

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)**

CASE NUMBER 29632/2014

DAVID MOTSEOTHATA TLHAKANE

AND

THE ROAD ACCIDENT FUND

24/11/2015
PLAINTIFF

DEFENDANT

JUDGMENT

BEKKER AJ

INTRODUCTION

[1] The Plaintiff in the matter is Mr David Tlhakane, a 45 year old male residing in Mareetsane. The Plaintiff claim damages from the Defendant as the statutory insurer in terms of the Road Accident Fund Act 56 of 1996 ("the Act") arising from injuries sustained in a motor collision. On 21 May 2011 at about 09h00 the Plaintiff was knocked down by a motor vehicle whilst travelling by bicycle on a public road in the Ventersdorp area.

[2] The Plaintiff issued summons on 17 April 2014 and his claim was quantified as follows:

Past medical expenses: R 100 000
Future medical expenses: Section 17(4) Certificate is demanded
Loss of earning capacity: R 600 000
General damages: R 500 000
Total: R 1 200 000 00

ISSUES NOT IN DISPUTE

[3] The Defendant has conceded that the insured driver was 40% to blame for the collision and the merits of the claim have been settled on the basis of a 60:40 apportionment in favour of the Plaintiff.

[4] The parties agreed that the past medical expenses amounted to a sum of R22 008.28 and that the court can grant an order accordingly.

[5] The Defendant undertook to furnish the Plaintiff with an undertaking in terms of Section 17(4) (a) for future hospital and medical expenses (limited to 60%).

[6] The parties agreed not to lead any *viva voce* evidence but to argue the matter on the strength of the expert reports submitted by the Plaintiff. The Defendant did not submit any expert reports to counter that of the Plaintiff. The contents of the reports were not in dispute.

ISSUES IN DISPUTE

[7] The amounts to be awarded by the Court for general damages and loss of earnings were in dispute. Both parties argued on the strength of the reports presented which amounts according to them must be awarded.

REPORTS PRESENTED BY THE PLAINTIFF

[8] The plaintiff submitted the following expert reports as per trial bundle C.

- Dr BE Ramasuvha an orthopaedic surgeon (page 3-12)
- Dr EM Mojapelo-Batka a clinical psychologist (15-34)
- Ms S Sebapu an occupational therapist (page 37-55)
- Ms M Kheswa an industrial psychologist (page 58-73)
- Mr J Sauer an actuary

FACTS RELEVANT TO THE CLAIM FOR GENERAL DAMAGES

REPORT OF DOCTER RAMASUVHA:

[9] After the Plaintiff was hit by a car, he was taken by ambulance to the Venterdorp Hospital where he was resuscitated and transferred to the Potchefstroom Hospital. He sustained a right tri-malleolar ankle fracture during the accident. During the incident he also sustained a 7 cm scar over the forehead, a 3 cm scar below the right nostril, a 12 cm scar over the right lateral malleolus, a 6 x 2 cm scar over the right medial malleolus and a 3 x 2 cm scar over the right mid- malleolar region. He was discharged three days after the accident on 24 May 2011. He was reviewed 2 weeks later at Potchefstroom Hospital and everything was in order. He was again admitted a month later on 26 June 2011 for sepsis on the right ankle wounds. He was treated conservatively for the sepsis. Implants on the right ankle (a fibula plate and screws) were removed on 4 September 2013. He now attends follow-ups at the local clinic. At the time of the accident the Plaintiff did not participate in any sporting activities and did not have any hobbies.

[10] The Plaintiff was assessed by Dr Ramasuvha on 16 September 2015. He found him in general good health. The Plaintiff was presenting with a right antalgic gait (limping) and used a crutch to mobilise. The Plaintiff complained to him about right ankle pain, which is felt in cold weather. He suffered from acute pain in the first few weeks following the accident. This slowly subsided and at the time of the examination the Plaintiff still complained of moderate chronic pain. He also complained in the second instance about headaches which are associated with epistaxis especially in hot weather. He did not complain about anything else.

[11] The radiological examination showed a healed right lateral malleolar fracture and a united right medial and posterior fractures which were treated with screws. It also showed an early post traumatic osteo-arthritis of the right ankle.

