



NORTH WEST HIGH COURT, MAFIKENG

CASE NO. 101/2009

In the matter between:

DIMAKATSO JOYCE TSHEPE

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MPSHE AJ.

A. INTRODUCTION

[1] The plaintiff, a qualified teacher, was involved in a motor vehicle accident on 24 June 2006 and sustained a minor head injury and devastating and debilitating orthopaedic and neuro-psychological, as

well as physical injuries which has led to physical and neuro-cognitive deficits. She was hospitalised for a period of about two months, two weeks of which was in the ICU. She was unable to work for about eight months. Her orthopaedic injuries have been documented in all the medico-legal reports of all the various experts as:

- a) there was a fracture of the left neck of humerus, was treated conservatively;
- b) there were fractured ribs on the left side;
- c) there was a possible fracture of the cervical spine on the right side;
- d) there was a fracture of the second lumbar vertebra;
- e) there were fractures of the pelvis in a number of areas;
- f) there was an injury to her right little finger, and whilst it was splinted, it was straight and gave no problem, it now remains in a fixed and flexed position;
- g) the ORIF of the SI joint was performed on 13 July 2006.

[2] Her neuro-cognitive and neuropsychological deficits are recorded in the reports of Ms M.F. Makama, a Clinical Psychologist, Dr Shevel, a Psychiatrist, Dr L.T.B. Jackson, an Industrial Psychiatrist, Professor Mokgokong, a Neuro-Surgeon and Ms N. Sewpershad, a Clinical Neuro-Psychologist. From an orthopaedic perspective, the experts predicted both conservative and surgical treatment some time in the future.

[3] Both issues of liability and quantum were in dispute, however, prior to and during the trial, the defendant conceded the issue of liability 100% in favour of the plaintiff. The parties further agreed that:

- a) the defendant is liable to the plaintiff for general damages in the amount of R400 000.00;
- b) the defendant is liable to the plaintiff in the amount of R123 317.00 in respect of past medical and hospital expenses;
- c) the defendant shall furnish the plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 in respect of all future medical treatment and hospital expenses incurred in connection with the injuries sustained by the plaintiff in the said accident.

B. ISSUE FOR DETERMINATION

- [1] The remaining issue that this Court has to determine is the quantification of the plaintiff's loss of earnings/reduced earning capacity. In this regard, the plaintiff led the evidence of three witnesses. These are Ms Makama, the plaintiff Dimakatso Joyce Tshepe and Dr Jackson. It needs to be recorded that the defendant did not lead any evidence after the plaintiff's case.
- [2] The plaintiff's loss of earnings/reduced earning capacity, as claimed by the plaintiff, is the amount of R1 400 123.00, as set out in the revised actuarial calculation of Algorithm, calculated to the retirement age of 60 years and which is based (except) for the retirement age on the report of Dr Jackson. Such actuarial calculation has already taken

reasonable contingencies into account.

- [3] The plaintiff was a qualified and trained teacher/educator who, in addition held an Advanced Certificate in Mathematics. At the time of the accident, she had been teaching for approximately 17 years and was stable in her position. Teaching and the imparting of knowledge was her passion and she described it in her evidence as her “calling”.
- [4] After her recovery and convalescence of some eight months, she was unable to return to teaching and the Department of Education on the professional advise of Ms Makama, and as a result of the psychological trauma and physical injuries she suffered and continues to suffer, was transferred to an administrative position. Such recommendation, Ms Makama testified, was strengthened by the plaintiff's refusal to even enter the school gate. Such was her trauma when confronted with the prospect of returning to the school and seeing the children and colleagues of the deceased educators who were her friends and colleagues. Ms Makama testified that she received reports of the plaintiff breaking down emotionally at the supermarket on seeing some of the children of the deceased colleagues.
- [5] In her testimony, Ms Makama confirmed the plaintiff's evidence concerning her anxiety, irritability and changed personality and the neuro-psychological and neuro-cognitive deficits and therefore recommended long term therapy.
- [6] In such new administrative position, the plaintiff was no longer eligible for

the financial incentives and advancement in her career that she would have been entitled to, particularly the incentive of Occupational Specific Dispensation ("the OSD") given to the teachers over and above their salaries and other notch increases. Ms Makama testified that she made the recommendation to have the plaintiff placed in an administrative position and she was aware that the plaintiff was earning a salary higher than that of others in the administrative capacity and it was determined that the plaintiff in such capacity would not receive increases until all those on the same administrative level shall have caught up with her.

