**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG LOCAL DIVISION, PRETORIA**

(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED:

Signature: Date: 24/10/2022

**CASE NO**: 43866/2017

In the matter between:

MARY PULENG SEFATSA Plaintiff

And

ROAD ACCIDENT FUND Defendant

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**JUDGMENT**

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**NICHOLS AJ**

[1] Ms Mary Puleng Sefatsa (the plaintiff) instituted action against the Road Accident Fund (RAF) pursuant to the injuries she sustained as a passenger, during a motor vehicle collision, which occurred on 18 August 2015.

[2] The issue of liability and merits was resolved in favour of the plaintiff by order of court dated 21 February 2020. Pursuant to this court order, the plaintiff is entitled to 100% of her agreed or proven damages. She is also entitled to an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, as amended, for future medical, hospital and related expenses.

[3] Mr Dredge, who appeared on behalf of the plaintiff, requested the issue of past medical, hospital and related expenses be postponed for later determination dependent on whether the plaintiff and RAF are able reach agreement regarding this head of damages.

[4] The issues for determination are therefore the quantum to be awarded to the plaintiff for general damages and whether the plaintiff has suffered a past and future loss of income and the value thereof.

[5] Despite notice of the set down date having been properly delivered to the RAF and its attorneys, the State Attorney, the RAF was not represented when the matter was heard and it therefore proceeded on a default basis.

[6] The plaintiff's medico-legal expert reports were delivered to both the RAF and its attorneys well in advance of the hearing. The plaintiff's representatives were unable to reach a settlement with the RAF. The various medico-legal expert reports delivered by the plaintiff, pursuant to the provisions of rule 36(9)(b), have been verified by affidavits deposed to by the respective experts as correctly reflecting their assessment of the plaintiff and the correctness of their findings and opinions as expressed therein.

[7] The plaintiff was 37 years old and employed at Harmony Mines when the accident occurred. She resides with her partner and two children in an informal dwelling in Welkom. As a result of the collision, the plaintiff sustained a bimalleolar fracture of the right ankle. Her injuries and sequelae are addressed in the expert reports of Dr AH van den Bout, orthopaedic surgeon; Mr Ben Prinsloo, Orthotist; Dr Henk Swanepoel, clinical psychologist; Ms Hanri Meyer, occupational therapist and Mr Ben Moodie, industrial psychologist. The RAF did not deliver any medico-legal expert reports and the plaintiff's medico-legal expert reports are uncontested.

**Orthopaedic surgeon**

[8] Dr van den Bout examined and assessed the plaintiff on 21 August 2019. She sustained a bimalleolar fracture of the right ankle and dislocation. She underwent an open reduction and internal fixation on both sides of the ankle. She was discharged from hospital after one week initially bandaged and later with a moonwalker for three

months. The screws were removed seven months later. She suffered from emotional shock, but did not receive any counselling and progressively developed a post-traumatic stress disorder (PTSD). After discharge, the plaintiff returned to the Welkom Mediclinic for check-ups until December 2015. X-rays were taken and medication was prescribed. The plaintiff did not receive any physiotherapy.

[9] The plaintiff denied being emotionally affected as a result of the accident. She reported that she was no longer depressed although she still suffered from insomnia with flashbacks to the accident. She reported that she was still very anxious in traffic and feared another accident occurring. She reported that her right ankle still swells and gets stiff when she stands for long or walks far, especially working underground in the mine and it is still painful now and then. She however does not take any tablets. She experienced her right leg as weaker and found climbing stairs to be difficult. She had no problems going down on her haunches.

[10] Clinical examination revealed that her leg length is the same and she has no axial pain. The right ankle shows a scar of 10cm on the lateral side, and a scar of 7cm on the medial side. The plaintiff was tender over the incisions, as well as anterior over the joint itself. She had full ankle movements on the left and right with dorsi- and plantar flexion. The subtalar joint was totally stiff and there is some wasting of the right calf. X-rays performed on 21 August 2019 depict the previous bimalleolar fracture with secondary osteoarthritis with subchondral sclerosis and osteophytes, and bony irregularity of the distal tibia. There was also residual surrounding soft tissue swelling visible. The plaintiff will require an ankle arthrodesis in about 15 years when she is 56 years old.

