REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 8989/2021

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 11-2-2025

SIGNATURE:

In the matter between:

MALEBO RAMAESELA PHAAHLA **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGEMENT

MASHAMBA AJ:

INTRODUCTION

[1] The plaintiff, Malebo Ramaesela, a female person, born on the 28th June 1988, has instituted an action against the Road Accident Fund ("the defendant") for damages resulting from personal injuries sustained on the 16th September 2018, at R 567 Chloe Road, Ga-Matlala, Limpopo Province. The plaintiff was a passenger in a motor vehicle accident with registration numbers and letters, O[…], driven by Wisani Ernest Mathebula, when the motor vehicle lost control and overturned.

[2] The plaintiff was 30 years old when the accident occurred and currently 37 years old, unemployed.

[3] On the 05th May 2021, the parties reached a settlement agreement, the defendant conceded merits 100% in favour of the plaintiff. Parties agreed that the issue of general damages is to be postpone *sine die*, as the seriousness of the plaintiff's injuries were not yet determined by the defendant.

[4] The plaintiff has issued summons against the defendant on the 01 December 2021, and served by the sheriff on the 03rd December 2021, at the defendant principal place of business. The defendant enters his appearance to defend out of time and serve their plea on the 25th April 2023. The plaintiff did not object to the defendant late service of the plea, therefore, this matter is properly defended.

[5] The matter was heard on the 10th December 2024, thereafter, the judgment was reserved.

ISSUE BEFORE THIS COURT

[6] This court is called to determine the plaintiff's claim for future medical expenses and past, future loss of earnings. The plaintiff claimed an estimated amount of R 11 000 000.00 calculated as follows;

5.1 Future Medical Expenses	section 17 undertaking
4.2 Past and future Loss of Income	R 8 000 000.00

4.3 General Damages R 3 000 000.00

[7] The future medical expenses claim will be substituted with an undertaking certificate in terms of section 17 (4) (a)-(b) of the Road Accident Fund Act 56 of 1996, as amended.

[8] The plaintiff appointed medical experts, who prepared medical reports to substantiate her claim. The defendant did not appoint any experts in this matter and during the trial the defendant indicated that he will make his submissions based on the plaintiff's medical reports. The plaintiff relied on the following expert reports;

6.1 Dr Buatre (Orthopaedic Surgeon)
6.2 Solly Mphofela (Occupational Therapist)
6.3 Tshepo Kalanko (Industrial Psychologist)
6.4 Independent Actuaries Consultants (Actuaries)

[9] The plaintiff made his submissions based on the conclusions of the medical experts' reports duly filed before this court. The court will evaluate the probabilities of all experts' opinion as per their respective reports. The court has considered the case of *Prince v Road Accident Fund*[1], where the court held at paragraphs 55, 56 and 59 in the evaluation of the probabilities in respect of expert evidence.

> *"Sufficient proof is established when an inference can be drawn about the fact in issue, providing that the inference is consistent with all the proven facts. In civil matters, it suffices if the inference is the most probable inference. Further, once prima facie proof or evidence has been provided, that is proof calling for an answer. This becomes conclusive proof on the point in issue usually if no evidence is produced to rebut it. The fact of the matter is, however, that the Court must at the end of the case reviews all the evidence and evaluate this according to the applicable primary criterion. It must be accepted, of course, that where, for example, a Defendant fails to produce evidence, this does not mean necessarily that the opponent's version in the case, falls to be accepted.*

[1] (CA 143/2017) [2018] ZAECGHC 20 (20 March 2018). Par 55, 56 & 59

The acceptance of Plaintiff's case depends on the probative strength of Plaintiff's case, being whether it is sufficient to cast, an evidential burden on the Defendant to present evidence."

PLAINTIFF'S INJURIES AND EVIDENCE

[10] The plaintiff was transported to Noble Hospital by EMS ambulance where she was not admitted but immediately transferred to Polokwane Hospital. The plaintiff was managed conservatively for the head injury with GCS 14/15. The fractured cervical spine was managed conservatively. The plaintiff had surgical management of her fractured femur initially with ex-fixator, later ORIL.

