>R1 697 535</u></b>	<b><u>15 050</u></b>	<b><u>1 682 248</u></b>

**TOTAL LOSS OF EARNING**

**R2 916 155**

For this reason, I am satisfied that the Plaintiff suffered a loss of earnings in the amount of R 2 916 155 (Two million nine hundred and sixteen thousand one hundred and fifty-five rands).

**[15] LAW****15.1. LOSS OF EARNINGS**

It is accepted that earning capacity may constitute an asset in a person's patrimonial estate. If loss of earnings is proven the loss may be compensated if it is quantifiable as a diminution in the value of the estate. It must be noted, a physical disability which impacts on the capacity to an income does not, on its own, reduce the patrimony of an injured person. It is incumbent on the Plaintiff to prove that the reduction of the income earning capacity will result in actual loss of income.

15.2. In quantifying such a claim an Actuary is often used to make actuarial calculations based on proven facts and realistic assumptions regarding the future. The role of the Actuary is to guide the court in the calculations to be made. Relying on its wide judicial discretion the court will have the final say regarding the correctness of the assumptions on which these calculations are based. The court should give detailed reasons if any assumptions or parts of the calculations made by the actuary are rejected. It must be borne in mind that the actuary depends on the report of the Industrial Psychologists, who in turn are dependent on the information provided by the claimant.

15.3. The learned author Dr R.J. Koch in *The Quantum of Damages Year Book* states at page 118 that the usual contingencies which the Road Accident Fund accepts is 5% (five percent) on the past income and 15% (fifteen percent) on the future income. The aforesaid is only a guideline, but it indicates the general approach adopted by the Defendant in similar

matters. The learned author continues on page 118 to suggest (based upon the authorities of *Goodall v President Insurance* and *Southern Insurance Association v Bailey N.O.* that as a general rule of thumb, a sliding scale can be applied, i.e. “1/2% per year to retirement age, i.e. 25% for a child, 20% for a youth and 10% in middle age:”

- 15.4. The court, in the case of *Road Accident Fund v Guedes* at paragraph [9] referred with approval to *The Quantum Yearbook*, by the learned author Dr R.J. Koch, under the heading 'General Contingencies', where it states that:

“...[when] assessing damages for loss of earnings or support, it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is the prerogative of the Court...”.

- 15.5. The percentage of the contingency deduction depends upon a number of factors and ranges between 5% (five percent) and 50% (fifty percent), depending upon the facts of the case.

- 15.6. The importance of applying actuarial calculations and its advantages was discussed in the case of *Southern Insurance Association v Bailey NO*, the court referred with approval to the case of *Hersman v Shapiro and Company* at 379 per Stratford J where the following was said:

‘Monetary damage having been suffered, it is necessary for the Court to assess the amount and make the best use it can of the evidence before it. There are cases where the assessment by the Court is little more than

an estimate; but even so, if it is certain that pecuniary damage has been suffered, the Court is bound to award damages.

"Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.

It has open to it two possible approaches.

One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown.

The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative.

It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a non possumus attitude and make no award."

- 15.7. Ultimately, the award for future loss of earnings or earning capacity must be based on good medical evidence and corroborating facts. There must be some reasonable basis for arriving at a particular figure. In the event of a mathematical approach, one has to first work out what the third

party's earnings would have been but-for the accident (that is, if the accident had not occurred), and secondly, one has to calculate what the Plaintiff's earnings are now that the collision has occurred (having regard to the accident) and the difference between these two amounts will then represent the loss.

## **[16] APPLICATION OF LAW TO FACTS**

- 16.1. The Plaintiff's future loss of earnings or capacity to earn has been actuarially calculated and the basis of such calculations, which is discussed below are consistent with the facts and probabilities in the matter.
- 16.2. The Plaintiff's case remains undisputed and remains unchallenged. The Defendant has not appointed a single expert to challenge and or contradict the Plaintiff's expert witnesses. There is also no evidence before me that prior to the collision the Plaintiff had any cognitive, neuro-cognitive and orthopaedic problems.
- 16.3. In so far as the injuries are concerned, it has not been disputed that the Plaintiff sustained head injury (mild) concussive and or injury which was consequent to the motor collision. It remains undisputed that the Plaintiff's chronic post traumatic headaches problems arising from the accident have caused the patient impairment and disability.

