REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 20634/2020

(1) REPORTABLE: NO
(2) OF INTEREST TO THE JUDGES: NO
(3) REVISED: NO
DATE: 12/03/25
SIGNATURE:

In the matter between:

DINEO JOYCE MATSIETSO PLAINTIFF

AND

ROAD ACCIDENT FUND DEFENDANT

Summary- third party claim against Road Accident Fund ("RAF") - claim for loss of earning capacity against RAF – injuries sustained left ankle injury and soft tissue injury to the lower back.

JUDGMENT

NYANDENI AJ:

INTRODUCTION

[1] On 16 October 2024 the Court heard an unopposed trial of the above-mentioned parties. There were no papers filed on behalf of the defendant and there was no appearance on behalf of the defendant. The plaintiff made an application in terms of rule 38(2) of the Uniform Rules of Court which was granted.

[2] The plaintiff sustained bodily injuries in a motor accident whilst being a passenger of the insured vehicle. The court has to determine whether the defendant can be held liable for these injuries.

[3] The issue of merits was granted 100% in favour of the plaintiff as she was able to prove a percent negligence by the insured driver. The issue of general damages was postponed sine die. The head of damages left to be determined by the Court was the loss of earning capacity by the plaintiff. The plaintiff conceded that there was no past loss of earning capacity and only future loss of earning capacity is to be determined by the Court.

FACTS OF THE MATTER

[4] On 3 May 2015, at approximately 14:30, between Vryburg and Scherzer-Reneke, a collision occurred between a motor vehicle with registration numbers and letters H[...] (hereinafter referred to as “the insured vehicle”) there and then driven by Modise Mnane and a motor vehicle bearing registration numbers and letters B[...], there and then driven by Itumeleng Isaac Puso at all material times the Plaintiff was a passenger at the time of the accident.

[5] The plaintiff was born on 2 September 1981 and was 43 years at the time of the hearing. She resides in Potchefstroom and was employed at the North West University at the time of the collision. As a result of the accident, the plaintiff sustained injuries which resulted in a left ancle fracture and soft tissue injuries. After the accident she was admitted to Joe Morolong Hospital.

[6] She was employed[1] at the time of the accident by the North West University. Seven weeks after the accident she returned to work. She is currently working in the same capacity as before the accident. She used to drive a lot before the accident and now she is office bound due to the accident, in the same capacity as an Administrator She is expected to retire at the normal retirement age.

[7] The Plaintiff completed grade 12 in 1999 and obtained a BCom degree in Industrial Psychology and Labour Relations in 2014 and a Post Graduate Diploma in Public Management in 2017

ISSUES

[8] The crisp issue to be determined by the Court is whether the defendant is liable for plaintiff's future loss of earning capacity as a result of the bodily injuries sustained in the motor accident.

[9] The injuries sustained are soft tissue injury to the lower back and a left ankle fracture.

THE PLAINTIFF'S CASE

[10] The plaintiff relied on the expert report of the orthopaedic surgent Dr Imran Ahmad Khan to prove the injuries she sustained in the accident and that such injuries have long term impairments or loss of body function, with a WPI of 8%.

[1] Orthopedic Surgent report para 3.

[11] The second expert the plaintiff relied on is that of the occupational therapist of Ndzungu and Associates. They confirm the injuries and sequelae thereon. They state that the plaintiff's optimal occupational functioning has been diminished. She will no longer be able to compete in the same light as her abled bodies competitors. She can only do sedentary work and light occupation. Her physical challenges and psychological deficit render her a vulnerable contender in the open labour market. Post-accident she continues to experience the lower limb limitations and she is now a sympathetic employee.

[12] The third expert the plaintiff relied on is the clinical psychologist, Mr Itumeleng Faku. The expert stated that the plaintiff experienced no changes or decline to her neuropsychological functioning. There is a significant change in her physical health and psychological functioning which has a significant impact on her self-image. The noted distress is associated with the impact and changes in her physical wellbeing which is pain and discomfort, change in self-image, anxiety related symptoms which stem from the physical limitation which makes her to feel vulnerable and fearful of what the future will be like. She has symptoms of depression, anxiety and personality vulnerabilities.

