IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GQEBERHA

REPORTABLE

Case No.: 2675/2022

In the matter between:

CHARLENE MAGDALENE MINNIES	Plaintiff
and	
ROAD ACCIDENT FUND	Defendant

JUDGMENT

EKSTEEN J:

[1] The plaintiff, Ms Charlene Minnies, currently 46 years old, was badly hurt in a motor vehicle accident on the N1 Freeway in Cape Town on 23 September 2019. She subsequently issued summons in the Western Cape Division of the High Court against the defendant for the recovery of damages that she suffered as a result of the injuries that she had sustained in the collision. The matter was subsequently transferred, by an order of court, to this court.

[2] The defendant has admitted its liability to compensate Ms Minnies for such damages as she may be able to prove that she suffered as a result of the accident. Accordingly, in August 2023, an order was made, by agreement, that the defendant furnish the plaintiff with an undertaking in terms of s 17(4)(a) of the Road Accident Fund

Act[1], for 100% of the costs of future accommodation that she may require in a hospital or nursing home, for treatment of, or the rendering of a service to her. Subsequently, in a pre-trial meeting shortly before the trial, her claim for general damages was settled in the amount of R800 000,00.

[3] What remained in dispute for determination in the trial was Ms Minnies' claim for past hospital and medical expenses and for loss of earning capacity.

Background

[4] There was no dispute at the trial in respect of the plaintiff's injuries or the immediate *sequelae* of the accident. Ms Minnie's was taken from the scene of the collision by ambulance to the Melomed Hospital, in Belville, where she was admitted in the casualty department and a clinical examination and radiological studies were performed. She had injuries to her ankle and right knee and experienced pain in her back and neck, for which she was treated conservatively and discharged the following day. Notwithstanding her discharge she had persistent symptoms in her right knee and, upon her return home, she was seen by a general practitioner in Kariega on 30 September 2019, who referred her to an orthopedic surgeon. Her knee was initially treated conservatively with a brace and physiotherapy, and she was given nonsteroidal anti-inflammatory medication.

[5] However, her symptoms persisted and she struggled with pain and mobility. Thus, on 28 November 2019, she underwent an arthroscopy of the right knee at the Cuyler Hospital in Kariega, and the findings of the arthroscopy led to a simultaneous medial meniscectomy. As a result of these procedures the final diagnosis of her injuries arising from the accident was that she had sustained a contusion of the right ankle, a grade 2 tear of the right knee's medial collateral ligament with an avulsion fragment from the medial femoral condyle (part of the ligament injury) and a tear in the medial meniscus of the right knee. She also sustained undefined neck and back injuries.

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[1] Act 56 of 1996

[6] Despite the aforementioned treatment, her knee continued to deteriorate and she received intermittent treatment from Dr Burger, an orthopedic surgeon in Kariega. On 4 May 2021 she was again admitted to the Cuyler Hospital for infection to the right knee and a possible avascular nicrosis and, on 24 August 2021, she was examined at the Livingstone Hospital where x-rays were taken, which confirmed that her right knee remained unstable. An MRI scan was performed on 2 September 2021 which indicated a torn posterior cruciate ligament, a strained anterior cruciate ligament, and a longitudinal tear in the meniscus. Thus, on 24 January 2022, she underwent a posterior cruciate ligament reconstruction of the right knee and a medial meniscectomy.

[7] These extended sequalae of the accident also had a psychological impact and Ms Minnies has been diagnosed with a chronic post-traumatic stress disorder, a generalized anxiety disorder, major depressive disorder and somatic symptom disorder. Mr Eaton, a clinical psychologist, concluded that her diagnosis in respect of these conditions was guarded. He explained that Ms Minnies had not yet accessed any professional counselling or medication in respect of these conditions as a result of her limited medical resources and the need to utilize those in respect of her daughter, who had also been injured in the accident. He emphasised that Ms Minnies' prognosis was not good, because of the chronicity of her difficulty and the perpetuating effects of her pain and mobility limitations, but he did recommend that psychological therapy was strongly indicated. He was hopeful that it would produce some improvements, but opined that it was difficult to predict. Hence his prognosis of her condition being "guarded".

Claim for loss of earning capacity.

