IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: D4007/2017

In the matter between:

KAYALETHU MANQANA **Plaintiff**

and

ROAD ACCIDENT FUND **Defendant**

ORDER

The following order is granted:

1. Judgment is granted against the defendant in respect of general damages in the amount of R 425 000.00.

2. The defendant is directed to furnish to the plaintiff an undertaking envisaged in section 17(4)(a) of the Road Accident Fund Act 1996 for 85% of the costs of all future accommodation of the plaintiff in a hospital or nursing home and all

medical treatment or rendering of service or supplying of goods to him arising out of the injuries he sustained in a motor vehicle collision that is the subject matter of these proceedings and to compensate him therefore after such expenses have been incurred.

3. The payment of the amount in paragraph 1 is to be affected within 180 calendar days from 2 December 2024.

4. The defendant is directed to pay interest on the amount referred to in paragraph 1 above at a rate of 11,5% per annum calculated from the 181st calendar day from 2 December 2024 to date of payment.

5. The defendant is directed to make payment of the plaintiff's taxed or agreed party and party scale cost to date, not already covered by a previous cost order, at Scale B, such costs to include:

   (i) the reasonable and necessary costs of counsel, including counsel's reasonable costs for his preparation for trial, such costs to include preparation of written submissions, as well as reasonable costs of counsel and the attorney for attending on any necessary consultations with the undermentioned expert witnesses and the plaintiff;

   (ii) the fees and expenses reasonably incurred for the undermentioned experts for *inter alia*, the experts reasonable qualifying fees, their reasonable reservation fees, and the reasonable fees of attending upon any necessary consultations with the plaintiff's counsel and attorney to testify at trial (with the quantum of their fees to be determined by the Taxing Master) namely:

      (aa) Dr L Rajah – orthopaedic surgeon

      (bb) Dr M Du Trevou – neurosurgeon

      (cc) Dr R M Hardy – neuropsychologist

   (iii) the plaintiff is directed in the event of the aforementioned costs not being agreed to:

      (aa) serve the notice of taxation on the defendant's attorneys of record;

(bb) to allow the defendant 180 calendar days to make payment of the taxed costs.

(iv) the defendant is directed to make payment in terms of the costs directly to the trust account of the plaintiff's attorneys whose details are as follows:

Name: Askew Martin & Adrain Incorporated Trust Account
Bank: Nedbank
Branch: A[…]
Branch code: 1]…]
Account No.: 1[….]
Reference: [….]

6. It is recorded the defendant's link number is 4[…].

JUDGMENT

Tucker AJ

[1] The plaintiff seeks judgment for the balance of its claim against the defendant arising out of the injuries sustained by the plaintiff on 6 October 2016 at Umlazi when he, as a pedestrian, was driven into by one Mr Mdlalose.

[2] With all other aspects of the claim having already been resolved between the parties, what remained for determination at the hearing was the quantification of general damages and the issue of future medical expenses.

[3] As became apparent in argument, the determination of both of these heads of damages rested predominantly on a singular question of law – whether all injuries sustained in an incident are relevant for the determination of general damages, or

limited portions of those injuries where multiple RAF4 serious injury assessment forms have been submitted and part of the injuries determined as serious.

Background

[4] The procedural background relevant for the matter can be summated as follows.

[5] The defendant's liability for the plaintiff's injuries arising out of the incident were settled between the parties on the basis that the defendant would be liable for 85% of the plaintiff's proven damages.

[6] Moreover, and also as a result of settlement, an order was taken by consent on 3 June 2024 in respect of loss of earnings, together with ancillary relief thereto. The remaining portions of the claim of general damages and future medical expenses was adjourned to 25 November 2024 for hearing.

[7] It was furthermore agreed that the issue of general damages would be argued on the papers as they stand, both sides having obtained comprehensive medico legal reports and there being joint minutes available between the parties as neuropsychologists, occupational therapists and industrial psychologists.

[8] The plaintiff had also filed affidavits by its experts confirming the contents of their respective reports.

