

SOUTH AFRICA / JUDGMENT

Nkuna v RAF (8168/14) [2017] ZAGPPHC 1172 (1 December 2017)

[2017] ZAGPPHC 1172

COURT

North Gauteng High Court, Pretoria

BEFORE

Hughes

CASE / FILE NUMBER

8168/14

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)

NOT REPORTABLE

(2)

NOT OF INTEREST TO OTHER JUDGES

(3)

REVISED.

Case Number: 8168/14

1/12/2017

In

the matter between:

HANYELENI
MARTHA
NKUNA
PLAINTIFF
and
THE
ROAD ACCIDENT
FUND
DEFENDANT

Coram:

HUGHES J

JUDGMENT

HUGHES J

- [1] On 5 June 2013 the plaintiff, HANYELENI MARTHA NKUNA, was a passenger in a motor vehicle that was involved in a collision. As a consequence of the collision the plaintiff sustained injury to her hip, thoracic injuries and an injury to her C2-T5 ligament.
- [2] At the commencement of the action those representing both the parties submitted that the issue of merits had been dispensed with and the only issue for determination is that of quantum, more specifically general damages and loss of earning/earning capacity.
- [3] Medical experts were instructed and they duly filed medical legal reports which were admitted into evidence together with the joint minutes of these experts in the same discipline.
- [4] From the joint minute between Dr Erich Mennen and Professor H Fleming who are orthopaedic surgeons it is recorded that the injuries that the plaintiff sustained are as follows:
- "1. Limited concussion.
2. Soft tissue injury to the cervical spine.
3. Soft tissue injury back and lumbar spine.
4. Severe bruising right leg.
5. Developed epileptic fits whilst in hospital."
- [5] It was also recorded that as a result of the cervical spine injury that the plaintiff sustained she had a diminished range of motion of her cervical spine in extension and rotational movements. It was further recorded that she had lost the normal lordotic curve in relation to the thoracolumbar spine injury she had sustained.
- [6] The permanent consequence of her injuries is that "she has degeneration of the cervical and lumbar spine which was aggravated by the soft tissue injury in the accident".
- [7] The plaintiff was hospitalised for 22 days before she was released and she returned to work after two months. She works in the intensive care unit and her duties entail lifting and rolling patients. She complains of back
- and neck pain, pain when standing for prolong period, headaches and loss of memory.
- [8] The orthopaedic surgeons agreed that due to the plaintiffs occupation provision should be made for early retirement. Going forward treatment would be occasional physiotherapy and surgically provision should be made for

a single level decompression and fusion at the cervical spinal level.

- [9] There is also on hand a joint minute by the occupational therapists Ms A Adroos and Ms D van Wyk. They noted that the plaintiff completed grade 12 and was an auxiliary nurse. Her superiors provided collateral information to the effect that they had not noticed any behavioural problems however she did complain to the night shift leader of back pain when she dealt with heavy patients. Both opined that the plaintiff would be able to cope with the demands of her job following treatment and rehabilitation. They also agreed that early retirement was not indicated however if she had the surgery proposed by the orthopaedic surgeons she would have needed assistance in handling heavy patients and she might have to be reassigned this could affect her work options. Without the surgery she would still require assistance with the heavy patients.
- [10] A neurologist, Dr J A Smuts, was instructed to comment on the seizure that took place in the ambulance and the fact that she fitted twice in ICU. As a result she was given TTO of Epilim and since she has not stopped using it. The plaintiff advised that she had a fit a year before the assessment was held i.e. 2014. He noted from the hospital notes that on admission her Glasgow Coma Scale (GCS) was 15/15. On the following day (06/06/2013) it was noted that she was "confused". On the following day she had removed her collar and she refused to eat. On 9 June 2013 the doctor had to be called as she was "very very weak" could not speak and restless. She continued to remove her collar and was noted to be lethargic and weak. She also had decreased levels of consciousness for days.
- [11] Dr Smuts opined that the epilepsy was a factor to take into account as this could be a sequelae that emanates from a head injury. He did state that "In my opinion the patient is severely depressed and needs help in this regard. Much of her problems can relate to the chronic pain rather than brain injury". This was because the plaintiff stated that she suffered from headaches two to three times a week and she took 4-6 painkillers every day. Lastly, he deferred to a psychiatrist for the plaintiff's psychotic episodes and a psychologist to comment on the severity of her memory impairment.
- [12] The EEG that he performed on the plaintiff came out normal and there was no epileptiform activity recorded even so he says this does not rule out epilepsy.
- [13] In 2016 the plaintiff was examined by a psychiatrist and a psychologist. The psychiatrist, Dr Mathey, states in his report that the plaintiff exhibited all the symptoms of Post-Traumatic Stress (PTS) and this has an effect on her attention and concentration abilities. This will affect her in the workplace. He opined that she was bipolar and experienced dysthymic episode, however he states it was not attributable to the injuries she sustained as a result of the collision.

