

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED: YES/NO	
.....	
DATE	SIGNATURE

In the matter between:

**Case No: 26962/2021**

**VICTOR MULEYA**

**PLAINTIFF**

**and**

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

**DEFENDANT**

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**JUDGEMENT**

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**JOYINI AJ:**

## **INTRODUCTION**

[1] The Plaintiff has instituted action against the Defendant for damages suffered as a result of personal injuries sustained in an incident that occurred on 3 February 2020 at approximately 08h15 at Kempton Park Train Station.

[2] At the time of the incident, the Plaintiff was a passenger holding a valid ticket in a Metrorail Passenger Train which was operated by the Defendant.

## **PARTIES**

[3] The Plaintiff is Victor Muleya, an adult male person born on 28 July 1990, who resides at 422 Phomolong Section in Tembisa.

[4] The Defendant is the Passenger Rail Agency of South Africa (PRASA), a public company established in terms of section 2 of the Legal Succession to the South African Transport Services Act, 9 of 1989 trading as Metrorail.

## **FACTS AND BACKGROUND**

[5] According to the particulars of claim on Caselines 001-4, the Plaintiff was pushed by other commuters who were preparing to disembark when the train was approaching the station and fell, whilst the train was in motion, through the open doors near the railway tracks.

[6] At the commencement of the proceedings, the parties informed the court that the issue of liability was settled at 80% in favour of the Plaintiff and the Court Order to that effect is uploaded on Caselines 007-1 to 2.

## **INJURIES SUSTAINED BY THE PLAINTIFF**

[7] It is common cause that the Plaintiff sustained left open tibia and fibula fracture<sup>1</sup> in the incident.

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<sup>1</sup> Tembisa Hospital records on Caselines 006-3: Dr Theron's report (Orthopaedic Surgeon).

## **TREATMENT RECEIVED BY THE PLAINTIFF**

[8] It is common cause that the Plaintiff was evacuated from the scene of the incident to Tembisa Hospital, where he was admitted for eleven days<sup>2</sup>. He received the following treatment: The fracture was initially treated with Plaster of Paris back slab<sup>3</sup> and was later surgically treated by way of open reduction and internal fixation (ORIF)<sup>4</sup>; pain medication; ORIF for 12 weeks and was referred to Musina Hospital for pin tract care; and crutches<sup>5</sup>.

## **PLAINTIFF'S CONDITION AS A RESULT OF THE INJURY**

[9] According to the Counsel for the Plaintiff, the injury left the Plaintiff with the following conditions and/or symptoms<sup>6</sup>: Painful left leg, knee and ankle aggravated by walking long distance, standing, handling heavy objects and inclement weather. He takes pain medication; the Plaintiff has reported to have developed anxiety and depression; diagnosed with acute stress disorder; antalgic gait; surgical scars on the left leg; limitations with squatting; and stiff joint.

## **THE ISSUES FOR DETERMINATION**

[10] The Court was called upon to determine the quantum and in particular, the Plaintiff's patrimonial and non-patrimonial damages in the total sum of R2 500 000, in respect of future medical and related expenses; past and future loss of earnings; and general damages.

[11] The proceedings on this matter started in the afternoon on 16 November 2023 and concluded very late on the same day as per a commitment that was made by both Counsel in my Chambers. I commend them for their commitment to the cause and the constructive role they had played during the proceedings from the beginning to the end.

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<sup>2</sup> Tembisa Hospital records on Caselines 004-10.

<sup>3</sup> *Id* on Caselines 004-13.

<sup>4</sup> *Id* on Caselines 004-11.

<sup>5</sup> *Id* on Caselines 004-9.

<sup>6</sup> Orthopedic surgeon's report at pp 006-4 para 8.1.2; Psychiatrist's report at pp 006-16 para 16.1& Occupational Therapist's report at pp006-32.

I also found their oral closing arguments towards the end of the proceedings very helpful and they were followed by their well-reasoned written closing arguments.

## **MEDICO-LEGAL EXPERTS AND THEIR OPINIONS/EVIDENCE**

[12] The Plaintiff was assessed by a number of Medical Experts. They filed medico-legal reports containing their assessment of the Plaintiff's injuries and *sequelae*, as well as opinions by the experts thereon for purposes of establishing the Plaintiff's claim for compensation.

