REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION PRETORIA

CASE NO: 35054/20

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO

DATE: 17 JANUARY 2025

SIGNATURE OF JUDGE:

In the matter between:

MCUNUKELWA MVUSELELO PLAINTIFF

and

ROAD ACCIDENT FUND DEFENDANT

JUDGEMENT

FLATELA J

[1] The Plaintiff instituted an action against the Road Accident Fund for damages suffered by him as a result of the injuries sustained by him in a motor vehicle accident that occurred on 25 October 2019 due to the negligent driving of the insured driver.

[2] On 23 October 2024, the matter was served before me. The plaintiff sought a default judgment against the defendant. It was informed that both the merits of the case and the amount of damages are still in dispute. An order to separate the issues of merit and quantum was granted in accordance with Rule 33(4). Additionally, I was informed that the defendant had disputed the seriousness of the injuries suffered by the plaintiff; therefore, the issue has been deferred to the Health Professions Council of South Africa for determination. The only matters that need to be determined are the loss of earnings and the terms of the undertaking under Section 17(4) of Act 56 of 1996.

[3] I heard the plaintiff's arguments regarding past and future income loss.

[4] The plaintiff submitted that prior to the accident, he owned two taxis. He operated one himself and hired a driver for the other. He claims that he earned between R9000 and R17,000 per week from the taxi he was driving. As a result of the accident, he was unable to continue driving and subsequently sold the taxi he had been operating. The accident has led to a loss of earnings and reduced earning capacity; therefore, the defendant must compensate him for both past and future lost income until his retirement age of 70.

[5] In terms of the amended particulars of the claim dated 26 July 2024, on 25 October 2019 at approximately 17H00 at or near R61, Southport, Sea View location, Bizana, Eastern Cape Province, a collision occurred between a motor vehicle with registration number M[...] [...] Z[...] [...] driven by Mongi S Goniwe (the insured vehicle) and a motor vehicle with registration numbers N[...] 8[...], driven by the Plaintiff. The negligent driving of the insured driver caused the accident.

[6] As a result of the accident, the Plaintiff sustained a head injury, neck injury and right arm. As a direct consequence, Plaintiff has suffered, continues to suffer, and will suffer the following *sequelae* in the future. The plaintiff was forced to undergo hospital and medical treatment and will be forced to undergo it in the future. The Plaintiff has experienced pain and suffering and will, in the future, experience pain and suffering.

The Plaintiffs injuries

[7] The initial entry of the hospital records, which describes the mode of arrival and condition on admission, amongst other information, recorded that on 25 October 2019, at about 19H35, the Plaintiff came in a stretcher from the scene. His injuries are described as forehead, right arm and spine. Dr Ntombela saw the plaintiff at 20:50, who recorded the injuries as head, neck, upper limb, chest, back, right hip, plus loss of consciousness. Lacerations +12cm frontal, and the provisional diagnosis was recorded as head injury, C-spine and chest trauma. His Global Coma Score (GCS) was 15/15 when he arrived at the hospital, meaning that he was conscious and fully alert.

[8] The Plaintiff received the following treatment – ATT injection, Voltaren and suturing of laceration, neck collar, X-ray and Neuro observation. C-spine cleared by orthopaedics. The plaintiff complained about neck stiffness with the painful left shoulder, inability to turn the neck to the left, and painful neck muscles. The Plaintiff was treated with analgesics and antibiotics.

[9] The plaintiff claims that the Defendant is liable to him in an amount of R9,900,000 (Nine Million Nine Hundred Thousand Rand), detailed as follows:

i.	Future medical treatment	R200 000
ii.	Past. loss of earnings	R1 700 000
iii.	Future loss of earnings	R7 000 000
iv.	General damages	R1 000,000.
v.	Total amount	R9 900 000

[10] Munro Forensic Actuaries prepared loss of earnings calculations on the basis that Plaintiff received an income of R9 000-R17 000 per week. The capital value of loss of earnings is calculated as follows:

a.	Past loss of income	R 1 390 375
b.	Future loss	R 4 950 540
c.	Total	R6 340 915

The contingency deduction of 5% on the past loss of earnings and 15% on the future loss of earnings was applied. The Plaintiff submitted that an amount of R4 638 800 is fair and reasonable.

