

IN THE KWAZULU-NATAL HIGH COURT, DURBAN

REPUBLIC OF SOUTH AFRICA

CASE NO.: 4739/06

Heard: 19 October 2011

Delivered: 7 November 2011

In the matter between

JONATHAN IAN MILLIKEN

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

D. Pillay J

Introduction

- 1] Jonathan Ian Milliken, the plaintiff, was driving a Nissan High-Rider double cab in Glenmore, Leisure Bay, KwaZulu-Natal on the afternoon of 9 December 2003. With him were his wife, Janine Ashley Milliken, their two children Shannen Anne and Niall Craig and his mother Elizabeth Milliken. It was raining. A white truck approaching from the opposite direction collided into the Nissan.

- 2] The plaintiff lost consciousness momentarily. On regaining consciousness he found himself on the tarred road. He heard his wife screaming 'my babies, my babies'. She was running along side the road with their son in her arms. He tried to open the front passenger door but it was jammed. With the help of people who had stopped at

the scene, he managed to open the rear passenger door. He found his daughter lying on top of his mother. He pulled his mother out of the vehicle and placed her on the ground. Then he removed his daughter and placed her along side his mother. His daughter moaned and he thought that she would be fine. He ran to his wife and son. His son was placed on the open tail-gate of a bakkie and someone was performing cardiopulmonary resuscitation (CPR) on him. Both his children and his mother died at the scene of the accident.

- 3] He was hospitalised overnight and heavily sedated. As a result of the accident, the plaintiff fractured his right ninth and tenth ribs, sprained his right middle finger, sustained a contusion to the right side of his abdomen, his right rib and his right lower leg. His right knee was also bruised. However, the most enduring consequence of the collision is the post traumatic stress disorder (PTSD) that he continues to suffer following the sudden death of his children and mother. He has also developed temporal lobe epilepsy.

The claims

- 4] In this action for damages arising from the collision, the Road Accident Fund accepted full liability for the collision. It agreed to pay general damages in the amount of R450 000.00, funeral expenses in the amount of R8 474.64, costs consequent upon the employment of senior counsel and the reasonable and necessary fees of expert witnesses for their reports, minutes, consultations with legal representatives and attendance in court. All that remains for the court to determine therefore is the plaintiff's past and future loss of earnings. Consequently, all the evidence lead on behalf of the plaintiff was confined to assessing the extent of his PTSD and, coupled with the epilepsy, their impact on his employment and earning capacity post the accident to date and into the future.

The evidence

- 5] Four experts reported on the plaintiff and testified at his trial. They are Dr Rosanne Hardy, Ms Jane Caroline Bainbridge, Dr Cristy Janet Leask and Dr Laban. Two experts reported only on the plaintiff's condition without testifying. They are Dr M J H Mair and Dr Rajkovic. Dr Mair's report was admitted. Dr Rajkovic's report was not challenged either. The actuary on whom both parties relied was Mr Ian Morris. Mr Kenneth John Langley the managing director of Alliance One testified about the plaintiff's prospects as an employee in the company.
- 6] On the facts there was much consensus between the parties. The Fund declined to call witnesses. Cross-examination of the plaintiff's witnesses was confined to determining the plaintiff's ability to progress career-wise and to enhance his earning capacity. His medical condition was not challenged. In fact, the Fund accepted that the plaintiff could not testify because rekindling memories of the accident would aggravate his PTSD. The parties also agreed to use the same actuary.
- 7] The points of departure arose from the differences of opinion of their respective industrial psychologists. Ms Shaida Bobat projected that uninjured the plaintiff would have been promoted to management but not to levels as high as Dr Leask projects.
- 8] Dr Leask testified for the plaintiff, whereas Ms Bobat did not testify for the Fund. Furthermore, Dr Leask's report is based on interviews with the plaintiff, his wife and father-in-law, the MMF form and documents accompanying it, reports of other experts who diagnosed the plaintiff's condition and psychometric tests she performed on the plaintiff to

assess his general and critical reasoning capabilities.