- 16.4. The occupational therapist opines that the Plaintiff's employment has been adversely affected and as result curtailed. His injuries make him an unfair competitor in the open labour market. The claimant is capable of performing light work. However, due to his chronic headaches, which developed following the accident, he will require reasonable accommodations in the workplace to manage her symptoms. These headaches also affect his cognitive functions, such as concentration and focus.
- 16.5. The occupational therapist opines that the Plaintiff's chronic condition creates a significant vocational prejudice, limiting his ability to perform at his full potential.
- 16.6. The industrial psychologist's uncontested postulations regarding the pre and post morbid future loss of earnings prior to and but for the accident is the only evidence that is before the Court which the Court must accept.
- 16.7. The Court accepts that the Plaintiff would require an understanding employer who will be willing to accommodate his cognitive limitation should he secure work in future.
- The Plaintiff is therefore likely to suffer a future loss of earnings to be calculated as the difference between her pre-accident earning potential and her post-accident earning potential.
- 16.8. The Court is mindful that the Plaintiff will be an unequal competitor at the open labour market compared with his healthier peers and that he will not be able to perform functions efficiently and effectively as compared

to his counterparts. The injuries sustained from the accident will hinder his career and future employability.

16.9. The Court finds that the Plaintiff's expert witnesses remain the only evidence before me. The submissions made by industrial psychologist are clear, reasonable and persuasive. I therefore find that the evidence before me is credible and I accept it as reliable and plausible.

[17] Plaintiff's counsel submitted that contingencies are to be applied as the actuarial calculations since *the Road Accident Fund Amendment Act 19 of 2005* cap does not have an impact on this case. In this regard counsel argues the contingency deductions of 7.5% (seven point five percent) on uninjured earnings and 32.5% (thirty two point five percent) on uninjured future earnings should be applied. I agree with the contingencies applied in the past loss of earnings.

The Court holds the same view with respect to the contingencies as applied by the actuary (addendum report) and submitted by the Plaintiff's counsel. In respect of past loss of earnings, the Court holds a different view with respect to proposed contingencies. In respect of future loss of earnings, the Court is of the view of future uninjured loss of earnings 15% (fifteen percent) and 30% (thirty percent) for future injured.

### COSTS:

[18] In *Bauer v Bauer & Another*<sup>5</sup> it was re-affirmed that the principle in awarding costs to a successful litigant is to strive to indemnify insofar as possible that litigant for the expenses she has incurred to initiate or defend litigation. These

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<sup>5</sup> (361104) [2008] ZAEHC 2008 (17 April 2008)

principles were also confirmed in *Zeelie v General Accident Insurance Co Ltd*<sup>6</sup>. This purpose of an award for costs has been acknowledged for a very long time, authoritatively ever since *Texas Co (SA) Ltd v Cape Town Municipality*<sup>7</sup>.

[19] In *Society of Advocates of KwaZulu - Natal v Levin*<sup>8</sup> the Court also stated as follows in respect of Counsel fees:

“ [19] A useful guide, which would find application in most cases where the reasonableness or otherwise of counsel's fee had to be determined on the taxation, was formulated in *City of Cape Town v Arun Property Development (Pty) Ltd and Another*:

“(a) Consideration should have been given to the importance of the matter, its financial value to the parties and the complexity of the issues raised and/or required to be canvassed”

[20] Pursuant to the recent amendment of Rule 69 and 70 (effective 12 April 2024) in terms of which Rule 67A was also introduced, it is incumbent upon a Court to make a ruling on the applicability of the new scales introduced for the employment of counsel. The scales listed in the amended Rule are Scales A, B and C. These scales govern the recoverability by the Plaintiff of counsels' costs on taxation.

[21] In *Buhle Waste (Pty) Ltd v MEC for Health Gauteng & Others*<sup>9</sup> Cajee AJ

<sup>6</sup> 1993 (2) SA 776 (EJ at 779 D-F)

<sup>7</sup> 1926 AD 467 at 488. (See *Cilliers, Costs*, par 1.03 at 1-4/5)

<sup>8</sup> 4564/13) [2015] ZAKZPHC 35; 2015 (6) SA 50 (KZP); [2015] 4 All SA 213 (KZP) (6 July 2015)

<sup>9</sup> (Gauteng Division Johannesburg, Case Number 2023-102560)

held as follows regarding the abovementioned Rule amendment.