[11] Dr van den Bout opined that the plaintiff has suffered a loss of earning capacity, which should be evaluated by an occupational therapist and industrial psychologist. Her work as a service person underground requires walking for 80% of her working hours. This causes lot of pain, discomfort and swelling. Before her arthrodesis, the plaintiff will gradually develop more stiffness, pain, and discomfort. He opined that after the arthrodesis the plaintiff's working life underground might end, however she would be able to perform light duty work above ground until normal retirement age.

[12] He opined further that besides the loss of earning capacity, that she may have a shortened working life because of the required future ankle arthrodesis. It could then transpire that she will then be declared unfit to go underground. It is uncertain whether she will be able to continue working at the mine earning the same salary. The plaintiff has scarring and will develop more scars with the ankle arthrodesis, because of the surgical incisions.

**Orthotist**

[13] Mr Prinsloo examined and assessed the plaintiff in November 2019. The plaintiff complained of pain in her left knee and that her ankle still swells and becomes stiff. Clinical examination revealed swelling in her right ankle. There are two scars on the lateral side of the right ankle. She has pain in the back of the ankle and has full range of motion.

[14] Mr Prinsloo opined that the plaintiff sustained serious injuries as a result of the accident that occurred on 18 of August 2015. These injuries will affect her for the rest of her life and have caused permanent damage to her right ankle. He opined that the plaintiff would not be able to perform in her occupation as she did prior to the accident. He recommended custom-made full length shoe insoles and below knee compression stockings, for use by the plaintiff for the rest of her life.

**Clinical neuropsychologist**

[15] Dr Swanepoel examined and assessed the plaintiff on 25 September 2019. The plaintiff reported that she was traveling to work when the accident occurred. She was seated in the left front passenger seat and recalled that the vehicle she was in, was traveling in the fast lane when the accident occurred. The driver of her vehicle drove into a stationary vehicle. She recalled that the airbag struck her in the face, however she did not lose consciousness. The vehicle caught fire but she could not recall how she exited or was removed from the vehicle.

[16] She was taken by ambulance to Welkom Mediclinic where she was admitted for one week. She sustained a bimalleolar fracture of the right ankle. She underwent an open reduction and internal fixation. She initially received a bandage, and later a moonwalker for three months. The screws were removed seven months later. She

complained that she experiences pain in her right ankle. She is unable to wear high heels and to exercise. She has difficulty performing household chores and her right ankle still swells and gets stiff when she stands for long or walks a far distance. The symptoms are especially aggravated when working underground in the mine.

[17] The plaintiff reported that since the accident she has become anxious when traveling as a passenger and is often afraid an accident might occur again. She reported that she experiences intermittent flashbacks of the accident and she suffers from insomnia.

[18] Dr Swanepoel opined that the plaintiff qualifies for a diagnosis of PTSD. He also opined that the plaintiff is affected on a neuropsychological level and will require psychotherapeutic intervention from a clinical psychologist for PTSD and chronic pain.

**Occupational therapist**

[19] Ms Meyer examined and assessed the plaintiff on 21 October 2019. She noted that the plaintiff's position at the time of the accident may be described as sedentary to light of nature. Three years post-accident, the plaintiff gained her current position of service person. This position may be described as medium of nature.

[20] Ms Meyer opined that the plaintiff meets the physical requirements of light work demand and she is not suited for medium, heavy or very heavy work demands. She is also not physically suited for her current work demands underground, which require medium demands, exceeding her physical capacity. She opined further that the plaintiff's current work demands could further exacerbate her symptoms of secondary osteoarthritis and might facilitate rapid degeneration of the distal tibia. Therefore, even with effective treatment, the plaintiff may not be suited for her current work tasks. Ms Meyer considered that the plaintiff's pre-accident job tasks were more suited to her current abilities however, the frequent walking required by this position could also cause pain and swelling in the right ankle and might necessitate more rest periods with reduced work productivity.

[21] She concluded that the plaintiff is thus not an equal competitor for this work, although it is more preferable than her current work demands. She also concluded

that it is likely that the plaintiff's physical and functional ability will deteriorate with age and her injuries could negatively affect the longevity of her employment. Should she be repositioned above ground, her salary would likely decrease (as it was pre-accident).

[22] Ms Meyer recommended that the plaintiff would benefit from multidisciplinary end stage rehabilitation, which should include physiotherapy, biokinetic intervention and occupational therapy. She also recommended the provision of assistive devices to assist the plaintiff to enhance participation in tasks and reduce discomfort.

