IN THE HIGH COURT OF SOUTH AFRICA NOT REPORTABLE

EASTERN CAPE, PORT ELIZABETH

Case No.: 3425/09
Date Heard: 23-28 March 2011
Date Delivered: 5 May 2011

In the matter between:

DEVON SHAW WRIGHT Plaintiff

and

THE ROAD ACCIDENT FUND Defendant

JUDGMENT

EKSTEEN J:

1]On 7 December 2007 the plaintiff, then 21 years of age, was involved in a motor vehicle collision in Buffelsfontein Road, Port Elizabeth. He was the driver of a motorcycle which came into collision with a motor vehicle. He sustained very severe bodily injuries in as a result of the collision.

2]The plaintiff claims damages herein from the defendant in the total amount of R9 087 136,77 which is made up as follows:

1.	Past Hospital Expenses	R 127 555,95
2.	Past Medical Expenses	R 33 809,82
3.	Future Medical Expenses	R 780 000,00
4.	Costs of a handyman and domestic assistant	R 800 000,00
5.	The costs of modification to	

	the home environment	R 20 000,00
6.	The cost of an automatic motor vehicle	R 50 000,00
7.	Loss of earning capacity	R6 275 771,00
8.	General damages	R1 000 000,00

[3] On 1 September 2010 and at a pre-trial conference in terms of the provisions of Rule 37 of the Uniform Rules of Court the defendant conceded the merits of the plaintiff's claim. In addition, the plaintiff's claim for past hospital expenses in the amount of R127 555,95 was admitted as was the past medical expenses in the amount of R33 809,82. At the pre-trial conference the defendant agreed that it would furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996 (the Act) "in respect of future medical and hospital expenses" arising out of the injuries sustained by the plaintiff in the accident.

[4] Pursuant to the agreements reached I made an order on 16 September 2010 that the defendant pay to the plaintiff an amount of R1 500 000,00 as an interim payment and that the defendant is to furnish to the plaintiff an undertaking in terms of section 17(4)(a) of the Act. I am advised that the defendant has complied with this order. I pause to mention that notwithstanding the formulation of the agreement contained in the Rule 37 conference as set out above, when the matter came before on 23 March 2011 Mr ***Spruyt***, who appeared on behalf of the defendant confirmed the defendant's agreement that the claims in respect of a handyman and

domestic assistant, the costs of modifications to the home environment of the plaintiff and the additional cost of the provision of an automatic motor vehicle were all to be considered to be "rendering of a service or supplying of goods" to the plaintiff as envisaged in section 17(4)(a). This, in my view, is correct and accordingly the claims relating to the handyman and domestic assistant, the modifications to the home environment of the plaintiff and the provision of an automatic motor vehicle are all to be covered under the undertaking given in terms of section 17(4)(a) of the Act. To the extent that the undertaking already given may be limited to future medical and hospital expenses, I shall make an order at the conclusion hereof that an undertaking in the terms of section 17(4)(a) be given. What remains in issue is accordingly the quantum of the plaintiff's loss of earning capacity and general damages.

[5] General Damages

The plaintiff was 21 years of age at the time of the collision and in excellent health. The evidence establishes that he enjoyed his sporting activities at school and in particular his participation in rugby and athletics. He attended the Newton Technical School in Port Elizabeth where he successfully completed Grade 10. After being unsuccessful in Grade 11 he returned to the Technical School to repeat Grade 11 before resolving to leave school prematurely in order to take up employment. In his last two years at school he had played in the first rugby team of his school and participated in the Eastern Province Schools Trials. At all times prior to the collision he had enjoyed outdoor activities and enjoyed motorcycling and fishing.

[6] In the collision the plaintiff suffered a wedge compression fracture of Level T12 of the vertebral body with comminution, a vertical AP spilt fracture through the vertebral body with retropulsion of the posterosuperior portion of the body impinging on the spinal canal. He suffered stenosis of the spinal canal caused by the retropulsion of bone fragment with impingement and compression of the conus of the spinal cord. In addition he sustained minor injuries to his head, chest, neck, upper limbs, lower limbs and pelvis including multiple abrasions.