- 9] Ms Bobat based her report on her interview with the plaintiff and formal tests she performed on him to assess his non-verbal reasoning ability, his cognitive functioning, his memory and his PTSD level. Without the collateral information that Dr Leask referred to and having failed to testify, Ms Bobat's opinion is tenuous. Still, the pre-trial minute between Dr Leask and Ms Bobat helps to orientate the court to the issue in dispute.
- 10] In summary, the consensus opinion of these experts is that the plaintiff suffered from PTSD to the extent that it impaired his career prospects and consequently his earnings. The dispute turns on the impact of his disability on his past and future loss of earnings post the accident. I will return to their points of agreement and disagreement after summarising the evidence of the experts and the plaintiff's employer.

Medical evidence

- 11] First, the extent of the plaintiff's disability is explored before turning to assess its impact on income. The plaintiff was 31 years when the accident occurred. Today at almost 40 years, he manifests symptoms of depression, anhedonia, irritability and loss of energy and libido. He holds negative views of himself, the world and the future. He has chronic suicidal ideation having attempted suicide twice, once in 2004 in Thailand when he tried to gas himself and again in 2009 in Zimbabwe when he overdosed on medication. After his suicide attempt in April 2004 he was hospitalised for three nights under the management of a psychiatrist. He continued to receive treatment for PTSD. He is chronically unhappy.

- 12] His personality changed from a warm loving father and husband to being cold and withdrawn. He is prone to aggressive outbursts towards his family and colleagues. His marital relationship is strained. He is impatient, rude, aggressive, intolerant, and emotionally and physically fatigued. His wife is scared of him especially when he consumes alcohol. He becomes abusive and has assaulted her on two occasions. On the first occasion he tried to stab her with a kitchen knife; on the second occasion he tried to drown her in the swimming pool. He has no recollection of these episodes. He has anxieties over money to the extent that he no longer allows his wife access to their funds. He admits that his marital relationship has deteriorated but resists marital counselling because he considers himself to be a private person.
- 13] Socially, he has become withdrawn. He does not want to meet people, friends or socialise with the family. He finds it an effort to be nice. He just wants to be left alone. He has lost trust in others. As for his faith, he has always been a believer. Now he finds himself questioning why God let these things happen. He has lost interest in maintaining the home.
- 14] He acknowledges that he is more short-tempered and has no passion for anything. He describes his symptoms of depression as being in a dark place from which he is unable to get out. He feels that he is 'not really living anymore'. He has been on anti-depressants since the accident. He acknowledges that the counselling he received soon after the accident saved his life.
- 15] Ms Bobat's tests confirm that his clinical depression and post traumatic stress scales are 'significant' and the content scales for anger was 'extremely high'.

- 16] On 18 April 2009, MRI and EEG brain scans showed no abnormalities. A neuropsychological assessment revealed a range of deficits consistent with variable impairment of his neuropsychological functioning. The EEG confirmed the presence of temporal lobe epilepsy for which he is being treated with Carbamazepine. He has to take it for the rest of his life. He is also taking Sulpiride, Amitryptilene and Fluoxetine for depression. He received psychotherapy and counselling by his general practitioner who managed his depression and post traumatic stress. Dr Laban prescribed additional medication for his post-traumatic temporal lobe epilepsy to stabilise his moods. She also prescribed psychotherapy on a weekly basis for two years and thereafter bi-monthly for five years.
- 17] On assessing his mental condition Dr Laban found him to be orientated and coherent but at times agitated. He was emotionally labile and easily detractable. He showed signs of psychomotor restlessness and behavioural problems triggered by high levels of anger and guilt. Although he was coherent, he had difficulties with comprehension, executive level reasoning, abstract thinking, problem solving and learning new information. His concentration was poor. His short-term memory was deficient. Although his insight was fair, his judgment was impaired.
- 18] Cognitively, his memory is impaired. He depends on his diary and cellular phone to remind him. His processing speed is reduced in that he is slower now and finds himself going back and rechecking things which slows him down. His attention and concentration diminishes within fifteen minutes. Neuropsychiatric interviews revealed the presence of chronic PTSD of moderate degree and recurrent major depressive episodes of moderately severe degree.