[11] Dr AL BUATRE, an orthopaedic surgeon ("ortho"), assessed the plaintiff on the 28th July 2022. The plaintiff was diagnosed of Head Injury, Fractured Left Femur (open), Fractured Cervical Spine and Facial Injury[2]. The plaintiff currently has the following condition; she has abnormal gait, pain on the operation site of left lower limb, she can not walk for long distance and she cannot stand for long[3]. The plaintiff will need the removal of fractured fixation implants with reconstruction of the knee ligaments by ortho to stabilise the knee instability. The ortho demonstrated his doubt that the plaintiff may suffer from residual knee instability that may give a permanent pain. The ortho, further recommended that the plaintiff should be assessed by neurosurgeon, neuropsychologist and plastic surgeon for her head injuries and scars[4].

[12] The ortho concluded that the plaintiff suffered acute pain from the accident injuries and surgery on her left femur for about eight weeks. The plaintiff is still suffering from the knee instability. The ortho opined that the plaintiff is currently permanently disabled with calculated impairment of 32% WPI and head injuries was not rated. The plaintiff occupational productivity has declined by 15% and that this may increase due to planned surgeries.

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[2] Index to the second bundle, page 31, para 2.2
[3] Index to the second bundle, page 33,
[4] Index to the second bundle, page 39, para 7.5

[13] Solly Mphofela, the Occupational Therapist (the OT), assessed the plaintiff on the 09th December 2020. The OT, assessed the plaintiff physical capacity. The OT, noted that the plaintiff's physical capacity, rate of work and work qualification profile could not competitive meet the physical requirements for occupation that require whole body range of motion, agility and stamina through the gross body movements due to reported pain on her left femur and left knee limited range of movement had a negative effect on her competitive participation in work samples that require frequently working below knee level inclusive of squatting and crouching position for prolonged period. The OT opined that the plaintiff's physical capacity, rate of work, and work qualification profile was suitable for sedentary types of work category. The OT noted that during the assessment the plaintiff could not meet the physical requirements for light, medium, heavy to very heavy type of work categories[5].

[14] The OT indicated that during the assessment, the plaintiff was found to have memory difficulties which may occur from time to time in her daily occupation. The OT further opined that the plaintiff frequently should have breaks to stretch and alternate between sitting and standing to compensate for left lower limb pain. The OT opined that the plaintiff may benefit from rehabilitation with a remedial cognitive therapist to teach her compensatory strategies to overcome cognitive difficulties. The OT made deference to an Industrial Psychologist regarding the plaintiff's postulations of her past and future loss of earnings[6]. The OT further noted that the plaintiff's head injury should be deferred to Neurosurgeon and Neuropsychologist.

[15] Tshepo Kalanko, Industrial Psychologist, (the IP) assessed the plaintiff on the 28th July 2020. The IP noted that the plaintiff's latest employment was in 2014, she was employed as a Cashier at Shell Garage. The plaintiff earned a salary of R 750 per fortnight. In the same year 2014, the plaintiff resigned from her employment due to salary dissatisfaction[7]. The IP indicated that the plaintiff had no proof of her previous earnings. The IP opined that since the plaintiff had no proof of earnings, it is recommended that annual earnings falling between the lower quartile and median range for semi-skilled workers as per suggested earnings assumptions for non-

[5] Index to second bundle, page 62, para 9.2.1
[6] Index to second bundle, page 68, para 11.8
[7] Index to second bundle, page 88, table 6

corporate workers noted in the Quantum Yearbook (R. Koch, 2014) be used for quantum.

[16] The IP noted that pre-accident the plaintiff aspired to acquire stable employment within the HR department and that post-accident her inspirations remained the same. The IP further opined that considering that the plaintiff N6 certificate in Human Resources Management and that following the required practical vocational component, the plaintiff would have been eligible for a national diploma. Furthermore, the IP opined that considering the high unemployment in the country the plaintiff within 1-3 years, she would have been able to secure employment. The IP further opined that the plaintiff would have been disadvantaged comparing to her more experienced counterparts, would be competing for the same position. The plaintiff would have likely opted to secure an intern position, as a means to further develop her overall work competencies and experience in HR field[8].

