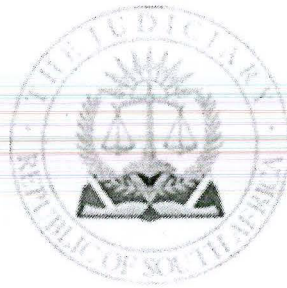
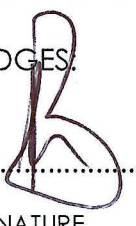


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
PRETORIA

(1)	REPORTABLE: YES/ NO	
(2)	OF INTEREST TO OTHER JUDGES. YES/NO	
(3)	REVISED. 04 MARCH 2024	
DATE		SIGNATURE

CASE NO: 45957/14

IN THE MATTER BETWEEN

D [REDACTED] M [REDACTED] C [REDACTED]

Identity Number: [REDACTED]

PLAINTIFF

and

THE ROAD ACCIDENT FUND

Claim Number: [REDACTED]

RESPONDENT

Link No: [REDACTED]

JUDGMENT

CEYLON AJ

[A] INTRODUCTION:

[1] This is a claim for delictual damages suffered as a result of injuries sustained by the Plaintiff arising from a motor vehicle accident which occurred on 13 October 2010, Kathu, Northern Cape Province, South Africa.

[2] In terms of the second amended Particulars of the Plaintiff's claim the total amount of damages claimed is R3 660 125-30, made up as follows:

(a) past loss of income	R15 306-00
(b) future loss of income	R3 348 882-00
(c) past medical expenses	R295 937-30

[3] Several of the claims have been addressed by this Court on a previous occasion and a Court order, dated 25 October 2017 by Ledwaba DJP, was issued in this regard [refer to pg 07-1 to 07-3 of Caselines]. The said Order dealt with, for instance, the issues of general damages and future medical/hospital expenses.

[4] At the hearing of 09 November 2023, Counsel for the Plaintiff relied mainly on his Heads of Argument ("HOA") to present his case and also on the expert reports which was admitted in terms of the Rule 38(2) of the Uniform Rules of Court. The Defendant did not file any expert reports in this matter.

[5] The Defendant and its legal representatives were not present at Court on the hearing date and the Plaintiff elected to proceed on a default basis. The Plaintiff led evidence by way of the said expert reports. No witness were called to testify at the hearing.

B. THE PLAINTIFF:

[6] The Plaintiff is D [REDACTED] M [REDACTED] C [REDACTED], ID no: [REDACTED], an adult male filter and turner and resident at [REDACTED] G [REDACTED] S [REDACTED], K [REDACTED], Northern Cape Province, South Africa.

[7] According to the said Particulars of claim the accident occurred when, on 13 October 2010 along Kathu Seshen Main Road, Kathu, Northern Cape, South Africa, a motor

vehicle bearing the registration numbers: ■■■ ■■■ NC, driven by one Mr Tebogo Prince Phaletsang ("insured driver") and a motorbike bearing registration numbers ■■■ ■■■ NC, driven by the Plaintiff, collided.

[8] The Plaintiff allege that the sole cause of the said collision was due to the negligence of the insured driver and as a result of said collision the Plaintiff sustained bodily injuries, and suffered damages in the amount of R3 660 125-30. The Plaintiff therefore claimed for judgment against the Defendant for the said amount, interest, costs and further and/or alternative relief in his summons.

[9] The Defendant defended the matter, filed its special Pleas and Plea, wherein which the Plaintiff's claims are disputed, and the Defendant prayed that the said claims be dismissed with costs.

[10] At the time of the accident, the Plaintiff was employed as a fitter and turner and was aged 33. He is married with one dependent child. His highest qualification was that he passed grade 12 and qualified as fitter and turner with N3 in 2011. From the Performance Management Plan, it appears that the Plaintiff undergoes regular training for his work and earns a basic salary of R33 333-76 per month at his place of employment at Kumba Iron Ore.

[11] According to the Orthopaedic surgeon, Dr Piet Engelbrecht, the Plaintiff suffered injuries as a result of the accident, left hip fracture dislocation and required a left hip joint replacement and during this procedure, he suffered complications to the left femur fracture and injury to the left knee. He received treatment (including closed reduction, blood transfusion and plate and screw fixation) for the same.

