



**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO: **656/2022**

Reportable: YES / NO

Circulate to Judges: YES / NO

Circulate to Magistrates: YES / NO

Circulate to Regional Magistrates: YES / NO

Edited: YES / NO

In the matter between:

MOPALAMO FRANK MOKAE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

Neutral citation: ***Mokae v The Road Accident Fund* (Case No: 656/22) 25 August 2026**

Coram: **Nxumalo J**

Heard On: **01 November 2024**

Order Granted: **28 April 2026**

Reasons Delivered: **25 August 2026**

Summary: **Personal injury – loss of earning capacity – actuarial calculation – contingencies – discretion of Court – actuarial calculation accepted into evidence and no contingencies applied – whether deduction should nevertheless be made – Court not bound by actuarial calculation and retains a wide discretion to award what is just – contingency deduction not automatic – no fixed or inflexible rule governing contingency allowances – contingencies may be positive or negative – assessment must have regard to the particular facts and circumstances of the case – plaintiff remained employed but expert evidence established diminished earning capacity and precarious continued employment – Court satisfied that no further deduction for contingencies was warranted – actuarially calculated amount of R3 884 100 awarded.**

ORDER

1. The Defendant is liable to compensate the Plaintiff in an amount of **R3 884 100 (THREE MILLION EIGHT HUNDRED AND EIGHTY-FOUR THOUSAND ONE HUNDRED RAND)** for loss of earning capacity.
2. The amount set out in paragraph 1 above shall be paid within 180 (One Hundred and Eighty) calendar days from the date of this order.
3. The Defendant is liable to pay interest on the above amount at the prescribed rate from the date of this order to the date of full and final payment.
4. The Defendant is liable for the costs of suit.
5. The Defendant is liable to pay interest on all taxed costs at the prescribed rate, from the date of *allocatur* of the Taxing Master to the date of full and final payment.

REASONS

INTRODUCTION:

- [1] The plaintiff is **MOPALAMO FRANK MOKAE**, an adult male born on 26 June 1978, residing at 1[...] N[...] Street, Douglas. His highest level of education is Grade 7. At the time of the accident, he was employed as a dump-truck driver by Four Arrows Mining, where he had been

employed since 2013, earning a monthly income of between R16 000 and R17 000.

[2] The defendant is **THE ROAD ACCIDENT FUND**, a juristic person established in terms of the **Road Accident Fund Act** 56 of 1996 (“**the Act**”).

[3] Section 17(1) of the Act provides as follows:

“The Fund or an agent shall-

- (a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;*
- (b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.”*

THE ACCIDENT AND CLAIM:

[4] It is common cause that on 17 April 2019, at approximately 16h00 on the R31, within the jurisdiction of this Court, the insured driver lost control of the insured motor vehicle, which left the roadway, rolled into the veld and overturned. At all material times, the plaintiff was a passenger in the insured motor vehicle. As a result of the said accident, the plaintiff sustained certain bodily injuries; to wit: multiple spinal fractures- L1, L2, L4 and T12; bilateral rib fractures and lung contusions.

- [5] It is also common cause that the accident was caused solely by the negligence of the insured driver. The plaintiff accordingly instituted action against the defendant for damages in the amount of R4 884 100. The claim comprised past medical expenses, future hospital and medical expenses, past and future loss of earnings, alternatively loss of earning capacity, and general damages. The plaintiff claimed future hospital and medical expenses in a nominal amount of R200 000, it being anticipated that the defendant would furnish an undertaking in terms of Section 17(4)(a) of the Act in respect of such expenses. The plaintiff further claimed R3 884 100 in respect of past and future loss of earnings, alternatively loss of earning capacity. The claim for general damages, in the amount of R1 000 000, was conditional upon the plaintiff establishing that he had sustained a serious injury as contemplated in the Act and the regulations promulgated thereunder.
- [6] On the day of the trial, the defendant conceded the merits in favour of the plaintiff. The parties thereafter concluded a settlement agreement in terms of which the plaintiff's claims for future hospital and medical expenses and general damages were settled. Accordingly, the only issue for determination was the plaintiff's claim for future loss of earnings/earning capacity.

BRIEF OVERVIEW OF THE RELEVANT EVIDENCE:

The Plaintiff's Evidence-in-Chief:

- [7] The plaintiff, in sum, testified that he could not return to work immediately after the accident. He remained at home recuperating for approximately two months, during which period he received his full salary. He nevertheless resumed work before he had fully recovered for fear of losing his employment. He failed the required medical tests

on two occasions and was consequently placed on light duties. He testified that he was not returned to his pre-accident duties as a dump-truck operator.

- [8] The plaintiff further testified that he is still performing light duties. He detailed his duties as cleaning offices and delivery of documents. He is also permitted to rest or sleep whenever he experiences pain or becomes exhausted. He testified that this arrangement continued for almost five years since the accident in 2019. He further testified that his salary had been reduced and that he currently earns between R12 000 and R14 000 per month. He also expressed the fear that he would be the first to be retrenched should his employer decide to retrench employees. He recalled that his employer had previously retrenched employees during 2013/2014.

Evidence by affidavit in terms of Rule 38(2) of the Uniform Rules of Court:

- [9] It is common cause that the plaintiff delivered reports by an orthopaedic surgeon, an occupational therapist, an industrial psychologist and an actuary. It is also common cause that the defendant delivered no expert reports. The plaintiff thereafter applied, in terms of Rule 38(2) of the Uniform Rules of Court, for leave to adduce the evidence of those experts by way of affidavit. The application, being unopposed, was granted.¹

Orthopaedic Surgeon:

- [10] According to Dr JF Greyling, an orthopaedic surgeon, the plaintiff's complaints, in the main, pertain, *inter alia*, to the following: pain in the

¹ Rule 38(2) of the Uniform Rules of Court provides:

"The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit."

lower back, especially when sitting for prolonged periods or lifting heavy objects; the need for occasional medication to manage the pain, which interferes with various daily tasks and activities, including work, household chores, travelling and sleeping; difficulty performing various physical tasks, including bathing, dressing, prolonged sitting and standing, walking long distances, running and bending; numbness and weakness in the lower limbs; considerable difficulty at work, particularly during prolonged sitting, although he endures the pain and discomfort as he is the sole breadwinner in his family; an inability to participate in recreational activities or hobbies; difficulty performing household chores, including gardening, and household maintenance, for which he now requires assistance; and symptoms of depression and anxiety since the accident.

