

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Not reportable  
Case Number: 31793/2021

(1) REPORTABLE: <b>NO</b>	
(2) OF INTEREST TO OTHER JUDGES: <b>NO</b>	
(3) REVISED: <b>NO</b>	
..... SIGNATURE	20 October 2023 ..... DATE

**MNINDENI JOHNSON NDABA**

Plaintiff

and

**ROAD ACCIDENT FUND**  
Defendant

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**JUDGMENT**

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Introduction

- [1] This action concerns a claim for general damages, proceeding on a default basis, and touching on two very important legal questions, namely:
- 1.1. Does the fact that an RAF1 form was completed by a doctor, other than the treating doctor, invalidate a Road Accident Fund claim?

- 1.2. What role, if any, can be played by a defendant in default proceedings, where that defendant failed to file a notice of intention to defend?

### The facts

- [1] The plaintiff is suing the defendant for a personal injury arising from a motor vehicle accident, which occurred on 17 November 2018, at approximately 03h30am at or near, Wilhemus Street, Morgenzon, Mpumalanga Province. A white Mercedes Benz Compressor C1, with registration number NN 82526, driven there and then by Mr. Nelson Mzayifani Ndaba, was involved in the accident. Mr. Ndaba (the driver) lost control of the vehicle, resulting in the accident. The plaintiff, Mr. Mnindeni Johnson Ndaba, 62 years old at the time, was a passenger in the vehicle when the accident occurred.
- [2] It is pleaded that the sole cause of the accident, was the negligent driving of the insured driver, who drove the vehicle dangerously, causing the plaintiff to sustain severe bodily injuries.
- [3] The defendant elected not to defend the action.
- [4] The Hospital records from Benoni Sunshine Hospital, confirm that the plaintiff was admitted following a motor vehicle accident on 17 November 2018, where he was diagnosed with following injuries:
  - 4.1. A right proximal femur fracture;
  - 4.2. A swollen right knee; and
  - 4.3. Soft tissue injury on the right arm
- [5] The occupational therapist appointed by the plaintiff, Dr. N.L. Mzayiya, confirmed that the plaintiff sustained a proximal femur fracture of right distal radius, which required fixatives, right knee contusion and a head injury with loss of consciousness.

[6] According to Dr. Mzayiya, the following *sequelae* and symptoms are attributable to the accident. The plaintiff:

- 6.1. has residual pain in the right proximal femur and right leg, which worsens at night and during cold weather;
- 6.2. limited range of movement in his arm, and experiences pain, aggravated by prolonged standing, walking and running;
- 6.3. struggles to ambulate stairs, cannot run and stand for prolonged periods of time;
- 6.4. is walking with antalgic gait on the right side;
- 6.5. has limited range of movement in his right leg;
- 6.6. had undergone:
  - 6.6.1. surgical intervention to remove fixatives;
  - 6.6.2. physiotherapy, conservative medical treatment and analgesics;
  - 6.6.3. splint arthroscopy and debridement of the right knee to decrease the adhesion in the suprapatellar region in order to improve knee function;

[7] Dr. Mzayiya notes, that an X-ray examination of the plaintiff, revealed that he has an osteomyelitis and a septic non-united proximal right intertrochanteric fracture femur fracture, with a screw cut out, and penetration of the right hip.

[8] In respect of prognosis, he opines that the injuries the plaintiff sustained, taking into consideration his age, were severe, and with a poor prognosis, will require further surgical intervention. He notes further, that the plaintiff's pain is mostly likely to worsen, and that the sepsis will need further surgical treatment in order to clear it. And pursuant thereto, he will need a total hip replacement.

[9] Dr. Mzayiya is further of the opinion that the plaintiff has a 30% functional impairment and physical inability, to function in both the upper limbs, right hand and knee, as a result of the injuries he sustained.