*"28. While I am cognizant of the fact that the new taxable costs regime no longer considers seniority of counsel, but rather complexity of the matter and value of the claim or importance of the relief sought to be the deciding factors, in my view a court should be wary not to grant or approve costs on a scale which counsel of a certain seniority would not ordinarily charge his or her own attorney and client. This would run counter to the intention of the new regime..."*

[22] With regard to this present matter, it is held by the Court that the employ of a senior counsel was warranted and that counsels' fees on Scale C are appropriate for *inter alia*, the following reasons:

**22.1. Value of the claims:**

The value of the claim should be evaluated in the eye of the Plaintiff who was injured. It is apparent that the Plaintiff needs to rely on her compensation to sustain herself especially in the later years of her life. From her point of view the amount concerned is considerable.

**22.2. Importance of the relief sought**

- The relief sought is for damages aimed at the compensation of the unfortunate Plaintiff who was involved in a motor vehicle accident. The Plaintiff suffered severe bodily and psychological injuries. The Plaintiff will suffer physical and psychological for the rest of her life; who has a permanent loss of her earning capacity; who has therefore lost the ability to properly earn a living. The matter has obvious importance to

the Plaintiff in that her entire remaining working lifespan has been blighted.

- As trenchantly observed by His Lordship Baqwa J in *Adv AJ Du Toit N.O. obo Cee-Jay Lee Johnson v The Road Accident Fund*<sup>10</sup> the Plaintiff has only one shot at obtaining due compensation from the Defendant and the Plaintiff's whole life depends on obtaining a proper award.

### **22.3. Complexity of the matter**

- This case involves the input by various experts of different disciplines. It involves an Orthopaedic surgeon to assess the functional *sequelae*; Psychologist in respect of neurological *sequelae*; an Occupational psychologist regarding the impact on his occupation; an Industrial psychologist regarding employment prospects; and the Actuary regarding the calculation of the loss of earnings/earning capacity. There are ten (10) experts which the Plaintiff has appointed in order to quantify this matter.
- The reporting of all the experts is not in plain layman's language, but in more complex and specific language and terms used in the respective expert disciplines. A proper understanding of the reporting requires special and specific knowledge by the legal practitioners.
- the matter involves preparation in regard to several different expert disciplines and expert witness reports; the drafting of heads of

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<sup>10</sup> 20147/2021) Gauteng Division, Pretoria (23 April 2024)

argument on the issue of the loss of earning capacity; and the research of the case law regarding awards of special damages (loss of earnings , past and future).

**[23]** It is therefore held by the Court that the value of the total claim is substantial, that the relief sought is of great importance to the Plaintiff; and that the matter involves issues of a high degree of complexity.

**[24]** The specific circumstances and the various factors attendant in this matter, rendered it wise and reasonable for the Plaintiff to have briefed a senior –Junior Counsel and or a more senior counsel.<sup>11</sup> There can be no justification for any contention that it was not necessary, or that it was wrong to employ a senior counsel; or that it is unfair to Defendant that it should be required to bear the costs incurred in the employment of a senior counsel. The Defendant could have settled this claim a long time ago had it complied with its statutory duties timeously.

*“In an unreported judgment of this Court, Road Accident Fund v Roman Klisiewicz, case No 192/2001, handed down on 29 May 2002, Howie JA set out the extent of the respondent's responsibilities, saying in para [42]: 'The [Road Accident Fund] exists to administer, in the interests of road accident victims, the funds it collects from the public. It has the duty to effect that administration with integrity and efficiency. This entails the thorough investigation of claims and, where litigation is responsibly contestable, the*

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<sup>11</sup> it was certainly a wise and reasonable precaution to employ the services of two counsel (compare *Newman v Prinsloo and Another* 1974 (4) SA 408 (W) at 411A; *Zweni v Minister of Law and Order* (1) 1991 (4) SA 166 (W) at 170A). The disputes involved potentially wide-ranging issue of both fact and law. It is not by any means a minor matter. The case was sufficiently difficult to justify the engagement of two counsel. (compare *DE NMMLOZE VENNOOTSCHAP ALINTEX v VON GERLACH* 1958 (1) SA 13 (T) at 16-7).

