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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

**Reportable / Not reportable
CASE No.:4032 /2020**

In the matter between:

JACQUES ZIETSMAN

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Coram: Van Rhyn J

Heard: 17 September 2024

Delivered: 30 October 2024

ORDER

1. The Defendant shall pay to the Plaintiff the amount of **R8 346 576.22 (EIGHT MILLION THREE HUNDRED AND FORTY-SIX THOUSAND FIVE HUNDRED AND SEVENTY-SIX THOUSAND RAND AND 22 CENTS)** in respect of the Plaintiff's claim against the Defendant for the following heads of damages:

Past Hospital and Medical Expenses: R1 409 676.22

Past and Future Loss of Earnings/Earning Capacity: R5 236 900.00

General Damages: R1 700 000.00

2. The aforesaid amount shall be paid into the trust account of Plaintiff's attorney, particulars thereof being as follows:

DSC Attorneys

First National Bank

Account number:6[...]

Branch code:210651

3. The Defendant shall pay interest on the aforesaid amount at the prescribed rate of *mora* interest for arrears debt, in terms of the Prescribed Rate of Interest Act, 55 of 1975, calculated 14 (fourteen) days from date of this order being granted, but only in the event that the said amount is not paid within 180 days of date of this order.
4. The Defendant is to furnish an undertaking to the Plaintiff in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, for 100% of the future accommodation of the Plaintiff in a hospital or nursing home or the treatment of, or the rendering of a service or the supply of goods to him arising out of injuries sustained by him in a motor vehicle accident on 2 April 2018 in terms of which undertaking the Defendant will be obliged to compensate him in respect of the said costs after the costs have been incurred and on proof thereof.
5. The Defendant shall pay the Plaintiff's taxed party and party costs on High Court scale to date of this order, including for sake of clarity, but not limited to, the costs of the plaintiff's attorneys, DSC Incorporated in Cape Town and the correspondent attorneys in Bloemfontein, including the attendances of candidate legal practitioner(s) where relevant, as well as other costs set out hereunder, which costs will be subject to the discretion of the Taxing Master.
6. The Defendant shall pay the taxed or agreed fees and qualifying expenses, reservation fees and all costs attached to the procurement of the medico-legal

reports and other reports listed hereunder, including addendum reports where relevant as well as X-rays and any other related costs. The latter costs shall include the costs of attending all Plaintiff's medico-legal examinations, the amount of which will be in the discretion of the Taxing Master following:

- 6.1 Full qualifying fees of the following experts:
 - 6.1.1 Dr J Reid (Neurologist)
 - 6.1.2 Dr T le Roux (Orthopaedic Surgeon);
 - 6.1.3 Mignon Coetzee (Clinical & Neuropsychologist);
 - 6.1.4 Dr Keir le Fèvre (Psychiatrist);
 - 6.1.5 Dr Dale Ogilvy (Speech & Language Therapist);
 - 6.1.6 Marleen Joubert (Occupational Therapist);
 - 6.1.7 Liza Hofmeyer (Counselling Psychologist & Human Resources Consultant);
 - 6.1.8 Willem Boshoff (Actuary Munro Forensic Actuaries).

7. The Defendant shall pay the taxed or agreed fees of Plaintiff's senior counsel, where so employed, on High Court Scale C.

8. The Defendant shall pay the actual travelling costs of the Plaintiff, Plaintiff's attorney, counsel and two (2) expert witnesses in respect of travel from Cape Town to Bloemfontein and back for the trial on 17 and 18 September 2024 as allowed by the Taxing Master.

9. The Defendant shall pay the taxed or agreed fees of the Plaintiff's accommodation and related costs as well as that of Plaintiff's attorney, counsel and two (20 expert witnesses in respect of the trial on 17 and 18 September 2024 as allowed by the Taxing Master.

10. The Defendant shall pay the costs related to the Rule 37(8) Conferences.

11. In the event that costs are not agreed between the parties, the Plaintiff shall serve the Notice of Taxation on the Defendant's attorney of record.