[7] He was initially transported by ambulance to the St George's Hospital Trauma Unit. He was a complete paraplegic in the early stages after the collision and was transported to the Greenacres Hospital for a MRI which confirmed the spinal fracture. On 8 December 2007 he had a laminectomy of the L1 level performed and a posterior spinal fusion of Level T12 and L2 done with transpedicular screws and rods. Bone grafts were also performed.

[8] Upon completion of these surgical procedures the plaintiff was advised by Dr Azhar that he had a fifty percent chance of being able to regain walking function. Understandably, the plaintiff was deeply traumatised upon receiving this news and cried uncontrollably for the remainder of that day. He was initially constipated and from the outset suffered from urinary incontinence. He was initially tearful and depressed.

[9] On 14 December 2007 the plaintiff was transferred from the St

George's Hospital to the Aurora Rehabilitation Centre. There he continued to experience urinary incontinence and in addition was unable to control his bowel movements and was required to wear nappies. This he found greatly humiliating. After several days at Aurora the plaintiff slowly started to regain some movement and feeling in his lower limbs. The rehabilitation treatment which was administered was painful and demanding. Due to the loss of sensation and the inability to control his bowel movements he would only become aware of the fact that he had soiled himself when he became aware of the unpleasant odour. He was catheterised from the outset and was tearful and emotionally labile during the early rehabilitation phases.

[10] Whilst at Aurora Hospital the plaintiff had various setbacks including a reopening of a surgical wound on his back which required treatment. He was eventually discharged from Aurora Hospital at the end of January 2008 in a wheelchair and returned home. During the initial period at home the plaintiff was mostly confined to a wheelchair and could ambulate around the house for short distances with the aid of crutches.

[11] At home plaintiff was totally reliant upon family and friends for almost all aspects of his daily living. He continued to suffer from a lack of control of his bladder and his bowel functions and his girlfriend, Chantelle Roberts, assisted in his catheterisation.

[12] On 30 June 2008 plaintiff required further surgery to his left foot and ankle for a deformity and muscle imbalance where a Z-lengthening of the

Achilles tendon was performed. In April 2009 he required a further operation to his left ankle.

[13] With appropriate questioning Dr Richard Holmes, an industrial psychologist, determined the overall sequelae of the accident and the impact which it had upon the plaintiff. He records that the plaintiff experiences ongoing pain of his back and both his lower limbs. He experiences ongoing spastic contractions of both lower limbs and experiences hypersensitivity, reduced sensation and loss of sensation in his legs. He has poor balance resulting in him regularly falling and being unable to walk in the dark or upon uneven surfaces. He is unable to run or even to walk quickly. His ability to remain standing or sitting for long periods is limited and he cannot remain seated in one position for any length of time. Ascending or descending steps is difficult and he experiences ongoing compromised lower limb function/dexterity. He has a greatly compromised agility and the reduced mobility as a consequence of his spastic gait.

[14] On an emotional level the plaintiff expresses a reduced level of motivation, intermittent moods of depression and increased irritability. He has an ongoing emotional lability and a diminished self-confidence which in turn has led to reduced social interaction and relational difficulties.

[15] He is left with a reduced libido, partial erectile dysfunction, ejaculatory difficulties and a loss of normal orgasmic function.

[16] It is now more than three years since the accident and the plaintiff still requires to make use of a catheter twice daily, a situation which is likely to persist indefinitely. His is still only able to walk with the use of a crutch which, Ms Ansie van Zyl, an occupational therapist, opines is likely to deteriorate over time.

[17] He has been left totally unemployable, a consideration to which I shall revert below. He has lost virtually all those amenities which previously brought meaning to his life and from which he derived great enjoyment. Plaintiff testified that he is totally unable to participate in off-road motorcycling, an activity which he pursued regularly and from which he derived great pleasure.

[18] From a very young age he assisted his father in the garage workshop with mechanical maintenance tasks and with time developed a considerable skill in this regard. Apart from his sport it was his prime interest whilst at school and, as will appear below, laid the foundation for the career which he was about to embark upon. He is now entirely unable to participate in even the most menial mechanical tasks. His inability to participate in these activities has, at least in his own mind, caused a measure of separation between him and his father, a bond which was previously very tight.