[13] The fourth expert is that of an industrial psychologist, Mr Tshepo Kalanko. He stated that the plaintiff may remain in her current employment notwithstanding the continuous effects of the accident-related injuries. Her work capacity may have been diminished due to the residual impairments of the injuries emanating from the accident. She has become a vulnerable competitor in the open labour market and she will not be able to compete with her healthier uninjured peers in the open labour market.

[14] The plaintiff's future earning capacity is curtailed as she remains with residual impairments emanating from the injuries sustained in the accident. She was rendered a vulnerable employee who relied on the employer for accommodative employment on the noted sequelae. It is also unlikely that she will reach her pre-accident career potential and her career progression may be hindered following the accident in question.

[15] The fifth expert the plaintiff relied on is DT Mureriwa who is a consulting actuary at One Pangaea Actuaries which gave a report with the following actuarial calculations: -

Contingencies

Past loss of income	pre accident	post-accident
	5%	5%
Future loss of income	pre accident	post-accident
	15%	25%

Loss of income

Past loss of income

Pre-accident R 1 794 009-00	Post-accident R 1 183 110-00
Less 5% = R 89 700-00	Less 5% = R 59 156-00
Total = R 1 704 309-00	Total = R 1 123 954-00

Grand total of past loss of income is R 580 355-00

Future loss of income

Pre-accident R 6 061 499-00	Post-accident R 3 220 160-00
Less 15% = R 909 225-00	Less 25% = R 805 040-00
Total = R 5 152 274-00	Total = R 2 415 120-00

Grand total of future loss of income is R 2 737 154-00

[16] The overall total amount for past and future loss of income is R 3 317 509-00, claimed in the Rule 38(2) of the Uniform Rules of the High Court. The Plaintiffs claim in the particulars of claim is R 900 000-00. The plaintiffs failed to file the notice of amendment and amended Particulars of Claim. The was no application for condonation for none compliance from the plaintiff, the Court is prepared to look at the matter holistically and give an appropriate decision.

CASE LAW ON THE DISCRETION OF THE COURT ON CONTINGENCY APPLICATION

General principles and discretion of the court in application of contingency

[17] The learned author Dr R.J. Koch in *The Quantum of Damages Year Book* states at page 118 that the usual contingencies which the Road Accident Fund accepts is 5 % on the past income and 15 % on the future income. The aforesaid is only a guideline, but it indicates the general approach adopted by the defendant in similar matters. The learned author continues on page 118 to suggest (based upon the authorities of *Goodall v President Insurance*[2] and *Southern Insurance Association v Bailey N.O.*[3] , that as a general rule of thumb, a sliding scale can be applied, i.e., "1/2% per year to retirement age, i.e., 25% for a child, 20% for a youth and 10% in middle age."

[18] In the case of *Road Accident Fund v Guedes*[4] the court referred with approval to *The Quantum Yearbook*, by the learned author Dr R.J. Koch, under the heading '*General Contingencies*', where it states that: -

[19] "[when] assessing damages for loss of earnings or support, it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is the prerogative of the Court..." The percentage of the contingency deduction depends upon a number of factors and ranges between 5% and 50%, depending upon the facts of the case. (See *AA Mutual Association Ltd v Maqula* 1978(1) SA 805 (A) 812, *De Jongh v Gunther* 1975(4) SA 78 (W) 81, 83, 84D, *Goodall* (*supra*), and *Van der Plaats v SA Mutual Fire & General Insurance Co Ltd* 1980(3) SA 105(A) 114-115A-D).

[20] The advantage of applying actuarial calculations to assist in this task was emphasised in the leading case of *Southern Insurance v Bailey*[5] at page 113H-114, where the Court stated;

> "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, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present

[2] 1978 (1) SA 389 (W).
[3] 1984 (1) SA 98 (AD)
[4] 2006 (5) SA 583 (SCA) at para [9].
[5] 1984 (1) SA 98 (A).

value of the loss. It has open to it two possible approaches. One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser extent."

