



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 9263/2019

In the matter between:

ETIENNE WIESE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

Coram: Justice J Cloete

Heard: 14 and 15 November 2022

Delivered electronically: 30 November 2022

JUDGMENT

CLOETE J:

- [1] The only remaining issue for determination in this claim for damages arising from a personal injury is the amount to be awarded to the plaintiff in respect of his loss of earnings (including the percentage contingency deduction to be applied thereto).

- [2] On 14 October 2017 the plaintiff, a matric pupil at the time, was travelling as a passenger in a motor vehicle on the R316 between Napier and Caledon when the driver lost control. Amongst other less severe injuries the plaintiff sustained cervical spine fractures at levels C5, C6 and C7, rendering him a permanent tetraplegic.
- [3] Action was instituted against the defendant (“RAF”) on 30 May 2019. The RAF only conceded the merits shortly before the trial 3 ½ years later. Thereafter the parties settled the other heads of damages and costs, the terms of which were incorporated in an order granted by agreement on 15 November 2022. These include general damages of R3 million, an interim payment of R1 million on account of loss of earnings, and the usual statutory undertaking for future treatment in terms of s 17(4)(a) of the Road Accident Fund Act.¹ The RAF maintains it has settled the plaintiff’s claim for past medical and similar treatment of R201 112.30 in full, but this appears to be in dispute. The parties thus agreed that the RAF remains liable for whatever amount(s) it is unable to prove it has paid in respect thereof.
- [4] During the trial the plaintiff testified and called his mother, Ms Johanna Wiese, as well as Dr Theo Le Roux (orthopaedic surgeon), Ms Liza Hofmeyr (industrial psychologist), Ms Elke Carey (occupational therapist) and Mr Peter Ennis (actuary). The RAF called no witnesses but filed the report of Ms Kirshia Pillay (industrial psychologist) which was referred to (without objection by the RAF) during Ms Hofmeyr’s testimony. In addition the parties

¹ No 56 of 1996.

agreed that affidavit evidence could be admitted in terms of uniform rule 38(2) in respect of the plaintiff's experts Dr Ed Baalbergen (rehabilitation practitioner), Ms Rosslyn Rich (mobility consultant) and Ms Petra Coetsee (architectural designer).

[5] Since closing argument understandably focused on the remaining issue (loss of earnings) I will only deal with the evidence which impacts directly thereon, and in the sequence that I believe paints the fullest picture of the plaintiff's lived experience as a result of this devastating injury.

[6] Dr Le Roux testified that the spinal fractures sustained by the plaintiff not only caused paraplegia but also permanent nerve damage to the upper extremities (arms and hands). This means that the plaintiff has very limited hand function. He is unable to perform the simple task of making a sandwich, he cannot write properly, and he finds it difficult to type. He cannot clothe himself, wash or eat independently. He lacks the strength to push himself in his wheelchair or lift himself to reduce pressure when sitting (thus preventing pressure sores). He requires someone to change his position every hour to 1 ½ hours on a fulltime, 24-hour basis.

[7] He has no sensation nor voluntary muscle action in his lower limbs (apart from intermittent spasms which he cannot control). His hips and knees have a tendency to flexion contracture (i.e. they cannot be straightened actively or passively) due to the chronic loss of joint motion and muscle atrophy, which means it is difficult for the plaintiff to lie comfortably on his back but only on

his side, again contributing to the risk of developing pressure sores. He also has a complete loss of motor function (including his bowel and bladder).

[8] Ms Carey conducted a detailed interview with the plaintiff as well as a musculoskeletal examination and mobility assessment. It was her opinion that should the plaintiff succeed in obtaining a matric and some type of tertiary qualification he will nonetheless be faced with the following restrictions in seeking employment.