[11] As proof of income, the plaintiff submitted the following collateral evidence:

i. A three-month bank statement from ABSA bank for the period of 2 July 2019- 1 August 2019; 2 August 2019-1 September 2019 and from 2 September 2019- 1 October 2019;

ii. a letter from Uncedo Taxi Association-Flagstaff confirming his membership and;

iii. A photo of a licence disc and operator card for a motor vehicle F[...] lapsing on 30 September 2025.

[12] An application was made under Rule 38 of the Uniform Rules to admit the expert evidence tendered without recourse to oral testimony. The order was granted. However, I ordered that the plaintiff present his evidence.

[13] It is prudent first to address the legal principles that govern the claim for loss of earnings, which will serve as the basis for evaluating this case.

Legal principles applicable to loss of earnings

[14] The legal principles applicable to restitution of loss of future earnings and/or earning capacity have been firmly established. In *Goldie v City Council of Johannesburg*[1] The above principle was expressed as follows:

> "Mr Hart, who argued the case for the defendant, quoted a number of cases, such as Union Government (Minister of R & H) v Clay (1913 AD 385), Hulley v Cox (1923 AD 234) and Craig v Franks (1936 SR 41) in support of the proposition that it is wrong to calculate the amounts to be awarded under these heads of damage on the basis of annuity, and that

[1] *1948(2) SA 913(W).*

whilst such actuarial calculations affords useful guidance, the true basis is what the court considers, under the circumstances of the case, to be fair and reasonable amount to be awarded the plaintiff as compensation. This may be so, but in the case where it is necessary to award compensation for loss of future earnings, I have difficult in appreciating what better starting point there can be than the present value of the future income which the plaintiff has been prevented from earning. From this point proper allowance must be made for contingencies, but if the fundamental principle of an award of damages under *lex Aquilia* is compensation for patrimonial loss, then it seems to me that one must try to ascertain the value of what was lost on some logical basis and not impulse or by guesswork."

[15] The principle derived from this *dictum* is that the fundamental tenet of awarding damages under *lex Aquilia* is to provide compensation for patrimonial loss. The aim is to restore the plaintiff to the position they would have occupied had the injury not occurred. This requires a logical assessment of the loss of earnings resulting from the accident, rather than relying on impulse or guesswork.

[16] This principle was approved in ***Dippenaar* v *Shield Insurance Co Ltd*** [2] Where Rumpf JA said that:[3]

'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. This was the approach in *Union Government (Minister of Railways and Harbours)* v *Warneke* 1911 AD 657 at 665, where the following appears:

[2] *Dippenaar* v *Shield Insurance Co Ltd* 1979 (2) SA 904 (A)
[3] Ibid, at 917 B – D.

> 'In later Roman law property came to mean the *universitas* of the plaintiff's rights and duties, and the object of the action was to recover the difference between the *universitas* as it was after the act of damage, and as it would have been if the act had not been committed (*Greuber* at 269)…'

Onus

[17] The onus of proof lies on the plaintiff to prove his case on a balance of probabilities. He is required to adduce sufficient evidence of his income to enable the court to assess and quantify his past loss and future loss of earnings.

Plaintiff's evidence

[18] The plaintiff testified that he was involved in an accident on October 25, 2019. Before the accident, he was self-employed and owned two taxis. On the day of the accident, he was driving his private car. After the accident, he lost consciousness and was transported by ambulance to Port Shepstone Hospital, where he received treatment and was discharged two weeks later.

[19] Following the accident, he was unable to return to work due to the injuries he sustained. He spent a year recuperating at home but could not continue his previous job. He mentioned that another driver was hired to operate the taxi he was driving but was fired due to unprofessional behaviour. The driver was always drunk, and the taxi was operating at a loss. Ultimately, he was forced to sell the taxi because it was not generating enough income. The plaintiff testified that he was earning about R13 000.00- R15 000 per week from the taxi he was operating. On the other hand, he earned about R1500- R2000 per week on the other taxi, and he paid the driver between R500 and R700 per week. He lost that income due to the accident.

