

SOUTH AFRICA / JUDGMENT

Mahlalela v Road Accident Fund (14395/2021) [2025] ZAGPPHC 442 (15 April 2025) [2025] ZAGPPHC 442

COURT

North Gauteng High Court, Pretoria

BEFORE

Suder

CASE / FILE NUMBER

14395/2021

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****Case****No: 14395/2021****(1) REPORTABLE: YES/NO****(2)****OF INTEREST TO THE JUDGES: YES/NO****(3)****REVISED: YES/NO****DATE:**

15TH APRIL 2025

SIGNATURE:

In

the matter between: MAHLALELA,
MDUDUZI
PLAINTIFF
and
ROAD
ACCIDENT
FUND
DEFENDANT

JUDGMENT

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. This judgment was prepared and authored by the Judge whose name is reflected herein and is handed down electronically by circulation to the parties/ their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand- down is deemed to be 15 April 2025.

SUDER, AJ

- [1] This matter came before me for default judgment on 15th October 2024. This is a personal injury claim where the Plaintiff seeks compensation for bodily injuries sustained by the Plaintiff,
- allegedly arising from a motor vehicle accident which occurred on 16th June 2019.
- [2] The Plaintiff sought to proceed on merits and quantum. On merits, the Plaintiff testified without calling any witnesses. Regarding quantum, the Plaintiff testified on his employment and earnings and relied on expert reports prepared by medical experts who evaluated the Plaintiff post-accident.
- [3] The Plaintiff's brought an application in terms of Rule 38(2) of the Uniform Rules of Court for the expert reports and affidavits to be admitted into evidence. *Havenga v Parker* 1993 (3) SA 724 (T), confirmed by the Supreme Court of Appeal in *Madibeng Local Municipality v Public Investment Corporation* 2018 (6) SA 55 (SCA), found it is permissible to place expert evidence before the Court by way of affidavits in terms of Rule 38(2). The Rule 38(2) application was granted.
- [4] It must be noted that even though the Rule 38(2) application was granted, this court must still be satisfied, after considering all the evidence, that the Plaintiff has a valid claim. By admitting the expert affidavits without viva voce evidence, this Court is not bound to accept the evidence presented for the purpose of granting default judgment.
- [5] Plaintiff's counsel submitted that since there was no participation by the Defendant, the issues of past and future medical expenses and general damages is to be postponed sine die.

- [6] The issues for determination before this court is that of merits and quantum only in respect of past and future loss of earnings.

Background

to Plaintiff's claim

- [7] The Plaintiff commenced proceedings against the Defendant by issuing and serving summons against the Defendant.
- [8] The Plaintiff averred in his particulars of claim that on 16th June 2019, when driving a vehicle bearing registration letters and numbers J[...], he was involved in a motor vehicle accident with motor vehicle bearing registration letters and numbers J[...]² ("the insured vehicle") which lost control and collided with the vehicle he was driving.
- [9] The Plaintiff claims that the insured driver was negligent in several respects, which negligence was the sole cause of the collision.
- [10] The Plaintiff claims that as a direct cause of the accident and the negligent driving of the insured driver, he sustained the following injuries:
- 10.1 Deep laceration on the left side of the head;
 - 10.2 Right big toe fracture; and
 - 10.3 General bodily injuries
- [11] According to the particulars of claim, the Plaintiff claims to have suffered serious injuries which he alleges entitles him to non-pecuniary damages in respect of pain, suffering, shock, loss of amenities of life, disablement and disfigurement. The Plaintiff alleges having complied with Regulation 3 in respect of the serious injury assessment.
- [12] The Plaintiff alleges that as a result of his injuries:
- 12.1 He had to receive hospital and medical treatment
 - 12.2 He will require future hospital and medical treatment
 - 12.3 He suffered severe pain after the accident and will suffer the same pain in future
 - 12.4 He suffered a loss of amenities and will suffer a loss of amenities in the future
 - 12.5 He suffers and will continue to suffer disability
- [13] The Plaintiff claims that he should be awarded 100% merits and the quantum claimed for loss of earnings. The Plaintiff is claiming the sum of R5,195,915-00 in respect of loss of future earnings, which is the only issue to be determined by this court in terms of quantum.

- [14] At the hearing Plaintiff's counsel submitted that the supporting claim for loss of earning capacity was included in the expert reports. The Plaintiff led evidence to make out a claim for the Defendants liability and the quantum of damages claimed for future loss of earnings. The Plaintiff did not call any witnesses. The Plaintiff testified in Swati and was assisted by an interpreter even though the Plaintiff was reported to be fluent in English.

Merits

- [15] The Plaintiff testified that he resides in Witbank and on 16th June 2019 he was involved in a motor vehicle accident. According to the Plaintiff, between 16h00- 17h00 in the afternoon, he was

travelling home from a place called Pap and Vleis. A convoy of motor vehicles were approaching from the opposite direction when suddenly a motor vehicle ("the insured vehicle") encroached into his lane of travel and collided with the vehicle he was driving. The road he was travelling was a one- way carriage road for each direction, consisting of a tar surface. There is a deep trench on the left side of the road which is lined by a heap of soil.

- [16] The Plaintiff testified that there were no vehicles ahead of him and the visibility of the road was clear. He testified that because everything was so quick, he did not see the insured vehicle in front of him as it entered the lane he was travelling on. He testified that he kept a proper lookout and tried to avoid the accident by applying brakes and trying to swerve but it was too late. The insured vehicle collided with the front of the vehicle the Plaintiff was driving, more specifically the right front side.
- [17] The Plaintiff testified that he was accompanied by three passengers. One of the passengers seated behind him was hospitalized. Despite this the Plaintiff did not call any witnesses and testified as a single witness. The Plaintiff's version of events was uncontested at the hearing and although Section 16 of the Civil Proceedings Evidence Act 25 of 1965, as amended, provides that judgment may be given by a court on the evidence of a single and credible witness, this court must be satisfied that the Plaintiff's evidence is credible. This would apply even if the evidence is uncontested. This court must have regard to all the evidence to satisfy itself that the Plaintiff's evidence is credible.
- [18] The Plaintiff testified that the accident between 16h00-17h00 on 16th June 2019. However, the admission records indicate that the Plaintiff reported he was involved in a motor vehicle accident around 14h00. The hospital injury accident report indicates that the time of the injury was 15h00. The accident report indicates that the motor vehicle accident at around 15h00. There is a clear discrepancy as to the time that the accident took place.
- [19] The Plaintiff testified that a vehicle from the opposite direction collided head on with the vehicle he was driving. When assessed by the experts and on admission at the hospital the Plaintiff reported that he was involved in a head on collision. When prompted by this court for clarity, the Plaintiff testified that the point of impact was the front driver's side of the Plaintiff's vehicle. The accident report does not indicate that the insured driver encroached

the Plaintiff's lane or was on the wrong side of the road. The sketch of the vehicle on the accident report does not accord with the Plaintiff's version of the point of impact. According to the accident report the point of impact was the front centre of the vehicle. This would accord with the Plaintiff's several instances of reporting a head on collision. Whilst it may be

accepted there was a collision, the issue to be determined is whether the collision was caused by the negligence of the Plaintiff or the insured driver.