[8] Ms Minnies claimed R7 862 742,00 for loss of earning capacity. At the time of the collision, she was employed by Kromberg Schubert Eastern Cape (Pty) Ltd as a taper operator, earning approximately R161 961,00 per annum inclusive of employer medical aid and provident fund contributions. The work that she performed was manual, on a production line, but she said that she had realised earlier that she had a passion for helping other people and uplifting her community. Hence, she had

commenced studying towards a bachelor's degree in social work at the University of South Africa on a part time basis long before the collision had occurred. But for the collision, she would, in all probability, have graduated by the end of 2019. She would have registered as a social worker in 2020, however, due to the outbreak of Covid 19, it was accepted that she would not have secured employment during that year. It was anticipated that she would have taken up employment in January 2021 as a government employee social worker. She had been in good health at the time of the collision and there was no reason to anticipate that she would not have remained in her employ as a social worker until her usual retirement age of 65.

[9] However, as a result of the accident and the injuries that she sustained, she discontinued her studies and has not graduated nor qualified as a social worker. She was absent from her employment with Kromberg Schubert, on ill-health leave, from 23 September 2019 until May 2020. She then returned to her employment, albeit with considerable discomfort, until November 2020. She was again off on ill-health leave from 11 November 2020 to 29 January 2021. Ultimately, she was retrenched from her employment in June 2021. Her retrenchment was not directly as a consequence of her injuries and was linked to a restructuring in the company and the closure of a number of production lines, including the production line on which she was employed. Nevertheless, her extended absence on ill-health leave and her very diminished physical capacity may have contributed to her retrenchment.

[10] The undisputed medical opinion is that Ms Minnies has reached her maximum recovery from her injuries and Dr de Bruin, an orthopedic surgeon, has opined that she will probably require a knee replacement in approximately 15-20 years from now. In a joint minute prepared by occupational therapists engaged by Ms Minnes and the RAF, respectively, they were in agreement that, from a purely physical perspective, Ms Minnies would be best suited to work of a sedimentary to a light nature (it not exceeding 33% of her shift). They considered, from a physical perspective, that all future positions secured by Ms Minnies should allow for the following accommodations:

‘8.4.1 Changing her posture between sitting, standing and walking every 45 minutes.

8.4.2 Not walking on or over uneven ground.

8.4.3 Not working in confined spaces, requiring awkward positioning such as kneeling or squatting.

8.4.4 Not walking on or over slippery floors.

8.4.5 The use of ergonomic adjustments in the workplace.’

[11] Even with these accommodations, they agreed that she may require a sympathetic employer due to the persistent symptoms experienced in her right knee. When superimposing the psycho-social difficulties outlined by Mr Eaton in his report onto her physical impairments, the occupational therapists agreed that they would impact on her efficiency levels in all positions that she might manage to secure in her current condition. They opined that she would not be regarded as suited for work as a social worker due to the counselling, support, and difficult emotional circumstances that such a position requires. They were in agreement that Ms Minnies would find it difficult to manage such a position if she herself is compromised on a psychological level.

[12] I pause to interpose that these difficulties were evident during the trial in at least two respects. On multiple occasions during her evidence Ms Minnies requested leave to be seated, only to rise again a short while later, due to the discomfort she experienced. In respect of her psychological difficulties, it was evident that she became emotional on every occasion that she was asked about the accident and the injuries that her husband and her daughter had sustained in the accident.

[13] Thus, the occupational therapists were in agreement that Ms Minnies suffers severe and permanent impairment to perform work of greater than an occasional light nature without accommodation or that requires cognitive abilities such as concentration for long periods of time, working in a stressful work environment, or working in an environment where time limits need to be met.

[14] Mr Coetzee, an industrial psychologist, considered the various expert reports filed by the parties in respect of general practitioners, radiologists, orthopedic surgeons, physio therapists, clinical psychologists and occupational therapists (all of which have been admitted), and he concluded that Ms Minnies is not regarded as suited for the work of a social worker due to the counselling, support and difficult emotional circumstances that such a position requires. He further opined that she is not regarded as fit to return to studying or working with clients in a professional social work capacity. Thus, he concluded that she would not secure any form of remunerative employment in the future.

[15] As I have said, but for the accident, Ms Minnies would, in any event, have terminated her employment with Kromberg Schubert and taken up employment as a social worker in a government department. Her anticipated career path and earnings in her premorbid condition was not disputed, nor were her actual earnings after the accident. The only issue in dispute between the parties, in respect of her claim loss of earning capacity, was whether Ms Minnies has, having regard to the accident, retained a residual earning capacity.

