

SOUTH AFRICA / JUDGMENT

Cassim and Others v Road Accident Fund (2005/15914) [2022] ZAGPJHC 763 (23 September 2022) [2022] ZAGPJHC 763

COURT

South Gauteng High Court, Johannesburg

BEFORE

Crutchfield

CASE / FILE NUMBER

2005/15914

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IN

THE HIGH COURT OF SOUTH AFRICA,
GAUTENG
DIVISION, JOHANNESBURG
CASE
NO: 2005/15914

REPORTABLE:

NO
OF
INTEREST TO OTHER JUDGES: NO
REVISED.
23
September 2022
In

the matter between:

CASSIM:

NAEEMA
First Plaintiff

ARDENDORFF:

EBRAHIM WILHELMINA
Second Plaintiff

CASSIM: NOOR MOHAMED obo ESTATE LATE
ESSOP
CASSIM
Third Plaintiff

CASSIM: SHARIFFA
Fourth Plaintiff

ARDENDORFF: MIKAEEL
Fifth Plaintiff

JOHNSON: AHMED
Sixth Plaintiff
and
ROAD
ACCIDENT
FUND
Defendant
Claim
No: 67/579292/11/1
Link

No: 1293145

JUDGMENT

CRUTCHFIELD J:

[1] The trial proceedings herein came before me on 23 February 2022 by way of an action for default judgment. The defendant's defences were struck out on 4 May 2021, for non-compliance with a court order and the plaintiffs referred to the registrar to allocate a date for the hearing of a default judgment.

[2] The first plaintiff was Naeema Cassim, a major female. The second plaintiff was Ebrahim Wilhelmina Ardendorff, a major male. The third plaintiff was Noor Mohamed Cassim, cited on behalf of the estate of the Late Essop Cassim, a major male prior to his death. The fourth plaintiff was Shariffa Cassim, a major female. The fifth plaintiff

was Mikaeel Ardendorff, a major male. The sixth plaintiff was Ahmed Johnson, also a major male. The plaintiffs were all victims of a motor vehicle collision that occurred on 5 August 2001.

[3] The defendant was the Road Accident Fund, a juristic entity established under section 2 of the Road Accident Fund Act, 56 of 1996 ('RAF').

[4] The RAF admitted liability for 80% of the proven damages of each plaintiff.

[5] The plaintiffs abandoned their respective claims for past hospital and medical expenses and each plaintiff claimed an undertaking in terms of section 17(4)(a) of the Act in respect of future hospital

and medical expenses.

- [6] The first and third to sixth plaintiffs all signed contingency fee agreements in terms of the Contingency Fees Act 66 of 1997.
- [7] Notwithstanding that the RAF's defence was struck out, the RAF was represented at the hearing. The plaintiffs' counsel did not object to the RAF's representatives advancing submissions at the hearing before me. I allowed them to do so notwithstanding the striking out, given that this matter is concerned with the award of public funds. I considered it to be in the interests of justice that the RAF, in the light of their appearance, be permitted an opportunity to address this Court, which they did.
- [8] The first and third plaintiffs' claims were settled in their entirety. The fifth plaintiff's claim for general damages was settled with the RAF. That left the second and fourth plaintiffs'

respective claims, the balance of the fifth plaintiff's claim and the sixth's plaintiff's claims for determination by me.

- [9] I deal with the disputed claims of the respective plaintiffs' ad seriatim.

The second plaintiff

- [10] The second plaintiff, Ebrahim Wilhelmina Ardendorff, was born on 31 May 1974. He was approximately 27 years of age at the time of the collision and turned 47 in May 2022. The second plaintiff was a passenger in the back of the involved in the accident immediately prior thereto, together with the first, fifth and sixth plaintiffs.
- [11] The injuries suffered by the second plaintiff as a result of the collision included various abrasions, injuries to the cervical and lumbar spine, whiplash of the neck, several broken ribs, severe injury to the knees, an injury to the chest and injuries to his lower and upper limbs.
- [12] The second plaintiff claimed past and future loss of earnings of R4 254 460.00 calculated as to R1 782 048.00 for past loss of earnings, R2 472 412.00 for future loss of earnings and general damages of R700 000.00. The 20% apportionment stands to be deducted from the plaintiff's claims.
- [13] The RAF submitted that the second plaintiff did not demonstrate proof of loss of earnings or patrimonial loss as a result of the accident, a requisite of the delictual claim for loss of earnings. Accordingly, the RAF tendered an amount of R300 000.00 in respect of the second plaintiff's loss of earning capacity as a result of the allegedly minimal injuries of the second plaintiff, and an amount of R400 000.00 for general damages.

- [14] Due to the ill health of the industrial psychologist initially appointed by the second plaintiff, one Mr Van Blerk, the second plaintiff underwent reassessment by psychologist Dr Sugreen, who consulted with the second plaintiff on 25 January 2022. According to the latter, the second plaintiff secured employment with Standard Bank in 2018 earning between R60 000 to R80 000 per month. This contradicted that stated by Mr Van Blerk who recorded that the second plaintiff was unemployed from April 2017 to date of his report on 4 June 2020.
- [15] Substantiating the report of Dr Sugreen was that of Dr Segwapa, a neurosurgeon, who assessed the second plaintiff on 17 January
2019. Dr Segwapa noted[1] that the second plaintiff “currently works as a Financial Consultant at Standard Bank”.
- [16] Prior to the accident on 5 August 2001, the second plaintiff worked as a security officer, paint shop assistant, call centre agent, manager and a sales agent earning commission based variable income of between R5 000.00 and R10 000.00 per month. Subsequent to recovering from the accident, the second plaintiff continued to work as a sales agent until 2004/2005, when he joined Old Mutual’s sales department on a contract basis earning between R8 000.00 and R9 000.00 per month plus commission.
- [17] By 2009, the second plaintiff was a permanent staff member at Old Mutual, held the title of sales manager responsible for managing a team of approximately 15 to 20 agents and earned approximately R18 000.00 per month. According to the second plaintiff, he encountered difficulties in managing the team as it increased in size and struggled with stress resulting in him being admitted to a psychiatric unit. As a result, the second plaintiff resigned during 2011.
- [18] The second plaintiff reported to Dr Sugreen that he was being groomed for the position of Distribution Manager with a potential earning capacity of approximately R60 000 to R70 000.00. At that stage, the second plaintiff was operating as the second in charge but lost that opportunity due to his psychiatric condition.
- [19] Subsequently, in 2012, the second plaintiff took up a contract position as financial advisor at an Old Mutual broker franchise. He also joined Vital Legal Services, as a financial advisor earning commission-based income.
- [20] The second plaintiff was employed variously in substantially a sales capacity until he passed the RA5 regulatory exam. In 2018, the second plaintiff signed a five-year contract with Standard Bank as an executive financial advisor. He estimated his earnings earned during 2018 and 2019 at R60 000 to R70 000.00 per month.