- [20] Plaintiff's counsel argued that on the evidence led, there is no argument that the Plaintiff could not have foreseen the accident. The Plaintiff demonstrated the conduct of a reasonable paterfamilias by swerving to try and avoid the accident. Plaintiff's counsel argued there should be no apportionment and the RAF should be liable for 100% of the damages.
- [21] The Plaintiff bears the onus to prove negligence on the part of the insured driver. This is notwithstanding that the Plaintiff's version remains uncontested. Plaintiff's counsel argued that absent the insured driver encroaching on the Plaintiff's lane, the accident would not have happened. The Plaintiff states in his 19F affidavit that the driver of the insured vehicle lost control and collided with the Plaintiff's motor vehicle. This version is different from the Plaintiff's testimony that the insured driver encroached on the Plaintiff's lane. The accident report was not presented to this court indicating a sketch and plan of how the accident happened.
- [22] Upon perusing the accident report, this court notes that there is no sketch and plan of the accident in the accident report. The description on the accident report was provided by one N.A.Hlahla, who from the hospital records and expert reports appears to be the Plaintiff's wife. According to the description of the accident, the Plaintiff was following a vehicle and the Plaintiff "tried to run" and that is when the accident happened. This is contrary to the Plaintiff's testimony that there were no vehicles ahead of him and the visibility of the road was clear. Ms Nhlahla was not called as a witness. This court is of the view that even if she was called as a witness should would add no value as she was not present when the accident occurred. This court notes its surprise that the passengers, especially the injured passenger was not called as a witness. This would have served to corroborate the Plaintiff's version and dispelled any perceived discrepancies. Despite Ms Nhlahla not being present when the accident happened, she reported to medical experts that on knowledge of the accident she attended the hospital and was advised by the Plaintiff how the accident took place. It is therefore reasonable to assume that when describing the accident Ms Nhlahla repeated what the Plaintiff communicated to her. The version presented in the accident report casts doubt on whether the Plaintiff's testimony before this court is truthful.
- [23] The Plaintiff's testimony and the description of the accident in the accident report does not accord with the Plaintiff's affidavit which states that the insured driver lost control of his vehicle and collided with the Plaintiff. Whilst it cannot be ruled out that a collision did in fact take place, given the blatant discrepancies this court is not convinced that the collision

was caused by the sole negligence of the insured driver. There may very well have been a collision however except for the Plaintiff's testimony, there is no evidence to suggest that the head on collision was caused by the sole negligence of the insured driver. The description of the accident provided in the accident report casts doubt on the allegations of negligence on the part of the insured driver. which is questionable if this court has regard to the description of the accident in the accident report. This court cannot rule out that the description that the Plaintiff "tried to run" could mean that the Plaintiff tried to overtake the vehicle in front of him, thus being responsible for the collision. This court cannot also rule out contributory negligence on the Plaintiff's part, however absent any evidence this court cannot make a determination on contributory negligence.

- [24] This court is not sufficiently satisfied on the evidence presented that the accident was caused by the sole negligence or even the negligence of the insured driver. The Plaintiff's evidence on the merits does not satisfy this court sufficiently to make a determination on the merits.
- [25] In the circumstances, this court this Court refuses to exercise its discretion in favour of granting default judgment on the merits and is of the opinion that the issue of merits must be ventilated in a full trial.

Quantum

- [26] While not being not obliged to address the issue of quantum, this court finds it apposite to comment on the probity of the Plaintiff's testimony and the expert evidence relating to the Plaintiff's claim for future loss of earnings and the quantification of the Plaintiff's claim.
- [27] The Plaintiff testified that he sustained injuries to the left side of his forehead, his right leg, he suffered a broken right thumb and his whole body was in pain. He testified that he has not fully recovered from the injuries sustained. He suffers with constant headaches, especially when it is hot and this affects his eyesight. Regarding the injuries allegedly sustained to his back and foot, the Plaintiff testified to having horrible pain when he sits for long and drives long distances. He is testified to not being able to wear a closed shoe for long durations especially when driving long distances as this causes his feet to swell. In most cases he requests his wife to accompany him. The Plaintiff submitted no evidence to support his testimony that his eyesight is affected by his headaches. There was further no evidence to confirm his testimony that he requires his wife's assistance when driving long distances.
- [28] The Plaintiff testified that before the accident he was employed at DIG, a mining company, as a supervisor. He was responsible for taking care of machines when employees were reporting for duty. He was responsible for ensuring that he recorded the correct working hours because the machines had to generate income at the end of the month. He was responsible for the time sheets so the employees could be properly remunerated. He testified that most of his working time was spent deep in the mines.