[16] On behalf of the defendant, Mr Jacobs, a social worker employed by the government, was called to testify. As adumbrated earlier, Ms Minnies had studied towards a bachelor's degree in social work before the collision. She had registered as a student social worker, with the South African Office of Social Service Professions, in 2016, and had worked under the supervision of Mr Jacobs in Kariega. Mr Jacobs testified that she had been a good student. He was clearly impressed with her capabilities. He confirmed that, after the accident, she did not return to her social work activities. The purpose of Mr Jacobs's evidence was to bolster the defendant's case that Ms Minnies had retained some residual earning capacity and that she could have obtained employment as an auxiliary social worker. In the notice delivered in terms of rule 36(9)(b), the defendant had intimated that Mr Jacobs would assert that Ms Minnies could have performed as an auxiliary social worker, for which she is adequately

qualified, in an office bound environment. The rule 36(9)(b) notice foreshadowed that she would perform the screening and interviewing of people with new complaints. This, inevitably, requires listening to the emotional complaints of people in her community, which would bring into play her own emotional circumstances that Mr Coetzee had referred to. The rule 36(9)(b) notice did not address this difficulty.

[17] During his evidence, however, Mr Jacobs did not advance this opinion. Rather, he said that she could have operated as an auxiliary social worker in the field, going out to community centers, such as schools. He explained that the auxiliary social workers in such an exercise would be required to perform support functions, such as handing out water bottles, or carrying a microphone from speaker to speaker during a workshop. He acknowledged, too, that this work would require her to be on her feet throughout the presentation. He admitted that he had not had sight of the orthopedic report by Dr de Bruin and his evidence appears to be irreconcilable with the agreements concluded between the occupational therapists to which I have referred earlier. Indeed, at the conclusion of the trial, Mr Dala, on behalf of the defendant, acknowledged that he had not established a probability that Ms Minnies could function as an auxiliary social worker.

[18] As I have said the premorbid career path postulated by Mr Coetzee and the plaintiff's probable earnings in such a career path are not in dispute. The plaintiff's claim for loss of earning capacity has been actuarially calculated on the acceptance that Ms Minnies is unemployable in her current state. In arriving at the figure claimed, Mr du Toit, the actuary, had made allowance, for illustrative purposes, for a 5% contingency deduction in respect of Ms Minnies' calculated past loss of income and 15% in respect of Ms Minnies' calculated future loss of earning capacity, but for the accident. At the trial, the parties accepted the contingency reduction of 5% in respect of the calculated past loss of earning capacity. However, Mr Dala contended that a more substantial allowance should be made for contingencies in the calculation of the future loss of earning capacity to allow for the possibility of some future earnings in her injured state.[2]

[2] See *Road Accident Fund v Kerridge* [2019] 1 All SA 92 (SCA); [2018] ZASCA 151 (SCA).

It cannot be gainsaid that the retrenchment of Ms Minnies did not arise only in consequence of her injuries. Some physical capacity had been retained and the agreement concluded between the occupational therapists reflects this. It is true, and undisputed, that her psychological diagnosis coupled with her physical disability will impact any employment that she may attain in the future, and it must be recognised that in any application for employment she would necessarily be competing with an oversupply of healthy, able- bodied individuals in the labour market. However, this does not preclude the generation of some form of income, albeit on a limited scale, and the occupational therapists recognised the possibility of a sympathetic employer.

[19] The prognosis postulated by Mr Eaton is uncertain, and an improvement in her psychological position cannot be excluded. Ms Minnies impressed me as an intelligent, presentable woman who has exhibited the ability, before the accident, to pursue a tertiary qualification. For these reasons, I consider that there is merit in Mr Dala's submission and that a reduction for contingencies, including not only the ordinary contingencies of life, but also the possibility of future earnings, of 25%, should be applied to the calculation of future loss of earning capacity. In the result, the calculation of past loss of earning capacity in the amount of R973 229,00[3] is to be accepted. The actuarial calculation of the future loss of earning capacity, before any contingency deduction, was in the amount to R6 745 287,00 and the actuarial soundness of the calculation was admitted. I consider that, for the reasons set out earlier, the figure should be reduced by 25%. Accordingly, an award of R5 058 965,25 in respect of future loss of earning capacity represents a fair compensation.[4]

Past hospital and medical expenses

[20] At a pre-trial meeting at the start of the trial the parties agreed that the plaintiff had in fact incurred past hospital and medical expenses in the amount of R156 950,70 as a result of the injuries sustained by Ms Minnies in the accident. It was further recorded that these expenses were fairly, reasonably and necessarily incurred.