- [21] During 2020, the second plaintiff struggled to meet targets and multi-tasking became very stressful for him. During 2021, he moved to an admin hub from which he received administrative support. At the time of his interview with Dr Sugreen, the second plaintiff remained in the Admin Hub earning commission-based income in the region of R60 000.00 to R70 000.00 per month but did not receive a bonus or a 13th cheque.
- [22] According to Dr Sugreen, the second plaintiff's complaints comprised light-headedness, headaches, memory problems and persistent pain in his neck with limited rotation.
- [23] Dr Sugreen reported that the second plaintiff had been diagnosed with depression and anxiety, that he was suicidal, experienced deterioration in his functioning since the accident and that he failed to perform to expectations, including experiencing difficulty in interpersonal and workplace settings. Furthermore, that he experienced pain from his orthopaedic injuries and qualified as a vulnerable competitor when compared to his uninjured peers within the open labour market.
- [24] The second plaintiff returned to work approximately two weeks after the collision. He did not receive remuneration during his convalescence and it is appropriate that he be paid damages in respect of that period.
- [25] The second plaintiff resumed his pre-accident employment as a sales agent, responsible for the same duties and earning the same income as he did prior to the collision. The second plaintiff remained employed in that capacity until 2004. Thereafter he demonstrated upward vocational mobility and commensurate increases in his income.
- [26] The second plaintiff's earnings showed progressive increases from 2004 up to mid-2012 at which time he earned approximately R20 000.00 per month commission-based income at Old Mutual franchise broker as a Financial Advisor. His income decreased in 2013 when he worked as a Sales Manager at The Indicator earning between R8 000.00 and R10 000.00 per month. In 2016, he joined Homechoice as a Call Centre Agent where he earned R15 702.00 per month prior to deductions and where he remained employed until April 2017 when he commenced his position with Standard Bank.
- [27] One of the elements to be proved by a plaintiff in a claim of this nature is a patrimonial loss. It is not sufficient for a plaintiff claiming a loss of earnings or income earning capacity to prove only that their physical disabilities resulting from the collision caused a reduction in earning capacity. In addition, a loss that serves to diminish the estate or patrimony of the plaintiff must be proved, absent which the claim will fail.
- [28] Differently stated, a reduction in earning capacity that gives rise to a pecuniary loss is an essential requirement of the cause of action.
- [29] Subsequent to recovering from the collision, the second plaintiff resumed employment in the same position at equal remuneration as he earned prior to the collision, notwithstanding the injuries, their sequelae and any consequential loss of productivity as a result.

- [30] Dr Sugreen acknowledged that notwithstanding the second plaintiff's injured state, he could earn commission-based income of R60 000.00 to R70 000.00 in 2021/22. No mention was made by Dr Sugreen of any period when the second plaintiff was unemployed or unable to be employed as a result of the accident.
- [31] Whilst the second plaintiff may have experienced a loss of productivity given his alleged reduction in functioning, the second plaintiff did not prove that that loss of productivity caused a loss of earning capacity that translated into a loss of income and a reduction to his patrimony.
- [32] There is little doubt that the second plaintiff's injuries and their sequelae suffered due to the collision impacted upon his physical well-being. Notwithstanding, he functioned adequately in his pre-accident employment position for approximately three years subsequent to the collision and his employment record shows steady improvement in his remuneration over the years.
- [33] In the circumstances, the second plaintiff did not sustain any loss of earning capacity that translated into a loss of income.
- [34] Whilst the RAF contended that there was a minimal loss of income earning capacity justifying an award of approximately R300 000.00. In the light of the second plaintiff's failure to prove patrimonial loss.
- [35] The second plaintiff claimed general damages of R700 000.00. The RAF submitted that an amount of R400 000.00 was fair as the injuries were soft tissue injuries.
- [36] The second plaintiff sustained soft tissue injuries to the cervical spine, lumbar spine, right ribs, chest and right shoulder. He reported pain in the right shoulder, elbow, ribs, knee and both cervical and lumbar spine radiating into his legs in cold weather. The second plaintiff was unable to walk long distances, sit or stand for long periods, run or lift or carry heavy objects. He also suffered from intermittent headaches. Pain and discomfort from the injuries as well as future medical procedures to be undertaken will result in future and additional pain and discomfort to the second plaintiff.
- [37] Furthermore, the second plaintiff had become more introverted and suffered from a significantly depressed mood, feelings of guilt and worthlessness.
- [38] An award for general damages is not an exact science. The second plaintiff suffered extensive soft tissue injuries, severe pain and continues to suffer some discomfort and pain as he will into the future, especially if he undergoes the suggested future medical intervention. He has suffered a loss of amenities of life in terms of his sporting and game playing activities for which he deserves compensation.
- [39] The second plaintiff referred me to *Battle v RAF*[2] in which an amount of R180 000.00 was awarded for general damages for soft tissue injuries to the neck of the victim. That

amount translated to R250 000.00 today.

[40] I was also referred to *Ramolobeng v Lowveld Bus Services (Pty) Ltd & Another*,^[3] in which the plaintiff suffered injuries to the cervical and lumber spine and a head injury with concussion. Whilst Mr Ramolobeng

suffered pain and similar loss of amenities of life to the second plaintiff, Mr Ramolobeng was left unemployable in the open labour

market and required greater surgical intervention than the second plaintiff. Mr Ramolobeng was awarded the sum of R540 000.00 in 2015, the present day value being R728 000.00.

[41] In the circumstances, I am of the view that an award of R450 000.00 is fair and reasonable in the second plaintiff's circumstances.

[42] In respect of the second plaintiff's loss of earnings for the period of two weeks spent recuperating after the collision, the second plaintiff earned commission-based earnings of between R5 000.00 to R10 000.00 per month immediately prior to the collision. The average earned was R7 500.00 per month, being R3 800.00 for two weeks of the month. R3 800.00 in 2001 is approximately R16 000.00 in today's money and I intend to award such amount.

[43] As regards the second plaintiff's costs, the inaccurate reporting by the industrial psychologist, Mr Van Blerk, was significant and may have influenced the conclusions of other experts who took note of his statements and relied thereupon. The fallacy that the second plaintiff was unemployed appeared to have followed through into the reports of Dr E Schnaid, who referred to "should (the second plaintiff) secure employment".

[44] In the circumstances, I intend to order that the RAF not be liable for the costs of Mr Van Blerk's reports or that of Dr Sugreen as the second plaintiff's claim for loss of earnings must fail other than the award for the past loss of R16 000.00.

[45] Accordingly, I intend to grant an order for past loss of earnings of R16 000.00 and general damages of R450 000.00.

The Fourth Plaintiff

[46] The fourth plaintiff was Shariffa Cassim, a major female born on 31 October 1955. The fourth plaintiff was approximately 46 years old at the time of the accident on 5 August 2001, in which she was injured. The fourth plaintiff was approximately 66 at the time of the trial.

[47] The fourth plaintiff initially claimed past and future loss of earnings of R3 423 597. 00, general damages of R700 000.00 from which the 20% apportionment is to be deducted.

[48] In the interim since the accident, the fourth plaintiff passed retirement age of 65, which resulted in the fourth plaintiff's claim being comprised of R3 423 447.00 for past and future loss of earnings and general damages of R700 000.00.

- [49] The fourth plaintiff allegedly suffered a mild concussive brain injury although there was no evidence of direct trauma to her head. Further, the fourth plaintiff suffered soft tissue injuries to her cervical and lumbar spine and her right shoulder as well as the effects thereof. The fourth plaintiff experienced headaches, dizziness, nervousness, restrictive movement of her right arm and some depression, requiring psychiatric management.
- [50] The fourth plaintiff was employed as a Sales Lady / Manager at Factory Fabrics immediately prior to the accident in 2001. She allegedly earned approximately R10 000.00 per month although no documentation was available to prove her earnings prior to the accident. The fourth plaintiff did not return to her employment once she recovered, allegedly due to her back and hand injuries sustained in the accident and the effects thereof.
- [51] The RAF submitted that the fourth plaintiff retired in the interim and that the calculation in respect of loss of earnings was not based on documentary evidence. No proof of the fourth plaintiff's pre-accident earnings was provided to the industrial psychologist. As a result, the RAF contended that the fourth plaintiff's earnings should be subject to a higher contingency of 80%.
- [52] The RAF argued that the fourth plaintiff should be considered as an unskilled worker as she did not have any post-matriculation qualifications and did not proceed to further her education. A retirement age of 65 should be applied. According to the RAF, the fourth plaintiff's past loss of earnings amounted to R589 867.00 and the fourth plaintiff's pension compensated for her claim for future loss of earnings.
- [53] The fourth plaintiff received a pension upon turning 60 years old. No documentation was available in respect of the pension. However, the fourth plaintiff's counsel submitted that an amount of R135 426.00 in respect of the pension stood to be deducted from the fourth plaintiff's claim for loss of earnings.
- [54] The fourth plaintiff's claim was reassessed by Dr Sugreen, necessitating an updated actuarial calculation dated 23 February 2022, the date of the application for default judgment.
- [55] Dr Sugreen reported that; "It is reasonable to suggest that but for the accident (the fourth plaintiff) could have purchased the business and carried on as the new owner with earnings at least on par with her pre-accident earnings until expected retirement age. (The fourth plaintiff's) earnings are comparable to between the medium and upper quartile of earnings of semi-skilled workers." Dr Sugreen also referred to an offer made to the fourth plaintiff in respect of the purchase of the business by her employer.
- [56] As regards the fourth plaintiff's employment history and the probability that she would have purchased the business of her previous employer, Dr Sugreen reported that the fourth plaintiff dropped out of school, commenced work as a teenager in 1970 at Continental Material as a Sales Lady, responsible for designing, cutting and manufacturing curtains, selling fabric, blinds and bedspreads and the like. The fourth plaintiff worked in that capacity until 1985, when she was voluntarily unemployed until 1992.