- [29] He testified that he returned to his pre-accident employment a month after the accident but remained there for only four months. He was not able to perform his duties to the fullest since sustaining the injuries in the accident. He had problems with his eyes, he tended to be forgetful and sitting for long posed a problem for him. He left his employment at DIG because of the mistakes he made on the paperwork and he also could no longer wear the safety boots which were a requirement. The Plaintiff's evidence was not supported by corroborative evidence which could be obtained from the Plaintiff's employer. There was no evidence before this court that the Plaintiff had problems with his eyesight serious enough to impeded his duties, or at all. Professor Lekgwara, the specialist neurosurgeon reported that the Plaintiff's vision was intact.
- [30] He testified that he left his employment at DIG because of the concerns raised around his performance. He was also subjected to a medical examination, a requirement of working at the mines, which was not successful due to the injuries he sustained in the accident. He was rendered "non-red ticket", meaning that he did not pass the medical fitness test. A red ticket is issued if one passes the medical fitness test. The Plaintiff submitted no evidence to this court supporting his testimony that he was rendered non-red-ticket. If this were the case the Plaintiff would not have been precluded from presenting to this court the outcome of the medical fitness test which rendered him non-red-ticket.
- [31] The Plaintiff testified that after leaving DIG he tried for a long time to secure employment and was successful for a while but is now unemployed. He was unemployed for approximately 8 months to a year before securing employment as a tipper truck driver at Masimanzi. He testified that as a tipper truck driver, he required a lot of strength to operate the tipper truck. This court is not convinced by the Plaintiff's testimony. It is this courts understanding a tipper truck operates by using a hydraulic system to lift and lower the truck bed. The driver only controls the tipping mechanism and this is controlled by hand and not by foot. Even if this were not the case and the Plaintiff required strength to operate the tipper truck, Professor Lekgwara's examination of the Plaintiff's motor system reported that the Plaintiff demonstrated normal muscle power
- was normal on all limbs.
- [32] The Plaintiff testified that he was sitting for long periods and had to concentrate a lot because of safety issues. He was subsequently taken off the tipper truck and put on ADT (Articulated Dump Truck) where he also experienced challenges in meeting targets because of his injuries. The Plaintiff testified that the red ticket was also a requirement for this position but he was given the job because he was known to the owner. As a sympathetic employer the owner would call the Plaintiff to assist for a period of time because he understood the Plaintiff's condition and the person he was before the accident. The Plaintiff's version does not seem probable given the legislated safety requirements which would have been applicable to the Plaintiff's employment. It is highly unlikely that even a sympathetic employer known to the Plaintiff would prejudice

operations and cause risk to the operations by not complying with safety protocols.

[33] The Plaintiff first testified to being employed as an ADT driver for a year before leaving. He testified that he was not permanently employed at Masimanzi. He thereafter testified that he was employed for 5 months. He experienced problems with picking up incorrect loads as he would forget where to collect certain types of cargo. He testified that even in this position the injury to his foot hampered him from wearing safety boots in adherence to safety standards as his legs would swell. Driving the ADT required the foot to operate. He further testified that the safety officer found him underground with his safety boots off and this created a problem for him. The Plaintiff's version was not supported by witness evidence. It would have been prudent to call the safety officer to testify on behalf of the Plaintiff and support his version. The Plaintiff did not present evidence from his erstwhile employer supporting his testimony that he had challenges performing his duties.

[34] The Plaintiff testified that he stopped working in September 2024. He attended an assessment by Dr Ngobeni, the Orthopaedic, on 8th August 2024 when he informed her that he managed to go back to his pre-accident employment. He was called back by his employer for a short period of time, hence he is now unemployed.

[35] The Plaintiff appointed several experts to evaluate and report on the nature of his injuries and the sequelae of the injuries sustained. The Plaintiff sought the expert opinion of a neurosurgeon, clinical psychologist, Orthopaedic surgeon, occupational therapist, industrial psychologist and actuary to support his claim for future loss of earnings.

[36] The Plaintiff obtained the following expert reports:

36.1 Professor Patrick L. Lekgwana (Neurosurgeon)

36.2 Dr R S Ngobeni (Orthopaedic)

36.3 Adelaide Phasha (Occupational Therapist)

36.4 Sandra I Mores (Industrial Psychologist)

36.5 Narropi Sewpershad (Clinical Psychologist and Neuropsychologist)

36.6 Munro Forensics Actuaries (Actuary)

[37] On presenting the Plaintiff's case on quantum on the issue of future loss of earnings, Plaintiff's counsel referred this court to the discussions and opinions contained in the expert reports of the neurosurgeon, the Orthopaedic surgeon and the psychologists. Plaintiff's counsel read into the record extracts from the reports and recommendations of the various experts.

[38] The Plaintiff was initially assessed by Dr R S Ngobeni, Orthopaedic Surgeon on 8 March 2021. He was reassessed on 8 August 2024 and Dr Ngobeni provided an Addendum report. The language of assessment was English and Isizulu. Dr Ngobeni was in possession of the x rays and x rays report and the RAF 1 Form completed by Dr Engela Wybenga. The Plaintiff

reported that he was employed as an ADT Operator at a mine. The Plaintiff reported to Dr Ngobeni on 8th August 2024 that he managed to go back to his pre-accident employment and testified before this court that because the employment was for a short time he was unemployed. This contradicts the Plaintiff's reasons for leaving his previous employments, viz that his injuries affected his performance. The Plaintiff testified to leaving his employment after his assessment with Dr Ngobeni not for reasons related to his injuries. It also makes no sense to this court why, despite the Plaintiff reporting to the medical experts and to this court that the injuries compromised his work performance, he would return to the same position.

[39] Dr Ngobeni reported that the hospital records indicated that the Plaintiff was diagnosed with a laceration on the forehead, lower back injury and an open right big toe distal phalanx fracture. The Plaintiff provided no evidence of loss of consciousness especially in the instance where the hospital records indicate there was no loss of consciousness.

[40] Dr Ngobeni reports that the Plaintiff was treated for backache and associated abrasions and has no complaints. The occupational therapist reported that the Plaintiff experienced challenges due to a back injury. Dr Ngobeni's report, which is recent, indicates that the Plaintiff presented no complaints regarding his back ache and associated abrasions. This court gives credibility to Dr Ngobeni's report as it is based on recent assessment of the Plaintiff.

[41] Dr Ngobeni reported that the Plaintiff had an open base phalanx fracture of the big toe and was taken for debridement nail bed repair and k-wire insertion. Whilst Dr Ngobeni reports that the Plaintiff struggles to wear closed shoes especially working boots due to pain and swelling, Dr Ngobeni has not opined that the Plaintiff has been disabled and is not able to perform his duties. Dr Ngobeni reports an impairment of the right big toe function which is a reduction in the function as opposed to complete non-function of the right big toe. Dr Ngobeni reported that the Plaintiff has full but painful ranges of

toes joint movement and he will benefit from analgesics, anti-inflammatories and orthotic shoe wear. The Plaintiff reports that he struggles with pain and discomfort when wearing safety boots at work and this may affect his productivity at work. Dr Ngobeni

recommends arthrodesis of the big toe to reduce pain and discomfort and orthotic softer shoe boots wear to be arranged with orthotics.

[42] Regarding future work capacity, Dr Ngobeni reported that the Plaintiff has N3 mechanical training post matric, a certificate for tipper truck, ADT and water bowser. He managed to go back to work post-accident. Dr Ngobeni's report does not render the Plaintiff disabled where he cannot function in his pre-accident employment. Dr Ngobeni reports that the Plaintiff's productivity may be affected, not the Plaintiff's ability to perform the functions.

