Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY

Case No: **2233/2018**
Heard on: **09/06/2023**
Delivered on: **21/07/2023**

In the matter between:

ROSLYN DRUCILLA ROSS Plaintiff/Respondent

and

SOL PLAATJE MUNICIPALITY Defendant/Applicant

JUDGMENT

MAMOSEBO J

[1] On 23 April 2020 this Court ordered Sol Plaatje Municipality (the defendant or the Municipality) to pay the plaintiff's proven or agreed damages with costs. The following heads of damages have become settled between the parties: Past hospital and medical expenses, future hospital and medical expenses, as well as general damages. What remains for determination is whether the plaintiff has made out a case for past and future loss of income

for damages sustained as a result of her being assaulted and raped on 20 November 2017. The plaintiff, Ms Roslyn Drucilla Ross, testified and also called four (4) expert witnesses to testify on quantum while the Municipality called only one witness. The matter was then postponed to 09 June 2023 for closing argument. For convenience I will refer to the parties as the plaintiff and the Municipality.

[2] The Municipality filed its Notice of Motion on 31 May 2023 *inter alia* asking for the postponement of the quantum hearing *sine die* pending finalisation of an application for leave to appeal to the full bench of this court against the whole of the judgment on the merits delivered on 23 April 2020. The Municipality also seeks condonation for the late filing of the application. Having heard argument for leave to appeal, I dismissed the application with costs and intimated that my reasons therefor will form part of the quantum judgment.

[3] The ground upon which the Municipality relies in seeking leave is that the judgment and order are legally untenable, bad in law and therefore invalid based on the following:

3.1 That the court found that the injury was a risk incidental to plaintiff's employment or what happened to the plaintiff bears a connection to her employment, which finding renders s 35 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) applicable and consequently bars a common law claim against the Municipality.

3.2 In the alternative should 3.1 not succeed, the Municipality will make an application on appeal to amend its plea to incorporate a special plea in terms of s 35 of COIDA, lead further evidence to demonstrate the existence of the plaintiff's claim in terms of COIDA.

Condonation

[4] It is common cause that judgment on the merits trial was handed down on 23 April 2020, over three years ago. It is trite that a party seeking

condonation must furnish a full explanation pertaining to the delay in seeking the relief sought. Khampepe J in S v Ndlovu 2017 (2) SACR 305 (CC) *at para 31 pronounced*:

> *"[31] The explanation given by Mr Ndlovu for the gross delay in making his application to this court is unsatisfactory. This court takes a dim view of parties disregarding its rules, and generally requires that a reasonable explanation be given for a delay before it will grant condonation. In Grootboom v National Prosecuting Authority this court held:*
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> *…'It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules. Of great significance, the explanation must be reasonable enough to excuse the default.'"*

[5] The Municipality conceded the inordinate delay in filing the application. It further conceded that s 35 of COIDA was not pleaded by the Municipality when merits were heard. However, it attributes that to an error on its erstwhile attorneys. Mr Groenewaldt, appearing for the Municipality, submitted that there is an arguable defence and the interests of justice coupled with prospects of success justifies that leave be granted.

[6] Of significance is that Towell and Groenewaldt Attorneys came on record on 13 April 2022. As correctly deposed to by the Municipal Manager, Mr Bartholomew Serapelo Matlala, almost two years has since elapsed. To show that there was consideration of an appeal by the Municipality and its current legal representatives the following is stated by Mr Matlala in his founding affidavit at paras 13 and 14:

> *"The defendant's current attorney, Stephen Groenewaldt, was initially of the view that quantum should be trialled as the merit s judgment was in order and that too much time had lapsed for an appeal. The said attorney was also instructed to attend to the quantum trial only and not to file an appeal.*
>
> *The defendant's attorney, Mr Groenewaldt, informed the defendant on or about 12 May 2023 that he discovered whilst assisting in the preparation of the drafting of heads of argument for the quantum, that the Honourable Ms Ladyship Justice Mamosebo J had misdirected herself on the law in respect of s 35 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) in her judgment of 23 April 2020, which renders her*

judgment untenable and bad in law on the grounds as will appear in the affidavit."