JUDGMENT

[1] The plaintiff, Jaques Zietsman, an adult male born on 4 July 1975, instituted action against the defendant in terms of the provisions of the Road Accident Fund Act 56 of 1996 (the 'RAF Act') for the payment of damages as a result of injuries sustained arising from a motor vehicle accident which occurred on 2 April 2018 on the N3 between Villiers and Warden. In his particulars of claim the plaintiff averred that a collision occurred between a red Toyota motor vehicle bearing registration letters and -number HLF [...] (the 'insured motor vehicle'), driven by Sihle Michael Cele (the 'insured driver') and a silver Toyota Corolla bearing registration letters and -number NT6[...] driven by the plaintiff.

[2] The issue of liability (merits) has been resolved in favour of the plaintiff with the defendant undertaking to pay 100% of plaintiff's proven or agreed damages. The future medical and hospital expenses have also been settled and the court was provided with a draft order in terms whereof the defendant is to furnish the plaintiff with an undertaking in terms of the provisions of section 17(4)(a) of the RAF Act for 100% of the costs of the future accommodation of the plaintiff in a hospital or nursing home or the rendering of future medical treatment or the supply of goods arising from the injuries sustained in the motor vehicle accident.

[3] The issues remaining in dispute are:

- (a) the quantum of the claim for past hospital and medical expenses;

- (b) the quantum of the claim for loss of earnings/earning capacity; and
- (c) the quantum of the claim for general damages.

[4] This matter was certified trial ready on 20 May 2024 and was enrolled for trial for two days. At the commencement of the matter the defendant requested a postponement of the trial on the basis that Dr Johan Reid, a neurologist, who assessed the plaintiff on 16 March 2020, opined that a curator bonis and curator ad litem should be appointed for the plaintiff. In the medico-legal report compiled by Dr Keir Le Fèvre, a psychiatrist, dated 16 October 2020, reference was made to a 'gambling problem' with which the plaintiff has successfully dealt with prior to the accident. It was noted that the stress of the accident may account for a relapse in future. A postponement was requested to investigate these aspects. The application for a postponement was opposed by the plaintiff. After hearing arguments on behalf of the parties, the application for a postponement of the trial was refused.

[5] In terms of the minutes of the pre-trial meeting held between the parties on 1 November 2023, the plaintiff undertook to furnish the defendant with proof of the past medical and hospital expenses incurred by the plaintiff due to the accident by no later than 3 November 2023. The plaintiff duly complied with the undertaking. The defendant undertook to respond to the settlement proposal in respect of the past medical and hospital expenses by no later than 8 December 2023. At the date of the hearing of this matter, the defendant has failed to revert in this regard.

[6] The plaintiff has deposed to an affidavit confirming the expenses in respect of the past hospital and medical costs. In the heads of argument submitted by the defendant, it is contended that the plaintiff has indeed furnished the defendant with vouchers from Discovery Medical Aid. The defendant has tendered an amount less than the amount claimed by the plaintiff on the basis that the plaintiff did not suffer a financial or personal loss as these expenses were covered by the plaintiff's medical aid. Section 17(1) of the RAF Act obliges the defendant, subject to certain exclusions and limitations, to compensate any person where injury has been sustained or death

occurred as a result of the negligent driving of a motor vehicle. The defendant seeks to escape liability for payment of the past medical and hospital expenses on the basis that these expenses were paid for by the plaintiff's medical aid scheme.

[7] The defendant is not entitled to seek to free itself from the obligation to pay full compensation to victims of motor vehicle accidents. Payment by a plaintiff's private medical aid scheme of past medical expenses does not relieve the defendant of its obligation to compensate the plaintiff for past medical expenses.¹ Therefore medical aid scheme benefits which the plaintiff has received are not deductible from his claim against the defendant.² I am therefore in agreement that the plaintiff has proved his claim in respect of the past medical and hospital expenses in the amount of R1 409 676.22

[8] The plaintiff presented the testimony of two expert witnesses during the trial, Mignon Coetzee ('Coetzee'), a Clinical and Neuropsychologist and Liza Hofmeyr, a Counselling Psychiatrist and Human Resources Consultant. The plaintiff did not testify during the trial. The defendant admitted the medico-legal reports filed by the plaintiff which reports were admitted as evidence in terms of rule 38(2) of the Uniform Rules of Court. The plaintiff provided the court with the medico-legal reports of the following experts:

- (a) Dr T le Roux (Orthopaedic Surgeon);
- (b) Ms L Hofmeyr (Counselling Psychologist & Human Resources Consultant);
- (c) Dr J Reid (Neurologist);
- (d) Dr K le Fèvre (Psychiatrist);
- (e) Ms M Joubert (Occupational Therapist);
- (f) Ms M Coetzee (Clinical and Neuropsychologist);
- (g) Dr D Ogilvy (Speech and Language Pathologist); and

¹ *Rayi NO v Road Accident Fund* (9343/2000) [2010] ZAWCHC 30 (22 February 2010).

² *D'Ambrosini v Bane* 2006 (5) SA 121 (C); *Discovery Health (Pty) Ltd v RAF and Another* (2022/016179) [2022] ZAGPPHC 768 (26 October 2022).

(h) Munro Consulting Actuaries.

[9] The defendant has filed one expert summary, namely a summary of Ms S Vilakazi ('Vilakazi'), an industrial psychologist. The medico-legal report by Vilakazi was not admitted as evidence, however the psychologists, Hofmeyr and Vilakazi, convened and filed a joint minute dated 11 June 2024 which reflect the full agreement. The defendant did not present any evidence during the trial.

[10] Mr Roux SC, counsel on behalf of the plaintiff, filed heads of argument and addressed the court on the evidence presented during the trial, the reports filed by the plaintiff and the joint minutes regarding the quantum of the claims for past hospital and medical expenses, future loss of income and general damages as well as the percentage to be applied in respect of the contingencies. Ms Banda filed heads of argument some two weeks later relating to the same aspects.

[11] It is not my intention to give a detailed summary of the evidence presented by the plaintiff's expert witnesses, save to mention the following: The personal and family background information regarding the plaintiff was set out in the report by Coetzee. The plaintiff is currently 49 years old and was injured when he was 42 years old. He is residing with his wife and two children in Cape Town. The plaintiff is the oldest of two children born to his parents. The plaintiff was born in Uitenhage and spent his early childhood in Kimberly where he attended pre-school. The family relocated a number of times and eventually the plaintiff completed his school years in George in 1993 with above average academic qualifications. The plaintiff enrolled for a BCom degree at the University of Port Elizabeth but did not complete his studies at the time. During his employment in the banking sector, he completed his studies and later also embarked on an MBA degree through the University of Stellenbosch, but did not complete the full course.

[12] The full history of the plaintiff's employment career is set out in the report by Coetzee and for purposes of this judgment it would suffice to mention that the

plaintiff was successful in respect of the positions he held at different companies/businesses throughout his employment career. He evidently seized different challenges and opportunities and had the ability to overcome retrenchment and other obstacles which occurred from time to time. Prior to the accident the plaintiff maintained a high level of physical activity and fitness and enjoyed playing golf and cycling. He did not have any significant medical history apart from a posterior Cruciate Ligament injury to his right knee. He suffered the following injuries in the accident on 2 April 2018:

- (a) traumatic head injury, including fractures of the left parietal and temporal bones, extradural haematoma in the left middle cranial fossa with depth of 2,2cm, extradural heamatoma overlying the high fronto-parietal lobe with dept of 1cm, attenuation of the left lateral ventricle, haemorrhage contusion of the right basal ganglia and a large left sided scalp haematoma
- (b) a moderately severe brain injury
- (c) bilateral clavicle fractures
- (d) fractures of the sternum (breast bone) and manubrium (bone above the sternum)
- (e) multiple bilateral rib fractures
- (f) right and left haemopneumothorax
- (g) ruptured liver, spleen and kidney
- (h) soft tissue injuries to the cervical spine
- (i) fracture of the second metacarpal bone of the right hand
- (j) fractures of the pelvis, including a fracture of the left transverse process L4, a fracture of the right ala of the sacrum, a fracture of the right superior and inferior pubic rami, a fracture of the left superior pubic ramus and a fracture of the anterior column of the acetabulum