[19] He regularly participated in and enjoyed fishing and played rugby both at school and thereafter. These activities are entirely beyond his current abilities. Both he and his girlfriend, Chantelle, testified that they have lost

most of their friends and that they have very little if any social interaction at present.

[20] The plaintiff was a young man at the time of the accident in a steady relationship with Chantelle, a relationship which still persists and they intended to be married. The impairment of the plaintiff's sexual ability is a matter of considerable concern to himself which impacts upon his confidence in the relationship. Indeed when the subject of marriage or a future family is raised the plaintiff avoids the subject.

[21] On a consideration of all these factors I am called upon to determine his reasonable general damages. In determining the quantum of general damages the court has a broad discretion to award what is considered to be fair and equitable compensation having regard to a broad spectrum of facts and circumstances connected to the plaintiff and the injuries suffered by him including their nature, permanence, severity and impact on his lifestyle. The plaintiff has suffered severe injury of a permanent nature which has impacted upon virtually every facet of his life. His dreams of a future career and a stable family life have been shattered. Ms van Zyl has expressed the view that his mobility appears to be deteriorating and is likely to deteriorate further in future. Mr Mark Eaton, a clinical psychologist, has expressed the view in evidence that the mental and physical health of the plaintiff appears to be deteriorating. His very considerable and continuous discomfort was readily evident in the witness box where he sat down intermittently and complained regularly of cramps in his legs.

[22] Mr ***Nepgen***, on behalf of the plaintiff, has referred me to a number of awards made in our courts in cases which he submits involved injuries of comparable severity. In each case he has referred me to the current day value of the awards made as calculated by the actuary Koch in his "*Quantum Yearbook*".

[23] He has also referred me to the decision of ***Wright v Multilateral Motor Vehicle Accident Fund*** reported in Corbett and Honey, Vol 4 at E-3-31 and in particular to the passage at E3-36 where Broom DJP stated as follows:

> "I consider that when having regard to previous awards one must recognise that there is a tendency for awards now to be higher than they were in the past. I believe this to be a natural reflection in the changes of society, the recognition of greater individual freedom and opportunity, rising standards of living and a recognition that our awards in the past have been significantly lower than those in most other countries."

[24] Having regard to this passage and to the awards made in the decisions which Mr Nepgen has referred to he submits that an appropriate award for general damages in the present matter would be R850 000,00.

[25] Mr ***Spruyt***, who appeared on behalf of the defendant has similarly referred me to a number of awards made in matters which he considers to be comparable cases and their present day values. No purpose would be served herein by my seeking to analyse the facts and circumstances of each of those

decisions. Every case differs in its facts from the next and every case falls to be decided on its own peculiar facts and the impact which the injuries may have had on the particular individual concerned. I have given careful consideration to each of the cases to which I have been referred and they have provided useful guidance in assessing the appropriate award to be made in the present matter. I have had regard to the effect which the ravages of inflation have had upon the value of money since such awards were made and I have attempted to assess a compensation which will be fair to both parties. I have sought to guard against the temptation to "pour out largesse from the horn of plenty" at the expense of the defendant in sympathy for the injured plaintiff. (Compare ***Pitt v Economic Insurance Co. Limited*** 1957 (3) SA 287 (N).)

[26] On a consideration of all the factors set out above I have concluded that an award of R750 000,00 would reflect fair compensation for general damages.

[27] Loss of earning capacity

In respect of the claim for loss of earning capacity the plaintiff has tendered much evidence both in respect of his pre-accident expectations and his post-accident condition. Much of the evidence relating to his post-accident condition is set out above and finds equal application to the claim for general damages. The defendant has tendered no evidence at all and the evidence on behalf of the plaintiff is largely unchallenged. I refer to the significant

features thereof below.

