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

Case No: 222/2011

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

In the matter between:

AUDREY CATHERINE VASS

Second Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Coram: Lever J

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JUDGMENT

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Lever J

1. Originally this claim against the Road Accident Fund (the Fund or Defendant) had three claimants. For reasons not material to this decision, only the second plaintiff's claim was to be determined by this court.
2. In short, the issues to be determined by this court relate to the question of causation in respect of the second plaintiff's loss of future earnings as well as the

quantum of damages to be awarded under certain heads of damages if damages were to be awarded at all.

3. The accident from which the second plaintiff's claim arose occurred on the 5 December 2006 at approximately 7:05pm on the road between Victoria-West and Loxton.
4. The second plaintiff testified that she was sleeping in the car before the accident. That she lost consciousness. When she regained consciousness, she was lying in a field. After some time, an ambulance came and transported her to a hospital in Victoria-West. After one day in Victoria-West Hospital she was transferred by road to the Carnarvon Hospital.
5. After the accident, the second plaintiff complained of severe pain in her lower back. She also had a headache, and she also had a bump on the left front side of her head. Since the accident the second plaintiff could not do certain movements and could not stand for an extended length of time. She had also become forgetful to the point where she had to write notes to herself which she posted on the fridge to remind her to do important things. Her sleep patterns had also become disrupted to the point that it took her a long time to get to sleep and she often woke up at 3 am and could not get back to sleep and would read a book when this occurred. These problems manifested themselves after the accident. She did not suffer from any of these problems before the accident.
6. At the commencement of the hearing of this matter, I was handed a signed supplementary Rule 37 minute. The said minute records an agreement in terms of which: the issues before this court were defined; certain of the expert evidence provided on behalf of the second plaintiff was placed before this court by agreement in the form of the expert reports that were duly filed. In these circumstances, such evidence is accepted by this court.
7. It is important to set out the material terms of this agreement, as set out in the said Rule 37 minute. The material terms of the said minute read as follows:

- “1. It is recorded that the parties have settled the claim of the Third Plaintiff as per the draft order to be handed into court.
2. In respect of the Second Plaintiff’s claim the parties are agreed that the following expert reports are admitted as evidence before court:
  - 2.1 Dr LF Oelofse (orthopaedic surgeon) dated 15 September 2014, expert bundle 2, record p 121 – 152;
  - 2.2 Dr LF Oelofse, 14 June 2018 dated (sic), expert bundle 2, record p 191 – 218;
  - 2.2(sic) Mrs M Grobler (Occupational Therapist) dated 12 September 2016, expert bundle 1, record p 47 – 84;
  - 2.3 Mrs M Joubert (Occupational Therapist) dated 16 August 2019, expert bundle 4, record p 351 – 375.
4. With regards to the Second Plaintiff’s claim for loss of income and earning capacity:
  - 4.1 The Defendant disputes, first and foremost, the casual connection between the injuries sustained and the loss suffered by the Second Plaintiff.
  - 4.2 In the event that Second Plaintiff has established causality:
    - 4.2.1 The parties are agreed that, should the Honourable Court accept the expert evidence of the industrial psychologist, Mrs S v Jaarsveld, the Second Plaintiff’s pre and post-accident career paths as well as her injured and uninjured earnings, as calculated by Munro actuaries at p 382 of expert bundle 4, save for the contingencies to be applied, are accepted by the Defendant.

4.2.2 In the event that the Honourable Court does not accept the evidence of the industrial psychologist, then and in that event the parties are agreed that Second Plaintiff's career path and her injured and uninjured earnings, save for the contingencies to be applied, are as follows:

Uninjured and Injured past income - R982 300,00

Uninjured and Injured future income – R314 200,00

5. The parties are agreed that contingencies to be applied are the prerogative of the court.”

8. In addition to the evidence formally placed before the court in terms of the above agreement, the second plaintiff herself testified, the evidence of Dr Van Aswegen the neurologist was led, as well as the evidence of the industrial psychologist Mrs Van Jaarsveld. The defendant did not lead any evidence to countervail the evidence led on behalf of the second plaintiff.

9. It is both useful and necessary to summarise the evidence admitted by the defendant in accordance with the above-mentioned agreement. The said summary will provide context and a useful backdrop against which the evidence of the plaintiff, Dr van Aswegen and Ms van Jaarsveld must be assessed.

