



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

JUDGMENT

Not Reportable

Case No: 2605/18

In the matter between:

YAMKELA KOMBLEA

PLAINTIFF

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

DEFENDANT

Coram: YAKE AJ

Heard: 13 May 2026

Delivered: Electronically on 7 September 2026

Summary: Damages claim - plaintiff fell out of a moving train - liability conceded at 95% – future hospital, medical and related expenses not disputed– loss of earnings and general damages remain for determination.

ORDER

1. The defendant shall pay to the plaintiff the sum of R13 238 218.70, together with interest thereon from the date of service of summons to date of final payment, as damages in respect of:
 - (a) R7 126 169.60 for future hospital, medical and other related expenses.
 - (b) R4 112 049 in respect of past and future loss of earnings.
 - (c) R2 000 000 in respect of general damages.
2. The defendant shall pay the plaintiff's taxed or agreed party-party costs on High Court scale, including costs of all reasonable qualifying fees and expenses of experts, the cost of obtaining medico-legal and all other expert reports, the costs of experts who attended joint expert meetings, as well as costs of counsel on scale C.

JUDGMENT

YAKE, AJ

Introduction

[1] These are action proceedings in terms of which the plaintiff claims damages against the Passenger Rail Agency of South Africa ('the defendant'). The issue of liability has been settled between the parties; it is therefore unnecessary for the purposes of this judgment to narrate the circumstances of the accident in detail. It suffices to mention that on 8 November 2017, at approximately 07h00, the plaintiff, born on 27 August 1993, was conveyed as a passenger aboard a Metrorail train operated by the defendant, travelling between Esplanade and Cape Town stations. Whilst the train was in motion, and

owing to the overcrowded condition of the carriage, the plaintiff fell through an open door of the said train.

[2] As a result thereof, he sustained the following injuries:

- (a) A laceration to the left knee.
- (b) A crush injury to the right lower leg and foot with multiple fractures, as a result of the right lower leg and foot being crushed by the wheels of the train. The crush injury was debrided on several occasions and attempts were made to stabilise the multiple fractures without success and a below knee amputation of the right leg was done on 13 November 2017.
- (c) Severe emotional trauma

[3] The only issue falls for determination in these proceedings is the quantum of damages claimed by the plaintiff. The plaintiff contends that he has suffered damages under the following heads:

- (a) Future hospital, medical and related expenses;
- (b) Past and future loss of earnings; and
- (c) General damages.

Analysis

[4] The plaintiff bore the overall onus of proving the damages allegedly suffered. Such damages can only be established through tendering admissible evidence. Unlike general damages, which are assessed in the exercise of judicial discretion, special damages require precise quantification. It is often the case that a party will adduce evidence of a technical nature in order to substantiate such special damages including actuarial calculations, medico-legal reports, and expert testimony.

[5] In proving the quantum of damages, the plaintiff filed on record a series medico-legal reports and actuarial reports together with the joint minutes compiled by respective experts. The medico-legal reports filed on record comprise the following:

- (a) Orthopaedic surgeons – Dr. I.P.S. Terblanche for the plaintiff and Professor G. Vlok for the defendant;
- (b) Occupational therapists – Ms. Elise Burns-Hoffman for the plaintiff and Ms. Joan Andrews for the defendant;
- (c) Industrial psychologist – Mr. E. Coetzee for the plaintiff;
- (d) Counselling psychologist – Mr. D.G. Malherbe for the defendant;
- (e) Orthotist – Mr. E. Rossouw for the plaintiff;
- (f) Prosthetist – Mr. S. Du Plessis for the defendant;
- (g) Physiotherapist – Ms. J Koep for the plaintiff;
- (h) Clinical Psychologist – Ms. P. Tudin;
- (i) Psychiatrists – Dr. L. Panieri-Peter for the plaintiff and Dr. Sutherland for the defendant.

[6] The aforesaid reports were admitted into evidence in terms of Rule 38(2) of the Uniform Rules of the Court and constitute the evidentiary foundation upon which the assessment of damages must now be undertaken. It was further agreed between parties that the joint minutes of the aforesaid experts be admitted into evidence without further proof thereof, likewise in terms of Rule 38(2). Consequently, I now turn to consider each head of damages as claimed by the plaintiff.