### General damages

- [10] The plaintiff's claim is solely for general damages. It was argued, having regard to the report by Dr. Mzayiya, that the plaintiff sustained a right proximal femur fracture with osteoarthritis, has residual weakness in his arm, residual pain and discomfort, inability to use his right dominant leg, a mild head injury with residual headaches, and a right knee injury with degenerative changes caused by the accident and his age, which qualify him for general damages with the Whole Person Impairment (WPI) of 30%.
- [11] It was argued further, that the court has a large discretion to award compensation in respect of general damages, having regard to the circumstances and the *sequelae* of the injuries. This was the position confirmed in *Protea Assurance Company Ltd v Lamb*<sup>1</sup>.
- [12] I was also referred to the matter of *Abrahams v Road Accident Fund*<sup>2</sup>. In that matter, a 41-year-old male suffered a badly comminuted fracture of the right proximal femur, fracture of the right distal fibula and patella, fracture of the right medial malleolus, severe soft tissue injuries to the left hand, secretion in the chest and a mild concussive traumatic head injury, shortening of the right lower limb, causing a need to wear an assistive device. The plaintiff in that matter was awarded, so it was argued, general damages of R663 000-00 (in 2017 terms) which translate to (R913 000.00 in 2023 terms).
- [13] It was further submitted, that in the matter of *Roe v The Road Accident Fund*<sup>3</sup> the plaintiff sustained a fracture of the femoral shaft, fracture of the tibia and fibula, fracture of the right patella, fracture of the left humerus, injury to the right foot and upper tooth fractures. In that matter, the court awarded the

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<sup>1</sup> 1977 (1) SA 530

<sup>2</sup> 204 (7J2) QOD 1 (ECP)

<sup>3</sup> (2009/161570 [2010] ZAGPJHC (1 April 2010)

plaintiff R650 000 in respect of general damages, which amount translates into R995 171.60 in 2016 terms.

[14] The *obiter dictum* and precedent in the *De Jongh v Du Pisanie NO*<sup>4</sup> where the court reiterated on the authority that, the modern tendency is to award higher amounts than in the past for general damages. Counsel for the plaintiff argued, that a careful reading of that case seems to indicate, that although there appeared at the time of the judgment, an upward tendency of such awards, there is a departure from an over conservative approach in awarding general damages as emphasized in *RAF v Marunga*<sup>5</sup>.

[15] Counsel for the plaintiff, also referred me to *Alla v Road Accident Fund*, where a 41-year-old correctional officer, sustained a fracture of the ankle resulting in displacement of the distal tibiofibular joint and soft tissue injury. Surgery was in the form of an open reduction and internal fixation of the fracture. She was immobilized in a cast for six weeks, and thereafter in an aircast brace. She continued to experience pain in the ankle, resulting in her having difficulty walking long distances. She was awarded general damages in the sum of R200 000.00 which translate to (R500 000.00 in today's terms).

[16] Counsel submitted further, that past awards serve as no more than a guide to give some indication as to what awards are appropriate on the facts of a particular case. Further, that in striving to determine a fair amount for general damages, the court should be guided by the broadest general considerations, on an amount which is considered to be fair in all circumstances of the case<sup>6</sup>.

[17] As the plaintiff was a pensioner at the time of the accident, no loss of earnings is sought.

[18] Counsel concluded, that in light of the expert reports and case law alluded to above, that an amount of R 750 000.00 for general damages would be fair

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<sup>4</sup> [2004] 2 All SA 565 (SCA)

<sup>5</sup> 2003 (5) SA 164 (SCA)

<sup>6</sup> *Bay Passenger Ltd v Frazen* 1975 (1) SA 269 (A) at 274

and reasonable in the circumstances.

RAF 1 not completed by the treating doctor

[19] The RAF1, is a form to be completed in respect of claims for compensation, under section 17 of the Road Accident Fund Act<sup>7</sup> as prescribed in section 24(1)(a) and regulation 7.