[17] The IP further opined that according to pay scale, an HR intern would usually earn between the ranges of R 25 000-R158 000 per annum (on average, amounting to R 91500 per annum). Considering that the claimant would probably able to secure an intern position likely between the year 2019 - 2020, she could have possibly entered in to said employment, earning within the lower quartile and median range for Paterson grading A1 as per Quantum Yearbook, 2019.

[18] The IP further opined that the plaintiff would have been able to secure permanent employment between 2021-2022 and probably earn the amount R 231 533 per annum. According to Koch (Quantum yearbook, 2020) this equate to lower quartile and median range for Paterson grading 82 (Total packages). The IP opined that with further career-related development, the claimant could have progressed further within vocational career, this could have stemmed from ongoing workplace experience and training as well as acquiring additional work-related or vocational qualifications as a means to improve her standpoint in the open labour market. The plaintiff would have possibly earned the amount of R 450 000 per annum. The IP opined that the plaintiff would have likely reached her career ceiling

[8] Index to the second bundle, page 90, par 37-38

within the median range and upper quartile for Paterson grade C1 at the approximately age of 45. Thereafter, normal inflationary increases would have applied until she reached the normal retirement age. The plaintiff would have likely retired at the normal age of 65, depending on her health, motivation and retirement policy of the said organization[9].

[19] The IP, further opined that, post morbid, the plaintiff will likely experience difficulties securing gainful employment, owing to physical challenges emanating from the injuries sustained. The reported physically challenges will likely interfere with the effectiveness of her performance whilst carrying out her occupational duties. The IP opined that considering her chronic headaches as well as the pain of the knee instability as noted by the Ortho. The IP took cognisance of the note made by the OT, as per his cognitive assessment, who noted that the plaintiff presented with severely impaired reading and comprehension, reduced concentration, impaired memory. The IP opined that any employment that the plaintiff may fortunately likely secure, she would likely enter to employment within the lower quartile for semi-skilled workers as per Koch (Quantum Yearbook, 2020). No significant growth in her career or her earnings is foreseen, any increase would stem from normal inflationary increases.

[20] The IP in conclusion indicated that the plaintiff's future likely earnings have been curtailed due to the injuries sustained in the reported accident. The plaintiff will no longer able to compete on par with her healthier, uninjured counterparts in the open labour market. The IP opined that the difference between the plaintiff's pre-accident and post-accident earning/vocational potential be used to determine future loss of income. The IP, recommended that this risk should be dealt with by means of a higher-than-normal post-accident contingency percentage.

[21] The plaintiff appointed Independent Actuaries & Consultants to calculate the plaintiff's past and future loss of income based on the postulations made by the Industrial Psychologist. The contingencies of 5 % past loss, 15 % pre-morbid and 25 % post morbid was applied.

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[9] Ibid 8, par 40

Item of Loss	Past income	Future Income	Total Income
Income had accident not occurred Less Contingency (5%/15%)	39619 -1 981 37 638	7 111 923 -1 066 788 6 045 135	**7 151 542** **-1 068 769** **6 082 773**
Income having regard to accident Less Contingency (0%/25%)		744 613 -186 153 558 460	744 613 -186 153 558 460
LOSS OF INCOME	37 638	5 486 675	5 524 313

PLAINTIFF'S SUBMISSIONS

[22] The plaintiff submitted that the opinion of the ortho, OT and the IP, should be accepted by the court as the opinions are fair and reasonable considering the injuries the plaintiff incurred as a result of the accident. The plaintiff further submitted that the contingencies applied in the actuarial report, aforementioned in paragraph 21, are fair and reasonable. The plaintiff prayed that the amount of R 5 486 675 is fair and reasonable to compensate the plaintiff for her future loss of earnings as a result of the accident.