- [43] This court is of the view that by following the recommendations of Dr Ngobeni, the Plaintiff will be able to execute his pre-accident work functions. Dr Ngobeni's recommendation does not support the view of the other experts which suggest that the Plaintiff will not be able to work for the remaining period of his work life.
- [44] The Plaintiff was examined by Professor Lekgwara, Specialist Neurosurgeon, on 8 March 2021 ("the first interview"). Professor Lekgwara provided a report pursuant to the first interview. Professor Lekgwara conducted an updated interview with the Plaintiff on 31 July 2024 ("the second interview"). The second interview took place approximately 5 years after the accident and 4 years, 4 months after the first interview. The Plaintiff was 39 years old when initially interviewed. Professor Lekgwara had at his disposal the clinical records from eMalahleni Hospital and the RAF Form 1 medical report completed by Dr Engela Wybenga on 21 February
2020. The Addendum report prepared by Professor Lekgwara pursuant to the second interview was identical in substance to the first report prepared after the first interview.
- [45] The Plaintiff reported loss consciousness after sustaining injuries to his head, chest, face, and right big toe. There is no evidence supporting the Plaintiff's version that he lost consciousness. The hospital records confirm that there was no loss of consciousness. The Plaintiff reported that he was not in a previous accident, however this was contradicted in his reporting to the clinical and neuropsychologist, Ms Sewpershad. The Plaintiff reported to Ms Sewpershad that he was in a previous accident.
- [46] Professor Lekgwara conducted a clinical details interview with the Plaintiff. The Plaintiff complained mainly of a painful right big toe and a headache. He complained that the painful right big toe started after accident, was triggered by long driving and was associated with swelling of the right foot. The Plaintiff complained that he sometimes cannot wear closed shoes and the pain is worse during cold weather. He takes analgesia for the pain. Regarding the headache, he complained that it was in the frontal area and started after the accident. He suffers with headaches almost daily it is worse during hot weather. He reported that he has memory problems and has not experienced any convulsions. This court notes that this contrary to what was reported by Ms Sewpershad. Ms Sewpershad reported that the Plaintiff's incidental recall, working memory, mental tracking
- and mental sequencing proved to be retained in line with those of his peers. Although the Plaintiff complained oh headaches, there is no evidence supporting the Plaintiff's complaint. This court notes that despite consulting a specialist neurosurgeon, the Plaintiff has not submitted to a CT scan or MRI scan confirming his alleged condition and the reasons therefor.
- [47] On systemic enquiry Professor Lekgwara reported negative for cardio vascular, respiratory, gastro-intestinal and urogenital symptoms. The Plaintiff reported no chronic illness.

- [48] Professor Lekgwara reported that according to the hospital records, the Plaintiff's Glasgow Coma Scale (GCS) was 15/15. Professor Lekgwara opined that the Plaintiff sustained the following Injuries: soft tissue injuries; right big toe distal phalanx fracture and mild traumatic brain injury. A GCS of 15/15 indicates a patient is fully alert, responsive and has no problems with thinking ability or memory.[1] This is not consistent with a diagnosis of brain injury. Professor Lekgwara opined that the Plaintiff had loss of consciousness for 5 minutes and suffered a grade 3 concussion. This is not supported by witness evidence or medical evidence. Professor Lekgwara did not present any neuroimaging results to support his diagnosis. Professor Lekgwara opined that the Plaintiff had post-concussion headaches and memory problems which will need assessment and treatment. Professor Lekgwara commented on the condition of a concussion, opining that a concussion results in the alteration of brain function. He opined that a clinical finding of a concussion includes confusion, amnesia, headache, drowsiness and loss of consciousness. The hospital records indicate that the Plaintiff was alert and there was no loss of consciousness. The report by Dr ND Mhlongo who attended to the Plaintiff post-accident also indicates there is no history of loss of consciousness. This court is not convinced by Professor Lekgwara's diagnosis that the Plaintiff suffered mild traumatic brain injury.
- [49] On the Plaintiff's cognitive functions, Professor Lekgwara reported that the Plaintiff's speech was fluent during interview, he appeared of average intelligence, he paid attention during the interview and sustained attention throughout the interview. On general examination, Professor Lekgwara reported that the Plaintiff presented with a 10cm left forehead scar. Examination of the cranial nerves indicated that the Plaintiff's vision was intact, no ophthalmoplegia was observed and no abnormalities were observed. Examination of the Plaintiff's motor system demonstrated that muscle power was normal on all limbs. This is not consistent with Professor Lekgwara's diagnosis that the Plaintiff suffered mild traumatic brain injury.
- [50] Professor Lekgwara opined that the Plaintiff had some neuropsychological problems which need to be assessed by a clinical psychologist. He did not provide details of the neuropsychological problems. This diagnosis seems inconsistent with Professor Lekgwara's report on the Plaintiff's cognitive functions. Professor Lekgwara reported normal cognitive functions for the Plaintiff. Professor Lekgwara did not report any abnormalities in respect of the Plaintiff's behaviour, supported by medical evidence.
- [51] Professor Lekgwara reported that the Plaintiff has a 2% chance of developing epilepsy. There was no basis submitted for this expected complication and no medical evidence supporting the prognosis. Professor Lekgwara's prognosis was that according to neurosurgical literature +/- 80% of patients suffering from post- concussion headaches recover within 2 to 3 years and 20% of patients remain with chronic symptom. He opined that since it is 5 years after the accident, no further improvement is expected. This is not supported by medical evidence and Professor Lekgwara did not present a CT scan or MRI scan to confirm the diagnosis of post- concussion headaches and mild traumatic brain

injury. Professor Lekgwara's diagnosis was based on reporting by the Plaintiff that he lost consciousness and suffered with headaches. This court is not convinced by the experts' assessment.