- [11] Upon radiological examination and X-rays of the lumbar spine, it was found, *inter alia*; that there was height loss of the anterior vertebral bodies of L1 and L2, which could be attributable to previous compression injuries; secondary degenerative changes with anterior osteophyte formation at L1 and L2; slight height loss of the vertebral body of T1; a whole person impairment total 31%; and that, although it would be possible to correct the severe kyphotic deformity by means of a spinal osteotomy and a four-level fusion, the procedure would probably not be worth the risk. Accordingly, no future surgery is anticipated.
- [12] According to Dr Greyling, the plaintiff would be unsuited to most physical work tasks and manual occupations and, should he seek alternative employment, may struggle to compete in the open labour market. He may also struggle with sedentary work involving prolonged sitting and standing, with which he has little experience. The plaintiff is not suited to the work that he is currently performing. He is not fit for manual labour and should be regarded as permanently disabled for work in the open labour sector. Dr Greyling also indicated on the

RAF4 report/form that to the extent that the plaintiff achieved more than 30% incapacity, no narrative was required.

- [13] In summary, Dr Greyling concluded, *inter alia*, that, as a result of his injuries, the plaintiff has bilateral radiculopathy at multiple levels in his lower limbs, including decreased power, increased reflexes and clonus. He also experiences pain, which interferes with various aspects of his daily life. This has had a significant impact on his ability to perform various occupational, recreational, household and selfcare tasks.
- [14] It was contended for the defendant that Dr Greyling's opinion, namely that the plaintiff had been accommodated on light duties for only one year before returning to his pre-accident duties as a truck operator, was contradicted by the plaintiff's oral testimony. The plaintiff testified that, after returning to work in 2019, he had continuously been accommodated on light duties. He further testified that, almost five years after the accident, he remained on light duties and was permitted to rest whenever he felt tired.

Occupational Therapist:

- [15] According to Ms Susan Maree, the occupational therapist, the plaintiff sustained the following injuries: a chance fracture L1; an unstable fracture at L2; stable fractures at T12 to L4; multiple rib fractures on both the right and left sides; bilateral haemothorax and lung contusions; and a crush injury. During his recovery, the plaintiff was confined to bed for six weeks and required assistance with personal care and household tasks. During this period, he had to use adult diapers as he was unable to walk to the toilet.
- [16] After that period, he decided to return to work even though he had not fully recuperated because he was the sole breadwinner and feared

losing his employment. He nevertheless failed his medical assessments and was consequently placed on light duties. The plaintiff is unable to carry or lift any heavy objects and particularly struggles with carrying more than 15 litres of water. He continues to work out of necessity and tolerates long hours operating heavy mining equipment, which causes him considerable discomfort.

- [17] She reported further that, during her examination, it was found, *inter alia*, that the plaintiff was unable to complete the repetitive squatting test, which elicited lower back and leg pain; his movement patterns were awkward; he became breathless after the test and required a rest break; during ladder climbing; his balance was significantly affected by quivering in both legs, and he pulled heavily on the ladder to reach the next step; he appeared breathless after the test, with poor cardiopulmonary endurance and sweating; he was unable to tolerate a sitting position for 30 minutes; and he displayed poor hygienic spinal principles and at times struggled with balance and coordination.
- [18] In discussing the plaintiff's work ability, Ms Maree reported that his diminished praxis and coordination were caused by lack of motor control of the lower limbs. His tolerance for postural activities, including standing, sitting, elevated work, and lowered work, was diminished, and numbness and pain were elicited. Before the accident, the Plaintiff was competitive in the open labour market and enjoyed the same opportunities for employment as other job seekers. He returned to work before he had fully recuperated for fear of losing his employment. He failed his medical test and was placed on adapted duties cleaning offices for 18 months.
- [19] The test results / assessment revealed that he is unsuited to sedentary work demands. Owing to the severity of his back injury, he struggles with some personal care activities such as washing and dressing and requires the assistance of his wife. Upon assessment by the employer's occupational health doctor to determine whether he was fit

enough to resume his duties, he failed the assessment, and he was then asked to only stay in the office area and clean. He was then sent for a second assessment in January 2020, where he again failed his medical and was then placed on light duty for the year 2020, where he remained in the office and did light cleaning work only.

[20] Ms Maree further opined that, although the plaintiff had returned to work, he was no longer able to cope with the physical demands of operating heavy mining equipment. In her view, the pounding movement over uneven terrain aggravated his back pain. She noted that, although he had been allocated to a larger dump-truck for greater comfort, he continued to experience significant discomfort and struggled to cope with the work demands. She further expressed the opinion that the plaintiff continued to work out of financial necessity, was reluctant to request further work adaptations or rest breaks for fear of losing his employment, and that his pain and discomfort interfered with his work performance.

[21] Similarly, it was contended on behalf of the defendant that Ms Maree's report suggests that, following the injury, the plaintiff returned to his pre-accident duties as a truck operator. This, it was argued, was inconsistent with the plaintiff's oral testimony that, upon returning to work, he failed two medical assessments, was assigned to light duties, and has remained on such duties for more than five years since the accident.

Industrial Psychologist:

[22] According to Dr Jacobs, the industrial psychologist, the following was noted: the Plaintiff completed Grade 7; at the time of the accident, he was employed as a dump-truck operator (ADT operator) by Four Arrow Mining; following the accident, he was unable to work for two months, during which period he continued to receive his salary; he returned to work before he had fully recuperated for fear of losing his employment;

he failed his medical assessment and was placed on light duties cleaning offices for 18 months; thereafter, he returned to his pre-accident occupation but found the ADT truck too physically demanding; he was assigned to a TRAP7 truck, which entails the same work; he is basically performing the same duties as prior to the accident; he finds it extremely difficult to perform those duties; he is required to climb onto the dump-truck several times a day and, when tired or in pain, he climbs down to stretch; he fears losing his employment; his employer is aware of his injuries; he continues to work despite the pain because it is his family's only source of income; he is concerned about his future; he has no other work experience or transferable skills; and he intends to continue working for as long as possible.