[9] He will not be able to perform manual work even in a seated capacity due to his lack of hand function (this was also the opinion of Dr Le Roux, who deferred however to Ms Carey). He is capable of operating a cell phone and computer but at decreased productivity since he can only function very slowly, and because all his fingers are paralysed, he cannot even lift a piece of paper. He will also fatigue easily. Added to this are the other significant challenges such as having to be lifted or repositioned at frequent intervals; requiring a carer to monitor and attend to his bowel and bladder functions to avoid infection and incontinence; a wheelchair accessible environment close to an exit for safety reasons in the event of an emergency; reliable door-to-door transport; and flexible working hours because of the practical difficulties (and attendant additional time) in preparing for work each day.

[10] It was also Ms Carey's opinion that the reality for a prospective employer is likely to be increased absenteeism or sick leave due to medical complications, physiotherapy and check-ups associated with his injury. The plaintiff will

experience psychological challenges impacting on his motivation, energy, concentration and focus on certain days. In her opinion, a course of counselling will not assist since this is what the plaintiff has to face daily until the end of his life.

[11] In her view the plaintiff will be able to be seated in front of a laptop or similar device for a maximum of five hours and certainly not for a full working day. Even if he utilises hand function assistive devices such as a computer mouse attached to a shoulder strap, this will not increase the speed at which he can operate since his fingers also have no reach.

[12] Ms Carey brought the challenges into stark perspective in her report where she stated that the plaintiff is fully dependent in his self-care including transfers, bathing, dressing, pressure care, toileting and incontinence management, provision of food and drink, charging his motorised wheelchair, fetching and carrying, opening doors and windows and environmental temperature regulation. She did however hold the opinion that the plaintiff is able to eat without assistance provided he is given '*suitably presented food*', but noted that he cannot lean forward, cannot reach far forward or sideways, and requires external support to maintain a seated position.

[13] In his report Dr Baalbergen noted that the plaintiff suffered a permanent and irreversible injury to his spinal cord. This has resulted in complete motor paralysis of his hand muscles, elbow extensions and all muscles below this.

Normal sensation too has been affected with loss of sensibility of the body including bowel control and bladder function.

[14] In his opinion a multitude of potential complications following spinal cord injury are possible and therefore ongoing care of such patients is lifelong and requires input from a multidisciplinary team. Depending on the level of injury, certain care pathways and complications can be anticipated. All spinal cord injuries are classified according to a standardised neurological classification system – the American Spinal Injuries Association (ASIA) classification – this not only identifies a neurological level predicting functional outcomes and levels of independence that are expected, but the neurological level can also be used to calculate life expectancy.

[15] According to the ASIA classification the plaintiff suffered an ASIA B C6 tetraplegia. Dr Baalbergen recommended that an industrial psychologist would need to ascertain whether the plaintiff will ever be able to be gainfully employed: *'Persons with spinal cord injury are able to work but many obstacles are encountered – normally retirement at an early age is recommended (from 55 years) due to the increasing number of complications encountered'*.

[16] When Dr Baalbergen assessed the plaintiff on 24 April 2019 he noted that he already had one major pressure sore, which he described as one of the most common and life-threatening complications seen in spinal cord injured

persons. His view accorded with those of Dr Le Roux and Ms Carey that adequate pressure relief both when seated and in bed should be exercised.

[17] In addition, the plaintiff will have to be vigilant to inadvertent injuries to the skin since he will not be able to feel them. Based on the plaintiff's level of injury both major and minor pressure sores are likely throughout his life, as are other complications such as contractures and fractures. Other risks, which are more rare, are heterotopic bone formation and septic arthritides.

[18] He further explained that the plaintiff's urological care and follow-up will require lifelong management since complications related to the urinary tract are common, including bladder and kidney stones. It is not unusual to suffer a urinary tract infection on a regular basis – sometimes as often as twice per year. More serious infections will require admission and intravenous antibiotics, perhaps occurring every five years. The plaintiff is also at risk of developing syringomyelia (a fluid filled cyst that develops in the area of damage in the spinal cord) as well as deep vein thrombosis. Chest or respiratory problems too are common to patients such as the plaintiff.