10. Dr Oelofse the orthopaedic surgeon, diagnosed the second plaintiff with a head injury and a lumbar spine injury. Dr Oelofse described the lumbar spine injury as an L5 - S1 disc injury with an L3 – S1 facet joint injury with facet arthrosis and chronic pain and muscle spasms.

11. Dr Oelofse pointed out that the radiological examination confirmed that there was a loss of lordosis on the lateral view and there was an early narrowing of the L5 – S1 intervertebral disc space with facet joint degeneration at L3 – S1.

12. Dr Oelofse summarised the second plaintiff's symptoms during 2018 as: A nagging and permanent pain in her lower back that she experienced on a daily basis; She struggles with recurring muscle spasms in her lower back. This decreases her already limited abilities, such as bending forward, sitting for long periods, working hunched over a computer for long periods; Oral pain medication provides only limited relief from the pain; Due to severe pain in her lower back she has to constantly change positions when sleeping at night; She has no complaints regarding any radicular symptoms.
  
13. Dr Oelofse recommended conservative treatment with non-steroidal anti-inflammatory drugs and analgesics, physiotherapy with long term rehabilitation and biokinetics. Dr Oelofse expressed the view that if the treatment should fail or not offer relief from the pain, the second plaintiff would need facet joint blocks in theatre. Dr Oelofse pointed out that there remained a possibility that the aforementioned treatments would not assist and that her symptoms would intensify and she would need to be admitted to hospital for intensive conservative treatment and rhizotomy in theatre. Dr Oelofse also foresaw the possibility that in the second plaintiff's total lifespan her lumbar spine would degenerate to end stage spondylosis, in which case a spinal fusion would be required.
  
14. Regarding the second plaintiff's head injury Dr Oelofse diagnosed a head injury with chronic headaches and chronic muscle spasms with residual neurological symptoms including loss of concentration, loss of short-term memory, forgetfulness and psychological trauma involving emotional outbursts, behavioural changes and feelings of anxiousness. However, in regard to the severity of these injuries, Dr Oelofse deferred to the opinion of a neurosurgeon.
  
15. Dr Oelofse expressed the view that the second plaintiff's orthopaedic injuries meant that, as far as employment and her domestic environment goes, she would have to be accommodated in a permanent light duty or back friendly environment as determined by an occupational therapist.

16. Dr Oelofse also expressed the opinion that as a result of second plaintiff's orthopaedic injuries, especially her lumbar spine injury had a profound effect on the second plaintiff's amenities of life, productivity and working ability and will continue to do so in future. He was also of the view that the second plaintiff was unable to continue as manager of her own coffee shop due to the debilitating effects of her injuries on her physical abilities.
17. Dr Oelofse also expressed the view that the second plaintiff's injuries and the disabilities that flowed from such injuries would be unfairly prejudicial to her if she were to compete in the open job market for employment.
18. Dr Oelofse also held the opinion that were it not for the accident and the injuries suffered as a result thereof, the second plaintiff would have been able to work until she was 65 years old. However, with the injuries suffered from the accident, especially the lumbar spine injury, the second plaintiff suffered certain deficits and even with successful treatment of her lumbar spine injury the said deficits would remain.
19. Dr Oelofse also referred to certain literature which showed the correlation between the development of chronic pain and its effect on retirement age. On this basis Dr Oelofse expressed the view that the second plaintiff's retirement age would be brought forward by 2 to 3 years. Finally, Dr Oelofse said that under no circumstances should the second plaintiff be allowed to do any form of physical labour.
20. As set out above, the evidence of Dr Oelofse was admitted unchallenged in terms of the agreement referred to above.
21. The other evidence admitted by the defendant in terms of the said agreement is the expert report of Ms Marli Grobler and a follow – up report by Ms Marlene Joubert, both of whom are occupational therapists. The relevant aspects of these reports were dealt with by the industrial psychologist, Ms S van Jaarsveld and encapsulated in her report which will be dealt with hereunder.

