REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 13/40367

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

....
DATE SIGNATURE

In the matter between:

WALTON, GAVIN ALLAN Plaintiff

and

ROAD ACCIDENT FUND Defendant

SUMMARY

Damages – action for – bodily injuries – claim for damages for loss of earnings or earning capacity – plaintiff contending that he would have been employed by company beyond retirement age of 60 – on consultative basis – *onus* of proof – expert evidence of Industrial Psychologist – use of the word

"*unemployable*" by expert witnesses – plaintiff failing to prove his employability after retirement.

J U D G M E N T

MOSHIDI, J:

INTRODUCTION

[1] The plaintiff, an adult retired manager, has instituted action against the defendant for alleged damages. The damages related to certain injuries described below, sustained by the plaintiff in a motor vehicle accident which occurred on the N17 Freeway, Brakpan, near the Carnival City, on 10 February 2013.

THE PLAINTIFF'S CLAIM AND INJURIES

[2] As a result of the collision, the plaintiff sustained the following injuries: soft-tissue injuries of the lower cervical spine; fractures through the distal shafts of the right tibia and fibula as well as through the neck of the fibula; a comminuted fracture of the right distal femur; and the *sequelae* to the injuries, which include, *inter alia*, pain and suffering, shock, loss of amenities, disablement and disfigurement. For what may become relevant later, in the particulars of claim, the plaintiff claimed the amount of R4 590 965,00 (four million five hundred and ninety thousand nine hundred and sixty five rand).

The defendant filed the usual plea of first, denying the plaintiff's particulars of claim. In the alternative, the defendant pleaded contributory negligence on the part of the plaintiff, and/or that '*should it be found that the plaintiff did sustain the alleged bodily injuries, in that he received medical treatment, and that the injuries sustained and their sequelae have given rise to damages, including non-pecuniary damages as alleged (all of which is still denied), then in that event the defendant pleads that it is not liable to compensate the plaintiff for non-pecuniary damages, as the plaintiff's injuries are not of a serious nature*'.

THE ISSUE FOR DETERMINATION

[3] However, in spite of the above contestation on the pleadings, by the time the trial commenced before me, certain developments in regard to the settlement of the matter had occurred. The rest of the plaintiff's heads of damages, including past medical expenses and general damages, as well as the provision of an undertaking by the defendant as envisaged in sec 17(4)(a) of the Road Accident Fund Act 56 of 1996 ("*the Act*"), if necessary, had been settled between the parties. The only issue for determination in this trial is the plaintiff's claim for loss of earnings and earning capacity.

[4] In regard to the last-mentioned head of damages, the parties agreed in exhibit "A", as to what was exactly still outstanding and what the court is called upon to determine. In this regard, exhibit "A" provides as follows:

"*1. The parties are agreed that the only issues for determination are:-*

1.1 whether the plaintiff but for the accident would have retired at the age of 60 (the normal retirement age at Element Six) or aged 70;

1.2 whether the plaintiff is presently unemployable or not.

2. If the plaintiff should retire at age 60 then the parties accept the Actuarial Calculation of Mr Minnaar in the sum of R184 264.00.

3. If the plaintiff should retire at age 70 then the parties accept the Actuarial Calculation of Mr Minnaar in the sum of R4 088 264.00.

4. The parties are agreed that the medico-legal report of the Orthopaedic Surgeons and the Occupational Therapist are what they purport to be and can be relied upon as those experts have given that evidence in court."

Annexure "A" is dated 14 October 2015.

THE PLAINTIFF'S EVIDENCE

[5] Three witnesses testified for the plaintiff, whilst the defendant called one witness, as described later below. The plaintiff himself testified, in broad outline, as mentioned immediately below.

[6] At the time of his evidence he was about 55 years old (date of birth being [.....] 1960). He holds a National Diploma in Electrical Engineering, as well as a Higher National Diploma in Electrical Engineering. He commenced employment with Element Six Production (Pty) Ltd ("*Element Six*"), the company referred to in annexure "A" above, from 1 April 1982. Element Six was involved in the production of synthetic diamond products, ranging from oil

and gas drill bits that are used to drill oil and gas. He was employed as Capital Projects Manager. His annual income was about R918 193,00. The accident in question occurred on 10 February 2013.

