



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

CASE NUMBER: 88960/2016

- (1) REPORTABLE: Yes / No
(2) OF INTEREST TO OTHER JUDGES: Yes / No
(3) REVISED: Yes / No

Date: 02 June 2024

MNCUBE AJ

In the matter between:

NCANGANA ELLEN MHLABA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

SUMMARY: *Civil Proceedings-Claim for damages for loss of earnings and general damages-the applicable legal requirement for assessment of such damages.*

JUDGMENT

N. MNCUBE, AJ:

INTRODUCTION:

[1] This is an action for damaged which was instituted by the plaintiff Ms Ncangana E. Mhlaba against the defendant. The defendant is the Road Accident Fund which is a statutory

body established in terms of section 2 of the Road Accident Fund Act 56 of 1996¹. During the hearing on quantum of damages the plaintiff was represented and there was no appearance on behalf of the defendant. The admission of the evidence by the plaintiff's various experts was granted in terms of Rule 38(2) of the Uniform Rules.

FACTUAL BACKGROUND:

[2] On 28 July 2015 the plaintiff who was the driver of her employer's vehicle employed was involved in a motor vehicle accident with a vehicle that was driven by the insured driver. She sustained injuries which were a dislocated right shoulder with an injury to the muscles and tendons, as well as sustained injuries to the cervical spine. After the plaintiff issued summons against the defendant for damages, on 5 June 2018 the Court ordered the separation of the merits and quantum and further ordered that the defendant must pay 50% of the plaintiff's proven or agreed damages. There was no contingency agreement.

ISSUE FOR DETERMINATION:

[3] The issue for determination is the quantum of the damages that the plaintiff suffered.

SUMMARY OF THE PLAINTIFF'S MEDICO-LEGAL REPORTS:

[4] **Dr Theo Enslin** who is an independent medical examiner conducted an examination on the plaintiff on 12 August 2016 and opined that:

- (a) There was tenderness over the anterior and posterior aspects of the right glenohumeral joint and right acromioclavicular joint.
- (b) Radiological examination confirmed that on the right shoulder there was severe narrowing of the subacromial space which was probably due to a complete tear of the supraspinatus tendon. There was previous surgery to the right shoulder which appeared to be a ligament repair.
- (c) There was a nexus between the accident and the injury to the right shoulder.
- (d) The plaintiff had not reached 30% whole body impairment and would qualify to be awarded general damages on the ground of serious long term impairment and permanent serious disfigurement.
- (e) The plaintiff's impairment has had a negative influence on her general amenities, working ability and appearance.

¹ Amended by Act 19 Of 2005 which came into operation on 1 August 2008.

- (f) The pain and limitations of movements cause restraint that do not allow plaintiff to work at the same level as before.
- (g) The plaintiff has on going pain and discomfort over the right shoulder with the loss of movement.
- (h) The plaintiff's injuries have resulted in life changing sequelae and has become an unequal competitor on the open labour market. She could not cope with her work as a security guard after the accident which caused her position to change to that of a CCTV operator.
- (i) The plaintiff has Post Traumatic Stress Disorder (PTSD) and depressed mood.
- (j) The plaintiff's injuries are severe, serious and disfiguring.

[5] **Dr Hans B. Enslin** is an orthopaedic surgeon examined the plaintiff on 8 February 2019 and opined that:

- (a) Tenderness was noted over the right acromion of the right shoulder.
- (b) Tenderness over the lower cervical spine.
- (c) Radiological examination revealed on the right shoulder there was severe narrowing of the subacromial space due to a complete tear of the supraspinatus tendon.
- (d) There was disc space narrowing at the C4/C5 level on the cervical spine.
- (e) The plaintiff who had surgery on the right shoulder has moderate loss of movement with flexion and abduction.
- (f) The plaintiff's disability for work has improved and the injury on the shoulder should not be regarded as serious however the accident had an effect on the function of her right shoulder.
- (g) Provision should be made for future treatment which will include conservative treatment such as consultation, physiotherapy, medication and surgical treatment such as an arthroscopic debridement of the right shoulder.
- (h) The plaintiff has not undergone life changing sequelae but she does not enjoy normal function in the right shoulder.
- (i) During a further examination on the plaintiff which took place on 23 March 2023 neck stiffness was present with muscle spasm in the right trapezius muscle. The intensity of the symptoms has not improved. She has symptoms of whiplash injury to the neck with muscle spasm in the right trapezius muscle.
- (j) The intensity of the symptoms on the right shoulder has improved since surgery was performed.