This paragraph clearly shows that the Municipality was aware of the required timeframes within which to file an appeal and has failed to explain the inordinate delay fully. But it is settled law that even if there may be a long delay it may be mitigated by the Municipality's prospects of success which leads me to addressing the aspect of s 35 of COIDA.

[7] Mr Groenewaldt asserts the argument that what was pronounced on the merits trial, namely, *what happened to the plaintiff thus bear a connection to employment.* Further, the assertion that the meaning thereof should be interpreted and understood as stating that *it is a risk incidental to the plaintiff's employment,* is factually and legally wrong. The interpretation of documents which includes judgments should be contextualised. See *Natal Joint Municipality Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at para 18 where Wallis JA remarked:

"[18] Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production"

[8] The submission made on behalf of the Municipality that its failure to raise the s 35 defence was clearly an error of law and that the Court should not be held ransom to such an error, is clutching at straws. This would mean every litigant who was not successful in their litigation can always blame the erstwhile legal representatives for not raising appropriate defences and claim an error for the courts to hear the matters afresh. This will certainly not expedite finality to litigation. It also ignores the interests of justice as well as the aspect of prejudice to other party/ies.

[9] It cannot be correct that what I stated in paras 24 and 25 of the main judgment authoritatively confines the plaintiff to claim damages that she has suffered in terms of s 35 of COIDA and excludes her from claiming in terms of the common law. Had that been the case I would not have quoted from the remarks by Navsa ADP in *Member of the Executive Council For the Department of Health, Free State Province v EJN* [2015] 1 All SA 20 (SCA) para 33 where the following conclusion was reached:

> *"[33] Dealing with a vulnerable class within our society and contemplating that rape is a scourge of South African Society,* ***I have difficulty contemplating that employees would be assisted if their common law rights were to be restricted*** *as proposed on behalf of the MEC.* ***If anything, it might rightly be said to be adverse to the interests of employees injured by rape to restrict them to COIDA. It would be sending an unacceptable message to employees, especially women, namely, that you are precluded from suing your employer for what you assert is a failure to provide reasonable protective measures against rape because rape directed against women is a risk inherent in employment in South Africa. This cannot be what our Constitution will countenance.*** *" (Own emphasis)*

[10] The SCA has again emphasised the position in *Churchill v Premier of Mpumalanga and Another* 2021 (4) SA 422 at para *34* where Wallis JA pronounced:

> *"[34] …[B]ut the nature and severity of the assault and the extent of the incursion upon the dignity and bodily integrity of the victim, cannot be the factors that determine whether it arose out of their employment. As held in MEC v DN it is difficult to see on what basis, as a general proposition, attacks on a person's dignity and bodily integrity are incidental to their employment. In simple language they are not things that 'go with the job'."*

[11] There is no finding in my judgment on the merits that the injury that the plaintiff sustained was a 'risk incidental to the plaintiff's employment. That was posed as a question at para 24 of the merits judgment. The statement that 'what happened to the plaintiff bears thus a connection to her employment' is stated solely for purposes of concluding whether the plaintiff had succeeded in establishing wrongfulness and negligence on the part of the Municipality which the plaintiff had to prove.

[12] The issues that were purportedly argued on behalf of the Municipality as legally untenable and bad in law are ill-conceived. The Municipality has failed to raise any substantial points of law that necessitate an appeal. Instead, the issues are already settled by the SCA as demonstrated in the aforementioned cases.

Having dispassionately considered them, the Municipality has no prospects of success on appeal. There is also no compelling reason for the appeal to be heard. Regard being had to all the above reasons the application for leave to appeal had to fail.