Dr Baalbergen concluded:

'The calculation of life expectancy is complex. Unfortunately, in South Africa, there have been no studies done to evaluate the life expectancy of the spinal cord injured population. One therefore relies on the many studies that have been done throughout the first world. Naturally, the availability of good initial care, adequate rehabilitation and careful follow-up are important provisos that improve the life expectancy of any spinal cord injured person. Although I would recommend using available statistics from first world countries to

calculate Mr Wiese's life expectancy, I am concerned that he has had so many complications since his injury, many of them serious in nature. This will negatively affect his survival...'

[19] The plaintiff, who was born on 19 March 1998, was 19 years old at the time of the incident. He testified in his wheelchair, with his attorney assisting by turning the pages of the exhibit bundle when he was asked to identify certain documents. Despite the situation in which he found himself, he came across as polite, well mannered and with a positive disposition.

[20] It appears that he was born and raised in Montagu by his mother and maternal grandparents. He lived with his mother and five siblings in a rented three roomed home with an outside toilet. The incident occurred on a Saturday and the plaintiff was due to commence his final matric exams (for which he had prepared) the following Monday.

[21] He testified that he was the captain of the school's rugby first team and also played first team cricket. He was a youth leader in a Christian organisation. He had been provisionally accepted to study a diploma in business management at Boland College in Worcester. Both he and a sister were sponsored by a local Dutch couple who, as I understood it, recognised their potential – his sister is currently studying business science management at the University of Stellenbosch.

[22] The plaintiff was obviously unable to write his matric exams following the incident. According to the report of Dr Baalbergen, he was initially treated at

Tygerberg Hospital and then transferred to the Acute Spinal Injuries Unit (ASCI) at Groote Schuur Hospital on 25 October 2017. He underwent a posterior cervical fusion from C4 to C7 on 30 October 2017. He was discharged from the ASCI unit on 20 November 2017 to the Western Cape Rehabilitation Centre, where he remained for a further 3 months receiving multidisciplinary rehabilitation. The plaintiff's evidence was that following his discharge from that facility he stayed with his brother Llewellyn, the latter's partner and their 3 children in a small two-bedroomed house in Macassar which belonged to an aunt.

[23] According to the account given by the plaintiff and Llewellyn to Ms Carey, the house was equipped with a ramp but was not fully accessible or suitable for the plaintiff's needs. He had to share a room with his nephews and had little privacy to attend to his personal needs including toileting on a commode. Llewellyn's partner cared for him from around 2018 until 2020. The plaintiff has since returned to live with his mother and other family members in Montagu.

[24] During his grade 12 year he achieved an average of 52.7% in March 2017, 50.6% in June 2017 and 53.1% in September 2017. Subsequent to the incident he was accepted into a work readiness program with the QuadPara Association of South Africa (QASA) in the capacity of "administrator". This required him to create a presentation on the '*value proposition of employing persons with disabilities in the workplace*' and present this to potential employers at the end of his contract, as well as to perform all tasks and duties

assigned to him by his supervisor. The program commenced on 1 April 2020 and terminated on 31 May 2020. He was required to work from 9am to 3pm, Monday to Friday. He was also provided with financial remuneration of R150 per day to assist with his travelling expenses. He successfully completed the program.

[25] It emerged from his testimony that despite the specified working hours, due to the Covid-19 pandemic his attendance was limited to 1 ½ hours per day. He explained that he was taught to work on Microsoft Teams, Excel and PowerPoint and was given assignments. When asked how he had worked on a computer, he replied that he used his left thumb on a tablet. He received R1 500 in total for those two months.