(k) The plaintiff has chronic pain over the right shoulder and cervical spine. The conservative treatment (will include consultation, orthotic treatment, physiotherapy and medication) and surgical treatment.

[6] **Dr JPM Pienaar** is a Plastic and Reconstructive Surgeon who examined the plaintiff on 17 October 2019 and opined that:

- (a) The plaintiff has 5% whole person impairment but qualifies under the Narrative test and will benefit from scar revision surgery.
- (b) The accident has left the plaintiff with serious permanent scarring and disfigurement which affect her appearance and dignity causing her social anxiety and embarrassment.

[7] **Mattie Peach** is an Occupational Therapist who assessed the plaintiff on 8 February 2019 and opined that:

- (a) There was pain behaviour which was noted during the assessment.
- (b) The plaintiff appeared to suffer from cognitive difficulties which could be related to the accident.
- (c) The plaintiff's emotional sequelae seem to have a negative impact on her social skills and general level of motivation.
- (d) The plaintiff presented with decreased arm swing on the right.
- (e) During spine evaluation the plaintiff reposted pain with lateral flexion to the left and rotation to the right. Tenderness was reported over the trapezius on the right and over the acromioclavicular joint.
- (f) During upper limb evaluation pain was reported with all movements.
- (g) The accident had a negative influence on the plaintiff's amenities of life.
- (h) The plaintiff's physical abilities do not match the job requirement of her previous occupation. She is currently capable of performing low ranges of medium duty.
- (i) The plaintiff presented with rotator cuff tear of the right shoulder.
- (j) The plaintiff's working potential has been altered by the injuries sustained in the accident.
- (k) Treatment that is recommended includes five hours of therapy, introduction to alternative methods of task execution, teaching joint saving principles, teaching and assisting with ergonomic adaptations at home and work.

[8] In an addendum report prepared by **C.J. Hill** who is an Occupational Therapist who assessed the plaintiff on 23 March 2023 opined that the plaintiff's current job performing access

control duties and her physical abilities do match. In an event that the plaintiff loses her employment she may find it difficult to find other employment which falls within sedentary, light and low ranges of medium duty work. The conclusion was that the plaintiff's working potential has been altered by the injuries sustained in the accident.

[9] **Janene C. White** is an Industrial Psychologist who assessed the plaintiff on 21 February 2019 opined that:

- (a) But for the accident the plaintiff would have continued in security guard supervisory capacity.
- (b) In the post -accident career, the plaintiff may be able to continue in the current access control security supervisor grade B capacity but it was evident that she was unable to cope with grade B supervisor capacity.
- (c) After the plaintiff secured alternative employment as access control security guard grade B supervisor. Unable to sustain employment in access control she will probably experience significant difficulty to secure and sustain alternative security guard supervisor positions due to the inability to meet the physical demands. A higher post - accident contingency deduction was proposed.
- (d) In past loss of earnings, from November 2020 to present date. For future loss of earning the plaintiff be compensated.
- (e) In an addendum report, the pre –accident postulation remained unaltered. On post - accident postulation the opinion was that the plaintiff may continue in the current access security officer grade C which she secured. Should the plaintiff fail to sustain such employment she will probably experience significant difficulty to secure and sustain alternative security guard positions.

[10] **Kobus Pretorius** is an Actuary who calculated the plaintiff's past loss of earnings after RAF Cap with 5% contingency deduction post morbidity earnings capacity at R 81 934 (eighty one thousand nine hundred and thirty four rand). The future loss of earning capacity after RAF Cap post morbidity earnings capacity less 30% contingency deductions was calculated at R 250 413 (two hundred and fifty thousand four hundred and thirteen rand).

