

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 34766/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

20 November 2024

DATE

.....

SIGNATURE

In the matter between:

KV MPHUTHI

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

ORDER

1. The Notice of intention to defend filed on 3 July 2024 is hereby set aside;
2. The plea filed on 4 July is hereby set aside;
3. The defendant is ordered to pay the plaintiff the amount of R 486 764.00 (Four hundred and eighty-six thousand seven hundred and sixty-four rand) in respect of the plaintiff's loss of earnings.

4. The defendant is ordered to furnish the plaintiff with a certificate as envisaged in section 17(4) of the Road Accident Fund Act 56 of 1996 for 100% of the expenses to be incurred as a result of the injuries sustained in the accident which had occurred on 12 July 2022.

5. The issue of general damages is postponed *sine dies*.

6. The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on the High Court scale, which costs shall include the cost of Counsel Adv. P. van der Schyf for 3 July 2024, 5 July 2024 and 11 July 2024 on scale B. Counsel's costs shall include his day fee, preparation and heads of argument.

7. The payment of the costs in paragraph 6 above shall be effected no later than 14 days following the date on which the agreement relating to the costs is reached between the parties or the stamped allocator following taxation is served on the defendant, whichever comes earlier.

8. Interest shall accrue on the capital amount in paragraph 3 above after the expiration of 180 days from the time this order is provided to the defendant together with the bank details of the Trust Account of the plaintiff's attorney of record, Slabbert & Slabbert Attorneys.

9. A valid Contingency Fee Agreement exists between the Plaintiff and Slabbert & Slabbert Attorneys.

JUDGMENT

KRÚGER AJ

[1] In this matter the plaintiff issued summons against the defendant in respect of a motor vehicle accident that occurred on 22 March 2018. The plaintiff was traveling straight on the R57, when in the process of overtaking the first insured vehicle, the

second insured vehicle approached from the front. The plaintiff attempted to return to his lane of travel but the first insured vehicle had increased speed and thus hindered the plaintiff to return to the plaintiff's original lane of travel. The plaintiff then swerved to the right to attempt to avoid a head on collision with the second insured driver. This resulted in the plaintiff's motor vehicle leaving the road and traveling on the gravel next to the road on the plaintiff's righthand side. The second insured driver swerved to his left-hand side and travelled on the gravel next to the road. The plaintiff then attempted to swerve to his left-hand side but it was too late and a head-on collision ensued.

[2] The matter was before me on the default judgment roll for 3 July 2024. The Defendant electronically served a notice of intention to defend on the attorney of the plaintiff on 3 July 2024 at 8h39 am, according to the proof of service. The notice of intention to defend was uploaded on Caselines also on 3 July 2024. The proof of service is in e-mail form and the relevant portions reads:

"Good day

The above matter refers

Take note that that service is herewith effected in terms of Rule 4A(1)(c)

Find attached hereto the underlisted documents for service

NOTICE OF INTENTION TO DEFEND

Kindly affix an acknowledgement of receipt stamp and return the stamped copy to us electronically

We hope the above is in order and we await your response

Regards

Lehlogonolo Thlapos Makhura."

[3] Rule 19(3) reads as follows:

"19 Notice of Intention to Defend.....

(3) (a) When a defendant delivers notice of intention to defend, defendant shall therein give defendant's full residential or business address, postal address and where available, facsimile address and shall also appoint an address, not being a post office box or poste restante, within 25 kilometres

of the office of the registrar and an electronic mail address where available, for the service on defendant at either address of all documents in such action, and service thereof at the address so given shall be valid and effectual, except where by any order or practice of the court personal service is required.

(b) The defendant may indicate in the notice of intention to defend whether the defendant is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service.

(c) The plaintiff may, at the written request of the defendant, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail. [my emphasis]

(d) If the plaintiff refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by the defendant, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.”