**Industrial psychologist**

[23] Mr Moodie examined and assessed the plaintiff on 7 November 2019. He delivered two reports dated 21 January 2020 and 18 March 2022. He considered the plaintiff's educational background. She completed her matric in 1999. Her matric school subjects were English, Afrikaans, Sesotho, geography, maths, science and biology. She completed a tourism and hospitality course in 2001 through the Stanford Business College, Welkom and her N1 in-service PMI technical training in 2017 at her current employer.

[24] The plaintiff's career progression showed her entering the employment market in March 2003 as an admin clerk and leaving that position to join her current employer as a clerk and driver in June 2006. She was employed in this position when the accident occurred. She completed her learnership for N1 in-service persons whereafter she was appointed to her current position in November 2018. The retirement age at her company is 60 years.

[25] The plaintiff's basic salary at the time of the accident was R4911.00 excluding provident fund, medical aid, overtime, allowances and bonuses. Due to the severity of her injuries, she was absent from work from 19 August 2015 to 6 December 2015 but she suffered no loss of earnings as a result. The plaintiff's basic salary in December 2015 was R5006.04. In December 2019, her basic salary was R16 839.59 and by December 2021, her basic salary was R22 132.18. At all times her basic salary excluded provident fund, medical aid, overtime, allowances and bonuses.

[26] Mr Moodie sought confirmation of the information provided by the plaintiff from her manager at the time of the accident and her current manager, both of whom were interviewed telephonically. Her current manager was aware that she had been involved in an accident and he reported that she did not have any problems carrying out her duties in her current position. He also explained that employees, like the plaintiff are required to undergo annual medical examinations to be declared medically fit to continue in her current position working underground

[27] Pre-morbidly, he opined that the plaintiff could have remained employed as a service person. However, although she may have reached her career ceiling in terms of growth potential, she would in all likelihood have continued to further her experience, level of productivity and skill set and therefore been able to increase her earnings marginally.

[28] Post-accident, he opined that the plaintiff's ability to progress occupationally is adversely affected by her inability to perform work of a more physical / manual nature. Her prognosis and need to undergo an arthrodesis at age 56, coupled with her pain and discomfort in her ankle will adversely affect her ability to continue working in her current position. He concluded that though the plaintiff has been able to obtain and sustain employment since the accident, she is occupationally impaired in comparison to her pre-morbid self. In light of the clinical psychologist's findings, he also concluded that the plaintiff struggles with PTSD, which has a negative impact on her cognitive abilities.

[29] He concluded overall that notwithstanding the fact that the plaintiff appeared to be coping occupationally, this would likely change in future as her symptoms worsened. Considering the degenerative nature of her injuries, the plaintiff's pain and difficulties will not only continue but also worsen; the strain on her already impaired coping mechanisms will likely increase and this will in turn adversely affect her productivity and her ability to sustain her employment.

[30] It was of no significance to him that by March 2022, the plaintiff was still employed in her underground position and her salary had continued to increase over and above the inflationary increases. He postulated in his November 2019 report that

the plaintiff would reach her career-earning ceiling by age 45. In the March 2022 report, he acknowledged that the plaintiff had progressed to the postulated earning ceiling at age 44 but maintained that this simply meant that going forward her increases would only be inflationary.

[31] Mr Moodie maintained his view and conclusion in both reports that it would be necessary for the plaintiff to resign from employment with immediate effect to seek employment equivalent to that which she performed prior to the accident. He recommended that she be provided with career guidance and counselling to assist her to transition through this stage and that she be provided with 12 months' worth of income to afford her an opportunity to focus solely on seeking employment that she would be physically suited to.

[32] In the March 2022 report, this employment is postulated at an earning on par with the lower level of the Patterson A1/A2 annual guaranteed packages (R6800 – R7900 basic monthly salary) likely progressing onto the median level of the Patterson A3/B1 annual guaranteed packages (R10500 – R12 200 basic monthly salary) by age 50. This will represent the plaintiff's career ceiling with only inflationary increases thereafter until her retirement.