[13] **I now deal with the quantum trial**. The plaintiff and four expert witnesses were called to testify in support of her case. She is an employee of the Municipality and instituted action against her employer for damages arising from bodily injuries that she sustained following a violent rape incident in the vicinity of Ruby and Jade Streets, Gemdene, Kimberley. She was on medical leave for two (2) years until November 2019 due to the emotional trauma suffered. Six years later the plaintiff still suffers from visual and auditory hallucinations, nightmares, has withdrawn socially, her marriage broke down; she suffers from low frustration tolerance, she is easily angered and irritated and constantly worries about her children and family and does not want to leave her house.

[14] The Municipality's heads attacked the credibility of the plaintiff's experts, particularly Dr Mariske Pienaar, a Clinical and Neuropsychologist, and Dr David Shevel, a psychiatrist. The attack on Dr Pienaar followed her statement that the plaintiff *'enjoyed being at work'*. Whereas the attack on Dr Shevel was initially predicated on his diagnosis of chronic Post Traumatic Stress Disorder (PTSD) being based on his undisputed experience, treatment and symptoms displayed by her. Understandably the issue was not pursued any further by Mr Groenewaldt during argument explaining that he was not the author of those heads of argument. Mr Groenewaldt could not level any criticism against their testimony and asserted that all the witnesses including the plaintiff were good and reliable witnesses and were not discredited.

[15] In the cross-examination of doctors Pienaar and Shevel by the Municipality's counsel, Mr Babuseng, they were accused of presenting new diagnoses of the plaintiff when they testified which was not encapsulated in their reports. This accusation was, however, countered, by Mr De la Rey, counsel for the plaintiff, who explained that the doctors only affirmed that the plaintiff's position has worsened. In my view the thrust of their evidence merely confirmed their initial diagnosis and did not affect the quantum of damages already claimed.

[16] In the main, the evidence of the plaintiff's expert witnesses is largely uncontested. Both Dr Pienaar and Dr Shevel diagnosed the plaintiff with chronic PTSD a chronic form associated with significant depressive and anxiety symptoms. The Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition- defines the psycho social stressor to which a person must be exposed in order to develop PTSD as follows:

> *"A. The person has been exposed to a traumatic event in which both of the following were present:*
>
> (1) *the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others;*
>
> (2) *the person's response involved intense fear, helplessness or horror."*

[17] Dr Shevel recommended that she receive psychiatric follow-up treatment, psychotherapy and may require hospitalisation from time to time. He opined that even with optimal response to psychiatric treatment, the plaintiff is likely to remain with residual symptoms of PTSD, depression and anxiety. The doctor reiterated that she has a chronic form of PTSD. Although she should be encouraged to work for as long as possible according to him there is a likelihood of her being unemployable within a period of about 10 years. He based this view on his experience, the treatment, assessments and symptoms of the plaintiff.

[18] According to Dr Shevel, the plaintiff falls within the 10% of individuals who are treatment resistant or partially treatment resistant. Both doctors said in their testimony that her emotional and psychological condition has deteriorated since they last evaluated her. What is inconceivable is that at the end of Dr Pienaar's evidence she was not questioned on her diagnosis nevertheless after Dr Shevel completed his evidence-in-chief, he was questioned on the findings and diagnosis arrived at by Dr Pienaar. This is inexplicable and smacks of an afterthought because the impression created was that Dr Pienaar's evidence is not countered.

[19] Prior to compiling her report Dr Pienaar conducted no less than eight (8) psychological assessments of the plaintiff and her clinical findings remain unchallenged. The plaintiff had six suicide attempts between 2018 and 2019, even during her pregnancy. She overdosed with medication. She was booked off from work and did not return for a period of two years, as already stated. Dr Pienaar recommended that she must continue to be seen by a psychiatrist to treat the mood disorders, PTSD, suicidal ideation and hallucinations pharmacologically. The clinical psychologists were to deal with her mood disorders and family difficulties including her marital and sexual difficulties. Dr Pienaar did not support the plaintiff's exposure to court proceedings as the exposure would traumatise her further. More importantly, she opined:

"(A)bout half the people with PTSD will recover within twelve (12) months. About two thirds of people with PTSD will recover within six (6) years. One third of people with PTSD have a chronic illness lasting more than six (6) years. It has been three (3) years since the incident [at the time of the report] and it is apparent that Ms Ross is still suffering from PTSD, despite treatment. Her risk for chronic PTSD seems high."

