

SOUTH AFRICA / JUDGMENT

Lesego v RAF (91425/2015) [2017] ZAGPPHC 1208 (31 July 2017)

[2017] ZAGPPHC 1208

COURT

North Gauteng High Court, Pretoria

BEFORE

Mahalelo

CASE / FILE NUMBER

91425/2015

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1)

NOT REPORTABLE

(2)

NOT OF INTEREST TO

OTHER JUDGES

(3)

REVISED.

CASE

NO: 91425/2015

31/7/2017

In

the matter between: GAVU
 LORRAINE
 LESEGO
 Plaintiff
 and
 ROAO
 ACCIDENT
 FUND
 Defendant

JUDGMENT

MAHALELO, AJ:

- [1] The plaintiff, Ms Lorraine Lesego Gavu, born on [...], instituted claim for damages in terms of the Road Accident Fund Act 56 of 1996 (" the Act") against the defendant. This claim arises from the injuries the plaintiff sustained in a motor vehicle collision which occurred on 12 December 2014 at or near the NI Road between Trompsburg and Edenburg in the direction of Bloemfontein when the motor vehicle with registration letters and numbers F[...] there and then driven by R Coetzer at the time ("the first insured vehicle') collided with a motor vehicle with registration letters and numbers C[...] ("the second insured vehicle') driven at the time by Mr M Kosana and in which the plaintiff was a passenger.
- [2] The defendant admitted full liability for the proven or agreed damages suffered by the plaintiff in the accident. The defendant has tendered an undertaking in terms of section 17(4)(a) of the Act in settlement of future hospital, medical and ancillary expenses which the plaintiff has accepted.
- [3] The plaintiff does not persist with the claim for past hospital, medical and ancillary expenses for want of any proof thereof.
- [4] The remaining heads of damages for determination are therefore the plaintiffs future loss of earnings or earning capacity and general damages.

COMMON CAUSE FACTS

- [5] The parties have agreed to the following common cause facts and circumstances between them:

The plaintiff completed Grade 12 in 2008. Thereafter she secured employment as a promoter for maize at Botshabelo Milling for six months in 2010. In 2011 she joined the South African Navy and completed her training as a telecommunications tactical operator, qualifying at the end of 2012. She worked as a telecommunications tactical operator initially placed in the main signal office in the Simon's Town Naval Base for 2 to 3 months. Thereafter she was placed on a warship in Mozambique for 10 months and then on another warship in Simon's Town for another 10 months. From June 2014 to November 2014 she was placed in a survey ship. She was then

promoted from the rank of able-seaman to leading-seaman. She remained in that position up to the time that the accident happened.

[6] The parties have further agreed that as a result of the collision the plaintiff sustained the following injuries:

6.1 A bilateral humeral fracture.

6.2 Bowel perforation.

6.3 A fracture of the dorsum.

6.4 Lacerations to the face.

6.5 A mild to moderate concussive brain injury.

[7] They further agreed upon the following sequelae resulting from the injuries:

7.1 The plaintiff was hospitalised for almost two months and underwent a number of surgical procedures to her upper arms, left foot and abdomen.

7.2 In addition to severe pain and discomfort as a result of orthopaedic injuries, the plaintiff experienced certain complications secondary to her bowel injury consisting of abdominal wall wounds infection requiring prolonged

treatment.

7.3 Long term psychotherapeutic treatment is required although with a poor prognosis and lifelong

vulnerability to depression.

7.4 The plaintiff has suffered and will continue to suffer severe impairments and losses in terms of amenities of life including severe curtailment in her participation in physical activities, pain (both arms, headaches, lower back) and paraesthesia of some fingers in the right hand, recurrent abdominal bloating and constipation, weight gain, anxiety and depression.

[8] The plaintiff's combined whole person impairment ("WP") rating for all the disciplines is 57%.

[9] The defendant admitted the reports of the following experts:

9.1 Dr White, a plastic and reconstructive surgeon;

9.2 Dr Mazabow, a neuropsychologist;

9.3 Professor Fritz, a neurologist;

9.4 Dr Grabler, a specialist; surgeon and gastroenterologist;

9.5 Ms Van der Heever, an educational psychologist; and

9.6 Mr Whittaker, an actuary (in so far as it relates to the correctness of the calculations and the basis thereof, not that the amounts are what the plaintiff is entitled to).