**Loss of earnings**

[33] In determining the loss of income, the plaintiff bears the onus to prove that she had the ability to earn the alleged income had it not been for the accident. In a claim for loss of earnings or earning capacity, the plaintiff is required to prove the physical disabilities resulting in the loss of earnings or earning capacity and actual patrimonial loss.[1]

[34] Our courts have accepted that the extent of the period over which a plaintiff's income has to be established has a direct influence on the extent to which contingencies have to be accounted for. Accordingly, the longer the period over which unforeseen contingencies can have an influence over the accuracy of the amount

[1] *Rudman v Road Accident Fund* 2003(SA 234) (SCA).

adjudged the probable income of the plaintiff, the higher the contingencies that have to be applied.[2]

[35] In the case of *Road Accident Fund v Guedes,*[3] the court referred with approval to *The Quantum Yearbook*, by R Koch under the heading 'General contingencies', where it states that when:

*'[in] assessing damages for loss of earnings or support, it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is the prerogative of the Court. . . .'*

[36] The advantage of applying actuarial calculations to assist in this task was emphasised in *Southern Insurance Association Ltd v Bailey NO,*[4] where it was stated that:

*'any inquiry 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 each 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'.*

[37] The plaintiff's actuarial calculations make provision for the plaintiff to resign her employment effective November 2022; a year of unemployment thereafter and re-employment at the lower salary scale until retirement at 62.5 years. These calculations and assumptions are premised on the industrial psychologist's recommendations and conclusions. A contingency of 15% is applied to both the 'but for' and 'having regard to' scenario for loss of earnings.

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[2] *Goodall v President Insurance Co Ltd* 1978 (1) SA 389 (W) 392H – 393G.

[3] *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA) para 9.

[4] *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A) at 113F – 114A.

[38] Counsel contended that these actuarial calculations are conservative and should be accepted. The '*but for'* scenario applied the usual contingency of 15% although a more apposite contingency would be 9.25% if one were to apply the accepted contingency deduction of 0.5% for every year until retirement. The '*having regard to'* scenario also applied the usual contingency of 15%, which was also conservative and favourable for the RAF. Additionally, the plaintiff's retirement age is calculated at 62.5 years to take account of the fact that she may be employed elsewhere in the future.

[39] With regard to the industrial psychologist's extraordinary recommendation for the plaintiff to resign from her current employment to seek a less paying sedentary to light position, counsel argued that the plaintiff is not obliged to push herself beyond her physical limitations, at great potential harm to herself, to simply save the RAF having to pay her for her loss of earning capacity. He contended that the plaintiff is not required to mitigate her losses to spare the state coffers having to pay her for her loss of earning capacity.

[40] He contended that the plaintiff should not be forced to continue to push herself beyond her physical limits indefinitely, because she will cause further injury to herself by doing so. The plaintiff, he argued, should be allowed to perform a lesser paying job more suited to her physical capabilities, whether at her current employer or elsewhere.

[41] He further contended that the plaintiff's claim could not simply be reduced to a loss of income that could be addressed by an appropriate contingency. Rather, he argued that it is a loss of capacity claim. She should not be performing the work that she currently is and the longer she does this, the greater the risk to herself. Hence, the recommendation that she resign immediately; be provided with the appropriate career counselling and guidance and afforded a year to secure alternate lesser paying employment similar to that she performed when the accident occurred.

[42] I am not persuaded that the industrial psychologist's extraordinary recommendation has merit or is in the plaintiff's best interest. This recommendation and counsel's contentions in support of this recommendation, fail to take account of the following facts:

(a) The plaintiff has been employed at her current employer since June 2006.

(b) The accident occurred in 2015 during the course of her employment and pursuant to this, a successful workman's compensation claim was lodged on her behalf.

(c) The plaintiff's curriculum vitae and her employer describe her position at the time of the accident as 'senior crew supervisor' although the industrial psychologist refers to her position as 'driver and admin clerk'.

(d) The plaintiff was promoted to her current underground position more than three years after the accident occurred after having being selected for the training for this position.

(e) She commenced in this role during or about November 2018 and continues in this position approximately 4 years later. A requisite for her position is an annual medical that she is required to pass in order to continue in that position. Axiomatically, the plaintiff has passed this medical examination for the past 4 years, notwithstanding the industrial psychologist's view.

(f) Factually, the plaintiff has suffered no loss of income at all and has in fact received more than inflationary increases each year.

(g) The plaintiff's current employment benefits include, inter alia, medical aid and pension fund contributions, overtime and housing subsidy.