[28] I have referred earlier to the plaintiff's childhood passion for mechanical activity. This he had learned from his father. The plaintiff's father qualified as a fitter and turner and as a welder. He worked first for the South African Transport Services and later joined General Motors in Port Elizabeth. There he had progressed to the position of maintenance coordinator where he had approximately 26 artisans working under his supervision prior to the accident. The plaintiff always regarded his father as a role model and enjoyed assisting him in his workshop.

[29] Mr Wright confirmed the evidence of the plaintiff relating to his passion for mechanical things. He testified that the plaintiff had acquired considerable skill in the workshop and he has expressed the view that the plaintiff had a good talent to develop as an artisan. Both he and the plaintiff testified that whilst still at school the plaintiff had worked during his vacations at large engineering concerns such as Tiger Engineering and Ellard Engineering. He had developed his mechanical skills to the extent that he started to earn an income in his spare time over weekends whilst still at school.

[30] Immediately prior to the accident the plaintiff had been employed by Demag Cranes and Components (Pty) Limited (Demag) as an artisan's assistant. He was an assistant to Mr Morgan. Morgan testified that the plaintiff was one of the best assistants he ever had. He says that, had he not known better, he would have thought that the plaintiff was qualified as an

artisan. The plaintiff was hardworking and excellent with mechanical work. He showed much initiative and a considerable interest in electrical work, the real area of Morgan's expertise. Morgan states that the plaintiff discussed with him his future plans. He had said that he intended to return to school to complete his Grade 12 N3 qualification and then to do an apprenticeship. The plaintiff had indeed resigned shortly before the accident from Demag, which the plaintiff says was done in order to return to his studies. Mr Grobbelaar, the area manager for Demag in the Eastern Cape, testified that he had spoken to the plaintiff prior to his resignation. He confirms the evidence of Morgan both in respect of the quality of the plaintiff's work and his future intentions. Grobbelaar testifies that Demag would certainly have taken the plaintiff on as an apprentice in view of their experience with him in the time that he had spent with them. Whilst it was the company's policy only to take on matriculants he says that he had a discretion, in deserving cases, to deviate from that policy. In the case of the plaintiff the company knew what they had in him and even if the plaintiff failed to obtain a matriculation he would certainly have taken the plaintiff on.

[31] Dr Holmes, an industrial psychologist expressed the opinion that it was strongly probably that the plaintiff would have qualified as an artisan, and possibly as a millwright (an artisan qualified in two different trades). He concluded that the plaintiff did have the necessary attributes and skills to have qualified as a millwright. In this regard he stated as follows:

> "Undoubtedly, Mr Wright did have the aptitude to successfully complete apprenticeship training and to qualify himself as an

> artisan. While it had been his ambition to become a qualified millwright, the possibility that he may have qualified in a different discipline as an artisan (motor mechanic, fitter, fitter/turner, etc) could not be excluded. Importantly, however, Mr Wright was extremely well motivated to ultimately qualify himself as a millwright and certainly had demonstrated the mechanical and electrical aptitude needed to apply his knowledge in the two trades."

[32] This opinion accords with the evidence received from the lay witnesses in this trial. Dr Holmes testified that there is a growing shortage of artisans in South African and that the plaintiff would therefore not have experienced any difficulty in obtaining employment. Indeed given his father's extensive exposure in the industrial field in Port Elizabeth Dr Holmes is of the view that the plaintiff would have been an advantaged work seeker in the area. This too is borne out by the evidence of Mr Grobbelaar. Dr Holmes predicts that on a consideration of the plaintiff's pre-morbid personality traits, his past work experience, his future intentions at the time of the accident and the dire skills shortage In South Africa, it is significantly probable that the plaintiff would have progressed in his chosen trade to at least a supervisory level.

[33] On an acceptance of the evidence of the plaintiff, his father, Grobbelaar and Morgan, none of which was seriously challenged, the plaintiff would have returned to his studies in 2008. Dr Holmes predicts, as a probable career path, that the plaintiff would, but for the accident, have commenced an apprenticeship in January 2010, would have qualified as an artisan and possibly a millwright, progressing in the trade to a supervisory position by the age of 40 to 43 and retiring at the age of 65. In reality, however, in view of the acute skills shortage in South Africa many artisans

progress more rapidly in the workplace and continue to earn for several years after their normal retirement age. Dr Holmes has, on the strength of reputable employment surveys which are periodically published in South Africa, ventured what he considers to be typical earnings through the career path of an artisan. In the event that the plaintiff would have qualified as a millwright Dr Holmes has expressed the view that his earnings would probably have been approximately 12 to 15 percent higher than that of an ordinary artisan. Whilst some of the opinions expressed by Dr Holmes were somewhat tentatively questioned in cross-examination no conflicting evidence was adduced.