22. The neurosurgeon, Dr van Aswegen, gave evidence before this court. In summary, his evidence was to the effect that: Prior to the accident, the second plaintiff's history as presented to him showed no history of back pain, headaches, emotional swings or changes, insomnia or forgetfulness; The relevance of the pre-accident history is that the lack of these complaints prior to the accident and their presence after the accident shows that the accident is the most probable underlying cause of these complaints; The fact that the second plaintiff was ejected from the vehicle due to the relevant accident and that she lost consciousness for an undetermined period showed that she had experienced a sharp acceleration and an equally sharp deceleration; Dr Van Aswegen used the analogy of a moulded jelly on a plate covered in custard to illustrate that if the plate were accelerated and decelerated the jelly and the custard would react differently due to the differences in their relative densities. He then testified that the different densities of the white and grey matter in the brain would react in the same way as the custard and jelly. The acceleration and deceleration of these substances with different densities within the human skull would cause an axonal shearing between the plaintiff's grey and white matter in her brain.

23. In Dr Van Aswegen's opinion, having regard to the nature of the injury, the second plaintiff's acute initial medical management, progress and follow up treatment, her pre-morbid status and functioning and her current complaints of headache, forgetfulness, insomnia and backache, the second plaintiff suffered a mild traumatic brain injury (mild *TBI*).

24. Dr Van Aswegen testified that in the second plaintiff's case there was an increased risk of dementia to a degree that is both statistically and clinically relevant.

25. Dr Van Aswegen testified that both the severity and frequency of such headaches may vary and does not follow a set pattern. In his view this was consistent with a mild TBI.

26. Dr Van Aswegen applied the World Health Organisation Disability Assessment Schedule 2.0 to the second plaintiff and the end result from this test was that the second plaintiff suffered a 24.90% disability.
27. Dr Van Aswegen is the Head of the Department of Neurosurgery at the University of the Free State. He came across as a thorough and thoughtful professional. He is clearly an expert in his field. He presented his evidence in a factual and forthright manner. There wasn't a hint of Dr Van Aswegen: overselling the second plaintiff's case; being an advocate for the second plaintiff; exaggerating the symptoms or the prognosis of the second plaintiff. In short, his evidence in both its quality and its content was what a court would expect from an expert in his field.
28. The defendant did not put up its own expert in the field of neuro – surgery. Dr Van Aswegen was cross – examined by Mr Mogano who appeared for the defendant in this matter. The said cross – examination did not shake the clinical observations made by Dr Van Aswegen or the conclusions and opinions that flowed from such observations.
29. The evidence of Dr Van Aswegen on the pre – morbid condition of the second plaintiff, the description of the accident and the post – accident symptoms was consistent with the evidence of the second plaintiff. The second plaintiff gave evidence and was cross examined by Mr Mogano. Save for a minor inconsistency on the frequency of the headaches suffered, the second plaintiff's evidence on these aspects was not materially shaken by such cross – examination. As Dr Van Aswegen testified with a mild TBI there would be no consistent pattern to which the frequency and severity of these headaches would conform. This is why I consider it a minor and non – material inconsistency, it would depend on when the second plaintiff was being questioned about the frequency of such headaches as to how she would answer that question.
30. In these circumstances I accept the expert evidence and opinions expressed by Dr Van Aswegen.



31. Ms Van Jaarsveld, an industrial psychologist, gave expert evidence on behalf of the second plaintiff. Ms Van Jaarsveld evaluated the second plaintiff on two occasions, being the 13 September 2016 and the 29 June 2020. She delivered an updated report on the 29 April 2021.
32. In her reports, Ms Van Jaarsveld summarised the second plaintiff's particulars relating to her level of education, her family structure and dynamics, her present complaints and occupational history. Save for one minor aspect relating to her occupational history, which will be examined in greater detail below, her expert evidence coincided in all material respects with the evidence given by the second plaintiff.
33. Ms Van Jaarsveld testified that if one has regard to the second plaintiff's pre – accident income, her work experience and employment history and the fact that she was self employed as the co – owner of a coffee shop, it can be assumed that had the accident not taken place she would have remained self – employed until retirement age with earnings equivalent to her income at the time of the accident with annual inflationary increases.
34. Ms Van Jaarsveld testified that self – employed people usually work well beyond the ordinary retirement age of 65 for as long as their health allows them to continue working.
35. Ms Van Jaarsveld expressed the opinion that if it were not for the accident, the second plaintiff even if she lost her coffee shop due to increased competition, would have been able to obtain alternative employment in a similar capacity as a manager of a restaurant or coffee shop.
36. Ms Van Jaarsveld referred to the opinions expressed by Dr Oelofse, Dr van Aswegen, and both occupational therapists being Ms Grobler and Ms Joubert, that if one just focuses on the physical requirements the second plaintiff would be able to perform sedentary work in a sympathetic environment with the necessary accommodations being made for the second plaintiff's physical limitations.