- [23] Doctor Jacobs further reported that the plaintiff was concerned that his employer might target him in case of any retrenchment. The plaintiff was also uncertain how his injury was going to degenerate and whether he would be able to continue working up to retirement age. Dr Jacobs further stated that, upon contacting the plaintiff's supervisor, he was informed that the employer had been aware of the plaintiff's injuries since the accident and remained concerned about his health. The supervisor advised that the plaintiff had been allocated a slower truck with slightly less impact on his spine; that he was frequently referred to the clinic before commencing work; that the employer was concerned that he might sustain further injury while at work due to his incapacity; that he was not suited to his current occupation; that his condition was being monitored and a further medical assessment would be requested should his condition deteriorate; and that, based on the available information and the test results, the plaintiff was not suited to the occupation of a dump-truck driver.
- [24] In conclusion, Dr Jacobs expressed the opinion that the plaintiff should cease working and would be unable to return to similar employment or obtain suitable sedentary employment. Dr Jacobs agreed with the

other experts that the plaintiff would not find other work once he discontinued his current employment; he was unlikely to secure alternative employment. In Dr Jacobs's opinion, the plaintiff appeared to be working contrary to reasonable medical advice and his continued employment was sympathetic in nature, in that his employer had accommodated his limitations. Dr Jacobs further opined that, having regard to the plaintiff's limited education, he was not capable of reskilling.

Actuary:

[25] The actuary, Ms Anica Van Der Westhuizen of Munro Actuaries, reported, in sum, that the figures were calculated as at 1 April 2023. The actuarial report reflects that the plaintiff is expected to remain unemployable in the future. According to the report, the capital value of the loss of earnings is R3 884 100. The calculations are said to be based on the information provided to the actuaries by the attorneys, including the Industrial Psychologist's report of Dr EJ Jacobs and the plaintiff's payslip for January 2023. The report reflects that, as of January 2023, the plaintiff's earnings before tax were as follows: his basic salary was R16 843 per month. The report states that it was indicated to the actuaries that the plaintiff suffered no past loss of earnings. As a result, they calculated the loss of earnings from March 2023 to allow for the correct tax calculations. Based on the apparent fact that the plaintiff's current employment is deemed sympathetic by the experts and the recommendation that he should stop working, the actuaries have assumed no further earnings from the date of calculation, but indicate that they would defer to the facts in that regard. The actuaries' calculations did not apply contingencies. The sum total of the calculated "loss of earnings" is R3 884 100.

[26] The defendant took issue with the actuarial report, contending that it was based on an incorrect factual premise. According to the

defendant, the summary of the actuarial calculations shows that, from March 2023, the plaintiff has not received any income and will not receive any income until the age of 63. This, the defendant contends, does not reflect the facts or the plaintiff's evidence before the Court.

Plaintiff:

- [27] The plaintiff testified that he sustained injuries to his back and, as a consequence, experienced numerous sequelae. At the time of the accident, he was employed as an operator at the mine but is no longer able to perform those duties. He testified that he no longer works in the mine because he failed the required medical assessments on two occasions. He nevertheless still has an access card, which permits him access only to the employer's offices. Regarding whether there had been previous retrenchments, he testified that there had been.

Plaintiff's Cross Examination:

- [28] Under cross-examination, the plaintiff testified, in sum, that prior to the accident he had been employed as a dump-truck operator by Four Arrows Mining since 2013, earning a monthly income of between R16 000 and R17 000. Following the accident, he did not immediately return to work but remained at home for approximately two months to recuperate, during which period he received his full salary. He nevertheless returned to work before he had fully recuperated for fear of losing his employment. He thereafter underwent two medical assessments, both of which he failed, whereupon he was placed on light duties.
- [29] He further testified that he continues to perform light duties. His duties include cleaning offices and delivering documents. He is permitted to rest or sleep whenever he experiences pain or becomes tired. He

testified that this has been his situation since the accident in 2019. He currently earns between R12 000 and R14 000 per month and disputed any suggestion that he earns more than those amounts.

[30] He further testified that he fears that he will be the first employee to be retrenched should the company decide to reduce its workforce or restructure its operations. From his recollection, the company only retrenched on one previous occasion in 2013/2014, which is more than 10 years ago. The plaintiff, however, did not seem to understand the difference between retrenchment and dismissal.

[31] After the cross-examination of the plaintiff, the defendant closed its case without leading any evidence.

THE PARTIES' ARGUMENTS, IN SUM :

Plaintiff's:

[32] The following, in sum, was submitted on behalf of the plaintiff: It is important to note that the plaintiff's actuarial report is the only actuarial evidence before this Court and that the actuarial calculations contained therein were accepted by the defendant. No past loss of earnings was calculated. Accordingly, the only issue remaining for determination is the contingency deduction to be applied to the plaintiff's future loss of earnings.

[33] It was further submitted that, whilst it is common cause that the plaintiff, at the age of 46, remains employed, he is unsuited to sedentary work as he is unable to sit for prolonged periods. He is currently working contrary to the advice of all the relevant experts. It was submitted that, whilst the experts agree that the plaintiff's residual earning capacity has diminished, the fact that he remains employed warrants the application of a higher contingency deduction. It was further submitted that the plaintiff's employer is merely accommodating him, particularly in light of the fact that he has already failed two

medical assessments and was consequently assigned to cleaning duties. Regard being had to the foregoing, it was argued that, should the employer retrench employees, the plaintiff would be the first to be retrenched.