Future hospital, medical and related expenses

[7] The claim for future hospital and medical expenses have been resolved by agreement between the parties. The only outstanding issue for determination is the appropriate contingency deductions to be applied. The plaintiff's claim pre-contingency amounts to R7 308 892. The figure was calculated in accordance with paragraph 7 in the schedule by the defendant's actuaries, Fero Actuarial Consulting, dated 16 February 2026.¹ The calculations expressly incorporate the consideration that the plaintiff will require future stump revision procedures, as recorded in the joint minutes of the orthopaedic surgeons Dr. Terblanche and Professor Vlok, dated 24 February 2026.

[8] In those joint minutes, Dr. Terblanche and Professor Vlok, noted that the plaintiff sustained a laceration to the left knee, which healed without complication, and a crush injury to the right foot and lower leg with multiple fractures culminating in a below-knee amputation. They are ad idem that the plaintiff may periodically develop stump-related complications, including soft-tissue difficulties. Should such complications not be adequately managed by prosthetic modification and pressure care, a severe revision procedure may become necessary. It is further agreed that the prosthesis will require intermittent replacement due to wear and tear, and that the associated future costs are both reasonable and foreseeable.

[9] The experts further caution that the plaintiff may develop psychological disturbances or emotional difficulties, which ought to be managed by appropriate mental-health professionals. Provided that the plaintiff remains psychiatrically stable, he should be able to continue working as a semi-skilled worker until retirement age. Nevertheless, ongoing emotional and psychological

¹ Index D, page 151 to 161 of the defendant's bundle

support from relevant experts will be required to sustain his functional capacity and mitigate the risk of deterioration.

[10] Mr. Crowe SC submitted that a contingency deduction of 2.5% is to be applied to the plaintiff's claim in the amount of R7 308 892. On this basis, the court is invited to award a post- contingency amount of R7 126 169.70. No submissions were advanced by the defendant in respect of this claim. The application of contingency deductions falls within the discretion of the court.

[11] The application of contingency deductions falls within the discretion of the Court. Although not frequently applied to medical expenses, contingency deductions may properly be imposed in appropriate circumstances, having regard to the uncertainties inherent in future medical interventions. This is so because contingencies include any possible relevant future event which might diminish or otherwise influence the extent of the plaintiff's damage.² In a wide sense, contingencies have been described as "*the hazards that normally beset the lives and circumstances of ordinary people*".³ In another formulation as "*unforeseen circumstances of life*".⁴ In *Buys v MEC for Health and Social Development, Gauteng*,⁵ Fourie J applied contingency deductions for future medical expenses, thereby affirming the principle that such deductions may be warranted where the surrounding circumstances justify their application.

[12] In the present matter, and in considering the items enumerated in paragraph 7 of the defendant's actuarial report, I have had regard to the efficacy of the therapies proposed, the likelihood that such programmes would be

² See *Erdmann v SANTAM Insurance Co Ltd* 1985 3 SA 402 (C) 404-405; *Burns v National Employers General Insurance Co Ltd* 1988 3 SA 355 (C) 365).

³ See *AA Mutual Insurance Association Ltd v Van Jaarsveld* 1974 4 SA 729 (A); *Van der Plaats v SA Mutual Fire & General Insurance Co Ltd* 1980 3 SA 105 (A); *Southern Insurance Association Ltd v Bailey* 1984 1 SA 98 (A) 117.

⁴ See *De Jongh v Gunther* 1975 (4) SA 78 (W) 80F).

⁵ *Buys v MEC for Health and Social Development of the Gauteng Provincial Government* (16223/2013) [2015] ZAGPPHC 530 (18 June 2015).

pursued to completion, and the diligence with which they might reasonably be carried out. This exercise does not however purport to predict future medical expenditure with precision. Rather, it is directed at determining in each instance, whether the intervention is reasonable and, if so, to assess its reasonable cost. In my view, a contingency deduction of 2.5 per cent, as advanced by the plaintiff, is fair and reasonable in the circumstances. Accordingly, the plaintiff is awarded future hospital, medical and related expenses in the sum of R7 126 169.70.