[20] The applicant appointed several medical-legal experts, who submitted their reports, which were admitted as evidence. The following experts examined the Plaintiff:

a. Dr Mafeelane – Orthopaedic surgeon
b. Dr Mazwi – Neurosurgeon
c. Dr J. F Mureriwa – clinical Psychologist
d. Dr Selahle – plastic and reconstructive surgeon
e. Dr Nhlapho -Ophthalmologist
f. Ms N Ndzungu – occupational therapist – on 18 January 2023
g. Talifhani Ntsieni – industrial psychologist
h. Munro Forensic Actuaries

Dr. Mafeelane – Orthopaedic surgeon

[21] Dr Mafeelane examined the Plaintiff on 29 June 2021. Referring to the hospital notes and the RAF form, Dr Mafeelane states that the Plaintiff sustained a neck injury, left shoulder and head injury. He deferred the head injury to a Neurosurgeon.

[22] Dr. Mafeelane examined the Plaintiff and found a reduced range of motion in the left shoulder due to pain. He opined that this is a positive indicator of a rotator cuff tear, along with intrascapular tenderness.

[23] The X-ray from Dr Ismail Farzanah's final report dated 29 June 2021 recorded that no fractures, dislocation, or subluxation and normal radiographic findings of the left shoulder were noted. The gleno -humeral and acromion -clavicular joint spaces are normal. There is a type 11 acromion present. There are no abnormal calcifications or radio opacities in the surrounding soft tissues. There is generalised maintenance of normal bone density. The scapula is intact.

[24] The doctor noted that the Plaintiff suffered severe pain after the accident and continues to suffer the inconvenience and discomfort of chronic pain from the injured areas. He has never been pain-free since the accident. As a result, the plaintiff suffered headaches, left shoulder pain, neck pain, an 8 cm scar on the right parietal region, difficulty carrying and lifting heavy objects and difficulty doing overhead activities. It is recorded that the plaintiff completed his education up to grade 8. At the time of the accident, he was self-employed as a taxi driver.

[25] Dr Mafeelane opined that the plaintiff needs arthroscopic rotator cuff repair surgery and a new line. The cost of such a procedure is R100,000 and includes hospitalisation, surgical fees, implants, theatre and rehabilitation. A new period of eight weeks post-surgery for recovery and rehabilitation is reasonable, but he will need to consult an Orthopaedic surgeon and physiotherapist. He will need to purchase prescription analgesic gel 6 to manage the pain. The doctor recommended that provisions be made for future medical expenses. Although the WPI was calculated at 8%, it is the experts' opinion that the injuries have resulted in a serious long-term impairment as per the narrative test 5.1. These recommendations are relevant for the assessment of general damages and future medical expenses

Dr Mazwi – Neurosurgeon

[26] Dr Mazwi assessed the Plaintiff on 22 March 2022 and opined that the Plaintiff experienced head trauma and also had scalp lacerations, with the loss of awareness. The Plaintiff had a brief loss of consciousness and amnesia with 15/15 GSC and amnesia in keeping up with the mild head injury.

[27] The Plaintiff now presents post-concussive headaches, difficulty with concentration, memory disturbances, poor memory and recall, a 2% risk of epilepsy, chest pains, and cervical. Neck pains, left arm, shoulder pains, head scar. Loss of amenities of life. Amenities of normal living were lost during the period of hospitalisation; activities of daily living and mental function have been affected; he has lost amenities due to headaches and permanent mental disturbances. He assessed the plaintiff to have 20% whole-person impairment, and the injuries sustained have resulted in permanent serious disfigurement and significant long-term mental disturbance under the narrative test.

[28] On retirement and employability. The doctor stated that the Plaintiff is unemployed and the injuries he sustained will make it difficult for him to compete fairly in an open labour market. He deferred to the Occupational Therapist to comment in more detail on the practical effect of this impairment and his ability to work in an open market.