[26] Although having suffered from depression in 2018 and 2019 – he felt he had nothing to live for – he once again became determined to better himself. He joined a group who studied for matric in the evenings at Macassar High School. However when the time came to write the exams he and the other members of his group received news that for some reason they had not been properly registered. This was yet another huge disappointment to him. However he remains determined and is currently studying at Montagu High School, planning to write his matric in June 2023 and then follow his chosen course of tertiary studies at Boland College. Should he succeed in these endeavours he hopes to move to Cape Town to seek employment since he believes that he will have better opportunities here.

[27] He has also managed to secure a fixed-term contract of employment with Vodacom, which commenced on 15 March 2022 and terminates on 28 February 2023. It is in reality a learnership program for special needs persons and the relevant contract stipulates that his appointment *'does not contemplate the Learner's appointment to the Company's permanent staff at any time or the Learner's appointment on an indefinite basis'*. According to the plaintiff he is given daily tasks, which are marked, and he receives points for his achievements. He is paid R5 000 per month and works on his own from home. He has also received a disability grant since 2019, which has remained virtually static in value and is currently R2 460 per month.

[28] On the assumption that the plaintiff is indeed able to pass his matric, the course which he hopes to attend at Boland College will endure for 2 years. During cross-examination he was asked how he would physically be able to study and write his matric exams. He replied *'with my cell phone'*. When asked how he takes notes, he responded that he makes a recording or takes photos of the notes with his cell phone. When he attended the QuadPara program, he would travel to and from Macassar to Durbanville each day with Dial-a-Ride, which is a public transport service for persons with disabilities. (It is noted that the distance between Macassar and Durbanville is 28km or a 45-minute drive each way).

[29] In her testimony the plaintiff's mother confirmed his current living arrangements. She explained that six family members reside together in their home. She gave up work on 10 June 2022 and is consequently the plaintiff's

main carer, although his sisters also help. The plaintiff has to be lifted and repositioned every two hours in each 24-hour cycle. She also confirmed that it was always the plaintiff's wish to study further and that *'I would like to see him have that chance'*.

[30] Ms Hofmeyr testified that she considered the plaintiff's grade 10 to 12 results for an indication of his pre-morbid scholastic performance. Although scholastically average, because of the other positions he held at school it could fairly be assumed that he has inherent leadership qualities, motivation and drive (this too is evident, and supported by, what he has achieved post-injury).

[31] Based on his school grades she was of the opinion that he would probably not have obtained a matric exemption to pursue a degree or similar qualification. Boland College would however have been a feasible option, provided that he obtained matric, which she felt confident he would have been able to do but for the incident.

[32] For a pre-accident scenario, Ms Hofmeyr assumed that the plaintiff would have completed tertiary studies or training on a NQF 5 or 6 level. Although dependent on the nature of the course, she anticipated that he would probably have studied for 3 years, completing his tertiary education in 2020. She continued:

‘Considering his positive attitude, work habits and achievement orientation, Mr Wiese would probably have been successful in completing his tertiary studies. It is noted that even in his injured state, he displayed significant determination in matriculating as he hoped to pursue further studies.’

[33] Ms Hofmeyr postulated two scenarios, namely a general career path in the formal sector (scenario 1) and a career path in the informal/semi-formal sector, specifically in the retail industry which was the plaintiff’s express choice (scenario 2). In either event he would have entered the labour market in 2021 and retired at age 65, although the projected earnings are different.

[34] On scenario 1 he would have entered at Paterson B1 level progressing evenly to Paterson C3 level over the course of his career, with a starting annual package of R218 000 escalating to R582 000 at age 50, when the earnings band would level out,² with inflationary increases being assumed to normal retirement age.

[35] On scenario 2, Ms Hofmeyr explained as follows. Considering market research, it can be assumed that the plaintiff would initially have been deployed in an entry level semi-skilled position in order to gain exposure. Typical positions would be a sales assistant, sales administrator or sales consultant, with initial earnings of R5 500 to R7 000 (current value) per month.