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[3] The capped calculation.

[4] It does not exceed the upper limit prescribed in s 17(4).

Notwithstanding the agreement the defendant denied being liable for these expenses. It pleaded:

> 'Notwithstanding that there is an agreement between the plaintiff and defendant that the plaintiff's quantified claim for past medical and hospital expenses is the sum of R156 950.70, the defendant denies it is liable to the plaintiff in that:-
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> (i) The plaintiff and her employer contributed to her medical aid scheme;
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> (ii) any such benefits were payable under the contract of her employment;
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> (iii) and as such does not fall within the realm of either *solatium*, gratuitous payment, benevolence and not self-insured; and
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> (iv) as such falls to be a benefit in the sum of R156 950,70 to be deducted.'

[21] All the past medical and hospital expenses were paid by the medical aid scheme, Sizwe-Gold Accent (the scheme), of which Ms Minnies was a member. Kromberg Schubert was a participating employer, who had contracted with the scheme for purposes of admitting all its employees as members of the scheme. As I have said, Ms Minnies' remuneration package with Kromberg Schubert included medical aid and provident fund contributions. They paid one third of the contributions to the scheme, while Ms Minnies contributed two thirds, and her contract of employment provided for Kromberg Schubert to deduct her contribution from her wages. It was accordingly common cause that her membership of the scheme was a condition of her contract of employment with Kromberg Schubert. As adumbrated earlier, Ms Minnies was retrenched in 2021, and she testified that she had then applied, successfully, to remain an individual member paying the full monthly contribution herself.

[22] Mr Dala argued that because Ms Minnies' membership of the scheme originated as a term of her contract of employment with Kromberg Schubert all payments made by the scheme in respect of her medical and hospital expenses, both before and after her

retrenchment, constituted benefits derived from her contract of employment which must be deducted from her claim against the defendant. The argument is founded exclusively on the authority in *Dippenaar v Shield Insurance Co. Ltd*[5] and *Standard General Insurance Co. Ltd v Dugmore NO*[6]. These cases dealt with pension benefits flowing from a contract of employment in the context of a claim for loss of earning capacity in circumstances where the plaintiffs sought to rely on their contracts of employment as a measure of their damages. Those principles find no application to past hospital and medical expenses and, for the reasons set out hereafter, I think that the reliance is misplaced.

[23] In *Dugmore NO* Olivier JA set out the general approach to an award for Aquilian damages as follows:

> 'The object of awarding Aquilian damages is to place the plaintiff in the position in which he would have been had the delict not been committed, thereby redressing the diminution of his patrimony caused by the defendant's delict (see, amongst the many cases expressing this basic principle, *Union Government (Minister of Railways and Harbours) v Warneke* 1911 AD 657 at 665; *Dippenaar v Shield Insurance Co Ltd (supra* at 917A-D)).
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> In calculating the patrimonial position in which the plaintiff would have been had the delict not been committed, and comparing it with his present position, one has to take into account not only the detrimental *sequelae* of the delict, but also the advantageous consequences thereof: after all, one needs to compare the total patrimonial position of the plaintiff at present (ie *post delicto*) with the corresponding position *ante delicto (Union Government v Warneke (supra* at 665); *De Vos v Suid-Afrikaanse Eagle Versekeringsmaatskappy Bpk* 1985 (3) SA 447 (A) at 451I-J; *Santam Versekeringsmaatskappy Bpk v Byleveldt* 1973 (2) SA 146 (A) at 150A-C).'

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[5] 1979 (2) SA 904 (A); [1979] 4 All SA 92 (A).
[6] 1997 (1) SA 33 (A); [1996] 4 All SA 415 (A).

[24] While these principles find application in respect of all heads of damages for patrimonial loss, there are exceptions to the rule. I revert to this to the extent necessary. Where a plaintiff seeks to claim damages for loss of earning capacity, he may, depending on the circumstances of the case, prove his damages by various means of his choice. What was decided in *Dippenaar*, and in *Dugmore NO*, was that if such a plaintiff chooses to use his contract of employment at the time of the delict as a measure of his damages, the monetary value of the contract can only be assessed when one looks at the contract as a whole. Thus, Rumpff CJ explained in *Dippenaar*:

> '[I]f in terms of such contract there is a compulsory deduction from salary plus a contribution by the employer in order to pay the employee money as sick leave or as a pension, it is the intention of the parties that that money shall be paid when it is due, in terms of the contract. In fact the "income" of the employee is, in terms of the contract, not confined to his salary (in its ordinary connotation) but includes also sick pay or pension when such pay or pension is due.'[7]

[25] So, the pension benefit falls to be deducted from a claim for loss of earning capacity only where a plaintiff utilised his contract of employment as the measure of his damages. In such a case, when considering what their patrimonial position would have been had the delict not been committed, as compared to their present position, the pension benefit derived in terms of the contract of employment is to be considered as retained income. Thus, if a plaintiff were allowed to retain both the pension and damages awarded for loss of earning capacity, he would receive double compensation.