- 19] The most disabling aspect of the plaintiff's psychiatric morbidity is the psychological distress he feels at the loss of his mother and children. His survivor guilt underlies his mental problems. His post-traumatic temporal lobe epilepsy induces his behavioural problems.
- 20] His loss of amenities of life includes the disruption to his family and social relations. His life expectancy is not affected. Dr Laban concluded that his neuropsychiatric deficits are permanent, especially as it persists five years after the accident.
- 21] Although initial medical records did not reveal injury to his head, Dr Hardy, a psychologist specialising in brain injury, described his disability as acquired psychopathology and personality change. She could not exclude brain trauma. At the time of the accident his oxygen deprivation and concussion contributed to his deficits. His dysfunction is probably attributable to the effects of a post concussive syndrome coupled with grief for the loss of his children and mother. Although he had a history of concussions in his youth he had recovered fully from them.
- 22] A neuropsychological assessment revealed that although many of his deficits appear to be mild, his performance in various tests fell below what would be expected from a 30 year old male with a grade 12 education. His average scores for the neuropsychological tests suggest that his cognitive ability deteriorated as a result of his head injuries. The head injury also contributes to his impaired capacity to attend to, recall and use new information. The tests substantially confirm that his alertness, abilities to avoid distractions, to concentrate, to retain new information and process information speedily were

compromised. These symptoms indicate mild brain damage.

- 23] The plaintiff reported to Dr Hardy that by the afternoon he is too fatigued to concentrate. He experiences anomia in that occasionally he cannot retrieve the right words. He uses sleeping tablets since the accident. He has nightmares about accidents and robberies usually involving the family being in danger and him being unable to help them. Sometimes he awakens with a fright. Sudden loud noises frighten him. He avoids meeting people with children, he suffers panic attacks but he manages to regain control on his own. He continues to experience headaches daily and finds that he is increasing the quantity of medication to cope with the headaches.
- 24] Dr Hardy's prognosis is that five years after the accident, ongoing counselling may assist him to manage his difficulties. In her follow-up assessment as recent as 5 September 2011, she suggests that he would benefit from unlimited psychological intervention, family counselling, psycho-education, psychiatric and pharmacological intervention and pain management. However, his symptoms are likely to persist and contribute to his neurocognitive disability. Work-wise, the combination of his physical, cognitive, psychiatric and psychological deficits diminishes his vocational capacity significantly.
- 25] Dr V Rajkovic, a consultant forensic psychiatrist who treated the plaintiff for clinical depression, described his condition as an 'emotional wasteland of despair and gloom, lack of any hope, any light.' Dr Rajkovic continued psychotherapy sessions which were lengthy, arduous attempts to revitalise the plaintiff's emotional responses. Suicide is an ever increasing risk, he notes. He also diagnosed temporal lobe epilepsy with mood disorder and concurrent PTSD. As a psychiatrist since 1985 with experience in a war situation, Dr Rajkovic remarked

that he has rarely, if ever, encountered a case of such emotional devastation as this.

- 26] In summary, the medical experts are agreed that the physiological injury to his head resulting in the temporal lobe epilepsy combined with PTSD complicates and retards his recovery. Psychological therapy will help but not cure him completely. Even if he received all the treatment recommended, his complete recovery is doubtful.