[4] On 3 July 2024 the parties appeared, but were not ready to argue the matter and more specifically the late filing of the notice of intention to defend. The matter was stood down to 5 July 2024. On 5 July 2024 the matter was again stood down to 11 July 2024. I issued a directive to the parties that the substantive application for the setting aside of the notice of intention to defend in terms of Rule 30, to be served on the defendant together with the caselaw the Plaintiff intended to rely on. The defendant had to file an answering affidavit thereto, should they wish to do so. Both parties had to file heads of argument by 12h00 on 10 July 2024.

[5] The plaintiff filed a substantive application in terms of Rule 30 for the setting aside of the notice of intention to defend of 3 July 2024, which application was physically served on the defendant on 8 July 2024. The defendant's answering affidavit thereto is dated 10 July 2024. The plaintiff filed supplementary heads of argument and the application was heard on 11 July 2024. The defendant also electronically served a plea on the plaintiff on 4 July and uploaded same on Caselines.

[6] The background on the matter according to the documents and pleadings uploaded on Caselines as well as the affidavits filed, are as follows:

Claim lodged (Physically served on defendant)	26 February 2021
Summons served (Service by Sheriff)	16 July 2021
Application for default judgment served (Physically served on defendant)	17 May 2023
Final notice of set down default judgment served (Physically served on defendant)	14 May 2024
Notice to amend (Physically served on defendant)	10 May 2024
Notices in terms of Rule 37	16 May 2024
Amended pages (Physically served on defendant)	30 May 2024
Default Judgment hearing date	3 July 2024
Notice of intention to defend	3 July 2024

[7] On 11 July 2024 both parties were represented and addressed the Court on the issue of the late filing of the notice of intention to defend.

[8] The Counsel for the plaintiff raised the issue that the notice of intention to defend was filed and served on the plaintiff's attorney of record electronically on 3 July 2024, being the day of the hearing for default judgment set down for 3 July 2024, without a condonation application or any explanation for the lateness thereof. It was further argued that this is an abuse of process and should be set aside.

[9] The Counsel for the defendant argued that such lateness is not an abuse of process and is specifically provided for in terms of Rule 19(5) and as such, no condonation application is necessary. Counsel was also requested to address me on the service or lack thereof in terms of Rule 19(5).

[10] Rule 19(5) states:

*“(5) Notwithstanding the provisions of subrules (1) and (2) a notice of intention to defend may be **delivered** [my emphasis] even after expiration of the period specified in the summons or the period specified in subrule (2), before default judgment has been granted: Provided that the plaintiff shall be entitled to costs if the notice of intention to defend was delivered after the plaintiff had lodged the application for judgment by default”*

[11] Rule 1 states:

*“ ‘**deliver**’ means to serve copies on all parties and file the original with the registrar”*

[12] The notice of intention to defend in this matter was not delivered as prescribed by the Uniform Rules as it was ‘served’ electronically on the attorney of the plaintiff, before the attorney of the plaintiff has given consent that subsequent documents and notices may be exchanged by way of electronic mail. In the circumstances the defendant has not complied with Rule 19(5) as contended in the answering affidavit to the plaintiff’s application in terms of Rule 30.

[13] At the outset the plaintiff’s Counsel referred the Court to the answering affidavit where the plaintiff was referred to as the ‘deceased’ although the plaintiff was present in Court. The Counsel for the defendant argued that this was merely an ‘error’

[14] The Court had the following concerns with this submission of the Counsel for the defendant and required to be addressed on same:

[14.1] the Counsel for the defendant was not the deponent to the affidavit and could not therefor make submissions to the Court on what the reasons were, as to why the plaintiff was referred to as the deceased by the senior claims handler ‘Kholofelo Maila’ who was the deponent to the answering affidavit;

[14.2] the defendant in the answering affidavits states:

“4.1 on receipt of the lodgement documents the claim was assessed, and upon assessing the matter to enable the fund to make an offer of settlement, it was noted that the accident was solely caused by the deceased.” It is not clear how the court can determine who the person is that is being referred to as the deceased. The accident report states that both the plaintiff and the second insured driver were both seriously injured. There is no evidence before the court that the second insured driver is presently still alive and therefor the court can not be sure that the deponent is not referring to the second insured driver.