[21] The Court has a large discretion to award what it considers right. Some of the factors that influence this discretion would be the possibility that the plaintiff may have less than a "normal" expectation of life. The amount of any discount may vary, depending upon the circumstances of the case.[6]

CONSIDERATION OF THE PLAINTIFF'S CASE

[22] In considering the matter the Court had consideration of the submissions made by Mr Zuma and his heads of argument together with all expert reports filed in the matter.

[23] The expert report of Clinical Psychologist Dr Itumeleng Faku states that the plaintiff's educational level is that she completed grade 12 in 1999, she completed BCom in Industrial Psychology a Labour Relations in 2014 and has a diploma which was obtained in 2017.

[24] She is not married and has two dependents. She is complaining of a chronic pain from her left ankle, she is unable to drive the long distance and suffering from the pain in her lower back. There is moderate swelling on the left ankle injury. She was not participating in any hobbies. Her mobility has been affected as she can no longer walk or and for a long period of time.

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[6] *Southern Insurance Association v Bailey N.O*. 1984 (1) SA 98 (AD) at 116G-H.

[25] Her total impairment capacity is 8%, but she has a long-term impairment emanating from the left ankle injury, her life expectancy has not been affected. Prognosis is that there are no neurological changes in her lower back and left ankle after 9 years after the accident. She is expected to do well in future after rehabilitation and conservative treatment.

[26] She will need rehabilitation, medication, consultations with a general practitioner, future Xray and MRI scan will be needed for lumber spine and left ankle injury. An amount of R 50 000-00 should be reserved for such a treatment. Future ankle surgery is expected to find intra articular pathology on the chronic left ankle pain. The amount of R 70 000-00 should be reserved for such procedure.

ON CLINICAL PSYCHOLOGY ASSESMENT

Background Information

[27] She was 41 years old at the time of the assessment, she has two children who are staying with her and her partner at Potchefstroom. She has no previous medical condition or illness and she was never hospitalised or psychiatric diagnosed.

[28] Her educational history is that she did her grade 1-7 at Ganyetsa Primary School and grade 8-12 at Hunadi High School. She enrolled for a degree in Industrial Psychology and a post graduate diploma in Public Administration at North West University.

[29] She complains of the following difficulties post the accident: -

(a) She experiences changes and decline in her physical strength and abilities- with pain and discomfort on the left lower back, especially when driving, walking or sitting for a prolonged period of time. During the cold climate; she uses lumber support to her lower back when sitting on a chair.

(b) She reported that her left leg was swollen, it gets numb. Before the accident she wore a size 5 shoe on the left leg and now she wears a size 6. She is now limited post the accident and is no longer able to go to the gym.

(c) She is emotionally vulnerable, irritable, anxious when having to travel since the accident. She is fearful about her future employment- anxious when coming to the issue of retirement.

(d) Effect on employment is that she will be able to perform light heavy duties in future and will not be an equal competitor in open market particularly due to left ankle sprain and swelling that is continuously causing her pain.

(e) Prognosis are that no radiological changes in her lower back and left ankle even seven years after the accident. She is expected to do well after future rehabilitation and conservative treatment but the left ankle pain will persist.

(f) She has a long-term impairment because of the accident.

MENTAL EXAMINATION

[30] She was 41 years old, Setswana and English-speaking female at the time of the assessment.

[31] The attitude towards the examiner was that she was co-operative and willing to do the tasks during the assessment. She was well orientated to time, place and person. Her mood affect was euthymic, affect reactive and appropriate to context. Her psychological behaviour was observed to have no psych-motor difficulties.

[32] Her concentration and attention were noted to be adequate to context. Her speech was noted to be normal toned voice and was fluent.

[33] After the clinical interview the following was noted: -

[34] She was irritable, she was anxious when traveling in a speeding car, experience flashbacks or complained of nightmares in relation to the accident. She has been withdrawn or detached from others. She avoids talking about the accident, still up and cries when thinking about it. She has no self-blame and no suicidal idea or thought of death.

[35] She reported changes in self-concept or self-esteem. She has less interest in previously enjoyed activities. She experienced no change in memory and concentration abilities since the accident. She has normal sleeping patterns. She has normal appetite and less energy levels. She finds it more difficult to make a decision than usual.

[36] She reported no visual and auditory hallucination, no delusions and none were observed or reported during assessment. She reported no seizures and no blackouts, no dizziness, no déjà vu and no jamais vu.