[9] There was nothing in contention of much moment between the experts where joint minutes were obtained. In summary:

(a) The neuropsychologists, Dr Hardy and Dr Gumbi agreed that the neuropsychological assessments demonstrated a neurocognitive deficit acquired as a result of a head injury. They are further of the view that given the plaintiff's acquired physical cognitive and emotional difficulties, his prognosis

for educational and vocational potential is poor. Recommendations were further made for psycho-educational and family counselling, amongst other future medical expenditure.

(b) The occupational therapists, Ms Kisten and Ms Govender, agreed that while the outcomes of vocational capabilities formed a matter of dispute both recognised the knee injuries sustained by the plaintiff and recommended referral to a physiotherapist and occupational therapist for further treatment.

[10] The plaintiff furthermore had obtained reports from Dr Rajah, a specialist orthopaedic surgeon, and Dr Du Trevou, a specialist neurosurgeon.

[11] In Dr Rajah's report, which was not countered by any expert by the Defendant, Dr Rajah noted evidence of left knee cruciate instability, assessed an anterior cruciate laxity of grade 2. This had led to decreased thigh circumference on the left leg, the tendency to hyperflex the left knee.

[12] Dr Rajah was of the view there was a possibility that a reconstruction may later be required on the left knee, together with treatment on the right knee for the soft tissue injuries sustained.

[13] Dr Rajah concluded his report and completed RAF4 serious injury assessment by stating that the orthopaedic injuries sustained by the plaintiff constituted a 6% whole person impairment.

[14] Dr Du Trevou, specialist neurosurgeon, also assessed the plaintiff. Dr Du Trevou's view was that the injuries sustained constituted a mild brain injury, in part deferring to the results of the assessment of clinical psychologist, Dr Hardy.

[15] Dr Rajah and Dr Du Trevou both completed separate RAF4 forms, a practice which is neither envisaged nor precluded under the Road Accident Fund Act 56 of 1996, but a practice which has become common place nonetheless.

[16] In Dr Rajah's RAF4 assessment, he opined that the orthopaedic injuries constituted a 6% whole person impairment, but also stated that the injuries constituted a "serious long-term impairment or loss of body function" under the narrative test.

[17] Dr Du Trevou in his separately completed RAF4 assessment stated that the injuries sustained by the plaintiff constituted a 27% whole person impairment, comprised of the weighted average of the 24% diagnosed by Dr Hardy as a Class III impairment of MSCHIF, a Class 1 disfigurement at 3%, and ongoing headaches at 1%.

[18] Two further important aspects from this form are:

(a) Dr Du Trevou was of the view that under the narrative test the injuries also constituted a severe long term mental or severe long term behavioural disturbance or disorder.

(b) The annotation was specifically made at page 4 of the report:
'To this must be added any orthopaedic impairment.'

[19] These two RAF4 forms and their treatment is what has caused the dispute between the parties that serves before the Court. Both RAF4 assessments were submitted to the defendant, and both were rejected. Both were subsequently taken on appeal by the plaintiff to the Health Professions Council of South Africa.

[20] Curiously, the Health Professions Council refused the appeal in respect of Dr Du Trevou's RAF4 serious injury assessment, but upheld the appeal in respect of Dr Rajah's RAF4 serious injury assessment stating that the Council was in agreement that the orthopaedic injuries sustained constituted a serious long terms impairment and loss of body function under the narrative test.

[21] It is these appeal results that has led to the two arguments that served before the Court:

(a) The plaintiff argues that, considering the injuries sustained by the plaintiff in the collision have been assessed as having been serious by the acceptance of the RAF4 form detailing the orthopaedic injuries constituting a serious long-term impairment under the narrative test, the plaintiff is entitled to general damages for all injuries sustained in the incident.
(b) The defendant contends that, considering the express rejection of Dr Du Trevou's RAF4 serious injury assessment and the limitation by the Health Professions Council of the qualifying injuries to the orthopaedic injuries under the narrative test, this Court is restricted in determining what general damages the plaintiff is entitled to and that only the sequelae arising out of the orthopaedic injuries must be considered to the exclusion of those arising from the head injury and disfigurement.