Past and future loss of earnings / earning capacity

[13] I now turn to consider the plaintiff's claim for past and future loss of earnings. In terms of the amended particulars of claim, dated 21 April 2026, the plaintiff asserts that he suffered past loss of earnings in the amount of R53 889, whilst his future loss of earnings is quantified at R4 058 160.

[14] The quantification of such loss necessarily depends upon the plaintiff's personal circumstances, the nature of the injuries sustained, the treatment already administered and that which remains to be undertaken, and, most critically, the sequelae of such injuries upon his existing and prospective capacity to engage in remunerative employment. The court's task is thus to determine, with due regard to the inherent uncertainties of life, the diminution in earning capacity occasioned by the accident and to quantify the resultant patrimonial loss.

[15] In undertaking this inquiry, the court must estimate, on the one hand, the income which the plaintiff would, in the ordinary course, have earned had the accident not occurred, and, on the other, his present earning potential in light of the injuries sustained. This comparative exercise is conducted with reference to the actuarial reports, which serve to assist the court in quantifying both past and

future loss of earnings and impairment of earning capacity by means of structured projections. Such projections are founded upon objective criteria, including the claimant's age, life expectancy, career trajectory, and anticipated retirement age. By employing this methodology, the actuary provides a coherent and objective framework within which the court may evaluate the extent of the plaintiff's financial loss, thereby ensuring that the award is rationally grounded and not speculative.

[16] The actuary's projections are, in turn, predicated upon the reports of industrial psychologists and a counselling psychologist, who themselves rely upon information furnished by the claimant and corroborated by other expert reports. Ultimately, the award for future loss of earnings or impairment of earning capacity must be anchored in sound medical evidence and corroborating facts, thereby ensuring that the quantification is both rational and just. It follows that the plaintiff bears the burden of establishing, through credible evidence, that the injuries sustained have deprived him of the ability to earn a livelihood in the ordinary course, and further, of demonstrating the earnings he would have secured had he not been incapacitated.

[17] In *Santam Versekeringsmaatskappy Bpk v Byleveldt*,⁶ it was emphasised that the assessment of damages for loss of earnings necessarily involves an element of uncertainty. Such uncertainties are addressed through the application of contingencies to both historical and projected earnings, thereby ensuring that the calculation reflects a realistic approximation of the plaintiff's future prospects. Compensation for future loss of earnings is accordingly assessed as a percentage of the value of the loss,⁷ calibrated to balance fairness to the plaintiff with the prudence required in judicial quantification. This inherent uncertainty arises from the fact that the court is required to project into the future, weighing

⁶ *Santam Versekeringsmaatskappy Bpk v Byleveldt* [1973] 2 All SA 173 (A); 1973 (2) SA 146 (A).

⁷ RJ Koch *Damages for Lost Income* (1984) at 31.

probabilities and contingencies, and applying its discretion to arrive at a figure that is fair, reasonable, and just in the circumstances.

[18] It must, however, be emphasised that actuarial evidence, while valuable, is not binding upon the court. Such evidence must be weighed against the broader factual and contextual matrix of each case. The court accordingly retains the discretion to determine the correctness of the assumptions upon which actuarial calculations are based. Where any assumptions or portions of the calculations are rejected, the court is obliged to furnish detailed reasons for doing so, thereby ensuring transparency in the exercise of its discretion and fidelity to the principle of rational adjudication.

[19] In *Southern Insurance Association v Bailey NO*,⁸ the Appellate Division observed:

‘Any enquiry into damages for loss of earning capacity is of its nature speculative

.....

All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss. It has open to it two possible approaches. One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a non possumus attitude and make no award.

.....

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

⁸ *Southern Insurance Association v Bailey NO* 1984 (1) SA 98 (A) at 113H–114E.

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.'