Tabisa Caga – Occupational Therapist

[29] On 30 June 2021, Ms Caga assessed the Plaintiff, who reported experiencing pain on the left side of his neck, shoulder, and upper back. He also mentioned suffering from headaches, dizziness, and muscle spasms. Additionally, he reported decreased strength and movement in his left arm and hand, as well as vision impairment. Other issues included difficulty lifting heavy objects, trouble sleeping on his left side, increased irritability, and forgetfulness.

Pre-morbid profile of the Plaintiff

Personal circumstances of the Plaintiff and family background

[30] Ms Caga summarised the educational and work history as follows: *"At the time of the accident in October 2019, the claimant was a taxi driver, and he owned two taxis. The claimant stated that after the accident occurred, he was unable to drive and hired another driver to drive his second taxi. He indicated that the new taxi driver was performing poorly, and he, therefore, did not make sufficient profit. His taxi was repossessed as he could not afford his monthly instalments. The claimant continued to operate as a taxi owner until August 2022; he stated that his taxi broke down and that he is unable to operate currently. Mr Mcunukelwa is currently unemployed.*

Previous work analysis

[31] *As a taxi driver, Mr Mcunukelwa worked from Monday to Sunday from 06:00 to 19:00 . His duties and work included sitting and driving for most of the day, driving a manual vehicle /taxi, mainly driving local trips, driving about 8 hours a day, performing long-distance trips about four times a month, e.g. From Mthatha and Johannesburg, occasionally assisting his passengers with their luggage and groceries. Ms. Caga concluded that the plaintiff is only suited for sedentary and light occupations. However, his job prospects are limited due to his education and work history. While he may manage local taxi driving for short distances, he is unable to handle long-distance driving or tasks that involve lifting heavy items. Frequent*

movements, such as changing gears or assisting passengers, would increase his pain and reduce his productivity.

[32] These issues hinder his chances of finding new employment and restarting his taxi business due to various financial factors. He will need to implement pain management strategies and cannot compete effectively in the labour market. The expert recommended future treatment options, including occupational therapy, physiotherapy, and assistive devices, leading to anticipated medical expenses.

[33] The presence of cognitive and psychosocial limitations may further curtail his ability to be trained in sedentary or light work in the future. His injuries will make him a lesser competitor in the open labour market compared to his peers. He would thus require an understanding employer who will be willing to accommodate his physical limitations. Due to the accident-related challenge, the Plaintiff's job options are likely to be curtailed as he will not be able to cope with physically demanding jobs. He does not retain enough physical vocational capacity to compete in the open labour market. His physical challenges preclude him from medium to heavy occupations or any work duties which require prolonged standing, walking, dynamic posturing, climbing, and driving.

Dr Selahle – Plastic and Reconstructive Surgeon

[34] Doctor S Selahle assessed the plaintiff on 16 July 2024 and made these findings: a 10 cm Scar on the frontal scalp and forehead. Dr Selahle concluded that the Plaintiff's scars have no features, but they are cosmetically unsightly and disfiguring. They are permanent, with little prospect of scar improvement by scar revision techniques. He has a 5% WPI. He suffered from considerable physical pain and is still suffering from emotional pain due to his cosmetically disfigured scar.

Dr JFL Murериwa – Clinical Psychologist

[35] Dr Mureriwa assessed the plaintiff on 1 July 2021. The Plaintiff reported to Dr Mureriwa that since the accident, he has had dizziness, a painful neck, painful left

shoulder and arm, forgetfulness and easily distracted, blurred vision, irritability, depression, tiredness or fatigue, and poor, disturbed sleep.

[36] Status Examination Findings: He is easily distracted and requires redirection during the tests. His recent memory appears to be moderately impaired. He has a reduced capacity to inhibit responses and sustained attention, mild obstructing thinking deficits, and he appears depressed and mildly anxious.

[37] Impact of the Accident: He cannot turn his head to the left and struggles with heavy lifting. He needs help with household tasks and has stopped exercising due to pain. His business is suffering as he can't work as much as before, leading to financial anxiety. He experiences pain when sitting for long periods, making him afraid to travel by car or taxi. He often misplaces items and has difficulty finding things. His impatience and irritability are straining relationships. He has low motivation, no longer enjoys his hobbies, and is socially withdrawn, preferring to be alone. He often misplaces items, which causes frustration, and his impatience strains relationships. He lacks motivation, no longer enjoys hobbies, feels socially withdrawn, and tires himself easily.