[13] The plaintiff had been intubated and ventilated at the accident scene and a Glasgow Coma Scale of 14/15 was recorded. His level of consciousness deteriorated. When he was first assessed at the trauma unit at the Netcare Union Hospital at Alberton he was in shock and a Glasgow Coma Scale of 2/15 was recorded. He presented with major chest trauma. Intercostal drains were used to drain the haemo- and pneumothorax. On 3 April 2018 a craniotomy and draining of the extradural haematoma was performed. On 6 April 2018 a tracheostomy was performed. On 3 May 2018 he was transferred for rehabilitation. On 23 August 2018 the tracheotomy scar was improved by a plastic surgeon. The plaintiff's liver was reduced and the ruptured diaphragm was repaired by a thoracic surgeon.

[14] Ongoing symptoms include the following:

- (a) headaches;
- (b) poor concentration with a short attention span;
- (c) forgetfulness and poor short-term memory;
- (d) irritability;
- (e) unprovoked aggression and impulsivity;
- (f) emotion, behaviour and personality changes;
- (g) palpitations during exercise;
- (h) neckache; and
- (i) erectile dysfunction.

[15] According to Dr Reid the plaintiff suffered moderately severe closed-head trauma with permanent neurocognitive compromise. His whole person impairment comes to 30% for severe neurocognitive compromise. No further neurosurgical intervention will improve his neurocognitive deficits. Dr le Fèvre opined that due to the combination of the plaintiff's psychiatric and physical injuries, his stress and

anxiety makes him irrational at times. His loss of enjoyment seems very significant and not being able to cycle or drive as before and being insecure at work stresses him a great deal. He furthermore experiences increased stress in his family life.

[16] The trauma of the accident caused not only physical issues, but also neuropsychiatric and physiological issues. Even though the plaintiff's anxiety and mood problems may improve with the time, he will always be troubled by the sequelae of the traumatic brain injury, namely neurocognitive loss, irritability and moodiness. His psychiatric injuries have rendered him a less capable person socially, intellectually and executively. According to Coetzee formal testing indicates that even though the plaintiff's innate intellectual ability is believed to have remained largely intact, there are specific areas of relative weakness and/or compromise that are believed to stem from the head injury and presents as, inter alia, compromised communicative effectiveness, word retrieval difficulties, compromised speed of processing, difficulty in retrieving encoded information and the ability to track and monitor his own performance. She opined that it is evident that the plaintiff is devastated by and anxious about the fundamental changes in his physical, emotional and neuropsychological functioning. The changes in his personality, behaviour, temperament and mood regulation add additional stress to his life.

[17] According to Dr Ogilvy, the speech and language therapist, the plaintiff presents with significant cognitive-communicative deficits and significant expressive and receptive communication impairments. The plaintiff's cognitive-communicative deficits and communication impairments are pathological and neurogenic in nature and fully in keeping with the traumatic brain injury he sustained in the accident. These deficits and impairments can be considered permanent in nature. The plaintiff has received intensive rehabilitation and therapeutic intervention since the accident. This includes occupational therapy, physiotherapy and participation in a biokinetic treatment program for a full year. He furthermore attended sessions with a psychologist and consulted a psychiatrist.

[18] Hofmeyer testified during the trial and confirmed the contents of the joint minutes as agreed between her and Vilakazi. From the contents of the joint minutes, it is evident that it was agreed that the plaintiff presented as an achievement orientated and ambitious individual with high aspirations for his career. For purposes of the actuarial calculations, it was assumed that the plaintiff would have received 9% of his basic annual salary for his involvement which would have amounted to R1 542 135.84 (2019). The plaintiff's total annual package amounted to R2 276 220.12. Although the retirement age at the plaintiff's current employer is at 60 years, it is assumed that the plaintiff would have pursued alternative employment in order to work until the age of 65 years.

[19] Regarding the post-morbid scenario it is agreed that the plaintiff was unable to return to work during 2018 and he only started working in a limited capacity during December 2018 for an hour to two hours per day. He returned to work in January 2019 and was extensively accommodated by his employer. It is furthermore agreed that further career progression is not envisaged. Although his remuneration was not adjusted, despite being responsible for a much smaller client, the plaintiff's annual increases were lower than prior to the accident. It is assumed that this pattern will persist and that the plaintiff would thus continue to suffer a future loss of income resulting from lower annual increases than the other senior managers.