[37] Based on the above-described symptoms, it can be inferred that the plaintiff suffers from the symptoms of depression and anxiety with related symptoms.

NEUROPSYCHOLOGICAL ASSESMENT

[38] She was subjected to a range of neuro-psychological assessments or tests which covers a wide spectrum of cognitive functions including attention and concentration, memory and learning, Visio-construction ability, reasoning and concept formation planning ability and verbal fluency ability.

[39] The Plaintiff underwent a selected subtest from Wechler Adult Intelligence Scale (WAIS III) and supplementary neuropsychological tests.

[40] The neuropsychological tests conducted are currently utilised in various clinical settings. These tests were developed abroad and as such, norms for the South African diverse population may not be available. Therefore, in this context of

the current neuropsychological tests, the results are considered together with qualitative data with specific emphasis on educational, language difference and culture. Test results are viewed as providing quantitative guidelines based on the effects of injury or neurocognitive functioning with underpinning of scientific approach whilst recognising that there are some limitations inherent in use of such tests.

[41] The test administered: -

(a) Ray Auditory Verbal Learning Test (RAVLT),
(b) Trail making A and B test,
(c) Similarities,
(d) Pattern completion,
(e) Comprehension,
(f) Ray complex figure test (RCF),
(g) Mental control,
(h) Digital Symbol Coding (DSC),
(i) Ray fifteen item,
(j) Digital Span
(k) Mazes,
(l) Letter number sequencing,
(m)Picture completion,
(n) Draw a clock / clock

DISCUSSION OF TESTS SCORES AND FINDINGS

[42] A neuropsychological assessment was undertaken to establish the nature and severity of any functional, cognitive impairments and how this may impact on the plaintiff's ability to function personally and occupationally. Through neuropsychological assessment on her cognitive ability revealed the following: -

ATTENTION CONCENTRATION

[43] Mental tracking and working memory were assessed by means of the teste's abilities to select a particular stimulus and exclude others, her ability to maintain the

attention over an extended period of time and attentively following and tracking a stimulus in the face of competing stimulus. Further working memory refers to the ability to hold and manipulate information.

[44] The plaintiff demonstrated well maintained ability to mentally track, process and scan information during her performance. This suggests that the attention and concentration (alertness, orientation and selection) was intact.

[45] She further demonstrated well sustained immediate attention, visual and auditory through (digit symbol search and Rey complex figure).

[46] She also demonstrated good mental processing of complex arithmetic and sequencing (through the letter and number sequencing).

MEMORY LEARNING

[47] A comprehensive assessment of memory functioning is important as this tends to be an area of specific complains in clinical practice.

[48] The plaintiff demonstrated well-adjusted mental processing as well as brief storage and mental manipulation of information. She demonstrated a good ability to retain and retrieve information as intact.

[49] This was noted consistently with her verbal memory as noted on the RAVLT and nonverbal memory (visual) on the RCF which showed not to impact on her overall memory and daily adjustments.

VISIO-MOTOR ABILITIES

[50] These abilities involving visual perception, visual motor co-ordination and constructional abilities were measured on the following tests: -

[51] The plaintiff's visual perception, visual motor co-ordination and constructional abilities were observed to be largely intact. She demonstrated well intact with scanning, visual-motor and double tracking of complex stimuli.

[52] This suggests that her drawing on the copy (Draw a clock) were normal, numbers in appropriately correct position. Hour and minute hand district and placed correctly. She demonstrated intact visual spatial and constructional abilities.

EXECUTIVE FUNCTIONING

[53] Executive functioning refers to the cognitive abilities necessary for complex goal directed behaviour and adaptation to a range of environmental changes and demands.

[54] The plaintiff demonstrated well sustained ability to plan, initiate and maintain a purposeful action. She demonstrated a well-maintained attention, mental tracking and visual search as well as sequencing and mental flexibility.

[55] She demonstrated well sustained attention with short- and long-term memory of visual and auditory stimuli. The plaintiff's cognitive abilities with a complex goal directed behaviours and adaptation to a range of environmental charges and demands was observed to be intact. She demonstrated significant cognitive ability to adjust to her current situation.