[22] At the outset of the hearing, it was pointed out that the particulars of claim itself does not deal with the orthopaedic injuries, and instead is limited to the head injury, a fractured tooth, and the scarring. Upon this enquiry counsel for the plaintiff made an application for an amendment to the particulars of claim.

[23] The sought amendment to the particulars of claim was objected to. The basis of the objection was two-fold:

(a) The claim for the orthopaedic injuries has prescribed;
(b) The defendant is otherwise prejudiced (the nature of such prejudiced being otherwise undefined).

[24] In determining whether an amendment should be granted or not the principles in *Affordable Medicines Trust and Others v Minister of Health and Another*[1] are worth particular mention where the Court stated:

[1] 2006 (3) SA 247 (CC), at paragraph 9

‘The principles governing the granting or refusal of an amendment have been set out in a number of cases. There is a useful collection of these cases and the governing principles in *Commercial Union Assurance Co Ltd v Waymark NO*. The practical rule that emerges from these cases is that amendments will always be allowed unless the amendment is *mala fide* (made in bad faith) or unless the amendment will cause an injustice to the other side which cannot be cured by an appropriate order for costs, or “unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleading which it is sought to amend was filed.’

[25] The first objection raised by the defendant – that of prescription – is improperly raised as the addition of a further injury from which damages is claimed does not constitute a new “debt” for the purposes of the Prescription Act. It is an amplification of the injuries sustained in the same incident for which the defendant is statutorily liable, and an amendment to the extent of the injuries has no impact on this underlying claim for the purposes of the Prescription Act. The “debt” owed by the defendant has remained at all times compensation for the injuries sustained on 6 October 2016 at Umlazi when he, as a pedestrian, was driven into by one Mr Mdlalose.

[26] As for the second objection, the prejudice that was apparently sustained was not specified.

[27] It must be mentioned at this point that both parties had signed joint minutes and agreed on the nature of the injuries sustained, which included the injuries to the knees that were sought to be introduced through the amendment.

[28] Further, the defendant’s argument that the general damages should be limited to the orthopaedic injuries (which injuries had not in fact been pleaded in the particulars of claim), demonstrates that this is an oversight to which neither party could claim any prejudice arising therefrom as both parties have been focused on the expert reports without even noticing the deficiencies in the particulars of claim.

[29] Furthermore, and considering this is an aspect the orthopaedic injuries were common cause between the parties and fully canvassed through their experts, the Court had a discretion to amend the pleadings in the absence of prejudice, and no prejudice was established.[2]

[30] I consequently permitted the amendment to the particulars of claim to add the orthopaedic injuries to the knees.

[31] It is against this background the principal argument must be returned to – the implication of multiple RAF4 forms being submitted, and whether an acceptance of a particular type of injury under the narrative test limits general damages to the sequelae arising from that part of the injuries sustained.

[32] To determine this question, it is necessary to repeat the legislative context.

The Legal Framework

[33] Since the amendment to the Road Accident Fund Act in 2005, the defendant's liability for general damages is limited to instances where the injuries sustained are serious. This is embodied in Section 17(1) which states:

'The Fund or an agent shall-

(a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

(b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established,

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by

[2] *Shill v Milner 1937 AD 101 at 105*

any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: **Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A)** and shall be paid by way of a lump sum.' (Own emphasis)

[34] Section 17(1A) in turn provides:

'(a) Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.

(b) The assessment shall be carried out by a medical practitioner registered as such under the Health Professions Act, 1974.'

[35] The Act itself does not provide further definition as to the manner of the assessment, but section 26 empowers the Minister of Transport to make regulations relating to the manner method of assessment and ancillary issues, an opportunity the Minister has seized through the promulgation various regulations, particularly regulation 3.

[36] The full regulations shall not be quoted in this judgment. They are readily available. A summary of the important considerations for the purpose of this judgment that can be readily concluded from a reading of the regulations are as follows:

a. Whenever reference is made to the serious injury assessment being conducted by a medical practitioner, the reference to a medical practitioner and assessment is always in the singular;
b. References to "the injury" are also in the singular;
c. The American Medical Association's guidelines on assessment are incorporated as a general basis for assessment.