C. EMPLOYMENT SINCE THE ACCIDENT

- [1] As pointed out earlier herein, the plaintiff was transferred to an administrative position. She has had to forego salary increases until her fellow colleagues' salaries caught up with hers. She has had to forego the OSD benefits, among other incentives given to teachers. The enquiries made by Dr Jackson, and which he shared with the Court, indicated that the plaintiff, in regard to her now being ineligible to receive the OSD alone amounted to roughly R20 000.00 per annum loss.
- [2] She has applied for a higher position in the administrative department but was unsuccessful as she did not meet the criteria. Dr Jackson is of the opinion, having regard to her physical and psychological deficits, that she has already reached her career ceiling in the post she is in and he does not foresee any career advancement for her as she would not

be able to compete with other candidates who do not suffer these deficits and who may be better equipped in terms of qualifications and experience for such position in the administrative field.

- [3] Ms Makama testified that the plaintiff has had a long professional and insightful interaction with her from the time of the accident, and which interaction continues to this day. Her testimony was forthright and credible. She testified as to the plaintiff's pre-accident dedication to and passion for teaching.
- [4] She observed that during her testing, the plaintiff appeared anxious, depressed and tearful. She furthermore was agitated, impulsive and restless and that she suffered from poor concentration and had to be given a break to complete tasks. She testified to the plaintiff's outbursts and that the plaintiff appeared to be empty, helpless and without hope. Her memory was tested and found to be impaired, and the test results are documented in her report. She diagnosed the plaintiff as having Post Traumatic Amnesia and Post Traumatic Stress Disorder.
- [5] She predicted a poor prognosis and opined that it was unrealistic to expect her cognitive, occupational or emotional recovery to be full due to the trauma she suffered. Her self-esteem was also affected by the change of the working environment.
- [6] Dr Shevel assessed the plaintiff and diagnosed her due to the injuries and trauma she suffered as having "Mood Disorder (mild to moderate chronic depression-dysthymia) secondary to physical injuries which

associated chronic pain". He further opined that her chances of promotion have been curtailed.

D. FUTURE EMPLOYMENT BUT FOR THE ACCIDENT

- [1] In order to determine the prospects of future and better employment for the plaintiff, evidence of an Industrial Psychologist was tendered.

- [2] Dr Jackson testified that the plaintiff, but for the accident, "could have realistically expected to experience further vocational advancement to positions in lower middle management, for instance, as head of department. It is unlikely that she would have progressed beyond this level. It is noted that Ms Tshepe has largely functioned in the public sector as an educator. In a work life span of about 15 years to the time of the accident, Ms Tshepe has always been engaged and has not experienced any spells of unemployment. It is likely that she could have continued to function in her role until she were able to experience some vocational advancement, for instance, as head of department and then Deputy School Principal. Thereafter, she could have worked until she were able to retire at the age of 65 years". He further stated that:

"Ms Tshepe earned as an educator at the time of the accident. Following the accident, she was off work for almost a year. However, she received full pay during her absence from work. Thus, no loss of past earnings would be indicated during her absence from work. However, following the introduction of the recommended earnings as per OSD agreement, Ms Tshepe has

sustained some loss of past earnings where she could have received payment back dated to January 2008. The earnings of the Teaching and Learning Specialist in section 4.1 would apply. Thus, the difference between these earnings and the earnings of an office manager would constitute her loss of past earnings.