(h) The plaintiff has two minor children.

(i) There is no indication at all that a move above ground to a sedentary position was explored or even raised with her employer or that her employer of now 16 years would reject outright such a request from an employee who seeks such position as a result of an injury that was caused ostensibly during the course of her employment. Additionally there is no indication that the plaintiff's physical limitations have been raised with her employer to explore an option for her to be medically boarded.

(j) The state of unemployment that exists in the country coupled with the plaintiff's added disadvantages created by her physical limitations and age, which will cause her to be an unequal competitor with younger healthy candidates thereby offering no guarantee that the plaintiff will secure any employment at all within a year, or more should she resign.

[43] The industrial psychologist's failure to address these pertinent factual issues which have a direct impact on the plaintiff's future income and quality of life, leaves one with a sense of disquiet and concern that a plaintiff may be encouraged to simply resign from gainful employment to pursue a short term gain. In this case, that short term gain is the proposed loss of earnings calculated on the assumption that she will be unemployed for a year going forward and thereafter earning at a significantly lower rate.

[44] It is trite that the role of the expert witness is to assist the court in reaching a decision. A court is not bound by, nor obliged to accept the opinion of any expert witness.[5] Although writing for the minority judgment, Seriti JA in *Bee v Road Accident Fund* affirmed that:

*'The facts on which the expert witness expresses an opinion must be capable of being reconciled with all other evidence in the case. For an opinion to be underpinned by proper reasoning, it must be based on correct facts. Incorrect facts militates against proper reasoning and the correct analysis of the facts is paramount for proper reasoning, failing which the court will not be able to properly assess the cogency of that opinion. An expert opinion which lacks proper reasoning is not helpful to the court.'*[6] *(References omitted)*

[45] An actuary's calculations are based on the assumptions and scenarios provided by the industrial psychologist and / or instructing attorney. If these assumptions and scenarios are rejected then those calculations must perforce fall away, bearing in mind that actuarial calculations are proffered as a useful basis to assist a court to establish quantum and do not prescribe the manner in which a court may exercise its discretion in this regard.[7]

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[5] *Road Accident Appeal Tribunal & others v Gouws & another* [2017] ZASCA 188; [2018] 1 ALL SA 701 (SCA) para 33; *Bee v Road Accident Fund* 2018 (4) SA 366 (SCA) para 22.
[6] *Bee v Road Accident Fund* 2018 (4) SA 366 (SCA) para 23.
[7] *Southern Insurance Association Ltd* op cit fn 4 at 116G – 117A.

[46] The plaintiff has suffered no loss of income to date, however, I accept that she will require the arthrodesis at age 56 and may be required to move to another position before or after this occurs. Considering the plaintiff's accumulation of experience and expertise during the last four years and the totality of her employment at her employer, the plaintiff has not established that she will of necessity be required to move to a sedentary position that is necessarily less remunerated or substantially less remunerated than her current earnings.

[47] Accordingly, I am of the view that this is a loss of income assessment that may be addressed by applying the appropriate contingencies. The plaintiff is therefore directed to instruct her actuary to calculate the loss and the application of the limit to the below calculation on net loss:

| | | |
|---|---|---|
| ***Past Loss*** | | |
| *Value of income uninjured* | *R 370,700* | |
| *Value of income injured* | *R 373,800* | |
| *Subtotal past loss of earnings* | | *-R 3,100* |
| | | |
| ***Future Loss*** | | |
| *Value of income uninjured* | *R5,820,700* | |
| *Less contingencies (20%)* | *R1,164,140* | |
| *Subtotal* | *R4,656,560* | |
| | | |
| *Value of income injured* | *R5,820,700* | |
| *Less Contingencies (35%)* | *R2,037,245* | |
| *Subtotal* | *R3,783,455* | |
| *Subtotal future loss of earnings* | | *R873,105* |
| | | |
| ***Total loss of earnings*** | | ***R870,005*** |

**General damages**

[48] It is now trite that the decision whether the claimant has a serious injury justifying the award of general damages is an administrative one that must be determined by the RAF and not the courts.[8]

[49] It was contended that this Court is not precluded from addressing the issue of general damages because the RAF accepted the plaintiff's injuries were serious. This

[8] *Road Accident Fund v Duma, Road Accident Fund v Kubeka, Road Accident Fund v Meyer, Road Accident Fund v Mokoena* 2013 (6) SA 9 (SCA) para 20; *Road Accident Fund vs Faria* 2014 (6) SA 19 (SCA) para 34.

is evidenced by the RAFs offer of settlement dated 13 June 2022. This proposed offer includes an amount for general damages. This Court's attention was only directed to the relevant portions of that offer that addressed general damages and the balance of the offer addressing other aspects of the parties' settlement discussions were redacted.