- [52] Professor Lekgwara reported that the Plaintiff lost the ability to generate an income during the time he was involved in the accident. He deferred an opinion on future loss of income to an industrial psychologist. The Plaintiff was compensated for the time he did not work.
- [53] Professor Lekgwara reported that the Plaintiff suffers severe long term mental or severe long term behavioral disturbance or disorder. To the extent that this is relevant to the Plaintiff's claim for loss of future earnings, this court is not convinced by this assessment.
- [54] Narropi Sewpersadh, Clinical Psychologist and Neuropsychologist, evaluated the Plaintiff to establish the neuropsychological and clinical psychological effects following a motor vehicle accident. The Plaintiff was assessed by Ms Sewpershad on 1 June 2021 and a report was provided on 25 February 2022. The Plaintiff was reassessed and subjected to a neuropsychological assessment on 2 August 2024. An Addendum was provided by Ms Sewpershad on 23 September 2024. The language of assessment was English, Swati and Ndebele. Ms Sewpershad reported that the Plaintiff was conversant in English and Ndebele. The findings in Ms Sewpershad Addendum report is the culmination of information predominantly provided by the Plaintiff and incorporates the results of the comprehensive neuropsychological assessment. The Addendum integrates the findings of her report dated 25 February 2022.
- [55] Ms Sewpershad assessed the Plaintiff by carrying out an extensive clinical interview followed by a neuropsychological testing and the administration of psychological questionnaires. Ms Sewpershad consulted the following documents when preparing her report:

55.1 The hospital records

55.2 The RAF Form 1 medical report completed by Engela Wybenga

55.3 Medico-legal report completed by Dr RS Ngobeni, the orthopedic surgeon

55.4 Medico-legal report and RAF 4 serious injury assessment report completed by Professor Lekgwara.

55.5 The Addendum Medico-legal report completed by Dr RS Ngobeni

55.6 The Addendum 4 Medico-legal report and RAF 4 serious injury assessment report completed by Professor Lekgwara

- [56] According to Ms Sewpershad, the Plaintiff reported that he was living in Middelburg with his wife and he secured employment since his previous assessment in 2021. The Plaintiff reported being involved in a previous accident in 2004/2005, when the vehicle in which he was a passenger was struck from behind. He reported that he did not suffer loss of consciousness during that accident nor did he suffer any injuries. Ms Sewpershad reported that the Plaintiff did not have any residual complaints relating to the previous accident.
- [57] The Plaintiff provided Ms Sewpershad with his occupational history. He reported that post-MVA he felt pressured to resign due to an unsympathetic employer. He was forgetful and made frequent mistakes. Pain and discomfort caused by the injury to his right toe made it difficult for him to wear safety boots. He suffered headaches two to three times a week which he treated with Grandpa. When confronted by his employer on his mistakes this resulted in arguments. This is contrary to the Plaintiff's reporting to Ms Moses, the Industrial Psychologist. The Plaintiff reported to Ms Moses that his employment was terminated for reasons unrelated to the accident. Ms Moses confirmed that the Plaintiff was employed post-accident by a sympathetic employer.
- [58] The Plaintiff reported that when the accident occurred, he was rendered unconscious and to his knowledge he woke up in hospital the next morning. This is contrary to the doctor's note by Dr Mhlongo which indicates that there was no history of loss of consciousness. The Plaintiff was reported by Dr Mhlongo to be clinically stable with a laceration on the forehead. The attending doctor did not record a head injury. This also contradicts the hospital patient clinical record which reports that the Plaintiff got out of the vehicle himself.
- [59] Ms Sewpershad indicated that the Plaintiff reported the following injuries: laceration to the forehead, a fractured right big toe, an injured back and chest / ribs which were painful on both sides. The Plaintiff received treatment by undergoing X-rays, his right big toe fracture was surgically repaired, he was given medication for pain and he received physiotherapy. The Plaintiff was issued a moon boot which he used for approximately 1 month post discharge. The Plaintiff reported that there were no fatalities but one other passenger was injured.
- [60] Ms Sewpershad reported that she obtained collateral information from the plaintiff's wife. The Plaintiff's wife reported that she was not present and did not witness the accident. She came to know of the accident through the vehicle tracker company which contacted her and informed her that the system indicated that the vehicle battery had been moved. She attempted to contact the Plaintiff but her calls were not answered. The Plaintiff returned her call after a few minutes and informed her that he has been involved in a motor vehicle accident. This is inconsistent with the Plaintiff's report that he lost consciousness and woke up in hospital. The Plaintiff's wife reported that she went to hospital and the Plaintiff was semi-conscious, was incoherent and in a lot of pain. This is also inconsistent with the version that the Plaintiff returned her call after a few minutes and with the hospital records which indicate that the Plaintiff was alert. The Plaintiff's

wife reported that when she returned to the hospital the next day, the Plaintiff could not remember how the accident occurred. If the Plaintiff was semi-conscious and incoherent on the day of the accident and could not remember the next day how the accident

happened, this court must then question how the Plaintiff's wife recorded a description of the accident in the accident report

the next day. The only reasonable inference which can be drawn is that the Plaintiff was not semi-conscious, which is in keeping with the hospital records that the Plaintiff was alert and there was no loss of consciousness.

[61] Ms Sewpershad reported that the hospital notes indicated that on admission the Plaintiff's Glasgow Coma Scale (GCS) was recorded at 15/15, with no loss of consciousness. Ms Sewpershad referred extensively to the medico legal report and RAF 4 Serious assessment report provided by Professor Lekgwara, to the medico-legal report provided by Dr Ngobeni, and to the RAF Form 1 medical report completed by Dr Engela Wybenga. This court has addressed the inconsistencies in Professor Lekgwara's report and will not repeat same.

[62] Ms Sewpershad reported that upon direct enquiry the Plaintiff reported that his eyesight is normal and he does not experience any episode of dizziness. This is consistent with Professor Lekgwara's report that the Plaintiff's vision was intact and inconsistent with the Plaintiff's report that he suffered eye problems resulting from the headaches. He reported that he did not develop post-traumatic epilepsy or convulsive disorders to date. The Plaintiff reported that his right foot/toe becomes swollen after sitting or driving for long periods. He reported that his speech is fluent. He is short tempered since accident but has learnt to control his temper. He is more forgetful, he forgets to follow up on prospective job offers and to attend to important errands and chores. His concentration is not as effective as before. He has no difficulty with effecting mental calculations. The Plaintiff assists with domestic chores and he has no limitations in this regard. He cleans the house, cooks and watches television.

[63] The Plaintiff reported that despite his pain and discomfort he remains motivated to sustain his employment. In his previous assessment the Plaintiff indicated that he remained motivated to seek employment and would look for opportunities in the mining sector or as a truck driver. This court finds it strange that the Plaintiff would seek opportunities in the mining sector despite complaining of restrictions he suffered allegedly arising from the injuries sustained. This is not consistent with the Plaintiff's complaints that he cannot drive for long periods and cannot wear safety boots due to the foot injury.

[64] The Plaintiff reported several features of PTSD, including nightmares of the accident, although infrequently. He reported that he experienced flashbacks and if he experiences this while driving, he asks his wife to drive. He reported experiencing anxiety while travelling but indicated that he still drives. He reported having difficulty controlling his temper and at least one isolated episode of entertaining thoughts of suicide after he lost his

temper and fought with his wife. There was no actual attempt at suicide. This was not verified by Ms Sewpersadh through collateral evidence. It is inconceivable that an expert report on such a serious matter without having regard to collateral evidence.