EMOTIONAL FUNCTIONING

[56] During the interviews and on the Beck Depression Inventory- found her to have significant mood indicators or internal conflicts. On the self-report scale, she was noted to be emotionally vulnerable due to the changes in her physical abilities. The noted emotional vulnerable is due to the changes in her physical abilities. The noted emotional distress is associated with the impact and change of full physical control. She has experienced symptoms of grief i.e., unable to enjoy things that she previously enjoyed/ participated in and change in self-concept. She has been

experiencing nightmares, fear when traveling in a speeding vehicle and has been short tempered.

MALINGARING

[57] A malingering test was administered to the plaintiff in order to establish the validity of the test results. The plaintiff's score suggested her test result could be regarded as valid.

FINDINGS

PRE-ACCIDENT FUNCTIONING

[58] The plaintiff presented with history of any development complications as it seemed that the plaintiff did not present any history of development complications. She completed grade 12, obtained a degree in an industrial psychology, and a post graduate diploma in public administration.

[59] She has not been diagnosed or treated for a psychiatric disorder prior to the accident. She presented with behavioural difficulties.

CONCLUSION

[60] The neuro-physical assessment suggest that the plaintiff experienced no changes or decline to her neuropsychological functioning. In this context the plaintiff's difficulties are primary attributed to the physical injuries sustained from the accident.

[61] The above mentioned concur similarity, the orthopaedic Surgeon found that the plaintiff sustained injuries as mentioned above and he prognosed that there are no radiological changes in her lower back and left ankle even seven years after the accident. She is expected to do well after future rehabilitation and conservative treatment but left ankle pain will continue to persist.

[62] The occupational therapist stated above that the plaintiffs complain about headaches, pain on the left ankle associated with the ambulation and physical activity, lower back pains, decreased vision, decreased standing and walking endurance, unable to lift and carrying heavy objects due to pain on left side. Functional she struggles to stand and walk long distance due to left ankle and lower back pain; she has difficulty lifting and carrying heavy objects due to left ankle and low back pain, difficulty lifting and carrying heavy object due to pain and left ankle. She struggles to conduct home maintenance tasks include cleaning due injuries related limitations and she now experience occupational barriers. An inability to cope with the constant physical demands for the duration of working day. Due to the reduced physical endurance and left lower limb pain and impairments. Inability to cope with tasks requiring squatting or crouching, slow working pace and challenges to handle or lift heavy object.

[63] On the other level the plaintiff was found to have a significant change in her physical health and psychological functioning which seem to negatively impact of the self-image. The noted emotional distress is associated with the impact and changes or decline on her physical wellbeing (physical pain and discomfort), change in self-image, anxiety related symptoms, resulting in physical limitations and that makes her to feel vulnerable and fearful of what the future will be like. In agreement with the orthopaedic surgeon’s post injury report, the plaintiff will be able to perform light heavy duties in future and will not be able an equal competition in open market particularly due to ankle sprain. She was found to present with significant symptoms of depression, anxiety and was observed to have some personality vulnerabilities. She would benefit from seeing a clinical psychologist for psychotherapy. In this context, the noted distress was found to meet a DSMV V diagnosis.

[64] Based on the information obtained and psychological assessment, the plaintiff has sustained significant injuries on the day of the accident. The neuropsychological assessment suggest that the plaintiff experienced no changes to her neuropsychological functioning.

[65] The noted difficulties attributed primarily to the accident in the form of physical changes seem to impact negatively on her daily existence, on social and

occupational platforms. The occupational therapist suggest that the plaintiff is expected to struggle with work requiring her to have adequate mobility and positional tolerance skills which has been compromised post the accident due to injury related limitations. Furthermore, she will therefore, be considered an unequal competitor and a vulnerable employee in a highly competitive open labour market when compared to her colleagues with the same experience and qualification.

ORTHOPAEDIC SURGENT

[66] The orthopaedic surgent, Dr Imran Ahmad Khan, was called to prove the injuries the plaintiff sustained in the accident and that such injuries have long term impairments or loss of body function, with a WPI of 8%.