[20] Similarly, in *De Jongh v Du Pisanie NO*,⁹ the Supreme Court of Appeal (the SCA) reaffirmed the wide discretion vested in trial courts to determine fair compensation. The SCA noted that the trial court has a wide discretion to award what in the particular circumstances it considers right. It is bound by no rule except that it must act judicially.

[21] Likewise, in *Road Accident Fund v Guedes*,¹⁰ the court endorsed a 'robust' approach to the assessment of future loss, particularly in cases of evidentiary uncertainty as follows:

'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 which 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.'

[22] The above-mentioned authorities underscore the principle that actuarial evidence, while not determinative, provides a rational framework within which judicial discretion is exercised. The court's ultimate task remains the ascertainment of the actual loss suffered by the plaintiff, tempered by the

⁹ *De Jongh v Du Pisanie NO* [2004] ZASCA 43; [2004] 2 All SA 565 (SCA); 2004 (5J2) QOD 103; 2005 (5) SA 457 (SCA) para 60.

¹⁰ *Road Accident Fund v Guedes* [2006] ZASCA 19; 2006 (5) SA 583 (SCA) para 8.

recognition that the plaintiff cannot be expected to furnish proof beyond what is reasonably possible in the circumstances.

[23] This judicial discretion extends also to the application of contingency deductions, which constitute an essential component in the assessment of damages. It must be reminded that contingencies are adjustments introduced to account for the uncertainties of life, including the risk of unemployment, illness, economic downturns, changes in career trajectory, or premature death.¹¹ They recognise that a person's working life seldom proceeds without interruption and thus ensure that the quantification of damages reflects a realistic approximation of the plaintiff's future prospects.

[24] In the present matter, it is common cause that the plaintiff obtained a National Senior Certificate (Grade 12) in 2012. Thereafter, in 2014, he enrolled at Cape College for a certificate in primary care. He did not, however, complete the qualification, having pursued only two years of study. During the period 2020 to 2021, he successfully completed a one-year course in business administration at NQF level 4.

[25] The plaintiff commenced employment at a young age, initially working as a trolley boy whilst still in primary school. In 2016, he secured employment through an agency at the Cape Town International Convention Centre (CTICC) as a general worker, where his duties entailed the movement of furniture, including chairs and tables. He remained in that position until November 2017, when the incident giving rise to these proceedings occurred. During this period, he supplemented his income by providing massage services outside of his working hours and on weekends. Following the incident, he resumed employment at CTICC in August 2018, this time in a permanent capacity as a

¹¹ Paragraph 11 supra

storeman. His duties require him to work eight-hour shifts, predominantly on his feet and moving around.

[26] The plaintiff described the shifts as demanding and problematic, resulting in pain and difficulty sleeping upon his return home. He experiences pain and numbness upon removal of the stump, and although he previously relied on painkillers and sleeping tablets, he has since discontinued their use. He expressed the hope that, if provided with a more suitable prosthetist, his quality of life would improve, as his current prosthesis is uncomfortable.

[27] The plaintiff further testified that the incident has affected him emotionally. He experiences anger, has become antisocial, and tends to isolate himself. As a consequence of these behavioural difficulties, he was admitted for psychiatric treatment at Somerset Hospital and subsequently at Sea Point Medical Centre.

[28] Ms. Burns-Hoffman and Ms. Andrews, the occupational therapists, confirmed that the plaintiff presents with emotional confusion and obsessive thoughts. His method of communication was at times convoluted and reflective of inner turmoil. They opined that he meets the criteria of being employable in the open market for work of a light physical nature, provided that any future employment excludes tasks requiring significant balance or work at low levels. They further concluded that his current work is neither suitable nor sustainable in the longer term, and that continuation in such employment may result in harm.

[29] Dr. L Panieri-Peter and Dr. Sutherland, the psychiatrists, both opined that the plaintiff suffers from a very significant mental illness, inclusive of psychotic features, which permeates every aspect of his functioning. His prognosis for psychiatric recovery is poor, even with treatment. They confirmed that he is physically unsuitable for his current employment and incapable of pursuing

further studies. The plaintiff requires urgent psychiatric admission following threats of suicide. Both experts recommended medical boarding and estimated that he is likely to lose his current employment within the next year. They are further agreed that, should the plaintiff lose his present employment, it is improbable that he will obtain or sustain future work.