Application to the Facts

[37] Against this legislative background, the circumstances of the claim and convention must be considered.

[38] As stated at the outset, it has become common for plaintiffs to submit more than one RAF4 form in the circumstances of the claim. This can arise where some experts do not wish to sign RAF4 serious injury assessments incorporating injuries beyond their expertise (though this does not appear to be a circumstance where required deference must be given), or also in other circumstances where it could well be established (and often is) that the injuries sustained by the plaintiff are broader than was initially anticipated. This latter scenario can often arise after an expert determines during an assessment the possibility of a further injury not within that expert's field, and a recommendation is made for a referral to a suitable expert.

[39] The clear purpose from the statutory framework is to determine whether the injuries sustained by a plaintiff in a collision constitute a whole person impairment of at least 30%, alternatively under the narrative test the injuries nonetheless are so serious that general damages is claimable against the defendant. This is envisaged to be done by the provision of a singular RAF4 serious injury assessment.

[40] The defendant's argument that the injuries can be separated by virtue of submission of different RAF4 forms (though arising from the same incident) is not envisaged by the Act, though neither is the plaintiff's submission of multiple RAF4 forms from the same incident.

[41] With this deviation from a strict reading of the Act, it should be borne in mind that the purpose of the Act is to compensate those who have suffered loss or damage wrongfully caused by the driving of motor vehicles.[3]

[42] The purpose of the restriction emphasised above of section 17(1) of the Act is to limit liability of the defendant to injuries sustained in a culpable vehicle incident

[3] See Section 3 of the Road Accident Fund Act

resulting in a whole person impairment of 30% or more, or an otherwise serious injury under the narrative test.

[43] The difficulty with the defendant's argument is that it seeks to impose a restriction on the damages claimable based on the arbitrary practice of separating out the RAF4 forms. This is not an interpretation that it supported from any of the express provisions of the Act or the Regulations.

[44] While there is some empathy for the complaint raised of additional administrative difficulties that may be experienced by the defendant in having to deal with multiple RAF4 submissions relating to the same incident, this cannot be regarded as a basis to sanction the separation of injuries sustained in the same incident into categories.

[45] The separation of injuries sustained into separate RAF4 form submissions by a plaintiff is incorrect. That said, the acceptance of the RAF4 submissions resulting out of the same incident and in respect of the same plaintiff with a result of suggesting some injuries should be considered and others ignored for the purpose of general damages is not envisaged by the Act, and further arbitrary and inappropriate.

[46] The purpose of the Act is to insulate a member of the general public from claims that may cripple them indefinitely and to compensate those impacted by wrongful conduct of road users. To give credence to the argument raised by the defendant, absent any statutory support for the proposition, does violence to this intention.

[47] It also appears to ignore that it is a whole person impairment that is being assessed, in assessing the injuries arising out of a particular instance. To allow the separation of injuries into different categories could effectively empower the defendant to selectively choose certain injuries and assess them individually as against the 30% whole person impairment threshold in order to try justifying a rejection of the RAF4 form. This cannot have been the intention of the legislature in the assessment, and it

is against the very principles that are encapsulated in the AMA Guidelines which have been incorporated through the Act.

[48] I am therefore unable to agree with the argument raised by the defendant on this restriction. The Act makes it clear that the assessment of an injury sustained in a particular instance is serious or not is not a matter of degree or individual qualification but rather a Boolean – once the injuries have been established as serious, an entitlement to general damages then after exists. The full scope of the injuries sustained in the incident are therefore claimable and will then form the quantification of general damages, and any restriction on quantification based on what the Road Accident Fund might have accepted or rejected or the Health Professions Council would have accepted or rejected, would be an irrelevance as neither of these bodies are permitted by the legislation to exclude parts of the quantification of damages, and such decision is limited to assessing the extent of the injuries as serious or not.