[14.3] An affidavit is deposing to evidence under oath, attesting to the truth of such evidence. In this instance the evidence deposed to has now been found to be untrue or at the very least the referral to the plaintiff as the deceased, if it was indeed the plaintiff that was referred to.

[15] Apart from the court's concerns as stated above, I am persuaded in the interest of justice and in the pursuit of the truth to allow the answering affidavit and to just disregard paragraph 4.1 thereof.

[16] The Counsel for the defendant conceded that the notice of intention to defend was electronically served on the plaintiff without consent to such service by the plaintiff as is required in terms of the Uniform Rules of Court. This does not constitute proper service and does not comply with the requirement of 'delivery' as stipulated in Rule 19(5).

[17] The defendant could not advance any valid reason to this Court as to why the notice of intention to defend should not be set aside. The defendant had some 36 months after the service of summons on the defendant by Sheriff, to defend the claim of the plaintiff. The defendant states in the answering affidavit that the reasons for not defending the claim timeously are:

a. The claim was repudiated. I am of the view there is no merit in this alleged reason. Annexed to the answering affidavit is the undated letter of repudiation, which letter states inter alia: *“The RAF hereby formally repudiates*

*your claim and will defend any action instituted against us in that:.....”;**[my emphasis]*. This letter is according to the proof of service which is also annexed, electronically served by e-mail on 8 April 2021. In the subject line of the e-mail it states “*MeritsRepudiationLetter1*”, however in the body of the e-mail it states: “*...Find attached herein our offer on merits for your attention. We trust you will find the above in order.....*” The repudiation did not preclude the defendant to defend the matter timeously before the matter had been set down for default judgment. What is noteworthy is that this letter and the proof of service e-mail originates from the defendant itself and was not sent through a panel attorney of the defendant. This signifies that the defendant had the information in their possession to defend the matter since at best 8 April 2021 or at least since the summons was served on the defendant being 16 July 2021.

b. The deponent to the answering affidavit states that she was advised that: “*.... Rule 19 is self-resolving in nature. It has an internal remedy in so far as non-compliance with the Rules is concerned....*”.

c. The defendant intends calling the insured driver for oral evidence. The accident happened some 3 years before it was defended. There is no record of who the first insured driver is. I find this allegation does not bear scrutiny;

d. The defendant is experiencing administrative difficulties as “*..... the summons was filed during a period which the defendant was undergoing a transition from the panel of attorneys to being defended by the State Attorneys as the contract of the Panel of Attorneys ended. The defendant is working around the clock to fix this*”. And “*I extend to the above honourable Court an apology in this regard. There is currently a delay in the administration of the process of defending matters and as a result this led to a number of matters being delayed in defending*” Again this allegation does not bear scrutiny as the defendant ended the contracts of their panel attorneys some time during 2020. The excuse has been used by the defendant ad nauseum, without the defendant getting its’ house in order.

[18] The Plaintiff referred the Court to the Supreme Court of Appeal matter of *Beinash v Wixley* (1997(3) SA 721 (SCA) at 734 where Mahomed CJ found:

*“There can be no doubt that every Court is entitled to protect itself and others against the abuse of its processes. Where it is satisfied that the issue of a subpoena in a particular case indeed constitutes an abuse it is quite entitled to set it aside. As was E said by De Villiers JA in **Hudson v Hudson and Another 1927 AD 259 at 268**: ‘When the Court finds an attempt made to use for ulterior purposes machinery devised for the better administration of justice, it is the duty of the Court to prevent such abuse’ F What does constitute an abuse of process of the Court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept ‘abuse of process’. It can be said in general terms however, that an abuse of process takes place where procedures permitted by the Rules of Court to facilitate the pursuit of the truth are used for a purpose extraneous to that objective”*