[57] No evidence from the fourth plaintiff's former employer and owner of the business who allegedly offered the business to her, was placed before me. The industrial psychologist, Dr Sugreen, 'deferred to the factual information'. No reference to any such facts was made by the fourth plaintiff's legal representatives and no

reliance was placed on any documentary evidence.

[58] No corroborating evidence of the alleged offer or probable purchase of the business by the fourth plaintiff was presented to Dr Sugreen or to this Court. No suggestion of how the fourth plaintiff would have paid for or financed the purchase of the business was provided by the fourth plaintiff.

[59] On a conspectus of the fourth plaintiff's educational and employment history; including that she dropped out of school, was voluntarily unemployed for approximately seven years and failed to return to any form of employment whatsoever subsequent to recovering from the accident, the probability that the fourth plaintiff would have taken over the business of her previous employer was minimal and I decline to make an order based on that postulation.

[60] Whilst I accept that it was difficult for the fourth plaintiff to obtain documentation proving her earnings given the long delay in this matter coming to trial, the fourth plaintiff did not give evidence herself and no proof whatsoever was provided in respect of her earnings or pension. It is appropriate to emphasise that a plaintiff is required to prove a claim for damages.

[61] Dr Sugreen stated that the fourth plaintiff did not return to her job after recuperating from the accident "mainly because of her back and hand problems". Post-accident, the fourth plaintiff allegedly was unable to engage in any income generating work and her vocational capacity was significantly reduced.

[62] Whilst I accept that the fourth plaintiff suffered some residual physical limitations and restrictions as a result of the injuries sustained in the accident, the fourth plaintiff retained residual capacity to hold down gainful employment after recovering from the accident. No reason was provided for the fourth plaintiff's failure to obtain some form of gainful employment subsequently.

[63] The fourth plaintiff did not demonstrate evidence of a direct trauma to her head or any impairment to her cognitive abilities. The accident resulted in soft tissue injuries causing some psychological impairment, a diminished quality of life and persistent chronic pain, including post-concussion headaches, discomfort, deterioration in her

mood and day-to-day functioning. Family issues appear to have aggravated the fourth plaintiff's psychological functioning and depression.

[64] The fourth plaintiff, post-accident, retained residual capacity to work, including light to occasional low range physical work.

- [65] Pre-accident, the fourth plaintiff probably would have worked until age 65. Currently, the fourth plaintiff is approximately 66 years old.
- [66] A claim for loss of earnings requires that a plaintiff prove that the accident caused a diminution of the plaintiff's estate. The fact that a plaintiff sustained injuries as a result of an accident does not, without more, translate automatically into a damages award for loss of earnings.
- [67] Whilst I accept that the fourth plaintiff did suffer some loss of earning capacity as a result of the accident, in the light of there being no evidence whatsoever of the plaintiff's earnings prior to the accident together with the fact that the fourth plaintiff retained residual capacity to obtain gainful employment, I am in agreement with the RAF that the claim should be subject to a higher contingency due to the absence of evidence and the fact that the fourth plaintiff did retain residual earning capacity.
- [68] The fourth plaintiff claimed uninjured earnings of R3 803 830.00 to which I applied a 70% contingency of R3 043 064 resulting in an amount of R760 766.00. Accordingly, an amount of R912 919.20.00 should be ordered in respect of past loss of earnings whilst the fourth plaintiff's pension compensates her for her claim for future loss of earnings
- [69] As regards the fourth plaintiff's claim for general damages, I accept that she has undergone and continues to experience effects such as pain, nervousness in respect of driving in a vehicle, some post-traumatic stress disorder and diminished enjoyment of life.
- [70] The fourth plaintiff's legal representatives conceded that the appropriate award for general damages is largely a matter of judicial discretion.[4]
- [71] The fourth plaintiff's counsel referred to *Battle v RAF*[5] in which an amount of R180 000.00 was awarded for general damages for a victim with soft tissue injuries, heightened anxiety whilst travelling in a motor vehicle and who was prior to the accident, a successful businesswoman in fashion. The amount of R180 000.00 has a present day value of R250 000.00.
- [72] In *Rheeder v RAF*[6] the plaintiff suffered from soft tissue injuries without any serious impact on his quality of life and was awarded an amount of R125 000.00 in 2013, having a present day value of R184 000.00.
- [73] In the circumstances I am of the view that an amount of R400 000.00 is appropriate in respect of general damages for the fourth plaintiff, from which the 20% apportionment stands to be deducted.
- [74] Accordingly, an amount of R912 919.00 should be ordered in respect of past loss of earnings and R400 000.00 for general damages stands to be ordered.

The Fifth Plaintiff

- [75] The fifth plaintiff was Mikaeel Ardendorff, a major male born on 10 September 1999. He was approximately two years of age at the time of the accident and turned 22 in September 2022.
- [76] The fifth plaintiff suffered direct trauma to his head, soft tissue injuries to his arms, lower limbs and lumber spine as a result of the accident.
- [77] The fifth plaintiff's current complaints included headaches and anxiety, nosebleeds, pain in the cervical spine radiating into his shoulders, pain in the back of his neck and in his lumbar spine spreading into his legs and right knee pain.
- [78] The fifth plaintiff displayed neurocognitive impairments and presented with reduced cognitive performance in certain areas such as losing focus quickly, memory loss, difficulty in paying attention and concentrating that were not consistent with his above average scores on memory and motor function.
- [79] The fifth plaintiff claimed past and future loss of earnings of R5 075 718.00; and general damages of R580 000.00.
- [80] The fifth plaintiff was assessed by Dr Sugreen on 25 January 2022.
- [81] Dr Sugreen reported that the fifth plaintiff commenced matric during 2019 but failed and repeated it in 2020 and again in 2021 when he passed with an endorsement for Bachelors studies. Subsequently, the fifth plaintiff was engaged in part-time employment as a general worker for a neighbour earning approximately R120 to R180 per day, depending on the allocated tasks for the day. The fifth plaintiff informed Dr Sugreen that he no longer performed that work and that he worked for a call centre during 2020 for approximately one month but was not able to cope and left. The fifth plaintiff informed Dr Sugreen that he wished to study mechanical engineering.
- [82] Post-accident, the fifth plaintiff's academic profile reflected a below average ability in all learning areas. Furthermore, the fifth plaintiff suffered and manifested the results of post-traumatic stress disorder and psychological impairment. The educational psychologist stated that any award made to the fifth plaintiff should be protected.
- [83] The fifth plaintiff's family background and social economic circumstances were recorded as being an average socio-economic background. The fifth plaintiff's father matriculated but was unemployed at the time of Mr Van Blerk's assessment. The fifth plaintiff's mother also matriculated and worked as a call centre agent. None of the fifth plaintiff's family members had tertiary qualifications making it more likely that the fifth plaintiff, but for the accident, would have undergone a post-matric college qualification rather than a degree qualification.
- [84] Mr Van Blerk postulated two scenarios; firstly, a matric qualification as well as a three-year post-matric degree qualification and secondly, a scenario in which the fifth plaintiff did not attain a matric qualification.

