

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: A295/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 5/6/2024

SIGNATURE:

In the matter between

ADV. M TROMP N.O.

Appellant

(In her capacity as a duly appointed
curatrix ad litem on behalf of Bakkes, Pieter Stegman)

and

ROAD ACCIDENT FUND

Respondent

JUDGMENT

MAHOSI J

[1] This appeal concerns an award by Raulinga J in the Court *a quo* to the appellant of R3 100 000.000 for future loss of earnings, and R1 350 000.00 for general damages suffered due to a motor vehicle accident. The appeal is before this Court with leave of the Court *a quo*.

[2] The appellant is Advocate Mart-Marie Tromp N.O., an adult female Advocate acting as the *curatrix ad litem* on behalf of Mr. Pieter Stegman Bakkes ("Mr.

Bakkes"), a sales manager born on 22 February 1973. On 14 January 2017, Mr. Bakkes was involved in a collision along the N6 route connecting Queenstown and Jamestown. The incident involved a white Toyota Quantum motor vehicle bearing the registration D[...] 2[...] X[...] G[...] and Mr Bakkes, who was cycling then. As a result of the accident, Mr. Bakkes sustained injuries.

[3] The appellant's action against the respondent was set down for hearing before the Court *a quo* on 09 February 2022. The question of liability was resolved before the commencement of the proceedings, as the appellant agreed to accept the respondent's offer to compensate him for 90% of his damages.

[4] The appellant also accepted the respondent's offer to furnish him with a statutory undertaking for 90% of future accident-related medical expenses. The parties agreed to postpone the appellant's claim for past hospital medical and related expenses *sine die* and proceed only with the claims for loss of earnings and general damages.

[5] On 09 February 2022, Adv. Grobler appeared for the appellant. The respondent's representative, Adv. P Moonsamie was unavailable. The Court *a quo* stood the matter down to 11 February 2022 and ordered that Adv. Moonsamie be prepared to address it. Adv. Grobler filed heads of argument, but Adv. Moonsamie failed.

[6] On 11 February 2022, the parties presented arguments regarding the future loss of earnings and general damages. For future loss of earnings, the appellant submitted that an award of R4 937 794.00 before the 10% merits apportionment be granted. After applying the merits apportionment and the statutory cap, the actuarially calculated amount was R4 850 873.00. The respondent argued that an award of R4 036 143.76 be granted.

[7] Regarding the amount to be awarded for general damages, the appellant argued that R2 000 000.00, before the 10% merits apportionment, be granted. The respondent argued for an award between R1 250 000.00 and R1 400 000.00, presumably before the 10% merits apportionment.

[8] Having considered the submissions made by counsel and the reports before it, the Court *a quo* handed down an extempore judgment in which it held as follows:

'In this matter the plaintiff was involved in an accident on 14 January 2017 and sustained multiple injuries of his upper body in particular he had brain injury and comprehensive fractures of the upper part of his spine and the lumbar vertebrae and other injuries. I do not have to go there and it will also be brain scar and of course visual trauma related injuries.

As a result apparently he suffers from double vision. It was submitted by counsel for the plaintiff that as a result of this injuries the plaintiff continued to work but he was demoted from being a manager to the so called recon. I think he was managing the other part of the employer's workplace and no longer performing what he was supposed to perform. However, it seems to me that although his salary was reduced, it was not terribly reduced.

I think at the time of his so called demotion he was earning about thirty thousand rand per month but one must also take into consideration the submissions by the defendant that although the plaintiff suffered serious injuries there is improvement in as far as his mobility is concerned and he is healing well. He can actually go on his haunches and he has no abnormal reflexes and that if he is exercising he should actually slowly recover as well.

What is also interesting is the issue raised by the defendant that the plaintiff may not go beyond 55 years of his employment. In other words, he will have to retire at age 63 which is an issue that the plaintiff did not actually mention. But also of interest is that the plaintiff did not receive any surgical treatment.