[67] She will need rehabilitation, medication, consultations with a general practitioner, future Xray and MRI scans will be needed for lumber spine and left ankle injury. An amount of R50 000-00 should be reserved for such a treatment. Future ankle surgery is expected to find intra articular pathology on the chronic left ankle pain. The amount of R70 000-00 should be reserved for such procedure.

OCCUPATIONAL THERAPIST

[68] According to the Occupational therapist Dr N Ndzungu, the plaintiff sustained a soft tissue injury at the lower back.

[69] Accident-related main complaint and impact on functioning, physical activity (headaches, pain in the left ankle associated with ambulation and physical activities); lower back pain, decreased vision, decreased standing and walking endurance, unable to lift / carry heavy objects due to pain in the left ankle, she struggles to conduct home maintenance tasks including cleaning due to injuries related limitations.

[70] The plaintiff is unable to cope with constant physical demands for the duration of a working day, due to reduced physical endurance and left lower limb pain

impairment, in ability to cope with tasks requiring squatting or crouching slow working pace and challenges to handle or lift heavy objects.

[71] Effect on employment is that she is expected to struggle with work requiring her to have adequate mobility and positional tolerance skills which have been compromised post-accident due to injury related limitations. Furthermore, she would therefore, be considered an unequal competitor and a vulnerable employee in a highly competitive open labour market when compared to her colleagues with the same experience and qualifications.

INDUSTRIAL PSYCHOLOGIST REPORT

[72] At the time of the accident the plaintiff was employed as a senior administrative assistant earning R 17 000 per month (R 204 000-00 per annum in 2015).

[73] The industrial psychologist recommends on the use of the average of the median on upper quartile of person B3 for the calculation purpose (R 194 500 per annum total package Kock 2015.

[74] Scenario 1 remain in her pre - existing employment or similar occupations:

- by the age of 47 years her earnings would have increased, assumed linearly to the average of the 50th and 75th percent for administrative secretaries (R419 562,50 per annum, 27 centuries Analytic, January 2022);
- thereafter salary inflationary increases until retirement age of 65 years;
- Scenario 2 secured better employment. She would have secured alternative employment, assumed in March 2016 earning an average of 25th and 50th percentile of those who studied business, commerce, accounting and related fields(R 502 668 per annum Analytic, January 2021).
- Thereafter salary inflation increases until the retirement age of 65 years

Preexisting income (from the date of the accident 2015/18 tax tables to date of calculation tax tables)

- Following the accident, the plaintiff was hospitalised, recuperated and returned to work after 7 weeks during which period she was fully renumerated,
- She is currently earning R 17 718, 5 per annum, 2022 money terms,
- The industrial psychologist opines on the use of average of the lower and median quartile Peterson B1 for calculation purposes R 208 000 per annum total package Kock 2022,
- Her earning would increase according to salary inflation until retirement age of 65 years.

ASSUMPTION

Financial and Demographic assumption

[75] Past inflation: -

- 2015 -4.47% per annum,
- 2016 -5.19% per annum,
- 2017 -6.57% per annum,
- 2018 -4.37% per annum,
- 2019 -4.00% per annum,
- 2020 -4.49% per annum,
- 2021 -3.16% per annum,
- 2022 -5.70% per annum,
- Future inflation is 5.00%,
- Discounted rate 8.65%,
- Salary inflation, inflation +1.00% and;
- Mortality rates 100% SALT 1984 to 1986.

CONTINGENCES APPLIED

[76] The contingency deduction application is the prerogative of the court. The following contingences have been applied in this matter. Past loss of income pre-accident and post-accident 5%.

[77] Future loss of income pre-accident and post-accident is 15% and 25%.

METHODOLOGY

[78] The past income period is thew after the date of the calculation period between the accident date and the date of calculation where the claimant received an income.

[79] The future income period is the period where the claimant received an income.

INCOME TAX

[80] The total taxable income is calculated based on section 2 income description,

[81] The notional tax that would have been paid is calculated based on the South African Revenue Services tax tables,

[82] For the past income period, historical tax tables have been applied;

[83] For the future loss period we have assumed that the future adjustments of tax tables are according to the future inflation assumption in section 3, assumptions. This implies that in the future, 2022/3 tax table remain constant in real terms.