[20] Mr Gregory Shapiro is the industrial psychologist who based his report on the reports of both doctors Pienaar and Shevel. The Municipality had appointed an industrial psychologist, Ms Susan Van Jaarsveld, who compiled a joint minute with Mr Shapiro, which was served and filed for purposes of trial. They agreed on almost all items considered. Of significance in their minute is the following at page 4 of the joint minute:

*"**We agree**: she will probably become unemployable within approximately 10 years as outlined by the Psychiatrist, Dr Shevel. At such stage, she will no longer secure or sustain gainful employment into the future.*
***We note**: the extended leave from Sol Plaatje Municipality dated 25 June 2021 with indications of unpaid leave for attention of the actuary.*

***We agree:** Based on the expert reports, Ms Ross no longer has the ability to work in similar capacity in future hence her future employability has been compromised. Thus taking her current earnings increasing with annual inflationary increases to circa 2031 when she would become unemployable. Such injured earnings are subject to higher than normal contingencies to be negotiated between the legal parties involved in order to account for her risks. Contingencies remain the prerogative of the Court and legal parties involved."*

It does not augur well for the Municipality, without presenting any other evidence, to abandon the joint minute and disown their own expert's opinion at the doorstep of the court, that the plaintiff would become unemployable within a period of about ten (10) years.

[21] The SCA has already pronounced on the aspect pertaining to the agreement reached by experts and the filing of joint minutes. Seriti JA, writing for the minority, in *Glen Marc Bee v The Road Accident Fund* 2018 (4) SA 366 (SCA) at para 64 held that:

"[64] In the absence of timeous repudiation, the facts agreed to by experts enjoy the same status as facts which are common cause on the pleadings or facts agreed in a pre-trial conference."

Rogers AJA, writing for the majority later went on in *Glenn Marc Bee*[1] and pronounced*:*

"[73] …In Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft Für Schädlingsbekämpfung mbH 1976 (3) SA 353 (A) Wessels JA foreshadowed that an expert's bald opinion, if uncontroverted, might carry weight (371G). All the more so, where experts for the opposing parties share the same opinion."

It therefore follows, in my view, that the purported rejection of Ms van Jaarsveld's opinion at this late stage without advancing any reasons or evidence to counter that opinion is of no consequence and holds no water.

[1]Ibid at para 73

[22] Following the reports by doctors Shevel and Pienaar, Mr Shapiro opined that the plaintiff would no longer have the ability to work in a similar capacity in future hence her future employability has been compromised. Her current earnings increasing with the annual inflationary increases to circa 2031 when she would become unemployable would be a good yardstick. Such injured earnings are subject to higher than normal contingencies to be negotiated between the legal parties involved in order to account for her risks. The following aspects were taken into consideration: but for the accident, the plaintiff would have continued to work as a General Assistant for a while into the future; she has a Grade 12 and N4 in Retail Management qualifications, working history, career intentions, collateral information and that she was only 36 years at the time of the incident, with further training and development she would have advanced to the position of Library Assistant where her career would be expected to reach its plateau.

[23] The last witness to testify for the plaintiff was Mr Willem Hendrik Boshoff, the actuary from the firm Munro Forensic Actuaries and Fellow of the Actuary Body. His qualifications and experience were not impugned. His firm was instructed by Honey Attorneys to estimate the capital value of the potential loss of earnings suffered by the plaintiff. The actuarial report is based on the data supplied, actuarial methods applied and assumptions made. Reliance was placed on the opinion of the industrial psychologist and collaterals like the plaintiff's payslips to calculate the plaintiff's loss of income which came to the amount of R3 176 285.00 (Three Million One Hundred and Seventy-Six Thousand Two Hundred and Eighty-Five Rand). Boshoff worked on the initial amount of R180 000.00(One Hundred and Eighty Thousand Rand). In this instance, the interpretations are standard as they did not assume anything extraneous.