[10] The parties subsequently also agreed to admit the reports of the respective Orthopaedic Surgeons (Drs Birrell and Mukansi) and the Occupational Therapists (Ms L Toerien and Ms K L Montwedi) in so far as they are in agreement and in so far as their reports contain aspects or issues not dealt with in the reports of their respective counterparts

[11] In support of its case the plaintiff called one expert witness, Mr Wessels, an Industrial Psychologist to testify. The defendant employed two expert witnesses namely the orthopaedic surgeon, Or Mukanzi and the occupational therapist, Ms Montoedi but elected not to call any of them in those aspects where they differ with the plaintiff's experts. The evidence of the plaintiff's expert witness is accordingly uncontested.

[12] The plaintiff sustained a mild to moderate concussive brain injury as well as a range of orthopaedic

injuries in the accident. She was airlifted to Pelonomi Hospital and was later transferred to 3 Military Hospital where she underwent open reduction operation with internal fixation of the fractured humeri. She developed sepsis of the abdominal wound and was referred back to Pelonomi Hospital and then back to 3 Military Hospital and then to 1 Military Hospital for the treatment of abdominal sepsis. She was able to return to work approximately six to seven months post-accident. The sequelae of the plaintiff's injuries in so far as they impact on her performance in the work place, are, summarised in the expert reports and viva voce evidence of Mr Wessels.

[13] For purposes of formulating his opinion, Mr Wessels considered all medical, therapeutics and psychological reports provided to him and available at that time as well as all the available supporting documentation. Mr Wessels also interviewed two of the plaintiff's superiors and also conducted a personal visit to the plaintiff's erstwhile working environment on a warship similar to the one on which the plaintiff was deployed.

[14] Mr Wessels testified that due to the difficulty in projecting a career, progression in the South African Navy, the plaintiff's young age and her study intentions; with evaluating her options thereafter (to study at degree level), he . opted for :a generalised approach to value and calculate the plaintiff's claim and her pre- accident earning capacity. Mr Wessels postulated that the plaintiff would have entered into degree studies in 2015. According to him, it is uncertain as to whether the plaintiff would have had to do a bridging year to improve her mathematics percentage depending on the requirements of the degree discipline she chose. Mr Wessels adopted a conservative approach in this regard and recommended that an additional year be added to the . completion of the degree.

[15] Mr Wessels postulated further that, the under graduate degree is normally three years,

however, the plaintiff would have entered into degree studies in 2015 on a part-time basis. Due to the pressures placed on such, as well as the plaintiff's full-time employment, another year should be added to the completion of the degree. Therefore, the plaintiff would have taken five years to complete the degree at the age 28 years. He assumed that during this period, the plaintiff would have remained on the same level and would have received annual increases as awarded by Government and received salary progression annually.

[16] Mr Wessels opined, to a question posed under cross-examination, which related to the fact that the plaintiff had not engaged in tertiary studies immediately after completing her schooling, that, in his experience, it is very

common for young persons entering the work market to develop insight into what it requires to progress, only when they do so, and are exposed to the realities and the requirements of the working environment, would they follow the career path of their choice. He further opined that the plaintiff, having clearly developed that insight and was likely to have embarked upon and successfully

completed the postulated tertiary qualification, that would have driven her to seek career progression outside of the South African

Navy, given the constraints within it to develop one's career.

[17] According to Mr Wessels, the plaintiff would have been capable of dealing with work of which the content complexity is at the Paterson Job Grade 01/2 level. Mr Wessels suggested that a straight line increase be applied from the earnings at the time of completing the degree studies until the career ceiling Paterson Job Grade D1/2 (501 percentile/Guaranteed package). Mr Wessels, therefore, concluded that the plaintiff would have reached the indicated maximum earnings level at age approximately 45-50 years due to the late achievement of the degree studies. Regarding contingencies, Mr Wessels recommended that a substantially higher post-accident contingency deduction be applied.