He has got no operations and he was in hospital for a week and for the person who was seriously injured as alleged by the plaintiff I think with his multiple injuries he ought to have been in hospital even for more than a month. I will take into consideration all these factors. When looking at the facts that after which I will have to exercise my discretion. I think the plaintiff is

now about 49 years old, and I think he is supposed to retire at 63 instead of 65.

Having done so, I looked also at the cases which I was referred to by the plaintiff and also the amounts suggested by the plaintiff as well as amounts suggested by the defendant counsel in her closing remarks and I think I should come to the following conclusion.

I am just looking at my notes. In as far as loss of earnings I come to the amount of three million and one hundred thousand and fifty and will actually conclude this proceedings. Counsel are to prepare a draft along this line. Loss of earnings three million and hundred thousand. Thank you.'

[9] Despite the appellant's request for full reasons when bringing the application for leave to appeal, the Court *a quo* failed to furnish them. In its order, the Court *a quo* awarded a net amount of R3 100 000.00, after the 10% merits apportionment, for loss of future earnings and a net amount of R1 350 000.00 for general damages, after the 10% merits apportionment. The appeal turns on whether the award granted by the Court *a quo* was justifiable.

[10] The judgment in *Road Accident Fund v Marunga*¹ is instructive. It provides that:

"As a general rule a court which delivers a final judgment is obliged to give reasons for its decisions. In an article in the *The South African Law Journal* (vol 115 - 1998 pp 116-128) entitled *Writing a Judgment* the former Chief Justice, MM Corbett, pointed out that this general rule applies to both civil and criminal cases. In civil cases, this is not a statutory rule but one of practice. The learned author referred to *Botes & another v Nedbank Ltd* 1983 (3) S.A. 27 (A) where this Court held that in an opposed matter where the issues have been argued litigants are entitled to be informed of the reasons for the judge's decision. It was pointed out that a reasoned judgment may well discourage an appeal by the loser and that the failure to supply reasons may have the

¹ [2003] 2 All SA 148 (SCA) at para 31.

opposite effect, that is, to encourage an ill-founded appeal. The learned author stated the following at 117:

'In addition, should the matter be taken on appeal, the Court of appeal has a similar interest in knowing why the judge who heard the matter made the order which he did. But there are broader considerations as well. In my view, it is in the interest of the open and proper administration of justice that the courts state publicly the reasons for their decisions. Whether or not members of the general public are interested in a particular case - and quite often they are - a statement of reasons gives some assurance that the Court gave due consideration to the matter and did not act arbitrarily. This is important in the maintenance of public confidence in the administration of justice.'

[11] In the current matter, the respondent's counsel submitted in its heads of arguments that the matter be postponed to enable the Court *a quo* to provide full reasons. The respondent opined that the absence of the reasons disadvantages this Court from adjudicating the matter properly. On the contrary, this is not a case where the Court *a quo* did not provide reasons. It is just that the attempt is inadequate. As such, this Court can determine the issues raised by the parties on the record provided.

Loss of earnings

[12] In considering the damages in respect of future loss of earnings, the Supreme Court of Appeal in *Road Accident Fund Act v Guedes*² restated the applicable principles as follows:

"It is trite that a person is entitled to be compensated to the extent that the person's patrimony has been diminished in consequence of another's negligence. Such damages include loss of future earning capacity (see for

² 2005 (5) SA 583 (SCA) at para 8.