[13] The Parties further informed the Court that the presentation of their respective cases was going to be done through presenting certain medico-legal reports of a number of experts in addition to adducing *viva voce* evidence. Let me take this opportunity to thank all the Experts for assisting the Court with their evidence. Leading expert evidence is not only important for a Plaintiff to strengthen and prove its case but likewise for a Defendant to contest and prove the contrary.

[14] The Plaintiff relied on expert evidence of the Orthopedic Surgeon, Psychiatrist, Occupational Therapist and Industrial Psychologist, who assessed the Plaintiff and compiled the reports wherein they set out the nature of the injury, *sequelae* thereof, and nature of future medical treatment, and the effect of the injuries on plaintiff's earning capacity<sup>7</sup>.

[15] The Defendant relies on the expert evidence of the Occupational Therapist and had admitted the contents of the reports by Dr JJ Theron (Orthopedic Surgeon) and Dr Sebastian Clifton (the Industrial Psychologist)<sup>8</sup>. The Defendant further admitted the actuarial methods and assumptions made by Mr Gregory Whittaker in respect of his actuarial calculation on future medical and related expenses. The admissions as stated by the Plaintiff were confirmed by the Defendant.

## **GENERAL DAMAGES**

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<sup>7</sup> Plaintiff's experts' reports on Caselines 006.

<sup>8</sup> Pre-trial minutes on Caselines 011-4 para 7.4.

[16] In awarding general damages, courts are guided by the decided cases. *In casu*, the Plaintiff suffered a left open tibia and fibula fracture injury as diagnosed by the Orthopaedic Surgeon, Dr J J Theron. The Counsel for the Defendant recommended to the Court the following judgments for use as a guide for awarding general damages.

[17] In *Ndzungu v Road Accident Fund*<sup>9</sup>, the Plaintiff had suffered injuries of the left tibia comminuted fracture and the left fibula fracture. The medical *sequelae* were that the plaintiff had the external fixture which was removed after two (2) months. The Plaintiff walked with a limp using one crutch. The left leg was shortened by 3cm and thus required a raised shoe. General damages were awarded at R 220 000 then, which is now R 367 800.

[18] In *Khakhang v Road Accident Fund*<sup>10</sup>, the Plaintiff had suffered injuries in the left knee, had left tibia compound fracture and left fibula compound distal fracture. The medical *sequelae* were that of non-union of fractures. The fractures were gradually declining, resulting in osteoarthritis. He also had a loss of knee function and experienced pain when kneeling. General damages were awarded at R400 000, and the amount is now R 400 446,31.

[19] The Counsel for the Defendant brought to the attention of the Court that in the abovementioned judgments, the Plaintiff had similar injuries with the Plaintiff *in casu* as compared to other judgments where Plaintiffs had suffered multiple and severe injuries, hence the higher amounts awarded for general damages. The Counsel for the Defendant submitted that, guided by these two aforesaid judgments, an amount between R 370 000 and R400 000 is a fair and reasonable amount to compensate the Plaintiff for general damages.

[20] The Counsel for the Plaintiff recommended to the Court the following judgments for use as a guide for awarding general damages.

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<sup>9</sup> [2010] LNQD (ECM).

<sup>10</sup> [2022] LNQD 05 (FB).

[21] In *Maele v Road Accident Fund*<sup>11</sup>, an injured was a 7 years old scholar who sustained mild concussive brain injury and fractured left tibia. The fracture and alignment of the left tibia had healed well after the accident. The child was hospitalised for five days after the accident and had a plaster of Paris cast applied to the leg. She endured acute pain for approximately four to five days after the accident and was in moderate pain for about eight weeks. She had some discomfort when running, standing or walking for long distances and when kneeling. The fracture healed completely, but provision was made for conservative future treatment with possible arthroscopy and debridement of left knee. She experienced serious learning difficulties prior to the accident and had a dismal school record which was not exacerbated by the injuries sustained in the accident. The Plaintiff was awarded R 330 000 in 2014, R 512 000 in 2023 terms.