[20] The industrial psychologists agreed that the plaintiff will not be able to cope with the demands of alternative employment as a Client Executive, Key Accounts Manager/Executive or Sales Director elsewhere, which is indicative of significantly reduced career scope for which compensation is recommended by way of contingencies. It is furthermore assumed that sustained employment until retirement age would be dependent upon the plaintiff's pain tolerance and resilience, to which extent he could continue to rely on compensatory strategies and the continued accommodation by his current employer. However, overtaxing on his coping skills will in the long run impact on his endurance. It was agreed that the plaintiff may retire at the age of 55 years when he could become eligible for early retirement.

[21] Regarding the claim for loss of earnings/earning capacity the defendant contends that even though the plaintiff returned to work post-accident and now manages a smaller client compared to his pre-accident client, his earnings were not affected as a result of this change. This is not what was agreed upon by Hofmeyr and Vilakazi. The contention that no supporting documents to confirm the collateral information obtained from the plaintiff's employer, that he would have been appointed to the African Executive Committee which would have meant further increases in his income, with the result that this aspect should not impact upon his loss of income, are without substance. The experts agreed that further career progression is not envisaged.

[22] In the heads of argument submitted by Ms Banda it is contended that an award for past loss of earnings in the amount of R500 000 and R1million for future loss of earnings would be fair and reasonable. No specific percentage of contingency deductions has been indicated and this aspect has been placed in the hands of the court. The actuarial report filed by the plaintiff, on the other hand, has included the information that the plaintiff has lost out on additional incentive earnings, has reduced earnings since the accident and might suffer losses that are not directly quantifiable and should be addressed via contingencies.

[23] The actuarial calculation filed by the plaintiff includes the assumption that the plaintiff's earnings will increase by 1.5% to 2% lower than his peers. Increases have been assumed in line with long-term earnings inflation assumption. Contingencies have been applied as follows:

Uninjured: 3% and 8.5% on past and future earnings respectively

Injured: 15% on future earnings.

The capital value of the loss of earnings (excluding the RAF cap) suffered by the plaintiff is as follows:

	UNINJURED	INJURED	LOSS OF
EARNINGS			

PAST INCOME	R14 509 500	R11 133 700	
CONTINGENCIES	3%		
<u>NET PAST INCOME</u>	<u>R14 074 215</u>		<u>R11 133 700</u>
			<u>R2 940 515</u>

FUTURE INCOME	R32 180 000	R8 865 900	
<u>CONTINGENCIES</u>			<u>8%</u>
			<u>15%</u>
	R29 444 700		R7 536 015
	R21 908 685		

TOTAL LOSS OF EARNINGS **R24 849 200**

The capital value of the loss of earnings including the RAF cap after contingencies amount to:

CAPPED LOSS

Past R883 400
 Future R4 353 500
 TOTAL: R5 236 900

[24] In *Southern Insurance Association v Bailey NO*,³ Nicholson JA held as follows concerning computation of future loss of earnings as a component of delictual damages: 'Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.'⁴ Contingencies are the ' . . . hazards of life that normally beset the lives and circumstances of ordinary people'⁵ and should therefore, ' . . . by its very nature, be a process of subjective impression or estimation

³ 1984 (1) SA 98 (AD).

⁴ Ibid at 113G.

⁵ Corbett & Buchanan, *The Quantum of Damages*, Vol II 360 at 367.

rather than objective calculation'.⁶ Contingencies for which allowance should be made, would usually include the following:

- (a) the possibility of illness which would have occurred in any event;
- (b) inflation or deflation of the value of money in future; and
- (c) other risks of life such as accidents or even death, which would have become a reality, sooner or later, in any event.⁷

[25] The actuarial calculations by the plaintiff's actuaries are premised on the expert opinions of Hofmeyer and Vilakazi and the *sequalae* occasioned by the injuries sustained by the plaintiff and renders the actuarial calculations both fair and reasonable. I agree with the contention on behalf of the plaintiff that the contingency of 3% in respect of the past uninjured earnings is in accordance with the general accepted approach. The 8,5% contingency deduction in respect of the future uninjured earnings is slightly higher than the norm since the plaintiff is presently 49 years old and a further 16 years remain before retirement. I am satisfied that the contingency deduction applied in this regard is fair and reasonable. The plaintiff should therefore be compensated in the total amount of R5 236 900 in respect of his loss of earnings.