example *President Insurance Co Ltd v Mathews*). The calculation of the quantum of a future amount, such as loss of earning capacity, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature such an enquiry is speculative and a court can therefore only make an estimate of the present value of the loss which is often a very rough estimate (see for example *Southern Insurance Association Ltd v Bailey NO*. The Court necessarily exercises a wide discretion when it assesses the quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right. Courts have adopted the approach that in order to assist in such a calculation, an actuarial computation is a useful basis for establishing the quantum of damages. Even then, the trial court has a wide discretion to award what it believes is just (see for example the *Bailey* case and *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd*). As pointed out by the learned authors Erasmus and Gauntlett with reference to a number of reported cases, the proper approach of an appeal court in appeals against awards of damages has often been set out, and the principles have been stated in different ways, some appearing to favour appellants, others respondents. Some of these principles which are of application in this matter are well summarised, again with reference to reported cases, by the learned authors in these succinct terms:

'(c) Where the amount of damages is a matter of estimation and discretion, the appeal court is generally slow to interfere with the award of the trial court - an appellate tribunal cannot simply substitute its own award for that of the trial court. However, once it has concluded that interference is justified in terms of the principles set out in (d) below, the appeal court is entitled *and obliged* to interfere.

(d) The appeal court will interfere with the award of the trial court:

(i) where there has been an irregularity or misdirection (for example, the Court considered irrelevant facts or ignored relevant ones; the Court was too generous in making a contingency allowance; the decision was based on totally inadequate facts);

(ii) where the appeal court is of the opinion that no sound basis exists for the award made by the trial court;

(iii) where there is a substantial variation or a striking disparity between the award made by the trial court and the award which the appeal court considers ought to have been made. In order to determine whether the award is excessive or inadequate, the appeal court must make its own assessment of the damages. If upon comparison with the award made by the trial court there appears to be a "substantial variation" or a "striking disparity", the appeal court will interfere." [Footnotes omitted]

[13] In the current matter, the appellant contends that the Court *a quo* erred by failing to correctly determine the loss of earnings despite the conspectus of evidence and the available actuarial calculation and by not correctly applying the legal principles relating to the quantification to the proven facts. The respondent submitted that the decision of the Court *a quo* should not be interfered with as it considered all facts placed before it.

[14] The respondent asserts that there is no evidence that Mr Bakkes was unable to work from March 2022 or a possibility that he might be shifted to a lower position as had been done in the past. It further asserts that nothing would justify the conclusion that Mr Bakkes will be unemployable when the evidence placed before the Court is that he was employed for five years post the accident. From the above, it argues that the actuarial calculation that valued nil post-accident earnings from 01 March 2022 is baseless.

[15] The Court *a quo* considered that Mr Bakkes would retire at age 63 and was sceptical about the seriousness of his injuries as he had no surgical treatment and was in the hospital for only a week instead of a whole month. It found that there was an improvement in his mobility, and he was healing well because he could go on his haunches and had no abnormal reflexes. Further, the Court *a quo* found that if the appellant were to exercise, he would slowly recover and gain full mobility.

[16] The evidence shows that Mr Bakkes was 44 years of age at the time of the collision, married with two teenage daughters. He was promoted at work shortly before the collision to the position of sales manager at a motor vehicle retail group and was a successful semi-professional cyclist with a sponsorship, enabling him to ride thousands of kilometres per month and frequently compete in cycle races.

[17] The appellant's attorneys of record obtained reports from the following 12 experts:

17.1 Dr JJ du Plessis (Neurosurgeon);

17.2 Dr M Mazabow (Clinical Neuropsychologist);

17.3 Dr K Theron (Speech Therapist);

17.4 Dr K Truter (Clinical Psychologist);

17.5 Dr C Weitz (Ophthalmologist);

17.6 Dr T Birrell (Orthopaedic Surgeon);

17.7 L Randall (Occupational Therapist);

17.8 B Donaldson (Industrial Psychologist);

17.9 Dr L Nel (Psychiatrist);

17.10 Dr K Carpenter-Kling (Ear, Nose & Throat Surgeon);

17.11 C Rule (Occupational Therapist and Disability Driving Consultant);

17.12 G Whittaker (Actuary).

[18] The above expert reports were presented to the Court on affidavits in terms of Rule 38(2) of the Uniform Rules of Court and admitted as evidence with the appellant's and his wife's affidavits.