[38] Activities of daily living and amenities: he no longer engages in exercise sessions like he used to, and he has stopped doing weightlifting and going to the gym. His interpersonal relationships have been negatively affected by irritability, low mood, and social withdrawal. His work capacity is impaired due to cognitive issues, pain, and low endurance, impacting his functional and community mobility. Additionally, he struggles with some basic activities of daily living, including proper breathing and sleeping, which are disrupted by persistent pain. As a result, he requires more assistance with heavy tasks than he did before.

[39] Whole-person impairment: The plaintiff has a 20% whole-person impairment, as concluded by the doctor. The plaintiff also suffered a mild traumatic brain injury, resulting in moderate overall disability. The rest of the opinion pertains to future medical treatment and general damages.

Talifhani Ntsieni – Industrial Psychologist

[40] Mr Ntsieni assessed the plaintiff on 17 October 2022. It was reported to Mr Ntsieni that after the accident, the Plaintiff could not no longer drive, cannot do chores such as gardening, is forgetful, experiences headaches and dizziness, especially in hot weather, is anxious about driving, and experiences left shoulder pains. Especially when doing heavy duties and during cold weather, he cannot carry or lift heavy objects using his arm.

Employment prospects and earning potential.

[41] Mr Ntsieni prepared his report based on all the reports of other experts available at the time of assessment. He opined on the following possible scenario:

[42] **Pre accident.** The plaintiff has a grade 4 education, a firearm certificate, a loco driver certificate, and a plumbing certificate. At the time of the accident, he was self-employed as a taxi driver, and the owner earned between R9 000 and R17 000 per week. He heavily relied on his physical health, strength and capabilities for gainful employment. His reported earnings at the time of the accident ranged above the upper quartile of the 2019 Taxi Driver/Owner of the Driver employees scale in the informal sector.

[43] Considering his level of education, work experience, and age, it is probable that he would have likely managed to increase his profit at CPI plus 3% per annum for about 7 years and, thereafter, maintained his earnings with future growth as a result of inflation. Inflationary-related increases to retirement age. He would have mostly likely wept beyond the normal retirement age of 65 years in a self-employment capacity. Thus, retirement up to age 70 at most, with his health permitting.

Loss of earnings

[44] It was reported that following the accident and hospitalisation, the plaintiff stayed at home, recuperating for a year. He lost income as he was the driver of the other taxi. He resumed his job as a taxi owner but did not return to his driving duties.

He sold the taxi that he used to drive as he could not drive due to pain and anxiety. He now has one taxi and is only generating R1500 profit per week. Thus, business loss is noted.

[45] It is evident from the expert's opinion that injuries sustained from the accident had a negative and restrictive impact on the plaintiff's level of psychological, neurosurgical, cognitive, psychological and occupational functioning. His post-accident career is one likely to be characterised by restrictions, pain and discomfort, as well as the risk of loss of income. His progression through his career is considered restricted and compromised as a result of the impact of the accident-related injuries. His work choices are reduced, and he has been rendered vulnerable.

[46] In competing with other able bodies, self-employment, individual. He is no longer performing at his pre-accident potential as a result of the accident. And has been rendered unequal to the competitor gainfully employed. He is likely to reach his pre-accident potential. He has, therefore, suffered the loss of earning capacity, translating into a loss of enemies. These risks should be fair and should be dealt with by much higher than normal pre-accident contingencies for possible unemployment. The condition deteriorates.

[47] Collateral information is addressed in paragraph 8 of the report. Mr Ntsieni says, “Mr Mcunukelwa was self-employed pre-accident, and this remains the same post-accident.

[48] Ms. Jele, on behalf of the plaintiff, applied for the default judgment on past loss and future loss of income as projected by Mr Ntsieni and calculated by Munro's actuaries.

[49] I raised a concern regarding the sufficiency of the collateral evidence submitted to the court in support of the proof of earnings. The plaintiff provided a three-month bank statement from before the accident and a letter from the Uncedo Taxi Association confirming his membership. It was argued that the bank statement confirmed his pre-morbid earnings. The ABSA bank statement indicated deposits

ranging from R16,000 to R18,000 and a recurring deduction of approximately R10,000 at the end of each month.