[18] Mr Wessels concluded further that, the plaintiff's cognitive difficulties would serve as an obstacle to her effective performance in her future tertiary studies, and that the injuries sustained by her will curtail her residual abilities, productive capacity and ability to work as before. As a result the plaintiff's ability to attain her

pre-accident level of income given the various negative factors is compromised. According to Mr Wessels no early retirement is indicated for the plaintiff.

OTHER EXPERTS

[19] According to the neurologist, Professor Fritz, the plaintiff sustained a mild to moderate concussive brain injury with secondary cognitive and behavioural changes which are partially organic in nature and also related to chronic pain and depression. Professor Fritz is of the view that the plaintiff will no longer be able to work on-board a ship.

[20] Dr Mazabow, the neuropsychologist is of the view that the plaintiff suffered a concussive brain injury which is at least mild to moderate in nature. He noted that the occurrence of an Adult Respiratory Distress

Syndrome raised the possibility that a secondary hypoxic brain insult was sustained. According to him, the plaintiff is further prone to episodes of intense depression since the accident and suffers loss of confidence and low self - esteem. As far as the depression was concerned, Dr Mazabow scored the plaintiff 29 on the depression inventory. According to him, this is borderline between moderate and severe mood disorder. Dr Mazabow attributed the plaintiff's depression to her distress about her reduced physical function and experience of chronic pain in her back, ankles, shoulders, abdomen and arms with headaches and associated limitations both at home and at work, as well as cosmetic changes from the scarring, both of the laparotomy and the upper limbs. According to Dr Mazabow, the plaintiff also presented with reduced memory and concentration. She has residual post traumatic anxiety and fear relating to motor vehicles, both as a passenger and a pedestrian. Dr Mazabow noted further that the plaintiff's cognitive abnormalities are in the domains of motor speed, dexterity for both hands, clerical functions, processing speed, visuo-spatial perceptual processing, immediate span of visuo-spatial attention, visual reasoning, stimulus resistance, rote verbal memory and visual memory and visual recognition memory as well as concentration memory.

[21] Dr Birrell, the Orthopaedic Surgeon is of the view that the plaintiff is no longer fit to become an active seaman due to her injuries and is basically now performing office job. Her loss of work capacity in this type of work at the moment is in the region of 5% to 6% but it is expected to improve to 2% over time. According to Dr Birrell, eventually when the internal fixation is removed, the pain in the humeri will diminish. He concluded from the orthopaedic point of view that, the plaintiff has a good prognosis of performing sedentary type of work and she is not expected to retire early as a result of the accident. Dr Birrell recommended that provision should be made eventually for the removal of the internal fixation from the two humeri which will require a month's sick leave. Dr Birrell opined that the plaintiff will not require any further surgery, however, the possibility of an arthroscopy of the left knee cannot be excluded which may also require six weeks' sick leave. Dr Mukansi, the defendant's orthopaedic surgeon, confirmed Dr Birrell's view that as a result of the injuries the plaintiff suffered in the accident, there was permanent disability. Dr Mukansi opined that the prognosis was poor for a military personnel because of both humeri and back pain. He concluded that the plaintiff should be given lighter duties due to her back pain. According to him, the plaintiff's life expectancy has not been compromised by the accident.

[22] The Occupational Therapist, Ms L Toerien is of the view that the plaintiff does not meet the demands of her pre-accident employment as a telecommunications operator tactical. She noted that the plaintiff is

also declared unfit to work at sea. According to her, the plaintiff is better suited for her current employment in a mostly sedentary

position and her current load handling ability correlates with her current work demands, however, her reduced upper limbs functioning,

reduced co-ordination and discomfort could impact on her work speed and productivity. Ms Toerien recommended that the plaintiff's work station be ergonomically adapted to accommodate her lower back pain when sitting for prolonged periods of time and that she be allowed frequent rest breaks to alter her positions.