- [14] When she consulted with the psychologist, Dr Pauw, it emerged that the plaintiff had resigned from the previous hospital (Unitas Netcare Hospita)l she had worked for and was working for a new hospital, Kalafong Hospital ICU. The plaintiff also reported to Dr Pauw that she had stopped taking her medication for epilepsy due to financial constraints. She also stated that her supervisor at Unitas Netcare Hospital established that she was bribing her colleagues to assist her with her duties. Her colleagues also covered for her if she administered the wrong medication to a patient.
- [15] Dr Pauw concluded that the plaintiff has neuropsychiatric symptoms of psychosis, mania and depression post-accident seems to have had psychiatric inpatient treatment post-accident. Of importance is this statement by Dr Pauw " Of concern... is the fact that her unit manager reported to Ms Adroos that neither Ms Nkuna's supervisor nor her shift leader have noticed any behavioural problems in the workplace which renders her clinical presentation incongruent with her presentation at work." The plaintiff is said to have been asymptomatic before the collision according to Dr Pauw and she states that though no head injury was documented but her behaviour post the accident in hospital is indicative of her having experienced significant changes post-accident.
- [16] The joint minute of the industrial psychologists, Ms M Kheswa and Ms R van Zyl, is instructive. At the time of the collision the plaintiff was working as an Enrolled nurse in the ICU at Unitas Netcare Hospital and her earnings were R12 396.00 per month. This equates to her annual earning being R148 752.00. Both agree that pre- morbid the plaintiff would have remained as an Enrolled nurse up until retirement.
- Further both agree that her salary as at 2016 would thus be R190 254.34 per annum as she would have reached her ceiling at age 45 according to Ms Kheswe, whilst Ms van Zyl is of the view that her salary would have grown along straight line progression from the time of the accident to her current salary as at 2016.
- [17] Post-morbid, both experts agree that if factual information is on hand to prove the plaintiff's past-loss for the period 5 June 2013, the date of the accident, to August 2013 being the month she says she returned to work, the plaintiff should be compensate.
- [18] Both industrial psychologist opined that post-morbid the plaintiff would probably remain functioning as an Enrolled nurse until retirement. Ms van Zyl believes that the salary of the plaintiff as at February 2016 of R190

254.34 should be used for quantification purposes. This should then be allowed to grow with annual CPI adjustments until retirement. Both experts agree that the orthopaedic surgeons have indicated that a period of early retirement should be factored into the equation as regards her loss post-morbid. What they have difficulty with is the sequelae as regards the plaintiff's psychological condition. Both agree that the information of the plaintiffs former supervisor and her nightshift leader does not tie in with the finding of Dr Pauw, the clinical psychologist. A further issue is the fact that they were unable to attain collateral information of the plaintiffs erstwhile supervisor which they regard as pertinent to the finalisation of the plaintiffs claim.