[7] The plaintiff's employment with Element Six came to an end on 29 May 2015 when he was retrenched under what appears to be controversial circumstances. Prior to the accident, the plaintiff says he had no known ailments. However, as a result of the injuries sustained in the accident, he was unable to perform his duties as before. He became severely restricted in performing his duties.

[8] He testified that although the prescribed retirement age at Element Six was 60, it was his intention to stay on as a consultant to his employer. In his view, staying on was an option since it was a practice at Element Six for employees who had left the company, with special and specific skills to be employed as consultants up to their 70's as in age. He disputed the suggestion that he was retrenched together with other approximately 300 employees as an operational matter. He is of the view that had it not been for the accident, he would have been employed by Element Six. He was performing highly skilled and essential services at Element Six and he was at the pinnacle of his career at the time of the accident, so much that upon his departure, somebody else replaced him. The replacement is Mr Steven Wood.

[9] In cross-examination, and when referred to the Retrenchment Agreement, which he signed in May 2015, the plaintiff conceded that he was in fact retrenched. It had nothing to do with the accident. It is significant that clause 1 of the Retrenchment Agreement,[1] provides that:

> "*The company and the employee agree that the employment of the employee with the company will terminate with immediate effect due to the employee being retrenched from the company. Accordingly, it is certified and agreed that the employee's employment terminates due to retrenchment on 29 May 2015.*"

[10] Further, in cross-examination, the plaintiff conceded that the accepted and compulsory retirement age at Element Six was 60. When put to the plaintiff that the option of employment of employees after 60 years was dependent entirely on the discretion of the Board of Element Six, the plaintiff somewhat disagreed. He said that to the best of his knowledge employees over 60 years have been given short-term contracts pursuant to negotiations with the person in charge of the projects department at Element Six. This was done in consultation with the General Manager. He said that this would be followed by an agreed short-term contract signed by all parties before any form of contractual post-retirement would take place. The plaintiff was confident that, like other employees who were given consulting contracts post-60 years, and up to 70 years, he would have been offered such employment, had it not been for the accident. This would have occurred if and when the need arose within Element Six. The plaintiff conceded that he informed his

[1] See bundle vol 6 pp 541 to 543.

Industrial Psychologist that the other option he had was probably to work as a sole proprietor in future.

THE EVIDENCE OF MR HERSCHEL

[11] The evidence of the plaintiff's second witness, Mr Donald R Herschel ("*Herschel*"), was somewhat controversial as it appeared to be biased overly, in favour of the plaintiff. It is significantly opposed to the evidence of the defendant's witness, Ms N Tshabalala, Element Six's Human Resources Partner at the time, as shown later below. It had associated companies or branches throughout the world. At the time of his testimony he was employed by a company called Mega Enterprises. Before that, he was employed by Element Six from 2009 in the position of the Engineering Project Manager for Zapro site. Zapro was Element Six's South African operation.

[12] Herschel testified that when he joined Element Six, the plaintiff had already been employed there for several years, doing site projects. The plaintiff had good and unique skills in what he was doing. The plaintiff did not report to Herschel initially but did so in the last three years of Herschel's employment. The plaintiff performed his duties well, but after the accident, the plaintiff became basically desk-bound, performing administrative and consultative functions only. As a result additional resources had to be secured to work with the plaintiff.

[13] On the issue in dispute in this matter, Herschel conceded that at age 60, the plaintiff would have been placed on mandatory pension and entered retirement. However, there was a strong likelihood that the plaintiff would have been employed by Element Six on a contractual basis post-60 years. There were other two employees who worked in this fashion until the ages of 73 and 68, respectively. "*Sometimes these contracts were yearly contracts. Sometimes they were month-to-month. Sometimes three months at a time,*"[2] he said. The plaintiff was only about 54 years at the time of the accident. He conveyed his views to the plaintiff's Industrial Psychologist, Mrs Van Zyl. Had it not been for his retrenchment at the end of July 2015, the plaintiff would easily have worked until age 70. Pursuant to the retrenchment, somebody else replaced the plaintiff.