[50] These contentions are not controversial and cognisance is taken of the facts that the RAF and the state attorney were aware that the matter was set down to proceed on 18 October 2022; did not appear at court or try harder to settle the quantum aspect of the plaintiff's claim; and / or did not notify the plaintiff that it does not consider her injuries as serious for purposes of general damages. Rather the only correspondence by the RAF in this regard evinces its acceptance of the nature of the plaintiff's injuries as serious, such that she qualifies for a claim of general damages.

[51] It was further contended that an amount of R350 000 would be a fair and reasonable award for general damages. Consequent upon the injuries sustained in the collision, the plaintiff's productivity has been compromised. She will require an arthrodesis at age 56, when her right ankle becomes symptomatic; she has already experienced two surgical operations; she has scarring; she suffers from insomnia, PTSD and constant pain.

[52] Counsel relied on the following matters in support of these contentions. In the case of *Van Dyke v RAF,*[9] the plaintiff, a 44 year old female machinist sustained the following injuries as a result of the accident: an undisplaced fracture of the left malleolus with tearing of the surrounding soft tissues. Leg immobilized in a plaster caste for two and a half months. The fracture bone united without complications, but chronic inflammation developing in the ankle due to fibrotic scar tissue, and ultimately capsulitis of the ankle and tendonitis of the lower leg. The plaintiff experienced chronic but low grade pain daily. The amount awarded is presently valued at R237 000 in today's monetary terms.

[9] Van Dyk *v RAF* 2003 5 QOD E8-1 (CA).

[53] In *Mahlangu v RAF*,[10] the plaintiff, sustained fractured ankle bones, torn ligament and soft tissue injury that resulted in him not being able to weight bear on the ankle, with a fixed plantar flexion. The amount awarded is presently valued at R414 000 in today's monetary terms. In *Alla v RAF,*[11] the plaintiff was a 41 year old corrections officer. He sustained a fracture of the ankle resulting in displacement of distal tibio-fibula joint and soft tissue injury requiring open reduction and internal fixation. He had difficulty walking long distances, standing for long periods, climbing stairs or walking on uneven terrain. He had the possibility of developing osteoarthritis and requiring joint replacement. The amount awarded is presently valued at R324 000 in today's monetary terms.

[54] The aforementioned cases were argued as being comparable and serving as a useful guide for an appropriate award of general damages in the amount of R350 000.

[55] It is trite that previous awards in comparable matters are intended to serve only as a guide and should not be slavishly followed. Each case must be determined upon a consideration of its own facts.[12] Having considered the plaintiff's particular facts and circumstances against the background of the authorities referred to, I agree that an award of R350 000 is an appropriate award for general damages.

[56] The general rule in matters of cost is that the successful party should be awarded her costs, and this rule should not be departed from except where there are good grounds for doing so. Accordingly, I intend awarding costs in favour of the plaintiff against the RAF.

[57] The final order shall be finalised and provided to the plaintiff once a revised calculation has been submitted by the plaintiff in accordance with the directive in paragraph 47 of this judgment, which she is directed to do within three days of receipt of this judgment.

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[10] *Mahlangu v RAF* (2013/4637) [2015] ZAGPJHC 342 (9 June 2015).
[11] *Alla v RAF* 2013 (6E8) QOD 1 (ECP).
[12] *Bay Passenger Transport Ltd v Franzen* 1975 (1) SA 269 (A) AT 274.

**T NICHOLS**
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, PRETORIA

*This judgment was handed down electronically by circulation to the parties' representatives via email, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 10H00 on 24 October 2022.*

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| HEARD ON: | 18 and 19 October 2022 |
| JUDGEMENT DATE: | 24 October 2022 |
| FOR THE PLAINTIFF: | Adv C Dredge |
| INSTRUCTED BY: | Kritzinger Attorneys |
| | Pretoria |
| FOR THE DEFENDANT: | Unrepresented |