[19] Dr Du Plessis reports that the appellant's combined whole person impairment ("WPI") is 53%. The injuries sustained by the appellant included:

19.1 A severe traumatic brain injury, which comprised of a diffused concussive brain injury together with focal damage to both frontal lobes (a C.T. scan performed during the plaintiffs initial admission to the hospital revealed an area of hemorrhagic contusion in the right caudate nucleus and a lacunar infarct in the left posterior parietal area). The MRI scan later confirmed the brain injury;

19.2. A severe compression fracture to the thoracic vertebra (T12) which has resulted in a moderate misalignment of his spinal column and chronic back pain;

19.3. A transverse fracture to his sacrum, which has probably caused a neurological deficit in the plaintiffs right leg;

19.4. A compression fracture of the lumbar vertebra (LS - with 50% loss of vertebral body height) and an injury to the L4/5 and LS/S1 disks;

19.5 Fractures of the left fourth, fifth and sixth ribs;

19.6. A fracture of the fifth metacarpal bone of the plaintiff's right hand (resulting in a malunited fracture of the distal aspect of the fifth radiocarpal with angulation);

19.7 A septal fracture with obstructive nasal airflow;

19.8. A hemopneumothorax on the left side;

19.9. Either a fourth or sixth cranial nerve paralysis resulting in double vision;

19.10. Scarring of 10cm around the distal aspect of the left elbow and a 12cm scar over the left buttock area;

19.11. Numerous bruises and abrasions;

19.12 Laceration on his arm and

19.13. Resultant depression and anxiety.

[20] After the accident, Mr Bakkes was transported by ambulance from the scene of the accident to Life Queenstown Private Hospital, where he was admitted. He woke up in hospital, and his wife avers that he was drowsy and confused when she visited him in hospital. She further states that his right leg was weak for the first few days after the accident.

[21] The appellant's GCS score of 14/15 was recorded at his arrival at the hospital. The CT scan report of his brain showed an area of hemorrhagic contusion in the right caudate nucleus and a lacuna infarct in his brain in the left posterior parietal area. The appellant was placed in the ICU, and his brain injury was treated non-operatively. He was discharged from the hospital on 25 January 2017.

[22] Dr Du Plessis noted that after Mr Bakkes' discharge from the hospital, he had experienced a lot of chest pain. He was drowsy, slept a lot and took approximately a week before becoming orientated regarding the week's days. Mr Bakkes was on sick leave for three months and struggled with diplopia (double vision) post-accident.

[23] Dr Du Plessis reported that Mr Bakkes has cognitive difficulties, chronic back pain, fatigue and a behavioural change attributed to the brain injury. Further, his frontal lobe brain injury is associated with his aggression, his difficulty in multitasking and his inability to function under pressure. Mr Bakkes cannot count backwards from 100 in sevens and can recall only the names of two of four simple items mentioned 5

minutes before. The accident was a watershed event in Mr Bakkes' life as he has an increased risk of epilepsy compared to the average person.

[24] Dr Mazebow found that Mr Bakkes demonstrated several critical impairments, and these areas of deficits include clerical speed and accuracy; sustained attention and concentration; error-vigilance; working memory and double mental tracking; visuo-graphic skills; non-verbal reasoning and abstraction and concept-formation; verbal fluency; arithmetic reasoning; planning; stimulus resistance; rote verbal memory; and visual memory (recall and recognition). He also evidenced rapid fatigability and a tendency to become overwhelmed by the task demands.

[25] Dr Mazenbow noted that Mr Bakkes and his wife reported that Mr Bakkes' cognitive, behavioural and interpersonal functioning deteriorated since the accident. His memory and his concentration have deteriorated, and there are changes in his speech that resulted in word-finding difficulty, occasional slurring, reduction in his information-processing speed and reaction times. Mr Bakkes has become structure and routine dependent, fatigable, short-tempered, irritable; unable to socialise and has become withdrawn because of his low self-confidence and his tendency to become overwhelmed agitated by social stimulation. His fatigability and inability to cycle in his former club also compromised his social functioning.