[14] Although he occupied a position two levels below the CEO at Element Six, Herschel said he had the requisite power to extend the plaintiff's employment beyond age 60. In cross-examination, Herschel was, however, rather evasive as to when exactly and for what period the plaintiff purportedly reported to him. The same applies to his initial assertion that he had authority to retain the plaintiff beyond age 60. However, such extension would still be dependent on approval by the Managing Director, who was not Herschel. Herschel conceded that management regarded the plaintiff as a liability to the company. He was no longer employed by Element Six and therefore could not influence management's decision to retain the plaintiff post-accident. He refuted that he and the plaintiff were retrenched at the end of July 2015

[2] See transcript p 24 lines 14-15.

together with other approximately 300 employees for operational reasons. He asserted that he worked for the company until end of August 2015. He had no evidence at all that the plaintiff was retrenched because of the accident. More about the nature of Herschel's evidence later.

THE EVIDENCE OF THE PLAINTIFF'S INDUSTRIAL PSYCHOLOGIST

[15] Mrs J van Zyl, an Industrial Psychologist, testified on behalf of the plaintiff. She originally assessed the plaintiff on 29 August 2014, and brought out a report during January 2015. She also brought out an addendum or supplementary report in October 2015.

[16] In brief, in her original report, Mrs Van Zyl testified and concluded that: the plaintiff presented with a high risk that his employer may be unwilling or unable to accommodate him in a sedentary position, or alternatively, that his employment may be terminated in future, should the company institute further restructuring, cost-saving, and retrenchments; and that, for example, the plaintiff may be placed on early retirement, as he is presently 54 years. Should this scenario occur, its is unlikely that the plaintiff will secure alternative employment in the open labour market, given his age and work limitations, as well the competitive labour market.[3]

[17] In regard to the possibility of the plaintiff continuing to work post-age 60, Mrs Van Zyl made it clear that she relied on only what Herschel told her. In this regard, when asked in evidence-in-chief whether the plaintiff, upon

[3] See transcript p 7.

departure from Element Six, would be able to be employed elsewhere as a consultant or an electrical engineer at age 60, Mrs Van Zyl asked the question, "*In the open labour market?*" Then thereafter said: "*My lord, that is difficult to say. He may have.*"[4]

It is common cause that the plaintiff received a retrenchment package.

[18] Again whilst testifying in evidence-in-chief, Mrs Van Zyl expressed the view that, in the light of the orthopaedic injuries the plaintiff sustained in the accident (a grade 3 compound *supra* condylar fracture of the right femur and grade 3 compound fractures of the right distal tibia and fibula), it was unlikely that he would have obtained alternative and sedentary employment in the open labour market.[5] I should make the brief observation here that this opinion is clearly in conflict with the view, or any view, that the plaintiff would have worked beyond age 60, up to age 70, as suggested by Herschel.

[19] The above picture became clearer in cross-examination. Mrs Van Zyl conceded that although she consulted with Herschel in August 2015, when she made a follow up, Herschel informed her that he had since left Element Six. She did not consult a person/s more senior to Herschel. She did not ask Herschel whether he was clothed with authority to extend plaintiff's employment post-60 years. Neither did she discuss with Herschel the full implications of being a consultant for the company post-retirement. She gained the impression later that the plaintiff was selected for retrenchment

[4] See transcript p 7.
[5] See transcript p 9.

due to his difficulties to perform as a result of the injuries sustained in the accident.

THE DEFENDANT'S EVIDENCE

[20] The final witness in the trial was Ms Nhlanhla Tshabalala ("*Tshabalala*"), who testified for the defendant. She testified as the HR Business Partner of Element Six. The retirement age at Element Six was 60. The plaintiff, together with Herschel, and other approximately 300 employees, were retrenched by the company for operational reasons at the end of May 2015.

[21] She testified that the company had the practice of keeping on employees after retirement, but this was purely for the purposes of skills transfer to the new employee. This would normally last for six months or twelve months, or depending on the retrenchment process. The decision was in the sole discretion of the General Manager. In her records, there was no employee that replaced the plaintiff after his retrenchment.