Employment

- 27] Turning to his employment situation, occupational therapist, Ms Bainbridge who, on 2 September 2011 assessed the plaintiff's ability to work and noted his work history. In 1990 on leaving school he started working for Transcontinental or Tancon Tobacco until 1995. For two years until 1997, he was a farm manager for DW Stotter (Pty) Ltd, a tobacco farm. He worked for Stancom which later merged with Alliance One International until he reached the position of sales manager in 2004.
- 28] After the accident in December 2003, he was booked off work for as long as he needed but he chose to return to work within three weeks. Retrenched in 2004, he secured employment as a leaf manager for Cut Rag Processes, a cigarette manufacturer. About 2009, he was an area manager for Associated Tobacco Company. He left there in April 2011 to rejoin Alliance One International as a sales executive, his current position.
- 29] His job involves buying tobacco from farmers, processing it in factories and ensuring that the bulk is exported. Before the accident he was on

the path to run the company and serve on its board of directors. He was earmarked for senior management and was sent on sales and management courses. He reported to Ms Bainbridge, however, that he believed that he was in the same job as he had been at the time of the accident. He had difficulty settling down in a job, feeling satisfied and motivated to work. He simply tried to get through each day. He had no real ambition or drive. He avoids anything challenging in the afternoons when he knows he would be tired and his concentration low. He is concerned that he has slowed down at work. His position allows him much freedom but he doubts that his boss has noticed his condition. He is fearful of the future and his ability to work as a professional, having regard to the objective negative conditions in Zimbabwe and his subjective sense of inadequacy.

- 30] Colleagues described the plaintiff before the accident as a go getter, ambitious, responsible, determined and one who chased business opportunities wherever he could. He was a trusted member of Stancom Commercial Tobacco Company having worked through the ranks, demonstrating his willingness to accept increased work loads and responsibility. He maintained a good work ethic. Before the accident he was dispatched abroad annually to boost local management and interact with customers. He developed an excellent name for himself with customers. He was highly competitive and was promoted steadily. In preparation for a promotion before his accident, he was selected to attend the University of Cape Town's Business School.
- 31] Mr Ivan Mop, a former employee of Stancom and Associated Tobacco company reported to Ms Bainbridge that he did not think the plaintiff would ever recover fully and pursue a higher career path; the plaintiff seemed to him to have no purpose left in life. Mr Allan Stevenson similarly observed that if the plaintiff did not heal psychologically, it

would affect his future earning capacity. He was convinced that but for the accident, the plaintiff would have been a senior figure in the tobacco industry in Zimbabwe. Mr Mike Green of Alliance One, Thailand did not think that the plaintiff's emotional capacity had been altered as he had been appointed in a higher capacity than when he had left Alliance One years ago.

- 32] In Ms Bainbridge's opinion full recovery is 'not realistic', taking into account that eight years have passed since the accident, the extent of his psychological disability, and the onset of temporal lobe epilepsy. Intensive psychiatric and psychotherapeutic interventions would ameliorate certain symptomology. Implementing ergonomic principles, physiotherapy and medication will help to ease his pain and discomfort. However, he can not be expected to manage increased levels of responsibility or stress associated with higher levels of management. His anti-social tendencies and loss of confidence diminish his prospects of securing better employment. Hence she advocates a higher than average contingency for periods of unemployment if he lost his job.
- 33] Notwithstanding Mr John Langley's high regard for the plaintiff, he opined that it was unlikely that the plaintiff would reach the career heights that he would have but for the accident. The plaintiff returned to Alliance One because there was an upturn in the industry. More staff was needed. Although there were promotion positions in sales, he doubted that the plaintiff would be appointed.
- 34] Although the plaintiff's employment appears secure for the time being, if the industry slumps or if he is promoted to high levels of stress, he may regress.