- [85] I accept that but for the accident, the fifth plaintiff would in all probability have achieved his matric certificate and undergone post-matriculation studies, possibly a three-year college course, and worked until retirement age of 65 years. I do not accept, as no evidence was advanced for the contention, that the fifth plaintiff would have pursued and completed a degree course. Nor do I accept the postulation by the educational psychologist that the fifth plaintiff would have pursued and completed a degree in architecture. No basis whatsoever was laid for the latter postulation.
- [86] Entry level earnings in respect of scenario 1, Grade 12 plus a three-year degree qualification, were given as between the lower quartile and median, being R125 000 - R230 000 during 2020.
- [87] Entry level earnings in respect of scenario 2, being less than Grade 12, were between the lower quartile and median, being R20 000 to R33 000 per annum at 2020 rand values at approximately 25 years of age and increasing to between the median and upper quartile of R47 000 to R94 000 by age 45.
- [88] Given that the fifth plaintiff took three years to obtain his matric qualification, the postulated earnings in scenario 2 above are the approximate earnings to be ascribed to the fifth plaintiff's future earnings having regard to the accident.
- [89] The information and postulations relied upon by the actuary in respect of the post-accident scenario are reasonable and I accept the fifth plaintiff's post-accident income of R1 336 721.00 less a contingency deduction of R401 016.00 giving a total of R935 705.00.
- [90] I do not accept that but for the accident the fifth plaintiff would have qualified with a three-year degree although I accept that he would have gained a three-year college qualification. As a result, I do not accept the actuary's 'but for' calculations and am forced to apply a higher contingency of 50% to the fifth plaintiff's anticipated pre-morbid future earnings of R8 057 496.00, resulting in pre-morbid future income of R4 028 748.
- [91] Subtracting the fifth plaintiff's future post morbid earnings of R935 705.00 and past earnings of -R30 115.00 from the pre-morbid future income of R4 028 748, results in a loss of earnings of R3 062 928.00 and I intend to make an award for that amount.
- [92] The educational psychologist reported that any award to be made required to be protected. There was insufficient evidence before me to make a determination and I was not addressed by the plaintiff's legal representatives in that regard. Hence, I intend to make an order that a curator ad litem be appointed in terms of Rule 57(1) of the Uniform Rules of Court to investigate whether the fifth plaintiff requires assistance in managing the funds to be awarded pursuant to the accident and issues ancillary thereto.
- [93] The fifth plaintiff is a major. He cannot be deprived of the administration of his estate without his consent or a finding of his inability to manage those funds. As stated in *Van Rooyen obo N(...) v Road Accident Fund*,^[7] 'funds can only be protected with the express consent of the adult. This naturally assumes that the curator ad litem in those instances has

properly discharged him/her of their duties in investigating the competency of the patient’.

[8] I do not know if the fifth plaintiff consents to the establishment of a trust in order to protect the anticipated award from the RAF.

[94] The expert’s evidence aforementioned indicated difficulties with the fifth plaintiff’s executive functioning and a loss of his cognitive functionality, both material factors in managing a large monetary amount. Those deficits may impact adversely upon the fifth plaintiff’s management of the award to be made by the RAF, if it is paid directly to the fifth plaintiff absent the establishment of a trust or some other means of protecting the award.

[95] There is not sufficient information before me in respect of the fifth plaintiff’s ability or otherwise to manage the award that is to be paid by the RAF as a result of the accident or on the enforceability of the contingency agreement between the fifth plaintiff and his attorneys of record herein.

[96] I am alive to the impact that the establishment of a trust will have on the fifth plaintiff’s self-autonomy and rights of freedom and dignity, if a trust is established or an alternate means of protection of the award is ordered, ultimately.[9]

[97] In the circumstances, I intend to order that a curator ad litem be appointed in order to investigate and report to the court on:

97.1 The need, if any, on the part of the fifth plaintiff for assistance in managing the funds to be awarded by the RAF pursuant to the accident;

97.1.1 If so; the means by which the award is to be protected, including consideration of the formation of a trust on terms to be recommended to a court;

97.2 The fifth plaintiff’s ability to understand the implications of this litigation instituted on his behalf against the RAF and to give rational instructions to his attorneys in respect thereof; and

97.2.1 Advise the court whether the steps taken on behalf of the fifth plaintiff by the attorneys concerned should be ratified or not, should the patient be found to have been unable to understand the implications thereof; and

97.3 The enforceability of the contingency fee agreement between the fifth plaintiff’s and his attorneys of record.

[98] A curator ad litem will also be in a position to make recommendations to a court on the least intrusive form of trust if a trust is recommended, and the period for which it should operate, if at all.

[99] I intend to request the fifth plaintiff’s legal representatives to:

99.1 Inform me in writing within ten (10) days of the delivery of this judgment, of:

99.1.1 The identity of a junior member of the Johannesburg Society of Advocates, suitably experienced and qualified, who consents to the appointment of curator ad litem to the fifth plaintiff in terms of Rule 57(1); and

99.1.2 The appropriate powers to be ordered to the curator ad litem.

[100] The powers of the curator ad litem shall include inter alia that the curator ad litem investigate and report to the court on:

100.1 The need, if any, on the part of the fifth plaintiff for assistance in managing the funds to be awarded by the RAF pursuant to the accident;

100.1.1 If so; the means by which the award is to be protected, including consideration of the formation of a trust on terms to be recommended to a court;

100.2 The fifth plaintiff's ability to understand the implications of the litigation instituted on his behalf against the RAF and to give rational instructions to his attorneys in respect thereof; and

100.2.1 Advise this Court whether the steps taken on behalf of the fifth plaintiff by the attorneys concerned under case number 2005/15914 should be ratified or not, should the patient be found to have been unable to understand the implications thereof; and

100.3 The enforceability of the contingency fee agreement between the fifth plaintiff's and his attorneys of record under case number 2005/15914.

[101] The curator's report must be delivered to the RAF and to the Master for the Master's comment and report.

[102] In the event that the fifth plaintiff's legal representatives wish to make submissions on matters arising from the appointment of the curator ad litem, they are at liberty to do so in writing within ten (10) days of the date of delivery of this judgment.

[103] In the circumstances, I intend to make an order for payment of a capital amount of R3 062 928.00 in respect of loss of earnings and R500 000.00 for general damages (as settled with the RAF), to be held in trust by the fifth plaintiff's attorneys pending the outcome, of the report of the curator ad litem.

The Sixth Plaintiff

[104] The sixth plaintiff, Ahmed Johnson, was a major male born on 30 December 1995. He was approximately six years of age at the time of the collision on 5 August 2001, of which he was a victim and approximately 26 years old when I heard the matter.

[105] The sixth plaintiff claimed past loss of earnings of R73 726.00, future loss of earnings of R4 198 749.00 and general damages of R850 000.00.