[23] Regarding the plaintiff's loss of earning capacity, Ms Toerien concluded that the plaintiff's future work prospective has been affected. According to her, the plaintiff presents with reduced physical work capacity and as a result, she is not indicated to work at sea. Ms Toerien concluded that the plaintiff will still be able to work in sedentary or light work demand position and her salary remained the same but was not compensated for overtime work and other benefits and has suffered a loss of income in that regard.

[24] Ms Van der Heever, the educational psychologist, confirmed the views of Mr Wessels that the plaintiff intended to enrol for a degree and that she met the requirements for admission. According to her, if the plaintiff

enrolled part-time as she intended, the duration of the course would have been five years. According to Ms Van der Heever,

post-accident, the plaintiff no longer had the motivation and drive and she lacked confidence in her own capabilities to pursue any tertiary qualifications. This, in Ms Van der Heever's view, is because the plaintiff's concentration and attention fluctuated and this interfered with her ability to memorise information. According to Ms Van der Heever, the plaintiff's work tempo varied and her short term memory as well as narrative memory presented a weakness and her working memory and mental tracking skills were inconsistent. For all the above stated difficulties, Ms Van der Heever concluded that the plaintiff is likely to experience difficulties working within time limits such as tests and exams. Ms Van der Heever concluded further that, considering all the available information, pre-accident, the plaintiff presented with a learning potential to have completed Grade 12 and a degree of her choice. Post-accident, she is unlikely to successfully complete a degree having regard to her current difficulties.

[25] Dr Grabler, the specialist surgeon and gastroenterologist, concluded that the plaintiff is at the risk of adhesive small bowel obstruction. According to him, the general estimation of the risk may be deemed

to be at least 20% in her life time.

[26] According to Dr Bruce White, the plastic and reconstructive surgeon, the plaintiff will require revision of the scars on both arms and that will be undertaken at the cost of R25 000.00 for theatre and hospitalisation. Revision of the laparotomy scar will be done separately at a cost of R30 000.00 for theatre and hospitalisation. With regard to the scars

on both arms an overnight stay in hospital and one week off from work is necessary whereas a two day stay in hospital and two weeks off from work is necessary for revision of the laparotomy scar.

[27] This brings me to the report of Ms Montoedi, the defendant's Occupational Therapist.

[28] She is of the view that the plaintiff is suited for sedentary and light physical demand jobs and is currently suited for her job. She noted that the plaintiff is right handed. According to her, the plaintiff's hands functions speed is normal. And the measurement of both her hands strength falls within the normal standard deviation of grip strength for her age and gender. Ms Montoedi concluded that the plaintiff presented with good endurance in standing and sitting and is moderately disabled or impaired. However following provision of recommended lumbar spine operation she will find challenges with standing long. Ms Montoedi concluded that because the plaintiff's job entails alternating sitting and standing, therefore she should

continue working until retirement age in her current job. According to Ms Montoedi the plaintiff did not present with cognitive or perceptual problems and no memory problems were experienced during assessment. She therefore concluded that the plaintiff suffered mild mood disturbances and tested normal for depression and anxiety.

Plaintiff's claim for past loss of earnings

[29] As a result of the uncontested evidence of the Industrial Psychologist, there are only two remaining issues, the first is whether the plaintiff suffered any past loss of earnings and the second is whether there is evidence substantiating the plaintiff's loss of earnings or earning capacity. In my view there is no use raising the second issue without leading evidence to counter. The evidence of Mr Wessels is unchallenged in this regard. After the accident the plaintiff returned to work and was sufficiently accommodated as discussed herein above. She could no longer return to her pre accident position because of the difficulties she experienced as a result of her injuries. She received her salary without allowances and overtime because she was no longer posted to her pre- accident work. On the basis of this information I find that the plaintiff suffered past loss of earnings.

Future loss of earnings and/or loss of earning capacity

"But for" the accident

[30.] The plaintiff holds a Grade 12 school qualification. She passed with endorsement and could have proceeded and completed the degree. Her earning potential can be quantified as follows:

According to Mr Wessels the plaintiff would have been able to command an income, allowing for a period of 5 years of attaining her degree commencing in the Paterson B level continuing with straight line increases and progression to the median package levels of the Paterson D1/D2 salary bands by the age between 45 and 50 years.

