IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHER JUDGES: NO	
(3) REVISED: NO	
1 April 2025	..[redacted]
DATE	SIGNATURE

CASE NO: 2020-3662

In the matter between: -

MMATHAPELO YENDE **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

JUDGEMENT

CAJEE AJ

1. This matter came before me as a Default Judgment Application in which the Applicant sought a order in the following terms:

"1. The Defendant shall pay Plaintiff, the sum amount of R2 673 330.00 (Two Million, Six-hundred and Seventy-Three Thousand, Three Hundred and Thirty rands), in respect of past and future loss of earning capacity and in full and final settlement of this action, and this amount shall be paid within 180 days from the date of this order into the following Attorneys bank account:

ACCOUNT HOLDER: SIBANDA BUKHOSI ATTORNEYS INC.

BANK:	FIRST NATIONAL BANK (FNB)
ACCOUNT NUMBER:	62545354780
ACCOUNT TYPE:	TRUST ACCOUNT
BRANCH:	HYDE PARK
BRANCH CODE:	255805

Apart from the aforesaid paragraph the remaining prayers sought were the same as the order I hand down, and won't be repeated.

2. I am only asked to rule on the quantum of damages in respect of the issue of the Plaintiff's claim for past and future loss of earnings. In his heads of argument Adv. Nllovu succinctly sets out the injuries the Plaintiff sustained in the accident, her alleged pre and post-accident employment history and the expert opinion in respect of the medico-legal assessments she attended.

3. The plaintiff was involved in an accident that occurred on the 20th of January 2018 in Soweto. She was a passenger at the time. The issue of liabilty was conceded by the Defendant 100% in Plaintiff's favour. The Plaintiff was almost 22 years old at the time.

4. The Plaintiff was transported to the Chris Hani Baragwanath Hospital where she was admitted and received medical treatment. It was determined that she sustained a fracture of her acetabulum. At hospital she was clinically and radiologically examined and a CT scan was done. She was treated conservatively with physiotherapy and advised to take bed rest and was provided with medication for pain. She was admitted for one week before being discharged. She has attended follow up treatment.

5. At the time of the accident the Plaintiff was according to her working as a self-employed baker earning approximately R6000-00 per month after expenses had been met. She has a matric qualification obtained in 2017. It

entitled her to pursue further studies towards a diploma or a higher certificate.

6. She has allegedly not worked since the accident. It is unclear how she has as a single mother been supporting herself and her three minor children since the accident. She worked as a self-employed baker selling some of her products from door to door. She also baked to order. Her former work as a baker is classified as light work by the occupational therapist. She has aspirations of completing a solar panel installation course at a TVET college but has been unable to secure a registration to do so despite applying to do so.

7. The Plaintiff complains of being unable to walk long distances, right knee and hip pain especially during cold weather, being unable to sit or stand for long periods, feeling anxious when travelling is speeding vehicles and becoming forgetful.

8. The Plaintiff was examined by several experts prior to the hearing of this matter. One of these is Dr. Kumbirai, an orthopedic surgeon. In his report following an examination he carried out on the 15th of July 2021 he opines that there is a 30% chance that the Plaintiff will require a total hip replacement in the next twenty to twenty five years. According to him the pain in her right hip will limit the occupational choices available to the Plaintiff as occupations requiring prolonged standing and walking would

aggravate her symptoms. He assessed her Whole Person Impairment to be 3%, which is well below the 30% that is required to automatically qualify one for non - percuniary general damages. However Dr. Kumbirai qualified the Plaintiff for general damages under the narrative test which has been accepted by the Defendant who has settled this issue with the Plaintiff.

9. In her report dated the 5th of July 2023 following an examination and assessment she carried out on the 12th of October 2022 the occupational therapist Ms Khwela states that the while the Plaintiff was best suited to work of a light physical nature she was still compromised when compared to others in her situation without these impairments. Her work as a baker also entailed for the most part work of a light physical nature. Ms. Khwela opines however that the failure of the Plaintiff to return to work after the accident is understandable given the nature and extent of her injuries. I will return to this aspect later. According to the occupational therapist the Plaintiff has a diminished post-accident work capacity.

10. In her report dated the 2nd of October 2023 after an assessment carried out on the 12th of October 2022 the industrial psychologist Ms. Chamisa-Maulana states that, having regard to the other expert opinion, in her opinion the Plaintiff will not be able to reach her pre accident career prospects. She is an unequal competitor in the open labour market given her physical limitations. She opines that but for the accident the Plaintiff would have continued earning as a self-employed baker but thereafter

would have secured formal employment within three to five years starting at the Patterson A3 level and eventually reaching her career ceiling at the Patterson B3 level by age forty five, where after inflationary increases would have applied. According to her there will now be a five year delay in the Plaintiff reaching her Patterson scale B3 career ceiling which she opines will be at fifty years of age.