- [106] The sixth plaintiff sustained a head injury, injury to his nose, soft tissue injuries to the cervical spine, lumber spine and left shoulder in the accident. The sixth plaintiff's previous illnesses included hypertension.
- [107] Whilst there was no evidence of direct trauma to the sixth plaintiff's head, he suffered a mild concussive brain injury, depression, psychological impairment and pain. He did not suffer from post-traumatic stress disorder but experienced emotional trauma, chronic pain and mood disturbances.
- [108] The sixth plaintiff experienced pain in his neck and left shoulder, pain and weakness in his lower back, weakness in his left hand, intermittent headaches, occasional dizziness if he stood up suddenly, mental and physical fatigue, changes in his sleep pattern and decreased appetite and weight loss.
- [109] There was evidence of accident related anxiety and disturbances in the sixth plaintiff's social relationships. He had problems with attention and concentration, finding it difficult to maintain focus and experienced memory difficulties, difficulty grasping concepts and expressive speech. The sixth plaintiff did not sustain a traumatic brain injury, had a good prognosis[10] and did not show any functional impairment or adverse impact on his cognitive abilities.[11]
- [110] Available evidence indicated that the sixth plaintiff, absent the accident, would have completed matric and probably obtained a post-matric qualification.
- [111] I accept that pre-accident the sixth plaintiff would have coped with the demands of mainstream schooling and obtained a Grade 12 certificate. A qualification post-matric was probable but not necessarily a Bachelor's degree, given his familial and socio-economic circumstances as well as difficulties with available finance.
- [112] The sixth plaintiff's mother held a Grade 10 certificate but was not employed. The sixth plaintiff's stepfather obtained a matric certificate and a college qualification, and worked as a manager. The sixth plaintiff's stepsister completed Grade 12 and worked at Standard Bank and his stepbrother was still school going.
- [113] Post-morbid, I accept that the sixth plaintiff may be able to obtain a higher certificate or a diploma, studying at his own pace.[12] The sixth plaintiff retained residual ability to hold gainful employment within the demands of his limitations, and will be able to function at pre-morbid levels with the necessary support, rehabilitation and intervention,[13] being low range medium work subject to his pain thresholds.
- [114] The sixth plaintiff wished to become a chef or an IT Technician but would require a Bachelor's degree in computer programming for the latter. Financial constraints had been a deterrent to post-matriculation studies together with his concentration difficulties.
- [115] He enjoyed swimming, playing table tennis, reading, listening to music, photography and cooking. There was no family history of mental illness or learning difficulties.

- [116] Subsequent to the accident, the sixth plaintiff repeated Grade 10 in respect of which his marks were predominantly within the 40s and 50s but passed every other school year and obtained a Grade 12 certificate.
- [117] School reports in respect of class 1 and class 2 in 2002, indicated that the sixth plaintiff obtained marks of 74% and 69% in class 1. His lowest mark in term 1 was history 50% and 60% in term 2. One educational psychologist opined that the sixth plaintiff's school marks in term 1 and term 2 indicated pre-accident potential whilst the marks obtained in matric indicated a loss of functionality due to the accident.
- [118] That was supported by the sixth plaintiff's retained functioning as illustrated by his post-accident IQ scores, the three highest of which were within the high average range.
- [119] I accept that the sixth plaintiff experienced some cognitive fallout as a result of the accident but his emotional and psychological difficulties resulted from the psychosocial factors around him.
- [120] The sixth plaintiff was employed from November 2015 to April 2016 as a call centre agent at Outsurance and left when his contract came to an end. In June 2016 he secured employment as a sales consultant, leaving in October 2016 due to insufficient income. During May to November 2017, the sixth plaintiff was employed as a general administrator at Sky Labs LMS but resigned due to insufficient income. The work was too taxing for his physical capacity. The sixth plaintiff was unemployed from November 2017.
- [121] During January to May 2018, the sixth plaintiff was temporarily employed as a dispatch clerk after which he was unemployed until
2019. Thereafter, from 2019 to date, the sixth plaintiff worked for a cousin selling houseware and homeware earning commission based income of approximately R500.00 per month.
- [122] The sixth plaintiff's actual past income was R206 439.00. Retirement age was pegged at 65 years.
- [123] The RAF submitted that a contingency of 50% should be applied to the pre-morbid future income postulates of the sixth plaintiff and a post-morbid future contingency of 20%. Accordingly, the future loss of income earning submitted by the RAF was R1 361 874.50 less 20% apportionment, totalling R1 089 499.60.
- [124] The calculations postulated by the actuary pre-accident were based on a scenario of the sixth plaintiff obtaining a Grade 12 together with a degree and a second scenario involving a Grade 12 and a degree utilised to provide corporate sector earnings. I do not accept those postulations. A more probable scenario in which the sixth plaintiff obtained a matric and a post-matriculation qualification such as a higher certificate or a diploma was more probable but calculations based thereon were not placed before me.

- [125] As regard the pre-morbid future income, the actuary postulated an amount of R8 679 897.00 on the basis of a matric and a 3-year degree qualification. Based on the facts and circumstances referred to above, I am of the view that the contingency submitted by the RAF of 50% was appropriate and should be applied.
- [126] Uninjured pre-morbid past loss was R206 439.00 subject to a contingency of 10% resulting in pre-morbid past loss of R196 117.00. The pre-morbid future loss was postulated at R8 679 897.00 in respect of which I applied a contingency of 50%, resulting in a future pre-morbid loss of R4 339 948.50.
- [127] The post-morbid postulates were past income of R122 391.00 in respect of which I do not apply a contingency. The future post-morbid income was postulated at R3 431 461.00 in respect of which I consider a contingency of 20% in the amount of R686 292.00 applicable, resulting in post-morbid future income of R2 745 169.00.
- [128] As a result, the total past loss of income is R73 726.00 and the loss of future earnings is R1 594 779.50.
- [129] In the circumstances an appropriate order will follow.
- [130] In argument before me the sixth plaintiff's legal representatives submitted that general damages of R500 000.00 was appropriate. The RAF submitted that R350 000.00 was appropriate based on *Lee v RAF*,^[14] the injuries being soft tissue and muscular injuries.
- [131] I accept that the sixth plaintiff suffered an impairment to his amenities of life and daily living for which he stands to be compensated. The sixth plaintiff has residual pain, cannot stand for prolonged periods of time, struggles to walk long distances and to assume positions such as crouching or carrying objects, he struggles to climb steps and has headaches and impairments of his personality and relationships.
- [132] Regard being had to the relevant case law, the sixth plaintiff's legal representatives referred to *Battle v RAF* and *Rheeder v RAF* in which an award of R125 000, having a present day value of R184 000, was made. In *Battle v RAF* an amount of R180 000, having a present day value of R250 000 was awarded.
- [133] In *Ramolobeng v Lowveld Bus Services (Pty) Ltd*, an award of R550 000, having a present day value of R728 000 was granted but in that matter the plaintiff underwent spinal surgery, was hospitalised for approximately six months and had to wear a lumber support brace.
- [134] I intend to order general damages of R450 000.00 for the sixth plaintiff.
- [135] I exclude all reservation fees of the experts as the plaintiffs sought to argue the matter based on affidavit.
- [136] In the circumstances, I grant the following orders:

FIRST PLAINTIFF [NAEEMA CASSIM]

By agreement between the first plaintiff and the RAF:

1. The defendant is liable to the first plaintiff for 80% of her proven or agreed damages.
2. The defendant shall pay to the first plaintiff a capital amount of R2 461 155.04 (Two million four hundred and sixty one thousand one hundred and fifty five rand and four cents) constituted as follows:

2.1. Future Hospital and Medical Expenses S17(4)(a) undertaking

Limited to 80%

2.2. Past Loss of Earnings

R 864 472.60

2.3. Future Loss of Earnings

R1 711 971.20

2.4. General Damages

R 500 000.00

Sub-Total

R3 076 443.80

Less 20% apportionment

R 615 288.76

Total

R2 461 155.04

3. The capital amount shall be paid into the trust account of the plaintiff's attorneys of record, Wadee and Wadee Attorneys, within 180 days of this order:

Wadee & Wadee Attorney Trust account

First National Bank

Branch Code: [....]

Account No: [....]