Following the accident, Ms Tshepe has been accommodated as an office manager. Her salary slip indicates a salary notch of R153 636 in this regard. Ms Tshepe has indicated that she had attended several interviews wherein her applications were not successful. This is not surprising as she competes with people with administrative experience whereas she only has experience as a teacher/educator.

.....

Thus, she will sustain a loss of future earnings. Her loss of future earnings would be the difference between her pre-accident earning capacity and post-accident earning capacity (as an Office manager)."

- [3] Ms Makama testified that depressed people have difficulty in concentration. She (the plaintiff) is no longer coping well as before on things. Ms Makama continued and said that she (the plaintiff) always says that she misses teaching and the incentives given to teachers, e.g. the OSD. Under cross-examination by Mr Liphosa, counsel for the defendant, the following emerged:

"Q: She will reach an adequate functional stage in recovery.

A: I disagree. The word poor can't be adequate. I mean chances are very slim for her to recover and function fully. She can't go back to the classroom."

- [4] This illustrates that chances of the plaintiff resuming her teaching career are slim, if not non-existent. This certainly has future financial implications for her. In her evidence, she stated that she is now 43 years of age and she could have been promoted if she was still in teaching. She is now

financially worse off as compared to if she was still in teaching. She testified that but for the accident, she would now have been 21 years in teaching. She would now have attained the position of a Head of Department (“HOD”). She stated that she would earn the salary of HOD until attaining 60 years of age.

E. FUTURE LOSS OF EARNINGS/REDUCED EARNING CAPACITY

[1] The plaintiff tendered the discovered actuary report of G.A. Whittaker, an actuary from the firm Algorithm. It should be noted that there is an amendment of calculations under future loss between the discovered report dated 29 March 2010 and that dated 27 May 2010. I quote herein verbatim the said report dated 27 May 2010, as handed in during argument:

1. TERMS OF REFERENCE

We have been asked to report on the capital value of the loss of Income sustained by Ms D.J. Tshepe as a result of a motor vehicle accident on 24 June 2006.

The resultant capital value has been determined at 1 April 2010 (“the calculation date”).

2. INFORMATION USED FOR THE ASSESSMENT

2.1 PERSONAL INFORMATION

Details in respect of Ms Tshepe are set out below:

Name	Date of birth	Age nearest at the Calculation date
D.J. Tshepe	31 July 1967	43 years

It has been assumed that Ms Tshepe can expect a normal life expectancy.

2.2 **EARNINGS AUDIT**

We have been provided with a report of the industrial psychologist Dr L.T.B. Jackson dated 18 March 2010. Ms Tshepe's loss of earnings has been calculated in accordance with Dr Jackson's report as follows:

2.2.1 **Uninjured earnings**

Earnings

Ms Tshepe's employment details are as follows:

Employer:	Diphetogo Primary School
Occupation:	Educator
Date commenced occupation:	During 1989

Had the accident not occurred Ms Tshepe would have been promoted to the following levels:

- On 1 January 2008 promotion to Teaching & Learning Specialist
- Assume after 5 years promotion to Senior Teaching & Learning Specialist
- Assume after a further 5 years promotion to Head of Department
- Assume after a further 5 years promotion to Deputy Principal

A notch Increase has been assumed on an annual basis.

Her **basic earnings** to date have therefore been taken as follows:

01.01.2008	R168 252 per annum
01.07.2008	R186 928 per annum
01.07.2009	R205 452 per annum

Ms Tshepe's future **basic annual earnings** would have increased in line with the salary scales for educators in the government service as follows:

Date	Description/Code	+ Inflation To 1.4.2010	1.7.2009 Terms
01.04.201	Code 123 at date of assessment	R212,486	R205,452