11. While there is nothing to gainsay the version of the Plaintiff that she earned about R6000-00 per month as a self-employed baker at the time of the accident no documentary evidence in support of this has been provided. Certain affidavits in support of this contention have been provided. However, this is not an extravagant amount and I will accept that the Plaintiff probably did earn this amount at the time of the accident. I do not however accept the opinion of the occupational therapist that it was reasonable for her not to return to work at all after the accident. In my opinion she could at the very least have resumed limited baking activities even if she could not earn on par with what she earned pre accident. There is no evidence that she was unable to bake to order as she did pre-accident.

12. As far as her future loss of earnings are concerned, none of the experts mention any possibility of early retirement should the need for a hip replacement ever arise. Should I accept the projections made by the industrial psychologist she will by then have secured more sedentary work

anyway. In fact, in the post-accident scenario allowance is already made for a delay in the Plaintiff reaching her career ceiling. I do not accept that a 20% differential between the pre and post-accident scenarios are justified. I believe a 10% differential is more appropriate.

13. In my opinion contingency deductions of 40% should apply to the Plaintiff's accrued earnings but for the accident and 25% to her prospective earnings but for the accident, as at the time of the accident she had not yet embarked on formal employment and this makes computing this amount more prospective. I am satisfied with the 35% contingency deduction in the post-accident scenario as calculated in the actuarial report.

14. If one applies this to the claim of the Plaintiff, as determined by Tsebo actuaries in the actuarial report dated the 3rd of October 2023 the following figures are obtained:

<u>Past Loss of Earnings</u>

Accrued Earnings but for the Accident:	R 623 719
Less 40% contingency deduction:	(R 249 488)
Total Accrued Earnings but for Accident:	R 374 231
Total Past Loss of Income	**R 374 231**

<u>Future loss of earnings</u>:

Pre Contingency Prospective Income but for the accident:	R 6 653 720
Less 25% Contingency:	(R 1 663 433)
Total Prospective Income but for accident:	R 4 990 298

PreContingency Prospective Income Because of the Accident:	R 5 499 793
Less 25% contingency:	(R 1 924 928)
Total Prospective Income because of accident:	R 3 574 865
Total Future Loss of Income:	**R 1 415 433**
Total past and future loss of Income:	**R 1 789 664**

15. I accordingly hand down judgment in the following terms:

"1. The Defendant shall pay the Plaintiff the amount of R 1 789 664 (One million seven hundred and eighty nine thousand rand and six hundred and sixty four rand) within a 180 days from date hereof made up as follows:-

Past Loss of Earnings	-	R 374 231
Future Loss of Income	-	R 1 415 433
TOTAL	-	<u>R 1 789 664</u>

2. The Defendant shall pay interest on the aforesaid sum of at the rate of 11.25% per annum calculated from 180 (One Hundred and Eighty) days from date of this order to final date of payment;

3. The said payment shall be made into the trust account of the Plaintiff's attorneys of record, with the following account details:

ACCOUNT HOLDER:	SIBANDA BUKHOSI ATTORNEYS INC
BANK:	FIRST NATIONAL BANK (FNB)
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4. The Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17 (4) (a) of Act 56 of 1996 to pay 100% of the loss of future accommodation of the Plaintiff in a hospital/or nursing home and such treatment, services or goods as she may require as a result of the injuries that she sustained in the accident which occurred on 20th January 2018, upon proof thereof.

5. The Defendant shall pay taxed or agreed costs on party and party High Court scale including all costs of Counsel on scale B and of obtaining expert's reports in respect of loss of earning capacity, up to and including the 23rd day of September 2024, subject thereto that:

5.1. In the event that the costs are agreed:

5.1.1. The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record; and

5.1.2. The Plaintiff shall allow the Defendant 180 days to make payment of the taxed costs:

5.1.3. Should the payment not be made timeously, the Plaintiff will be entitled to recover interest at the rate of 11.25 % per annum on the taxed or agreed costs from the date of the allocation to the day of payment.

5.2. Such costs shall include, as allowed by the Taxing Master:

5.2.1. The costs of and consequent to the appointment of Counsel, as well as his reasonable preparation fees for trial and appearance for the Default judgment trial on 23 September 2024.

5.2.2. The costs of all Medico legal reports.

5.2.3. The reasonable and taxable preparation, qualifying and reservation fees, if any, in such amount as allowed by the Taxing Master, of the above experts.

5.2.4. The reasonable costs incurred by and on behalf of the Plaintiff in attending the Medico-Legal examination of both parties expert which shall include, the reasonable accommodation and transportation of the plaintiff when attending such medical assessment."

[redacted]

CAJEE AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

Date of hearing:	**23rd September 2024**
Date of Judgment:	**1st April 2025**
For the Plaintiff/ Applicant:	**Adv. W. B. Ndlovu**
	073 423 7175