4. In the event of the aforesaid amount not being paid timeously, the defendant shall be liable for interest on the amount at the applicable mora rate, calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, from the 181st calendar day after the date of this Order to date of payment.

5. The defendant is ordered in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 to reimburse the first plaintiff 80% of the costs of any future accommodation of the first plaintiff in a hospital or nursing home,

or treatment or rendering of service to her or supplying goods to her arising out of injuries sustained by her in the motor vehicle

accident on which this cause of action is based, after such costs have been incurred and upon proof thereof.

6. The defendant is to pay the first plaintiff's agreed or taxed High Court costs as between party and party, such costs to include, subject to the Taxing Master's discretion:-

6.1. The costs incurred in obtaining payment of the capital amount referred to in paragraph 2 supra;

6.2. Preparation fees, if any, of the experts referred to in paragraph 6.4 below;

6.3. First plaintiff's reasonable travel and accommodation costs to attend both plaintiff and defendant's expert's appointments and consultations;

6.4. Costs of all the first plaintiff's expert reports and addendums of the following experts:

6.4.1. Orthopaedic Surgeon Dr. E. Schnaid

6.4.2. Clinical/Neuropsychologist Mr. C. Sampson

6.4.3. Neurosurgeon

Dr. L.F. Segwapa

6.4.4. Occupational Therapist Ms. M. Venter

6.4.5. Industrial Psychologist Mr. H. Van Blerk

6.4.6. Industrial Psychologist Dr. G. Sugreen

6.4.7. Actuary

Mr. J Potgieter

6.5. The costs consequent upon the employment of two Counsel where two Counsel were used, which costs shall include but not be limited

to, preparation, consultations, attendance and/or reservation for attendance at the pre-trial conference/s, drafting of pre-trial

agenda/s and/or minutes, attendances at the judicial pre-trial certification, drafting and attendances at the Trials Interlocutory

Court and preparation.

7. The first plaintiff shall, in the event that the costs are not agreed, serve the Notice of Taxation on the defendant physically and electronically upon the relevant case manager; and
8. The taxed or agreed bill of costs shall be payable within 180 (one hundred and eighty) days of taxation or agreement hereof and payable into the trust account of the first plaintiff's attorneys as recorded hereinabove.
9. In the event of the aforesaid amount not being paid timeously, the defendant shall be liable for interest on the amount at the applicable mora rate, calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, from the 181st calendar day after the date of this Order to date of payment.
10. A valid contingency fee agreement has been entered into between the first plaintiff and her attorneys of record.

SECOND PLAINTIFF [EBRAHIM WILHELMINA ARDENDORFF]

11. The defendant is liable to the second plaintiff for 80% of his proven or agreed damages, by agreement.
12. The defendant shall pay to the second plaintiff a capital amount of R372 800.00 (Three hundred and seventy two thousand eight hundred rand and zero cents) constituted as follows:

12.1. Future Hospital and Medical Expenses S17(4)(a) undertaking

Limited to 80%

12.2. Past Loss of Earnings

R 16 000.00

12.3. General Damages

R 450 000.00

Sub-Total

R466 000.00

Less 20% apportionment

R 93 200.00

Total

R372 800.00

13. The capital amount shall be paid into the trust account of the second plaintiff's attorneys of record, Wadee and Wadee Attorneys, within 180 (one hundred and eighty) days of this order:
14. In the event of the aforesaid amount not being paid timeously, the defendant shall be liable for interest on the amount at the applicable mora rate, calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, from the 181st calendar day after the date of this Order to date of payment.
15. The defendant is ordered in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 to reimburse the second plaintiff 80% of the costs of any future accommodation of the Second Plaintiff in a hospital or nursing home, or treatment or rendering of service to him or supplying goods to him arising out of injuries sustained by him in the motor vehicle accident on which this cause of action is based, after such costs have been incurred and upon proof thereof.
16. The defendant is to pay the second plaintiff's agreed or taxed High Court costs as between party and party, such costs to include, subject to the Taxing Master's discretion:-
 - 16.1. The costs incurred in obtaining payment of the capital amount referred to supra;
 - 16.2. The preparation fees, if any, of the experts referred to in paragraph 16.4 below;
 - 16.3. The second plaintiff's reasonable travel and accommodation costs to attend both plaintiff and defendant's expert's appointments and consultations excluding those in respect of Mr Van Blerk and Dr Sugreen;
 - 16.4. Costs of all the second plaintiff's expert reports and addendums of the following experts:
 - 16.4.1. Orthopaedic Surgeon
Dr E Schnaid
 - 16.4.2. Clinical/Neuropsychologist Mr C Sampson
 - 16.4.3. Neurosurgeon
Dr L F Segwapa
 - 16.4.4. Occupational Therapist
Ms B Huang
 - 16.4.5. Actuary
Mr J Potgieter
 - 16.5. The costs consequent upon the employment of two Counsel where two counsel were utilised, which costs shall include but not be limited to, preparation, consultations, attendance and/or reservation for attendance at the pre-trial conference/s, drafting of pre-trial

agenda/s and/or minutes, attendances at the judicial pre-trial certification, drafting and attendances at the Trials Interlocutory

Court and preparation.

17. The second plaintiff shall, in the event that the costs are not agreed, serve the Notice of Taxation on the defendant physically

and electronically upon the relevant case manager; and

18. The taxed or agreed bill of costs shall be payable within 180 (one hundred and eighty) days of taxation or agreement hereof and payable into the trust account of the second plaintiff's attorneys as recorded hereinabove.
19. In the event of the abovementioned amount not being paid timeously, the defendant shall be liable for interest on the amount at the applicable mora rate, calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, from the 181st calendar day after the date of this Order to date of payment.
20. A valid contingency fee agreement has been entered into between the second plaintiff and his attorneys of record.

THIRD PLAINTIFF [ESTATE LATE ESSOP CASSIM]

By agreement between the Third plaintiff and the RAF:

21. The defendant is liable to the third plaintiff for 80% of the proven or agreed damages of the deceased estate of the late Essop Cassim, in respect of which Naeema Cassim is the newly appointed executor, by agreement.
22. The defendant shall pay to the third plaintiff a capital amount of R144 000.00 (One Hundred and Forty-Four Thousand Rand) constituted as follows:

22.1. General Damages R 180 000.00

Less 20% apportionment

R 36 000.00

Total

R 144 000.00

23. The capital amount shall be paid into the trust account of the third plaintiff's attorneys of record, Wadee and Wadee Attorneys, within 180 (one hundred and eighty) days of this order:

24. In the event of the aforesaid amount not being paid timeously, the defendant shall be liable for interest on the amount at the applicable mora rate, calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, from the 181st calendar day after the date of this Order to date of payment.
25. The defendant is to pay the third plaintiff's agreed or taxed High Court costs as between party and party, such costs to include, subject to the Taxing Master's discretion:-
 - 25.1. The costs incurred in obtaining payment of the capital referred to above;
 - 25.2. The costs consequent upon the employment of two Counsel, where two counsel were used, which costs shall include but not be limited to, preparation, consultations, attendance and/or reservation for attendance at the pre-trial conference/s, drafting of pre-trial agenda/s and/or minutes, attendances at the judicial pre-trial certification, drafting and attendances at the Trials Interlocutory Court and preparation.
26. The third plaintiff shall, in the event that the costs are not agreed, serve the Notice of Taxation on the defendant physically and electronically upon the relevant case manager; and
27. The taxed or agreed bill of costs shall be payable within 180 (one hundred and eighty) days of taxation or agreement hereof and payable into the trust account of the third plaintiff's attorneys as recorded hereinabove.
28. In the event of the aforesaid amount not being paid timeously, the defendant shall be liable for interest on the amount at the applicable mora rate, calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, from the 181st calendar day after the date of this Order to date of payment.
29. There is no contingency fee agreement entered into between the third plaintiff and his attorneys.