[34] Using the opinions expressed by Dr Holmes in respect of the plaintiff's probable qualifications and career path, had he not been injured, and assuming that the plaintiff would have earned salaries in line with Dr Holmes's estimates, Mr Gerard Jacobson, an actuary, has made a calculation of what the plaintiff would have earned in the remainder of his working life had he not been injured.

[35] It is not in dispute that the plaintiff is now, as a result of his injuries, not a contender for employment in any capacity on the open labour market.

[36] It is now trite that in our law the defendant must make good the difference between the value of the plaintiff's estate after the commission of a delict and the value it would have had if the delict had not been committed. The capacity to earn money is considered to be part of a person's estate and

the loss or impairment of that capacity constitutes a loss, if such loss diminishes the estate. (See for example ***Dippenaar v Shield Insurance Co. Ltd*** 1979 (2) SA 904 (A) at 917B-C.)

[37] The assessment of future loss of earning capacity presents obvious difficulties. These were discussed in matter of ***Southern Insurance Association Limited v Bailey NO*** 1984 (1) SA 98 (A) at 113F-114E where Nicholas JA stated as follows:

> 'Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.
>
> It has open to it two possible approaches.
>
> One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown.
>
> The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative.
>
> It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a *non possumus* attitude and make no award. …
>
> In a case where the Court has before it material on which an actuarial calculation can usefully be made, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an "informed guess", it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial Judge's "gut feeling" (to use the words of appellant's counsel) as to what is fair and reasonable is nothing more than a blind guess. …'

[38] Mr Jacobson has calculated the value of the plaintiff's earning capacity but for the accident, on the assumptions set out above, in an amount of R6 169 452,00 if the plaintiff had simply become an artisan and R6 721 662,00 if he had become a millwright. The actuarial soundness of the calculations have not been challenged at all. The assumptions set out in the evidence of Dr Holmes were challenged in cross-examination but not contradicted by evidence. I am satisfied that Dr Holmes has laid a sufficiently sound basis for the assumptions underlying the calculation for me to place reliance upon the actuarial approach. Indeed, in argument before me Mr ***Spruyt***, on behalf of the defendant, did not contend otherwise.

[39] The calculations made by Mr Jacobson has, correctly, had no regard to contingency adjustments. That is a matter for the court to do.

[40] Whilst accepting the actuarial calculation as an attempt to ascertain the value of what was lost on a logical basis, a judge is not "tied down by inexorable actuarial calculations". He has "a large discretion to award what he considers right". (Compare Holmes JA in ***Legal Assurance Co. Ltd v Botes*** 1963 (1) SA 608 (A) at 614F.) One of the elements in exercising that discretion is the making of a discount for "contingencies" or the "vicissitudes of life". The amount of such a discount may vary, depending upon the circumstances of each case. (See for example ***Van der Plaats v South African Mutual Fire and General Insurance Co. Ltd*** 1980 (3) SA 105 (A) at 114-5.)

[41] The assessment of the necessary adjustment to be made in each case is, like the assessment of the future damages, not a matter which can be accurately calculated. Thus Nicholas J, as he then was, concluded in ***De Jongh v Gunther and Another*** 1975 (4) SA 78 (W) at 80F as follows:

> "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 practiced by ancient prophets and soothsayers, and by modern authors of a certain type of almanack, is not numbered among the qualifications for judicial office."

[42] It follows that the rate of such a contingency discount cannot be assessed on a calculated basis. It is largely arbitrary and will always depend upon the judge's impression of the case. (Compare ***Southern Insurance Association v Bailey NO*** *supra* at 116H-117A.)