- 35] Dr Leask interviewed Ashley Wilson the senior buyer of Stancom, who was also a close friend of the plaintiff and his family, Mr Ken, Mr Graham Du Preez, the sales director of Alliance Once and Paulett Kankhwende, the human resources director, all of whom commended the plaintiff.
- 36] In Dr Leask's assessment, the plaintiff has the capacity to cope with numerical work at a skilled level and to cope with a broad range of semi-skilled work. His responses to a questionnaire that tested his personality attributes indicated that he might have presented himself in a falsely positive light.
- 37] The opinions of the plaintiff's colleagues are hearsay. Furthermore, they are not experts. However, they are relevant to Dr Leask formulating her expert opinion on his future prospects. The reliability of the opinions of his colleagues is not challenged. Nor is the opinion of Dr Leask. I accept her evidence and report.

The approach to determining past and future loss of earnings

- 38] Determining loss of income would pose no difficulty if judges could gaze into crystal balls to foretell a claimant's future. Since that is impossible, judges do the best they can employing methods that are not wholly speculative and arbitrary but still not perfect science. Mr Pillemer helpfully identified the generally accepted four-step process of the annuity method of calculating loss of earnings claims. This method injects some rationality into the determination. It involves the following:
- A) Determining what the plaintiff was likely to have earned had he not suffered the disability.
- B) Determining what the plaintiff is likely to earn having regard to the disability.

C) Subtracting (B) from (A).

D) Applying contingencies – before the figures in (A) and (B) are finally determined.¹

Prognosis

Component A

39] Returning to the point of departure between Dr Leask and Ms Bobat, they agree that uninjured, the plaintiff would have been promoted with a successful career in the tobacco industry. They appear to disagree on the extent of his success. Ms Bobat opined in the pre-trial minute that he would have been promoted to a sales executive or regional manager with earnings comparable to those paid by larger companies. The first difficulty is that as Ms Bobat did not testify, she did not clarify her conceptualisation of the positions of sales executive and regional manager and whether the plaintiff would attract rates of remuneration higher or lower higher than those that Dr Leask assigned to him, whatever his position. The second difficulty is that it is not clear whether she thinks he would not have achieved director status or higher. She expresses no clear opinion on what his position would have been but for the accident. Reading between the lines, she seems to suggest that he would not have reached the heights that Dr Leask ascribes to him.

Component B

40] As far as his injured career prospects go, these experts agree that as

¹ Corbett and Buchanan Vol 1 General Principles at page 48

he has not after 8 years returned to his pre-morbid level of functioning, he is unlikely to progress to higher levels. In her report Ms Bobat notes that with his deficits, he will probably remain at the level of sales executive with inflationary increases applying to his remuneration. Both industrial psychologists therefore agree that the plaintiff would remain in his current position as sales executive for the rest of his life. He will retain his current remuneration USD 8 800 per month plus medical aid, pension and provident fund benefits, all of which are subject to inflationary increases. They also agree that a higher than average contingency for unemployment should be awarded for his injured state. Agreement on these facts minimises some of the uncertainty attendant on assessing future loss of earnings.

Assessment

Factor A 'but for' income

- 41] Dr Leask obtained from Ms Kankhwende the following salary bands for the positions the plaintiff might have held but for the accident:

manager \$66 000- 90 000

executive \$84 000 – 120 000

director \$120 000 – 170 000

- 42] Dr Leask compared these salary scales with those of Philip Morris International and found that they were consistent with salaries in the tobacco industry. Based on Ms Kankhwende's figures, Dr Leask projected the plaintiff's loss of income but for the accident as follows:

Year	Title	USD per month
2003	Manager	4000
2004	Manager	4500
2005	Manager	5000
2006		

to Executive 75th per centile of \$84 000 - \$120 000 per annum
 2008
 2009
 to Director 75th per centile \$120 000 - \$170 000 per annum
 2037 (age 65)

- 43] To these figures must be added the annual increases of 3 % to 5 % per annum, the performance bonus of 15%, the benefits of a company car and the employer's medical aid, pension and provident fund contributions.