- [34] It was further submitted that, having regard to the plaintiff's age, he would ordinarily have remained in employment until the age of 65. On that basis, the remaining 19 years of his working life would ordinarily attract a contingency deduction of 9%. It was submitted, however, that the circumstances of this case justify a contingency deduction of 20%, being approximately double the deduction proposed by Koch. Accordingly, a deduction of 20% from the amount of R3 884 100 was contended to be fair and reasonable. This would result in an award of R3 107 280.

Defendant's:

- [35] The following was submitted for the defendant: That according to Dr Greyling's opinion, in sum, the plaintiff is a 44-year-old male residing in Douglas. That his highest level of education is Grade 7 and that at the time of the accident he was employed as a dump-truck driver for Four Arrows since 2013. His job entailed 12-hour shifts on a truck. He was able to return to his job after the accident, but was placed on light duties for one year, which he is still performing.
- [36] That the plaintiff was only accommodated to perform light duties for a period of one year and thereafter returned to his pre-accident duties as a dump-truck operator. That the foregoing contradicted the plaintiff's testimony before this Court. That it is so since the plaintiff testified that he was accommodated to perform light duties ever since he returned to work in 2019, after his injuries. That five years later, he was still accommodated and that the employer allows him to rest and sleep whenever he feels tired.

- [37] That the occupational therapist, for her own part, stated, *inter alia*, that: After the accident, the plaintiff was unable to work for two months and returned to work before he was fully recuperated for fear of losing his employment. That he failed his medical tests on two occasions and was thereafter placed on lighter duties of cleaning offices for 18 months. Thereafter, he returned to his previous dump-truck operating duties. That he is currently unable to cope with the said work demands because his back pain is aggravated by the pounding movement of the truck over uneven terrain. He therefore changed to a larger dump-truck for more comfort. This notwithstanding, he is still not coping. He is presently not in an ideal position to request more work adaptations or rest breaks, for fear of losing his employment.
- [38] That the occupational therapist also stated that the plaintiff remains employed out of necessity due to his family financial responsibilities. That he takes breaks by climbing out of his truck frequently and doing inspections around the vehicle to alleviate his pain and discomfort, which diminishes his work rate and performance.
- [39] That it can be deduced from said report that the occupational therapist believed that after the injury, the plaintiff was returned to his pre-accident duties as a dump-truck operator. That this belief contradicts the plaintiff's testimony before this Court. That it is so since the plaintiff testified that upon his return to work, he failed two medical tests and was consequently allocated to perform light duties. That he is still being so accommodated, more than five years after the said injury.
- [40] According to the industrial psychologist, concerning the pre-morbid payslip for March 2019, the plaintiff was able to earn a basic salary of R10 924 per month or an approximate amount of R17 404, which includes certain allowances and the employer's contributions of R776 per month. That the plaintiff's payslip indicated that he is an ADT

Operator on a Patterson Level B2. Consequently, in 2019, his annual income per annum amounted to R218 160.

- [41] That according to the plaintiff's post-accident payslip for January 2023, he was earning a basic salary of R16 843 per month, plus certain allowances and an employer's contribution of R1 623 per month. His payslip for January 2023 shows he was able to earn an amount of R24 691 with allowances. His payslip indicated that he is an operator on a Patterson B4 Level, with an estimated annual package of R315 768, in 2023.
- [42] Accordingly, the defendant submitted that Dr Jacob's evidence does not align with the plaintiff's testimony that he was earning somewhere between R16 000 and R17 000, prior to the accident. That after the accident, his salary was reduced to between R12 000 and R14 000. That Dr Jacob's evidence is not based on facts the plaintiff testified about in this Court. That, in fact, the plaintiff disputed Dr Jacob's evidence regarding his pre-accident and post-accident earnings, including the payslips attached. That he further disputed that he was currently performing pre-accident duties as a dump-truck operator. That the evidence of the plaintiff's alleged supervisor, one Mr Abbey Maine, does not comply with Section 3 of the **Law of Evidence Amendment Act** 45 of 1988, because it is hearsay evidence. That this Court must therefore reject same on the basis that the defendant was not afforded an opportunity to test same in Court. That allowing the said evidence would therefore infringe on the defendant's right to a fair trial.
- [43] That the plaintiff testified that the employer accommodated him to perform light duties and is allowed to rest and sleep. That he is no longer performing pre-injury duties as a dump-truck operator. That the plaintiff's evidence on loss of earnings does not align or corroborate the impugned expert evidence. That this Court was faced with two issues; to wit: firstly, if the Court were to accept the plaintiff's

evidence, the issue would be that his evidence does not corroborate evidence by the experts. Secondly, if this Court were to accept the expert's evidence, the issue would be that their evidence is not based on facts or evidence given by the plaintiff.

[44] That the plaintiff is currently accommodated and receiving a monthly salary. There is no evidence from the experts, particularly the occupational therapist, evincing that he is not coping in the performance of his current duties as currently accommodated. That it is so because the experts believed that the plaintiff returned to his pre-injury duties as a dump-truck driver after one year. He was not assessed in terms of his current duties. That the impugned expert evidence has been led without proper factual foundation.

[45] That the issue to be addressed by the plaintiff therefore is whether is suitable to perform his current duties as accommodated by the employer and secondly, how long is the employer willing to accommodate and pay him under the current capacity.

[46] In conclusion, it was contended for the defendant that the plaintiff has failed to discharge the onus by proving on a balance of probabilities that he suffered future loss of earnings. That it is so since the evidence of the plaintiff and the experts do not corroborate each other, but in fact contradict each other. Accordingly, the claim for loss of earnings should be dismissed with costs on a party and party scale. Alternatively, it was submitted for the defendant that the experts be ordered to reconsider the evidence given by the plaintiff in Court and align their reports with same.

[47] The defendant also submitted that, to the extent that the expert opinions or evidence are based on hearsay evidence, such evidence fell to be rejected by this Court. This is so because the defendant's right to a fair trial would be infringed if this Court were to accept expert

opinions based on hearsay without affording the defendant an opportunity to test such evidence.