[22] In *Kubayi v Road Accident Fund*<sup>12</sup> the Plaintiff was an adult male who sustained open fracture of the distal tibia and fibula. As a result of the external fixation, he developed infection in the area, which was chronic, not healed on the date of the hearing and unlikely that the sepsis will be healed. His physical impairment includes: pain in his left ankle exacerbated by prolonged static positions or repetitive movement, strenuous rigorous activity as well as hot weather; loss of functional range movement in the left ankle; swelling of the left ankle and muscle atrophy of the left foot; leg length discrepancy of approximately 1.5cm; scar on the left leg, which partially conceals a healing wound; decreased rate of performance in walking and stair climbing. Award of R 300 000 for general damages was made in 2013, R 500 000 in 2023 terms.

[23] It is common cause that the Defendant relied on the matters of *Ndzungu v Road Accident Fund* 2011 (6E4) QOD 8 (ECM) and *Khakhang v Road Accident Fund* (1983/2018) [2021] ZAFSHC 306 (2 December 2021) and submitted that an amount of between R 370 000 and R 400 000 is fair for Plaintiff's claim for general damages.

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<sup>11</sup> 2015 (7E4) QOD 1 (GNP)

<sup>12</sup> 2013 (6E4) QOD 27 (GNP)

[24] Having regard to the comparable awards relied upon by both parties, Plaintiff's injuries and sequelae thereof, his age, ages of the claimants in the aforementioned decisions injuries and *sequelae* thereof, the Counsel submitted on behalf of the Plaintiff, that although the Plaintiff submits that an amount of R 450 000 is fair and reasonable, the amount of R 400 000 suggested by the Defendant is also fair.

[25] I have considered the above case law in comparison to the present case. Accordingly, the Court concluded that the appropriate award for general damages is R400 000.

### **LOSS OF INCOME/EARNING CAPACITY**

[26] On this head of damages, both parties appointed Actuaries and obtained reports, respectively. It should be noted that the conclusions made by both experts in relation to the Plaintiff's loss of income are not far from each other.

[27] The Plaintiff's expert reported the net past loss to be at R 76 144, having applied a 5% contingency and the net future loss to be at R 994 362, having applied a 16% contingency on the future pre-accident income and a 36% contingency on the future post-accident income. That resulted to a total net of R 1 070 506.

[28] The Defendant's expert reported the net past loss to be R 100 235, having applied a 5% contingency and the future net loss to be R 956 800, having applied a 15% contingency on the future pre-accident income and a 25% contingency on the future post-accident income. That resulted to a total net of R 1 057 035.

[29] Having regard to the conclusions reached by both experts, the Counsel for the Defendant submitted that an amount of R 1 070 506 is a fair and reasonable amount to compensate the Plaintiff for the loss of income/earning capacity.

[30] Both parties have adopted the contingencies applied by the actuary and submitted that they are fair and reasonable under the circumstances.

[31] In the result, the Court concluded that an amount of R 1 070 506 is a fair and reasonable amount to compensate the Plaintiff for the loss of income/earning capacity.

## **FUTURE MEDICAL EXPENSES**

### **DR JJ THERON: ORTHOPAEDIC SURGEON FOR THE PLAINTIFF**

[32] The Counsel for the Plaintiff expressed the view that it is common cause that the Plaintiff would require medical treatment in future, as a result of the injury sustained in the accident. In this regard, he submitted that the treatment recommended by Dr Theron is not in dispute. The Counsel for the Defendant concurred. The Defendant agreed to pay for the reasonable conservative treatment recommended by Dr Theron.

[33] The amount involved here is R21103<sup>13</sup> and it is not going to be deducted from Appendix 1. It will remain there.

### **DR R.T.H. LEKALAKALA: SPECIALIST PSYCHIATRIST FOR THE PLAINTIFF**

[34] The bone of contention in respect of quantum is the issue of future medical and related expenses as per the recommendation made by the Plaintiff's expert, Dr Lekalakala, the Psychiatrist. After examining the Plaintiff, he recommended twelve (12) sessions of trauma focused counselling at the cost of R2000 per session<sup>14</sup>. This recommendation was taken into consideration by the actuarial expert when computing the future medical expenses and was reflected in Appendix 1<sup>15</sup>.

[35] During cross-examination, Dr Lekalakala conceded that his recommendation was no longer necessary as the Plaintiff had reached maximum medical improvement at the time he was assessed. The Counsel for the Defendant submitted therefore that this

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<sup>13</sup> Appendix 1 on Caselines 006-79.

