



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NO: RAF 163/2022

In the matter between:

TEBOGO JOHANNES MONTSHO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Date reasons requested: 12 August 2026

Delivered: 1 September 2026

Coram: Reddy J

Summary: Quantum determined by way of trial on affidavit in terms of Rule 38(2) of the Uniform Rules of Court - merits having been conceded in full by the Road Accident Fund. General damages of R600 000,00 and past and future loss of earnings of R1 168 790,40 awarded - reflecting an assessment of the plaintiff's injuries against comparable awards - tempered by the age of the expert reports - the inherently speculative nature of a loss of earning capacity assessment for a claimant injured as an infant.

JUDGMENT

REDDY J

Introduction

[1] On 20 May 2025, I granted the following order:

‘1. THAT:

1.1 The Defendant accepts liability for 100% (hundred percent) of the Plaintiff's agreed or proven damages;

1.2 The Defendant is to pay the Plaintiff R600 000,00 (Six Hundred Thousand Rand) in respect of general damages;

1.3 The Defendant is to pay the Plaintiff the amount of R1 168 790,40 (One Million One Hundred and Sixty-Eight Thousand Seven Hundred and Ninety Rand and Forty Cents) in respect of past and future loss of earnings;

1.4 The Defendant is to furnish the Plaintiff with a Section 17(4)(a) undertaking of the Road Accident Fund Act 56 of 1996, in terms of which the Defendant undertakes to pay the costs of future accommodation of the Plaintiff in a hospital or nursing home or supplying of goods to him/her, pursuant to injuries sustained by him/her in a motor vehicle collision which occurred on the 12th of September 2008, after the costs have been incurred and on proof thereof. Said certificate to be served on Plaintiff's attorneys not later than 28 July 2025.

2. The Defendant will not be liable for interest on the capital amount should same be paid before or on the expiry of the 180 days from date of judgment as per paragraph 1 supra, failing which the Defendant will be liable for interest calculated from 14 days from date of judgment.

3. The Defendant pays the Plaintiff's taxed or agreed party and party costs on the High Court scale up to the date hereof including the costs of the trial dates of 20th, 21st and 22nd of January 2025, which costs will inter alia include:

3.1 Cost incurred in preparation for and presentation of Plaintiff's Rule 38(2) Application as granted on date 21 January 2025 as well as the cost of drawing and obtaining the associated expert affidavits;

3.2 The reasonable cost of the medico legal reports, RAF 4 assessment report and the reasonable preparation and reservation fees (if any), addendum reports, any joint reports and the affidavits of the experts whom Plaintiff gave notice of, including the fees charged by the experts for purposes preparing and deposing to their affidavits in terms of the Rule 38(2);

3.3 The costs of senior and junior counsel for the trial, which cost will include attendance of pre-trial conferences and drafting of minutes (other than that by the Plaintiff's attorney, if any), inclusive of costs of drafting of Heads of argument and subsequent replying heads of argument. The cost for Counsel as from 12 April 2024 will be taxed on scale B;

3.4 The reasonable travel and accommodation expenses of the Plaintiff in accordance with the AA tariff for purposes of attending medico legal examinations and attendance at Court for purposes of trial;

3.5 The reasonable costs of instructing attorney and correspondent attorney at the seat of Court, which will include the costs for preparation for and attending the hearing date as set down for the 20th, 21st and 22nd of January 2025 by the instructing correspondent and accompanying travel and accommodation costs;

3.6 The costs occasioned by the Plaintiff's attorney in preparation of trial bundles;

3.7 The reasonable costs incurred to obtaining of payment of the capital as well as taxed costs and Section 17(4)(a) undertaking.

4. There is a contingency fee agreement concluded between the Plaintiff and his/her Attorney of record.

5. Taxation or settlement of bills of cost will additionally be subject to the following general conditions:

5.1.1 The Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant's attorneys of record; and

5.1.2 The Plaintiff shall allow the Defendant 14 (fourteen) court days to make payment of the taxed costs from date of stamped allocator and/or settlement;

5.1.3 The Defendant will not be liable for interest on the party and party cost except if not paid on or before the said agreed date in which case the Defendant will be liable for interest calculated from date of stamped allocator and/or settlement.