[20] Section 24(2)(a) of the Act provides that:

*“The medical report shall be completed on the prescribed form by the medical practitioner who treated the deceased or injured person for the bodily injuries sustained in the accident from which the claim arises, or by the superintendent (or his or her representative) of the hospital where the deceased or injured person was treated for such bodily injuries: Provided that, if the medical practitioner or superintendent (or his or her representative) concerned fails to complete the medical report on request within a reasonable time and it appears that as a result of the passage of time the claim concerned may become prescribed, the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding the cause of the death or the nature and treatment of the bodily injuries in respect of which the claim is made.”*

[21] In considering, what the RAF1 form seeks to convey, the Supreme Court of Appeal in *Road Accident Fund v Busuku*<sup>8</sup> said:

The RAF1 form does not call for detailed information. It is not intended, of itself, to enable the Fund to assess the quantum of the plaintiff’s claim. It seeks to enable it to investigate the impact of the injuries sustained. In order to do so the RAF 1 form requires the disclosure of information to guide and facilitate the investigation.

[22] In *Busuku*, the SCA, referred with approval to the judgment of Galgut AJA in *Constantia Insurance Co Ltd v Nohamba*<sup>9</sup>, where he said, with reference to a

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<sup>7</sup> Act 56 of 1996

<sup>8</sup> (Case no 1013/19) [2020] ZASCA 158 (1 December 2020) para 16

<sup>9</sup> 1986 (3) SA 27 (A) at 39G-H

claim form, that:

'As we have seen from the Commercial Union case supra at 157 [Commercial Union Insurance Co of South Africa Ltd v Clarke 1972 (3) SA 508 (A) at 517E] and the Gcanga case supra at 865 [AA Mutual Insurance Association Ltd v Gcanga 1980 (1) SA 858 (A)] the purpose of the form is to enable the insurance to "enquire into a claim" and to investigate it. It is designed to "invite, guide and facilitate" such investigation. It follows, in my view, that, if an insurance company is given sufficient information to enable it to make the necessary enquiries in order to decide whether "to resist the claim or settle or compromise it before any costs of litigation are incurred", it should not thereafter be allowed to rely on its failure to make such enquiries.'

[23] In the proceedings before me, the defendant challenged the plaintiff's claim on the basis that the RAF1 form, was not completed by the treating medical practitioner.

[24] In *Multilateral Motor Vehicle Accident Fund v Radebe*<sup>10</sup>, the court held as follows in respect of this issue:

'It is true that the object of the Act is to give the widest possible protection to third parties. On the other hand, the benefit which the claim form is to give the Fund must be borne in mind and given effect to. The information contained in the claim form allows for an assessment of its liability, including the early investigation of the case. In addition, it also promotes the saving of the costs of litigation . . . These various advantages are important and should not be whittled away. The resources, both in respect of money and manpower, of agents and particularly of the fund are obviously not unlimited. They are not to be expected to investigate claims which are inadequately advanced. There is no warrant for casting on them the additional burden of doing what the regulations require should be done by the claimant.'

[25] In *M v Road Accident Fund*<sup>11</sup>, Spilg J, dealt with the issue as follows:

The intention of s 24(2)(a) is clear. The Fund should be satisfied as to the medical treatment that was received from the hospital at which the claimant was admitted pursuant to an accident. I have referred to this in a previous RAF case as a primary source of evidence. This aspect lay at the foundation of my criticism of the expert evidence tendered and the failure of the Fund to properly investigate the nature of injuries actually sustained

<sup>10</sup> 1996 (2) SA 145 (A) at 152E

<sup>11</sup> (24261/2014) [2016] ZAGPJHC 268 (10 October 2016) para 47 & 48

in that earlier case.