[43] Mr ***Spruyt*** has submitted that I should adjust the calculated damages down by approximately 35% for the particular contingencies which arise in this case. Mr ***Spruyt*** argues that the plaintiff may not have attained his matric qualification. This of course so, however, Dr Holmes has given consideration to this possibility. Dr Holmes states as follows:

> "Although Mr Wright would probably have experienced difficulty in achieving the required proficiency level in mathematics and science, given his scholastic limitations, he would not have experienced any difficulty in completing the practical training of both the electrician and mechanic (the millwright being a two trade artisan). Importantly, communications with Mr Grobbelaar, of Demag, revealed that Mr Wright had, during the course of his period of employment at Demag, worked as an artisan's assistant to electricians, fitters and millwrights.

> Having been exposed to the work and functional activities of the aforementioned artisans, Mr Wright gained valuable experience in the broad domains of manufacture, installation, repair and servicing of heavy industrial equipment."

[44] The predicted career path which underlies the actuarial calculations is therefore not dependent upon the plaintiff's academic achievements at school. It is significant that the salary scales which Dr Holmes has suggested as typical earnings for an artisan relate to artisans with Grade 10 qualifications and not matriculants. In these circumstances it seems to me that this particular consideration of the plaintiff's scholastic ambitions are largely immaterial to his future earnings.

[45] Mr ***Spruyt*** argues that the plaintiff may not have found employment with Demag for any number of reasons, for example, lack of need for an apprentice, closure of the plant, etc. This is also true, however, Mr Grobbelaar's evidence provides very good reason to assume that the plaintiff would indeed have obtained such a position. Even if he had not obtained employment with Demag the evidence of Dr Holmes is that he would have had no difficulty in obtaining employment. In this regard his father has been an artisan in Port Elizabeth for many years and he has built up a formidable network of contacts in industry in Port Elizabeth. Indeed, it was his connections which originally secured the plaintiff's employment with Demag. Secondly, Dr Holmes considered that the plaintiff has in his own capacity shown such attributes in his brief employment record that he would, without his father, have obtained employment. This evidence is supported by

Grobbelaar and Morgan. Finally, and most significantly, the evidence of Dr Holmes is that there is a considerable shortage of skills in the industrial sector in South Africa and this evidence stands uncontradicted. In these circumstances it seems to me that there is a sound basis for the predicted career path with or without Demag.

[46] Mr ***Spruyt*** suggests that allowance should be made for the possibility that the plaintiff may not have qualified as a artisan. The mere fact that the plaintiff had not yet qualified at the time when the accident occurred requires that I should be alive to the possibility that he may not have done so. I have referred above to the evidence of Dr Holmes in this regard which stands uncontradicted and I am accordingly of the view that this consideration should not be exaggerated.

[47] Mr ***Spruyt*** argues that Demag operates mainly in the motor industry and it is a well-known fact that any decline in the economy affects the motor industry and especially its support contractors and suppliers negatively which in turn results in short time and even retrenchments being applied. This too is so, however, it would be wrong to regard all "vicissitudes of life" as being always negative. Nicholas JA, in ***Southern Insurance Association Limited v Bailey NO*** *supra* referred with approval to the dictum of Windeyer J in the Australian case of ***Bresatz v Przibilla*** (1962) 36 ALJR 212 (HCA) at 213 where he is quoted as follows in respect of contingencies:

> 'It is a mistake to suppose that it necessarily involves a "scaling down". What it involves

> depends, not on arithmetic but on considering what the future may have held for the particular individual concerned … (The) generalisation that there must be "a scaling down" for contingencies seems to be mistaken. All "contingencies" are not adverse: all "vicissitudes" are not harmful. A particular plaintiff might have had prospects or chances of advancement and increasingly remunerative employment. Why count the possible buffets and ignore the rewards of fortune? Each case depends on its own facts.'

[48] There is no reason on the evidence before me to believe that a down turn in the fortunes of the motor industry is more probable than a boom.

[49] In any event, the calculations of the plaintiff's loss is not tied to Demag. His employment prospects as an artisan were rosy even without Demag. He may have secured a more remunerative position than predicted and the motor industry may have flourished beyond current expectation.

