

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2019/19645

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
	
<u>28 March 2025</u>	_____
DATE	SIGNATURE

In the matter between:

RIKHOTSO MARKS KANELANI

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

PIENAAR, AJ

Introduction

1. This matter was on the default judgment roll for the 5th of September 2024. The Plaintiff served the notice of set down on the Defendant on the 14th of June 2024. I was informed that the merits were settled and the issue of general damages was rejected.

2. On the 5th of March 2024, the Defendant's defence was struck off for non-compliance.
3. The matter was before me in respect to the damages for loss of earnings after liability was conceded by the Defendant. This application was lodged in terms of Rule 38(2) of the Uniform Rules of Court to lead experts' evidence by way of affidavits.

Quantum

4. It is trite that the Plaintiff bears the onus to prove how the injuries have affected him in respect of his earning capacity. The only remaining aspect is that of loss of earning capacity. In substantiation of this claim, the Plaintiff has delivered various expert reports that I will refer to where relevant. Dr van den Hout, an orthopaedic surgeon, reported that the Plaintiff suffered a head and brain injury, with a depressed skull fracture, large epidural haemorrhage and pneumocephalus, an injury of the left shoulder (contusion) and low back pain (soft tissue injury).
5. Dr Tommy Bingle, a neurosurgeon, reported that the Plaintiff sustained a head injury with brain bleeding and a left lower leg injury. According to the hospital records, he was finally diagnosed with "subdural haemorrhage left", "depressed skull fracture left" and "laceration left parietal area". He was admitted in the ICU where he was hospitalised for a week. Thereafter, he was transferred to a general ward and after another week he was transferred to Auckland Park Rehabilitation and discharged on 25 July 2017 in order to recuperate. The Plaintiff was later readmitted to Milpark Hospital due to bleeding from his nose and ears and was subsequently hospitalised for 3 days. The Plaintiff also attended follow up consultations at Milpark Hospital.
6. Mr DS Ormond-Brown, a clinical psychologist, reported that the neuropsychological examination had identified impairments that will have a negative impact on his ability to do his job as a security driver. His difficulties with concentration were reported to have an increased his risk for making errors and forgetting instructions and would further reduce his work pace, ultimately causing inefficiency.

7. Mr Linde. Mr Jooste, an Industrial Psychologist, reported that but for the accident, Mr Rikhotso would have probably continued his employment as a cash-in-transit guard with Fidelity Cash Solutions and would have been able to apply for a Senior CIT Collector/Driver position by the age of 40 to 45 years old. Provisions should be made for overtime and other benefits. His retirement age would have been the age of 65 years old.
8. Now, as a result of the accident, due to the severity of his brain injury, the related difficulties as well as the workplace feedback that he has been rendered practically unemployable, he will suffer a total loss of earnings and earning potential from the premature ending of his services, which will probably be within the next three to five years.
9. According to Mr Sebola, Operation Manager at Fidelity Security in Witbank, Mr Rikhotso changed post accident. He stated that he lost it. He is forgetful and that he always complained about pain somewhere in his body. He was moved to light duty in Witbank post-accident. He is no longer eligible for any promotions. Mr Rikhotso was involved in a work related motor vehicle accident while on duty on the 30th of June 2017. According to the Compensation for Occupational Injuries and Diseases Act, 1993, reported that the claim is finalised and that there is no compensation awarded.
10. The calculation by the actuary is as follows:
 - a. Loss after the application of the limit:

Net past loss: R302 197

Net future loss: R3 334 801

Total net loss: R3 636 998,00
11. The Plaintiff has submitted that I should apply contingencies of 5% to the past loss and 10% to the future loss and 20% for the future income injured scenario. I propose to rather apply 5% on the past loss, and 20% on future income and 25% to the future income injure scenario. That calculates to a total loss of R3 636 998.00.

Order

12. I make the following order:
13. The Defendant is ordered to pay to the Plaintiff, the amount of R3 636 998.00 in respect of loss of earning capacity, ("the capital amount") in one installment within 180 (ONE HUNDRED AND EIGHTY) days after granting of this order. Should payment not be effected timeously, the Plaintiff will be entitled to recover interest on the unpaid capital amount at the prescribed rate per annum published from time to time in the National Gazette, and calculated from the 15th day from service of this court order.
14. The Defendant shall issue an undertaking in terms of section 17(4)(a) of the Road Accident Fund as amended.
15. The Defendant is ordered to pay the Plaintiff's taxed, alternatively agreed costs of the suit on a High Court, party-and-party scale as well as the costs incurred which costs shall include, but not be limited, to the following:
 - a. The costs of all medico-legal, radiological and RAF4, actuarial, addendums, re-calculations, and joint reports, if any, filed by the Plaintiff;
 - b. The reasonable and taxable preparation, qualifying and reservation fees of the Plaintiff's experts, if any, in such amount as allowed by the Taxing Master, of the experts.
 - c. The costs of and consequent to drafting and procuring affidavits from the expert witnesses with a view to applying for default judgment, as well as the expert witnesses's charges in respect thereof.
 - d. The full fee ("day fee") on scale B in terms of Rule 69 as required in terms of section 67A(3)(a)) of Plaintiff's counsel briefed for trial on the 3rd and 5th of September 2024 as well as his reasonable preparation for trial, as well as preparing heads of argument.

- e. The Plaintiff shall pay the costs within 14 days of an agreement being reached on costs, alternatively, the service of an allocator on the defendant. Should payment of the taxed costs not be effected timeously, the Plaintiff shall be entitled to recover interest on the taxed alternatively agreed costs at the prescribed interest rate per annum from the date of allocator or agreement to date of final payment.
 - f. The amounts referred to in paragraph 13 will be paid to the Plaintiff's attorneys, Joubert Botha Incorporated, by direct transfer into their trust account.
16. General damages are postponed *sine die*.
17. There is valid contingency fee agreement.



M PIENAAR
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Plaintiff:	Adv PS Oberhozer instructed by Joubert & Botha Inc
For the Defendant:	Ms P Makhathini (State Attorney) instructed by The Road Accident Fund
Date of Trial:	06 September 2024
Date of Judgment:	26 March 2025