SUMMARY OF THE DEFENDANT'S MEDICO- LEGAL REPORT:

[11] **Dr Ntlaka Tsim** is an Occupational Therapist who assessed the plaintiff of 19 June 2018 and opined that –

- (a) During the examination the plaintiff gave her full potential.
- (b) The plaintiff's grip strength on the right arm was limited due to the injury to the right shoulder and her hand grip strength was significantly limited due to reported pain on the right shoulder in comparison to her counterparts.
- (c) The plaintiff did not present with behavioural impairment however deferred to the clinical psychologist for final comment.
- (d) Considering the decreased range of motion in the plaintiff's right shoulder, she (the writer) would allow plaintiff eight hour occupational therapy intervention.
- (e) The plaintiff would benefit from an assessment and treatment by a physiotherapist for twelve hours for the residual right shoulder pain and lower back pain symptoms.
- (f) She (the writer) would allow the plaintiff to have a trolley, a haversack, a heat pad, long-handled mop and a high chair on casters.
- (g) Domestic assistance three times a week and home maintenance assistance once a month were recommended for the plaintiff.
- (h) The plaintiff will continue to require conservative treatment for her chronic pain.
- (i) The plaintiff's physical capacity has been reduced as a result of the accident related injuries.
- (j) The plaintiff's amenities of life have been affected by the accident to some extent.

SUBMISSIONS MADE:

[12] All submissions made on behalf of the plaintiff as the only party present during the hearing were considered. The plaintiff placed reliance on the opinions of the various experts. The contention was that it is settled law that contingency deductions fall within the Court's discretion. A Court may be entitled in qualifying the amount of damages to form an estimate of the plaintiff's chances of earning a particular figure. In respect of general damages, the reliance was placed to the matter of **De Jongh v Du Pisanie 2005 (5) SA 457 (SCA)** para [60] in which the dictum of Holmes R in *Pitt v Economic Insurance Co Ltd 1957 (3) SA 284 (D)* was applied.

[13] Counsel for the plaintiff relied on these matters for general damages awards- (a) **Malela v RAF (24142/ 2011) [2012] ZAGPPHC 344** (11 December 2012) where the plaintiff who was suffering from constant headaches a result of the accident was awarded by the court an amount of R150 000 (one hundred and fifty thousand rand) in general damages. (b) **Battle v RAF (2192/2009) [2014] ZAWCHC 131** (20 August 2014) where the plaintiff was awarded R180 000(one hundred and eighty thousand rand) in general damages. (c) **Mavimbela v RAF**

(43669/2008)[2010] ZAGPPHC 278 (8 June 2010 where the plaintiff was awarded R175 000(one hundred and seventy five thousand rand) in general damages. (d) *Mlatsheni v RAF* 2009 (2) SA 401 (E) the court awarded R140 000 (one hundred and forty thousand rand) in general damages. (e) *G.E.B v RAF* (2477/2015) [2017] ZAECPHC 42 (5 September 2017) an award of R 500 000 (five hundred thousand rand) for general damages. Lastly the submission was that the plaintiff be awarded R125 206, 50 for loss of earnings and R 300 000 for general damages.

APPLICABLE LEGAL PRINCIPLES:

[14] In a claim for loss of earning capacity physical injury does not necessarily impair the ability for one to earn an income.² It is trite that the damages for loss of income can be granted where a person has suffered patrimonial loss. Any enquiry into the damages for loss of earning capacity is very nature is speculative because it involves a prediction as to the future.³

[15] In ***Bane v D'Ambrosi* (279/08) [2009] ZASCA 98** (17 September 2009) para 15 it was stated '*When a court measures the loss of earning capacity, it invariably does so by assessing what the plaintiff would probably have earned had he not been injured and deducting from that figure the probable earnings in his injured state (both figures having been properly adjusted to their 'present day values'). But in using this formulation as a basis of determining the loss of earning capacity, the court must take care to make its comparison of pre- and post-injury capacities against the same background*'.