[12] It is envisaged that the Plaintiff will need to consult with his General Practitioner, Physiotherapist and Orthopaedic Surgeon to continue treatment for the chronic pain on his right ankle. The plaintiff as mentioned earlier has post traumatic osteo-arthritis and if the pain persists he will need an arthrodesis (ankle fusion) of the right ankle.

REPORT OF DR MOJAPELO-BATKA

[13] The assessment was done on 16 September 2015. Based on the clinical observation and the psychometric testing, the Plaintiff's current psychological functioning was found to be dominated by a mood which is predominantly severe depression and severe anxiety. The Plaintiff suffered various psychological *sequelae* as a result of the car accident. The car accident has resulted in the loss of health and independency and this seemed to significantly contribute to his current emotional state.

[14] As a result of his loss of health and independence he has feelings of hopelessness, frustration and lowered self-esteem. He is in need of psychotherapeutic intervention otherwise his current emotional state is unlikely to improve. Thirty hour- long sessions of psychotherapy is recommended as a minimum.

REPORT OF S SEGWATI, OCCUPATIONAL THERAPIST

[15] The plaintiff complained about pain in the lower back on the right ankle when walking for longer than 30 minutes. The Plaintiff mobilised for about two months with bilateral crutches and a single crutch up to date. During the assessment he complained of the following:

He suffers from severe headaches associated with dizziness, nausea and nosebleeds. He has itchiness and pain over the scarred area of the head.

He has memory problems. He has pain during inclement weather periods in his right ankle. He has pain when walking for longer than 30 minutes or standing for extend periods. He requires a mobility aid when walking. He has pain in his lower back when he wakes up in the morning. He also has pain when walking longer than 30 minutes or when operating his donkey cart. He uses pain medication on a daily basis to manage his pain symptoms.

[16] During assessment it was noticed that his balance is slightly compromised and the Plaintiff complained of pain of the right ankle and the lower back. He walked with a limp using a crutch. Ms Sebapu indicates that after observing the Plaintiff during the evaluation she found that the reported pain to the back and ankle was justified. The back pain might have been due to poor biomechanical postures as a result of the right ankle injury and associated difficulties. After the operation he required assistance for about 5 months with self-management tasks. He is now independent in self-care activities. He will benefit from occupational therapy to assist with the selection of assistive devices that would enhance participation in tasks, as well as advice on the use of correct postures during activity participation, and cognitive therapy and post – operative therapy.

PRINCIPLES TO APPLY WHEN EVALUATING A CLAIM FOR GENERAL DAMAGES

[17] It is a well-known fact that making an award for general damages comprising pain and suffering, disfigurement, permanent disability and loss of amenities of life is particularly difficult. However, certain

governing principles have evolved over the years. It is now trite that when considering general damages, the court has a wide discretion to award what it considers to be fair and adequate compensation to the injured party. See ***Protea Insurance Company V Lamb 1971 (1) SA 530 (A) At 535A-B and Road Accident Fund V Marunga 2003 (5) SA 164 (SCA) At 169 E-F.***

[18] Due to the difficulty in calculating an amount to be awarded for non-patrimonial damage, considerations of fairness and reasonableness always play determining rolls in the assessment of such damages. Whilst fairness and reasonableness mean that the claimant must be sufficiently and properly compensated for the injury he has suffered, it also means that inordinately high awards should not unnecessary the burden the defendant.

In ***Wright v Multilateral Motor Vehicle Accident Fund, Corbett &Honey Vol IV XE3-36, Broome DJP said:***

“I consider that when having regard to previous awards one must recognize that there is a tendency for awards to now be higher than they were in the past. I believe this is to be a natural reflection of the changes in society, the recognition of greater individual freedom and opportunity, rising standards of living, and recognition that awards in the past have been significantly lower than those of most other countries.”