[30] Mr. Coetzee, the industrial psychologist for the plaintiff, and Mr. Malherbe, the counselling psychologist for the defendant, both opined that, pre-morbid, the plaintiff would have pursued further formal education and, but for the accident, would probably have progressed in his career. They agreed that he is not physically suited to his current employment, which is sympathetic and accommodative in nature, and that his continued tenure therein is unsustainable. In consequence, they recommended that a more generic career and earnings path be adopted. Both concurred that the plaintiff would have reached his career plateau at a semi-skilled Paterson Grade B3 level between the ages of 40 and 50.

[31] The experts further agreed that, but for the accident, the plaintiff would have continued to supplement his income through massage services from the date of the incident until August 2018. Post-morbid, they opined that from March 2023 he would have continued earning until March 2025, thereafter, experiencing incremental increases until August 2038, when he would have attained the age of 45 years. From that juncture, he would have remained employed on a semi-skilled basis until retirement at the age of 65.

[32] The divergence between the experts arises in respect of the plaintiff's post-morbid earnings beyond August 2038 until his retirement in August 2058. Mr. Coetzee opined that the plaintiff would have received a total package of R316 000 per annum, whereas Mr. Malherbe contended that his remuneration would have been limited to a basic salary of R244 000 per annum. It is striking

that the plaintiff presently earns on a total package basis. In these circumstances, there is no rational basis for Mr. Malherbe's reliance upon a calculation confined to a basic salary. His approach disregards the plaintiff's current remuneration structure and fails to reflect the reality of his employment conditions. In my view, Mr. Malherbe's conclusion is unsustainable. The court is enjoined to adopt assumptions that are consistent with the factual matrix before it. Accordingly, I accept Mr. Coetzee's projection as the more credible and realistic basis for quantifying the plaintiff's post-morbid earnings.

[33] In the circumstances, I find that the plaintiff has suffered past loss of earnings in the amount of R53 889. This figure was agreed upon by both Mr. Coetzee and Mr. Malherbe, and I discern no reason to apply any deduction thereto. As regards future loss of income, I am persuaded by Mr. Coetzee's approach. The fair and reasonable method is to calculate the plaintiff's earnings on the basis of his total package, rather than a basic salary alone. Both actuaries for the plaintiff and the defendant recommended that no contingency deductions be applied to past loss of income, and that a 15% contingency deduction be applied to future loss of earnings. I accordingly adopt this framework, which balances actuarial precision with judicial discretion, and ensures that the quantification of damages is both rational and just.

[34] As was stated in *Van Der Merwe v Road Accident Fund*,¹² the determination of loss of earnings and the incorporation of contingencies falls within the ambit of judicial discretion. The court must adopt an approach peculiar to the facts of the present matter. I accordingly consider it appropriate to apply a contingency deduction of 15% to the plaintiff's future loss of earnings. In the result, the fair and reasonable amount of future loss, after contingency deductions, is in my view an amount of R4 058 160. Consequently,

¹² *Van Der Merwe v Road Accident Fund* (7407/2022) [2025] ZAWCHC 158 (3 April 2025) para 20.

I find that the fair and reasonable total of past and future earnings suffered by the plaintiff amounts to R4 112 049.

General damages

[35] I now turn to consider the issue of general damages suffered by the plaintiff. The plaintiff seeks an award in the amount of R2 500 000, whereas the defendant contends that an award of R800 000 would constitute appropriate compensation. It is trite that the purpose of general damages is to afford compensation for pain and suffering, loss of amenities of life, disability, and disfigurement occasioned by the wrongful act.¹³

[36] In assessing such damages, the court is vested with a wide discretion to award what it considers fair and adequate compensation, having regard to all the relevant facts and circumstances of the case.¹⁴ In determining non-patrimonial damages, the court is guided by established principles. In *Sandler v Wholesale Coal Suppliers Ltd*,¹⁵ it was held that such damages must be assessed upon broad and equitable considerations. The same principle was reaffirmed in *Southern Insurance Association v Bailey NO*,¹⁶ and further endorsed in *Minister of Safety and Security v Seymour*,¹⁷ where the court emphasised that an award must be fair to both parties.