- [65] Ms Sewpersadh reported that the plaintiff was fluent in English and he presented himself in a logical and coherent manner. His memory was adequate for the purpose of the evaluation and his insight and judgement seemed intact.
- [66] Ms Sewpersadh reported the Plaintiff's auditory attention to be generally well within normal expectations although subtle fluctuations in his concentration with increased complexity. His incidental recall, working memory, mental tracking and mental sequencing proved to be retained in line with those of his peers. His problem solving and numerical reasoning on the arithmetic test was on par with the majority of his peers. This was confirmed by Ms Phasha's report that the Plaintiff presented with relevant and logical thoughts and his memory was functional.
- [67] Ms Sewpersadh took cognizance taken of the opinion of Professor Lekgwara, the Neurosurgeon who concluded that Mahlalela sustained a mild traumatic brain injury having considered there was a history of loss of consciousness.
- [68] Ms Sewpersadh reported a decline in the Plaintiff's neurocognitive functioning. She opined that clinically the Plaintiff's presentation was suggestive of poor adaptation to the post injury effects of the accident. The Plaintiff presented with a mood disorder (depression), generalized anxiety as well as significant PTSD features along with a mild traumatic head injury that was now manifesting as a post-concussive syndrome. Ms Sewpersadh reported that the accident rendered the Plaintiff psychologically vulnerable, that the Plaintiff presented with persistent injury related limitations that impeded his ability to return to his premorbid levels of functioning, from a neurocognitive and psychological perspective.
- [69] Ms Sewpersadh reported that she identified a critical decline in the cognitive domains of complex attention, processing speed, verbal memory and on tasks of executive function. The Plaintiff manifests persistent mood disturbance/severe depression and on-going features of PTSD. The Plaintiff's chronic pain disorder has been identified as a critical contributor to his increased psychological vulnerability. She opined that ongoing mental stress has negated the Plaintiff's quality of life and adversely impacted his personal sense of competence.
- [70] Ms Sewpersadh summarized that based on the information at hand and the tests conducted, the Plaintiff sustained a co-morbid psychological injury because of the accident. The Plaintiff presented with major depression as well as significant features of PTSD which resulted in ongoing emotional pain and suffering. Ms Sewpersadh opined that the Plaintiff would benefit from a referral for psychiatric assessment and treatment. The Plaintiff stands to benefit from psychotherapeutic intervention to work through his depression, poor motivation, loss of confidence, his anxiety, residual trauma and fear related to travelling. This court was not presented with a report from a psychiatrist confirming this assessment.

The Plaintiff reported to the Occupational Therapist on 30 June 2021 that he was in the process of divorcing his wife as he has become short tempered leading to violent behaviour towards his wife. This was not verified by the expert through collateral evidence. Absent supporting evidence this court cannot rule out that the Plaintiff's psychological injury and depression was due to reasons related to the Plaintiff's

marital situation.

- [71] In completing the RAF Form 4 Serious Injury Assessment Report, Ms Sewpersadh, in addition to her assessment of a psychological injury, relied on Professor Lekgwara's report that the Plaintiff had sustained a traumatic brain injury. This has been addressed by this Court insofar as it impacts the Plaintiff's claim for loss of future earnings.
- [72] This court is not convinced by Ms Sewpersadh report on the Plaintiffs neurocognitive functioning. Neurocognitive function refers to the mental processes and skills directly linked to brain structure and function, including memory, language, attention, and executive function. It refers to an individual's various cognitive abilities. In contradiction to Ms Sewpersadh, Professor Lekgwara, on the Plaintiff's cognitive functions, reported that the Plaintiff's speech was fluent during interview, he appeared of average intelligence, he paid attention during the interview and sustained attention throughout the interview.
- [73] It is apposite to note that the Damages Affidavit before this court refers to Ms Sewpersadh report dated 25 February 2022. There is no affidavit by Ms Sewpersadh confirming the contents of her Addendum report. In the circumstances any updates to the report dated 25 February 2022 cannot be afforded probative value.
- [74] Adelaide Phasha, Occupational Therapist, evaluated the Plaintiff's occupational performance. Ms Phasha evaluated the Plaintiff on 30 June 2021 and presented a report on 31 March 2023. The Plaintiff relied on the report of the occupational therapist, Adelaide Phasha to confirm employment history and to address the aspects of workability and employability. The Plaintiff reported being unemployed at the date of assessment.
- [75] Ms Phasha made reference to and summarized the contents of the expert opinions of Professor Lekgwara (specialist neurosurgeon), Dr RS Ngobeni (Orthopaedic Surgeon) and Ms Sewpersadh (clinical psychologist). Ms Phasha relied on the Plaintiff's reporting on his current complaints.
- [76] The Plaintiff reported that he was in the process of a divorce. Regarding mode of transport, he either walks or uses public transport. He experiences travelling related anxiety when travelling in a speeding vehicle.
- [77] Ms Phasha reported that the Plaintiff recorded loss of consciousness, however noted that the available hospital records did not note a history of loss of consciousness. According to Ms Phasha, the Plaintiff reported that he was not involved in any previous accidents.

[78] Regarding his employment history, the Plaintiff reported that at the time of the accident he was employed as an Excavator Machine Operator Supervisor at DIG Mining. After the accident he was off for a month to recuperate from the injuries, on full pay. He resumed his pre-accident duties when he returned to work with difficulty due to the pain and suffering in his right foot. He forced himself to wear boots which was mandatory and he struggled to get onto elevated platforms and to walk on uneven terrain. The Plaintiff reported that post-accident he had decreased concentration and accuracy levels. He

made two errors which caused the company financial loss and was called in for a hearing but decided to resign instead. He could not recall when he resigned but it was around June 2020. He remained unemployed and was still unemployed at the time of the consultation

in June 2021.

[79] On 22 March 2022, Ms Phasha contacted the Plaintiff for updated details on his employment. The Plaintiff reported to Ms Phasha that during October/November 2021 he obtained employment at a mine in Middelburg as a Tipper Truck Driver. He experienced pain on the right foot and big toe but would endure the pain. He was forgetful and forgot to record the weight of the loads and this led to complaints from his supervisors. He worked for 3 to 4 months until he was retrenched on 28 January 2022. He was the only one from his department to be retrenched, although others were retrenched as well. He reported that others were rehired except him. The Plaintiff's alleged retrenchment was not verified by Ms Phasha and neither did the Plaintiff provide proof of retrenchment. This would have been an easy task given that the Labour Relations Act prescribes a specific procedure for retrenchment. During his testimony the Plaintiff did not testify on being retrenched.