LIFE EXPECTANCY

[84] The relevant life expectancy is calculated based on Mortality tables 100% SALT 1984-86 highlighted in section 3 assumptions.

EXPECTED PRESENT VALUE

[85] We did not apply interest on mortality to the past income period.

[86] For the future income period, we have applied the actuarial notion of expected present value. This is calculated by multiplying the income after tax by the relevant inflation factor, discount factor and mortality rate.

[87] The loss at both calculation date for each projected year is estimated to the difference between the pre-accident and post-accident expected present value.

PROFESIONAL GUIDANCE

[88] The approach taken in this report has been made with refence to the guidelines issued by the Actuarial Society of South Africa (ASSA), in particular the Advisory Practice Note 701 delictual and other Legal Matters provides guidelines for the minimum content of an actuarial report to promote consistency and completeness of disclosure.

[89] RAF Amendment Act 2005 that came into effect on 01 August 2008, introduced an annual caping in section 17 4(c). The cap is only applicable to accidents that occurred after 01 August 2008. The cap is applied after allowing for an accounting, mortality and contingencies. The cap does not apply in certain claims.

[90] We do not have any relationship or conflict of interest with the plaintiff, RAF and any other various stakeholders involved.

[91] This report is limited to assessing potential claim against RAF for loss of earnings. The report assumes that there is a valid claim against the RAF for loss of earnings. The report does not consider any other possible claim.

ASSESMENT RESULTS

[92] The plaintiff's claim is per scenario 1 for the past and future loss of income for an amount of R 3317 509-00.

[93] We have assessed the loss of the plaintiff on the calculation date. Based on the income information provided, our actuarial methodology and assumption detailed above, the total additional compensation is the total loss as summarized in section 5 of assessment results.

[94] It should be noted that different information and / or set of assumption will result in different estimated losses. The total loss will change over time and recalculation may be required if the date of the calculation is significantly different from the date of settlement.

REASONS FOR THE LOSS

PRE- ACCIDENT

[95] It is important to note that the plaintiff was employed by the North West University as a senior Administrative Assistant and she reportedly earned R17 000-00 per month and R 204 000 per annum. <u>However, she could not provide proof of her earnings, thus difference is given to factual information</u>. <u>Due to limited renumeration information provided, the validation of an actual renumeration figure for the claimant's pre-existing earnings, it is recommended that the earnings falling between the median range and upper quartile of B3 (Total package) in the corporate sector as obtained from the quantum year book (Kock 215) and noted in table 5 above be used for quantum.</u>

SCENARIO 1

[96] The plaintiff was 33 years old when the accident occurred and she was in an establishment phase of her career, thus she had not reached her career ceiling. Therefore, the writer opines that she would have continued with her pre- accident employment or similar occupations in the open labour market. Thereafter with career growth, through further work experience and further obtaining additional qualifications, evidenced by post-accident developments of obtaining a post graduate diploma in public management, it is opined that she would have been legible for promotion within her work place, thereby increasing her earnings.

[97] According to 21st Century Analytico, the earning for administrative secretaries and related associate professional aged between 45-49 years of age are as follows: -

- 25 percental R 68 097 per annum;
- 50 percental R 255 050 per annum;
- 75 percental R 584 074 per annum.

[98] Considering the above earnings, it is opined that she could have reached her career ceiling between 50 to 75 percentile (R 419 562.50 per annum) between the ages 45-49 years. The writer notes that these earnings are in keeping with the earning with the earning falling between the median range and upper quartile of Peterson level B5 (total package) of the corporate survey earnings (Kock 2022), as noted in the table 8 above. Thereafter, any increase in her earnings would have stemmed from the annual inflation increases until she reaches the age of retirement of 65 years.

[99] It is opined that the plaintiff may remain in her current employment notwithstanding the continues effects of the accident-related injuries, her work capacity may have been diminished due to the residual impairments she remains with, following the accident, hence she has become a vulnerable competitor in the open labour market as she will not be able to compete with able and healthier competitor.

[100] Upon assessing the above facts, the Court is of the view that the plaintiff suffered a residual future earning capacity in terms of section 6(b) and (c) of Road Accident Fund Act of 2006 (RAFA).