[36] Given the plaintiff’s leadership qualities, Ms Hofmeyr was of the view that he would have progressed to a supervisory (2IC) role within approximately 5 years and to a management position such as store manager within 5 years

² Based on Robert Koch’s Quantum Survey (2021).

thereafter. Market research confirmed that individuals employed in such supervisory positions could expect to earn R8 000 to R12 000 per month (current value); and in a management role between R10 500 to R25 000 per month (current value), depending on the size, profile and location of the store in question.

[37] For calculation purposes, Ms Hofmeyr believed it reasonable to assume that the plaintiff would initially have earned approximately R15 000 per month (current value) if deployed as a store manager, but over a further period of 5 to 7 years (average of 6 years), he would have assumed increased responsibility and progressed to larger stores. His earnings should have gradually increased to approximately R25 000 per month or R300 000 per annum (current value) over that period, with inflationary increases also assumed to normal retirement age thereafter.

[38] To conclude on the pre-morbid scenario, it was Ms Hofmeyr's opinion that the median of scenarios 1 and 2 should be taken for purposes of actuarial calculation. Having regard to her reasoning, I have no hesitation in accepting this since it is fair, realistic and if anything borders on the conservative. During her cross-examination the RAF did not take issue with this approach either.

[39] Turning now to the post-morbid scenario. In her report dated 4 May 2021, Ms Pillay (the industrial psychologist appointed by the RAF) concluded that *'it is unlikely... Mr Wiese will gain permanent employment in the future due to the extent of his physical deficits, regardless of his cognitive ability and*

accommodations to study further. In 2015 to 2016 it was noted that the disability employment figures were approximately 0.7%... Therefore the writer opines that Mr Wiese will remain unemployed for the remainder of his life'.

- [40] Ms Hofmeyr's opinion was that the plaintiff still has the inherent capacity to matriculate and is highly motivated, but whether realistically he will be able to do so depends on the level of support he receives as well as his physical functioning and health at any given time. Assuming he does succeed, his options for further studies are however restricted by his disability, accessibility to learning centres as well as his limitations. In her words:

'...As a result of their limited mobility, most tetraplegics would often complete further studies to enhance their computer skills, which could allow for potential employment in Call Centre environments or some IT environments. However, considering Mr Wiese's pre-morbid academic performance, and especially his rather poor Mathematics Literacy marks, a career in an Information Technology or programming environment is not deemed a suitable training and occupational field... It can be assumed that due to transport difficulties, mobility difficulties and fatigue associated with his disability, it would probably take him longer to complete a Diploma... in Business Management, which he hopes to do... It seems reasonable to allow for four or five years of further studies [for this purpose].'

- [41] Ms Hofmeyr agreed that without a formal tertiary qualification, access to reliable transport, suitable care and an accommodating work environment it is likely that the plaintiff will remain permanently unemployed in future. However he does seem motivated to pursue some sort of work, preferably in a commercial environment or in a role where he can capitalise on computer

skills. This will also provide him with a sense of purpose and independence, which is important to him.

[42] She expressed a similar view to that of the RAF's expert Ms Pillay:

'Employment Equity Legislation does facilitate and promote the employment of disabled individuals. Formal sector employers who employ more than 50 employees are, for example, required to employ 2% of disabled individuals. However, disabled individuals would still need to meet the minimum requirements of a position to be considered for employment. In Mr Wiese's case, his severe disability and mobility restrictions would significantly limit the potential positions he could apply for. It can also be assumed that he would require special equipment and significant accommodations, which would not be feasible at most employers.'

[43] Ms Hofmeyr was further of the view that even if the plaintiff is provided with all of his reasonable requirements, the reality is that most tetraplegics still remain unemployed and, given his particular deficits, such as using his one thumb to type in an administrative environment, this would put him at the back of the queue. In her opinion, at best and in optimal circumstances, the plaintiff could obtain employment at a semi-skilled level in a call centre within a commercial environment earning R41 948 per annum in 2016 terms, or R5 000 per month in current terms.