0	Notch increase code 124	R214,599	R207,495
01.04.201	Notch increase code 125	R216,752	R209,577
1	Promotion Snr Teaching Specialist 136	R239,421	R231,495
01.04.201	Notch increase code 136	R241,819	R233,814
2	Notch increase code 137	R244,248	R236,163
01.04.201	Notch increase code 138	R246,687	R238,521
3	Notch increase code 139	R249,157	R240,909
01.04.201	Promotion to Head of Department 141	R254,149	R245,736
4	Notch increase code 142	R256,700	R248,202
01.04.201	Notch increase code 143	R259,266	R250,683
5	Notch increase code 144	R261,856	R253,188
01.04.201	Notch increase code 145	R264,475	R255,720
6	Promotion to Deputy Principal 147	R269,796	R260,865
01.04.201	Notch increase code 148	R272,499	R263,478
7	Notch increase code 149	R275,213	R266,103
01.04.201	Notch increase code 150	R277,956	R266,755
8	Notch increase code 151	R280,755	R271,461
01.04.201	Notch increase code 152	R283,550	R274,164
9	Notch increase code 153	R286,389	R276,909
01.04.202	Notch increase code 154	R289,256	R279,681
0	Notch increase code 155	R290,829	R281,202
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Annual bonus has been taken as 8.33% of basic earnings.

Her earnings would have further increased after 1.4.2010 in line with salary inflation set out in paragraph 3.1 only until her retirement age.

Retirement age and retirement benefits

It has been assumed that Ms Tshepe joined the Government Employees Pension fund on 1 January 1989. This type of retirement fund is known as a defined benefit

fund. That is, the final benefit at retirement is defined and this is funded from both employee and employer contributions. The benefits on normal retirement in the Government Employees Pension Fund for public service act appointees are determined as follows:

- (1) A pension is payable equal to one fifty-fifth of final average basic salary over the 2 years prior to retirement multiplied by an employee's length of service.
- (2) An annual allowance of R360 is payable.
- (3) A gratuity is payable equal to 6.72% of final average basic salary over the 2 year prior to retirement multiplied by an employee's length of service.
- (4) Member's contribute 7½% of basic salary to the fund.

Taking the above into consideration, the following benefits have been determined on retirement at age 60:

- (1) A pension of 70.15% of average annual basic salary over the 2 years prior to retirement plus an allowance of R360 per annum.
- (2) A gratuity of 2.5928 times average annual basic salary over the 2 years prior to retirement.

2.2.2 **Injured earnings**

Dr Jackson states that Ms Tshepe has since been transferred to the position of Office Manager at the Department of Education in Mabatho. She earns R153 636 per annum (assume effective from July 2009). In addition annual bonus has been taken as one month's salary.

Dr Jackson states that given the injuries sustained in the accident Ms Tshepe will not progress beyond her current level of employment. Her earnings will therefore increase in future in line with inflation only until her retirement at age 65.

Her **basic earnings** have therefore been taken as follows:

01.01.2008	R127 482 per annum
01.07.2008	R140 868 per annum (10.5% increase)
01.07.2009	R153 636 per annum (11.0% increase)

01.04.2010 R158 896 per annum (+ headline inflation from 1.7.2009)

Annual bonus has been taken as 8.33% of basic earnings.

Her earnings will increase after 1.4.2010 in line with salary inflation set out in paragraph 3.1 only until her retirement age.

Retirement age and retirement benefits

Ms Tshepe is a member of the Government Employee Pension Fund. The following benefits have been determined on retirement at age 60:

- (1) A pension of 70.15% of average annual basic salary over the 2 years prior to retirement plus an allowance of R360 per annum.
- (2) A gratuity of 2.5928 times average annual basic salary over the 2 years prior to retirement.

3. **ASSUMPTIONS**

The capital value of loss of income has been determined using the following assumptions:

3.1 **Economic and demographic assumptions**

Summary of nominal assumptions

We observe that interest rates and inflation rates fluctuate from year to year. However, we observe that interest and inflation rates tend to move in tandem – that is, when inflation rates rise, interest rates rise. Conversely, as inflation rates decline, interest rates decline. It is the relationship between interest and inflation that is of importance to the calculations as that relationship remains fairly stable.