"Having Regard" to the accident

[31] According to Dr Birrell, the Orthopaedic Surgeon, the plaintiff is no longer fit to become an active seaman due to her injuries and is basically performing now an office job. Her loss of work capacity in this type of work at the moment is in the region of 5% to 6% but it is expected to improve to 2% over time. Ms Toerien is of the view

that the plaintiff does not meet the demands of her pre-accident employment as a telecommunications operator tactical. According to her, the plaintiff is also declared unfit for sea and is better suited for her current employment in a mostly sedentary position. It is Ms Toerien's view that the plaintiff's current load handling ability correlates with her current work demands, however, her

reduced upper limbs functioning, reduced co-ordination and discomfort could impact on her work speed and productivity. Regarding the plaintiff's loss of earning capacity, Ms Toerien concluded that the plaintiff's future work prospective has been affected. She presents with reduced physical work capacity and as a result she is not indicated to work at sea. I am not persuaded by the report of Ms Montoedi that the plaintiff presented with good endurance in standing and sitting and is moderately disabled or impaired and that the plaintiff did not present with cognitive or perceptual problems and no memory problems were experienced during assessment. Ms Montoedi's conclusion that the plaintiff suffered mild mood disturbances and tested normal for depression and anxiety is not in line with all other expert opinions.

Conclusion re loss of earnings

[32] Actuarial calculations were made on the basis of the opinion and postulations made by the plaintiff's Industrial Psychologist who relied on the reports of the plaintiff's experts. The defendant admitted the assumptions used by the plaintiff's actuary. On the basis of the information provided and on the basis that overtime and allowances would have averaged 7,16% of the plaintiff's basic salary had the accident not occurred the actuary assumed a marginal rate of taxation of 25% for the Tax year ending February 2015 and 26% until the calculation date arriving at a net past loss of R20,684.00 after the application of 5% contingency allowance.

[33] For purpose of calculating the plaintiff's claim for future loss of earnings regard must be had to the report of the plaintiff's actuary dated 19 April 2017, more particularly the third scenario namely that the plaintiff, having regard to the accident will have to retire at age 60. On this scenario, the plaintiff's uninjured earnings amount to R10 193,345.00 and her injured to R9 357,890.00. This is before the application of any contingencies. It is trite that contingency deductions are within the discretion of the court and depend upon the judge's impression of the case. Contingencies are the normal consequences of life, which beset every human being and which directly affect the amount which the plaintiff would have earned. See *Southern Insurance v Bailey* 1984 (1) SA 98 (A). General contingencies cover a wide range of consideration which may vary from case to case and may include early death, loss of employment and promotion

prospects.

Having taken into consideration the usual factors to be considered it is my view that the evidence in this case supports the grant of a 15% contingency application in respect of the "but for" scenario and 45% in respect of the "having regard to" scenario resulting in the plaintiff's net future loss of R3,210,173.00 and a total net loss of R3,230,857.00.

GENERAL DAMAGES

[34] It is clear on a consideration of all the evidence before Court that the plaintiff suffered pain, suffering, discomfort and loss of amenities of life. There is no doubt that the plaintiff sustained a mild to moderate concussive brain injury and various orthopaedic injuries of some significance as stated by the Orthopaedic Surgeons. She, in addition to severe pain and discomfort experienced certain complications secondary to her bowel injury consisting of abdominal wall wound infection requiring prolonged treatment. Multiple forms of future medical and surgical treatment regimens are foreseen (including removal of the fixatives in both upper arms, plastic and reconstructive surgery for scars with partial improvement, a 3-4% chance of an arthroscopy of the left knee; surgery for intestinal complications and possible back surgery).

[35] The plaintiff has suffered and will continue to suffer severe impairments and losses in terms of amenities of life including severe curtailments in her participation in physical activities. The plaintiff's combined whole person impairment ("WPI") rating for all the disciplines is 57%.