[19] In ***Road Accident Fund v Marunga 2003 (5) SA 164 (SCA)*** the Court said the following:

“[23] This Court has repeatedly stated that in cases in which the question of general damages comprising pain and suffering, disfigurement, permanent disability and loss of amenities of life arises a trial Court in considering all the facts and circumstances of a case has a wide discretion to award what it considers to be fair and adequate compensation to the injured party. This Court will interfere where there is a striking disparity between what the trial Court awarded and what this Court considers ought to have been awarded: See ***Protea Assurance Co Ltd v Lamb 1971 (1) SA 530 (A)*** at 535A - B and the other cases cited there.

[24] At 535B and following of the *Protea* case Potgieter JA considered what regard should be given to awards in previously decided cases. After considering *dicta* in several decisions of this Court the learned Judge of Appeal stated that there was no hard and fast rule of general application requiring a trial court or a Court of appeal to consider past awards. He pointed out that it would be difficult to find a case on all fours with the one being heard but nevertheless concluded that awards in decided cases might be of some use and guidance.

[25] In the *Protea* case, above, this Court in determining the measure of damages considered all relevant factors and circumstances and derived assistance from the 'general pattern of previous awards.’

GUIDANCE FROM PREVIOUS AWARDS

[20] The Plaintiff’s Counsel argued that the facts and circumstances of the current matter closely resemble that of ***Mazilana v Road Accident Fund 2004 (5E3) QOD 24 (AF)*** In the Mazilana- matter an amount of R 175 000 was awarded for general damages. According to the Quantum Yearbook 2015 compiled by Koch on page 46, the current value of that award will be R 336 000.As a result the Plaintiff’s Counsel argued that the Court should award R 336 000 for general damages in this matter.

[21] Counsel for the Defendant argued that the Court should take note of the facts of *Maringa supra*, and requested the Court to grant an award of not more than R 220 000 for general damages.

[22] The facts and relevant circumstances to consider in the current matter in order to make a determination of general damages are captured in [9]-[16] above and need not be repeated. The facts of the Mazilana- matter are briefly the following as per [2]-[4] and [10] of the judgment:

“[2] The injuries suffered by the claimant were well set out by Dr Carl Liebertrau, one of the defendant's expert witnesses, in his report dated 2 December 2003. The claimant suffered a closed segmental fracture of the shaft of the right femur and a fracture of the medial maleolus of the right ankle. There was an associated laceration of the lateral region of the right ankle. He suffered a laceration of the face lateral to the right eye. He suffered a head injury with concussion. He suffered soft tissue injury of his back.

[3] An X-ray examination of the chest and pelvis was normal. An X-ray examination of the cervical spine demonstrated degenerative changes. An X-ray of the right femur and right ankle confirmed the fractures. The claimant was taken to theatre on 6 July 1996. The fracture of the right femur was stabilised with a locking nail. Intra-operatively it was noted that there was a fracture line extending to the lesser trochanter. The internal fixation was not considered stable and the claimant was treated post-operatively in a Thomas splint with skeletal traction by means of a Denham pin through the proximal tibia. The fracture of the medial maleolus was managed by immobilisation in a below-knee plaster of paris cast. The claimant was discharged from hospital on 19 September 1996, mobilising with the help of crutches.

[4] At the time of the arbitration the claimant still walked with a marked limp. His right leg was 4cm shorter than his left leg.

[10] The prognosis that the doctors gave was that, although a surgical intervention may at some time or other be undertaken, due to the interval that had already elapsed, it was unlikely that a full correction would be achieved. The back pain which was undoubtedly caused by the leg length inequality would probably remain. The pain mechanism in his back and the degenerative changes which are exacerbated by his leg length inequality, would not revert to normal. He would always have mechanical backache to some or other degree.”

[23] There is no doubt that the injuries sustained by the Plaintiff in the Mazilana matter are much more severe and multiple than that of the Plaintiff the current matter. The leg length inequality could not be rectified and will thus remain as well as the coupled back ache. In the Mazilana matter the following conclusion was reached about general damages:

“[24] As far as general damages are concerned, the parties agreed that the case of *Road Accident Fund v Marunga* 2003 (5) SA 164 (SCA), was the most similar previous award. Counsel were agreed that R175 000 was the appropriate amount for general damages. The similarities between Marunga's injuries and the claimant's injuries are indeed striking. The differences are that Marunga was a much younger man than the claimant. Marunga spent longer in hospital, but he had a chance of complete recovery. The claimant's multiple injuries exceeded Marunga's other injuries. In the circumstances I am of the view that R175 000 is an appropriate award for general damages.”