[26] According to Dr Mazenbow, the above cognitive, behavioural and social interpersonal impairments are attributed predominantly to the severe traumatic brain injury sustained in the accident. These neuropsychological disturbances would be further exacerbated by Mr Bakkes' clinical psychological disturbances, chronic pain symptoms (including back pain, chest pain and headaches), residual double vision, photophobia (light sensitivity) and dizzy spells that occur in the course of his daily functioning.

[27] Dr Mazenbow reported that significant and persisting neuropsychological deficits would be expected following the nature and severity of Mr Bakkes' traumatic brain injuries. He found it unlikely that any further improvements would be significant and considered his current neuropsychological status permanent.

[28] Dr K Truter reported that Mr Bakkes now suffers from an organic brain disorder with symptoms of frontal lobe cerebral pathology, anxiety and depression. According to Dr Weitz, Mr Bakkes' double vision is trauma-related and he suffers from either a fourth or sixth cranial nerve paralysis as a result of the accident.

[29] Dr Birrel stated that Mr Bakkes has anger outbursts and he is short-tempered, has slurred speech when he is anxious, experiences headaches and has difficulty concentrating. These, according to Dr Birrel, resulted in three written warnings against Mr Bakkes due to his department's poor performance.

[30] Dr T Birrel reported that Mr Bakkes often experiences pins and needles and numbness in his arms and hands. Further, Mr Bakkes presents with a scar of 10cm around the distal aspect of the left elbow and has a 12cm scar over the left buttock area, which are accident related. A full flexion of his knees causes discomfort on both sides, and he has been unable to go on his haunches properly since the accident. The right hand shows a malunited fracture of the distal aspect of the fifth radiocarpal with angulation.

[31] Dr K Carpenter-King found that post-accident, Mr Bakkes chokes at times when swallowing. Further, when lying and sleeping, he chokes and feels as if he cannot breathe. When walking and suddenly turning, he becomes disorientated and feels like he is falling. Mr Bakkes tends to wander into objects, has a decreased taste and struggles to hear with background noise. He can only sleep on his right side after the accident. If he sleeps on the left side, he cannot breathe. His nose has become more obstructed after the accident, and he has nose bleeds at times. Mr Bakkes has a settle fracture with obstructive nasal airflow.

[32] Mr Bakkes' score of 35 on the Depression Inventory is in the severe range of depression. His depressive symptoms currently include suicidal thoughts, together with chronic sadness, discouragement about the future and anhedonia (reduced capacity to experience pleasure), a sense of failure, guilt and expectation of punishment, diminished self-confidence, self-criticism, a desire to cry, a feeling of restlessness, loss of social interest, difficulty making a decision, reduced sense of self-worth, lowered energy, increased need for sleep, irritability, decreased appetite,

fatigue, distractibility and reduced sexual interest. These symptoms persist despite the current use of anti-depressant treatment.

[33] Mr Bakkes and his wife attribute this chronic depression to his reduced physical and cognitive abilities, difficulties experienced in the workplace, poor financial situation, loss of his ability to cycle with his team and his low self-confidence and self-esteem. Mr Bakkes reports fear related to cycling, with generalised anxiety in the form of chronic worrying about his financial situation and fear occurring when he finds himself out of his routine (having become structured-dependent since the accident), and he also has developed social phobia, relating to his low self-confidence. Mr Mazenbow found that Mr Bakkes' prognosis for psychological treatment was guarded to poor, and the plaintiff will likely remain psychologically vulnerable in the long term.