[37] In *Road Accident Fund v Marunga (Marunga)*,¹⁸ the SCA stated that:

‘Even though the courts have a wide discretion to determine general damages and even though it cannot be described as an exercise in exactitude, or be arrived at according to known formulae, a trial court should at the very least state the factors and circumstances it considers important in the assessment of damages. It should provide a reasoned basis for arriving at its conclusions.’

¹³ *T. P. N. v Road Accident Fund* (11807/2017) [2024] ZAKZDHC 37 (11 June 2024) para 17.

¹⁴ *Road Accident Fund v Marunga* [2003] ZASCA 19; 2003 (5) SA 164 (SCA) para 23.

¹⁵ *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 at 199.

¹⁶ Fn 8 *supra*.

¹⁷ *Minister of Safety and Security v Seymour* [2006] ZASCA 71; 2006 (6) SA 320 (SCA) at 325B.

¹⁸ *Road Accident Fund v Marunga* [2003] ZASCA 19; [2003] 2 All SA 148 (SCA); 2003 (5) SA 164 (SCA) para 33.

[38] In *De Jongh v Du Pisanie*,¹⁹ the SCA dealt with issues such as fairness and the court's discretion in the context of previously decided cases of similar facts and cited with approval, the following passage from *Pitt v Economic Insurance Co. Ltd*,²⁰ where the following was stated:

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

[39] In the present matter, there is no doubt that the plaintiff has sustained damages. It must further be borne in mind that no monetary award can undo the harm that has been suffered. Both parties have relied upon *Mnguni v Road Accident Fund*,²¹ and *Mthethwa v Road Accident Fund*,²² in support of their respective contentions.

[40] In advancing his proposition, Mr. Ramaili SC contends that in *Mnguni* the plaintiff suffered severe brain injuries together with an amputation of the right lower leg, for which damages in the sum of R700 000 were awarded in 2010. He submits that the present matter is distinguishable, in that the plaintiff did not sustain any severe head or brain injuries.

[41] Counsel further relies upon *Mthethwa*, where the plaintiff suffered an above-knee amputation of the left leg and an upper-arm amputation, and was awarded damages of R800 000. He argues that the injuries in *Mthethwa* likewise differ from those in the present matter, in that here the plaintiff suffered the amputation of a single limb only. In the result, counsel submits that an award in the amount of R800 000 would be appropriate in the circumstances.

¹⁹ *De Jongh v Du Pisanie* [2004] ZASCA 43; [2004] 2 All SA 565 (SCA); 2005 (5) SA 457 (SCA); 2004 (5J2) QOD 103 (SCA) paras 60-64.

²⁰ *Pitt v Economic Insurance Co. Ltd* 1957 (3) SA 284 (D) at 287E-F.

²¹ *Mnguni v Road Accident Fund* 2010 (6E2) QOD 1 (GSJ).

²² *Mthethwa v Road Accident Fund* 2010 (6E2) QOD (GSJ).

[42] In countering the proposition advanced by Mr. Ramaili, Mr. Crowe contends that the defendant has overlooked the intervening effects of inflation upon the quantum of the aforesaid authorities, noting that the present-day inflation-adjusted values thereof are R2 024 000 and R1 743 000 respectively. In this regard, reference was made to *Corbett's The Quantum of Damages*.²³

[43] Counsel further argued that, while differences exist between the orthopaedic injuries and amputations in *Mnguni* and *Mthethwa*, the psychiatric consequences suffered by the plaintiff in the present matter elevate its severity. The plaintiff, counsel submits has endured profound emotional trauma, has been diagnosed with a severe mood disorder with psychotic features and a comorbid disorder, and faces a highly guarded psychiatric prognosis.