[50] Mr ***Spruyt*** suggests that the calculations have been done on the best possible scenario for the plaintiff and are accordingly overly optimistic. I do not agree. They have had no regard to the probability of post retirement earnings, they have ignored additional income which he may have earned in his spare time over weekends and they proceed on a very conservative assessment of promotion prospects as it emerges from the evidence of Dr Holmes.

[51] There are, however, a number of considerations which do suggest a downward adjustment of the calculated figure. Firstly, the plaintiff was a very

young man at the time when the collision occurred. The claim is accordingly calculated over an extended period of time during which adverse events may have arisen. Secondly, the plaintiff intended to embark upon a career as an artisan where working conditions are necessarily more hazardous than a career behind a desk. Thirdly, the plaintiff has been rendered unemployable in consequence of the accident and accordingly recognition must be given to the saving which he will have in respect of working clothing and transport to and from his place of employment. On consideration of all the factors I am of the view that an appropriate adjustment to the actuarial calculations is to accept the lesser calculation, that based upon the career path of an ordinary artisan (as opposed to a millwright) and to reduce the figure arrived at by 15% to allow for the general contingencies of life and those specific to this plaintiff.

[52] The evidence establishes that the plaintiff does not have any realisable residual earning capacity having regard to his injuries. In the circumstances I consider that an award of R5 244 034,00 (R6 169 452,00 less 15%) represents compensation which is fair to both the plaintiff and the defendant in respect of the plaintiff's loss of earning capacity.

[53] In the result the plaintiff's damages (excluding those covered by the section 17(4) undertaking) arising from the accident are assessed as follows:

1.	Past Hospital Expenses	R127 555,95 (as agreed)
2.	Past Medical Expenses	R 33 809,82 (as agreed)
3.	Loss of Earning Capacity	R5 244 034,00

4.	General Damages	R750 000,00
Total		R6 155 399,77

[54] The plaintiff's claims relating to future medical expenses, the costs occasioned by the necessary future employment of a handyman and domestic assistant, the cost of the future modifications to the plaintiff's home environment and the additional costs of an automatic motor vehicle are to be covered by an undertaking in terms of section 17(4)(a) of the Act. As recorded at the commencement of this judgment I am advised that such an undertaking has already been given in respect of future medical and hospital expenses pursuant to an order which I had previously given relating to an interim payment. The undertaking is to be in the terms of section 17(4)(a) of the Act.

[55] In the result it is ordered that the defendant:

1. Pay to the plaintiff the sum of R6 155 399,77 as and for damages. (It is recorded than an amount of R1 500 000,00 of the R6 155 399,77 has already been paid as an interim payment.)

2. Pay interest to the plaintiff on the outstanding amount of R4 655 399,77 calculated at the legal rate from a date fourteen (14) days after the date of this judgment to the date of payment.

3. Provide the plaintiff with an undertaking in the terms of section

17(4)(a) of the Road Accident Fund Act, 56 of 1996.

4. Pay the plaintiff's costs of the suit as taxed, such costs to include:

4.1 The costs of the reports and qualifying expenses, if any, of

4.1.1 Dr Azhar

4.1.2 Dr Audley

4.1.3 Dr Keeley

4.1.4 Dr Coetzee

4.1.5 Mr Deon Rademeyer

4.1.6 Dr Garish

4.1.7 Mr Mark Eaton

4.1.8 Dr Richard Holmes

4.1.9 Ms Ansie van Zyl

4.1.10 Mr David Williams

4.1.11 Mr Gerard Jacobson; and

4.2 The costs of the photographs handed in in evidence.

5. Pay interest to the plaintiff on the plaintiff's taxed costs calculated at the legal rate from a date fourteen (14) days after *allocatur* to the date of payment.

_____

J W EKSTEEN

JUDGE OF THE HIGH COURT

Appearances:

For Plaintiff: Adv *Nepgen*, instructed by De Villiers & Partners, Port Elizabeth

For Defendant: Mr *Spruyt* instructed by Friedman & Scheckter, Port Elizabeth