My attention was directed to the unreported judgment of Alkema J in *Zuko Busuku v the Road Accident Fund* [2016] 3 All SA 498 (ECM). With respect to the learned judge, I do not see the purpose of s 24(2)(a) and the mischief it seeks to address in quite the same way. At paras 24 the court said that

*‘It follows that the hospital records may not substitute a duly completed medical report as the source of the information. The Act read with the Regulations only recognize the duly completed medical report on form RAF1 as the only source of the information. If the hospital records may constitute substantial compliance with Regulation 7 read with section 24 of the Act, as Mr Bodlani submitted, then the words used in the Act and Regulations become meaningless and are not given effect to. And this is not permissible under the law of interpretation of Statutes and it offends the case law on the subject, including judgments from the Supreme Court of Appeal which are binding on this Court.’ (emphasis added)*

[26] He continues<sup>12</sup>:

Which brings one back to the treating doctor. In a busy hospital treating doctors are unlikely to recall the specifics of every patient, they may not be exclusively treating the same patient and may be rotated. They are unlikely to have firsthand recall, but they would be able to confirm what they did, provided they have sight of the hospital records.

But what must be done if the evidence demonstrates a systemic frustration of the intention of the section by those who are required to complete the medical report portion of the RAF1 form? It seems to me that by parity of reasoning substantial compliance will suffice if the section is to remain in the statute book while its implementation is frustrated in this way. Practitioners cannot be expected to bring compelling orders, much less should lay persons who pursue their own claims.

Accordingly substantial compliance in circumstances where the Fund is entitled to condone strict non-compliance (as evident from s24(5)) is not necessarily confined to where there is some deviation from the strictures of the legislation but includes cases where it is demonstrated that there is a systemic impediment to the reasonable attainment of the objective of s 24(2) (a) by the hospital authorities and provided of course there is no prejudice.

[27] In, *Mphuti Lettie Limakatso obo Mojalefa Mphuti v Road Accident Fund*<sup>13</sup> (an unreported decision) Spilg J, also said the following about compliance with the

<sup>12</sup> Ibid para 50-53

<sup>13</sup> Case Number 24261/ 2014 [Gauteng Local Division] para



purpose of section 24:

“It has been held in a long line of cases that the requirement relating to the submission of the claim form is peremptory and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices. As to the latter requirement this court in *SA Eagle Insurance Co Ltd v Pretorius* reiterated that the test for substantial compliance is an objective one.”

[28] The Act, places primacy on the completion of the RAF1 form for purposes of providing the RAF with information about a claim. The medical portion of the form, must however be completed by a medical practitioner, who was the treating doctor. The Act makes allowance for a departure from that requirement, where the medical practitioner or superintendent (or his or her representative) concerned, fails to complete the medical report on request, within a reasonable time, and it appears that as a result of the passage of time the claim concerned may become prescribed. In such an instance, the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding the cause of the death or the nature and treatment of the bodily injuries, in respect of which the claim is made.

[29] I am persuaded, in light of the prevailing authorities that, where the medical report in respect of an RAF1 form was completed by a medical practitioner, other than the treating doctor, and it can be ascertained that the information reflected therein, is derived from him having conversed himself fully, with the contents of those medical records, the inclusion of such a medical report would render the completion of the RAF1 form, substantially compliant, and accordingly valid for purposes of the Act.

[30] The objection raised by the defendant in this regard, must accordingly be overruled.

Participation by the defendant in default proceedings

[31] A defendant can be in default of proceedings, if he elects not to defend an action, or his defense is struck out, during the course of the action. Which begs the question, what role if any, can a defendant play in default proceedings. I am not required to deal with the latter portion of the second question, save to state that I align myself fully with the position adopted by this court in *Stevens & 1 other v Road Accident Fund*<sup>14</sup>, where Twala J said:

[8] Counsel for the plaintiffs submitted that, although he did not note an objecting at the commencement of this hearing, it was improper and against the rules of Court to allow the defendant to participate in these proceedings for its defence has been struck out. His agreement with counsel for the defendant was only to lead evidence of the plaintiffs on the points listed above but not to give the defendant an opportunity to cross-examine the witnesses. It was further submitted that, the Court should not place much weight on the negative evidence, if any, that may have been elicited under cross-examination. This is tantamount to, so the argument went, being ambushed by the defendant whom it was not expected to attend Court let alone to participate in the proceedings when its defence has been struck out.