[22] Tshabalala was cross-examined. She was first employed by Element Six in February 2005. Herschel, who was retrenched in May 2015, and not August 2015 as he testified, did not have the authority to influence the decision of management. In my view, the evidence of Tshabalala suggests that, when Herschel joined the company in 2009, he found Tshabalala there.

[23] The defendant's Industrial Psychologist, R T Ntsieni, did not testify as he or she was not at court, and could not be traced when required to testify for some inexplicable reason. The court refused to postpone the matter further as there was no reasonable likelihood that the witness would come to court, at any stage.

[24] On the basis of the above evidence, the court was called upon to decide the issue in dispute as set out in exhibit "A". The pertinent issue is essentially whether the plaintiff would probably have continued working for Element Six as a consultant post age 60, on his version, or whether he was retrenched by Element Six, not due to the injuries sustained in the accident, but for operational reasons, as contended by Element Six. In determining the issue, on which the plaintiff bore the *onus*,[6] the probabilities must of necessity be considered. In the end, the Actuarial Calculation of the plaintiff, depending on the finding, are not in dispute as such.

[25] First, the nature of the plaintiff's claim of loss of earnings and earning capacity. In *President Insurance Co Ltd v Matthews*,[7] the court said:

> "*…, he is entitled to be compensated to the extent that his patrimony has been diminished in consequence of such negligence. This also takes into account future loss. His damages therefore include any loss of future earnings or future earning capacity he may have suffered. (See Santam Versekeringsmaatskappy Bpk v Byleveldt 1973 (2) SA 146 (A) at 150A-C.) A precise mathematical calculation of such a loss is seldom possible because of the large number of variable factors and imponderables which come into play. It is recognised, however, that 'the monetary value of loss of earning capacity may be proved in a*

[6] See *Koster Ko-op Landboumaatskappy v SA Spoorweë en Hawens* 1974 (4) SA 420 (W) at 425 and *New Zealand Construction (Pty) Ltd v Carpet Craft* 1976 (1) SA 345 (N).
[7] 1992 (1) SA 1 (A) at 5C-E.

variety of ways, depending on the facts of each case'. (Per Rumpff CJ in Dippenaar v Shield Insurance Co Ltd 1979 (2) SA 904 (A) at 917F.)"

RESOLUTION OF FACTUAL DISPUTES

[26] In as far as resolving factual disputes, and determining probabilities, such as in the present matter, one of the classical cases is *Stellenbosch Farmers' Winery Group Ltd v Martell et Cie,*[8] which, at the risk of prolixity, I must re-visit:

"*To come to a conclusion on disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) the reliability; and (c) the probabilities. As to (a) the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or evens. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of the assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail.*"

[8] 2003 (1) SA 11 (SCA) at 14 to 15.

APPLICATION OF LEGAL PRINCIPLES

[27] In applying the legal principles to the facts of the instant matter, I am more than convinced that the plaintiff has neither discharged the *onus* of proving his assertions, nor on a balance of probabilities, nor made out a case to show that the balance of probabilities favoured his case. This, for a number of reasons apparent from the evidence.

[28] In the first place, the entire basis of the plaintiff's contentions and, rather ambiguous aspirations, were premised on what Herschel told the plaintiff. There was no official confirmation or evidence from Element Six to support the contentions – that the plaintiff would be granted a contract post the age of 60 – on a consultative basis. Regrettably, the aspirations and hopes of plaintiff without any basis, were conveyed to his Industrial Psychologist, Mrs Van Zyl, to support in her reports without confirmatory collateral and independent evidence. The opinions and expert evidence of Mrs Van Zyl, based on the evidence of Herschel, clearly cannot be sustained. In her summary of her original report,[9] Mrs Van Zyl opined that:

> "*Mr Walton* [the plaintiff] *was employed as Projects Manager at Element Six. But for the accident, Mr Walton would probably have continued with his employment as Capital Projects Manager, or similar position, at his employer. He was probably motivated to work until*

[9] See vol 3, plaintiff's index for trial, p 318.