[24] In the matter of *Marunga supra* the facts and circumstances were the following as per [6] - [8] of the judgment:

“[6] It is common cause that as a result of the collision the respondent sustained the following injuries:

- (i) a fracture of the left femur;
- (ii) a soft tissue injury in the chest area;
- (iii) bruises on the forehead, left arm and left knee.

[7] It is common cause that the respondent received treatment, attended at hospitals and was subjected to surgical procedures as described in this and the following paragraph. On 9 April 1993, the day after the collision, the respondent was subjected to a surgical procedure in terms of which a plate and screws were inserted in his left leg in order to deal with the fracture of the left femur. He spent five months in hospital recuperating, approximately two of which were spent with his left leg in traction and in plaster.

[8] After his discharge from hospital the respondent was compelled to use crutches as a walking aid for approximately five months. During 1997 he was readmitted to hospital for the surgical removal of the plate and screws. As it turned out the plate had moved and caused a mal-union and angulation of the femur that resulted in a shortening of the respondent's left leg. The respondent spent two weeks in hospital after the plate and all but one of the screws were removed. He attended different hospitals at intervals for a period of approximately four years for treatment of the injuries sustained in the collision. The visits were not all fruitful in that the treatment envisaged did not always materialise.”

[29] Distilled from the undisputed facts referred to earlier in this judgment is the following salient features. The respondent is a young man in his twenties who, over and above the surgical procedures that he has already been subjected to, will have to endure two further procedures. The degree of pain and discomfort attendant upon these surgical procedures and the consequences of the injuries have been set out in some detail in paras [7] - [18]. The respondent's mobility was totally and partially impaired for substantial periods and he will be rendered immobile when the envisaged surgical procedures are performed in future. He spent four years attending at hospitals to receive treatment. This was a major disruption in his life. His enjoyment of life must have been severely curtailed by the travelling to and from the hospitals with the discomfort caused by the condition of his left leg. This was at a time in his life when he ought to have been in the full bloom of youth.

Furthermore at the time of trial a period of approximately eight years had passed since the collision, only four of which did not include the trauma of surgical intervention. The bone and muscle in the respondent's left leg have settled into their deformed position. The respondent after a period of relative calm in his life now faces the prospect of repeated future traumatic surgical intervention. This is an important factor to be taken into account in favour of the respondent. With the envisaged corrective surgery the discomfort of walking with a shortened leg will be alleviated but will never disappear. His disfigurement is permanent. The respondent has suffered a permanent 20% loss of power in his left leg. His mobility has been permanently restricted. He will be unable to lift heavy objects. He is a sports lover who was an active sportsman and who is now unable to play sport. The extensive surgical scar on his left leg is obvious. Insofar as the corrective surgery is concerned, even though the risk of non-union of the femur and infection is small it cannot be discounted altogether.”

An amount of R 175 000 was subsequently awarded for general damages.

[25] The Court also considered the matter of **Alla v Road Accident Fund 2013 (6E8) QOD 1 (ECP)** for guidance although not referred to it by Counsel. In this matter the facts and circumstances relevant to general damages were the following:

“[6] The injuries sustained by the plaintiff in the collision were a fracture of the left ankle resulting in displacement of the distal tibio/fibula joint and soft tissue injury. On the day of the accident the plaintiff was seen by Dr S Mentz and later by Dr Hendrik Juan De Jonge at the Out Patients Department in Greenacres Hospital. She could not be admitted to the hospital on that day because of bed shortage. She was only immobilised by means of a back slab. On being admitted to Hospital the following day an open reduction and internal fixation of the fracture was performed and the medial malleolus was fixed by two 50 mm malleola screws with washers. The plaintiff's ankle was then immobilised by means of an ultra-cast plaster which was removed after six weeks whereon the ankle was immobilised in an air-cast brace and the plaintiff was referred to a physiotherapist.