[26] The claim for past medical expenses is, in my view, on a different footing. First, Ms Minnies has placed no reliance on her contract of employment in order to establish her claim for past hospital and medical expenses. Second, the scheme made payment of the medical expenses in terms of its contract with Ms Minnies as a member. The contract is in substance an indemnity insurance as explained by Gautschi JA in *Thomson v Thomson*[8] at 547H-I:

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[7] *Dippenaar* at 920D-E.
[8] 2002 (5) SA 541 (W).

> 'A medical aid scheme is, if not in law then in substance, a form of insurance. One pays a premium against which there may be no claim, or claims less than the value of the premiums, or claims which far exceed the value of the premiums. Were this a claim for damages, whether in delict or in contract, there is little doubt that the defendant would not have been entitled to rely on the payments received from the medical aid scheme.'[9]

[27] In the case of indemnity insurance agreements, such as that which existed between Ms Minnies and the scheme, three basic rules of law have emerged: that the wrongdoer is not entitled to benefit from the fact that the person wronged was insured; that the insured may not be enriched at the expense of the insurer by receiving both the insurance indemnity and the damages from the wrongdoer; and that the insurer replaces the insured; ie the insured is subrogated by the insurer, which entitles the insurer to claim the loss from the wrongdoer.[10] The effect of these rules is that once the scheme has paid out the medical expenses, as it is obliged to do in terms of its contract with its member, it acquires the right under the principle of subrogation to recover its loss from the wrongdoer.[11] The insurer may either take cession of the claim from the insured, in which case it may proceed to sue in its own name, or it may claim in the name of the insured. Subrogation is a term implied by law into a contract of indemnity insurance.[12] But, in this case it was an express term of the agreement. Paragraph 35 of the rules of the scheme provide:

> '35.1 In the event that expenditure in respect of benefits paid by the Scheme arose as a result of an accident or incident or event caused by a third party and which gives rise to a legally enforceable claim by the Member or Dependent against such third party, the Member and/or Dependent shall be advised to consult an attorney, selected by the Scheme, to ascertain whether the claims

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[9] See also *D'Ambrosi v Bane and Others* 2006 (5) SA 121 (C) at 134E-F.

[10] See, for example, *Rand Mutual Assurance Co. Ltd v Road Accident Fund* 2008 (6) SA 511 (SCA) at 519 para 17.

[11] See *Visser and Potgieter: Law of damages (3rd ed)* p. 236.

[12] The *MT 'Yeros' v Dawson Edwards and Associates* [2007] 4 All SA 922 (C) at 930A-E; and *Rand Mutual Assurance* para 18.

can be successfully prosecuted. The Member and/or Dependent shall, if so advised by such attorney, instruct same to proceed with the claim.

35.2 In the event of the Member or Dependent wishing to personally pursue the matter to finality, the Member or Dependents shall instruct such attorney to pay over to the Scheme any proceeds of the claim recovered as a result of the litigation insofar as the benefits paid by the Scheme are concerned.'

[28] The question of double compensation simply does not arise, and the plaintiff's claim is subject to the principle of subrogation.[13] Accordingly, the scheme incurred obligations to Ms Minnies by virtue of her membership, subject to her recovering such amounts from the defendant to reimburse them. The source of the monthly contributions to the scheme is immaterial. The benefits paid by the scheme are *res inter alios acta* and the defendant cannot claim the benefit of them.[14]

Costs

[29] The general rule in respect of costs, that the costs follow the result, is appropriate in this case. However, two earlier orders that reserved costs remain for consideration.