37. However, Ms Van Jaarsveld testified that one also has to take into account the second plaintiff's work experience and qualifications. Together with the opinion of Dr Oelofse that the second plaintiff should not be allowed to undertake physical labour. As well as the opinion of Dr Van Aswegen that the second plaintiff suffered a mild TBI with symptoms of forgetfulness and chronic headaches. Ms Van Jaarsveld points out that it follows from these factors and opinions that the second plaintiff will not be able to compete successfully in the open labour market for a clerical position.

38. Ms Van Jaarsveld's holistic approach to the second plaintiff's post – accident income potential is that second plaintiff is functionally unemployable.

39. It was further Ms Van Jaarsveld's position that the evidence suggests that the second plaintiff was, as a matter of fact accommodated post – accident by a sympathetic employer. In this regard she referred to the fact that second plaintiff's husband took over some of her tasks and allowed her to work at her own pace. Her husband, as co – owner of the coffee shop, allowed her to take breaks as and when she needed.

40. Further, Ms Van Jaarsveld pointed out that an additional assistant was employed after the accident because the second plaintiff could not perform the tasks connected to her position as co – owner of the coffee shop which she performed prior to the accident. Ms Van Jaarsveld also pointed out that this appointment of an additional assistant would have been a factor in the second plaintiff's coffee shop being able to be profitable and compete with similar businesses in the same area.

41. Ms Van Jaarsveld was challenged during cross – examination about the fact that she testified that the second plaintiff was unemployed during the period 2015 to September 2019, whereas the second plaintiff testified that time she assisted a certain Ms Vera with domestic tasks.

42. The second plaintiff testified that she only assisted Ms Vera for one or two days per week, but that she could not remember the frequency, nor could she recall

the remuneration she received from this work. When the second plaintiff was challenged on this aspect during cross-examination, she said she did not regard this as permanent employment.

43. From the fact that the second plaintiff's evidence in regard to the frequency of assisting Ms Vera and the remuneration she received was so sparse and sketchy, it suggests that in the context of the second plaintiff's working life that this was a very small and insignificant part of her working life.

44. Ms Van Jaarsveld's evidence was also that the information given to her by the second plaintiff in this regard was so sketchy and limited that it is almost negligible.

45. In relation to this employment with Ms Vera the sketchy details, plus the nature of such work and its relative short duration and Ms Van Jaarsveld's failure to deal with such employment, seen in its proper context, would have no material effect on Ms Van Jaarsveld's report and her conclusions reached therein. In the light of Dr Oelofse's report that her physical challenges showed she was not suited to such domestic work, it is more a sign of the second plaintiff's desperation due to her circumstances. If anything, this is a consideration when determining the contingencies to be applied to any damages that might be awarded.

46. The defendant did not secure the services of an industrial psychologist to refute or challenge the views held and the conclusions reached by Ms Van Jaarsveld. Ms Van Jaarsveld did not abuse her position as an expert witness before this court. Her conclusions and reasons for such conclusions appeared reasonable to this court. There was nothing before this court that would place her credibility in question. In these circumstances, I accept the evidence of Ms Van Jaarsveld.

47. The second plaintiff's evidence was materially in line with the contents of the expert reports.

48. The second plaintiff did not create the impression that she was manufacturing evidence or that she was overstating the extent of her injuries. The minor lapses

that emerged from her evidence were not material and are in any event consistent with the mild TBI diagnosed and assessed by Dr Van Aswegen. In these circumstances, I also accept the evidence of the second plaintiff.

49. The defendant did not appoint any experts. As already stated, the defendant did not lead any evidence in this trial. The defendant contented itself with cross-examining the second plaintiff and the experts called to give evidence on her behalf.