<sup>14</sup> Expert report para 18.2, found on Caselines 006-17.

<sup>15</sup> Appendix 1 on Caselines 006-78.



recommendation by Dr Lekalakala and the calculation reflected in Appendix 1 should be disregarded.

[36] The Counsel for the Plaintiff conceded and as such, decided to abandon the claim for the treatment recommended by Dr Lekalakala, the Psychiatrist.

[37] This means that an amount of R 24 000 for trauma focused counselling would be deducted from the calculation reflected in Appendix 1<sup>16</sup>.

**MS PORTIA NDLHALANE: OCCUPATIONAL THERAPIST FOR THE PLAINTIFF AND MS SAGWATI SEBAPU: OCCUPATIONAL THERAPIST FOR THE DEFENDANT**

[38] The disputed treatment is that recommended by Ms Ndlhalane and it is disputed by Ms Sagwati Sebapu: Occupational Therapist for the Defendant in the joint minutes. The occupational therapists for both parties met and compiled joint minutes, where they disagree on the following aspects: The Plaintiff's need for one session of occupational therapy at plaintiff's home<sup>17</sup>; certain assistive devices recommended by Ms Ndlhalane<sup>18</sup>; and the Plaintiff's need for domestic and gardening assistance<sup>19</sup>. The Counsel for the Plaintiff submitted that the therapeutic intervention, assistive devices and assistance recommended by Ms Ndlhalane is necessary and reasonable and should be allowed.

**Assistive devices**

[39] The Counsel for the Plaintiff argues that all the recommended assistive devices are necessary and should be allowed because the Plaintiff is living alone and is responsible for cleaning his own room. He submitted that the acknowledged pain will be alleviated by the assistive devices recommended by Ms Ndlhalane.

[40] During cross-examination, Ms Ndlhalane insisted that the assistive devices, the domestic and the gardening assistance recommended will be needed in the event that

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<sup>16</sup> *Id* on Caselines 006-79.

<sup>17</sup> Joint Minutes on Caselines 010-2 para 2.1.2.

<sup>18</sup> *Id* paras 3.2 & 6.1.

<sup>19</sup> *Id* para 4.2.

the conservative treatment is not successful or the Plaintiff does not receive the recommended treatment.

[41] The Counsel for the Defendant submitted that according to the recommendations of Ms Ndlhalane, the defendant is expected to pay for both the conservative treatment and the assistive devices that would be needed in the event that the treatment has not worked or the Plaintiff does not receive the recommended treatment, as postulated by Ms Ndlhalane. In the event where the treatment works and/or the Plaintiff receives the recommended treatment and the pain is alleviated, the assistive devices that the Defendant would have already paid for would not be necessary. The Defendant will not be able to recover the cost of such devices from the Plaintiff. The Counsel therefore submitted that the Plaintiff would have been unjustifiably enriched.

#### **Domestic and gardening assistance**

[42] Ms Sebatu disagrees with the recommendation for domestic and gardening assistance on the basis that the Plaintiff lives in a one room that does not have a garden, has good long-term prognosis and does not have limitations. Ms Ndlhalane is however of the view that as long as the Plaintiff's pain and symptoms persist, he will require domestic and gardening assistance in future. Ms Ndlhalane conceded that the Plaintiff does not require gardening assistance at this stage. She however emphasised that her recommendations are based on future situation, when the Plaintiff lives in a bigger place with a garden or if the recommended treatment does not resolve the pain. The Counsel for the Plaintiff submitted that this recommendation is reasonable, as it cannot be expected that the Plaintiff will live in a backroom for the rest of his life. He argued that the Plaintiff is obliged to claim all his damages in one action. He cannot wait until he moves to a bigger place, before claiming for gardening assistance. He is experiencing pain which limits him in some activities.

[43] As an *obiter dictum*, the Counsel for the Plaintiff referred the Court to an important 'once and for all rule' which is a South African common law rule originating from English law (*Member of Executive Council, Health and Social Development, Gauteng v DZ* [2017] ZACC 37 (herein referred to as DZ), para. 46; SALRC, 2017: 32). The common

law rule states all claims arising from a single cause of action, both accrued and prospective, must be considered once and for all on finalisation of the matter (Neethling, Potgieter & Visser, 2015: 235-8). The rule is aimed at preventing multiple claims based on a single cause of action, harassment of defendants and conflicting decisions (DZ, para 16). This is just a by the way remark in passing.