A summary of the nominal assumptions used for the future projections are set out below:

Assumption	Parameter
Interest rate (after tax)	9.675% p.a.
Inflation of earnings	7.000% p.a.
Inflation of pension	4.875% p.a.
Underlying mortality estimates	SALT 1984/86

Net discount rate

If we call “r” the nominal rate of interest and “f” the

nominal rate of inflation, then the growth rate of your purchasing power or net discount rate denoted "n" is defined as:

$$n = \frac{r - f}{(1 + f)}$$

In terms of the above nominal parameters, future income has therefore been capitalised at a net discount rate of:

$$x = \frac{0.09675 - 0.07}{(1 + 0.07)} = 2.5\%$$

3.2 **Taxation**

Rates of personal income tax as defined in the relevant Income Tax Acts, Taxation Laws Amendment Acts and Revenue Laws Amendment Acts have been applied in the past. Current rates of taxation applicable from 1 March 2010 to 28 February 2011 have been applied in future periods assuming that the median rate of taxation will remain constant in future.

4. **DEDUCTIONS**

4.1 **General contingency deductions**

It is general practice to adjust the results of the computation of loss in income with general contingency deductions. The deduction for general contingency deductions typically makes allowance for items such as:

- (1) loss of earnings due to illness;
- (2) savings in relation to travel to and from work;
- (3) risk of future retrenchment and resultant unemployment.

The following deductions for general contingencies have been made by way of illustration:

Name	Past loss	Future loss
Uninjured earnings	5%	15%
Injured earnings	5%	15%

General contingency deductions are a matter for negotiation between the legal representatives or ultimately a matter for the Court to decide.

5. **SUMMARY OF RESULTS**

Past loss

Value of income uninjured:		R360,775
Less contingency deduction: 5.00%	R 18,039	

		R342,736

Value of income injured:		R261,909
Less contingency deduction: 5.00%	R 14,095	

		R267,814

 Net past loss: R
 74,922

Future loss

Value of income uninjured:		R4,408,938
Less contingency deduction: 15.00%	R 661,341	

		R3,747,597

Value of income injured:		R2,849,878
Less contingency deduction: 15.00%	R 427,482	

		R2,422,396

 Net future loss:
 R1,325,201

 Total net loss:
R1,400,123

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6. **QUALIFICATION**

This calculation has been based on information supplied, and assumptions made which appear to be reasonable on the basis of such information. If it is considered that any information is incorrect, or assumptions inappropriate, then a recalculation should be made."

[2] I have indicated *supra* that the defendant tendered no evidence after close of case for the plaintiff. However, during argument, the defendant handed in an actuarial report of G.W. Jacobson of Gerard Jacobson Consulting Actuaries.

[3] I asked Mr Liphosa as to the status of this report. I could not and did not obtain any pertinent legal explanation on this. This report was never discovered by the defendant as expected. The defendant discovered only four medico-legal reports, save the actuarial report. I need to refer to Rule 36(9) of the Uniform Rules, which states:

"No person shall, save with the leave of the court or the consent of all parties to the suit, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he shall—

- (a) not less than 15 days before the hearing, have delivered notice of his intention so to do; and
- (b) not less than ten days before the trial, have delivered a summary of such expert's opinion and his reasons therefor."

[4] The purpose hereof is to prevent surprise and to give a litigant the opportunity to come prepared to trial to counter the expert evidence adduced to by his opponent. . . Harms, *Civil Procedure in The Supreme Court*.

[5] *In casu* the defendant did not comply with the rule. The defendant did not even attempt to apply to Court for leave to use the expert's report

as evidence. I have difficulty in admitting the defendant's actuarial report. I find myself compelled to rule on evidence before me in the absence of any other.

F. AMENDMENT TO PARTICULARS OF CLAIM

[1] On 02 June 2010, approximately three Court days after argument, the plaintiff filed a notice to amend. The said notice was received by the defendant on 02 June 2010. The said amendment is in relation to certain heads of damages. There is an increase as follows:

- a) R23 317.00 under Estimated Past Hospital and Medical Expenses;
- b) R4 922.00 under Estimated Past Loss of Earnings/Loss of Earnings Capacity Loss of Employability;
- c) R825 201.00 under Estimated Future Loss of Earnings/Loss of Employability/Loss of Earnings Capacity.