[19] In respect of the issue raised by the plaintiff, that the defendant abused the process of Court by the late filing of the notice of intention to defend, the Court was referred by Counsel for the plaintiff, to the judgment of Davis J in the matter of **Seronica Nathram v Road Accident Fund 46876/2020 ZAGPPHC [26 April 2024]** (“*Nathram*”) where the learned judge referred to **South African Human Rights Commission v Standard Bank South Africa Ltd and Others 2023 (3) SA 36 (CC) at [31]** where the Constitutional Court held that, in the exercise of its inherent jurisdiction, a High Court may refuse to hear entire proceedings which amount to an abuse of process. Davis J went further in paragraphs 18 and 19:

“[18] It is often argued in this court when belated notices of intention to defend are filed by the RAF at the eve of the hearing, with reliance on Rule 19(5), that that sub-rule gives procedural substance, not only to the audi alterem partem – principle, but also to a defendant’s Section 34 rights of access to court.

[19] This contention by the RAF is correct, but only insofar as the sub-rule allows a defendant such as the RAF to prevent default judgment being taken against it whilst it still has the actual intention to defend the matter and the intention to have the plaintiff’s claims disrupted by way of leading

countervailing evidence at trial. If the sub-rule is utilised to facilitate something else, then its provisions are abused.”

[20] In the matter before me the defendant filed an answering affidavit to the founding affidavit of the plaintiff. The answering affidavit was deposed to by a senior claims handler employed by the defendant at its Menlyn branch. It is stated in the answering affidavit that the reason for the delay in filing the notice of intention to defend is:

“.....It is not in dispute that the notice of intention to defend is late or is filed outside of the period is provided in the Rules. ...I extend to the above honourable Court an apology in this regard. There is currently a delay in the administration of the process of defending matters and as the result this led to a number of matters being delayed in defending. The defendant is working around the clock to fix this.”¹

[My emphasis]

[21] Interestingly, in the **Nathram** judgment supra, Davis J quoted from the answering affidavit filed in that matter before 5 February 2024 as follows:

“6.2 It is not in dispute that the notice of intention to defend is late or is filed outside of the period is provided in the Rules.

6.3 I extend to the above honourable Court an apology in this regard. There is currently a delay in the administration of the process of defending matters and as the result this led to a number of matters being delayed in defending. The defendant is working around the clock to fix this.”

[22] The defendant had various opportunities to file a notice of intention to defend had the defendant had any desire to defend the matter, namely:

1. After the summons was served on the defendant by Sheriff on 16 July 2021;
2. After the application for default judgment was served on 17 May 2023;

¹ Answering affidavit paragraph 6.3

3. After the notice of set down for default judgment was served on 14 May 2024;
4. After the notice of intention to amend was served on the defendant on 10 May 2024, to name but a few.

[23] Had the defendant timeously defended the matter and then discovered afterwards that there are no grounds to defend the matter, this issue could have been remedied with an offer or had the defendant, after they defended the matter, discovered that it was not properly lodged or any non-compliance on the part of the plaintiff, again this could be remedied by a special plea. The point is, there are various remedies available for all litigants in terms of the Rules of Court, which Rules have been established to provide certainty, reliability, fairness and guidance to litigants in the process of litigation.

[24] In the current matter before me the plaintiff has served and filed *inter alia* the following documents on the defendant without any participation in the litigation process from the defendant:

1. Lodgement documents;
2. Combined Summons;
3. Discovery Affidavit;
4. Photographic Evidence;
5. Mediation Notice;
6. Pre-trial Notice together with pre-trial questions;
7. Medical expenses schedule;
8. Proof of income documents;
9. 7 Medico-legal and expert reports;
10. Amendment documents;
11. Default judgment Application;
12. Rule 38(2) Application
13. Medico-legal and expert confirmatory affidavits
14. Notice of set down for default judgment