[26] At the hearing this matter, Mr Roux SC applied for an amendment of the amount claimed in respect of general damages to read R2 million. As to the claim for general damages, plaintiff' counsel referred to four cases where the injuries sustained by the claimants are comparable to the injuries and the sequelae thereof of the plaintiff. The injuries suffered by a Grade 8 schoolboy in *Rabie v MEC for Education, Gauteng*⁸ are, inter alia, that he suffered a brain injury as well as a fracture of the mandible and a head injury with skull fractures when he was thrown into the air and landed on his head. Besides the head injury, x-rays revealed a

⁶ *Shield Ins. Co. Ltd v Booysen* 1979 (3) SA 953 (A) at 965G-H.

⁷ Corbett & Buchanan, *The Quantum of Damages*, Vol I at 51.

⁸ 2013 (6A4) QOD 227 (GNP).

pathology of the right upper lung. He was treated in the intensive care unit for an extended period of time and a tracheostomy and craniotomy were performed. He furthermore suffered a fracture of the patella of the left knee. He later returned to school but was socially isolated and unable to return to physical sports. He was left with impairments in the neuro-cognitive, neuro-psychological and neuro-behavioural range. He completed his studies at school and obtained university admission. An amount of R800 000 which would amount to R1 403 000 in 2024 was awarded for general damages.

[27] An amount of R1 350 000 was awarded for general damages in the matter of *Dlamini v RAF*⁹ where the claimant suffered a brain injury as well as a fracture of the mandible and an injury the right foot (dislocation). The claimant suffered from cognitive deficits and was no longer able to work. As a result of his neuro-cognitive and neuro-psychiatric sequelae, the appointment of a curator ad litem and curator bonis was recommended. The present-day value will be approximately R2 million. On behalf of the plaintiff, it is contended that an amount of R2 million would be fair and reasonable compensation under the heading for general damages.

[28] Ms Banda referred to a number of cases and contends that a fair and reasonable award for general damages will amount to R1 350 000. Mr Roux SC, in reply, expressed criticism against the contention on behalf of the RAF that the awards made in *Van der Mescht v Road Accident Fund*,¹⁰ *Claassens v Road Accident Fund*,¹¹ *Mathopa v Road Accident Fund*¹² and *Zavela v Road Accident Fund*¹³ are comparable to the facts of the matter at hand. On behalf of the plaintiff, it is argued that the injuries and their sequelae suffered by the plaintiff are more severe and furthermore, the cases referred to by the defendant are of little assistance since the sequelae of the injuries were not dealt with in any detail, alternatively with sparse detail with the result that the cases referred to by the plaintiff are more on par with the facts of the matter on hand.

⁹ Case No 59188/2013 (3 September) 2015.

¹⁰ 2010 6 (QOD) J2-42 (GSJ).

¹¹ [2019] LNQD 47 (GP).

¹² [2024] LNQD 24 (GP); [2023] ZAGPHC 1810.

¹³ [2013] ZAGPJHC 215 (GJ)

[29] It is trite that an assessment of the amount of damages is a matter of estimation and a trial court has a wide discretion to award what it in the circumstances considers to be fair and adequate compensation to the injured party for his or her bodily injuries and their *sequelae* and having regard to a broad spectrum of facts and circumstances connected to the plaintiff and the injuries suffered, including their nature, permanence, severity and the impact on the plaintiff's lifestyle.