DEFENDANT'S SUBMISSIONS

[23] The defendant submitted that the plaintiff was not examined by neurosurgeon and neuropsychologist, therefore, it was unreasonable for the experts to give their opinion regarding the plaintiff head injury. The defendant indicated that the plaintiff should not rely on the head injury to support his reasonable claim for loss of earning since she has failed to appoint the neurosurgeon and neuropsychologist to assess her head injury. The defendant submitted that the court should ignore the head injury due to the lack of neurosurgeon opinion. The defendant indicated that the calculated loss of earnings was influenced by the head injury.

[24] The defendant further argued that the IP opinion referred in paragraph 37 is unfounded, when he opined that the plaintiff N6 qualification in Human Resources Management, following the required practical vocational component, she would have been eligible for a national diploma. The defendant further argued that if the plaintiff was eligible to obtain a diploma after N6, she should have done so between 2014-2018 before accident occurred. The defendant indicated that the plaintiff failed to indicate why the diploma was not obtained before the accident occur and the defendant submitted that the opinion of the IP is baseless. The defendant further referred the court to the recommended occupational therapy sessions which if attended, the plaintiff would be fit to do sedentary types of work.

[25] The defendant submitted that the plaintiff's loss of earning can be calculated by applying a pre and post morbid equal, therefore, apply the spread of 15%. The defendant calculated 15% spread to be the amount of **R 1 066 788.45**. The defendant applied 15% spread from the calculated uninjured future loss of earnings referred in the aforementioned actuarial report, paragraph 21.

COURT'S FINDINGS ON ISSUES OF THE PLAINTIFF'S LOSS OF EARNINGS

[26] This leads me to the issues of the order for the future loss of earning capacity and contingencies to be applied. In this regard I am also guided by ***Mngomezulu v RAF***[10], Kgomo J argued that:

> *"For the Plaintiff to succeed in a claim for loss of earnings, he is required to provide a factual basis for an actuarial calculation. This is a process designed to assess actuarial I mathematical calculations on the basis of the evidence as well as over-all assumptions vesting or depending on such evidence. This approach is known as the actuarial approach. Par 84*
>
> *The actuarial approach seeks to determine the loss of earnings as realistically as possible to what may be the Plaintiff's actual losses. The approach comprises of (a) providing a factual basis upon which the loss of earning is to*

[10] (Case No. 04643/20 I 0) [2011] ZAGPJHC l 07 (8September2011), par 84-85

be calculated and only then (b) by applying appropriate contingency deductions." Par 85

[27] This court further considered a decision in ***Southern Insurance Association Ltd v Bailey NO***[11] Nicholas JA stated as follows:

"Where the method of actuarial computation is adopted, it does not mean that the trial Judge is "tied down by inexorable actuarial calculations". He has "a large discretion to award what he considers right" .... One of the elements in exercising that discretion is the making of a discount for "contingencies" or the "vicissitudes of life". These include such matters as the possibility that the Plaintiff may in the result have less than a "normal" expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case." Par 116-117

[28] The court accepted the defendant's submission, that the extent of the head injury was not confirmed by the neurosurgeon and neuropsychologist. Although the court noted the OT opinion regarding the plaintiff's head injury, it was necessary to have the assessment from neurosurgeon and neuropsychologist in order to ascertain the extent of the head injury.

[29) The court accepts the opinion of the IP, when he opined that considering the plaintiff's N6 qualification in Human Resource Management, and following the required practical vocational component, the plaintiff would have eligible for a National Diploma.

[30] This court noted that the plaintiff is permanently disabled with calculated impairment of 32% WPI, orthopaedical injuries only. The court further took note of the Ortho's opinion that the plaintiff may have early retirement due to complication in her knee and cervical spine.

[11] 1984 (1) SA 98, par 116-117

[31] The OT opined that the plaintiff will benefit from optimal pain management, recommended ortho's intervention, followed by lower limb pain rehabilitation, coupled with education on methods of task approach and task execution as well as joint protection techniques. The OT is of the opinion that the plaintiff's pain might decrease and her comfort level increase and she will likely be able to cope with sedentary occupation[12]. The court is of the view that the plaintiff is compromised as a result of the injuries incurred in the accident and that she is going to be disadvantaged in an open labour market, when competing with her uninjured peers.