[48] The defendant contends that the discovery of documents in terms of the rules of Court does not make them admissible as evidence against the other party, unless the documents could be admitted under one or other of the common law exceptions to the hearsay rule. That contention was made with reference to ***Rautini v Passenger Rail Agency of South Africa***.² Furthermore, with reference to ***Mbizo v Old Mutual Life Assurance Company (SA) Ltd***³, it was submitted for the defendant that the function of an expert is to give an opinion on the facts and documents given to him by the client. He must then draw inferences from those facts and documentation. The reasonableness or otherwise of drawing inferences from such facts in support of the opinion can only be determined once the plaintiff's evidence has been tested.⁴ The overarching argument or attack on the evidence of experts is grounded on the principle that an opinion of an expert must be based on facts which have been proven before the Court. That an opinion based on facts not in evidence has no value for the Court. A Court has to ascertain whether the opinions expressed by the experts are based upon facts proved to it by way of admissible evidence.

[49] The defendant ultimately argues that the onus is on the plaintiff to tender sufficient evidence of his pre- and post-accident income to enable the Court to assess and quantify past and future loss of earnings. That, as pointed out in ***Rudman v Road Accident Fund***⁵, an award cannot be based upon speculation. It must have an evidential foundation.

² (853/2020) [2021] ZASCA 158 (8 November 2021) para 11

³ (3365/2017) [2024] ZAECMHC 29 (14 May 2024) para 13

⁴ See also ***Road Accident Fund v Madikane*** (1270/2018) [2019] ZASCA 103 (22 August 2019), para 4; ***Pricewaterhousecoopers Incorporated and others v National Potato Co-operative Ltd and Another*** [2015] 2 All SA 403 (SCA), para 80

⁵ 2003 (2) SA 234 (SCA), para 16

DETERMINATION:

[50] The plaintiff filed the reports of his experts, but the defendant did not admit the opinions expressed therein. Consequently, the plaintiff elected to lead the evidence of his experts by way of affidavit in terms of Rule 38(2) of the Uniform Rules. The defendant did not oppose the application. It nevertheless maintained that, to the extent that any of the opinions expressed by the experts were based on hearsay evidence, such evidence remained subject to the provisions of Section 3(1) of the **Law of Evidence Amendment Act** 45 of 1988. The defendant contended that it had not agreed to the admission of hearsay evidence against it and that, insofar as an expert opinion depended upon hearsay evidence, its admission without affording the defendant an opportunity to test the evidential basis upon which the opinion was founded would cause prejudice and infringe upon its right to a fair trial. The defendant accordingly submitted that any portion of the expert evidence founded on hearsay should be rejected.

[51] Section 3 of Act 45 of 1988 expressly stipulates as follows:

- “(1) Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless-*
- (a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings;*
 - (b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or*
 - (c) the court, having regard to-*
 - (i) the nature of the proceedings;*
 - (ii) the nature of the evidence;*
 - (iii) the purpose for which the evidence is tendered;*
 - (iv) the probative value of the evidence;*
 - (v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;*

- (vi) *any prejudice to a party which the admission of such evidence might entail; and*
 - (vii) *any other factor which should in the opinion of the court be taken into account, is of the opinion that such evidence should be admitted in the interests of justice.*
- (2) *The provisions of subsection (1) shall not render admissible any evidence which is inadmissible on any ground other than that such evidence is hearsay evidence.*
- (3) *Hearsay evidence may be provisionally admitted in terms of subsection (1) (b) if the court is informed that the person upon whose credibility the probative value of such evidence depends, will himself testify in such proceedings: Provided that if such person does not later testify in such proceedings, the hearsay evidence shall be left out of account unless the hearsay evidence is admitted in terms of paragraph (a) of subsection (1) or is admitted by the court in terms of paragraph (c) of that subsection."*

[52] The defendant identified the evidence of the plaintiff's alleged supervisor, Mr Abbey Maine, as evidence that does not comply with Section 3 of the **Law of Evidence Amendment Act** 45 of 1988, on the basis that it constitutes hearsay evidence. The defendant further submitted that, to the extent that any of the expert opinions or evidence were based on hearsay evidence, such evidence fell to be rejected by this Court. This contention was made in general terms, without identifying the particular evidence that could constitute hearsay. The basis of the contention was that the defendant's right to a fair trial would be infringed if this Court were to accept expert opinions based on hearsay without affording the defendant an opportunity to test such evidence. The defendant maintained that it had not agreed to the admission of hearsay evidence against it and that, insofar as an expert opinion depended upon hearsay evidence, its admission without affording the defendant an opportunity to test the evidential basis upon which the opinion was founded would cause prejudice and infringe upon its right to a fair trial. The defendant accordingly submitted that any portion of the expert evidence founded on hearsay should be rejected.

- [53] The evidence attributed to Mr Abbey Maine does not materially bear upon the determination or quantification of the plaintiff's loss of earning capacity. The information allegedly furnished by Mr Maine concerns principally the plaintiff's workplace circumstances, including the duties performed by him, the accommodation allegedly afforded to him by his employer, his attendance at the clinic and the employer's concerns regarding his ability to continue performing his duties. The plaintiff's actual earnings before and after the accident are reflected in his payslips, while his physical limitations, vocational capacity and ability to compete in the open labour market are addressed by the evidence of the orthopaedic surgeon, occupational therapist and industrial psychologist.
- [54] In the circumstances, it is unnecessary for the Court to rely upon the hearsay statements attributed to Mr Maine in determining the plaintiff's loss of earning capacity. The Court accordingly does not consider it necessary to determine whether that evidence is admissible in terms of Section 3(1) of the **Law of Evidence Amendment Act** 45 of 1988.
- [55] By way of recap, the essential evidence relevant to the plaintiff's loss of earnings/earning capacity is that, following the accident, he was accommodated by his employer on lighter duties for approximately one year, after which he returned to his pre-accident occupation as a dump-truck operator and remained employed. The medical and occupational therapy evidence nevertheless indicated that he experienced significant difficulty performing the physical demands of his occupation and was considered unsuitable for his current work and for most physical and manual occupations. Dr Jacobs considered his continued employment to be precarious and, to some extent, sympathetic in nature, and expressed the view that, should the plaintiff leave his current employment, he would probably remain unemployed. He concluded that the accident had diminished the plaintiff's capacity to earn.