Factor B 'having regard to' loss of income (future)

- 44] Dr Leask broke down his progression as follows having regard to the accident:

Sales executive by 2005 – 2006 for 3 – 5 years

Sales director by 2008 – 2010 until retirement

An additional 15% should be added to the remuneration of the executive director for bonus and a further 15% of basic for medical aid. He continues to receive pension and provident fund contributions.

Factor B: 'having regard to' loss of income (past)

- 45] His past monthly income in USD post the accident extracted from Dr Leask's report is as follows:

2003 – 4000

2004 – 4500

2005 – 4500

2006 – 4500

2007 – 4500

2008 – 4500

2009 – 5000

2010 – 5000

March 2011 – 5000

April 2011 – 8800

Determination

46] But for the accident the plaintiff would easily have achieved an executive sales position by 2006 and director by 2009. He was in fact promoted to sales executive but this promotion was delayed until April 2011. As a young executive further promotion to director would also be within easy reach. Restricting his remuneration to the 75th percentile is modest and achievable. Based on her evidence, Dr Leask's projections are reasonable.

Contingencies (factor D)

47] The assessments of factors A and B above must be moderated by contingencies. Higher or lower contingencies apply to either increase or decrease the awards assessed for factors A ('but for') and B ('having regard to'). Thus if the probabilities are strong that a claimant would reach great heights in her career, then her 'but for' amount should be high. If the adversities of life are strong, the 'having regard to' amount should be low. To achieve the appropriate amount of the award, either a high percentage is assigned to keep factor B low and a low percentage is set to increase factor A, or vice versa, depending on

the prevailing contingencies.

- 48] Age is a 'hard' fact on which other contingencies can be worked off.² Actuary Robert Koch's textbook *The Quantum Year Book* suggests the rule of thumb of applying approximately ½ % per annum over the working life of a claimant. *RAF v Guedes* 2006 (5) SA 583 (SCA) at 588 supports this approach. At the age of 40, the plaintiff would have twenty five more working years until retirement at age 65. Applying the rule of thumb, the contingency reduction would be 12.5%. Thereafter, both the 'but for' and 'having regard to' scenarios which cover the same period should start from the same base of 12.5% to increase or decrease income due to positive or negative prospects.
- 49] The plaintiff's youthful age means that the period for which contingencies must be considered is long. Projecting loss of earnings over a long period is harder than if the plaintiff had a few years to retirement.
- 50] Contingencies are the vicissitudes of life, both favourable³ and unfavourable. Assigning percentages for contingencies requires the court to first identify the favourable and unfavourable contingencies generally and specifically in relation to the facts of the case; second, form an opinion on the likelihood of each contingency, and thereafter, balance negative and positive contingencies to arrive at the most reasonable percentage.
- 51] The usual adversities of life – economic downturn, retrenchment, accidents and illness – are possibilities that could interrupt or impede the working life of any person. These I regard as 'soft' facts because they may or may not occur. Specifically on the facts of this case the soft factors are not so soft that the norm of 12.5% can apply. In the 'having regard to' scenario additional risks not present in the 'but for'

² *Goodall v President Insurance Company Limited* 1978 (1) SA 389 (W)

³ *Minister of Defence V. Jackson* 1991 (4) FA 23 (ZS)

scenario include the likelihood of him losing his job, his vulnerability, the possibility of an error in the estimation of the plaintiff's life expectancy and retirement age having regard to his suicide ideation. Therefore, although the retirement age in the tobacco industry is 65 years he is likely to be un- or under-employed before retirement. Correlatively, his prospects of progressing are weighed down by the adverse impact of the higher stress levels accompanying promotion. In the 'but for' scenario global economic uncertainty and increasing prohibitions against the tobacco industry are threats that could materialise sooner or later.