> *retirement. On 10 February 2013, Mr Walton was involved in a motorcycle accident in which he sustained orthopaedic injuries. These injuries have resulted in permanent impairment and have significantly curtailed Mr Walton's working capacity, as set out in the report*." (underlining added)

In addition, in her supplementary report or addendum dated 8 October 2015, Mrs Van Zyl opined that:

> "*With regard to Mr Walton's post-accident employability, the writer concludes that Mr Walton was probably retrenched from his employment at Element Six with effect from 29 May 2015 due to the injuries sustained in the accident in question. The writer is of the opinion that it is unlikely that Mr Walton will secure alternative employment in the open labour market, given his age and work limitations, as well as the competitive labour market. The writer is of the opinion that Mr Walton has probably suffered a total loss of earnings from the date of his retrenchment until the retirement age of 60 years. The writer notes that Mr Walton received a retrenchment package. The writer is of the opinion that Mr Walton probably suffered a loss of potential future earnings in respect of the consulting work that he would have been able to undertake at his employer until the age of 70 years.*"[10]

The opinion immediately begs the question why the employer, Element Six, from a business point of view, and operational reasons, would be inclined to continue employing an employee post-retirement age, who is "*unlikely … to … secure alternative employment in the open labour market, given his age and work limitations, as well as the competitive labour market*". Viewed in whatever way, this is highly improbable in the circumstances. In addition, the expert evidence of Mrs Van Zyl, which is flawed, as pointed out above, cannot be allowed to usurp the function of the court. It is also trite that the court must not blindly accept expert testimony. It must be so, despite the plaintiff's overstated special skills as alleged by Herschel. It must be recalled that the

[10] See vol 3, plaintiff's index for trial, p 582.

submissions were equally in direct conflict with the evidence of Tshabalala who testified for the company. In my view, the opinions of Mrs Van Zyl came through as somewhat contradictory when properly considered. Indeed, in cases of this nature, expert witnesses often contend that claimants have become '*unemployable*', without much ado. In Webster's *New World Dictionary*, the word '*unemployable*' is defined as "*not employable, specific because of severe physical or mental handicaps, outmoded skills, etc*", whilst the word '*unemployed*' is defined as "*not employed; without work, not being used*". In "*the Satchwell report: an analysis of and comment on the findings of the Road Accident Fund Commission*", the learned authors at p 689 state that:

> "*Future loss of earnings or future loss of earning capacity may be described as the loss suffered where a victim is temporarily or permanently precluded from earning what he or she was earning before the accident.*"

In my view, and upon a proper construction of the word '*unemployable*', it was highly unlikely and improbable that Element Six would have continued to employ the plaintiff post-60 years if he was truly unemployable. Based on this finding, the fact that the defendant's Industrial Psychologist did not testify in the end, did not help the plaintiff's cause.

FURTHER PROBLEMS WITH HERSCHEL'S EVIDENCE

[29] There is yet another reason why on the disputed issues, the probabilities do not favour the plaintiff's cause. This is based on what I prefer

to label as Herschel's patently unreliable evidence. It is common cause that at the time of his testimony, he was no longer employed by Element Six. He said that he only left the employment of Element Six in August 2015. There was no documentary proof of this assertion. On the contrary, Tshabalala, the Human Resources Partner of Element Six, testified that he was part of a group of some 300 employees, including the plaintiff, that were earmarked for retrenchment, for operational reasons, with effect from 29 May 2015 already. There was no credible evidence to the contrary in this regard. Tshabalala was explicit in her evidence that the plaintiff was retrenched, and given a retrenchment package, not due to his post-accident physical and mental condition, but for operational reasons only. The plaintiff consented, and indeed, signed the written retrenchment package, as mentioned earlier. He cannot '*have his cake and eat it*', at the same time.