[30] The matter was initially enrolled for trial on 20 April 2023. At the hearing the trial judge ordered that the matter stand over to 24 April 2023. He issued an order that the occupational therapists instructed by the respective parties should meet and prepare and furnish a joint minute on or before 24 April 2023. It appears from the formulation of the order that the defendant had intended to file a report by an industrial psychologist and the trial judge ordered that it should do so, in terms of rule 36(9)(b), on or before 24 April 2023. The occupational therapists duly met and a joint minute was furnished, however, the defendant remained in default in respect of the report of the industrial psychologist. When, on 5 May 2023, the defendant had still not filed the report of its industrial psychologist, the matter was postponed to 15 August 2023 at the request of the defendant. The trial judge ordered that the defendant pay the plaintiff's

[13] See also *Bane and Others v D'Ambrosi* 2010 (2) SA 539 (SCA) at 550E-H.
[14] *Bane* at 550 para 19.

trial costs and the costs of attendance at case management and roll call proceedings, as well as the costs of trial preparation checklists in respect of the plaintiff's claim. But he reserved the question of costs of plaintiff's second counsel.

[31] The matter was again enrolled for trial on 15 August 2023. It emerges from the order issued on 29 August 2023, that the matter stood over from day to day from 15 August to 18 August and thereafter to 22 August. Thus, on 29 August 2023 Makaula ADJP ordered that the costs occasioned by the postponement of the trial, including the costs of 15, 16, 17, 18 and 22 August 2023, due to the unavailability of a civil judge, be reserved.

[32] I consider first the question of the costs of the second counsel at the hearing in April 2023. The court has a wide discretion in respect of the award of costs where more than one counsel is employed. The overriding question is whether, in the circumstances, it was a reasonably prudent step for the plaintiff to have employed two counsel. The plaintiff's claim is a large claim and in respect of the loss of earning capacity it was a complex claim. The complexity of the matter flows from her apparent physical ability evidenced by her initial return to her employment and the subtle psychological impacts which manifested later. Her claim was hotly contested at the time and the defendant had instructed its own industrial psychologist and occupational therapist. I consider that it was a reasonably prudent decision to appoint two counsel at that stage and the reserved issue in the order of 5 May 2023 should be decided in Ms Minnies' favour.

[33] I turn to the reserved costs in August 2023. For the reasons set out earlier the blame for the inability to proceed to trial cannot be laid at the door of either of the litigants and I consider that it would be just and equitable for these costs to be costs in the cause. Accordingly, Ms Minnies is entitled to the costs that were reserved on 29 August 2023, including the costs of two counsel.

[34] At the trial, Mr Frost, on behalf of Ms Minnies, urged me to make a special costs order pursuant to the provisions of rule 37A(13) – (16). Rule 37A(14) provides for the trial judge to have regard to the case flow management record in regard to the conduct of the trial, including the determination of any applications for a postponement and issues of costs. Rule 37A(14) records that the failure by a party to adhere to the principles and requirements of rule 37A may attract an adverse costs order. In this respect Mr Frost has referred me to a number of pre-trial procedures before April 2023 and again before August 2023, which he submitted were reflective of the defendant's failure to adhere to the principles and requirements of rule 37A. I consider that there is merit in a number of the issues raised, but I do not think that it justifies a special costs order. The events giving rise to the postponement on 5 May 2023 have already been considered by the trial judge, who made an order in respect of the attendances at case management and roll call proceedings as well as the costs of trial preparation checklists in respect of the plaintiff's claim at the time. He has already applied his mind to these issues and made an order which he considered to be appropriate.

[35] Because there was no trial judge available in August 2023, the failures of the defendant's representatives did not have a material impact upon the proceedings. Whatever the shortcomings might have been at the time, they have not contributed to protracting the trial or delaying its finalisation. I do not consider that a special order as to costs in this respect is justified on the facts.

[36] In the result, the defendant is ordered to pay to the plaintiff:

1. The amount of R800 000,00, as and for general damages;
2. the amount of R6 032 194,25 in respect of past and future loss of earning capacity;
3. the amount of R156 950,70 in respect of past hospital and medical expenses;
4. the plaintiff's costs of suit, including the costs reserved on 29 August 2023, all such costs to include the costs of two counsel; and

5. the costs of the plaintiff's second counsel that were reserved on 5 May 2023.

J W EKSTEEN
JUDGE OF THE HIGH COURT

Appearances:

For Plaintiff:	Adv A Frost, Adv B Westerdale
Instructed by:	Boqwana Burns, Gqeberha
For Defendant:	Adv I Dala
Instructed by:	The State Attorney, Gqeberha
Date Heard:	7, 8, 9, 14 February 2024
Date Delivered:	27 February 2024