[56] Of particular relevance is that the plaintiff's actual earnings, as reflected in the payslips relied upon by Dr Jacobs, increased after the accident. His March 2019 payslip reflected earnings of R17 404 per month, including allowances, with a basic salary of R10 924 per month, whereas his January 2023 payslip reflected earnings of R24 691 per month, including allowances, with a basic salary of R16 843 per month. Notwithstanding that the plaintiff remained employed and was earning an income, the actuarial calculation, based in part on Dr Jacobs' opinion that the plaintiff was expected to remain unemployable in the future, assumed no further earnings from the date of calculation and calculated a future loss of earnings of R3 884 100, without applying contingencies.

[57] In this case, the actuary's report is the only actuarial calculation admitted into evidence and accepted by the defendant as such. The actuarial report is dated 10 March 2023. At that time, the plaintiff was 44 years of age. When the accident occurred, he was 40 years of age. When the heads of argument were filed in 2024, the plaintiff was 46 years of age. Accordingly, it was submitted on behalf of the plaintiff that, at 46 years of age, he would, in the ordinary course, still have been able to work until the age of 65. Thus, when the heads of argument were filed in 2024, the plaintiff had 19 years of employment remaining, which, on the usual scale, would result in a contingency deduction of 9%.

[58] It was submitted that, given that there was only one actuarial report before the Court, which was accepted as such by the defendant, and that no past loss had been calculated in this instance, the only issue before the Court was the contingency deduction to be applied to the future loss of earnings. It was further submitted that, although the plaintiff remained employed, the evidence showed that he was doing so against the medical advice of the experts and that his earning capacity had been significantly diminished. It was contended that,

should the employer resort to retrenchments, the plaintiff would be first in line, and that the evidence established that his employer was currently accommodating him. He was not suited to sedentary work and did not possess the skills necessary for such work. Accordingly, it was submitted that a higher contingency should be applied. Against this backdrop, it was submitted on behalf of the plaintiff that a reasonable contingency to be applied *in casu* to the future loss should be 20%, approximately double the contingency deduction proposed by Koch. The amount contended for was therefore R3 884 100, less 20%, resulting in R3 107 280. No past loss of earnings had been factored into these amounts. The amount of R3 884 100 represents the actuarially calculated future loss of earnings before any deduction for contingencies.

[59] It is clear from the expert evidence that the plaintiff would remain unemployable in the future. It is also clear from that evidence that his current employment is regarded as sympathetic in nature and that, ordinarily, he should stop working. In the uninjured scenario, the actuarial report records that the plaintiff's earnings would, from March 2023, have progressed at R16 843 per month, calculated in financial year 2023 terms and before tax, unless otherwise stated. The report reflects that the actuaries included the same fringe benefits from March 2023 onwards and allowed for earnings inflation until the retirement age of 63. The report further reflects that no contingencies were applied.

[60] In ***Southern Insurance Association Ltd v Bailey NO***⁶, the then Appellate Division insightfully made the following observations:

“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

⁶ 1984 (1) SA 98 (A) At 113F to 114E

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.

...

In a case where the Court has before it material on which an actuarial calculation can usefully be made, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an "informed guess", it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial Judge's "gut feeling" (to use the words of appellant's counsel) as to what is fair and reasonable is nothing more than a blind guess. (Cf Goldie v City Council of Johannesburg 1948 (2) SA 913 (W) at 920.)"

[61] The above notwithstanding, the Appellate Division proceeded in **Bailey** to make the following apt observations:

"Where the method of actuarial computation is adopted, it does not mean that the trial Judge is "tied down by inexorable actuarial calculations". He has "a large discretion to award what he considers right" (per Holmes JA in Legal Assurance Co Ltd v Botes 1963 (1) SA 608 (A) at 614F). One of the elements in exercising that discretion is the making of a discount for "contingencies" or the "vicissitudes of life". These include such matters as the possibility that the plaintiff may in the result have less than a "normal" expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case. See Van der Plaats v South African Mutual Fire and General Insurance Co Ltd 1980 (3) SA 105 (A) at 114 - 5. The rate of the discount cannot of course be assessed on any logical basis: the assessment must be largely arbitrary and must depend upon the trial Judge's impression of the case.

The appellant's counsel strongly attacked the discount of 10% which Vos J made for contingencies. He submitted that a factor of 50% would have been appropriate in the circumstances, especially in view of the fact that Danderine was a young child with virtually her whole life before her, so that she would have been exposed for a very long time to the vicissitudes of life.

It is, however, erroneous to regard the fortunes of life as being always adverse: they may be favourable. In dealing with the question of contingencies, Windeyer J said in the Australian case of Bresatz v Przibilla (1962) 36 ALJR 212 (HCA) at 213:

*‘It is a mistake to suppose that it necessarily involves a ‘scaling down’. What it involves depends, not on arithmetic, but on considering what the future may have held for the particular individual concerned... (The) generalisation that there must be a ‘scaling down’ for contingencies seems mistaken. All ‘contingencies’ are not adverse: All ‘vicissitudes’ are not harmful. A particular plaintiff might have had prospects or chances of advancement and increasingly remunerative employment. Why count the possible buffets and ignore the rewards of fortune? Each case depends upon its own facts. In some it may seem that the chance of good fortune might have balanced or even outweighed the risk of bad’.*⁷

- [62] It is now well settled that contingencies, whether negative or positive, constitute an important mechanism for adjusting the loss suffered to the circumstances of each individual case, with a view to achieving equity and fairness between the parties. There is no hard and fast rule regarding contingency allowances. The Quantum Yearbook⁸ states:

“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 courts. However, most matters do not go to court so the relevant deduction becomes a matter for negotiation. Even when matters do go to court some judges seek advice from expert witnesses as regards the appropriate deductions to make. General contingencies cover a wide range of considerations which may vary from case to case and may include: taxation, early death, saved travel costs, loss of employment, promotion prospects, divorce, etc. There are no fixed rules as regards general contingencies. The following guidelines can be helpful:

Sliding scale: $\frac{1}{2}\%$ per year to retirement age, ie 25% for a child, 20% for a youth and 10% in middle age.