[24] Whilst acknowledging that the issue of contingencies falls squarely within the discretion of the Court, in their calculations they assumed the following contingencies as reasonable in the circumstances: 10% on the plaintiff's uninjured future earnings (had the incident not happened) and 35% on her injured earnings (the postulation of the industrial psychologist, plaintiff's

morbidity and allow for income tax inflationary growth but discount earnings in future). According to the payslips plaintiff received bonuses. The medical experts assumed that she may be able to work only up to the age 50. In as far as the plaintiff's past earnings in both her uninjured and injured earnings a contingency deduction of 5% was used. In the uninjured scenario he took cue from Dr Robert Koch's 5% per annum as the benchmark. The plaintiff was a government employee. Her job was therefore secure unlike in the private sector and that informs the lower contingency. A higher contingency is used where the risk is higher.

[25] This is how the actuary has calculated the value of loss of earnings:

	Uninjured Earnings		**Injured Earnings**		**Loss of Earnings**
Past	R 777 300		R 728 500		
Less Contingencies	5 %		5 %		
	R 738 435	-	R 692 075	=	R 46 360
Future	R4 826 300		R1 867 300		
Less Contingencies	10 %		10 %		
	R4 343 670	-	R1 213 745	=	R3 129 925
			TOTAL LOSS OF EARNINGS:		**R3 176 285**

[26] It is clear that the parties do not agree on the aspect of contingencies. While Mr De la Rey, counsel for the plaintiff, argued that the Court should accept the proposed contingencies as reasonable, Mr Groenewald to the contrary accepted that the amount in respect of the past loss of income does not really make a difference. However, he argued that in respect of future loss of income for the uninjured earnings, 10% does not do justice to the facts because the plaintiff is still reasonably young and the report by the experts said she may be unemployable in ten years' time. As much as her situation can deteriorate it can also improve over time. If one factors in the normal

eventualities of life like death, sickness etc., an allowance of 10% should be much higher. Mr Groenewaldt did not suggest any percentage but left it to the Court to decide. In respect of the future injured earnings estimated at 35%, he contended that the estimate of 35% is too high under the circumstances considering that one third of that period of ten years has already lapsed. He contended that the percentage should be much less because it is a plunge into darkness. Regard being had to the explanation by the actuary while testifying about the vicissitudes of life, the fact that the plaintiff suffers from chronic PTSD and all her surrounding circumstances considered when the computation was made, I am satisfied with the explanation by the actuary in this regard.

[27] Mr Babuseng, who appeared for the Municipality during the quantum trial, sought permission to recall the plaintiff in order to question her on her divorce summons. She had already testified that her marital relationship broke down because of her intimacy fears. She even suggested to her husband at that time that he can engage in extra-marital affairs. I deemed it unnecessary and insensitive to expose her to further trauma which, in any event, would not advance the Municipality's case. I do not see how her divorce summons points to her dishonesty. What is relevant in this matter and which demands attention, is the diagnoses by the experts to arrive at an appropriate quantification of her claim. Both doctors, Pienaar and Shevel, testified that there are built-in mechanisms in their assessments to determine whether a patient is lying or exaggerating a situation or not. In the plaintiff's case she never presented to either one of them as untruthful. There is no reason to doubt the correctness of the reports of both doctors Shevel and Pienaar; moreover because both testified and were subjected to cross-examination and there was no countervailing expert evidence to rebut their testimony.