6. The Interest rate on the outstanding monies due to the Plaintiff will be calculated as prescribed in Section 1 of the Prescribed Rate of Interest Act, 1975, as amended by the Judicial Matters Amendment Act, No 24 of 2015, which act was promulgated on 15 December 2015.'

[2] A request for reasons was first raised in a communiqué dated 2 June 2025, and formalised in a notice in terms of rule 49(1)(c) of the Uniform Rules of Court, signed on 25 June 2025. It only came to my knowledge on 12 August 2026, as a result of administrative bungling in its transmission to me. Given the inordinate delay in the request for reasons being served before me, a concise explanation is warranted.

The parties

[3] The plaintiff is Mr Tebogo Johannes Montsho (Montsho), a major male person. He instituted this action, initially through his mother and natural guardian, arising from injuries he sustained as a minor child. By the time the matter proceeded to trial he had attained majority and continued the action in his own name.

[4] The defendant is the Road Accident Fund (the RAF), a juristic person established in terms of section 2 of the Road Accident Fund Act 56 of 1996, liable in law to compensate victims of motor vehicle accidents caused by the negligent driving of insured vehicles.

The merits

[5] The merits of the claim were conceded in full by the RAF prior to trial. The only issues that remained for adjudication were the quantification of general damages and of past and future loss of earnings. The RAF proffered an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for Montsho's future medical costs, and no claim was pursued for past medical expenses. Those issues were determined on the evidence placed before me by way of affidavits, admitted under rule 38(2) of the Uniform Rules of Court, read with section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988.

Background facts

[6] On 12 September 2008, Montsho, then three years old, was a pedestrian at Orkney, North West Province, when he was struck by a motor vehicle bearing registration number F[...]. The driver of that vehicle failed to keep a proper lookout. This collision is recorded in the serious injury assessment report completed by Dr H S Wentzel, and is consistent with the case as pleaded.

[7] Montsho sustained a soft tissue degloving injury to the left leg, with massive loss of tissue, and a suspected fracture of the distal femur, treated by debridement, suturing, multiple skin grafts, and a course of physiotherapy and rehabilitation.

The expert evidence

[8] Montsho's case on quantum rested on the reports and confirmatory affidavits of a panel of experts, none of whom were refuted by the RAF by way of a competing report or *viva voce* evidence. I turn now to succinctly deal with the expert evidence.

Dr Vic Oelofse (orthopaedic surgeon)

[9] Dr Vic Oelofse, an orthopaedic surgeon who examined Montsho on 25 August 2022, confirmed the degloving injury and the suspected distal femur fracture, and recorded that Montsho walks with difficulty and finds sitting uncomfortable. He noted that Montsho's left leg is now materially shorter than the right, and expressed the view that, from an orthopaedic perspective, Montsho is best suited to sedentary employment in future. His Rule 38(2) affidavit of 25 August 2022 recorded a Whole Person Impairment of 42%, while his medico-legal report of 21 September 2022 recorded 44%. Ms Gericke's report noted this discrepancy and adopted the latter figure of 44% for her calculations, and, to my mind, that later figure is the more reliable one to adopt here.

Dr L Gordon (plastic and reconstructive surgeon)

[10] Dr L Gordon, a plastic and reconstructive surgeon who consulted with Montsho on 14 September 2022, corroborated the degloving injury and the multiple skin grafts, while documenting extensive scarring. Dr L Gordon was of the view that future employability was unlikely to be materially affected by the disfigurement. He further found that the accident had not had any detrimental effect on Montsho's life expectancy, though the quality of his past and future life had been severely affected by the injury.

