

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 58893/2021

DATE: 04-02-2025

DELETE WHICHEVER IS NOT APPLICABLE

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

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

(3) REVISED.

DATE 4/2/2025

SIGNATURE [REDACTED]

10 In the matter between

KHANYE REFILWE FORTUNE

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

J U D G M E N T

WEIDEMAN, AJ:

20 Matter number 39 on this week's roll is Khanye Refilwe Fortune and the Road Accident Fund, case number 58893 of 2021. The plaintiff in this matter is an adult female nurse, born on the 28th of June 1984. She was involved in an accident on the 27th of February 2021.

On or about the 25th of January 2024 the defendant conceded the aspect of liability.

The only aspect before Court on this occasion is certain heads of damage of the quantum of the plaintiff's claim. Before commencing the discussion on quantum, counsel moved two applications. The first was in terms of Rule 38(2) and which was for the leading of evidence on affidavit. This application was granted. The second was an application in
10 terms of Rule 33(4) for the separation out of the claims for past hospital medical expenses and general damages and for these to be postponed *sine die*.

The plaintiff's injuries, set out in paragraph 6 of the particulars of claim, consisted of the following:

- an L2 compression fracture,
- blunt face trauma,
- a chest injury, and
- 20 • general body pains.

From the Bar, counsel advised that the plaintiff's most significant injury was the L2 compression fracture and that most of the plaintiff's sequelae flows from this injury.

Details of the heads of damage under which the plaintiff is claiming are contained in paragraph 8 of her particulars of claim. Before court on this occasion is only her claims for past and future loss of income.

At the time of the accident in question the plaintiff was in full time employment at a government hospital whilst also supplementing her income by doing additional work at a private hospital where she worked two weekends per month.

10 Looking at the plaintiff's actual income, the actuary prepared a calculation, and which is on CaseLines 005 from page 194. Of importance are the figures contained on CaseLines 005-198.

In respect of the claim for past or accrued loss of income, this relates, as I understand it, to the weekends which she was unable to work and the loss calculated in respect thereof is R10 381. In respect of accrued or past loss of income this is the amount which the defendant will be liable
20 for.

As far as future loss of income is concerned, there is a small difference between the figures prepared in the uninjured scenario and in the injured scenario. In my opinion the contingencies applied by the actuary do not

adequately address the factors affecting the Plaintiff's prospects. I believe that the contingencies that should be applied are 25% and 35%, respectively. The effect of this would be that the claim for future loss of income, but for the accident, would be reduced to R4 507 684 and the having regard to figure to R3 878 282. The difference between these two amounts is the nett award in respect of future loss of income and it would be R629 402.

10 To summarise, my order is as follows;

- 1 The plaintiff's application in terms of Rule 38(2) is granted.
- 2 The plaintiff's application in terms of Rule 33(4) for the separation of past hospital and medical expenses and general damages from the remainder of the issues is granted and these aspects are postponed *sine die*.
- 3 The plaintiff's claim for future hospital, medical and ancillary expenses will be dealt with by the
20 defendant providing the plaintiff with a **standard** Undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, for the future hospital medical and ancillary expenses.
- 4 In respect of past loss of income the defendant shall pay the plaintiff the amount of R10 381.

5 In respect of future loss of income / impairment
of earning capacity, the defendant shall pay the
plaintiff the amount of R629 402.

6 The defendant shall pay the plaintiffs taxed or
agreed party and party costs, counsel fees to be
on scale B.


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10 WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 4/2/2025