[28] The defendant only called one witness, Mr Kgosiebonya Abraham Bogacwi, Executive Director: Community and Social Development, whose responsibilities include, among others, the management of libraries. His testimony was to the effect that the plaintiff could be transferred to another department within the Municipality, but was not aware if any request for a

transfer was made. In that case, Human Resources must first consent to the request before it is escalated to the Municipal Manager. He conceded to not knowing if the Municipality has any employees with psychiatric or psychological problems or is even able to accommodate them. This is where the Municipality rested its case.

[29] This Court has already found the Municipality liable for the plaintiff's proven or agreed damages. The Municipality has not substantiated why the Compensation Commissioner is liable for the plaintiff's damages. A case has not been made out by the Municipality that the Compensation Commissioner will pay the plaintiff's loss of earnings based on Dr Pienaar's letter dated 25 April 2018 addressed to the Compensation Fund. Evidently, the plaintiff received a salary from the Municipality for the two years immediately after the rape incident as well as five (5) therapy sessions. The Compensation Fund wrote a letter to the Municipality stating that the Municipality is liable for payment of the plaintiff's full salary and reasonable medical expenses for as long as she is unable to perform her normal duties. The Compensation Fund was not joined to these proceedings and I therefore deem it unnecessary to entertain the aspect of the Compensation Fund in these proceedings. In any event, Mr Groenewaldt abandoned or distanced himself from the written submissions pertaining to loss of earnings and the issue of the compensation commissioner.

[30] In *Dippenaar v Shield Insurance Co Ltd* 1979 (2) SA 904 (A) at 917B-D Rumpff JA articulated this principle:

> *"In our law, under the lex Aquilia, the defendant must make good the difference between the value of the plaintiff's estate after the commission of the delict and the value it would have had if the delict had not been committed. The capacity to earn money is considered to be part of a person's estate and the loss or impairment of that capacity constitutes a loss, if such loss diminishes the estate. This was the approach in Union Government (Minister of Railways and Harbours) v Warneke 1911 AD 657 at 665 where the following appears:*
>
> *"In later Roman law property came to mean the universitas of the plaintiff's rights and duties, and the object of the action was to recover the difference between the universitas as it was after the act of damage, and as it would have been if the act had not been committed (Greuber at 269). Any element*

of attachment or affection for the thing damaged was rigourously excluded. And this principle was fully recognised by the law of Holland."

See also Union and National Insurance Co Ltd v Coetzee 1970 (1) SA 295 (A) where damages were claimed and allowed by reason of impairment of earning capacity."

[31] The Municipality did not call any like experts to rebut or counter the evidence of the plaintiff's experts. All the witnesses who testified on behalf of the plaintiff were credible and reliable and I have no reason to reject their evidence. There is no need for me to estimate an amount which seems fair and reasonable based on the evidence before me because I accept the actuarial calculations for the quantification of the claim. As Nicholas JA remarked in *Southern Insurance Association v Bailey NO 1984 (1) SA 98 (A) at 116G:*

"Where the method of actuarial computation is adopted, it does not mean that the trial Judge is "tied down by inexorable actuarial calculations". He has "a large discretion to award what he considers right" (per HOLMES JA in Legal Assurance Co Ltd v Botes 1963 (1) SA 608 (A) at 614F). One of the elements in exercising that discretion is the making of a discount for "contingencies" or the "vicissitudes of life". These include such matters as the possibility that the plaintiff may in the result have less than a "normal" expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case. See Van der Plaats v South African Mutual Fire and General Insurance Co Ltd 1980 (3) SA 105 (A) at 114 - 5. The rate of the discount cannot of course be assessed on any logical basis: the assessment must be largely arbitrary and must depend upon the trial Judge's impression of the case."

To sum up

[32] The plaintiff suffers from chronic PTSD resultantly suffering from a severe loss of earning capacity. The Municipality's industrial psychologist has confirmed this assertion in the joint minute. The doctors have allowed her a further 10 years of employment despite the Municipality not convincing on whether they are able to accommodate people with her condition. The doctors have provided in detail what her condition entails. But for the need to care for her four children and the dire financial situation, she was constrained to return to the same working environment. She has undergone a major disruption in her life. Her enjoyment of life was curtailed by the rape

incident which was career limiting if not racking. Though at the time of trial six years had passed, the plaintiff had not shown any improvement in terms of her chronic medical condition but had on the contrary regressed.