[32] The court has a discretion to apply reasonable contingency deduction after all risks have been considered, such as the economic turmoil, sicknesses, disasters and demise. The concerns raised by the defendant will be dealt with by applying a higher contingency deduction.

[33] Contingencies are subjective; however, Robert Koch (Quantum yearbook 2020) has suggested the following well-followed approach to determine what the 'normal' contingency would be:

> *" ...what is described as a "sliding scale" is used, under which it is allocated a "112% for year to retirement age, i.e 25% for a child, 20% for a youth and 10% in middle age".*

[34] This court has taken into consideration the submissions made by the defendant in relation to unconfirmed head injury and existing delays which has affected the plaintiff to enter labour market even before the accident occurred. The court is of the view that reasonable contingency deduction should be as follows; 10% past loss, 30 % premorbid and 15 % postmorbid deduction. The calculations are to be done in the below table as follows;

[12] Index to second bundle, page.67, par 11.8

Item of Loss	**Past income**	**Future Income**	**Total Income**
Income had accident not occurred Less Contingency (10%/30%)	39619 -3961 35 658	7 111 923 -2 133 576 4 978 347	**7 151 542** **- 2 137 537** **5 014 005**
Income having regard to accident Less Contingency (0%/15%)		744 613 -111 692 632 921	744 613 -111 692 632 921
LOSS OF INCOME	35 658	**4 345 426**	**4 381 084**

[35] In the circumstances, the court finds that the appropriate amount to be awarded to the plaintiff in respect of the past and future loss of earnings should be in the sum of **R 4 381 084**.

COSTS

[36] The Court shall not deviate from the general rule that the cost shall follow the successful party.

ORDER

[37] In the circumstances, the court makes the following order;

1. The defendant shall pay the plaintiff the sum of **R 4 381 084.00** (Four Million, Three Hundred and Eighty-One Thousand, and Eighty-Four Rands) in respect of the past and future loss of earnings.

2. The defendant shall furnish the plaintiff with an undertaking in terms of section 17 (4) (a) of Act 56 of 1996, wherein the defendant undertakes to pay

100% of the costs resulting from the motor vehicle accident which occurred on the 15th September 2018. The defendant shall furnish the abovementioned undertaking within 30 days from the date of receipt of this court order.

3. The Amount in paragraph 1 above shall be paid into the plaintiff's attorneys trust account;

NAME OF BANK: FIRST NATIONAL BANK
ACCOUNT HOLDER: NTSHOSA MADIBA INC
TYPE OF ACCOUNT: TRUST CHEQUE ACCOUNT
ACCOUNT NO: 6[…]
BRANCH CODE: 250655

4. The defendant shall be liable to pay interest on the aforesaid amounts *tempore morae* at the rate of 11% per annum from 180 days after the date of this order to date of the payment.

5. The defendant shall pay the plaintiff's taxed or agreed party and party costs until the date of this order including costs of a counsel scale B.

6. The costs consequently in the preparation of and obtaining the medico legal and actuary reports that were served on or provided to the defendant.

7. The reasonable taxable costs of necessary consultations with the said experts and the reasonable taxable traveling, subsistence and accommodation costs of the plaintiff for attending the medico legal examination, subject to the discretion of the taxing master.

8. The reasonable taxable costs of traveling, subsistence, accommodation costs of the plaintiff for attending court.

9. The defendant shall be liable to pay interest on the amount of the Plaintiff's costs of suit, as taxed or agreed, at 11% per annum from 14

(fourteen days) of the allocatur of the taxing master or the date of the agreement, whichever applies, to date of payment.

10. The issue of general damages is postponed *sine die*.

E MASHAMBA
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

APPEARANCES

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DATE OF JUDGEMENT	**: 11 February 2025**