[7] The plaintiff remained in hospital until 25 November 2006 whereon she was discharged in a wheelchair. She was in a wheelchair for a period of six weeks after which she started walking with the aid of crutches. She resumed her duties on 15 January 2007 whilst still walking with the aid of crutches. The internal fixatives were removed in April 2008.

[10] In her evidence the plaintiff testified that she still experiences pain on her ankle resulting in difficulty in walking long distances, standing for lengthy periods of time, ascending or descending flights of stairs, walking on uneven surfaces, carrying heavy objects and getting in and out of a motor vehicle. She is unable to run, walk fast or play active sports. Prior to the accident she used to play netball, she has not been able to participate in this sport since her injury.

[11] In his medico-legal report, Dr Basil Mackenzie, an orthopaedic surgeon, opines that in the future the unresolved ankle injury will continue to result in considerable pain associated with walking. Surgical options are, according to him, limited and generally unsatisfactory. The plaintiff stands the risk of suffering degenerative arthritis, the only remedy for which is an ankle fusion or a total ankle replacement. According to Dr Mackenzie, the plaintiff should do sedentary jobs and cannot do the work that she did prior to the collision. Prognosis of full restoration of function through surgery is, according to Dr Basil Mackenzie, unlikely to be successful. However, an arthrodesis of the distal tibio/fibula joint could be considered, although the results would be unpredictable and could even make the plaintiff's problems worse.”

In the Alla- matter the Court awarded an amount of R 200 000 for general damages (R226 000 is the current value).

[26] The Court finds that there are various striking similarities between the current matter and the Alla – matter when considering relevant factors in assessing the quantum for general damages. They are the following;

- Both plaintiffs are in their early, middle forties.
- Both suffered a fracture of the ankle.
- Both spent about two to three days in hospital initially.

- On both of them an internal fixation of the fracture was performed and the internal fixatives were removed at a later stage.
- Both of them walked with the aid of crutches for about two to three months after the operation although the plaintiff in the Alla – matter spent six weeks in a wheelchair before using the crutches.
- Both of them still experience pain on their ankles resulting in difficulty in walking long distances, standing for long periods of time.
- Both of them it seems are destined for further surgical interventions. The Plaintiff in the current matter has already been diagnosed with post traumatic osteo-arthritis and the one in the Alla-matter stands the risk of suffering degenerative arthritis. It seems that an ankle fusion or even a replacement might be the end result of the further surgical interventions.

[27] There are of course differences which must also be considered:

- The Plaintiff in the current matter had to be admitted after the initial operation due to sepsis on the ankle wounds.
- The Plaintiff in the current matter is walking with a limp and still makes use of a crutch to mobilise.
- The Plaintiff in the current matter has already been diagnosed with post traumatic osteo-arthritis, whilst the one in the Alla-matter only stands the risk of a similar complication. Further surgery, with the coupled hospitalisation and pain is inevitable for the Plaintiff in the current matter.
- The psychological impact of the accident on the Plaintiff seems to be more severe than the one in the Alla-matter and he is as a result in need of further psychotherapy.
- In addition the Plaintiff in the current matter is also suffering from back pain which might have been due to poor biomechanical postures as a result of the right ankle injury and associated difficulties.
- The Plaintiff in the Alla-matter used to participate in sport but is now unable to do so due to the ankle injury, her enjoyment of life has been curtailed in that manner. The Plaintiff in the current matter did not participate in any sporting activities.
- The pain suffered by the Plaintiff in the current matter is more chronic than the pain suffered by the Plaintiff in the Alla-matter; he is taking pain medication on a daily basis.

[28] The Court finds that the matter of *Alla supra* is much more instructive than those of *Marunga* and *Mazilana supra*. There are to a certain extent similarities regarding the injuries sustained between the current Plaintiff and those in the *Mazilana* and *Marunga* matters, but the rest of the relevant circumstances are substantially different. In the end awards made in previous matters remain only there for guidance.

[29] Having considered all the factors and circumstances relevant to the assessment of damages referred to earlier and considering past awards and taking into account the more modern approach to the award of damages as set out in the passage in the *Wright* judgment referred to in [18], the Court considers an amount of R280 000 an appropriate award of damages.