[49] As a result of the above, the Court must take into account all of the injuries of the plaintiff in assessing general damages.

[50] Having found this, the quantification of the full body of injuries sustained by the plaintiff comes into contention.

[51] Mr Murray for the plaintiff, in his heads of argument, raised two decisions, one of which was persisted with in argument being the decision of *Vermaak v Road Accident Fund.*[4]

[52] In *Vermaak*, a 60-year-old male sustained a mild head injury, a fracture of the right tibial plateau with onset of compartment syndrome and a soft tissue injury to the left shoulder. He also continued to experience constant knee pain and shoulder pain and had to monitor severe laxity of the right posterior cruciate ligament. The Court in

[4] [2017] ZAGPJHC

2017 awarded an amount of R 350 000.00, which has an adjusted 2024 value of R492 100.00.

[53] While a useful comparison, the orthopaedic injuries in this matter were more severe, but also there was no consideration as to scarring.

[54] As further comparatives, the following cases are instructive.

[55] In *Vukeya v Road Accident Fund*[5] the plaintiff there sustained a mild moderate frontal brain injury together with orthopaedic injuries including whiplash, a lower back injury, a fracture to the metacarpal bone in the left hand and a soft tissue injury to the leg. There are also neurocognitive consequences, and the plaintiff continues to suffer from chronic headaches and depression. An amount of R 568 000.00 was awarded in 2014, with the current value of R941 744.00.

[56] In the decision of *Tshongolo v Road Accident Fund*[6] the plaintiff sustained a mild brain injury as well as abrasions to the face and a fracture of the right clavicle. The plaintiff had continued to experience headaches on a near daily basis and had shoulder pains induced by lifting heavy objects, together with back pain resulting from a soft tissue injury. The Court awarded R 500 000.00 in 2021, for an adjusted value of R594 000.00.

[57] Taking into account these authorities, I am in agreement with submission by Mr Murray that an appropriate quantum for general damages would be an amount of R500 000.00, such amount reduced to R 425 000.00 taking into account the 85/15 apportionment.

[58] Ms Ramothar's submissions relating to the quantification were hinged on the Court finding that it was limited to the orthopaedic injuries that it did not consider the

[5] 2014 (ZB4) QOD1 (KZP).
[6] Tshongolo v RAF (19958/14) [2021] ZAGPJHC 29

head injury sequelae. Consequently, these amounts of the authorities mentioned by Ms Ramothar would not constitute adequate compensation for the whole of the injuries sustained.

[59] This brings us to the final aspect of the claim – future medical expenses.

[60] The occupational therapist and the neuropsychologist all recommend and envisage further medical treatment going forward. Ms Ramothar for the defendant stated duly not having instructions to tender the undertaking, and that this difficulty in tendering the undertaking resulted from the same fundamental question above – whether the plaintiff's entitlement would be for all injuries or orthopaedic injuries only owing to the HPSCA's decision.

[61] The difficulty I have with this argument is that future medical expenses is not contingent on a finding of general damages. This is not a condition under section 17(4) of the Act which provides:

'Where a claim for compensation under subsection (1)-

(a) includes a claim for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her, the Fund or an agent shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the Fund or the agent to furnish such undertaking, to compensate-

(i) the third party in respect of the said costs after the costs have been incurred and on proof thereof; or

(ii) the provider of such service or treatment directly, notwithstanding section 19 (c) or (d), in accordance with the tariff contemplated in subsection (4B);

(b) includes a claim for future loss of income or support, the amount payable by the Fund or the agent shall be paid by way of a lump sum or in instalments as agreed upon;

(c) includes a claim for loss of income or support, the annual loss, irrespective of the actual loss, shall be proportionately calculated to an amount not exceeding-

(i) R368 035 per year in the case of a claim for loss of income; and

(ii) R368 035 per year, in respect of each deceased breadwinner, in the case of a claim for loss of support.'

[62] Accordingly, future medical expenses would in any event have been for all the injuries sustained, and the joint minutes clearly agree on the need for future consequent medical expenses.