FOURTH PLAINTIFF [SHARIFFA CASSIM]

30. The defendant is liable to the fourth plaintiff for 80% of her proven or agreed damages, by agreement.
31. The defendant shall pay to the fourth plaintiff a capital amount of R1 050 336.00 (One million fifty thousand three hundred and thirty six rand only) constituted as follows :
 - 31.1. Future Hospital and Medical Expenses S17(4)(a) Undertaking
 - 31.2. Past Loss of Earnings

R912 919.00

31.3. General Damages

R400 000.00

Sub-Total

R1 312 919.00

Less 20% apportionment

R 262 583.80

Total

R1 050 336.00

32. The capital amount shall be paid into the trust account of the fourth plaintiff's attorneys of record, Wadee and Wadee Attorneys, within 180 (one hundred and eighty) days of this order:

33. In the event of the aforesaid amount not being paid timeously, the defendant shall be liable for interest on the amount at the applicable mora rate, calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, from the 181st calendar day after the date of this Order to date of payment.

34. The defendant is ordered in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 to reimburse the fourth plaintiff 80% of the costs of any future accommodation of the fourth plaintiff in a hospital or nursing home, or treatment or rendering of service to her or supplying goods to her arising out of injuries sustained by her in the motor vehicle accident on which this cause of action is based, after such costs have been incurred and upon proof thereof.

35. The defendant is to pay the fourth plaintiff's agreed or taxed High Court costs as between party and party, such costs to include, subject to the Taxing master's discretion:-

35.1. The costs incurred in obtaining payment of the capital amount referred to above;

35.2. Preparation fees of the experts referred to below;

35.3. Fourth plaintiff's reasonable travel and accommodation costs to attend both plaintiff and defendant's expert's appointments and consultations;

35.4. Costs of all the fourth plaintiff's expert reports and addendums of the following experts:

35.4.1. Orthopaedic Surgeon Dr E Schnaid

35.4.2. Clinical/Neuropsychologist Mr C Sampson

35.4.3. Neurosurgeon

Dr L F Segwapa

35.4.4. Psychiatrist

Dr C Visser

35.4.5. Occupational Therapist Ms J Moatshe

35.4.6. Industrial Psychologist Mr H Van Blerk

35.4.7. Industrial Psychologist Dr G Sugreen

35.4.8. Actuary

Mr J Potgieter

35.5. The costs consequent upon the employment of two Counsel where two counsel were utilised, which costs shall include but not be limited to, preparation, consultations, attendance and/or reservation for attendance at the pre-trial conference/s, drafting of pre-trial

agenda/s and/or minutes, attendances at the judicial pre-trial certification, drafting and attendances at the Trials Interlocutory

Court and preparation.

36. The fourth plaintiff shall, in the event that the costs are not agreed, serve the Notice of Taxation on the defendant physically

and electronically upon the relevant case manager; and

37. The taxed or agreed bill of cost shall be payable within 180 (one hundred and eighty) days of taxation or agreement hereof and payable into the trust account of the fourth plaintiff's attorneys as recorded hereinabove.

38. In the event of the aforesaid amount not being paid timeously, the defendant shall be liable for interest on the amount at the applicable mora rate, calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, from the 181st calendar day after the date of this Order to date of payment.

39. A valid contingency fee agreement has been entered into between the fourth plaintiff and her attorneys of record.

FIFTH PLAINTIFF [MIKAEEL ARDENDORFF]

40. The defendant is liable to the fifth plaintiff for 80% of his proven or agreed damages, by agreement.

41. The defendant shall pay to the fifth plaintiff a capital amount of R3 598 906.40 (Three million five hundred and ninety-eight thousand nine hundred and six rand and forty cents) constituted as follows:

41.1. Future Hospital and Medical Expenses S17(4)(a)

undertaking Limited to 80%

41.2. Past and Future Loss of Earnings

R3 998 633.00

41.3. General Damages (agreed

between the fifth plaintiff and the RAF) R500 000.00

41.4. Sub-Total

R4 498 633.00

41.5. Less 20% apportionment

R899 726.60

41.6. Total

R3 598 906.40

42. The capital amount shall be paid into the trust account of the fifth plaintiff's attorneys of record, Wadee and Wadee Attorneys, within 180 (one hundred and eighty) days of this order:

43. In the event of the aforesaid amount not being paid timeously, the defendant shall be liable for interest on the amount at the applicable mora rate, calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, from the 181st calendar day after the date of this Order to date of payment.

44. A curator ad litem is hereby appointed to the fifth plaintiff in terms of Rule 57(1) of the Uniform Rules of Court, in order to investigate and report to this Court, the RAF and to the Master, on the following issues:

44.1. The need, if any, on the part of the fifth plaintiff for assistance in managing the funds to be awarded by the RAF pursuant to the accident;

44.1.1. If so; the means by which the award is to be protected, including consideration of the formation of a trust on terms to be recommended to a court;

44.2. The fifth plaintiff's ability to understand the implications of the litigation instituted on his behalf against the RAF and to give rational instructions to his attorneys in respect thereof; and

44.2.1. Advise this Court whether the steps taken on behalf of the fifth plaintiff by the attorneys concerned should be ratified or not, should the patient be found to have been unable to understand the implications thereof; and

44.3. The enforceability of the contingency fee agreement between the fifth plaintiff and his attorneys of record.

45. The identity of the curator ad litem and the powers to be awarded to the curator ad litem will be determined pursuant to the process envisaged below:

45.1. The fifth plaintiff's attorneys of record are requested to provide this Court and the RAF, within ten (10) days of the delivery of this judgment, with an affidavit incorporating:

45.1.1. The name of a suitably qualified and experienced junior advocate practising as a member of the Johannesburg Society of Advocates, who consents to the appointment as curator ad litem to the fifth plaintiff in terms of Rule 57(1) of the Uniform Rules of Court;

45.1.2. Details of the relevant experience held by the advocate referred to immediately above;

45.1.3. Proof of the consent of the advocate referred to immediately above, to the appointment; and

45.1.4. A statement of the powers to be ordered in respect of the curator ad litem including the power/s to investigate and report to this Court, the RAF and to the Master, on the following issues:

45.1.4.1. The need, if any, on the part of the fifth plaintiff for assistance in managing the funds to be awarded by the RAF pursuant to the accident;

45.1.4.2. If so; the means by which the award is to be protected, including consideration of the formation of a trust on terms to be recommended to a court;

45.1.4.3. The fifth plaintiff's ability to understand the implications of the litigation instituted on his behalf against the RAF and to give rational instructions to his attorneys in respect thereof; and

45.1.4.4. Advise this Court whether the steps taken on behalf of the fifth plaintiff by the attorneys concerned should be ratified or not, should the patient be found to have been unable to understand the implications thereof;

45.1.4.5. The enforceability of the contingency fee agreement between the fifth plaintiff and his attorneys of record.

46. In the event that the RAF does not object in writing to the appointment of the curator ad litem proposed by the fifth plaintiff's attorneys of record, within ten (10) days of the delivery of the nomination to the RAF, the Court will appoint the nominee in chambers unless any interested party requests a hearing in open court to effect the appointment of the nominated counsel.

47. Pending the outcome of the curator ad litem's report and recommendations:

47.1. Payment of the amount of R3 598 906.40 will be made by the RAF directly into the trust account of the fifth plaintiff's attorneys within 180 (one hundred and eighty days) of the delivery of this judgment;

47.2. The fifth plaintiff's attorney of record shall retain the capital amount including the costs, in an interest-bearing account in terms of Section 78(2)(A) of the Attorneys Act, for the benefit of the fifth plaintiff; and

47.3. The validity of the contingency fee agreement purportedly entered into between the fifth plaintiff and his attorneys is reserved.