[50] The evidence provided was not sufficient for me to quantify the past and future loss of earnings. However, I afforded the plaintiff an opportunity to supplement the information regarding this claim. Specifically, I directed the plaintiff to provide proof of ownership for the taxis, details of the sale of the taxi he was operating (including the purchase price), a spreadsheet from the bank statement that shows the profit derived from the taxi the plaintiff was driving, and copies of the bank account statements following the accident, particularly the statement from 2024. Additionally, I requested the plaintiff's SARS income tax registration. Consequently, I postponed the matter to give the plaintiff’s attorney enough time to collect this information.

[51] The plaintiff later submitted a certificate of registration to prove ownership of the taxi operated by a hired driver, along with a Professional Driving Permit (PDP) for the taxi he was driving. However, he did not provide a spreadsheet detailing the income generated from the taxi. No explanation was provided for this failure to comply with the directives.

[52] The plaintiff provided a bank statement from his FNB Premier Current Account covering the period from August 2, 2024, to October 31, 2024. The statement indicates a balance of R98,167.99. Additionally, it was noted that the plaintiff was not registered with the South African Revenue Service (SARS). It was stated that the plaintiff operated his taxi business informally, similar to other informal traders, and, therefore, was not registered with SARS.

[53] The plaintiff was unable to provide any documentation related to the sale of his taxi. It was argued on his behalf that he lacked documentation because the sale was an informal cash transaction. Furthermore, the buyer has since passed away, and the plaintiff does not know the current whereabouts of the taxi's documentation.

[54] I enquired with counsel regarding the date or year of the taxi sale. Ms. Jele, after conferring with her instructing attorney, informed me that the taxi was sold in

2023. This new information regarding the year of the sale is fundamentally at odds with what the plaintiff had previously communicated to his expert. As early as 2021, the plaintiff communicated to all his experts that that he sold his taxi after dismissing the driver he had hired. It is questionable whether the taxi was sold at all. I will revert to this later.

[55] Ms Jele, on behalf of the plaintiff, acknowledged that the court will find it difficult to assess the damages regarding the collateral evidence provided. Ms Jele proposed that the court should deal with this predicament in the following:

a. The expert noted that, like most self-employed people in the informal sector, there was no record-keeping; however, his earnings were within the self-employed person's scale.
b. The plaintiff's loss may be accepted as a loss of incapacity, and the uncertainty of earnings can be addressed by the application of a much higher than normal contingency where the pre-morbid and the post-morbid are considered the same.
c. In this way, the loss of capacity to drive the taxi again will be compensated while the much higher-than-normal contingency discharges the court uncertainties.

[56] The Plaintiff proposed that the court should resolve the issue by applying contingencies as follows:

	Uninjured	Injured	Loss
Past	R 1 696 500-35%= R 1 102 725	R2221 300	R881 425
Future	R6 521 400 -20% = R5 543 190	R6 521 400-50% = R3 260 700	R1 956 420
TOTAL LOSS			R2 837 845

[57] The Applicant submitted that an amount of R 2 837 845 would be fair to compensate the plaintiff in respect of the loss of earning capacity. It was submitted further that the plaintiff would accept a much higher than normal contingency to his past and future earnings as there is not enough satisfactory collateral evidence yet before the court.

[58] Ms Jele referred to the matter of **Southern Insurance Association v Bailey**[4] Where it was held that "*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 …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.*

[59] It was further submitted that if the Court does not accept the proposals, the plaintiff would require and request a further period to gather all collateral evidence to satisfy the court.

[60] I informed the plaintiff's counsel that I needed time to consider the supplementary information and supplementary heads of argument and would provide my decision on 15 November 2024. After careful consideration, I concluded that it would be more appropriate to write a formal judgment rather than simply issuing an order. I now deal with the principles applicable to loss of earnings and contingencies.

[61] The first issue the Court must determine is whether the plaintiff has proven that he has a valid claim for lost income on the balance of probabilities.