[63] Neither side has, in order to avoid this position, repudiated their experts.[7] Accordingly this position is binding on the parties.

[64] The second argument raised by Ms Ramothar for the defendant is the suggestion that a Court cannot order an undertaking to be provided. In support of this, the unreported decision of *Knoetze obo Malinga and Another v Road Accident Fund*[8] was referred to.

[65] While this decision did declare that it is generally not competent for a Court to direct the Fund to provide an undertaking, the Court also confirms the blanket election that had been made by the defendant through its Chief Executive Officer to provide undertakings to compensate for injuries in terms of section 17 of the Act for future accommodation in hospital or resting home treatment or rendering of a service or good supplied. Particularly at paragraphs 24 to 27 of that judgment the Court found:

'[24] What a court may also take judicial notice of, is its own functioning and the matters that come before it. In our experience, the "evidence" referred to by the Fund's CEO, mentioned in paragraph 22 above, has not featured in this Division and neither does the CEO claim that it has. Insofar as it may have been known to the "litigating public", that may not have included those courts which have "regularly" granted such claims. One of the plaintiff's counsels labelled the website as merely "informative". Furthermore, the contents of the Fund's own Claims Procedure Manual, appears to cater for various permutations and options regarding the nature and contents of undertakings. In addition, there was some doubt when the matters were argued before us as a whether the furnishing of an undertaking always

[7] See Bee v Road Accident Fund 2018 (4) SA 366 (SCA)
[8] 2022 ZAGPPHC 819.

applied or whether there were exceptions. If there were exceptions, then a court would not, without having been informed thereof in a specific case, know whether the "blanket election" would apply or whether that matter might be one of the "exceptions". After some debate, it appeared that the exceptions mostly, if not exclusively, occurred ex post facto, that is after an undertaking had been furnished. Apparently, the Fund had been known, after the managers of its Post Settlement Department had been approached, to provide monetary payment in respect of future medical expenses in lieu of an undertaking. This apparently occurs where there has been a significant merits apportionment against a plaintiff and the foisting of an undertaking on such a plaintiff would lead to unfair results. There is a last aspect which bears mentioning and it is this: an election to furnish an undertaking (or not) should be a formal and conscious resolution by the Fund, acting through its delegated officers and even the "evidence" referred to above, does not confirm that a "blanket election" has been taken in this fashion. At best, it is an indication of what could ordinarily be expected to happen, but it cannot be said to be conclusive. For these reasons we decline to find that a "blanket election" had taken place in respect of the furnishing of guarantees in all claims against the Fund where the costs of future medical and ancillary expenses are claimed as part of a plaintiff's damages.

[25] Clearly alive to this dispute and in response to the directive of the Acting Judge President of this Division in referring this issue to this full court, the CEO of the Fund, in the affidavit filed in the joint hearing of these matters, reiterated the fact that the Fund has indeed now made a "blanket election" to furnish an undertaking to every claimant who is entitled to a claim for payment of future medical and ancillary expenses in terms of section 17(4)(a). The CEO undertook to have included in the Fund's "first letter" issued to a claimant upon receipt of a newly lodged claim and allocation of a claim number "… a reiteration of its blanket election by expressly stating that a claimant will only be entitled to an undertaking in respect of any proven claim for the costs of the future accommodation of the claimant in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her". The fund has further undertaken to publish via a notice through the Legal Practice Council and its internal database of attorneys a statement reaffirming its blanket election.

[26] Insofar as there may have been doubt as to either the existence of a "blanket election" or whether this fact has sufficiently been so notorious that a court could have taken judicial notice thereof, such doubt has now been removed by the Fund's CEO. Counsel for the Fund has confirmed in open court that courts can now take judicial notice of this. The result is that, once a plaintiff proves its claim as contemplated in section 17(4)(a), it is entitled to claim an

order catering for a direction to the Fund to furnish such an undertaking and a court is entitled to grant such an order. This will also apply in instances where orders by default are sought.