[33] Having considered all the factors and circumstances relevant to the assessment of the loss of earning capacity claim and taking into account the computation of contingencies in the award of such damages, I consider the amount of R3 176 285.00 (Three Million One Hundred and Seventy-Six Thousand Two Hundred and Eighty-Five Rand) an appropriate award of damages. It follows that the plaintiff's claim must succeed to that extent.

[34] **I am left with the question of costs.** There is no reason why the costs should not follow the result. In my view after the Municipality's industrial psychologist completed the joint minute with the plaintiff's industrial psychologist, it was an opportune time for the Municipality to reconsider its stance and that it ought to have thrown in the towel and settled the matter.

[35] For the reasons stated above, the following order is made:

PART A

BY AGREEMENT BETWEEN THE PARTIES the following order is made:

1. Payment by the defendant to the plaintiff in the sum of R1 404 844.14 (One Million Four Hundred and Four Thousand Eight Hundred and Forty-Four Rand and Fourteen Cents) which amount is computed as follows:

    1.1 General Damages R650 000.00

    1.2 Past hospital and medical expenses R97 180.64

    1.3 Future hospital and medical expenses R657 663.50

    into the following bank account:

    HONEY ATTORNEYS – TRUST ACCOUNT
    NEDBANK – MAITLAND STREET BRANCH, BLOEMFONTEIN
    BRANCH CODE: 11023400
    ACCOUNT NO: 1102475912
    REFERENCE: Y VOSLOO/I29022

2. In the event that the defendant does not, within 60 (sixty) days from the date on which this order is handed down, make payment of the capital amount the defendant will be liable for the payment of interest on such amount at 10.25% (the statutory rate per annum) calculated 60 (sixty) days from date of this order.

PART B

Having considered the pleadings filed of record and having heard argument on behalf of the plaintiff and defendant the following order is made:

1. Application for leave to appeal is refused.

2. Condonation for the late filing of the application is refused.

3. Payment by the defendant to the plaintiff in the sum of R3 176 285.00 (Three Million One Hundred and Seventy-Six Thousand Two Hundred and Eighty-Five Rand) for loss of earnings which amount shall be paid into the following bank account:

HONEY ATTORNEYS – TRUST ACCOUNT
NEDBANK – MAITLAND STREET BRANCH, BLOEMFONTEIN
BRANCH CODE: 11023400
ACCOUNT NO: 1102475912
REFERENCE: Y VOSLOO/I29011

4. In the event that the defendant does not, within 60 (sixty) days from the date on which this order is handed down, make payment of the capital amount the defendant will be liable for the payment of interest on such amount at 10.25% (the statutory rate per annum) calculated 60 (sixty) days from date of this order.

5. The defendant pays plaintiff's taxed or agreed party and party costs to date of this order, including but not limited to the following:

5.1 Reasonable qualifying and reservation fees of the following experts:

5.1.1 Dr M Pienaar (clinical and neuropsychologist)

5.1.2 Dr DA Shevel (psychiatrist)

5.1.3 Mr G Shapiro (industrial psychologist)

5.1.4 Munro Forensic Actuaries.

6. In the event that costs are not agreed:

6.1 The plaintiff shall serve a notice of taxation on the defendant's attorney of record; and

6.2 The plaintiff shall allow the defendant 60 (sixty) court days to make payment of the taxed costs.

_____

MC MAMOSEBO J

JUDGE OF THE HIGH COURT

NORTHERN CAPE DIVISION

For the plaintiff/respondent:	Adv H E De La Rey
Instructed by	Honey Attorneys c/o Haahoffs Attorneys
For the Defendant/applicant:	Mr S Groenewaldt
Instructed by:	Towell & Groenewaldt Attorneys