...

Normal contingencies: *the RAF usually agrees to deductions of 5% for past loss and 15% for future loss, the so-called ‘normal contingencies’.*” (Emphasis supplied)

⁷ At 116G to 117D

⁸ RJ Koch *The Quantum Yearbook* (2024) at 125

[63] The established basic principle in the assessment of future damages is that it is not an exact science and that the requisite enquiry remains highly speculative. The Court must determine the appropriate amount of compensation in the best possible way, having regard to all the facts at its disposal. In this regard, the Court enjoys a very wide discretion.⁹ The Supreme Court of Appeal in **Road Accident Fund v Guedes**¹⁰ observes instructively:

“It is trite that a person is entitled to be compensated to the extent that the person’s patrimony has been diminished in consequence of another’s negligence. Such damages include loss of future earning capacity (see for example President Insurance Co Ltd v Mathews). The calculation of the quantum of a future amount, such as loss of earning capacity, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature, such an enquiry is speculative and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate (see, for example, Southern Insurance Association Ltd v Bailey NO). The court necessarily exercises a wide discretion when it assesses the quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right. Courts have adopted the approach that, in order to assist in such a calculation, an actuarial computation is a useful basis for establishing the quantum of damages. Even then, the trial Court has a wide discretion to award what it believes is just (see, for example, the Bailey case and Van der Plaats v South African Mutual Fire and General Insurance Co Ltd).” (Footnotes omitted)

[64] Where bodily injury incapacitates a plaintiff to the extent that his future ability to earn a living has been partially or fully compromised, our law refers not to loss of future earnings, but to “loss of earning capacity”. It is so termed because, in these circumstances, it is the plaintiff’s capacity to earn, rather than his actual earnings, that is affected, although the loss is ordinarily measured by reference to the loss of expected income.¹¹ In **Dippenaar v Shield Insurance Co Ltd**¹², the Court observed:

⁹ **HB Klopper Damages** (2017) at 96; see also **President Insurance Co Ltd v Mathews** 1992 (1) SA 1 (A) at 5C to E.

¹⁰ 2006 (5) SA 583 (SCA) para 8

¹¹ **HB Klopper Damages** (2017) at 117; see also **Road Accident Fund v Guedes** 2006 (5) SA 583 (SCA).

¹² 1979 (2) SA 904 (A) at 917B-E.

“In our law, under the lex Aquilia, the defendant must make good the difference between the value of the plaintiff’s estate after the commission of the delict and the value it would have had if the delict had not been committed. The capacity to earn money is considered to be part of a person’s estate and the loss or impairment of that capacity constitutes a loss, if such loss diminishes the estate. This was the approach in Union Government (Minister of Railways and Harbours) v Warneke 1911 AD 657 at 665 where the following appears:

‘In later Roman law property came to mean the universitas of the plaintiff’s rights and duties, and the object of the action was to recover the difference between the universitas as it was after the act of damage, and as it would have been if the act had not been committed (Greuber at 269). Any element of attachment or affection for the thing damaged was rigourously excluded. And this principle was fully recognised by the law of Holland.’

See also Union and National Insurance Co Ltd v Coetzee 1970 (1) SA 295 (A) where damages were claimed and allowed by reason of impairment of earning capacity.

It is correctly argued that, in a case of personal injury as a result of a delict, the Court must calculate, on the one hand, the present monetary value of all that the plaintiff would have brought into his estate had he not been injured, and, on the other hand, the total present monetary value of all that the plaintiff would be able to bring into his estate whilst incapacitated by his injury. The monetary value of loss of earning capacity may be proved in a variety of ways, depending on the facts of each case.”

[65] Whilst it is so 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 actuarial calculations, it is also so that the deduction is within the prerogative of the Court. General contingencies cover a wide range of considerations which may vary from case to case and may include taxation, early death, saved travel costs, loss of employment, promotion prospects, divorce etc. There are simply no fixed rules as regards general contingencies. A sliding scale of ½% per year to retirement age, i.e. 25% for a child; 20% for a youth and 10% for the middle-aged has been suggested.

[66] According to the actuarial report *in casu*, the figures were calculated as at 1 April 2023. Furthermore, the report states that “if figures are

required more than twelve months after this date of calculation, a new calculation is recommended. For shorter time periods, allowance for inflation may be considered.” Accordingly, it had to be factored in that the figures in question were required more than 12 months after the date of calculation and that a new calculation was recommended. An allowance for inflation also had to be considered. In this regard, actual or assumed earnings are usually projected using earnings-inflation assumptions, as well as any other information deemed reasonable having regard to the facts and relevant expert opinion.

[67] The evidence before this Court indicates that, in January 2023, the plaintiff’s basic salary was R16 843 per month. The actuarial report further records an employer provident-fund contribution equal to 5.3% of basic salary, an employee provident-fund contribution equal to 4.3% of basic salary, additional taxable earnings calculated at 48.64% of basic salary, and an employer medical-aid contribution of R320 per month.

[68] It is trite that the opinion of an expert witness does not usurp the function of the Court. It bears emphasis that, where the method of actuarial computation is adopted, it does not mean that the trial Judge is “tied down by inexorable actuarial calculations”. He has “a large discretion to award what he considers right”. One of the elements in exercising that discretion is the making of a discount for “contingencies” or the “vicissitudes of life”. The amount of any discount may vary, depending upon the circumstances of the case. The rate of the discount cannot, of course, be assessed on any logical basis: the assessment must be largely arbitrary and must depend upon the trial Judge’s impression of the case. It has been said that such “inexorable actuarial calculations leave no room within their framework for the subtle variety of equitable considerations”.¹³ The Supreme Court of Appeal has likewise emphasised that an actuarial

¹³ RJ Koch *Damages for lost income* (1984) at 57

computation is a useful basis for assisting the Court in establishing the quantum of loss of earning capacity, but that the trial Court retains a wide discretion to award what it considers just.