50. Then defendant argued its case. In accepting the evidence of Dr Oelofse, the orthopaedic surgeon and the occupational therapists, Ms Grobler and Ms Joubert, the defendant accepted that the second plaintiff had suffered a loss of earning capacity as a result of the accident. This is the effect of that evidence, and this is especially evident in the report of Dr Oelofse. This satisfies the 'but for' test in relation to the loss of earning capacity.

51. The fact that the defendant accepts that there has been a loss of earning capacity is evident not only from the acceptance of the evidence of Dr Oelofse and the two occupational therapists but is also emerges from the Heads of Argument filed by Mr Mogano on behalf of the defendant. This emerges from paragraph 19 of the said Heads of Argument which reads:

“19. According to Ms S van Jaarsveld, Industrial psychologist, the plaintiff sustained loss of earnings immediately after the accident in the year 2006. Ms Van Jaarsveld testified that the injuries sustained by the plaintiff from the accident reduced her capacity to work. This contributed to the Plaintiff (sic) Coffee shop losing competition against other competitors (sic). We submit that the basis is incorrect as it is common cause that because of the Plaintiff's reduced capacity to work after the accident the Coffee Shop employed an extra person to assist.”<sup>1</sup> (emphasis as supplied by Mr Mogano)

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<sup>1</sup> Although Mr Mogano refers to plaintiff, in the context of the pleadings he is in fact referring to the second plaintiff.

52. This foreshadows the defendant's argument, which goes further to argue that the reason the second plaintiff's coffee shop closed was because of increased competition from other similar businesses in the area. Therefore, Mr Mogano argued there was no financial loss as a result of the accident.

53. This latches onto the evidence that emerged from the trial in an opportunistic fashion. However, in doing so, the defendant overlooks two important considerations.

54. Firstly, the second plaintiff and the relevant coffee shop business had to incur the extra expense of employing an extra assistant to do the work that the second plaintiff could no longer cope with. This extra expense meant that the relevant coffee shop would struggle to compete with the other restaurants and/or coffee shops competing for business in the same area. This was the evidence of Ms Van Jaarsveld. This evidence of Ms Van Jaarsveld was not challenged by the defendant in cross-examination.

55. Secondly, this argument advanced by the defendant also overlooks the fact that had there been no accident and second plaintiff had not had her capacities reduced by virtue of such accident, in the event that the coffee shop closed, for whatever reason, second plaintiff would have been able to obtain an equivalent position as a manager of a restaurant/coffee shop. By virtue of the evidence of the deficits suffered by the second plaintiff as set out in Dr Oelofse's report and the evidence of Dr Van Aswegen, this is no longer possible. The uncontested evidence is that the second plaintiff can simply no longer do the work required for such position.

56. In these circumstances the defendant's argument cannot be sustained. It cannot be and is not a defence to the second plaintiff's claim.

57. Accordingly, second plaintiff has established causality and is entitled to the damages as calculated by Munro Actuaries and referred to in paragraph 4.2.1 of the supplementary Rule 37 minute quoted above. This leaves the question of the

contingencies to be applied to these damages as well as the quantum of the general damages to be awarded to the second plaintiff.

58. In paragraph 5 of the supplementary Rule 37 minute the parties have agreed that the contingencies to be applied to the calculation for the loss of earning capacity is the prerogative of this court.

59. The scenarios in which contingencies have to be applied in the context of this case are the “past uninjured earnings” in relation to the “past injured earnings”. Then the “future uninjured earnings” in relation to the “future injured earnings”.

60. The “past uninjured earnings” relate to that period where but for the accident the second plaintiff would have continued along her career path undisturbed from the date of the accident until the date that her claim is formulated and prosecuted. This entails a projection of what her career path would have been and what she would have earned had that path been followed. Here there are fewer variables, and they are less uncertain than projecting for the future. Nevertheless, variables remain, and they must be catered for by applying contingencies. On the facts of the plaintiff’s case and on this aspect of the plaintiff’s case in the calculation of the value of the loss of income involved I think a contingency of a 5% (five per cent) deduction would be reasonable and appropriate.