[36] The plaintiff was hospitalised for almost two month and underwent a number of surgical procedures to her upper limbs, left foot and abdomen. She regained her consciousness after some days in hospital. After the accident she is now a changed person with continuous physical complaints. She faces the real prospects of pain and surgical procedures as well as some physical disability. All the experts are agreed that the plaintiff should be compensated for the injuries she sustained in the accident. For all the reasons stated above the plaintiff now has to be compensated adequately and fairly in the form of general damages.

[37] In determining general damages the court is called upon to exercise its discretion to award what it considers to be fair and adequate compensation having regard to a broad spectrum of facts and circumstances connected to the plaintiff and the injuries she sustained including their nature, permanence, severity and their impact on her lifestyle.

[38]. *Sandler v Wholesale Coal Supplies Ltd* 1941 AD 194 the court held:

"The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending upon the judge's view of what is fair in all the circumstances of the case."

- [39] That still remains the legal position. The award of general damages is trite, there is no hard and fast rule of general application requiring the court to consider past awards. Such awards are seldom on all fours with the facts of the case under consideration. It therefore becomes necessary that each case must be considered on its own merits.
- [40] Based on the above principles I have endeavoured to assess what I consider to be a fair compensation of the plaintiff in this case. I have also taken into consideration that whilst the plaintiff must be sufficiently and properly compensated for the injuries she sustained in the accident, the defendant should not be unnecessarily burdened with an inordinate high award despite the recent tendency by courts to pitch the awards higher than in the past. See *De Jongh v Du Pisanie NO* (2004] All SA 565 (SCA).
- [41] The injuries sustained by the plaintiff in the accident and the sequelae thereof have been stated above. Whilst the plaintiffs brain injury is classed as “at least” mild to moderate, Prof Fritz highlighted the severity of the result thereof based on the findings of Dr Mazabow, all of which are not disputed.
- [42] The plaintiff has claimed the sum of R1,3 million whilst the defendant argued that the plaintiff's general damages should be assessed at R600 000,00. In this regard both have referred me to various decided cases on the subject dealing with past awards made in comparable cases.
- [43] Counsel for the plaintiff especially referred me to the following cases with regard to a mild to moderate brain injury with orthopaedic injuries.
- [44] *Mofokeng v Road Accident Fund 2014* (784) QOD 12 (GSP). In this case an amount of R700 000,00 was awarded for soft tissue injuries of the back and neck and a moderately severe brain injury. This is worth R827 000 in the current value. In my view, the plaintiff's orthopaedic injuries and the permanent sequelae thereof are distinguishable from those of the plaintiff in the case of *Mofokeng*.
- [45] In *Abrahams v Road Accident Fund 2014* (7J2) QOD 1 (ECP) an amount of R500 000,00 was awarded in 2012 (today's value R663 000,00) to a 41 year old man for a comminuted fracture of the right proximal femur, fractures of the right distal fibula and patella, right malleolus, soft tissue injuries to the hand and a mild concussive traumatic head injury. A shortening of the right leg resulted in persistent pain from a combination of orthopaedic injuries.
- [46] In the unreported case of *Mofulatse v Road Accident Fund* (Case Number 77/2010) in the North Gauteng High Court Molefe J awarded R1,2 million as general damages in June 2014 (now worth R1 416 923,00) where the plaintiff suffered a brain injury with various fractures to the legs, of which resulted in fairly severe neuropsychological sequelae and likely knee replacement surgery in the future. The plaintiff in that case also sustained a fracture of the left wrist.
- [47] The defendant referred the court to the following case:

Madan NO v Road Accident Fund 2012 (6A4) QOD 123 (GSJ) where the plaintiff sustained severe brain injury with neurocognitive and neuropsychological sequelae. The court awarded R180 000,00 (current value R400 000,00). It is my view that this case is distinguishable from the present in that the plaintiff in the present case sustained mild to moderate brain injury with serious sequelae.