Ms Alet Mattheus (educational psychologist)

[11] Ms Alet Mattheus, an educational psychologist who assessed Montsho on 24 August 2022, expressed the opinion that, absent the accident, Montsho would probably have completed Grade 12. Post-accident, she found his cognitive functioning to fall within the borderline range, with significant working memory difficulties and emotional difficulties flowing from the trauma of the accident. Montsho repeated Grade 1 and, at the time of assessment, was struggling in Grade 10. She recommended placement in a technical and vocational college, where he would probably be capable of an N3 level of education, unlikely to progress further.

Ms Sune Swart (clinical psychologist)

[12] Ms Sune Swart, a clinical psychologist who evaluated Montsho on 23 August 2022, diagnosed mild post-traumatic stress symptoms and mild depressive symptoms flowing from the accident, and considered Montsho to have been rendered more psychologically vulnerable on a long-term basis. She was of the view that his academic functioning, and in turn his occupational prospects, were likely to be adversely affected by this vulnerability.

Ms Cindy-Lee du Randt (occupational therapist)

[13] Ms Cindy-Lee du Randt, an occupational therapist who assessed Montsho on 23 August 2022, found him, on functional capacity evaluation, best suited to sedentary work with limited mobility and no agility requirements, and concluded

that he is no longer an equal competitor in the open labour market in any occupation.

Ms Lianè Gericke (Industrial psychologist)

[14] Ms Lianè Gericke, an industrial psychologist retained on Montsho's behalf, posited that, but for the accident, Montsho would probably have completed Grade 12, entered the labour market in an unskilled capacity by March 2025, and progressed over time to a semi-skilled earnings ceiling by age 45. Having regard to the accident, the same expert projected that Montsho's incomplete schooling would confine him to the unskilled, informal labour market, and that he would struggle to obtain or retain even sedentary employment. On this basis, Montsho was treated as unemployable for the purpose of the actuarial calculation.

GRS Actuarial Consulting

[15] GRS Actuarial Consulting, applying those assumptions, calculated the present value of Montsho's pre-morbid earnings at R1 947 984,00. After a general contingency deduction of 25%, applied to reflect the ordinary uncertainties of the pre-morbid projection, the net pre-morbid loss was calculated at R1 460 988,00. No post-morbid income was allowed for, on the basis that Montsho was assumed to be unemployable, and no contingency was deducted from that nil figure. The resultant net loss, on the actuary's calculation, was R1 460 988,00.

RAF experts

[16] The RAF appointed no experts of its own, and led no evidence to counter the medico-legal and actuarial evidence adduced on Montsho's behalf. Its case, as

developed in argument, was directed instead at the weight to be attached to that evidence.

The approach to expert evidence

[17] The correct approach to expert evidence of this kind is not in doubt. As was held in *Michael v Linksfield Park Clinic*¹:

‘The question of reasonableness and negligence is one for the court itself to determine on the basis of the various, and often conflicting, expert opinions presented. As a rule that determination will not involve considerations of credibility but rather the examination of the opinions and the analysis of their essential reasoning, preparatory to the court's reaching its own conclusion on the issues raised.’

[18] Although that dictum was directed at the assessment of professional reasonableness, the same discipline applies more generally to the evaluation of expert opinion evidence. Ultimately, the court must evaluate the underlying reasoning of each report submitted. It axiomatically follows that a court should not blindly accept a report for a lack of challenge, nor discount it based on the RAF's bare objections unsupported by countervailing evidence. It is against this backdrop and within this prism that the evidence must be evaluated.

Submissions on behalf of Montsho

[19] Advocate Van der Westhuizen submitted that the evidence introduced under rule 38(2) had to be accepted at face value. Advocate Van der Westhuizen pointed out that the RAF did not oppose the rule 38(2) application when it served before this Court. He submitted that this posture meant the objection raised later from

¹*Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another* 2001 (3) SA 1188 (SCA) para 34.

the bar, that the orthopaedic report had become stale, ought to carry little weight in those circumstances.

[20] Advocate Van der Westhuizen added that the RAF's own unqualified tender of an undertaking in terms of section 17(4)(a), which did not exclude orthopaedic treatment, was itself an implicit acceptance of Dr Oelofse's findings and recommendations. Advocate Van der Westhuizen relied further on a confirmatory letter obtained shortly before the hearing, in which Dr Oelofse's practice reaffirmed that the diagnosis and treatment plan set out in the 2022 report remained unchanged.