61. The “past injured earnings” relate to actual earnings from the date of the accident until such time as the second plaintiff’s claim was formulated and prosecuted. As actual earnings in that period are being dealt with it would be inappropriate and indeed prejudicial to the defendant to reduce that amount by applying a contingency to such amount. Stating the obvious, the loss of past earnings is established by deducting the actual earnings for this period from the projected earnings had the second plaintiff continued along her career path undisturbed by the accident. This is why it is appropriate to apply a 0% (zero percent) contingency to the past injured earnings.

62. The “future uninjured earnings” being for the loss of income for the period from the date the second plaintiff’s claim is formulated and prosecuted until the end of

the second plaintiff's working life. Projections into the future involve assumptions that may or may not eventuate. None of us have a crystal ball or other means to determine what the future holds. Hence for this period it would be appropriate to deduct a larger contingency to cater as far as is possible for those contingencies arising. On the facts of the second plaintiff's case, I think on this aspect of the second plaintiff's claim for loss of earnings a 15% contingency to be deducted from the amount calculated under this aspect of ascertaining the second plaintiff's loss of income would be appropriate and reasonable.

63. In this case the second plaintiff was not earning an income from the date her claim was formulated and prosecuted. In these circumstances it would be appropriate to apply a 0% (zero percent) contingency to "future injured earnings".

64. Applying these contingencies as postulated in paragraph 4.2.1 of the supplementary Rule 37 minute as was done by Munro actuaries renders a total loss of earnings for the second plaintiff in the amount of R728 355,00 (seven hundred and twenty-eight thousand three hundred and fifty-five Rand). This is the amount that will be awarded to the second plaintiff in respect of the claim for loss of earnings.

65. In respect of general damages Mr Mogano for the defendant argued that the second plaintiff only suffered a narrowing of L5 that the authorities cited on behalf of the second plaintiff dealt with fractures of the spine. That therefore the Fund does not offer compensation. In respect of the mild TBI Mr Mogano submitted that the neurosurgeon himself classified it as mild and the fund does not compensate for that.

66. On the first argument Mr Mogano is wrong. Mr Zeitsman SC who appeared for the plaintiff cited the case of Ramolobeng v Lowveld Bus Services (Pty) Ltd<sup>2</sup> where the spinal injuries were not in respect of fractures. In that case the court awarded damages in the amount of R555 000.00 (five hundred and fifty thousand Rand) in 2015, which translates to R764 000.00 (seven hundred and sixty-four

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<sup>2</sup> [2015] ZAGPPHC 31 (3 February 2015).

thousand Rand) in 2022. In any event the admitted evidence of Dr Oelofse was that as a result of the narrowing of the second plaintiff's L5 she suffered serious disabilities. The risks of degeneration were clearly a concern for Dr Oelofse.

67. In respect of the second argument raised by Mr Mogano in respect of the mild TBI that this is a mild injury and not a serious disability. In the first place looking at injuries individually assists in evaluating the extent of the disability of the claimant, but that is not how general damages are assessed. General damages are assessed by looking at all the injuries and assessing their overall impact on the claimant. It is for this reason that the decisions of other courts in relation to prior awards for general damages are essentially just a guide. Few claimants ever have precisely the same injuries or combination of injuries.

68. In respect of the mild TBI Mr Zietsman referred the court to the matter of Mtshali v The Road Accident Fund<sup>3</sup> here there was also a mild TBI and the court in 2017 awarded general damages in the amount of R850 000.00 (eight hundred and fifty thousand Rand). This translates in 2022 terms to an amount of R991 000.00 (nine hundred and ninety-one thousand Rand).

69. Considering the undisputed medical and expert evidence relating to the second plaintiff the overall impact of these two injuries is significant. Using the two cases referred to as a guide and after the available evidence is taken into account, I am of the view that R800 000.00 (eight hundred thousand Rand) is an appropriate award in respect of general damages.

70. The last issue is the issue of costs. There is no reason why costs should not follow the event. However, second plaintiff has asked for the costs of Senior Counsel. At the start of the proceedings Mr Zeitsman handed up a draft order reflecting certain agreements between the parties and leaving blank the amounts that would flow from the questions that I was asked to adjudicate. This draft order provides for the costs to include the costs of Senior Counsel. Mr Mogano did not

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<sup>3</sup> (23918/2013)[2017] ZAGPPHC 868 (22 March 2017).



object to this. It is on this basis that I am prepared to include the costs of employing Senior Counsel.