- [19] I am in agreement with the sentiments expressed by the industrial psychologist that collateral information from the erstwhile supervisor is crucial and necessary to determine both general damages and her loss of earning capacity. For this reason I requested the parties to instruct the industrial psychologist to obtain the collateral information and there after they compile a joint minute to assist me in the quantification of the plaintiff's claim.
- [20] I instructed the parties to instruct their respective Industrial Psychologist to obtain this collateral information. A joint minute received on 13 October 2017 was compiled. I deal with the contents below.
- [21] The two Industrial Psychologists obtained the information I requested and provided me with a joint minute dated 12 October 2017 duly filed with the registrar on 13 October 2017.
- [22] What emerges from the joint minute with regards to the pre-morbid scenario is that the Industrial Psychologist were able to establish the plaintiff's current actual earnings for the period January 2017 to May 2017, that being R197 645,14 per annum. They also now premise that going forward there should be biennial notch increases and annual CPI adjustments until 2022 at this stage the plaintiff would have reached her highest level as a Staff nurse on Grade 1. Thereafter annual CPI adjustments until retirement at age sixty five
- (65) years. They opine that Staff nurse grade 1 will be her highest level as they could not ascertain if she would have progressed further as permission had not been given by the plaintiff in order that they divulge this information to them.
- [23] With regards to the post-morbid scenario the experts obtained the following information:
- (a) The plaintiff was employed on 1 March as a Staff nurse: Grade 1 and her salary was on Level 2 of the OSD salary scales;
 - (b) Her basic salary at that stage was R134 550.00 per annum;
 - (c) She qualified for an annual inflationary related increase determined by the Minister of Public Service and Administration ;
 - (d) A notch increment and performance bonus were also a benefits which she would receive having been evaluated;
 - (e) Her employer contributed 13% to the Government Employees Pension Fund;
 - (f) On her birthday month she qualified for a 13th cheque equivalent to a month's salary;
 - (g) The company also contributed towards medical aid R1014.00 per month and a housing allowance of R800.00 per month (however the plaintiff is not receiving the latter).

[24] On the topic of the plaintiff's work performance at the time of the collision and from the plaintiff's current employer, they established that there was 'a disconnect between Ms Nkuna's (the plaintiff's) presentation during the consultation sessions with the various experts and the manner in which she was and is perceived at work ...collateral feedback received from her current employer does not indicate towards any work performance related problems."

[25] An interview with the Unit manager, Ms Moema, under whom the plaintiff works at Kalafong, she stated that she was not aware of any work performance related problems with the plaintiff and she had not received any complaints regarding the plaintiff's current work performance. Ms Matika, the night matron of ICU at Kalafong advised that the plaintiff took sick leave on a regular basis and the reasons were that she was ill or had family related problems. She further stated that she had not observed

any behavioural problem with the plaintiff and she was not concerned with the plaintiff's work performance as a staff nurse.

[26] They also interviewed the plaintiff's previous unit manager, Ms Ismael and her night shift leader, Mr Ernest Moyilwe. Though Mr Moyilwe stated that the plaintiff would experience some difficulty in lifting heavy patients

due to her lower back pain, no odd behaviour was exhibited by the plaintiff. Ms Ismael said she never received any complaints about the plaintiff's performance.

Loss of earnings/earning capacity

[27] Before I turn to deal with the plaintiff's claim for loss of earning/earning capacity I set out the dicta of Rumpff J in *Dippenaar v Shield Insurance Co Ltd* 1979 (2) SA 904 (AD) at 917A-C:

"In our law under the *lex Aquilia*, the defendant must make good the difference between the value of the plaintiff's estate after the commission of the delict and the value it would have had if the delict had not been committed. The capacity to be part of a person's estate and the losses of impairment of that capacity constitute a loss, if such loss diminished the estate."

[28] From the outset it ought to be recorded that the plaintiff abandoned her claim for past loss of earnings for the two month period when she was not working and recuperating at home. The only loss of earnings that needs to be calculated is that for the future.

[29] The joint minute of the 12 October 2017 states the following clearly:

"(RvZ) According to Ms Nkuna's salary advice from Unitas Netcare Hospital her earnings for the period May 2013 was R12 396.00 which translates to annual earnings of R148 752.00 (total package)." At para (4) of the joint minute.