[21] On general damages, Advocate Van der Westhuizen argued for an award of R1 200 000,00, having regard to the severity and permanence of the orthopaedic injury, the extensive scarring, and the psychological and cognitive sequelae. On loss of earnings, Advocate Van der Westhuizen urged this Court to accept the actuarial calculation of R1 460 988,00 in its entirety, submitting that the assumptions underlying it were sound and were, in the circumstances of a plaintiff injured in early childhood, as reliable as the available evidence permitted.

Submissions on behalf of the RAF

[22] Mr Setati, appearing for the RAF, did not dispute the correctness of the factual findings recorded in the expert reports as such, but vocalised two objections going to the weight to be attached to that evidence.

[23] First, Mr Setati submitted that the history of the mechanism and *sequelae* of the injury, as recorded in the reports, was obtained substantially from Montsho's

uncle rather than from Montsho himself or from contemporaneous medical records, and that this hearsay evidence did not meet the requirements of section 3 of the Law of Evidence Amendment Act.²

[24] Second, Mr Setati submitted that several of the medico-legal reports, on their own terms, were expressed to be valid for a period of two years from the date of assessment. Importantly Mr Setati underscored that period which had lapsed by the time the matter came to trial in January 2025, without an updated assessment having been obtained.

[25] In support of his submissions on general damages, Mr Setati placed store on a series of comparable awards. In *Kobego³ v Road Accident Fund* a five-year-old girl who suffered a degloving injury to the right lower leg, with loss of muscle bulk and extensive scarring, was awarded R350 000,00. Mr Setati contrasted this with *Noble v Road Accident Fund⁴*, where a head and brain injury with multiple fractures and extensive scarring attracted an award equating to R1 226 000,00 in current terms, submitting that Montsho's injuries, serious as they are, did not approach the severity of those two matters. In the alternative, and independently of his submission that the claim be dismissed or postponed, Mr Setati submitted that a risk discount ought to be applied to reflect the absence of hospital or clinical records and of an updated assessment, and that general damages be settled at R450 000,00.

[26] On loss of earnings, Mr Setati's primary submission was different. He said the claim of total unemployability was extreme. It had not been tested by an

²Section 3 of the Law of Evidence Amendment Act 45 of 1988.

³*Kobego v Road Accident Fund* 2013 JDR 2270 (GNP) at para 45

⁴*Noble v Road Accident Fund* 2011 (6J2) QOD 54 (GSJ).

updated vocational or occupational assessment. Mr Setati submitted that this Court should be cautious. The proper course, Mr Setati advanced, was either dismissal of this head of claim, or a postponement to allow updated reports to be obtained. In the alternative, Mr Setati put forward a competing calculation. He applied a 20% contingency, not the actuary's 25%, to the pre-morbid figure of R1 947 984,00. This gave pre-morbid earnings of R1 558 387,20. Mr Setati then applied a further 40% contingency to that same pre-morbid base. This, he said, represented a residual post-morbid earning capacity of R1 168 790,40, despite the case advanced for total unemployability. Mr Setati set the two figures off against one another. On the RAF's alternative case, Montsho's total loss of earnings amounted to no more than R389 596,80.

General damages

The law

[27] It is deep-rooted in our law that an award of general damages is not susceptible of precise mathematical calculation. It is apt, in this regard, to recall the words of *Sandler v Wholesale Coal Suppliers*⁵:

‘The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending upon the Judge's view of what is fair in all the circumstances of the case.’

[28] Comparable previous awards accordingly guide, but do not bind, that assessment, and must be suitably adjusted for the changed value of money. The assessment of general damages is pre-eminently a matter for the discretion of the

⁵*Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 at 199.

trial court. As was stated in *Road Accident Fund v Marunga*⁶, a court, in considering all the facts and circumstances of the case, enjoys a wide discretion to award what it considers to be fair and adequate compensation to the injured party. In *Minister of Safety and Security v Seymour*⁷ this principle was expressed as follows:

‘The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they have no higher value than that.’