[44] Mr. Crowe further submitted that these psychiatric sequelae, which impair the plaintiff's functioning and render his recovery poor, place the present case within a severe category warranting higher general damages. He proposes that an award in the range of R2 000 000 to R2 250 000 would be appropriate. In support of this contention, counsel emphasised that the plaintiff was 24 years old at the time of the incident and is presently 32 years old. He underwent a below-knee amputation of the right leg, suffers severe emotional trauma as confirmed by the psychiatric experts, and faces the real prospect of losing his employment within the next year notwithstanding ongoing treatment.

[45] In arriving at a fair and reasonable measure of compensation, I have had regard to a broad spectrum of facts, including the nature, severity, and permanence of the injuries sustained. I take cognisance of the fact that the plaintiff is still young, and that his life has been drastically altered by the incident. Prior thereto, he was healthy and engaged in studies to advance his career. Consideration must also be given to the impact of the injuries upon the

²³ Corbett's *The Quantum of Damages* (Vol 7) at pages lxix to lxxi and to (Vol 9) at pages lxix to lxx.

plaintiff's daily life, his age, personal circumstances, and the guidance afforded by comparable awards in cases involving similar injuries. Upon a holistic evaluation of these factors and circumstances, the court is enjoined to determine what constitutes just compensation for pain and suffering, disfigurement, and loss of amenities of life, bearing in mind that the award must be fair to both parties.

[46] While I note that *Mnguni* and *Mthethwa* are distinguishable from the present matter, what is common to all is that in each case the plaintiff's leg was amputated, a feature similar to the present circumstances. However, notwithstanding the psychiatric consequences in the instant matter, the circumstances in *Mnguni* were more severe, as the plaintiff therein suffered a significant brain injury.

[47] In the result, taking into account the psychiatric sequelae and the below-knee amputation sustained by the plaintiff, together with the other injuries endured, including pain and suffering, I am of the view that an award of R2 000 000 constitutes fair compensation in relation to general damages. This conclusion is reached by making comparisons with the compensation awarded in both *Mnguni* and *Mthethwa*, having regard to the year of the awards in those cases. According to the *Quantum Yearbook of RJ Kock 2026*, the current adjusted value in *Mnguni* is R2 042 200, while in *Mthethwa* it is R1 748 000. Consequently, I am satisfied that an award of R2 000 000 constitutes fair and reasonable compensation for general damages.

Costs

[48] What remains for determination is the question of costs. The general principle is that a litigant who is successful in the proceedings is entitled to recover the costs reasonably incurred in the conduct of such litigation. The

plaintiff seeks an order for costs of suit together with interest from the date of summons to the date of judgment, and further interest from the date of judgment until the date of payment. Reliance was placed on *Passenger Rail Agency of South Africa v Bisschoff N.O. obo Reyners*,²⁴ where the court distinguished between pre- and post-judgment interest. Pangarker AJ (as she then was) held that the in duplum rule finds no application to pre-judgment interest and accordingly confirmed that PRASA was liable for both pre- and post-judgment interest. No submissions were advanced by the defendant in relation to this aspect. In the result, I find no basis upon which to depart from the general principle that costs follow the result, having regard to the authority of the *Bisschoff* matter in relation to the award of interest. The defendant is accordingly ordered to pay the plaintiff's costs of suit, together with interest as sought.

Order

[49] In the results, I make the following order:

- (a) The defendant shall pay to the plaintiff the sum of R13 238 218.70, together with interest thereon from the date of service of summons to date of final payment, as damages in respect of:
 - (i) R7 126 169.60 for future hospital, medical and other related expenses.
 - (ii) R4 112 049 in respect of past and future loss of earnings.
 - (iii) R2 000 000 in respect of general damages.
- (b) The defendant shall pay the plaintiff's taxed or agreed party-party costs on High Court scale, including costs of all reasonable

²⁴ *Passenger Rail Agency of South Africa v Bisschoff N.O. obo Reyners*.

qualifying fees and expenses of experts, the cost of obtaining medico-legal and all other expert reports, the costs of experts who attended joint expert meetings, as well as costs of counsel on scale C.

S YAKE

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff: M Crowe SC

Instructed by: Jonathan Cohen & Associates

For the Defendant: M Ramaili SC

Instructed by: Dabishi Nthambelini Inc