[44] On domestic assistance, Ms Ndlhalane testified that assistance is still required even if the Plaintiff lives in a back room, as the domestic assistant will assist the Plaintiff in spring cleaning, moving the furniture, laundry and ironing. Ms Ndlhalane only recommends eight (8) hours per week for domestic assistance. It is common cause that the Plaintiff experiences pain when standing for a long time, lifting and squatting. Ironing and laundry (hand wash) requires long standing and sitting. With the domestic assistance, the Plaintiff can do lighter home chores and live things such as laundry, ironing and moving furniture to the domestic assistant. The Counsel for the Plaintiff argues that the recommended assistance is therefore necessary.

[45] Ms Ndlhalane confirmed that she found the Plaintiff's functional capacity to be good. She reported<sup>20</sup> as follows: *"Based on the individual task scores in Dynamic strength, Position to tolerance and mobility, he has the capacity to endure sedentary light physical work for an 8-hour day over 40 weeks"*. At no point in her report did she mention that there is an indication of a deteriorating state of tolerance in the future. During cross-examination she was asked about the fact that the plaintiff's tolerance at work is diagnosed as good, then why would it be different at home such that she recommends assistance for the plaintiff in carrying out house chores. Ms Ndlhalane answered that the plaintiff still experiences pain and will continue to experience pain.

[46] The Counsel for the Defendant submitted that Ms Ndlhalane's recommendations are not supported by her clinical examination findings. It is not disputed that the Plaintiff still experiences pain. What the Defendant disputes, is the extent and the severity of the pain as reported by the Plaintiff. Ms Ndlhalane's conclusions and recommendations are

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<sup>20</sup> Section G para 5.2 in her report, found on Caselines 006-36.

based on the Plaintiff's reporting. It was brought to the attention of the Court that the Plaintiff gave different reports in relation to his hospitalisation duration and the treatment, to different experts in a very short space of time. According to the Counsel for the Plaintiff, this renders information reported by the Plaintiff to be unreliable.

[47] Ms Ndlhalane insists on the need for domestic and gardening assistance. In her report regarding the living arrangements<sup>21</sup>, she mentioned that the Plaintiff reported to be staying in a one room accommodation. In the entire report, there is no clear description of the said room in relation to the type of furniture and the arrangement thereof. Yet during cross-examination, she told the Court that the domestic assistance recommended will spend eight (8) hours once a week, lifting up furniture and doing spring cleaning. Furthermore, at no point in her report did she mention that prior to the accident, the Plaintiff used to do spring cleaning every week, lifting the furniture, changing bedding once a week. This was mentioned for the first time during the cross-examination. She also recommended gardening assistance, yet she reported that the Plaintiff has no garden. She, however, ended up conceding that the gardening assistance is not necessary. The Counsel for the Defendant therefore submitted that the domestic and gardening assistance should be disregarded in her report and in the computation in

Appendix 1<sup>22</sup>.

## CONCLUSION

[48] A Court's approach to expert testimony was neatly summarised in *Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another* [2001 \(3\) SA 1188](#) (SCA). Howie J writing for the court stated- "[36] . . . what is required in the evaluation of such evidence is to determine whether and to what extent their opinions advanced are founded on logical reasoning. That is the thrust of the decision of the House of Lords in the medical negligence case of *Bolitho v City and Hackney Health Authority* [\[1997\] UKHL 46](#); [\[1998\] AC 232](#) (HL (E)). With the relevant dicta in the speech of Lord Browne-

<sup>21</sup> Section D para 2 of her report, found on Caselines 006-28.

<sup>22</sup> Item no: 17 (d) on Appendix 1, found on Caselines 006-78.