What I find alarming is when the actuary, Argen Actuarial Solutions are instructed, by the court mind you to do a calculation in line with the joint minute of 12 October 2017 they decided to ONLY do a calculation based on Ms Van Zyl's (RvZ) opinion and do not see fit to take Ms Kheswa's

(MK) opinion at all. A further concern that I have with the aforesaid actuarial calculation is that the report is now premised on a different figure attained from the same salary advise however there is a qualifier that being that the premorbid income for the plaintiff's 2013 salary as calculated by Ms Van Zyl now stands at R158 152.00 per annum and R13 179.00 per month. At para 2.2 of the actuarial calculation. How is this possible? The same expert examines the same salary advice and comes up with two different amounts as being the plaintiff's earnings from Unitas Netcare Hospital.

[30] A further concern that I have with the Argen actuarial calculation, yet again not been in line with the joint minute, is that the following is asserted by Ms Van Zyl in the joint minute at para 5:

"(RvZ) recommends that Ms Nkuna's actual earnings at the time of the accident in question of R148 752.00 per annum can be allowed to grow with a straight-line progression reaching earnings equal to that of her current actual earnings for the period January 2017 to May 2017 of R197 645.14 per annum in 2017...Thereafter biennial notch increases and annual CPI adjustments until 2022 when she will reach her highest level as a Staff Nurse: Grade 1. Thereafter annual CPI adjustments until retirement age of sixty- five (65) years."

This differs from what she advises the actuary at 2.2 the pre-morbid path she now asserts is that within Staff Nurse Grade 1 notch 2 in 2017 there would be annual increases in her income until her retirement at age 60, where after the plaintiff would have returned to the private sector from age 60 after retiring from the government sector earning a similar package as she did with the Department of Health receiving annual increases on that amount until she retired at age 65. This latter pre-morbid scenario was never proposed when Ms Van Zyl was having discussion with Ms Kheswa when they discussed the issues to be considered in the joint minute.

[31] I think it is apposite just to reiterate what the duties and functions of an expert are to the court. In my view Ms Van Zyl together with the actuary really lost the plot when they embarked on a frolic of their own in providing the actuarial calculation on behalf of the plaintiff. These two experts did not adhere to the warnings ascribed

by the court with regards to the roll that an expert plays in the grand scheme of court process. I proceed to set out but a few

hereafter.

[32] The nature of expert's evidence and how it should be assessed was affirmed in *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft Fur Schadtungsbekampfung MBH 1976 (3) SA 352 (A.D) at 371G-372A:*

"(See *Klue and Another v Provincial Administration, Cape. 1966 (2) S.A. 561 (E) at p.563*). ' As I see it. an expert's opinion represent his reasoned conclusion based on certain facts and data which are either common cause, or established by his own evidence or that of other competent witness. Except possibly where, it is not controverted, an expert's bald statement of his opinion is not of any real assistance . Proper evaluation of the opinion can only be undertaken if the process of

reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert. Even bearing in mind that the addressee of the summary is properly also an expert, I am of the opinion that the addressee may not be able to evaluate the opinion, so as to enable him to advise the party consulting thereon, if he is not informed in the summary of "the reasons" for the opinion. Having regard to the above meaning of the word "reasons" in the context of the sub-rule as a whole and the purpose thereof, I am of the opinion that the summary must at least state the sum and substance of the facts and data which lead to the reasoned conclusion (i.e., the opinion). Where the process of reasoning is not simply a matter of ordinary logic, but involves, for example, the application of scientific principles, it will ordinarily also be necessary to set out the reasoning process in summarized form. The addressee should then be in a position to evaluate the opinion, and be in a position to advise the party consulting him whether the opinion can be controverted and, if so, what evidence is required to do so."

[33] Coopers at 371A-C, further states that the facts or data for the opinion reached by the expert witness must appear in the reasons for his or her opinion or conclusions. These facts or data would include experiments, investigations and information obtained.