[27] The Black Lawyers Association, as the fifth amicus, argued that the use of the word "or" in section 17(4)(a) denoted that the Fund might elect to issue an undertaking alternatively, that a court might direct the Fund to furnish an undertaking. Insofar as there may be ambiguity in the meaning of the section, the Constitution enjoins courts to interpret legislation in a manner which promotes the spirit, purport and objects of the Constitution. The Constitutional Court had endorsed the contextual and purposive approach espoused by Natal Joint Municipal Pension Fund v Endumeni in Road Traffic Management Corporation v Waymark Infotech Ltd. In our view, this court is however bound by the decision in Marine & Trade Insurance Co Ltd. Even though that decision pre-dates the Constitution, its interpretation followed the development of the wording of the section, through its predecessors and had due regard to the wording of the successive section, including the use of the word "or". The decision of Van der Walt, given in our post – Constitutional dispensation, has also analysed specifically whether a court could grant a direction to the Fund and concluded that it couldn't, despite the inclusion of the word "or" in the section. We are not convinced that that decision is clearly wrong, as contended for by this amicus. In any event, having regard to the blanket election now having been exercised in the circumstances set out earlier, this question has now become moot and no further interpretational development is necessary.'

[66] I was not informed by Ms Ramothar on raising these paragraphs of any change to the defendant's stance on these matters.

[67] Accordingly, and despite there not yet having been any particular undertaking provided in the current matter (and especially in the context in which the undertaking was not provided as yet detailed above) I can see no preclusion against holding the defendant to its blanket election to provide undertakings as envisaged in section 17 of the Act.

Order

[68] On account of the above, the balance of the order not being contentious, the plaintiff is entitled to judgment against the defendant for the following terms:

1. Judgment is granted against the defendant in respect of general damages in the amount of R 425 000.00.

2. The defendant is directed to furnish to the plaintiff an undertaking envisaged in section 17(4)(a) of the Road Accident Fund Act 1996 for 85% of the costs of all future accommodation of the plaintiff in a hospital or nursing home and all medical treatment or rendering of service or supplying of goods to him arising out of the injuries he sustained in a motor vehicle collision that is the subject matter of these proceedings and to compensate him therefore after such expenses have been incurred.

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    (i) the reasonable and necessary costs of counsel, including counsel's reasonable costs for his preparation for trial, such costs to include preparation of written submissions, as well as reasonable costs of counsel and the attorney for attending on any necessary consultations with the undermentioned expert witnesses and the plaintiff;

    (ii) the fees and expenses reasonably incurred for the undermentioned experts for *inter alia*, the experts reasonable qualifying fees, their reasonable reservation fees, and the reasonable fees of attending upon any necessary consultations with the plaintiff's counsel and attorney to

testify at trial (with the quantum of their fees to be determined by the Taxing Master) namely:

(aa) Dr L Rajah – orthopaedic surgeon

(bb) Dr M Du Trevou – neurosurgeon

(cc) Dr R M Hardy – neuropsychologist

(iii) the plaintiff is directed in the event of the aforementioned costs not being agreed to:

(aa) serve the notice of taxation on the defendant's attorneys of record;

(bb) to allow the defendant 180 calendar days to make payment of the taxed costs.

(iv) the defendant is directed to make payment in terms of the costs directly to the trust account of the plaintiff's attorneys whose details are as follows:

Name: Askew Martin & Adrain Incorporated Trust Account
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Branch: A[…]
Branch code: 1[…]
Account No.: 1[…]
Reference: […]

(v) It is recorded the defendant's link number is 4[…]

TUCKER AJ

Appearances

Counsel for the Plaintiff:	S Murray
Instructed by:	Askew Martin & Adrain Inc 4th Floor, Room 403 FNB Building 151 Musgrave Road Berea, Durban Ref: RIA/M3017/cn/Yuri
Counsel for the Defendant:	S Ramothar
Instructed by:	State Attorney 12 Floor, Embassy Building 199 Anton Lembede Building Durban Link No.: 4011924
Date of Hearing:	25 November 2024
Date Judgment Delivered:	2 December 2024