[12] The experts consulted, indicated that it is probable that due to the injuries sustained, the Plaintiff's condition will deteriorate and that he will not be able to carry out his daily work obligations and will find it difficult to meet his work demands even with the assistance of his co-workers and may ultimately lead to his dismissal from work. The experts suggest that, given the nature of his work, academic history and work history, it is unlikely that the employer will be able to accommodate him in a sedentary position.

[13] According to said Dr Engelbrecht, the Plaintiff will require a revision left hip joint replacement around the age of 50-53 years old. The expert suggest that the Plaintiff will have to retire at age 63.

C. THE INJURIES AND ITS SEQUELAE:

[14] The Plaintiff suffered various injuries as a result of the accident. He consulted several experts to assist with preparing reports in relation to the injuries sustained and the consequences that ensued as a result thereof, namely Dr P Engelbrecht (Orthopaedic

surgeon), Kelly Cumming (Occupational therapist), JT Consulting (Industrial psychologist) and GW Jacobson (Actuaries).

[15] According to the experts, the Plaintiff sustained left hip fracture dislocation and required a left hip joint replacement and suffered complications during this procedure causing left femur fracture/injury to left knee.

[16] Plaintiff received closed reduction of left hip and skin traction was applied. Skeletal traction pin was inserted into the proximal tibia. The traction period was six weeks after suffering complications of the fracture dislocation of left hip, a total hip replacement was performed in April 2011. The left distal femur fracture was managed by means of plate and screw fixation. Blood transfusion was required.

[17] After completion of the above, formal treatment, Plaintiff still requires analgesics which are used intermittently, residual symptoms of left hip and left knee.

[18] The Plaintiff currently complains of stiffness of the left hip, intermittent pain which is worse when active. Discomfort in the left hip experienced at night and difficulty walking. Pain experienced in left knee, but no swelling or locking at this joint.

[19] The Orthopaedic surgeon does not expect loss of life expectancy due to the injuries and the sequelae thereof and indicated that surgical scars left will not improve by further treatment. The possibility of a girdle stone procedure for the Plaintiff, around age 75, cannot be excluded.

[20] Several future medical procedures are recommended, including surgical procedures (left hip joint replacement at R300 000-00), a second hip replacement (R300 000-00), a girdle stone procedure (R40 000-00), arthroscopic debridement of hip joint (R45 000-00) and analgesics, inflammatories, muscle relaxants and physiotherapy (R60 000-00 all-inclusive).

[21] The Occupational therapist confirmed that the Plaintiff will require the medical intervention as recommended by the medical experts (eg Orthopaedic surgeon), and recommended physiotherapy (at least 10 sessions at R500-00 to R700-00 per hour), biokinetics (3 sessions per week for a 6 month period at R800-00 for 1st session and thereafter between R400-00 and R680-00 per session), clinical psychology and psychiatric intervention (as recommended by the relevant experts). In addition, 20 hours of occupational therapy and assistive apparatus [such as a walking stick (R340-00), single gutter crutch (R225-00), customised trolley (R1900-00), perching stool with arm rests (R950-00), toolbox on wheels (R949-00), shower chair (R750-00) etc], will be required. Further, domestic and garden assistance and post-operative care will be required by the Plaintiff.

[22] According to the Occupational therapist, the accident has resulted in disfigurement which negatively impacted on the Plaintiff's post-accident physical and psychological well-being, occupational function and his quality and enjoyment of life.

[23] The Industrial psychologist indicated that the Plaintiff is left with physical, functional, emotional/psychological and cognitive limitations following the accident and the treatment recommended by the medical and other experts and the costs thereof must be taken into account in the calculation of his loss of earnings.

[24] The actuary report sets out the calculations and the basic of the loss of the Plaintiff's earnings/earning capacity.

D. MERITS:

[25] According to paragraph 2.1 of the Plaintiff's Heads of Argument ("HOA"), the merits have previously been concluded 60% in favour of the Plaintiff.

[26] This Court accordingly records that liability was conceded 60% in favour of the Plaintiff and that the Defendant is liable for 60% of the Plaintiff's agreed or proven damages.