*Wilkinson we respectfully agree. Summarised, they are to the following effect. [37] The Court is not bound to absolve a defendant from liability for allegedly negligent medical treatment or diagnosis just because evidence of expert opinion, albeit genuinely held, is that the treatment or diagnosis in issue accorded with sound medical practice. The Court must be satisfied that such opinion has a logical basis, in other words, that the expert has considered comparative risks and benefits and has reached 'a defensible conclusion' (at 241G-242B). . . . [40] Finally, it must be borne in mind that expert scientific witnesses do tend to assess likelihood in terms of scientific certainty. Some of the witnesses in this case had to be diverted from doing so and were invited to express prospects of an event's occurrence, as far as they possibly could, in terms of more practical assistance to the forensic assessment of probability, for example, as a greater or lesser than fifty per cent chance and so on. This essential difference between the scientific and the judicial measure of proof was aptly highlighted by the House of Lords in the Scottish case of *Dingly v The Chief Constable, Strathclyde Police* **200 SC (HL) 77** and the warning given at 89D-E that '(o)ne cannot entirely discount the risk that by immersing himself in every detail and by looking deeply into the minds of the experts, a Judge may be seduced into a position where he applies to the expert evidence the standards which the expert himself will apply to the question whether a particular thesis has been proved or disproved – instead of assessing, as a Judge must do, where the balance of probabilities lies on a review of the whole of the evidence.' (Emphasis added)*

[49] Counsel were apparently able to reach a compromise on a number of the issues relating to quantum, but remained at odds in regard to certain areas of future medical and related expenses, in particular, the domestic and garden assistance.

[50] According to the well-established position in our law, the Courts need to be mindful of the current situation of the Plaintiff and exercise a measure of common sense and judicious discretion in avoiding an award that would amount to a windfall to which the Plaintiff would not be entitled. The purpose of a claim such as this is to compensate the

Plaintiff for loss that he has suffered or will suffer and not to make an award that amounts to largesse. The Plaintiff, however, must first discharge the onus on him to prove the loss.

[51] *In casu*, evidence establishes that the Plaintiff does not have a garden and in paragraph [45] above Ms Ndlhalane's assessment is that the Plaintiff's functional capacity is good. She reported<sup>23</sup> as follows: "*Based on the individual task scores in Dynamic strength, Position to tolerance and mobility, he has the capacity to endure sedentary light physical work for an 8-hour day over 40 weeks*".

[52] In considering the future medical and related expenses, it is also important to note that the Court is bound to ensure that its decision is fair not only to the Plaintiff, but also to the Defendant. In this regard, I have considered all the expert evidence and arguments from both Counsel.

[53] It appears from the case law that determining the future medical and related expenses is in the main, a speculative exercise. This is so because, some claimants may heal and be rehabilitated back to their pre-accident position while other's positions may degenerate well beyond the actuarial abstractions, postulations and predictions by other experts. However, the Court is enjoined to make a decision regardless.

[54] In this instant case and having taken into account the postulations and predictions by the Experts who examined the Plaintiff, and the actuary's predictions, and the previous court decisions. I conclude that an amount of R159 690 for garden assistance be disallowed as it is common cause that the Plaintiff does not have the garden and an amount of R212 920 for domestic assistance as Ms Ndlhalane's assessment is that the Plaintiff's functional capacity is good (see paragraphs 45 and 51 above).

### **Quantification of future medical and related expenses**

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<sup>23</sup> Section G para 5.2 in her report, found on Caselines 006-36.

[55] The Plaintiff relies on the actuarial report by Algorithm Actuarial Consulting<sup>24</sup>, for quantification of his claim for future medical expenses. In terms of the calculation, total costs of the treatment and assistive devices, as well as costs for conservative treatment, occupational therapy and domestic and garden assistance, as recommended by Ms Ndlhalane is R 441 282.

[56] An amount of R 24 000 for trauma focused counselling should be deducted from the R 441 282, as Dr Lekalakala in his evidence indicated that such treatment is not necessary. The two amounts of R 159 690 for garden assistance and R 212 920 for domestic assistance should also be deducted from R 441 282. The remaining total amount left is R 44 672.

[57] In the circumstances, I conclude that the contingency deduction of 10% from the remaining total amount left is R 44 672 is appropriate, having regard to the possibility that certain treatment may not be undertaken and his life expectancy can be shorter than the assumed life expectancy.

[58] After 10% contingency deduction, total amount for future medical and related expenses is R40 204,80.