[29] In *Protea Assurance Co Ltd v Lamb*⁸, the court held:

‘Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages.’

[30] Within this context the overarching criteria would be fairness. In *Pitt v Economic Insurance Co Ltd*⁹ the underlying fairness of an award was brought into sharp focus in the following way:

‘The court must take care to see that its award is fair to both sides – it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense.’

Evaluation

[31] Montsho's injury was, on any assessment, a serious one. The 44% Whole Person Impairment recorded by Dr Oelofse, the permanent shortening of the left

⁶*Road Accident Fund v Marunga* 2003 (5) SA 164 (SCA) at para 23.

⁷*Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) para 17.

⁸*Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 535H-536B.

⁹*Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (D) at 287E.

leg, the restriction to sedentary employment, and the extensive scarring described by Dr Gordon together evinced an injury of considerable severity and permanence, sustained by a child of three years old.

[32] What distinguished Montsho's case from the purely orthopaedic and disfigurement injury considered in *Kobeqo* was the psychological and cognitive overlay described by Ms Swart and Ms Mattheus. Mild post-traumatic stress and depressive symptoms, together with borderline cognitive functioning and significant working memory difficulties, were *sequelae* which were absent from that comparator, and which, in my view, warranted an award somewhat above the range that case would otherwise suggest.

[33] At the same time, Montsho's injury did not approach the severity of *Noble*, which involved a head and brain injury with associated neurocognitive deficits of a different order to the emotional and cognitive *sequelae* described here. An award approaching the current value of that award would, to my mind, have overstated the comparison.

[34] From my standpoint, a further relevant fact was that the orthopaedic and clinical psychology reports on which Montsho relied were, by the time of trial, several years old, and that no updated assessment was placed before me to confirm Montsho's current condition. While this did not affect the admissibility of the evidence, admitted as it was under Rule 38(2)¹⁰ without objection to the application itself, it was a legitimate consideration going to the degree of confidence with which an award at the higher end of the range contended for by Montsho could be made.

¹⁰Uniform Rule of Court 38(2), read with section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988.

[35] As I see it, Mr Setati's proposition, that this evidentiary shortcoming warranted a risk discount reducing general damages to R450 000,00, could not be accepted. The core findings on which such a discount would need to operate, the degloving injury, the permanent shortening of the left leg, the extensive scarring, and the psychological and cognitive sequelae, were not themselves disputed. Mr Setati challenged the currency of the reports, not the correctness of the findings they contained. A discount of that order would have been apt had the underlying diagnosis itself been placed in issue. It was not. The measured response to reports that had become dated was, to my mind, the one already reflected *supra*, restraint at the upper end of the range contended for by Montsho, not a wholesale discount from the established injury.

[36] Weighing these considerations, to my mind an award of R600 000,00 fairly and reasonably compensated Montsho for his general damages. In the premises, general damages in the amount of R600 000,00 were awarded to Montsho.

Loss of earnings

The law

[37] The principle is well ensconced in our law that any enquiry into damages of this kind is inherently speculative. As was stated in *Southern Insurance Association Ltd v Bailey NO*¹¹:

"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

¹¹*Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A) at 113F-G.

is to make an estimate, which is often a very rough estimate, of the present value of the loss."

[38] Resultantly, the court must do the best it can on the material before it, making use of contingency allowances to accommodate the many imponderables inherent in such a projection. It is settled that the younger a plaintiff, the more time remains for the vicissitudes of life to intervene, and that courts accordingly apply higher pre-morbid contingencies the younger the plaintiff. This was affirmed in *Sayed NO v Road Accident Fund*¹², which recognised the established sliding scale of a pre-morbid contingency of 25% for a child, 20% for a youth, and 10% in middle age, as a convenient starting point, to be departed from according to the circumstances of the particular case.