[80] Ms Phasha obtained collateral information from the Plaintiff's supervisor at DIG Mining, Mr. Johan Van Niekerk, who confirmed that the Plaintiff was employed as an Excavator Machine Operator. He confirmed that following the accident the Plaintiff was given light duties which he performed until he resigned. The light duties included driving a small vehicle instead of a light vehicle. This was to accommodate the Plaintiff who was struggling to perform his duties due to the right foot pain. Mr. Van Niekerk referred questions around the reason for the Plaintiff's resignation to HR. The HR Department indicated that the Plaintiff was facing disciplinary action and resigned. Ms Phasha was provided with the Plaintiff's resignation letter dated 8 June 2020, which was absent a reason for resignation, suffice to state that he was resigning with immediate effect. The information provided to Ms Phasha is in contradiction to the version presented by the Plaintiff that he left DIG Mining because of errors on the paperwork and he could no longer wear the safety boots. It is also in contradiction to the information provided

by the Plaintiff to the Industrial Psychologist that his contract was terminated at DIG Mining for reasons not related to the accident. Ms Phasha reported that the Plaintiff's pre- and post-accident job as an Excavator Machine Operator fell predominantly within the light work category. The Plaintiff was given light duties but chose to resign, which according to his report to Ms Stone, was for reasons unrelated to the accident.

[81] Ms Phasha reported that the Plaintiff presented with relevant and logical thoughts during the interview and his memory was functional. This is not consistent with the Plaintiff's evidence that he had memory problems.

[82] Regarding workability, Ms Phasha reported that on the day of assessment the Plaintiff reported mid-back pain, right ankle and big toe joint and fatigue in the right leg consistent with the injuries sustained. She reported that the Plaintiff presented the following challenges:

82.1 Equivalence of circumference which was suggestive of decreased functional use of the right leg in daily activities.

82.2 Mild swelling was noted below the right malleolus suggestive of symptomology in the area.

82.3 The Plaintiff presented with kyphosis on the thoracic spine and lordosis was noted on the lumbar spine.

82.4 Muscle spasms were noted on the trapezius muscles down to the thoracic spine

82.5 His point standards did not meet the competitive standards during the Valpar 11 task assessing his eye-hand-foot co-ordination which is critical for driving most machines in industries and factories.

82.6 He presented with overall physical ability for the medium category of work.

82.7 Mild cognitive fallouts were noted with regards to immediate recall memory, attention and fatigue.

82.8 The Plaintiff's work rate during clerical and numerical assessment did not meet the open labour market standards.

[83] The challenges presented by Ms Phasha are not supported by the expert reports. Dr Ngobeni reported no complaints in respect of the reported back injury. Professor Lekgwara reported positive on cognitive function. Ms Sewpersadh reported that the Plaintiff had no difficulty with effecting mental calculations. There was no evidence substantiating that the Plaintiff's work during clerical and numerical assessment did not meet labour market standards. This is a subjective test to the extent that different labour markets set different standards. To make a clinical assessment which is unsubstantiated by facts is unconvincing to this court.

[84] Ms Phasha opined that considering the injuries sustained, the assessment findings and the expert opinions, the Plaintiff is suited for light to occasional medium work category. Full spectrum medium category is not recommended as it tends to exacerbate spine

symptomology and also due to reduced psychological endurance. She reported that the Plaintiff is unsuited for heavy to very heavy work category because of the injuries sustained. He would need to take frequent rest breaks and observe joint and spine saving principles. She opined that he is an unequal and vulnerable competitor in the open labour market who will always be at risk of losing his job. Ms Phasha concluded that the Plaintiff suffers occupational dysfunction due to presenting physical, cognitive and psychological challenges. He has limited options and is an unequal competitor in the labour market and a highly vulnerable employee. He will always need an employer who understands his limitations. His limitations will impact his promotional opportunities and growth which contributes to his overall loss of earning potential in the future. It is accepted that

he would not reach his pre-accident work potential and would struggle to re-enter the open labour market and would most probably remain unemployed for the remainder of his life unless employed by a sympathetic employer.

[85] This court is not convinced by Ms Phasha's opinion on the Plaintiff's workability. Ms Phasha's comment that full spectrum medium category is not recommended as it tends to exacerbate spine symptomology is not convincing if regard is had to Dr Ngobeni's report. Dr Ngobeni reported in her Addendum that the Plaintiff had no complaints regarding back pains, Ms Phasha's report suggests that the back injuries has compromised the Plaintiff's ability to work in the full spectrum medium category. This is unsupported by any medical evidence. Ms Phasha's comment that the Plaintiff

would most probably remain unemployed for the remainder of his life unless employed by a sympathetic employer is without merit and not convincing to this court. The Plaintiff was employed as recently as August 2024. The Plaintiff did not indicate the reasons for him leaving employment being the challenges he previously reported. The Plaintiff did not testify that he was employed by a sympathetic employer during August 2024.

[86] Ms Phasha's conclusion that the Plaintiff suffers occupational dysfunction due to presenting physical, cognitive and psychological challenges is not convincing given Professor Lekgwara's report on the Plaintiff's cognitive functions and Dr Ngobeni's report which in no way suggested that the Plaintiff was physically impaired to the extent of not being able to be employed.

[87] It is apposite to note that this court is not possessed with an Addendum by Ms Phasha given that her assessment is outdated. Ms Phasha's report does not have regard to the updated Addendum reports provided by Dr Ngobeni, Professor Lekgwara and Ms Sewpersadh.

[88] Plaintiff's counsel submitted that the report of the Industrial Psychologist, Sandra j Moses speaks for itself. The Plaintiff was assessed by Ms Moses on 30 June 2021 and a report was issued on 5 April 2023, two years later. The assessment was conducted to determine the extent and impact of the injuries on the Plaintiff's physical and cognitive functioning to predict his future work prospects and earning potential. Ms Moses referenced the RAF 1 claim form and medico legal reports prepared by Dr Ngobeni, Professor Lekgwara, Ms

Sewpershad and Ms Phasha.