CLAIM FOR LOSS OF EARNINGS

[30] The Plaintiff is unschooled and is cohabiting with his partner and has four children. At the time of the accident he was employed as a farm worker (removing eggs of chickens) and earned a basic salary of R 1 800 per month. He did not return to work after the accident and has not obtained any other employment since. The occupational therapist found (page 54 of trial bundle C) that regarding his residual functioning he is considered unsuited for any strenuous and or laborious occupations as well as occupations requiring physical exertion. He is best suited for sedentary to light occupations having regard to the injury to his ankle. While his pre-accident occupation was within the aforementioned parameters, the occupational therapist found that this is not the case anymore; as it required extended standing and walking which would accelerate the degenerative changes. She also found that he would struggle to secure suitable gainful employment matching his residual functioning, due to his low level of education and his limited skills basis. Her finding is also that one does not foresee him re-entering the open labour market in any form of gainful employment. These findings were not disputed by the Defendant and the Court is satisfied that it can be accepted as reliable.

[31] The industrial psychologist in his report also concluded that having regard to the injuries of the Plaintiff he will be restricted in terms of choice of employment and employer. He will in any event be challenged performing physical elements of a prospective position. This will exclude him from most jobs in both formal and informal sectors and he would be not an equal competitor in the open labour market. His employment prospects are limited to his labour potential as he is not educated or a skilled worker. He has no other experience than that of a labourer. His chances of securing sedentary employment are slim to naught. The industrial psychologist found after considering all the facts that the Plaintiff is unemployable in the open labour market.(page 72 of Bundle C) These findings were not disputed by the Defendant and the Court is satisfied that it can be accepted as reliable

[32] The report and actuarial certificate of Mr Sauer the actuary (Page 76-79 of Bundle C), was not disputed or challenged by the Defendant. He calculated the past loss of earnings to be R 117 310 after a 5% contingency deduction was made. He based his calculations for future loss of earnings on the fact that the Plaintiff would be unemployable. He calculated the loss of future earnings after a 10% contingency deduction was made, to be R 400 949, the total loss of earnings is thus calculated to be R 518 259. The Court accepts the report and certificate of the actuary.

[33] Although the Defendant did not dispute the actuarial report, it was argued on its behalf that the Court should consider adjusting the amount for future loss of earnings downwards. The Defendant's Counsel argued that the plaintiff is currently working as a hawker selling fire wood and water from a donkey cart. He started doing this from July 2015. He revealed this to the occupational therapist and it is captured in her report (page 42-43 of Bundle C). He started to do so due to his dire financial situation. He has two assistants who assist with the loading and offloading of the fire wood and water. His children are assisting with tying the donkeys to the cart. He can work seven days a week depending on the demand, from an hour to a full day. He charges about R 200 for a bundle of fire wood and makes about R40 to R 120 per day after paying R 50 each to his assistants for wood and R 10 for each for water. He reported that he is experiencing lower back pain when travelling on the donkey cart and the donkeys are galloping fast. Counsel for the Defendant argued that on average he makes R 80 per day and therefore a monthly income of about close to R 1600, not far less therefore from what he

used to earn. The Court was urged as a result to drastically adjust the claim for loss of future earnings. Counsel on behalf of the Plaintiff requested the Court to award as calculated by the actuary.

[34] The Court carefully considered the argument advanced in [33] by Counsel on behalf of the Defendant, but the Court finds that it cannot be supported. The Plaintiff is not in gainful employment but started to sell water and wood in a desperate effort to address his dire financial situation. This is not a structured work, if he for example loses the donkeys or his assistants he will not be able to continue hawking. The income is clearly flexible as it is dependent on demand. It is really an oversimplification to argue that he earns R 80 per day seen in the light of the aforesaid. He only started hawking in July 2015 and it is an open question whether the demand for his services will remain the same. The sustainability of his efforts is also unsure especially seen in the light of his medical condition. It is clear from the report of the orthopaedic surgeon that post traumatic Osteo-arthritis was diagnosed and that he would need at least an arthrodesis (fusion) of the ankle in the near future. The successful outcome of it is unsure and in any event hospitalisation, surgery and pain will make it impossible for him to continue with his hawking for a considerable period of time. Seen in the light of the above, the court is satisfied that the Plaintiff proved on a balance of probabilities that he is entitled to an amount for future loss of earnings as calculated by the actuary.