*adoption of reasonable and timeous steps in advancing its defence. These are not exacting requirements. They must be observed'."*<sup>12</sup>

[25] It was the Defendant that obliged the Plaintiff to approach this Honourable Court for relief.

[26] It should be borne in mind that by awarding counsels' costs on scales A or B the Honourable Court will effectively be penalizing the Plaintiff. Counsel are entitled to make and recover reasonable fees for their work done (**Algemene Balieraad van Suid-Afrika v Burger en 'n Ander**<sup>13</sup>LPC Code of Conduct 15.1 and 23.1). That is not affected by the particular scale under Rule 67 A. Rule 67 A merely restricts the ability of the Plaintiff to recover more than the specified amounts on scales A, B or C, respectively, from the unsuccessful Defendant. The balance of counsels' fees unfortunately have to be paid by the successful Plaintiff out of the capital awarded. This impinges on the trite principle set out in paragraph 3 above.

- a. In the premises, it is held by the Court that Plaintiff is entitled to an order that the fees consequent upon the employment of a senior counsel are allowed; and for a direction that such fees are granted on scale C.
- b. Since the advent of the Covid pandemic and the consequential change that it had on the normal Court and trial procedures, the Court has placed more and more emphasis on comprehensive heads of argument to be filed by the representatives of litigants to assist the Court. Presiding judges rely more

<sup>12</sup> (*Madzunye and Another v Road Accident Fund 2007 (1) SA 165 (SCA) par [17] at 171*).

<sup>13</sup> 1993 (4) SA 510 (T);

and more upon the written submissions of counsel to assist them rather than entertaining hours of oral argument.

- c. In this sense the normal practise for presenting argument in the High Court has become more similar with the practice in the Constitutional Court. In this the court with approval in ***Society of Advocates of KwaZulu - Natal v Lev*** matter *supra* held as follows:

*"ii) In President of the Republic of South Africa & Others v Gauteng Lions Rugby Union & Another [41] Kriegler J drew a distinction between the practice in the Constitutional Court and the SCA in respect of the heads of argument and the associated appearance of counsel at the hearing. He pointed out that 'in the SCA the emphasis is on the oral presentation of argument by counsel in open court with heads of argument serving largely as a preliminary guide to the Court, while in the Constitutional Court, the emphasis is on written submissions, which are not regarded as succinct heads of argument forming the basis of the argument to be presented, but the argument itself together with all the supporting material.'*

*And further that 'In an appropriate case, therefore, it may be reasonable to make some special allowance for counsel's fees for preparing written argument for this court. This is expressly contemplated by sub rule (2) of the CC Rule 21.'*

*iii) There is no reason why a similar consideration should not apply to the assessment of counsel's fees in this matter.*

*iv) I have perused the relevant heads of argument and having considered the submissions of Ms Annandale on the general and specific purpose and content of heads of argument, I am of the view that the taxing mistress misdirected herself in assessing the fee at R600 per page, as such an assessment even on a per page basis, is disproportionate to the effort involved in drafting the heads and fails to take into account the issues dealt with therein.*

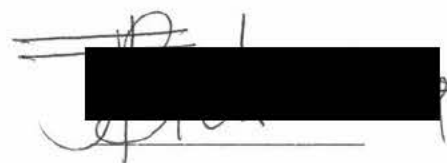


5. Loss of earnings R 2 916 155.00

6. Costs of counsel on scale C

**Total**

**R 3 766 159 (Three million  
Seven hundred and sixty six  
thousand one hundred and  
fifty nine rand).**



**J. ZITHA AJ**

Judge of the High Court

Gauteng Division, Pretoria

Date of Hearing: 17<sup>th</sup> February 2026

Judgment delivered: 27<sup>th</sup> May 2026

**APPEARANCES:**

For the Plaintiff: Adv Ludvick Visser

Attorney for the Plaintiff: Salome le Roux attorneys

For the Defendant: None

Attorney for the Defendant: None