- [89] The Plaintiff reported that he was driving his own car and a car travelling from the opposite direction lost control colliding head on into the claimant. The Plaintiff reported that post-accident his contract at DIG Mining was terminated and the termination was not accident related.
- [90] Ms Moses did not conduct any psychometric assessment. The role of psychometric assessments is to determine the individual's current potential and future career options.
- [91] On pre-accident employment prospects, Ms Moses opined that pre-accident, based on the Plaintiff's employment record and dearth of alternative vocational training, skill or work experience, the Plaintiff would in all probability have continued working as a supervisor. Ms Moses opined that considering the Plaintiff was 35 years of age at the time of the accident and his qualifications no career progression was probable as the Plaintiff reached his career peak. The Plaintiff would have been able to work until retirement age between 60-65 years depending on the retirement policy of the company he works for until retirement. This court is not convinced that this is the case.
- [92] Ms Moses based her opinion on the Plaintiff's post-accident prospects on the expert reports she consulted. Ms Moses opined that the Plaintiff reported that his contract was terminated due to a mistake on his time card. Ms Moses opined that according to the clinical psychologist the Plaintiff suffers from occupation dysfunction due to presenting physical, cognitive and psychological challenges. Ms Moses opined that the Plaintiff's dismissal was a result of the injuries sustained. This court has addressed the contradictions in versions earlier in this judgement.
- [93] According to Ms Moses, competing for alternative employment would be problematic for the Plaintiff. His Grade 11 and N3 qualification would limit him to compete for unskilled work in the non-corporate sector which is generally heavy physically demanding and would require prolonged standing and walking. She opined that his cognitive and psychological difficulties would require him to be supervised as he is prone to making costly mistakes. Ms Moses opined that considering it has been three years that the Plaintiff continued to experience cognitive and psychological challenges since the accident, she is of the opinion that the Plaintiff is likely to remain unemployed for the rest of his work years. This assessment is not convincing to this court for reasons already addressed in this

judgement.

- [94] Ms Moses reported on the Plaintiff's pre- and post-accident earnings as reported by the Plaintiff. The Plaintiff reported that pre-accident he earned R12,000-00 per month. Post-accident the Plaintiff reported that he secured a job as tipper truck driver from September/October 2021 for 4 months, earning a salary of R16,000- 00 a month. Ms Moses opined that based on the expert reports the Plaintiff's residual work capacity, career options and employability have been compromised due to the injuries he sustained. She opined that he

was likely to remain unemployed for the rest of his work years and thus suffers a total loss of past and future income. It is the court's view that an expert cannot rely on unverified information. Ms Moses reported that her recommendations and conclusions are based on information made available at the time of evaluation. Ms Moses has not verified the Plaintiff's alleged earnings.

- [95] Ms Moses indicated that the report would be valid for a period of 18 to 24 months from the date of interview after which a follow up assessment would be required. The interview was conducted on 30 June
2021. A period of 24 months expired on 30 June 2023. As at the date of this hearing, a period of 3 years and 4 months has lapsed since Ms Moses interviewed the Plaintiff. The Plaintiff did not present a report updated by Ms Moses, which is required for the purpose of assessing loss of earnings and employability.
- [96] Munro Forensic Actuaries estimated the capital value of the potential loss of earnings. The actuary report states that the figures are calculated as at 1 May 2023 and if figures are required more than 12 months after the date of calculation, a new calculation is recommended. The report was based on data supplied, generally accepted actuarial methods employed and assumptions made. The information supplied was not audited or verified. The calculations were based on information provided by the Plaintiff's attorney, which included the report by the industrial psychologist Sandra Moses dated 5 April 2023. According to the actuary report new calculations were to be obtained in April 2024. This was not done.
- [97] The actuarial calculations were based on the Plaintiff working intermittently since the accident, the Plaintiff being unemployed since January 2022 and the opinion that the Plaintiff is expected to remain unemployable in the future.
- [98] The actuaries based their calculations on uninjured earnings of R12,000-00 per month and injured earnings of R16,000-00 in 2021 and no further earnings since January 2022. On uninjured earnings the actuary calculated loss of earnings at R435,000-00 per year until age 45, allowing for earnings inflation until retirement age 62.5 old. These earnings were not verified by Ms Moses, as confirmed by the actuaries. The actuary calculation was based on proposed earnings. The actuary applied a 5% contingency on past earnings and a 15% contingency on future earnings.
- [99] The actuarial calculations are of no assistance to this court. The unverified earnings cannot be accepted as a basis for computing loss of earnings. In addition, Ms Moses has not provided the actuaries with an updated report. Ms Moses reported on the Plaintiff's employment as at 2021. Since then the Plaintiff was employed in other jobs.

- [100] Even if this court were inclined to granted judgment on the merits, in the absence of updated expert reports and updated calculations, based on verified information, this court would not have been satisfied with the evidence before it to exercise its discretion to grant default judgment for future loss of earnings.
- [101] In *Tshuma v Road Accident Fund* (2023/045963) [2024] ZAGPJHC 452 (8 May 2024), Weideman AJ held that it trite that the Plaintiff bears the onus to prove how the injuries affected earning capacity. There is a difference between the question whether the plaintiff has suffered an impairment of earning capacity and the question whether the Plaintiff will in fact suffer a loss of income in the future.
- [102] In *Tshuma*, the court referred to *Twine and Another v Naidoo and Another* (38940/14) [2017] ZAGPJHC 288; [2018] 1All SA 297 (GJ), where the court held that the admission of expert evidence should be guarded as it is open to abuse. The court held that expert testimony should only be introduced if it is relevant and reliable. A court is not bound by, nor obliged to accept the evidence of an expert witness. The presiding officer must base his findings upon opinions properly brought forward and based upon foundations which justified the formation of the opinion. The court should actively evaluate the evidence. The cogency of the evidence should be weighed "in the contextual matrix of the case with which (the Court) is seized.
- [103] This court is not satisfied that the interests of justice will be served by granting default judgement on merits and quantum in respect of loss of future earnings. This court is of the view that the inconsistencies identified in the Plaintiff's testimony and the expert reports require ventilation in a full trial.

Order

[104] In the result, the following order is granted:

104.1 The application for default judgment is refused.

104.2 The determination of general damages is postponed sine die

104.3 The determination of past and future medical expenses is postponed sine die

104.3 There is no order as to costs.

F SUDER

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For the Plaintiff: Advocate MD Sekwakweng

Instructed by: Mahlabegoane Attorneys, Pretoria

For Defendant: No appearance

Date of Hearing: 15 October 2024

Date of Judgment: 15 April 2025

[1] (<https://my.clevelandclinic.org/health/diagnostics/24848-glasgow-coma-scale-gcs>)

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