[44] She agreed however that the plaintiff's prospects are also reduced by the health and related factors outlined by Dr Baalbergen. She agreed with Ms Carey that allowance should be made for significant periods of unemployment as well as an early retirement age of 55 years as postulated by Dr

Baalbergen. In short, she was of the view that having regard to the fact that statistically only between 30% to 50% of tetraplegics of working age in higher income countries are gainfully employed, she would expect the plaintiff's chances (in South Africa) to be only 20%. It is noted that Ms Hofmeyr's prediction is more optimistic than that of the RAF's own expert.

[45] During argument the RAF accepted that the "median" approach suggested by Ms Hofmeyr to the plaintiff's pre-morbid earnings is appropriate, and this was supported by the actuary Mr Ennis during his testimony, and applied by him for purposes of his calculation with an anticipated retirement age of 55 years (in accordance with what Dr Baalbergen proposed). The parties were also in agreement that the usual contingency deduction of 5% should be applied to the plaintiff's past loss of earnings.

[46] The only areas of dispute were the percentage contingency to be applied to future loss of earnings, and whether or not 80% should in any event be deducted thereafter based on Ms Hofmeyr's evidence about the reality of a tetraplegic person being able to secure employment in the first place (which was why she pitched the plaintiff's prospects at 20%).

[47] Given that (as previously stated) the RAF's own expert, Ms Pillay, was of the opinion that the plaintiff would be completely unemployable for similar reasons, it is unsurprising that this area of "dispute" was not pursued by the RAF with any vigour or conviction.

[48] Ms Hofmeyr's evidence is uncontested on this score. In all the circumstances, I agree that it would be fair to apply a deduction of 80% after the other contingency deduction which I deal with below. As counsel for the plaintiff put it, even with the best will in the world, the plaintiff's chances of earning that type of income in future are significantly compromised given the specific nature of his injury.

[49] In *D'Oliveira v RAF*³ it was stated that

[8] The purpose behind applying a contingency deduction in an award for damages is to take account of the unpredictable "vicissitudes of life". These include –

"the possibility that the plaintiff may in the result have a less than '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 quantification of the extent of the contingency lies entirely within the discretion of the court and must be determined upon the court's impression of the case. In fixing the contingency deduction, a court will have regard to objective factors present, common logic, expert evidence and the like.'

[50] In *Southern Insurance Association v Bailey NO*⁴ it was held that:

'It is, however, erroneous to regard the fortunes of life as being always adverse: they may be favourable. In dealing with the question of contingencies, Windeyer J said in the Australian case of Bresatz v Przibilla (1962) 36 ALJR 212 (HCA) at 213:

³ 2019 (2) SA 247 (WCC) at para [8].

⁴ 1984 (1) SA 98 (AD) at 117B-D; see also *Ngubane v South African Transport Services* 1991 (1) SA 756 (AD) at 781F-782C.

“It is a mistake to suppose that it necessarily involves a ‘scaling down’. What it involves depends, not on arithmetic, but on considering what the future may have held for the particular individual concerned... (The) generalisation that there must be a ‘scaling down’ for contingencies seems mistaken. All ‘contingencies’ are not adverse: All ‘vicissitudes’ are not harmful. A particular plaintiff might have had prospects or chances of advancement and increasingly remunerative employment. Why count the possible buffets and ignore the rewards of fortune? Each case depends upon its own facts. In some it may seem that the chance of good fortune might have balanced or even outweighed the risk of bad.”

[51] Counsel for the plaintiff submitted that a 20% contingency deduction would be appropriate, whereas the RAF’s attorney argued for a 25% deduction. He relied on *Bee v RAF*⁵ where the Supreme Court of Appeal made clear that *‘the younger the [accident] victim, the longer the vicissitudes of life will operate and the greater the uncertainty in assessing the claimant’s likely career path’*.