[16] In ***Herman v Shapiro & Co* 1926 TPD 367** at 379 it was stated '*Monetary damage having suffered, it is necessary for the Court to assess the amount and to make the best use it can 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 damages.*'

[17] A court has a wide discretion to award compensation it deems fair and adequate on the facts of each matter for bodily injuries and sequelae.⁴ In ***AA Mutual Insurance Association Ltd v Maqula* 1978(1) SA 805 (A)** it was held '*It is settled law that a trial court has a wide*

²See *MI v RAF* (16384/2013) [2023] ZAGPPHC 585(14 July 2023) para [7].

³See *Southern Insurance Association Ltd Bailey* No 1984 (1) SA 98 (A).

⁴See *AA Mutual Association Ltd v Maqula* 1978 (1) SA 805 (A) at 809.

discretion to award what it in the particular circumstances considers to be a fair and adequate compensation to the injured person for his bodily injuries and their sequelae'.

[18] In claims for loss of earning, the amendment of the RAF Act 56 of 1996 as contemplated by section 17 introduced various limitations on the defendant's liability. One of the limitation in section 17 (4) (c) of RAF Act 56 of 1996 was to put a cap or limit on the annual loss payable by the defendant.

[19] Section 17 (4) (b) of RAF Act 56 of 1996 (as amended) provides-
'In respect of any claim for the loss of income or support the amounts adjusted in terms of paragraph (a) shall be the amounts set out in the last notice prior to the date on which the cause of action arose.'

[20] The constitutionality of this cap was challenged in **Law Society of South Africa & Others v Minister of Transport 7 Another 2011 (1) SA 400 (CC)** and it passed the muster. The purpose of the Cap is to limit the sum to be paid.⁵

[21] In respect to the assessment of general damaged it was recognised in **Hendricks v President Insurance 1993 (3) SA 158 (C)** in respect to the award for general damages that the quantifying of such awards is very difficult. The correct approach when assessing the damage suffered is to determine the present value of the actual loss suffered taking into account all contingencies and then comparing it with the annual loss or cap as determined on the date of the accident.⁶ In computing the damages suffered for loss of earning capacity it is usual to place reliance on the actuarial calculations. In relation to future loss of earnings the standard actuarial calculation is to take into account the life expectancy.⁷

[22] Considering past awards in the assessment of general damages it is vital that a proper basis for comparison must be ascertained. All factors affecting the assessment of damages must be taken into account.⁸ Ultimately, past awards serve as a guide as each case must be considered on its own merit.

⁵ See *Sil & Others v RAF* 2013 (3) SA 402 (GSJ) paras 13- 15.

⁶See *RAF v Sweatman* 2015 (6) SA 186 (SCA).

⁷See *Bee v RAF* para [115].

⁸See *Mpondo v RAF* (CA 283/2011) [2011] ZAECGHC 24 (9 June 2011) para 21.

[23] In **Bee v RAF 2018 (4) SA 366 (SCA)** para [31] (minority judgment) it was held '*The purpose of the Road Accident Fund Act 56 of 1996 is to compensate victims of motor vehicle accidents for loss or damage caused by the driving of a motor vehicle. The court can only make a proper determination of the appropriate compensation to award if it takes into account all the relevant evidential material and not be restricted to the joint minute of experts. . If the court ignores reliable and credible evidence placed before it, that would undermine the purpose of the Road Accident Fund.*' Importantly at para [101] (majority judgment) it was held '*If, out of benevolence, an employer allows an injured employee to return to work and to perform such limited tasks as he is able to do, and continues to pay him a salary, the injured employee is not obliged to deduct such salary when quantifying his loss of earnings. . .*'