[59] Having had the Counsel for the parties, the Plaintiff is awarded the following amounts:

- Future medical and related expenses:	R 40 204,80
- General damages:	R 400 000
- Past and future loss of earnings:	R 1 070 506
TOTAL before merits apportionment:	R 1 510 710,80
Less 20% merits apportionment (302 142,16):	R 1 208 568,64

**[60] Consequently, the following order is made:**

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<sup>24</sup> CL section 006 at pp 006-78.

1. The Defendant is ordered to pay the Plaintiff a sum of R 1 208 568,64 (one million two hundred and eight thousand five hundred and sixty-eight rand sixty-four cents), in respect of the Plaintiff's claim for future loss of earnings, within 30 (thirty) days of this order. The afore sum is calculated as follows:

1.1	Future medical and related expenses:	R 40 204,80
1.2	General damages :	R 400 000
1.3	Past and future loss of earnings:	R 1 070 506
	Total before merits apportionment:	R 1 510 710,80
	Less 20% merits apportionment (302 142,16):	R 1 208 568,64

2. Defendant is ordered to make payment directly into the Plaintiff's Attorney of record's trust account with the following details:

<b>ACCOUNT HOLDER</b>	<b>:</b>	<b>OUPA LEDWABA ATTORNEYS</b>
<b>BANK</b>	<b>:</b>	<b>FIRST NATIONAL BANK</b>
<b>ACCOUNT NUMBER</b>	<b>:</b>	<b>62751396089</b>
<b>TYPE OF ACCOUNT</b>	<b>:</b>	<b>TRUST ACCOUNT</b>
<b>BRANCH CODE</b>	<b>:</b>	<b>250566</b>
<b>REFERENCE</b>	<b>:</b>	<b>LEDWABA/TRAIN/M11</b>

3. Should the Defendant fail to make payment of the capital within 30 days, the Defendant will be liable for interest on the amount due to the Plaintiff, at applicable statutorily prescribed mora rate of interest calculated from date of mora to date of final payment.



4. The Defendant is ordered to pay the Plaintiff taxed or agreed party and party costs of the action on the High Court scale, which costs shall, subject to the discretion of the taxing master, include (but not limited to) the following:
  - 4.1 The reasonable costs for consultation and preparation for trial, qualifying and reservation fees (if any) as well as the costs of preparation of the medico legal reports, joint minutes and appearance of the following experts:
    - 4.1.1 Dr Jac J Theron, Orthopedic Surgeon;
    - 4.1.2 Maine Radiology, Radiologists;
    - 4.1.3 Ms P D Ndlhalane; Occupational Therapist
    - 4.1.4 Dr S Clifton, Industrial Psychologist;
    - 4.1.5 Dr R T H Lekalakala, Specialist Psychiatrist; and
    - 4.1.6 Mr G A Whittaker, Actuary.
  - 4.2 Costs of plaintiff's counsel, including his full preparation fee, drafting heads of argument and full day fee for 16 November 2023.
  - 4.3 Reasonable traveling and accommodation costs of the Plaintiff to attend the medico-legal assessments.
  - 4.4 Costs of compiling and preparing bundles.
  - 4.5 Attorney's costs.
5. In the event that the parties do not agree on the costs referred to in prayer 4 above, the Plaintiff shall serve notice of taxation on the defendant's attorney of record.

6. The Defendant is ordered to pay the Plaintiff's taxed and/or agreed costs within 180 days from date upon which the accounts are taxed by the taxing master and or agreed between the parties.
7. It is recorded that the Plaintiff has concluded a contingency fee agreement with his Attorney

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**T E JOYINI**

**ACTING JUDGE OF THE HIGH COURT, PRETORIA**

**APPEARANCES:**

Counsel for the Plaintiff: Adv RB Mphela

Instructed by: Mr O Ledwaba of Oupa Ledwaba Attorneys

Counsel for the Defendant: Adv T Mzizi

Instructed by: Mr Siyabonga Sineke of Ngeno and Mteto Inc.

Date of Hearing: 16 November 2023

Date of Judgment: 4 December 2023

This judgment has been delivered by uploading it to the court online digital data base of the Gauteng Division, Pretoria and by e-mail to the Attorneys of record of the parties. The deemed date and time for the delivery is 4<sup>th</sup> of December 2023 at 10h00.