[69] It bears emphasis that provision for contingencies is a matter falling within the discretion of the trial Court and that the amount allowed for contingencies is variable and closely related to the facts and circumstances of each case. Thus, allowing for contingencies is one of the elements in exercising the discretion to award damages.¹⁴ It is so that although contingencies are generally taken into account when awards of damages are quantified, this is not always done.¹⁵ Furthermore, contingencies may be positive or negative; not all contingencies are negative or necessarily involve a reduction of the award. In **Minister of Defence and Another v Jackson**¹⁶, the Court observed:

"The contingencies to which regard is to be had in the making of a discount include such matters as the possibility of an error in the estimation of the plaintiff's life expectancy and retirement age; the likelihood of illness, accident or unemployment which would have occurred in any event, or which may in fact occur, and so affect the plaintiff's earning capacity; and the inflation or depreciation of money in the future. Naturally the amount of any discount depends on the facts of each particular case. There is no standard rule. The assessment is largely arbitrary.

It is, however, wrong to view the fortunes of life as being always adverse; they may be favourable. This point was well made by Windeyer J in Bresatz v Przibilla (1962) 108 CLR 541 (a decision of the High Court of Australia). He said at 543-544:

'It is a mistake to suppose that it necessarily involves a 'scaling down'. What it involves depends, not on arithmetic, but on considering what the future might have held for the particular individual concerned. He might have fallen sick from time to time, been away from work and unpaid. He might have become unemployed and unable to get work. He might have been injured in circumstances in which he would receive no compensation from any source. He might have met an untimely death. Allowance must be made

¹⁴ **Road Accident Fund v Reynolds** (A5023/04) [2005] ZAGPHC 19 (18 February 2005), para 5 (and the authorities therein cited)

¹⁵ *Ibid* para 7

¹⁶ 1991 (4) SA 23 (ZS) at 34F to 35C

for these ‘contingencies’ or the ‘vicissitudes of life’ as they are glibly called. But this ought not to be done by ignoring the individual case and making some arbitrary subtraction. We were told that in South Australia it is a common practice to subtract 25% ‘for contingencies’. Indeed counsel for the appellant, in the calculations he made in support of his claim for higher damages, conceded that this should be done. But he did not explain why. I know of no reason for assuming that everyone who is injured and rendered for a period unable to work would probably in any event have been for a quarter of that period out of work, or away from work and unpaid. No statistics were presented to justify this assumption. Moreover, the generalisation, that there must be a ‘scaling down’ for contingencies seems mistaken. All ‘contingencies’ are not adverse; all ‘vicissitudes’ are not harmful. A particular plaintiff might have had prospects or chances of advancement and increasingly remunerative employment. Why count the possible buffets and ignore the rewards of fortune? Each case depends upon its own facts. In some it may seem that the chance of good fortune might have balanced or even outweighed the risk of bad’.”

[71] In **Braun obo Tiripano v Passenger Rail Agency of South Africa**¹⁷, the Court observed:

“The application of the appropriate contingencies to the actuarial calculation of earnings in this matter emphasises certain principles. The first is that each case should be determined by its peculiar facts. There are normal deductions that apply to past and future earnings in the uninjured state for adults. These deductions are 5% for past earnings and 15% for future earnings. For a younger adult, such as a 25-year-old with approximately 40 years until retirement, a 20% deduction would be appropriate and consistent with a 0.5% annual deduction. Contingency deductions are applied to earnings, not to the loss of earnings. In any given case, there are usually four deductions that need to be applied, and each should be considered on its merits. There are instances, such as in casu, where a higher-than-normal deduction is warranted for future uninjured earnings if the facts require it. The contingency deduction thus applied for future uninjured earnings may be higher than for future injured earnings, emphasising the need to consider the reasoning behind each calculation. Regarding injured earnings, no deductions are necessary for past injuries if they, as is usually the case, reflect actual earnings. There is a tendency to apply a higher-than-normal deduction to future injured earnings. The facts of a particular case should determine whether that is appropriate or not. If the career projection proposed is customised to the Plaintiff’s injured condition, it will make no sense to apply a higher-than-normal deduction. Overall, the Court still maintains a discretion in applying or not applying contingencies.’ (Emphasis supplied)

¹⁷ (9777/2018) [2025] ZAWCHC 141; 2025 (9A4) QOD 1 (WC) (26 March 2025) para 45

[72] Having regard to the principles set out above, the Court must determine, on the particular facts and circumstances of this case, whether a contingency deduction is warranted. Although the actuarial report made no deduction for contingencies, such a deduction is not an automatic or mandatory consequence of an actuarial calculation. It remains a matter within the discretion of the Court, which must test the actuarial result against the general equities of the particular case.¹⁸ Having considered the evidence as a whole, including the plaintiff's actual earnings as reflected in the payslips, the assumptions underlying the actuarial calculation, the plaintiff's particular circumstances, and the nature and extent of his diminished earning capacity, the Court is satisfied that no further deduction for contingencies is warranted. The actuarially calculated amount of R3 884 100.00 accordingly constitutes a fair and reasonable award in the circumstances.

ORDER:

[73] It is against this backdrop that the following order issued:

1. The Defendant is liable to compensate the Plaintiff in an amount of **R3 884 100.00 (THREE MILLION EIGHT HUNDRED AND EIGHTY-FOUR THOUSAND ONE HUNDRED RAND)** for loss of earning capacity.
2. The amount set out in paragraph 1 above shall be paid within 180 (One Hundred and Eighty) calendar days from the date of this order.
3. The Defendant is liable to pay interest on the above amount at the prescribed rate from the date of this order to the date of full and final payment.

¹⁸ *Hulley v Cox* 1923 AD 234 at 244

4. The Defendant is liable for the costs of suit.
5. The Defendant is liable to pay interest on all taxed costs at the prescribed rate, from the date of *allocatur* of the Taxing Master to the date of full and final payment.

APS NXUMALO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances:

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Instructed by:

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For the Defendant:
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