[34] Dr Truter reports that according to collateral evidence, Mr Bakkes presents with personality and behavioural changes. Before the accident, Mr Bakkes was perfectionistic. However, he now finds it difficult to adjust to his changes, tends to display social anxiety as well as situationally inspired anxiety, finds it difficult to multitask, shows a speech deficit and cannot function under stress. The consequences of the accident impacted various spheres of his life.

[35] Dr K Theron found that Mr Bakkes displays mildly affected speech intelligibility due to his rapid speech rate, which has resulted in an indistinct articulation. Mr Bakkes reported difficulty with word-finding and verbal expression, concentration, multitasking, problem-solving, short-term memory, following a group conversation, re-reading information to facilitate recall and understanding, and fatiguing mentally and physically quicker than before the accident. His cognitive communication difficulties displayed are in keeping with the documented *sequelae* of a moderate to severe brain injury and with the involvement of the frontal lobes of the brain.

[36] Dr K Theron reported that Mr Bakkes' cognitive communication difficulties will negatively influence communication in both vocational and social settings. Such challenges could make communication less effective and influence how his communication partners perceive him. This, in turn, could negatively impact the

establishment of new interpersonal relationships and the maintenance of current relationships and can be regarded as a significant loss in quality of life.

[37] The uncontested and undisputed evidence of medico-legal experts reveals that Mr Bakkes sustained severely debilitating orthopaedic injuries, which, in conjunction with a severe brain injury, renders him entirely unfit for employment. The updated medico-legal reports confirm that, even though the appellant remained employed from the date of the collision to the hearing, his employment situation deteriorated to the point where he was at risk of being terminated as soon as his claim against the respondent was finalised. In other words, Mr Bakkes is unfit for employment and has only been able to sustain employment due to his employer's sympathetic and accommodating demeanour.

[38] In light of the above evidence, it is apparent that the Court *a quo* failed to assess all the evidence placed before it properly. In so doing, it misdirected itself on the facts, thereby committing an irregularity. Had it not done so, it would not have been suspicious of the seriousness of the appellant's injuries. The fact that Mr Bakkes was admitted to the hospital for a week as opposed to a month and had not undergone any surgical procedures cannot be a measure of the severity of his injuries. The evidence is that his injuries rendered him unfit for employment. In the absence of the respondent's expert evidence to contradict the admitted evidence, the Court *a quo* had no basis to reject or doubt the appellant's evidence.

[39] The Court *a quo* committed an irregularity by awarding an arbitrary amount concerning the loss of earnings. Had it not done so, it would have addressed its concerns by applying contingencies to the calculations done by the actuary. In the circumstances, this Court is bound to intervene with its award. Having regard to all the relevant factors, this Court considers the contingencies applied by the actuary as appropriate.

[40] Based on various assumptions, the actuary calculated that the appellant's value of income uninjured would have been R2 116 380.00, for income injured would be R1 432 226, and the future loss of earnings would be R8 232 878. He suggested deducting five per cent for past loss, fifteen per cent for future income (uninjured)

and no contingency for future income (injured) as the appellant would be rendered unemployable.

[41] After applying the contingencies mentioned above, the past loss of earnings amounted to R578 334.00, and the future loss of earnings amounted to R6 997 946.00, making the total loss of earnings R7 576 280.00. As the CAP introduced by the Road Accident Fund Amendment Act is applicable, loss of earnings is limited as follows:

Past loss of earnings: R 578 334.00

Future loss of earnings: R4 283 830.00

Total loss of earnings: R4 862 164.00

General Damages

[42] It is trite that while the courts possess broad discretion in determining general damages and despite this process being inherently imprecise and not based on established formulas, the *Court a quo* must, at a minimum, articulate the factors and circumstances it deems significant in assessing damages. It should also offer a reasoned basis for its conclusions.³

[43] In the current matter, the *Court a quo* mentioned that it looked at the cases to which it was referred and the amounts suggested by both parties and exercised its discretion to award a net amount of R1 350 000.00 for general damages after the 10% merits apportionment. However, it did not state whether it found any cases the appellant relied on applicable and which factors weighed most heavily with it in determining the quantum for general damages. As such, the appellant's submissions that the *Court a quo* had no regard for the conspectus of evidence and failed to correctly apply the legal principles relating to the quantification appear well founded.