[62] The difficulty of quantifying the monetary value of loss in claims of this nature is clearly articulated in the case of *Terblanche v Minister of Safety and Security and Another*[5] . The SCA held :

> "The difficulty with claims of this nature is generally not so much the recognition that earning capacity constitutes an asset in a person's estate, but

[4] *1984(1) SA 98 (A) at 112E-114F*
[5] (20006/2013) [2015] 48 ZASCA (27 March 2015) at para 14

> rather the quantification of the monetary value of loss of earning capacity by a trial court. Each case naturally depends on its own facts and circumstances as well as the evidence before the trial court concerned.”

[63] The actuarial calculations submitted are based on a report by the Industrial Psychologist, which states that the plaintiff was earning between R9000 and R17,000 per month. However, the Industrial Psychologist did not verify these amounts and relied solely on the plaintiff's statements. The report indicates that the plaintiff has no record-keeping, so the court must accept his word regarding his income.

[64] The plaintiff, despite working in the informal sector, has multiple bank accounts. He manages his bank account independently. I found it odd that he lacked any documentation related to the sale of his taxi; there was no paper trail or money trail.

[65] There is another challenge in quantifying the plaintiff's claim. The plaintiff provided contradictory information regarding the circumstances of the taxi he claimed was in operation. He informed Ms Caga that the taxi had been repossessed by the bank, as noted in paragraph 2.4 of Ms Caga's report.

[66] The report states: "At the time of the accident in October 2019, the claimant was a taxi driver and owned two taxis. The claimant indicated that after the accident, he was unable to drive and hired another driver for his second taxi. However, he reported that the new driver was performing poorly, resulting in insufficient profits to cover his monthly instalments. Consequently, the taxi was repossessed. The claimant continued to operate as a taxi owner until August 2022, when his taxi broke down and has since been unable to operate. The plaintiff is currently unemployed."

[67] The plaintiff informed Mr. Ntsieni that he spent a year recuperating from his injuries. During this time, he lost income because another taxi he owned was not operational, as he was the driver. He mentioned that he resumed his job as a taxi owner but did not return to driving. He tried to hire someone else to drive the taxi;

however, the individual was unprofessional and often intoxicated. As a result, he decided to sell the taxi he had been driving. He can no longer drive due to anxiety and persistent pain in his left shoulder. As a result, he is now left with only one taxi and is reportedly generating R500 in profit each week. Since he sold his other taxi and is currently operating with just one, his profits have decreased. Consequently, there has been a significant loss of income from the time of the accident up to now.

[68] During the proceedings, the plaintiff testified that he sold his other taxi while recuperating at home. I instructed the plaintiff to provide the court with details of the sale, including the purchase price. It was stated that the transaction was informal and conducted in cash, and, unfortunately, the buyer is now deceased, and the plaintiff has no available documentation regarding the sale.

[69] The plaintiff has presented conflicting information regarding the taxi incident. Any effort to quantify the plaintiff's claim for past and future loss of earnings is likely to be speculative without any factual basis.

[70] In the circumstances, I make the following order :

i. The defendant is ordered to pay 100% of the plaintiff's proven damages;
ii. The defendant shall furnish the plaintiff with an undertaking for future medical expenses in terms of section 17(4)(a) of Act 56 of 1996, limited to 100% for the cost of future accommodation of the patient in a hospital or nursing home or the treatment of or rendering of service or supplying of goods to him arising out of injuries sustained by the patients in a motor vehicle which occurred on 25 October 2019.
iii. The general damages are postponed *sine die*
iv. Absolution from the instance is granted in respect of the claim for the past and future loss of earnings;
v. The defendant shall pay the costs of this plaintiff's taxed costs on party and party scale.

vi. The defendant shall pay the costs of the counsel subject to scale B of sub-rule (3) of rule 67A

FLATELA LULEKA

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the handed down is deemed to be 10h00 on 17 January 2025

Counsel for Plaintiff	:Adv D Jele
Instructed by:	: Sotshintshi Attorneys
Date of the Hearing	: 23, 25, October 6 and November 2024
Date of the Judgement:	: 17 January 2025