[24] There was one aspect that required a remark that is the legal effect of the signed joint pre-trial minutes in terms of Rule 37. It is trite that pre-trial conference is designed to provide parties with ways to curtail the duration of the trial by redefining the issues to be tried. The norm is for courts to bind parties to the agreements made during the pre-trial conference. Only in special circumstances is a party entitled to resile from an agreement reached at a Rule 37 conference.⁹ In **Filta- Matix (Pty) Ltd v Freudenberg and Others 1998 (1) SA 606 (SCA)** para [19] it was stated '*To allow a party, without special circumstances, to resile from an agreement deliberately reached at a pre-trial conference would negate the object of rule 37, which is to limit issues and to curtail the scope of the litigation (cf Prince NO v Allied –JBS Building Society 1980 (3) SA 874 (A) 882D-H.*'

[25] There is no definition of what constitutes a special circumstances, therefore each case must be decided on its own merits. On the facts of this matter, I was satisfied that there were factors which constituted special circumstances which justified giving leave to the plaintiff to resile from an agreement not to lead evidence by way of affidavit. I must not be understood to be advocating that in all circumstances (in the absence of special circumstances) parties can resile from the agreement reached at Rule 37 of the Uniform Rules. The following are factors which were found to constitute special circumstances-

1. Proper notice of Motion was served upon the defendant¹⁰ in which it was clearly set out that '*the medico-legal reports referred to in the affidavit by Mrs Tarryn –Leigh Pharo-*

⁹See MEC for Economic Affairs Environment and Tourism, Eastern Cape v Kruizenga and Another 2010 (4) SA 122 (SCA).

¹⁰Despite the short period allocated to oppose, the interest of justice dictated that such period be condoned.

James appended hereto as Annexure "A" be admitted into evidence in terms of Rule 38(2) of the Uniform Rules of Court.'

2. Courts are enjoined to uphold the right of access to court and to be more flexible in applying requirements of procedure even to exercise the power to condone non-compliance with the enacted Rules of Court if the interest of justice permit.¹¹
3. In the absence of any prejudice to the defendant who was not present during the hearing, I found that the interest of justice would best be served in granting the plaintiff leave to lead evidence by affidavit which curtailed costs.

EVALUATION:

[26] The plaintiff had the onus to prove on a balance of probabilities that she suffered damages. What was clear was that the plaintiff due to the accident she was off work and received her earnings during the time she was indisposed. What was clear however was that as a direct result of the accident she was unable to perform the same duties with the previous employer Fidelity Guards before she left. The experts are in agreement that the effect of the accident rendered the plaintiff suitable for light work. Dr Enslin was of the opinion that the plaintiff's impairment has had a negative influence on her general amenities and working ability. In the absence of any evidence to gainsay this, this must be accepted.

[27] Pre- accident the plaintiff did not suffer from any disabling disease (as there was no evidence that the asthma impacted negatively on the plaintiff's ability to perform her duties as a security guard). 'But for' the accident, the plaintiff was then only suited for access control duties. Ms White the industrial therapist was of the opinion that post -accident career, the plaintiff may be able to continue in the current access control security supervisor grade B capacity but was unable to cope with grade B supervisor capacity. I have considered the actuarial calculation which put the loss of future earnings at R 250 414 (two hundred and fifty thousand four hundred and fourteen rand).

[28] The contention by the plaintiff's Counsel was that the loss of earnings is a matter of estimation done by the Court which is correct. Counsel referred to the matter **of De Klerk v ABSA and Others [2003] 1 All SA 651 (SCA)**. It must be mentioned that the reference to estimation of damages was mainly based on the facts of that case. In that case the Court was

¹¹See *Mukaddam v Pioneer Foods (Pty) Ltd and Others* 2013 (5) SA 89 (CC) para [39].

unable to do the exact quantification of the loss. Consequently, it correctly found that if causation had been proved on how much investment Mr De Klerk would have invested which was a matter of estimation. I have considered the cases Counsel referred in respect of general damages.

[29] Dr Hans Enslin who later re-assessed the plaintiff on 23 March 2023 noted that there was neck stiffness with muscle spasm. This later examination clearly proved that the plaintiff had not improved from the injury she sustained as a result of the accident. Both the plaintiff's expert and the defendant's expert conceded that the plaintiff will require future treatment. On that basis the plaintiff has shown that there was a real potential that she will be requiring future medical treatment.