E. QUANTUM:

(i) past medical/hospital and related expenses:

[27] According to the Plaintiff, he received treatment at private medical facilities for the injuries sustained in the accident and he kept proof of the relevant medical and related expenses.

[28] The Plaintiff claims an amount of R295 937-30 for past medical, hospital and related expenses and therefore R177 562-38 after the 60% apportionment for such damages.

[29] The Plaintiff provided a schedule of his past medical and related expenses at pg 12-1 and 12-2 of Caselines, evidencing the alleged expenses incurred by him and the details of the costs of such expenses. This is substantiated by the relevant vouchers [pg 13-3 to 12-12, Caselines] and an affidavit in support of these expenses by the Plaintiff's medical aid scheme officials [pg 12-13 to 12-15 of Caselines].

[30] The Defendant did not dispute the injuries sustained by the Plaintiff, its sequelae, the treatment received, the costs of the treatment and the fact that it is paid on behalf of the Plaintiff. The Defendant did not contest any element of this claim of the Plaintiff and the hearing went ahead unopposed.

[31] This Court could not find any aspect of this claim, the injuries, treatment and costs of treatment contentious unnecessary, unreasonable or unfair. This Court is of the view that

the Defendant is liable to settle this claim minus the apportionment applicable. Accordingly, the Defendant is liable to pay the amount of R177 562-38 in respect of this head of damages to Plaintiff.

(ii) general damages:

[32] This head of damages has been dealt with by way of Court Order dated 25 October 2017 (per Ledwaba DJP) – refer to paragraph 1 of the said Order [pg 07-1, Caselines].

(iii) future medical/hospital and related expenses:

[33] This head of damages has also been dealt with in the said Court Order (per Ledwaba DJP) dated 25 October 2017, at paragraph 3 thereof [refer to pg 07-1, Caselines].

(iv) past and future loss of earnings:

[34] The actuary report deals with the calculations of the Plaintiff's loss of earnings/earning capacity.

[35] In relation to the past loss of earnings the actuary calculated it in the amount of R16 112-00 and applied a 5% contingency reduction. The nett past loss of earnings is therefore an amount of R15 306-00.

[36] With regards to future loss of earnings the amount was calculated at R11 356 254-00 and applied a 15% contingency reduction (R1 703 438-00). The nett value of income but for the accident is therefore an amount of R9 652 816-00. Further, the value of income having regard to the accident is R5 409 104-00. A contingency reduction of 30% (R1 662 731-00) was applied. Therefore, the nett value of income having regard to the accident is R3 786 373-00. Accordingly, the total nett loss of earnings is R5 881 749-00.

[37] However, after applying the 60% apportionment of damages in favour of the Plaintiff, the actuary calculated the revised loss of earnings as follows: past loss value but for the accident R9 667-00 minus 5% contingency reduction (R483-00) is R9 184-00 net past loss. Future loss value of income is R6 813 752-00 minus 15% contingency reduction (R1 022 063-00) gives R5 991 689-00 net value of income but for the accident.

The value of income having regard to the accident is R3 245 462-00. 30% contingency reduction is applied (R973 639-00). The net value having regard to the accident is R2 271 823-00. The net future loss is R3 519 866-00. The total net loss is R3 529 050-00.

[38] According to the actuary, the claim is affected by the RAF Amendment Act 19 of 2005. The annual loss at time of the accident was an amount of R180 750-00 per annum. This limit was accounted for throughout the actuarial calculations. Due to these limitations of losses, the loss of income reduces to the following:

Net past loss	R9 184-00
Net future loss	R3 099 361-00
Total net loss	R3 108 545-00

[39] For the Plaintiff to succeed on a claim for future loss of earnings, he must prove on a balance of probabilities that he suffered a significant impairment giving rise to a reduction in earning capacity. There must be proof that the reduction in earning capacity gives rise to pecuniary loss [Rudman v RAF 2003 (2) SA 234 (SCA)]. In De Jongh v Du Pisani 2004 (5) QOD J2-103 (SCA) it was held that contingency factors cannot be determined with mathematical precision and that contingency deductions are discretionary. This principle was also acknowledged in Zondi v RAF [(2565/2015)[2021] ZAGPPHC 707 (26 October 2021) at para 14].