[9] In *Khunou & Others v Fihrer & Son 1982 (3) SA (WLD)* the Court stated the following:

*“The proper function of a Court is to try disputes between litigants who have real grievances and so see to it that justice is done. The rules of civil procedure exist in order to enable Courts to perform this duty with which, in turn, the orderly functioning, and indeed the very existence, of society is inextricably interwoven. The Rules of Court are in a sense merely a refinement of the general rule of civil procedure. They are designed not only to allow litigants to come to grips as expeditiously and as inexpensively as possible with the real issues between them, but also to ensure that the Courts dispense justice uniformly and fairly, and that the true issues aforementioned are clarified and tried in a just manner.”*

[10] In *Trans-African Insurance Co Ltd v Maluleka 1956 (2) SA 273 (A)* which was quoted with approval in *Life Healthcare Group (Pty) Ltd v Mdladla & Another (42156/2013) [2014] ZAGPJHC 20 (10 FEBRUARY 2014)* the court stated the following:

*“No doubt parties and their legal advisers should not be encouraged to become slack in the observance of the Rules, which are an important*

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<sup>14</sup> Unreported decision Johannesburg Local Division. Case No: 26017/2016 Date: 28 October 2022

*element in the machinery for the administration of justice. But on the other hand technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits.”*

[11] I disagree with the contentions of counsel for the plaintiffs. It has been held in a number of decisions that the rules are for the court and not the court for the rules. Moreover, in casu, the striking out of the defence of the defendant does not in itself bar the defendant from participating in these proceedings. The defendant is entitled to participate in these proceedings but his participation is restricted in the sense that it cannot raise the defence that had been struck out by an order of Court. It is therefore not correct to say the defendant was not entitled to cross examine the plaintiffs after giving evidence. Furthermore, the cross examination was on the evidence tendered by the plaintiffs and the defendant did not attempt to introduce its own case during the cross examination.

[32] The defendant in the matter before me, did not file a notice of intention to defend, but still appeared as a party at the default judgment proceedings, where it sought leave to raise the legal issue pertaining to the RAF1 form. I have exercised my discretion, within the parameters of Rule 27(3) of the Rules, and allowed the defendant to raise the point, which, as stated above, was dismissed.

#### Analysis on the issue of general damages

[33] A claim for general damages, relates to damages suffered by a person arising from *inter alia* physical integrity, pain and suffering, emotional shock, disfigurement, a reduced life expectancy, and loss of life amenities<sup>15</sup>.

[34] In *Legodi*, the court commented as follows on the question of general damages:

[51] The case of *Hendricks v President Insurance* and the authors *Visser and Potgieter Skadevergoedingsreg* (2003) 97 provide that the

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<sup>15</sup> *Legodi v Road Accident Fund* (50948/17) [2021] ZAGPPHC 566 (2 September 2021) para 50

nature of the general damages to be awarded make quantifying the award a complex task. This is because of the personal, non-pecuniary, and subjective nature of these interests, which make it difficult to quantify, but remains recoverable.

[52] To qualify as a serious injury three steps must be undertaken by the medical practitioner. Firstly, to apply the non-serious injury criteria list; secondly, the methodology is contained in the *American Medical Association's Guides to the Evaluation of Permanent Impairment (AMA Guide)*; and thirdly, the methodology as set out in the narrative test. In this matter, the plaintiff crossed the threshold of meeting the requirements of "serious damages" by the expert reports.