[30] In the assessment of damages, I have not lost sight of the following personal particulars of the plaintiff-

1. That she completed grade 10.
2. That she was 51 years old at the time of the accident.
3. That she was a widow with two adult children who was still dealing with being a widow.
4. That she lived in a shack with some amenities.
5. That she worked as a security officer with meagre earnings.
6. That she was still experiencing pain post the accident.
7. That she is from a disadvantage background.
8. That the liability on merit was conceded in her favour.
9. The effect that the accident has had on the plaintiff post the accident.

[31] I have not lost sight of the fact that awarding damages must be fair to both parties. As correctly observed in *De Jongh v D* para [47] that contingency factors cannot be determined with mathematical precision but closely related to the facts of each case. On the facts, the defendant's Occupational Therapist Dr Tsima who did not re-assess the plaintiff after the initial assessment which was conducted noted the following material observations-

1. On the day of assessment, the plaintiff had residual pain.
2. The plaintiff had limited grip strength on the right arm due to the injury to the right shoulder.
3. The grip strength on the right hand was significantly limited due to the reported pain in the right shoulder.

4. The plaintiff would benefit from eight hours of Occupational therapy due to the decreased range of motion on the right shoulder.
5. Due to the plaintiff's current situation and impairment a recommendation was made for domestic assistance three times a week.
6. A recommendation was made for the plaintiff to receive assistance towards home maintenance at a cost of four thousand rand a month.
7. The plaintiff's physical capacity had been reduced because of the accident related injuries and that her amenities of life have been affected by the accident to some extent.

[32] The fact that the plaintiff still experienced pain long after the accident and the concession made by the defendant's own expert that the plaintiff's amenities of life have been reduced due to the accident related injuries shifted the probabilities in favour of the plaintiff. Simply put, the plaintiff proved on a balance of probabilities that she suffered damages as a result of the accident.

[33] I have considered these cases for past awards for general damages -

- (i) **Patuleni and Others v RAF (295/1010) [2013] ZAECGHC 70** (20 June 2013) in respect of general damages an amount of R300 000 (three hundred thousand rand) was awarded for the first plaintiff, R 350 000 (three hundred and fifty thousand rand) for the second plaintiff and R250 000 (two hundred and fifty thousand rand) for the third plaintiff.
- (ii) **Kriel v RAF (2020/6446) [2022] ZAGPJHC 425** (21 June 2022) an amount of R900 000 (nine hundred thousand rand)

[34] In considering what may be a fair contingency deductions (applying the principle on **Bee v RAF**) on future loss of earning, I took into account the following-

- (a) age of the plaintiff;
- (b) the fact that though the plaintiff was asthmatic which was a disease with a potential to be life threatening, there was no evidence that this impacted on her working capacity or that she was not managing it well as to pose a risk on her life expectancy or caused her some disability.
- (c) The effect of the accident on the plaintiff as far as her body and psychological well-being.

CONCLUSION:

[35] In conclusion, I was satisfied that the plaintiff's patrimony has been diminished due to loss of income¹². She has proved that she is entitled to compensation. Consequently the plaintiff's the heads of damage were proven. Having considered all the facts in this matter I found that the following award was indeed fair within the RAF limit after deducting the agreed 50 % of proved damages—

(a) Loss of earnings: an amount of R 121 750, 23 (one hundred and twenty one rand seven hundred and fifty rand and twenty three cents).

(b) General damages: an amount of R 300 000 (three hundred thousand rand).

Total damages was R 421 750, 23 (four hundred and twenty one thousand seven hundred and fifty rand and twenty three cents).

COSTS:

[36] The last aspect to be addressed is the issue of costs. Awarding of costs is at the discretion of the court which must be exercised judicially. I have deemed that a just cost order is as indicated in the court order hereunder.