[30] In *Cawood NO v Road Accident Fund*¹⁴ an adult female sustained a significant blow to the head resulting in skull base and facial fractures. A CT scan confirmed the presence of a frontal extradural hematoma requiring surgical drainage. At the time of the trial the current physical neurological examination was normal with no focal neurological deficits. The claimant reported problems with memory, concentration and behaviour. The traumatic brain injury has not physically impaired her ability to work, but her many cognitive impairments have significantly affected her ability to engage in gainful employment. She suffers from, inter alia, psychological and cognitive fallouts, a disruption in her activities of daily living, headaches, dizziness and intolerance for light and noise. She will require supervision and guidance for the rest of her life. An amount of R1 400 000 was awarded for general damages in 2023 which will amount to R1 471 000 in 2024.

[31] In *P obo LP v Road Accident Fund*¹⁵ a 13-year-old schoolboy was hit by a minibus taxi. He was a pedestrian at the time of the incident. He was comatose after the accident and was airlifted to hospital. He spent five weeks in ICU and another four weeks in a general ward. Thereafter he attended a rehabilitation centre for a further period of four months. His serious head injuries consisted of a depressed skull fracture, traumatic contusion and haemorrhage in the right temporal and bi-frontal regions, subdural haematomas in the right frontoparietal region, a diffuse axonal injury involving the cerebral hemispheres basal ganglia, brainstem

¹⁴ 2023 (8A4) QOD 195 (GNP).

¹⁵ 2023 (8A4) QOD 174 (GSJ).

cerebellum and corpus callosum of the brain. He suffered fractures of the right femur, tibia and clavicle; also, multiple abrasions and lacerations resulting in disfigurement of permanent nature.

[32] The head injury resulted in diffuse brain damage with severe intellectual and other deficits such as speech-problems, pseudobulbar paralysis of the mouth, tongue and swallowing mechanisms and intermittent loss of both bladder and stool control. Drastic personality changes left the minor emotionally volatile with aggressiveness at times and severe emotional control problems. The minor child's right leg was shorter than the left, he was unable to walk for long periods without assistance and was effectively wheelchair bound. He cannot write as he struggles with pencil grip. His ability to engage in meaningful interactions and to express himself are impaired and permanent. He suffers from memory problems and his mental processing is slow. He will not be able to matriculate even in a school for learners with special needs. He is regarded as unemployable. An amount of R1 850 000 was awarded in 2023 which would equate to an amount of R2 085 000 in current terms.

[33] The court will generally be guided by awards previously made in comparable cases and will be alive to the tendency for awards to be higher in recent years than has previously been the case. In considering previous awards it is appropriate to have regard to the depreciating value of money due to the ravages of inflation. Having regard to the comparable awards relied upon by Mr Roux SC, the cases referred to by Ms Banda and the two matters referred to above, I am of the view that an amount of R1 700 000 as general damages would be fair and reasonable given the profound loss of amenities suffered by the plaintiff, the loss of his career prospects and *sequelae* of the head injury as well as his retained insight in respect of the losses suffered due to the accident.

[34] **ORDER**

In the result the following order is made:

1. The Defendant shall pay to the Plaintiff the amount of **R8 346 576.22 (EIGHT MILLION THREE HUNDRED AND FORTY-SIX THOUSAND FIVE HUNDRED AND SEVENTY-SIX THOUSAND RAND AND 22 CENTS)** in respect of the Plaintiff's claim against the Defendant for the following heads of damages:

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accident on 2 April 2018 in terms of which undertaking the Defendant will be obliged to compensate him in respect of the said costs after the costs have been incurred and on proof thereof.

5. The Defendant shall pay the Plaintiff's taxed party and party costs on High Court scale to date of this order, including for sake of clarity, but not limited to, the costs of the plaintiff's attorneys, DSC Incorporated in Cape Town and the correspondent attorneys in Bloemfontein, including the attendances of candidate legal practitioner(s) where relevant, as well as other costs set out hereunder, which costs will be subject to the discretion of the Taxing Master.

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I VAN RHYN
JUDGE OF THE HIGH COURT,
FREE STATE DIVISION, BLOEMFONTEIN

Appearances

On behalf of the Plaintiff:

Instructed by:
Attorneys

Adv. J-H ROUX SC
Rosendorff Reitz Barry

Bloemfontein

On behalf of the Defendant:

BANDA
Instructed by:

P
State Attorneys

Bloemfontein