[53] The plaintiff in the *De Jongh* matter sustained a head injury consisting of extensive fragmented fractures of the frontal skull extending into the orbits (eye sockets) and the zygomatic arches - cheekbones, as well as the jaw, causing extradural haematoma which led to unconsciousness and which had to be surgically removed. Importantly, in this matter the SCA, quoting Holmes J, also pointed out the following fundamental principle relative to the award of general damages:

*"that the award should be fair to both sides, it must give just compensation to the plaintiff, but not pour largesse from the horn of plenty at the defendants' expense."*

[54] In *Mashigo v Road Accident Fund*, Mr. Justice Davis summarises the well-known approach to general damages and the use of previous comparable awards as follows:

*"[10] A claim for general or non-patrimonial damages requires an assessment of the plaintiff's pain and suffering, disfigurement, permanent disability, and loss of amenities of life and attaching a monetary value thereto. The exercise is, by its very nature; both difficult and discretionary with wide-ranging permutations. As will be illustrated herein later, it is very difficult if not impossible to find a case on all four with the one to be decided. The oft-quoted case of *Southern Insurance Association v Bailey* NO 1984 (1) SA 98 AD confirmed that even the Supreme Court of Appeal had difficulties in laying down rules as to how the problem of an award for general damages should be approached. The accepted approach is the "flexible one" described in *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 at 199, namely: the submissions were "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 on the Judge's view of what is fair in all the circumstances of the case".*

[11] *Of course, awards in cases that show at least some similarities or comparisons are useful guides, taking into account the current value of such awards to accommodate the decreasing value of money. See inter alia: SA Eagle Insurance Co v Hartley [1990] ZASCA 106; 1990 (4) SA 833 (A) at 841 D and the practical work of The Quantum Yearbook by Robert J Koch which includes tables of general damages awards annually updated to cater for inflation.*

[12] *In respect of the issue of comparable cases and the guidance provided thereby, the Supreme Court of Appeal has stated in Protea Assurance co Ltd v Lamb 1971 SA 530 at 536 A - B: "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. At the same time, it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration".*

[55] The court in these cases has discretion. However, this discretion is not restrained by a relentless tariff drawn from previous similar awards. When assessing such damages the factors must be considered in totality. Naturally, courts are assisted by sufficiently comparable case law which can be used as a yardstick to assist the court in arriving at an appropriate award. (Footnotes omitted)

[35] The injuries sustained by the plaintiff, are distinguishable from the injuries sustained in *Abrahams*. *Abrahams* sustained multiple injuries including a badly comminuted fracture of the femur, fractures of the fibula and patella, fracture of the right malleolus, severe soft tissue injuries of the hand and a mild concussive head injury. He underwent surgery in the form of an open reduction and internal fixation of the femoral fracture, an open reduction of the patella fracture with fixation, an open reduction and internal fixation of the malleolus. Subsequent surgeries for removal of the fixatives at the patella,

and a revision of the non-union of the fibula malleolar fracture were performed. His right limb was shortened with the need for an assistive device. Osteoarthritis was present in the left knee, and there was limitation of range of motion in the right hip, knee and ankle. In that matter, Abrahams' pre-existing generalised anxiety disorder was exacerbated. He was accordingly rendered unemployable. An amount of R500 000.00 was awarded in 2014 for general damages.

[36] The injuries sustained by the plaintiff in *Roe*, are also distinguishable from the injuries sustained by the plaintiff in this matter. In that matter, the plaintiff was 44 years old at the time of the collision. He was driving his motorcycle during the early hours of the afternoon, on the day of the incident. He was rendered unconscious and had no memory of the collision at all. After the collision, he was taken by ambulance to Olivedale Clinic for emergency treatment. He sustained a soft-tissue injury to the neck as well as facial injuries, a fracture of the cheek, and some of his teeth had come loose.

[37] The X-rays that were taken, confirmed that Roe had sustained the following orthopaedic injuries:

- 37.1. A comminuted fracture of the right femoral shaft;
- 37.2. Comminuted fractures of the right tibia and fibula;
- 37.3. A fracture of the right patella;
- 37.4. A fracture of the left humeral shaft;
- 37.5. A supra-intra fracture of the left distal humerus;
- 37.6. A degloving injury over the lateral aspect of the right foot;
- 37.7. Fracture of his upper incisor teeth.