[25] It is my view that not only did the defendant not comply with the Rules but also used the Rules as an abuse of the process of this Court. The purpose of Rule 19(5) is not the 'go to place' if one has ignored a claim and now the clock has struck 12. The general argument of the defendant in various matters is then that all can be cured by a cost order. I align myself in this regard with Davis J in the Nathram matter where he states:

"[26] Rule 19(5) envisages that any prejudice caused by the late delivery of a notice of intention to defend, can be met with a cost order, even on a punitive scale. The RAF also contends that, should such a cost order be made, that would remove any prejudice suffered by a plaintiff, but that is not correct. A cost order would only benefit the legal practitioners or ameliorate some of the cost burden of a plaintiff, but any consequential postponement or delay caused by such a late delivery would simply mean that the determination of compensation due to a plaintiff (and the payment thereof) is postponed, often for months or even years given the state of this Division's congested rolls. That delay in not receiving either an undertaking in terms of section 17(4) or any compensation sounding in money for an extended period of time, is not ameliorated by a cost order. This is a weighty factor to consider in addition to the wastage of judicial resources and the consequential contribution to the congestion of the trial roll."

[26] The defendant is an organ of state which falls under the authority of the Minister of Transport. The defendant is funded by the fuel levy. The fuel levy is a compulsory contribution to social security benefits and the National Treasury determines the levy amount, which is collected by South African Revenue Services at point of sale. The fuel levy is a tax that goes directly to the defendant to fund its' operations. As such, these funds should not be wasted, on unnecessary legal costs, especially punitive cost orders which the defendant tenders often in respect of procedural non-compliance.

[27] In the matter of **MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd 2014 (3) SA 481 (CC)** it was held by Jafta J (Madlanga J and Zondo J concurring) "*.....it is to insist on due process, from which there is no reason to exempt government. On the contrary, there is higher duty on the state to respect*

*the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifeline. It is the constitution's primary agent. It must do right, and it must do it properly...."*²

[28] I therefore find that there is no intention to defend before me and even if there was, in the circumstances it stands to be set aside as an abuse of the process of Court.

[29] The plea that was served electronically and filed on Caselines on 4 July 2024 likewise stands to be set aside. Just as a matter of interest, the plea that was filed comes down basically to a bare denial, save to state that the plaintiff was the sole cause of the accident without any further detail regarding same. The plea also contains two special pleas which is identically the same regarding the seriousness of injuries and with 2 conflicting prayers with each special plea. Nothing much turns on the plea save to strengthen the view of the Court and the contention of the plaintiff, that the notice of intention to defend and subsequent plea was not filed for the purpose of pursuing the truth and entering in meaningful litigation with the plaintiff but rather for an ulterior purpose.

[30] I now consider the application for default judgment of the plaintiff. The plaintiff has served and filed an application in terms of Rule 38(2) and affidavits by the plaintiff as well as medico-legal and expert confirmatory affidavits. The Rule 38(2) application to have evidence placed before the Court by affidavit was granted.

[31] The plaintiff is a 31-year-old male driver and floor manager. The plaintiff was driving a vehicle (DNH993FS) on 22 March 2018 at 12:00 on the R57 between Heilbron and Sasolburg. The vehicle in front of him was driving slowly and when it safe to do so he overtook that vehicle which then in turn increased its speed to close the gap between him and the vehicle in front of him preventing the plaintiff to get back to the left lane and a vehicle approaching them from the front then collided with the plaintiff.