48. The fifth plaintiff's attorneys of record shall pay the capital amount together with any accrued interest, over to the trustees of the trust to be appointed if such a recommendation is made by the curator ad litem to be appointed, and, ordered by a Court, alternatively to the fifth plaintiff if no such recommendation and order is made.

49. The defendant is ordered in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 to reimburse the fifth plaintiff 80% of the costs of any future accommodation of the fifth plaintiff in a hospital or nursing home,

or treatment or rendering of service to him or supplying goods to him arising out of injuries sustained by him in the motor vehicle

accident on which this cause of action is based, after such costs have been incurred and upon proof thereof.

50. The defendant is to pay the fifth plaintiff's agreed or taxed High Court costs as between party and party, such costs to include, subject to the discretion of the Taxing Master:-

50.1. The costs incurred in obtaining payment of the capital amount referred to above;

50.2. Preparation fees, if any, of the experts referred to below;

50.3. Fifth plaintiff's reasonable travel and accommodation costs to attend both plaintiff and defendant's experts' appointments and consultations;

50.4. Costs of all the fifth plaintiff's expert reports and addendums of the following experts:

50.4.1. Orthopaedic Surgeon

Dr E Schnaid

50.4.2. Clinical/Neuropsychologist Mr C Sampson

50.4.3. Neurosurgeon

Dr L F Segwapa

50.4.4. Educational Psychologist Ms R Macnab

50.4.5. Occupational Therapist

Ms A Rossouw

50.4.6. Psychiatrist

Dr C Visser

50.4.7. Industrial Psychologist

Mr H Van Blerk

50.4.8. Industrial Psychologist

Dr G Sugreen

50.4.9. Actuary

Mr J Potgieter

50.5. The costs consequent upon the employment of two Counsel where two counsel were used, which costs shall include but not be limited

to, preparation, consultations, attendance and/or reservation for attendance at the pre-trial conference(s), drafting of pre-trial

agenda/s and/or minutes, attendances at the judicial pre-trial certification, drafting and attendances at the Trials Interlocutory

Court and preparation in respect of merits and quantum.

51. The fifth plaintiff shall, in the event that the costs are not agreed, serve the Notice of Taxation on the physically and electronically upon the relevant case manager; and
52. The taxed or agreed bill of cost shall be payable within 180 (one hundred and eighty) days of taxation or agreement hereof and payable into the trust account of the fifth plaintiff's attorneys as recorded hereinabove.
53. In the event of the aforesaid amount not being paid timeously, the defendant shall be liable for interest on the amount at the applicable mora rate, calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, from the 181st calendar day after the date of this Order to date of payment.

SIXTH PLAINTIFF [AHMED JOHNSON]

54. The defendant is liable to the sixth plaintiff for 80% of his proven or agreed damages, by agreement.
55. The defendant shall pay to the sixth plaintiff a capital amount of R1 753 784.80 (One million seven hundred and fifty-three thousand seven hundred and eighty four rand and eighty cents) constituted as follows:

55.1. Future Hospital and Medical Expenses S17(4)(a) undertaking

55.2. Past Loss of Earnings

R 73 726.00

55.3. Future Loss of Earnings

R1 594 779.00

55.4. General Damages

R 450 000.00

Sub-Total

R2 192 231.00

Less 20% apportionment

R 438 446.20

Total

R1 753 784.80

56. The capital amount shall be paid into the trust account of the sixth plaintiff's attorneys of record, Wadee and Wadee Attorneys, within 180 (one hundred and eighty) days of this order:

57. In the event of the aforesaid amount not being paid timeously, the defendant shall be liable for interest on the amount at the applicable mora rate, calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, from the 181st calendar day after the date of this Order to date of payment.

58. The defendant is ordered in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 to reimburse the sixth plaintiff 80% of the costs of any future accommodation of the sixth plaintiff in a hospital or nursing home,

or treatment or rendering of service to him or supplying goods to him arising out of injuries sustained by him in the motor vehicle

accident on which this cause of action is based, after such costs have been incurred and upon proof thereof.

59. The defendant is to pay the sixth plaintiff's agreed or taxed High Court costs as between party and party, such costs to include, subject to the Taxing Master's discretion:-

59.1. The costs incurred in obtaining payment of the capital amount referred to above;

59.2. Preparation fees, if any, of the experts referred to below;

59.3. Sixth plaintiff's reasonable travel and accommodation costs to attend both plaintiff and defendant's expert's appointments and consultations;

59.4. Costs of all the sixth plaintiff's expert reports and addendums of the following experts:

59.4.1. Orthopedic Surgeon

Dr E Schnaid

59.4.2. Clinical/Neuropsychologist Mr C Sampson

59.4.3. Neurosurgeon

Dr L F Segwapa

59.4.4. Educational Psychologist Ms R Macnab

59.4.5. Psychiatrist

Dr C Visser

59.4.6. Occupational Therapist

Ms M Butler

59.4.7. Industrial Psychologist

Mr H Van Blerk

59.4.8. Industrial Psychologist

Dr G Sugreen

59.4.9. Actuary

Mr J Potgieter

59.5. The costs consequent upon the employment of two Counsel where two counsel were used, which costs shall include but not be limited

to, preparation, consultations, attendance and/or reservation for attendance at the pre-trial conference/s, drafting of pre-trial

agenda/s and/or minutes, attendances at the judicial pre-trial certification, drafting and attendances at the Trials Interlocutory

Court and preparation in respect of merits and quantum.

59.6. The sixth plaintiff shall, in the event that the costs are not agreed, serve the Notice of Taxation on the defendant physically and

electronically upon the relevant case manager; and

59.7. The taxed or agreed bill of cost shall be payable within 180 (one hundred and eighty) days of taxation or agreement hereof and payable into the trust account of the sixth plaintiff's attorneys as recorded hereinabove.

60. In the event of the aforesaid amount not being paid timeously, the defendant shall be liable for interest on the amount at the applicable mora rate, calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, from the 181st calendar day after the date of this Order to date of payment.

CRUTCHFIELD J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

JOHANNESBURG

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 23 September 2022.

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INSTRUCTED BY:

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FOR THE DEFENDANT:

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IN RESPECT OF THE FIRST PLAINTIFF

(STATE ATTORNEY)

FOR THE DEFENDANT

Mr Nkateko Mhlongo

IN RESPECT OF THE SECOND

AND SIXTH PLAINTIFFS

FOR THE DEFENDANT

Ms Moipone Brenda Moyo

IN RESPECT OF THE FOURTH PLAINTIFF

FOR THE DEFENDANT

Ms Thandi Mathebula

IN RESPECT OF THE FIFTH PLAINTIFF

DATE OF THE HEARING:

23 February 2022

DATE OF

JUDGMENT:

23 September 2022

[1] CaseLines 077-123.

[2] Battle v RAF [2914] ZAWCHC 131 (20 August 2014).

[3] Corbett & Honey Quantum of Damages Vol VII, C5-29.

[4] A A Mutual Insurance Association Ltd v Maqula 1978

(1) SA 805 (A).

[5] Battle v RAF, Corbett & Honey QOD VLL C3-1.

[6] Rheeder v RAF, Corbett & Honey QOD VLL C5-1.

[7] Van Rooyen obo N(...) v Road Accident Fund (77303/2018)

[2021] ZAGPPHC 334 (17 May 2021) ('Van Rooyen').

[8] Van Rooyen id para [23].

[9] Van Rooyen id para [21] quoting Modiba obo Ruca; in re: Ruca v Road Accident Fund (1261/2013; 63012/13) [2014] ZAGPPHC 1071 (27 January 2014).

[10] Caselines 081-330.

[11] Caselines 081-331.

[12] Caselines 081-331.

[13] Caselines 081-331.

[14] Lee v RAF.

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