[34] More recently in *Commissioner, South African Revenue Service v Stepney Investments (Pty) Ltd* 2016 (2) SA 608 (SCA) at 616F- H Majiedt JA stated :

"More importantly, as Addleson J said in *Menday v Protea Assurance*.

'It is not the mere opinion of the witness which is decisive but his ability to satisfy the Court that, because of his special skill,

training or experience, the reasons for the opinion which he expresses are acceptable . the Court, while exercising due caution, must be guided by the views of an expert when it is satisfied of his qualification to speak with authority and with the reasons given for his opinion.' [My emphasis.]"

[35] It is evident that facts and data that Ms Van Zyl provided to the actuary did not appear in any of her reports and neither did it appear in both joint minutes of the Industrial Psychologist. The shift away from her original stance to that which appears in the actuarial calculation is worrisome as this exhibits that she moves the goal posts so to speak as the case progresses and she is prone to bend under the pressures of those instructing her instead of being of assistance to the court. For these reasons I will not place any reliance on the actuarial calculation of C Heymans of Argen Actuarial Solutions.

[36] The propositions in the joint minute made by Ms M Kheswa are before me and I therefore take these into consideration. To a large extent most of the propositions are common cause but for the progression of the plaintiff in the pre-morbid scenario. As far as Ms Kheswa is concerned an employee reaches their career plateau at age 45. The plaintiff was thus in the maintenance phase of this career plateau and there was thus little possibility of vertical elevation. This cannot be seen in isolation though because the plaintiff would in all likelihood obtain notch elevations in that grade Staff Nurse: Grade

1.

[37] As alluded to earlier in this judgment the collateral feedback from the plaintiff's erstwhile employer did not indicate any issue of work related problems. There is also the added issue that there is no nexus between the alleged impairment of the plaintiff as indicated by Dr A Pauw, the Clinical Psychologist, and the plaintiff's injuries. The plaintiff's psychological and cognitive problems do not correlate with the collateral feedback received from her employers. This being the case it would only leave the issue of her career lifespan being shortened as mentioned by the Orthopaedic Surgeon.

[38] For easy reference I set out the basis of the actuarial calculation as proposed by Ms Kheswa as set out in Rosewood Technologies report:

"Future earnings had the accident not occurred:

Based on pour interpretation of the option of the Industrial Psychologists, we estimated the present value of the following earnings, had the accident not occurred:

Basic salary:

- R155 346 per year (SN-1Notch 2) at present
- Increasing with 3% notch increases in July 2018, 2020 and 2022 and also increasing with earning inflation of 6% in April each year until retirement at age 65.

Fringe benefits

- An annual bonus equal to one month's basic salary.
- Average overtime and night shift allowance of 2, 7% of basic salary.
- Subsidised medical aid contributions of R1'014 per month at present, adjusted with earnings inflation and assumed to continue
- Subsidised medical aid contributions of R1'014per month at present, adjusted with earnings inflation and assumed to continue for the rest of her life.
- Ms Nkuna is a member of the Government Employees Pension Fund and contributes 7, 5% of basic salary towards this fund. At retirement at age 65, she would have become entitled to a pension calculated as 1/55 times years' service times' average salary during the two years prior to retirement as well as a gratuity of 370% of annual pension. Based on service from 1 March 2016, we allowed for an initial pension of 31, 5% of final salary as well as a gratuity of 370% of the initial pension. We further assumed that the pension after normal retirement would have increased with price inflation of 5% in April each year.

Future earnings having regard to the accident:

Based on our interpretation of the opinion of the Industrial Psychologists, we assumed that, having regard to the accident, Ms Nkuna's earnings will be the same as described in 2.2 above. except that higher contingency deductions, to be negotiated, might be applied. "

[39] Having regard to the aforesaid at para 4 of the actuarial calculation prior to the application of the contingencies depicts the following:

Earnings if accident did occur R2 464 833.00

Earnings given accident did occur R2 464 833.00

[40] Taking into account the statement advanced in the actuarial report of Rosewood Technologies at para 2.5 with regards to the fact that "Should the injuries be such that Ms Nkuna has a 50% chance of early retirement at age 60, the estimated loss will [be] equivalent to a 10% contingency differential." In addition, I take cognisance of the dicta in *Goodall v President Insurance* 1978 (1) SA 389 (W) at 392H -393E where Margo J stated the following:

"In the assessment of a proper allowance for contingencies, arbitrary considerations must inevitably play a part. for the art or science of foretelling the future, so confidently practised by ancient prophets and soothsayers, and by modem authors of a certain type of almanack. is not numbered among the qualifications for judicial office. In *De Jong v Gunther and Another*, 1975 (4) SA 78 (W). NICHOLAS, J.. said, at p. BO, opposite the letter F:

"In a case where a plaintiff sues for his own future loss of earnings it is only contingencies which affect him personally which have to be considered. In his Judgment in *Van Rensburg v President Versekeringsmaatskappy*, (W.L.D. 21.11.68}, quoted in *Corbett and Buchanan*, *The Quantum of Damages*. vol. 2, at p. 65, LUDORF, J., referred to the fact that it has become almost customary, at any rate at this Division of the Supreme Court, for the Court to make a deduction for unforeseen circumstances of life of one-fifth. That is, it is true, a rough and ready approach. but the nature of the problem is such that one can do no better than adopt a rule of thumb of this kind."

In *Van Rensburg's* case the plaintiff was 25 years old, and in *De Jongh's* case, which was a claim by dependants for loss of support, NICHOLAS, J., adopted the figure of 20 per cent of contingencies, in relation to the deceased's earning power, the deceased having been approximately 25 years of age at the time of his death. *Van Rij, N.O. v Employers' Liability Assurance Corporation Ltd.*, 1964 (4) SA 737 (W), but reported on this point only in *Corbett and Buchanan*, vol. 1 at p. 618, is another instance of 20 per cent being allowed for contingencies, the plaintiff in that case being a minor who had not yet embarked on a firm career. In the well known case of *Sigoumay v Gillbanks*, 1960

(2) SA 552 (AD), SCHREINER . J.A., at p. 569, made provision for contingencies in an amount equal to approximately 16 per cent The plaintiff in that case was 33 years of age, a fact which appears from the report of the case in the Appellate Division, or in the Court of

first instance, or *Corbett and Buchanan*."

[41] In considering the contingencies to be applied I take into account that the plaintiff would have to retire earlier in her working life span than expected. In granting her the benefit on consideration of the orthopaedic surgeons report my assessment is that a reasonable period of early retirement would be that of five years. Together with the factors I have taken into account of her work ethos, attendance, performance and accounts of her immediate superiors I conclude that many of the complainants advanced by the plaintiff with regards to her work capabilities have not been corroborated or validated by evidence from her immediate superiors. I am mindful that some of her complaints do not arise from the accident or put differently are not even accident related.

[42] In these circumstances I consider that an allowance of a contingency in the case of the plaintiff future earning had the accident not occurred should be in what is regarded as the normal contingency rate being

that of 10%. With regards to the future earning of the plaintiff having regard to the accident I am in agreement with Ms Kheswa that the plaintiff had already reached her career plateau when she was involved in the collision. The relevant notch increases, inflationary increases are taken into account and the contingency for early retirement is also built into the contingency that I regard as being compatible in these circumstances. This contingency can be nothing more than 35% in my view, inclusive of the 10% reduction to bring the figure in line with a loss of five years early retirement as alluded to above. I have calculated the percentages, I have recommended against the figures calculated by the actuary in para 40 supra. The total loss that is produced after the contingencies are applied is a total future loss of R554 587.42 which would be due and payable to the plaintiff.

General Damages

[43] The plaintiff submitted that the appropriate amount to be awarded for general damages is R700 000.00. In substantiation of the amount of General damages due to the plaintiff I was referred to a host of cases and I make mention of just a few which I set out below:

Mohale v RAF 2015 (7A4) QOD 15 GNP 1n today's terms an amount of R768 000.00;

Oosthuizen v RAF 2016 (7C4) QOD 5 GNP an amount of R583 063.00;

Tlou v RAF unreported case: 17225/2011 GNP an amount of R636 069.00; and Robertson v RAF Full Court of Appeal-GNP Appeal case: A5060/2012 an amount of R500 000.00.