[2] To date I have not received any objection to the intended amendment in compliance with Rule 28(3). It is so that courts are to lean towards granting amendments, save if the intended amendment may be prejudicial to the other party. I therefore grant the amendment.

G. I have indicated *supra* that I only have to make a finding in respect of loss of earnings/reduced earnings capacity.

- [1] There is abundance of case law in relation to this matter. Principles have been crystallised in this regard. In *Santam Versekeringsmaatskappy Bpk v Byleveldt* 1973 (2) SA 146 (A) at 150B–D, Rumpff JA stated the principles as follows:

“In ’n saak soos die onderhawige word daar namens die benadeelde skadevergoeding geëis en skade beteken die verskil tussen die vermoënsposisie van die benadeelde vóór die onregmatige daad en daarna. Kyk, bv, *Union Government v Warneke* 1911 AD 657 op bl 665, en die bekende omskrywing deur Mommsen, *Beiträga sum Obligationenrecht*, band 2, bl 3. Skade is die ongunstige verskil wat deur die onregmatige daad ontstaan het. Die vermoënsvermindering moet wees ten opsigte van iets wat op geld waardeerbaar is en sou insluit die vermindering veroorsaak deur ’n besering as gevolg waarvan die benadeelde nie meer enige inkomste kan verdien nie of alleen maar ’n laer inkomste verdien. Die verlies van geskiktheid om inkomste te verdien, hoewel gewoonlik gemeet aan die standard van verwagte inkomste, is ’n verlies van geskiktheid en nie ’n verlies van inkomste nie.”

In *Dieppenaar v Shiela Insurance Co. Ltd* 1979 (2) SA 904 (A) at 917B–D, Rumpff JA stated the following:

“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 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.”

The case of *Union & National Insurance Co. Ltd v Coetzee* 1970 (1) SA 295 (A) at 300A–B is apposite. Jansen AR stated:

“ ’n Bepaalde liggaamlike gebrek bring egter nie noodwendig ’n

vermindering van verdienvermoë mee nie of altyd 'n vermindering van gelyke omvang nie—dit hang o.a. af van die sort werk waarteen die gebrek beoordeel word. Die verlies van die eerste lit van die linkerhand se pinkie kan vir 'n kassier, wat verdienvermoë betref, onbeduidend wees maar vir 'n pianis noodlottig; so ook 'n stywe enkel vir die kassier teenoor die geval van 'n balletdanser."

- [2] *In casu* the plaintiff, as a result of the accident, had to be placed in an administrative post as opposed to teaching. This, as testified to by Ms Makama, is as a result of the psychological trauma and physical injuries she suffered. The plaintiff suffered from changed personality, but of importance is the neuro-psychological and neuro-cognitive deficits.
- [3] This is confirmed by Dr Jackson who testified that the plaintiff has already reached her "career ceiling" and he does not foresee any career advancement for her as she could not be able to cope as a result of these deficits.
- [4] On a joint minute of a meeting between N. Sewpershad and L. Roper, both clinical psychologists, the following emerged:
- "3.1 Ms Sewpershad notes that the psychometric test results during her neuropsychological assessment of Ms Tshepe's neuro-cognitive functions revealed cognitive deficits and refers to her report regarding the descriptions thereof.
- 3.2 Ms Sewpershad notes that the above neuropsychological problems which Ms Tshepe presents with are consistent with a mild head injury and should therefore be regarded as permanent.
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- 3.4 The experts agree that other factors such as pain, her Posttraumatic Stress response and depressive symptoms may have lowered her scores during her testing and

exaggerated the test findings in some aspects of the assessment.

3.5 Both experts noted the presence of symptoms of a Major Depressive Disorder and a Post-traumatic Stress Disorder, the onset of which appeared to be triggered by the accident in question as well as the death of her colleagues and change of employment resulting from the aftermath of the accident."