[40] In Herman v Shapiro & Co [1926 TPD 367] it was held that:

“Monetary damage having been suffered, it is necessary for the Court to assess the amount and make the best use of the evidence before it. There are cases where the assessment by the Court is very little more than an estimate, but even so, if it is certain that pecuniary damage has been suffered, the Court is bound to award damage.”

[41] It is trite that the trial court has a wide discretion to award what it in the particular circumstances order to be fair and adequate compensation to the injured party for bodily injuries and their sequelae [AA Mutual Association Ltd v Magula 1978(1) SA 805 (A) at 809]. There are no hard and fast rules to be applied in deciding what a fair and adequate compensation to an injured party should be. Arbitrary considerations must inevitably play a part. An enquiry into future loss on income is by nature speculative because it involves prediction of the future [Moeketsi v RAF (5651/2016)[2021] ZAFSHC 214 (30 July 2021) at para 21; Southern Insurance Association v Baily NO 1984 (1) SA 98 (AD)].

[42] In connection with actuarial calculations, in Baily NO, *supra*, it was stated that:

“...while the result of an actuarial computation may be no more than “informed guess” it has the advantage of an attempt to ascertain the value of what was lost on a logical basis.” [at 114E; Moeketsi, *supra*, at para 22].

F. CONCLUSION:

[43] Having considered all the relevant factors and circumstances of this matter cumulatively, the case authorities cited, expert reports filed, I am of the view that the injuries sustained by the Plaintiff is so severe that he will derive benefit from the treatment, medication and processes recommended by the experts in their respective reports and it will afford some relief and assistance to his health and general well-being.

[44] Taking into account the above factors, principles and the decrease in the value of money, the awards made in this matter, in my view, would be just, fair, reasonable and adequate in the circumstance, which are as follows:

- | | |
|--|---|
| (i) past medical/hospital expenses: | R177 562-38 |
| (ii) future hospital/medical and related expenses: | already decided on , ito
Court Order of 25/10/2017 |
| (iii) past and future loss of earnings: | R3 108-545-00 |
| (iv) general damages | already decided ito Court
Order of 25/10/2017 |

G. COSTS:

[45] In the view of this Court, there are no factors or good grounds that exist in this matter that would justify a deviation from the general rule that costs should follow the result [Myers v Abramson 1951(3) SA 348 (C) at 455].

H. ORDER:

[46] In the result, judgment by default is granted in favour of the Plaintiff is granted in favour of the Plaintiff against the Defendant for:

(a) Payment in the amount of R3 286 107-38 to the Plaintiff by the Defendant, into the trust account of the Plaintiff's attorneys, with details as follows:

account holder:	Ehlers Attorneys
bank and branch:	First National Bank
account number:	6202 422 6799
branch code:	261 550
reference:	DM Cloete/RAF

(c) In the event of default of payment, interest shall accrue on the outstanding amount at the prescribed rate per annum, calculated from date of default to date of final payment, both days included.

(d) The issue of future medical, hospital and related expenses have been dealt with by this Court in its Order dated 25 October 2017 (per Ledwaba DJP)

(e) The Defendant is ordered to pay the Plaintiff's costs on a party and party basis on the High Court scale, including the costs of the Plaintiff's experts, including the qualifying

costs of all experts whose notices have been served on the Defendant and cost of counsel.

(f) The issue of general damages have been dealt with by way of Court Order dated 25 October 2017 (per Ledwaba DJP), *supra*.

(g) In the event that costs are not agreed between the parties, the Plaintiff will be entitled to serve a notice of taxation on the Defendant. The taxed costs will be payable within fourteen (14) calendar days of date of taxation and shall likewise be paid into the trust account of the Plaintiff's attorneys mentioned above.



B CEYLON

ACTING JUDGE OF THE HIGH
COURT, GAUTENG DIVISION,
PRETORIA

HEARING DATE:	09 November 2023
JUDGMENT DATE:	04 March 2024
APPEARANCES:	
For the Plaintiff:	Adv J Bam
Instructed by:	Ehlers Attorneys Centurion
For the Defendant:	No Appearance
Instructed by:	Not Applicable