[44] What has emerged from the interview with the plaintiff's current and previous employer is that the plaintiff has not displayed any signs of psychosis, mania and depression at her work place. In my view, this fortifies Dr Mathey findings that the plaintiff is bipolar and experiences dysthymic episodes that is not attributable to the accident. In this case the only permanent consequence as stated above in this judgment is that of the plaintiff, as a consequence of her orthopaedic injuries she will suffer degeneration of the cervical and lumbar spine.

[45] I am mindful of the dicta of Eksteen J in *Ambrose v RAF* 2011 (6C4) QOD 13 (ECP) at [48]:

'General damages: In assessing an award for general damages the court has a broad discretion to award what it considers to be fair and adequate compensation. The court will generally be guided by awards previously made in comparable cases and will be alive to the tendency for awards to be higher in recent years than was previously the case. (Compare *De Jongh v Du Pisanie* NO 2005

(5) SA 457 (SCA) at 457D-E). In considering previous awards it is appropriate to have regard to the depreciating value of money due to the ravages of inflation. It would however be inappropriate to escalate such awards by a slavish application of the consumer price index. (See *AA Onderlinge Assuransie Assosiasie Bpk v Sodoms* 1980 (3) SA 134 (A).)'

[46] In the circumstances I conclude, as regards General damages is concerned, having considered the case I was referred to and the various expert reports, that a fair and equitable amount is that of R500 000.00.

[47] Consequently the following order is made:

[1] The defendant, the Road Accident Fund, shall pay the plaintiff, HANYELENI MARTHA NKUNA, the sum of R1 054 587.42 (one million fifty four thousand five hundred and eighty seven rand and forty two

cents), in respect of General damages

and Loss of earning/ earning capacity.

[2] The order annexed as 'X' is made an order of court.

W. Hughes

Judge of the High Court Gauteng, Pretoria

IN THE HIGH COURT OF SOUTH AFRICA

In the matter between:

HANYELENIMARTHANKUNA

PLAINTIFF

THE ROAD ACCIDENT FUND

DEFENDANT

ORDER

By agreement between the parties, IT IS ORDERED THAT:

1 The merits are settled on the basis that the Defendant shall pay 100% of the Plaintiff's proven or agreed damages;

2. The Defendant shall pay to the Plaintiff the sum of R1 054 587.42 (One million fifty four thousand five hundred and eighty seven rand and forty two cents) in respect of General Damages past and future loss of earnings/earning capacity;
3. In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the rate of 10.5% per annum, calculated from the 15th calendar day after the date of this order to date of payment.
4. The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996 for payment of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him resulting the injuries sustained by the Plaintiff in the motor vehicle accident that occurred on 05 June 2013, to compensate the Plaintiff in respect of the said costs after the costs have been incurred and upon proof thereof limited to 100%.
 5. The Defendant shall pay the Plaintiffs taxed or agreed party and party costs on the High Court scale, subject thereto that:
 - 5.1 In the event that the costs are not agreed:
 - 5.1.1 The Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;
 - 5.1.2 The Plaintiff shall allow the Defendant 14 (FOURTEEN) Court days from date of allocatur to make payment of the taxed costs.
 - 5.1.3 Should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the rate of 10.5% per annum on the taxed or agreed costs from date of allocatur to date of final payment.
 - 5.2 Such costs shall include but not be limited to:
 - 5.2.1 The costs incurred in obtaining payment of the amount mentioned in paragraphs 2 and 5 above;
 7. There is no contingency fee agreement between the Plaintiff and Spruyt Incorporated Attorneys.

BY ORDER OF THE REGISTRAR

PLAINTIFF'S ADVOCATE: ADV PIETER LOURENS

072 979 8908

DEFENDANT'S LEGAL REPRESENTATIVE:

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