- [48] Whilst there may be certain similarities between some of the cases and the present, fact of the matter is each decision differs on the facts and the considerations raised therein from the present. Past awards serve no more than to give some indication or guidance as to what sort of awards are appropriate on the facts of a particular case. To the extent that guidance may be derived from these matters, I have given careful consideration to them.
- [49] Whilst the plaintiff's brain injury is classified as mild to moderate, Prof Fritz highlighted the severity of the result thereof. The plaintiff suffers pain in several areas as described and will suffer such pain in all likelihood for the rest of her life. Her scarring on her arms and abdomen is very severe and can only partially be addressed by plastic surgery. She suffers and will continue to suffer depression with a poor prognosis to treatment. She has permanent severe neuropsychological sequelae which will impair her ability to better herself educationally.
- [50] On a consideration of all the facts of the present matter and previous awards made in similar matters it is my considered view that an award of R950 000,00 is a fair and reasonable compensation.
- [51] In the result the following order is made:

51.1 The defendant shall pay the sum of R4 180 857.00 (FOUR MILLION ONE HUNDRED AND EIGHTY THOUSAND EIGHT HUNDRED AND FIFTY SEVEN RAND AND ZERO CENTS) to the plaintiffs' attorneys, Adams & Adams, in full and final settlement of the plaintiffs claim, which amount shall be payable by direct transfer into their trust account, details of which are as follows:

Nedbank

Account Number: [...],

Branch number: 198765, Pretoria,

Reference JPR/DAC/P1682;

51.2 The defendant shall furnish plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, for 100% of the costs of the future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a services to . her or supplying of goods to her arising out of the injuries sustained by her in the motor vehicle collision that occurred on 12 December 2014 after such costs have been incurred and upon proof thereof;

51.3 The Defendant must make payment of the plaintiff's taxed or agreed party and party costs on the High Court scale, which costs shall include, but not be limited to, the following:-

51.3.1 The fees of Senior Counsel on the High Court Scale, inclusive of Counsel's full reasonable day fees for 21 April 2017 and 24 April 2017, and the reasonable costs in respect of the preparation of the Heads of Argument, if and;

51.3.2 The reasonable taxable costs of obtaining all expert/medico-legal RAF4 Serious Injury Assessment

ratings and actuarial reports from the Plaintiff's experts which were furnished to the Defendant;

51.3.3 The reasonable taxable preparation, qualification, travelling and reservation fees, if any, of the following experts:

- (a) Dr PB White;
- (b) Dr DA Birrell;
- (c) Ms L Toerien;
- (d) Dr M Mazabow;
- (e) Prof VU Fritz;
- (f) Dr S Grobler;
- (g) Ms S Van Der Heever;
- (h) Mr W Wessels;
- (i) Mr G Whittaker;

51.4 The costs of a consultation between the Plaintiff and her attorney to discuss the terms of this order;

51.5 The reasonable taxable accommodation and transportation costs (including Toll and E-Toll charges) incurred by or on behalf of the Plaintiff in attending medico-legal consultations with the parties' experts, consultations with the legal

representatives and the court proceedings, the quantum of which is subject to the discretion of the Taxing Master;

51.6 The reasonable taxable accommodation, transportation (rental vehicles and return airplane tickets), sustenance and other costs incurred by the Plaintiff's attorney, instructing attorney and Industrial Psychologist in respect of the inspection conducted in Simonstown. These costs will also include the reasonable day fees for the attorney, instructing attorney and Industrial Psychologist over the relevant period.

51.7 It is recorded that the Plaintiff's instructing attorneys act in terms of a Contingency Fee Agreement for services rendered;

51.8 The above costs will also be paid into the aforementioned trust account.

[52] The following provisions will apply with regards to the determination of the aforementioned taxed or agreed costs:-

52.1 The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record;

52.2 The Plaintiff shall allow the Defendant 14 (FOURTEEN) court days to make payment of the taxed costs from date of settlement or taxation thereof;

52.3 Should payment not be effected timeously, Plaintiff will be entitled to recover interest at applicable statutory rate on the taxed or agreed costs from date of allocatur to date of final payment.

M B MAHALELO

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

FOR THE PLAINTIFF: ADV WP DE WAAL SC

INSTRUCTED. BY: ADAMS & ADAMS ATTORNEYS

FOR THE DEFENDANT: ADV T MANKGE

INSTRUCTED BY: MOCHE ATTORNEYS

DATE OF HEARING: 24 APRIL 2017

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