[38] It is worth pointing out, that Roe remained under sedation and regained full consciousness four to five days after the collision, while still in hospital. The court awarded R650 000 for general damages.

[39] I am not persuaded that the diagnosis that the plaintiff suffered a head-injury, is sufficiently borne out by the evidence, nor can Dr. Mzayiya, given his expertise and field of practice (occupational therapist), make such a diagnosis.

[40] I have carefully considered the extent of the plaintiff's injuries, and the *sequalae* as reflected in the expert reports. I have also taken into consideration the plaintiff's age, and the prevailing authorities as alluded to in this judgment. I am satisfied that an award of R450 000.00 for general damages in favour of the plaintiff, is both fair and reasonable.

[41] In the result I make the following order:

Order:

1. The defendant is 100% liable for the plaintiff's damages sustained in the motor vehicle accident that occurred on 17 November 2018;
2. The defendant is to make a payment in the amount of R 450 000.00 (Four Hundred and Fifty Thousand Rand Only) in full and final settlement to the plaintiff's action, which amount is payable to the plaintiff's attorney of record within 180 (one hundred and eighty) days from the date of this order;
3. The defendant is liable for the interest on the amount of R450 000.00 (Four Hundred and Fifty Thousand Rand) at a prescribed interest rate of 10.5% failing payment within the agreed 180 days following this order;
4. The defendant is ordered to issue an undertaking [100%] to the plaintiff in terms of the provision of Section 17(4)(a) of the RAF Act as amended;
5. The defendant is ordered to pay the plaintiff's party and party costs on the High Court scale, which costs include plaintiff's experts reports for which the defendant has received a notice in terms of the provisions of Rule 36(9)(a) and (b), which costs include the costs of the trial for 20 July 2023;

6. In the event that the costs are not agreed:
  - 6.1. The plaintiff shall serve a notice of taxation on the defendant's attorney of record;
  - 6.2. The plaintiff shall allow the defendant 180 (One Hundred and Eighty) days from date of allocator to make payment of the taxed costs, should payment not be affected timeously;
  - 6.3. The plaintiff will be entitled to recover interest at the rate of 10.5% per annum on the taxed or agreed costs from date of allocator to date of final payment;
  - 6.4. The costs incurred in obtaining payment of the amounts mentioned in paragraphs above;
  - 6.5. The costs of all medico-legal, experts, RAF4 forms obtained by the plaintiff, as well as all expert reports furnished to the defendant;
  - 6.6. The costs and expenses incurred of transporting the plaintiff to and from the medico – legal examinations;
  - 6.7. The costs of, and consequent to, compiling all minutes in respect of pre-trial conferences;
  - 6.8. Costs of counsel for preparation of a trial, and a day fee for 20 July 2023;
  - 6.9. The costs in respect of obtaining all documents and lodging of the plaintiff's claim;
  - 6.10. The reasonable travelling costs of the plaintiff, who is hereby declared a necessary witness in respect of the merits.

7. The capital amount including the costs shall be payable to the attorney of record's trust account, with the following details;

Name of the Account Holder:	NOMPUMZA ATTORNEYS
Branch :	FIRST NATIONAL CARLTON CENTRE
Type of Account :	CHEQUE ACCOUNT
Account Number :	[...].

8. The Contingency fee agreement is hereby declared valid



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**B. FORD**

Acting Judge of the High Court  
Gauteng Division of the High Court,  
Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 20 October 2023 and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 20 October 2023.

Date of hearing: 20 July 2023

Date of judgment: 20 October 2023

**Appearances:**

For the plaintiff:	Adv. S. Tshungu
Instructed by:	Nompumza Attorneys
For the defendant:	Mr. T. Ngomana
Instructed by:	State Attorney