[52] In reaching my conclusion I have taken into account the following. The plaintiff was 19 years old at the time of his injury, and had already displayed leadership skills and the type of personality which is conducive to career advancement. He had sponsors (the Dutch couple) and, although of average scholastic intelligence, that is not the only type of intelligence required for success in today’s entrepreneurially-minded world.

[53] On the probabilities, and given his drive and motivation, his prospects of advancing would have been on the higher of the two scenarios postulated by Ms Hofmeyr, although she has appropriately adopted a more conservative

⁵ 2018 (4) SA 366 (SCA) at para [116].

approach (i.e. the median). The point however is that the median has already been factored into Mr Ennis' calculation.

[54] The plaintiff was a physically active, sporty individual, with no apparent history of ill-health, behavioural problems or absenteeism from school. Although introduced to his sponsors by his sister, it is fair to assume they would not have taken him under their wing unless they regarded him as showing true potential.

[55] Added to this is despite the devastating effects of his injury as well as his straitened socio-economic circumstances, the plaintiff has proven himself to remain determined to better his lot in life, as is borne out by studying again for matric, travelling a round trip of 1 ½ hours each day in public transport to attend the QuadPara program for 2 months, and applying for and being accepted into the Vodacom program. To my mind this demonstrates an unusually high level of strength of character and determination to succeed, which would have stood the plaintiff in good stead in his career progression had he not been injured.

[56] I accept, as submitted by the RAF, that the plaintiff was young at the time of the incident, but all of these positive factors weigh strongly in favour of the 20% contingency deduction contended for on his behalf. This deduction already takes into account the ordinary vicissitudes of life such as accident, illness or unemployment, which in any event could have occurred.

[57] The RAF's attorney was unable to point to any other factor, apart from the plaintiff's youth at the time of the incident, which would militate in favour of a higher deduction given his particular profile, and nor can I think of any. Finally, even though he was young at the time of the incident, the plaintiff had already been provisionally accepted at Boland College, and Ms Hofmeyr was confident he would have passed matric, thus rendering his provisional acceptance confirmed. It is therefore not a case of merely gazing into a crystal ball.

[58] On the calculations supplied and/or verified by Mr Ennis, this results in a total award for past and future loss of earnings of R4 135 563 calculated as follows:

Past:

| | | |
|--|-----------|------------------------|
| Earnings if not injured | R 257 950 | |
| Less 5% (R12 897) | | R 245 053 |
| Less injured earnings and disability grant | | <u>R 174 590</u> |
| <u>Past Loss:</u> | | <u>R 70 463</u> |

Future:

| | | |
|---|------------|--------------------------|
| Future earnings if not injured | R5 330 950 | |
| Less 20% (R1 066 190) | | R4 264 760 |
| Less 80% of future injured earnings (R998 300 x 80%) | | <u>R 199 660</u> |
| <u>Future Loss:</u> | | <u>R4 065 100</u> |

TOTAL PAST & FUTURE LOSS:

R4 135 563

[59] **The following further order is made:**

- 1. The defendant shall pay to the plaintiff the sum of R3 135 563, being the total award for past and future loss of earnings of R4 135 563 less the amount of R1 million already ordered as an interim payment towards same;**

- 2. The defendant shall pay to the plaintiff's attorney of record the sum of R201 112.30, less any portion which the defendant is able to provide documentary proof has been paid, in respect of the plaintiff's past medical expenses; and**

- 3. The plaintiff and his mother, Ms Johanna Wiese, are declared necessary witnesses and shall be entitled to their travelling and any accommodation costs reasonably incurred in attending the trial. This is in addition to the order previously made on 15 November 2022 in respect of the costs of this action.**

J I CLOETE

For plaintiff: Adv R D McClarty SC

Instructed by: Heyns & Partners Inc. (reference Ms C S Van Heerden)

For defendant: Mr F S Goosen
Instructed by: Office of the State Attorney