Evaluation

[39] The actuary calculated the present value of Montsho's pre-morbid income, based on the projections of the industrial psychologist, at R1 947 984,00, and treated Montsho's post-morbid income as nil, on the basis that he was assumed to be wholly unemployable. Applying a general contingency deduction of 25% to the pre-morbid figure alone, the actuary arrived at a net loss of R1 460 988,00.

[40] The actuary's 25% pre-morbid contingency was, in terms of the sliding scale, no more than the ordinary starting point for a plaintiff of Montsho's age at the date of the accident. It reflected the normal vicissitudes of life to which any child of three would be subject over a working life of more than sixty years, but nothing case specific to Montsho's own claim.

¹²*Sayed NO v Road Accident Fund* [2023] ZAGPPHC 482 para 21-22.

[41] Upon evaluation, to my mind, a 25% pre-morbid contingency deduction, without more, did not adequately account for the uncertainties attending this particular claim. Montsho was three years old at the date of the accident, and any projection of his career path, in the absence of the accident, over a period of more than sixty years was necessarily speculative in the extreme. The premise that Montsho would, but for the accident, have progressed in a straight line from unskilled to semi-skilled earnings by age 45 was a reasonable working assumption, but it remained only that.

[42] Furthermore, from my standpoint, the alternative calculation advanced by Mr Setati was equally unconvincing. It rested on an assumption he elsewhere asked me to treat with caution. On his calculation, a 40% contingency was applied to the same pre-morbid base of R1 947 984,00. This produced a postulated residual post-morbid earning capacity of R1 168 790,40. That figure was set off against a pre-morbid figure reduced by a 20% contingency. The result was a total loss of only R389 596,80. The difficulty with this approach was clear. It assumed Montsho retained a residual earning capacity. There was no evidential foundation for that assumption. The RAF called no vocational or occupational evidence of its own. The postulate of a meaningful residual earning capacity ran directly counter to the uncontested expert evidence, in particular that of Ms du Randt. She found that Montsho was no longer an equal competitor in the open labour market in any occupation. As I see it, a post-morbid earning capacity that no expert had identified could not be adopted.

[43] Significantly, the assumption that Montsho was now wholly unemployable, on which no contingency deduction at all was applied, was itself an extreme

outcome that called for a corresponding measure of caution. Insofar as it rested on vocational and psychological assessments conducted in August 2022, without the benefit of an updated occupational assessment closer to the date of trial, and without the benefit of contemporaneous medical records to confirm the mechanism and course of the injury independently of the history given by Montsho's uncle, it evinced the very difficulties proffered by Mr Setati. While these went to weight rather than admissibility, to my mind they, together with the inherently speculative nature of the enquiry, justified a special contingency over and above the ordinary, age-related 25%.

[44] An adjustment of this kind is well within the discretion which *Bailey* itself contemplates, given that the enquiry admits of no more exact a method. A single, higher contingency deduction, applied to the pre-morbid figure to account both for the ordinary vicissitudes already reflected in the age-related 25%. For the further, case specific evidentiary shortcomings identified *supra* , is, to my mind, a more principled response than either accepting the actuary's 25% uncritically or declining to make an award on this head at all.

[45] To my mind, a special contingency of a further 15 percentage points, over and above the ordinary age-related 25%, appropriately reflected these case specific uncertainties without descending into an unprincipled discount. The resulting pre-morbid contingency deduction of 40%, applied to the pre-morbid figure of R1 947 984,00, and maintaining the actuary's treatment of Montsho's post-morbid income as nil, yielded an amount of R1 168 790,40. It bears recording, for completeness, that this figure corresponds numerically to the residual post-morbid earning capacity contended for by Mr Setati in his alternative calculation alluded to *supra*. That correspondence is coincidental. From my standpoint, that figure was arrived

at by an entirely different route, being a single, elevated pre-morbid contingency applied to a nil post-morbid income, for the reasons already given, and not by attributing to Montsho any residual earning capacity which the evidence did not support.

[46] In the premises, R1 168 790,40 was awarded to Montsho in respect of past and future loss of earnings.