³ Road Accident Fund v Marunga [2003] 2 All SA 148, at para 33.

[44] The appellant's counsel referred the Court *a quo* to awards made in various matters in which severe brain and orthopedic injuries were sustained and argued for an award of R2,000,000.00 (before the 10% merits apportionment). In the unreported judgment in *M Anthony v The Road Accident Fund*⁴, a twenty two year old female, who sustained severe head injury, a bilateral medial orbital fracture, inferior blowout fracture, multiple facial lacerations and open wounds, bruising to the upper arm, broken and lost teeth as well as severe scarring and disfigurement was, awarded an amount of R1 600 000.00 in 2017. The current value amounts to approximately R2 270 585.17.

[45] In *Mafalo v Road Accident Fund*⁵, a thirteen-year-old student who suffered severe head and brain injuries, which led to poor concentration, mood and personality changes and inability to participate in all the sporting activities that he had participated in before the accident, was awarded R1 200 000.00 in March 2014. The current value amounts to approximately R1 979 437.79.

[46] In another unreported matter of *Mofulatse v Road Accident Fund*⁶ the plaintiff, who suffered a brain injury with various fractures to his legs and the left wrist, which resulted in moderately severe neuropsychological sequelae and likely knee replacement surgery, was awarded R1 200 000.00 in June 2014. The current value amounts to about R2 055 700.00.

[47] In *Vermaak N.O. obo T Nkwana v Road Accident Fund*⁷ a twenty-seven, year old man who suffered a severe traumatic brain injury with significant and profound neurocognitive, neuropsychiatric and neuropsychological *sequelae*, blunt chest trauma, a sprain of the lower back, psychological shock, and trauma with resultant reactive asthma and reduced lung capacity with persistent chronic depression and anxiety with a poor prognosis to treatment, and an injury to his left hand resulting in

⁴ [2017] ZAGPPHC 161.

⁵ Unreported judgment of the High Court of South Africa, Gauteng Division, Pretoria, Case No 17806/2010.

⁶ Unreported judgment of the High Court of South Africa, Gauteng Division, Pretoria, Case No 77/2010.

⁷ Unreported judgment of the High Court of South Africa, Gauteng Division, Pretoria, Case No 14728/2009.

an inability to use it to carry heavy loads was awarded R1 800 000.00 on 03 December 2018. The current value amounts to approximately R2 448 872.99.

[48] Considering all the factors and circumstances relevant to the assessment of damages referred to earlier in this judgment and considering past awards, the amount of R1 800 000.00, as argued by the appellant, is an appropriate award for damages. To the extent that this amount differs so radically from the amount awarded by the Court *a quo* and the latter failed to motivate its award, it follows that this Court is entitled to upset the award of the Court *a quo*.

[49] In light of the above, the appeal must succeed, and the costs must follow the cause.

[50] Accordingly, the following order is made:

1. The appeal is upheld with costs.
2. Paragraph 1.3 of the order of the Court *a quo* is replaced with the following:

'1.3.2 Loss of earnings	R4 862 164.00
1.3.3 General Damages	R1 800 000.00
Total	R6 662 164.00'

D Mahosi
Acting Judge of the High Court
Gauteng Division, Pretoria

I agree

A. Basson
Judge of the High Court

Gauteng Division, Pretoria

I agree

N. Davis

Judge of the High Court
Gauteng Division, Pretoria

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The date for hand-down is deemed to be_ May 2024.

Appearances

For the Appellant:

Advocate J.F. Grobler

Instructed by:

Adams and Adams Attorneys

For the Respondent:

Advocate M.H. Mokale

Instructed by:

State Attorney

Date of hearing:

20 March 2024