

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 107493/2023

DATE: 2025-02-25

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 25/2/2025

SIGNATURE [Redacted Signature]

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In the matter between

TSAKANE BETTY BOTSANE on behalf of

RHULANI MANDLATHI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

20 **WEIDEMAN, AJ:**

In this matter, the aspect of negligence had become settled directly between the parties on the basis of a 70% apportionment in favour of the plaintiff. Before court was the claim for loss of income and future medical expenses. The defendant had not made a decision in respect of the

seriousness of the plaintiff's injuries and the court was asked to separate out the claim for general damages and for it to be postponed *sine die*.

At the commencement of the matter, I indicated to counsel that the amended page 6 of the plaintiff's particulars of claim, on CaseLines 015-17 contained the following five injuries:

1. Bladder injury;
- 10 2. Rectal injury;
3. Blunt abdominal trauma;
4. Pelvic fracture; and
5. Head injury.

The various specialists whose medico-legal reports were filed of record indicated that the first three of these injuries, the bladder injury, rectal injury and the blunt abdominal trauma should be assessed by a urologist and a general surgeon. The plaintiff, for reasons unknown to the court,
20 opted not to appoint a urologist or a general surgeon.

After indicating that the plaintiff wished to proceed on the papers as they stood, counsel moved an application in terms of Rule 38(2) to lead evidence on affidavit. I proceeded to canvas with counsel the experts or

documentation in the scope of the application and noted down the following experts whose reports I was advised by counsel should be included: Dr Kumbirai, Dr Mazwi, M M Mphelo, Ms Mahlatsi, Mr Monyela and Mr Mandlathi.

I again asked counsel to confirm that these were the expert reports and documentation that the R38(2) application related to and counsel confirmed that it was. The application was granted.

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Counsel then briefly presented the plaintiff's claim. The difficulty is that the actuary was not included in the Rule 38(2) application and therefore there was no actuarial report before court. This also implied that there was no expert evidence relating to an actuarial calculation and no amounts for the court to consider. As a result the application for loss of income could not be considered.

My order is as follows:

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1. The defendant shall be liable for 70% of such damages as the plaintiff may be able to substantiate;
 2. The defendant's application to lead evidence on affidavit in terms of Rule 38(2) is granted;
 3. The plaintiff's application to have the aspect of

general damages postponed *sine die* is granted;

4. The defendant shall be liable to the plaintiff as far as future hospital, medical and ancillary expenses are concerned in terms of Section 17(4)(a) of the Road Accident Fund Act to provide the plaintiff with an Undertaking for such future hospital, medical and ancillary expenses limited to 70%.

5. The plaintiff's application in respect of future loss of income is dismissed.

10 6. Plaintiff is entitled to his party and party costs to be taxed or agreed.

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WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

20 DATE: 25/2/2025
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