Costs

[47] Costs follow the result. The RAF, having conceded liability and having been substantially unsuccessful in resisting the quantum claimed, is to pay Montsho's taxed or agreed party and party costs on the High Court scale, including the costs of the rule 38(2) application, the reasonable costs of the medico-legal reports and the serious injury assessment, the costs of senior and junior counsel, and the reasonable costs of instructing and correspondent attorneys, all as more fully set out in the order. It was recorded, and is not in dispute, that a valid contingency fee agreement exists between Montsho and his attorneys of record.

Order

[48] For these reasons the following order was made:

‘1. THAT:

1.1 The Defendant accepts liability for 100% (hundred percent) of the Plaintiff's agreed or proven damages;

1.2 The Defendant is to pay the Plaintiff R600 000,00 (Six Hundred Thousand Rand) in respect of general damages;

1.3 The Defendant is to pay the Plaintiff the amount of R1 168 790,40 (One Million One Hundred and Sixty-Eight Thousand Seven Hundred and Ninety Rand and Forty Cents) in respect of past and future loss of earnings;

1.4 The Defendant is to furnish the Plaintiff with a Section 17(4)(a) undertaking of the Road Accident Fund Act 56 of 1996, in terms of which the Defendant undertakes to pay the costs of future accommodation of the Plaintiff in a hospital or nursing home or supplying of goods to him/her, pursuant to injuries sustained by him/her in a motor vehicle collision which occurred on the 12th of September 2008, after the costs have been incurred and on proof thereof. Said certificate to be served on Plaintiff's attorneys not later than 28 July 2025.

2. The Defendant will not be liable for interest on the capital amount should same be paid before or on the expiry of the 180 days from date of judgment as per paragraph 1 supra, failing which the Defendant will be liable for interest calculated from 14 days from date of judgment.

3. The Defendant pays the Plaintiff's taxed or agreed party and party costs on the High Court scale up to the date hereof including the costs of the trial dates of 20th, 21st and 22nd of January 2025, which costs will inter alia include:

3.1 Cost incurred in preparation for and presentation of Plaintiff's Rule 38(2) Application as granted on date 21 January 2025 as well as the cost of drawing and obtaining the associated expert affidavits;

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3.3 The costs of senior and junior counsel for the trial, which cost will include attendance of pre-trial conferences and drafting of minutes (other than that by the Plaintiff's attorney, if any), inclusive of costs of drafting of Heads of argument and subsequent replying heads of argument. The cost for Counsel as from 12 April 2024 will be taxed on scale B;

3.4 The reasonable travel and accommodation expenses of the Plaintiff in accordance with the AA tariff for purposes of attending medico legal examinations and attendance at Court for purposes of trial;

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4. There is a contingency fee agreement concluded between the Plaintiff and his/her Attorney of record.

5. Taxation or settlement of bills of cost will additionally be subject to the following general conditions:

5.1.1 The Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant's attorneys of record; and

5.1.2 The Plaintiff shall allow the Defendant 14 (fourteen) court days to make payment of the taxed costs from date of stamped allocator and/or settlement;

5.1.3 The Defendant will not be liable for interest on the party and party cost except if not paid on or before the said agreed date in which case the Defendant will be liable for interest calculated from date of stamped allocator and/or settlement.

6. The Interest rate on the outstanding monies due to the Plaintiff will be calculated as prescribed in Section 1 of the Prescribed Rate of Interest Act, 1975, as amended by the Judicial Matters Amendment Act, No 24 of 2015, which act was promulgated on 15 December 2015.'

REDDY J
JUDGE OF THE HIGH COURT, SOUTH AFRICA,
NORTH WEST DIVISION

Appearances

Counsel for the Plaintiff: Advocate Van der Westhuizen

Instructed by: Brandt & Lambrechts Attorneys, Klerksdorp

Correspondent Attorneys: Bruce Loxton Attorneys, Mahikeng

For the Defendant: Mr Setati

Instructed by: Office of the State Attorney, Mmabatho