Accordingly, the following order is made:

BY AGREEMENT BETWEEN THE PARTIES the following order is made in respect of the Third Plaintiff:

1. Payment by the defendant to the Third Plaintiff in full and final settlement of her claim for general damages and loss of income arising from a motor collision which occurred on the 5 December 2006 ("the motor vehicle collision") in the sum of R1 000 000.00 (one million Rand) which amount is compiled as follows:

1.1 R500 000.00 (five hundred thousand Rand) in respect of general damages;

1.2 R500 000.00 (five hundred thousand Rand) in respect of past and future loss of income.

2. The defendant is ordered to furnish the Third Plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for 100% of the costs of the future accommodation of the Third Plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to the Third Plaintiff arising out of the injuries sustained by her in the motor collision mentioned above, in terms of which undertaking the Defendant will be obliged to compensate her in respect of the said costs after the costs have been incurred and on proof thereof.

AFTER HAVING CONSIDERED THE EVIDENCE OF RECORD the following order is made in respect of the Second Plaintiff:

3. Payment by the Defendant to the Second Plaintiff in the sum of R1 528 355.00 (one million five hundred and twenty-eight thousand three hundred and fifty-five Rand), which amount is compiled as follows:

3.1 R800 000.00 (eight hundred thousand Rand); and

3.2 R728 355.00 (seven hundred and twenty-eight thousand three hundred and fifty-five Rand).

4. The defendant is ordered to furnish the Second Plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for 100% of the costs of the future accommodation of the Second Plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to the Second Plaintiff arising out of the injuries sustained by her in the motor collision mentioned above, in terms of which undertaking the Defendant will be obliged to compensate her in respect of the said costs after the costs have been incurred and on proof thereof.

THE FOLLOWING ORDER IS MADE WITH RESPECT TO THE SECOND AND THIRD PLAINTIFFS (hereinafter “the plaintiffs”):

5. Payment of the amounts referred to in paragraphs 1 and 3 above to be made into the following bank account:

HONEY ATTORNEYS – TRUST ACCOUNT

NEDBANK – MAITLAND STREET BRANCH, BLOEMFONTEIN

BRANCH CODE 1[...]

ACCOUNT NO: 1[...]

REFERENCE: H[...]

6. If the Defendant does not, within 180 days (one hundred and eighty) days from the date on which this order is handed down, make payment of the capital amounts the Defendant will be liable for the payment of interest on such amounts at the rate of 9% (the statutory rate per annum) compounded and calculated 14 (fourteen) days from the date of this order.

7. The Defendant to pay the Plaintiffs' taxed or agreed party and party costs on the High Court scale, until the date of this order, including but not limited to the costs set out hereunder:

7.1 The reasonable qualifying and reservation fees and expenses (if any) of the following experts:

7.1.1 Drs Van Dyk and Partners (radiologists);

7.1.2 Drs Burger Radiologists Inc (radiologists);

7.1.3 Dr LF Oelofse (orthopaedic surgeon);

7.1.4 Dr A van Aswegen (neurosurgeon);

7.1.5 Mrs M Joubert of Rita van Biljon Occupational Therapists;

7.1.6 Ms A Grebe of Rita van Biljon Occupational Therapists;

7.1.7 Mrs M Grobler of Rita van Biljon Occupational Therapists;

7.1.8 Ms S van Jaarsveld (industrial psychologist);

7.1.9 Munro Forensic Actuaries; and

7.2 The cost of senior counsel.

8. In the event that costs are not agreed:

8.1 The Plaintiffs shall serve a notice of taxation on the Defendant's attorney of record; and

8.2 The Plaintiffs shall allow the Defendant fourteen (14) court days to make payment of the taxed costs.

Lawrence Lever  
Judge  
Northern Cape High Court, Kimberley

Representation:

*For The 2<sup>nd</sup> & 3<sup>rd</sup> Applicant:*

*Adv PJJ Zietsman (SC)*

*Instructed by:*

*Haarhoffs Inc.*

*For The Respondents:*

*Mr A Mogano*

*Instructed by:*

*Office of the State Attorney.*

*Date of Hearing:*

*01 December 2022*

*Date of Judgment:*

*16 February 2024*