[101] Upon assessing the expert report it is not apparent whether the injury suffered by the plaintiff is temporary or permanent. However, all the experts recommended that the plaintiff must attend further rehabilitation in which in time she is expected to do well after future rehabilitation and conservative treatment.

[102] The experts further stated that she will be able to continue in the position that she is in at the University until the retirement age of 65 years, however she is only qualified to do a sedentary kind of work because of the none united ankle injury which is mostly problematic when she is driving long distance.

[103] The injury suffered by the plaintiff was found to have made a significant change in her physical health and psychological functioning which seem to negatively impact of the self-image. The noted emotional distress is associated with the impact and changes or decline on her physical wellbeing (physical pain and discomfort), change in self-image, anxiety related symptoms, resulting in physical limitations and that makes her to feel vulnerable and fearful of what future will be like. In agreement with orthopaedic surgeon’s post injury, the plaintiff will be able to perform light heavy duties in future and will not be able an equal competition in open market particularly due to ankle sprain. She was found to present with significant symptoms of depression, anxiety and was observed to have some personality vulnerabilities.

[104] With the above facts the Court is of the view that the plaintiff suffered a permanent future loss of earnings which will improve in future by the plaintiff subjecting herself to consult with the recommended experts for rehabilitation and healing of the injury and sequalae thereon through an undertaking.

[105] To quantify the amount to be awarded to the plaintiff for future loss of earning capacity the court established the reasonable and fair amount based on the proven facts and the prevailing circumstances[7]. The Court established the amount with reference to mathematical calculations made on the proven facts of the case using mathematical calculations of the actuary provided by the plaintiff as the basis of the loss[8].

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[7] *Union Government v Clay* 1913 AD 385, *Hulley v Cox* 1924 AD 234 and *Griffiths v Mutual and Federal* 1991 (1) SA 535 (A).
[8] *Goldie v City of Johannesburg 1948* (2) SA 913 (W) and *Southern Insurance v Bailey* 1984 (1) SA 98 (A) at 114A-G.

[106] In calculating this loss, the Court used scenario 1 calculation of the actuary with the same contingencies applied and found that the plaintiff suffered only 35% of the future loss of earning capacity of the calculation. This estimation is exacerbated by the fact that she could not provide proof of her earnings, thus difference is given to factual information. Due to limited renumeration information provided, the validation of an actual renumeration figure for the claimant's pre-existing earnings, it is recommended that the earnings falling between the median range and upper quartile of B3 (Total package) in the corporate sector as obtained from the quantum year book (Kock 2015) and noted in table above be used for quantum.

[107] The Courts findings are that the plaintiff suffered a loss to the amount of **R** 958 003**-90,** which is 35% loss of the amount claimed by the plaintiff in paragraphs 16 and 92 above, which is reasonable and fair under the circumstances.

ORDER

In light of the above facts the following order is made: -

[108] The application in terms of Rule 38(2) of the High Court Rules is granted;

[109] Merits are granted 100% in favour of the plaintiff;

[110] The Defendant will furnish the Plaintiff with an Undertaking Certificate in terms of Section 17 (4) (a) of the Road Accident Fund Act 56 of 1996, to pay the costs of Plaintiff's future accommodation in a hospital or nursing home, treatment of or rendering of service or supplying of goods to her arising out of the injuries she sustained in a motor vehicle collision on the 03 May 2015 and the sequelae thereof, after such costs have been incurred and upon proof thereof limited to 100%.

[111] The general damages are postponed sine die;

[112] The defendant shall pay the amount of **R 958 003-90** for the loss of earning capacity and;

[113] The defendant shall pay the cost of the action on scale B on party and party scale.

T NYANDENI

ACTING JUDGE OF THE HIGH COURT

PRETORIA

DATE OF HEARING: 16 OCTOBER 2024

DATE OF JUDGMENT: 12 MARCH 2025

APPEARANCES:

COUNSEL FOR THE PLAINTIFF:	**ADV. P T ZUMA**
INSTRUCTED BY:	**HC MATALADI ATTORNEYS (PRETORIA)**
COUNSEL FOR THE DEFENDANT:	**NO APPEARANCE**
INSTRUCTED BY:	**NO APPEARENCE**