- 52] Fortune may also have favoured the plaintiff. In the 'but for' scenario, further promotion, perhaps even beyond the level of director with Alliance One or another company was realistic. His educational and skills development towards advancing his career and regular promotions indicate that his career was on an upward trajectory. In the 'having regard to' scenario, further therapy which all the experts recommend and which the plaintiff himself found helpful can over time improve his condition possibly leading to promotions. The human spirit is resilient and capable of many surprises, even the acceptance of profound loss.
- 53] Somewhere between the hard and soft contingencies lies the inflation or depreciation of money in the future. That the value of money will change is a reasonable certainty. The uncertainty is about whether it will be upwards or downwards and by how much. The reality may differ from the actuary's estimation.
- 54] These positive and negative contingencies set off each other. In the 'but for' factor A scenario, balancing the adversities of life with good fortune the probabilities tip the balance in favour of the plaintiff's

career excelling to great heights with little adversity. Instead of the norm of 12.5%, a contingency of 7.5% that Mr Pillemer proposed is set for future loss of income but for the accident. This percentage also factors in the long period of 25 years for the rest of his working life.

- 55] For past loss of earnings, the shorter period of 8 years in retrospect is easier to estimate. Instead of the 5% that Mr Pillemer proffered I set the contingency at 6% because his employer out of kindness or otherwise was willing to promote him and did promote him albeit later than Dr Leask projected. Obviously, no contingency applies to the actual past earnings.
- 56] In the 'having regard to' factor B scenario, all the experts and his employer were pessimistic about his promotion prospects. But no one criticised his performance currently. That could be because he is good enough for the job he now holds or because no one supervises him closely. However, the overwhelming kindness shown to him cannot discount the fact that as a person with disability he is being accommodated. This accommodation obscures the real worth of his labour.
- 57] On the other hand, his concern for his financial future is a driving force that propels him to remain focused on work. That, coupled with the likelihood that with the therapy he is yet to receive his health would improve hold out a glimmer of optimism. Instead of allowing the discount for contingencies to remain at 12.5% as Mr Pillemer suggests, I reduce it to 11%. A percentage shift up or down seems arbitrary or insignificant, but not so in a case where the quantum could be substantially in excess of USD1m.

58] Order

It is ordered that:

1. Judgment is entered for the plaintiff against the defendant for
 - a. general damages in the sum of R450 000.00
 - b. funeral expenses in the sum of R8 474.64

2. The defendant is ordered to furnish to the plaintiff an undertaking in terms of section 17(4) of the Road Accident Fund Act 56 of 1996 for the costs of the future accommodation of the plaintiff, in a hospital or nursing home or treatment of or rendering of a service to him or supplying goods to him arising out of the injuries sustained by him in the motor vehicle collision that occurred on 9 December 2003, after such costs have been incurred and upon proof thereof.

3. The defendant is ordered to pay the plaintiff's taxed or agreed costs such cost to include:
 - a. the costs consequent upon the employment of senior counsel; and
 - b. the reasonable and necessary fees charged by the under mentioned expert witnesses for their reports, joint minutes (where applicable), their fees for consultations reasonably held with the plaintiff's legal representatives, their fees to qualify themselves to testify at the trial, their attendance fees not exceeding the amount payable to witnesses in accordance with the tariff in civil cases:
 - i) Dr MJH Mair (report and consultations only);
 - ii) Dr R Hardy;
 - iii) Dr Rajkovic (report only);
 - iv) Ms J Bainbridge;
 - v) Dr Leask;

- vi) Ian Morris – Actuary (reports only);
- vii) Dr Laban

4. In the event of costs not being agreed, the plaintiff is directed to serve a notice of taxation on the defendant or the defendant's attorney of record and allow the defendant seven (7) court days to make payment of the taxed costs.
5. I discount his loss of income follows:
 - a. past by 6 %;
 - b. future but for the accident 7.5 %;
 - c. future having regard to the accident by 11 %.
6. The plaintiff is directed to refer the discounts in paragraph 5 above to the actuary to factor them into his computation of the claims for past and future loss of income.
7. The parties may revert to the court with the actuary's provisional amounts for these claims, unless they settle the matter.

D. Pillay J

Appearances

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