² At paragraph [82]

[32] According to the Accident Report it was reported *"According to "A" (the plaintiff) he was following another vehicle disturbed "A" and "A" tried to avoid that vehicle and he move to the right side and "B" (second insured driver) was still on his lane and was traveling straight and is were both vehicles head on and passenger from each vehicle sustained serious injuries and.... both drivers and vehicles were damages and both passengers and drivers were taken to hospital by an ambulance"*

[33] In the 19F affidavit of the plaintiff, he states: *"..... I was traveling straight on the R57 when I observed a slow-moving vehicle in front of me. I switched on my right indicator in order to overtake the said motor vehicle after making sure it was safe to do so. As I was in the process of overtaking the said motor vehicle, it suddenly started to increase its speed, making it difficult for me to overtake. There was also another motor vehicle traveling in the same direction in front of the motor vehicle I was overtaking. I then noticed another motor vehicle traveling towards me from the opposite direction. I tried to move back to my original lane of travel to make way for the oncoming vehicle, but the motor vehicle I was overtaking, did not allow me any space to do so. I then swerved my motor vehicle towards the right-hand side, resulting in me leaving the road onto the gravel next to the road. At the same time, the oncoming motor vehicle also swerved towards its left-hand side. I then immediately tried to swerve back to my left-hand side, but it was too late, resulting in our motor vehicles colliding head on....."*

[34] It is in my view under the circumstances clear that the defendant be held 100% liable for the plaintiff's proven damages as this is the uncontested evidence of the plaintiff and no contributory negligence had been pleaded in the plea even if the plea had not been set aside.

[35] According to the medico-legal and expert reports as well as hospital records and photographic evidence of the injuries filed by the plaintiff and to which this Court was referred to, the plaintiff sustained the following noteworthy injuries and sequelae which is of significance in determining his loss of income:

1. Open fracture to his left tibia/fibula (external steel frame was applied, with surgery performed and pins screws and plate inserted);
2. Laseration to the right knee;
3. Scarring;
4. Post-Traumatic Stress Disorder.

[36] The Industrial Psychologist, served and filed by the plaintiff, to wit, M Beytell, summarises in the report: *“4.2 Mr Mphuthi reported that he was unconscious for approximately 10 minutes following the accident and reported that he woke up on the scene of the accident, whilst waiting for the ambulance. He reported that an ambulance transported him to Tokollo Hospital in Heilbron, where he was examined at the emergency care unit, before being transferred to Kroonstad Hospital where he was admitted for five to six days before being discharged. Mr Mphuthi reported that when he was discharged, he was discharged with the external metal frame attached to his leg.... He reported that the external metal frame was applied to his leg for approximately 8 to 9 months before it was removed. Mr Mphuthi reported that he was not able to take care of himself during this period. Mr Mphuthi reported that his leg was still not right and that he still struggles a lot with his left leg and ankle.”*

[37] Dr Enslin, the Orthopaedic Surgeon served and filed by the plaintiff opines in his report:

“PROGNOSIS & FUTURE MORBIDITY:

11.1.1 Left ankle: He has unsatisfactory bony healing of the left distal tibia with severe malunion. A 13° valgus deformity and 19° anterior angulation of the distal tibia / fibula, compared to the proximal tibia / fibula are noted. He has early osteoarthritic changes in the left ankle with joint space narrowing in the superomedial corner and increased sclerosis on the articular surface of the left distal tibia. He has a leg length discrepancy, due to the malunion, with the left leg 2.5cm shorter than the right leg. He has pelvic obliquity and a scoliosis convex to the left, due to the leg length discrepancy.”

[38] M Beytell continues: *“.....He has had no formal training since leaving school. He has been working for Everland Funeral Homes as a driver since*