COURT ORDER

[35] It is ordered that:

1. MERITS

The Defendant is liable to compensate the Plaintiff 60% of his proven or agreed damages as a result of the motor vehicle collision on 21 May 2011

2. QUANTUM

The Defendant is ordered to pay the following:

2.1 GENERAL DAMAGES R 280 000(60%)

(Two hundred and eighty thousand Rand)

2.2. LOSS OF EARNINGS R 518 259(60%)

(Five hundred and eighteen thousand two hundred and fifty nine Rand)

2.3 PAST HOSPITAL/MEDICAL EXPENSES:

TOTAL: R 22 008.28(60%)

(Twenty two thousand and eight rand and twenty eight sent)

3. The above amount (60% thereof) to be paid to the Plaintiff's attorney **MASIKE ATTORNEYS** by direct transfer into their trust account within 14 (fourteen days) details of which are as below:

4. The Defendant shall not be liable for interest if payment is effected timeously as set out above.

5. Should the Defendant fail to effect payment of the above amount , then the amount will bear interest at the rate of 9%(nine present) per annum, calculated from and including the 15 th day after the date of this order to and including the date of the payment thereof.

6. The Defendant must furnish the Plaintiff with an undertaking in terms of Future Hospital and Medical Expenses in terms of Section 17(4)(a), in respect of the costs of future accommodation of the Plaintiff in a hospital or nursing home or treatment or rendering of a service or supplying of goods to him after the costs have been incurred and on proof thereof, resulting from the motor vehicle collision that occurred on 21 May 2011.(limited to 60%)

7. The Defendant to comply with the Occupational Therapist's recommendations and also to provide the Future Hospital and Medical Expenses Undertaking in terms of Section 17(4)(a) within 30(thirty) days from the date of this order.

8. Payment of the Plaintiff's taxed of agreed part to party costs on High Court scale, which costs will include but not limited to:

8.1. The fees of Counsel on the High Court scale for the 15 October 2015, 21 October 2015 and 29 October 2015 which shall include , but not limited to, perusal, preparation, research, consultations, attendance of pre-trial conference and day fee.

8.2 The costs of Attorney on High Court scale, which shall include, but not limited to perusal, consultation on 15 October 2015, 21 October 2015 and 29 October 2015.

8.3 The costs of Correspondent Attorney on High Court scale, which shall include, but not limited to, attendance of pre-trial conferences if any.

8.4 The reasonable taxable costs of obtaining all medico-legal reports from the Plaintiff's experts which were furnished to the Defendant, travelling, accommodation, food and cost associated with attending medico-legal appointments and attendance of the Court.

8.5 The reasonable taxable preparation and reservation fees, if any, of the following experts of who notice have been given, being:

Orthopaedic Surgeon

Clinical Psychologist

Occupational Therapist

Industrial psychologist

An actuary

8.6 The costs of the Serious Assessment Report/RAF form 4

8.7 The cost of attending *inspection in loco* if any

8.8 The costs incurred in the preparation and service of the bundles

8.9 The costs of witnesses if any

9. The aforementioned taxed or agreed party to party costs, once determined, must be paid the Plaintiff's attorney **MASIKE ATTORNEYS** by direct transfer into their trust account within 14(fourteen days) details of which are as below:

ACCOUNT HOLDER: MASIKE ATTORNEYS TRUST ACCOUNT

BANK NAME: NEDBANK

ACCOUNT NUMBER: 1977080537

BRANCH CODE: 197705

10. In the event that costs are not agreed upon, the Parties agree as follows:

10.1 The Plaintiff shall serve the notice of taxation on the Defendant's Attorney on record; and

10.2 The Plaintiff shall allow the Defendant 14(fourteen) court days to make payment on taxed costs.

11. Contingency Fee Agreement is applicable.



A.C Bekker

Date heard: 29 October 2015

Acting judge

Date delivered: 24 November 2015

29 October 2015

Appearances: Adv F Masweneng: Plaintiff

Adv T Mmadi: Defendant