[5] Orthopaedic surgeons, Dr's D. Engelbrecht and R.J.L. Stein agree that the plaintiff would be better suited for sedentary employment in the future.

[6] In the teaching profession, the cognitive functioning becomes important. Dr Stein performed a series of test on the cognitive functioning of the plaintiff. He finds this to be average, but also states that she is open to forgetfulness.

[7] Ms Makama testified and was cross-examined. She testified that:

"Patient was slow and hesitant in thinking. Responses of the patient were sometimes irrelevant. Thoughts were also vague."

Under concentration, she states the following:

"Patient appeared to be attentive and could take instructions. **However, she could not sustain in solving problems, which needed prolonged concentration.** The concentration appeared to be impaired. When given a task to complete, she could not sustain for a long time."
(My underlining)

She continued and said:

"Memory was also impaired, both long term and short term memory."

Under prognosis, the following is noteworthy:

"Due to impairment in memory which is depicted, it would be unrealistic to expect the client's cognitive and occupational functioning to recover fully."

- [8] This evidence explains the reason why the plaintiff cannot continue with her teaching career. The plaintiff is a mathematics subject teacher, which subject requires concentration and the ability to solve problems. The plaintiff lacks all these due to the accident. Teaching to lower grades, like Grade 4 and 5 necessitates walking around in class as well as long hours of standing. Given the injuries sustained, this is not possible.
- [9] In the matter of *Prinsloo v Road Accident Fund* 2009 (5) SA 406 at 410 paragraph 5, Chetty J said the following:

"[5] A person's all-round capacity to earn money consists, inter alia, of an individual's talents, skill, including his/her present position and plans for the future, and, of course, external factors over which a person has no control, for instance, *in casu*, considerations of equity. A court has to construct and compare two hypothetical models of the plaintiff's earnings after the date on which he/she sustained the injury. *In casu*, the court must calculate, on the one hand, the total present monetary value of all that the plaintiff would have been capable of bringing into her patrimony had she not been injured, and, on the other, the total present monetary value of all that the plaintiff would be able to bring into her patrimony whilst handicapped by her injury. When the two hypothetical totals have been compared, the shortfall in value (if any) is the extent of the patrimonial loss."

- [10] I come to the conclusion that the plaintiff is financially affected and this will endure for the future. She is to be compensated for loss of future earning capacity.
- [11] Counsel for the defendant argued that the plaintiff's expertise in mathematics puts her ahead of others. I find no substance in this. The plaintiff's expertise would be relevant and indeed benefit her as a teacher but not as an administrator. It was further argued that the fact that the plaintiff remains in the same Department of Education is mitigating. I fail to understand the relevance hereof. The issue is about reduced income, which is not disputed and not the location of employment.
- [12] As indicated previously, I am faced with one actuarial report of the plaintiff, based on the evidence of Dr Jackson. The report provides for the sum of R1,325,201 as net future loss.
- [13] Having regard to the age of the plaintiff being 43 years, this providing for a balance of 17 years before retirement, taking inflation into account, the assumption that the plaintiff would probably be in the teaching career until retirement, I don't find the amount to be unreasonable.

H. CONCLUSION

- [1] Consequently, I make the following order:

- a) Payment of the sum of R2 423 440.00;
- b) Interest on the said amount awarded in the judgment at the rate of 15.5% per annum from a date 14 days after judgment to the date of payment;
- c) Cost of suit to include VAT charges at the rate of 14%; and
- d) Interest at the rate of 15.5% per annum *a tempore morae* on the aforesaid cost from the date of the Taxing Master's *allocutur* to the date of final payment.

M.J. MPSHE
ACTING JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING : 28 MAY 2010
DATE OF JUDGMENT : 25 JUNE 2010

COUNSEL FOR PLAINTIFF : ADV S. EBRAHIM
COUNSEL FOR DEFENDANT : ADV LIPHOSA

ATTORNEYS FOR PLAINTIFF : GURA TLALETSI INC. (Instructed by

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(Instructed by KEKANA HLATSHWAYO RADEBE INC.)