Order:

[37] In the circumstances the following order is made:

1. The defendant is ordered to pay the plaintiff the total amount of R421 750 ,23 (four hundred and twenty one thousand seven hundred and fifty rand and twenty three cents) in delictual damages following injuries that the plaintiff sustained in a motor vehicle accident.
2. The amounts are payable by the defendant on or before the expiry of 180 (one hundred and eight) days by depositing the said amount into the trust account of the plaintiff's attorney of record as follows:

Account Name: MACROBET INC

Bank: Standard Bank

Account No: 010424288

Brank Code: 010045

¹² See RAF v Kerridge 2019 (2) SA 233 (SCA) para 25.

3. The defendant will not be liable for interest on the outstanding amount subject to the following –

3.1 Should the defendant fail to make payment of the capital amount on or before the expiry of 180 (one hundred and eighty) days from date thereof the defendant shall pay interest on the amount to the plaintiff at the rate prescribed by the Minister in accordance with the Prescribed Rate of Interest Act 55 of 1975 (as amended) per annum from date thereof to date of final payment.

3.2 The defendant is ordered to deliver to the plaintiff within a reasonable time or within 30 (thirty days) after called upon in writing to deliver such an undertaking in terms of section 17 (4) (a) of the RAF Act 56 of 1996 (as amended) wherein the defendant undertakes to pay 50% of the cost of future accommodation in a hospital or a nursing home or treatment of, or rendering of a service or supplying of goods to the plaintiff arising out of injuries sustained by the plaintiff in the motor vehicle collision which occurred on 28 July 2015 after the costs have been incurred and on proof thereof.

3.3 The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on High Court scale B including the trial date of 2 May 2024 subject to the discretion of the Taxing Master which shall include-

3.3.1 The costs of all expert reports, medico-legal reports, addendum medico- legal reports and combined joint report, if any. The RAF 4 Serious Injury Assessment Reports and radiology reports of all the experts of whom notice was given and or whose reports have been furnished to the defendant and or its attorney. This shall include but not limited to the following experts to whom notice has been given- **Dr T.J. Enslin** (Independent Medical Practitioner); **Dr H.B. Enslin** (Orthopaedic Surgeon); **Dr J.P.M. Pienaar** (Plastic and Reconstructive Surgeon); **Mattie Peach and C.J. Hill** (Occupational Therapists); **Janene White** (Industrial Psychologist); **Kobus Pretorius** (Actuary).

- 3.4 The fees of plaintiff's Counsel on Scale B in respect of preparation for trial on 2 May 2024, consultation, preparation of heads of argument and pre-trial conference (if such pre-trial conference is an additional pre-trial conference and such costs were not included on the Court Order dated 5 June 2018)
- 3.5 The costs of and consequent to compiling and preparation of the plaintiff's bundles for trial and costs to upload the bundles to CaseLines and deliver to the defendant electronically.
- 3.6 The reasonable travelling, subsistence and accommodation costs including e-Toll fees (if such fees are owed and payable) incurred by and on behalf of the plaintiff for attending all the medico- legal examination arranged by plaintiff and defendant.
- 3.7 The reasonable taxable costs of one consultation with plaintiff in order to consider the offer made by the defendant (if such costs were incurred and were not included in the Court order dated 5 June 2018).
- 3.8 The cost that are incurred in obtaining payment and or execution of the capital amount and or delivery of the undertaking in terms of section 17 (4) (a) of RAF Act 56 of 1996 as amended.
- 3.9 In the event that the costs are not agreed the plaintiff shall serve notice of taxation on the defendant and or attorney of record and the plaintiff shall allow the defendant 180 (one hundred eighty) days from date of allocator to make payment. Should the defendant fail to make payment of the taxed costs defendant shall be liable for interest on the amount at the applicable interest rate per annum.

MNCUBE, AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

On behalf of the Plaintiff : Adv. Rabaney
Instructed by : Kotlolo Attorneys
: 154 Pine Street
: Arcadia

On behalf of the Defendant : No Appearance.

Date of Hearing : 02 May 2024
Date of Judgment : 02 June 2024