December 2018, earning R3,500.00 per month. He now struggles to drive a manual car..... Mr Mphuthi reported that he was off from job hunting for approximately eight months following the accident. Considering that he was fitted with a steel frame to his left leg, and during which time he had to ambulate with crutches, with Dr H.B. Enslin confirming this period, the writer deems his recuperation period relevant for Mr Mphuthi. Mr Mphuthi reported that he was finally successful in securing a permanent position at Everland Funeral home following the accident in 2019. He reported that he was employed as a Driver and Floor Manager. Mr Mphuthi was still employed with his post-accident employer at the time of finalisation of this report, and this was confirmed with the collateral information obtained..... Furthermore, taking into consideration the severity of Mr Mphuthi's injuries (specifically his left lower leg and left ankle), the writer is of the opinion that should Mr Mphuthi remain employed with his current employer, or become self-employed as a Spaza Shop owner, he will retire earlier than what would have been the case had the accident not intervened. The writer is of the opinion that Mr Mphuthi would opt for early retirement at age 60 years, in either position he find himself in at that time, and the writer is of the opinion that he will suffer a further 50% loss of income from age 55 years to age 60 years due to the left leg length discrepancy, which has a negative effect on his lower back and the fact that he now walks with a limping gait, suffering pain and discomfort regularly whilst his pain and discomfort being recalcitrant to pain medication. It is suggested that Mr Mphuthi should be compensated for the financial losses that had and will incur as a direct result from the sequelae of the injuries he sustained, and the negative effects this will have on his future earning potential.....Mr Mphuthi reported that he was not employed and did not earn any form of income at the time of the accident. Mr Mphuthi therefore does not suffer a past loss of earnings following the accident and during the recuperation period thereof.... Mr Mphuthi reported that he found employment in 2019 as a Driver and Floor Manager and Everland Funeral Parlour, and he reported that (which was also confirmed via collateral information obtained), earned R4,000.00 per month. This manually calculate to R48,000.00 per annum. Mr Mphuthi does earn an annual bonus in the amount of one months' earnings, which manually brings his annual earnings to R52,000.00 per year. As per the collateral information obtained, normal inflationary increases are utilised at Everland Funeral Parlour....”

[39] I am satisfied with the contingencies applied by the actuary on the future loss of earnings being 15% pre-morbid and 39% post morbid on the future loss of earnings. There is no past loss of earnings and thus the total amount for loss of earnings comes to R486 764.00.

[40] In the circumstances I make the following order:

1. The Notice of intention to defend filed on 3 July 2024 is hereby set aside;
2. The plea filed on 4 July is hereby set aside;
3. The defendant is ordered to pay the plaintiff the amount of R 486 764.00 (Four hundred and eighty-six thousand seven hundred and sixty-four rand) in respect of the plaintiff's loss of earnings.
4. The defendant is ordered to furnish the plaintiff with a certificate as envisaged in section 17(4) of the Road Accident Fund Act 56 of 1996 for 100% of the expenses to be incurred as a result of the injuries sustained in the accident which had occurred on 12 July 2022.
5. The issue of general damages is postponed *sine dies*.
6. The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on the High Court scale, which costs shall include the cost of Counsel Adv. P. van der Schyf for 3 July 2024, 5 July 2024 and 11 July 2024 on scale B. Counsel's costs shall include his day fee, preparation and heads of argument.
7. The payment of the costs in paragraph 6 above shall be effected no later than 14 days following the date on which the agreement relating to the costs is reached between the parties or the stamped allocator following taxation is served on the defendant, whichever comes earlier.

8. Interest shall accrue on the capital amount in paragraph 3 above after the expiration of 180 days from the time this order is provided to the defendant together with the bank details of the Trust Account of the plaintiff's attorney of record, Slabbert & Slabbert Attorneys.

9. A valid Contingency Fee Agreement exists between the Plaintiff and Slabbert & Slabbert Attorneys.

M KRÜGER

ACTING JUDGE OF HIGH COURT
GAUTENG DIVISION
PRETORIA

Date of hearing: 03 July 2024, 5 July 2024 and 11 July 2024

Date of judgment: 20 November 2024

For the Applicant : Adv P van der Schyf

Instructed by: Slabbert & Slabbert Attorneys

For the Defendant: Ms MC Shabalala

Instructed by: STATE ATTORNEY, PRETORIA

Date of incident 22 March 2018

Date of summons issued 16 July 2021

Date of application for default judgment heard 11 July 2024

Notice of intention to defend filed 3 July 2024

Plea filed 4 July 2024