[30] In any event, Herschel was by far, not a credible witness. This for a number of reasons. He was plainly biased in favour of the plaintiff. He exaggerated his evidence in large measure. He was evasive on crucial issues, particularly regarding the ostensible authority to extend the plaintiff's contract beyond 60 years of service. The overwhelming evidence in regard to this aspect, is that the ultimate discretion to extend employees' employment beyond the official and compulsory retirement age was that of the Managing Director of Element Six. In his unduly aggressive manner, Herschel conceded that he could not, and was not authorised to represent Element Six's official view and operational policy view on this aspect. The examples of previous employees, whose contracts were extended by the company, as conceded

partially by Tshabalala, were patchy and dingy, to say the least. In the end, I was sufficiently convinced that the evidence of Herschel, viewed holistically, was highly improbable.

[31] The evidence of the plaintiff, coupled with that of its source, Herschel, was so improbable that it could not prove on a balance of probabilities, what they alleged could be the case. In *Miller v Minister of Pensions*,[11] it was said:

> "*It must carry a reasonable degree of probability but not so much as is required in a criminal case. If the evidence is such that the tribunal can say 'we think it more probable than not', the burden is discharged, but if the probabilities are equal it is not*."

See too, *Ocean Accident and Guarantee Corporation Ltd v Koch*,[12] *Pergrine Holdings.*[13] In the instant case, the plaintiff's evidence fell short of these requirements. The evidence was largely ambitious and speculative, which all misled Mrs Van Zyl. The evidence of Tshabalala cannot be faulted, in spite of its patent unsatisfactory features.

THE CASE LAW RELIED UPON

[32] The plaintiff relied on the usual relevant case law, such as *Southern Insurance Association v Bailey NO* 1984 (1) SA 98 (A), re-enforcing the approach by the courts to the inquiry into damages for loss of earning capacity. On the other hand, the defendant referred to unreported cases such as *Nienaber v Road Accident Fund* (A5012/11) [2011] ZAGPJHC 150 (27/10/2011) and *Roe v Road Accident Fund* (2009) 16157) [2010] ZAGP

[11] 1947 (2) All ER 372 at 374.
[12] 1963 (4) SA 147 (A).
[13] 2001 (3) SA 126.

JHC 19 (1 April 2010). In the latter case, Van Oosten J, found that the plaintiff failed to prove that impairment of his capacity to an income will result in the production of a lesser income in the future, and therefore pecuniary loss. In the *Nienaber* case, a decision of a full court of this division, the Court dealt with an appeal against an award made by the high court, in respect of the appellant's future loss of earning capacity. The appeal succeeded substantially on an aspect which is not material to the present matter. I have had regard to all the other authorities and case law referred to by both parties.

[33] Based on the above I have come to the conclusion that the plaintiff has not proved that he would have continued to work for his employer post-age 60, as he contended. The fact that he sustained injuries in the accident, and that he was subsequently retrenched, appear to me to have been purely incidental occurrences. He would have most probably retired at the age of 60, the normal retirement age at Element Six, and not at age 70. He is presently unemployable on his and Mrs Van Zyl's evidence. The Actuarial Calculation of Mr I J Minnaar, of the Consulting Firm, Clemans, Murfin and Rolland, should be accepted by the court. It was agreed upon by the parties in the amount of R1 814 264,00, as contained in annexure "A", and being the plaintiff's claim for loss of earnings in the event of the above finding. The court was not provided with details of the settlement regarding plaintiff's other heads of damages (general damages and past and future medical expenses). However, the court was informed that these damages were in fact settled by the parties previously. I need to say no more in regard to these damages.

COSTS

[34] The costs should follow the result. The issue in dispute was fully argued pursuant to the hearing of oral evidence from both sides.

ORDER

[35] In the result the following order is made:

35.1 The defendant shall pay to the plaintiff the agreed amount of R1 814 264,00 (one million eight hundred and fourteen thousand two hundred and sixty four rand), being the plaintiff's loss of earnings as a result of the accident on 10 February 2013.

35.2 Interest on the aforesaid amount at the rate of 15% per annum from 14 (fourteen) days of the date of this judgment to date of payment.

35.3 Costs of suit, such costs to include the qualifying expenses and costs of the expert witness, Mrs J van Zyl.

D S S MOSHIDI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

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INSTRUCTED BY	NINGIZA HORNER INC
DATES OF HEARING	15-16 OCTOBER 2015
DATE OF JUDGMENT	26 FEBRUARY 2016