

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

CASE NO:2023-071600

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED. |

17 April 2025

Date

K. La M Manamela

In the matter between:

NDEBELE, PROMISE STHEMBILE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge's secretary. The date of the judgment is deemed to be 17 April 2025.

JUDGMENT

KHASHANE MANAMELA, AJ

Introduction

[1] The plaintiff, Ms Promise Sthembile Ndebele, was injured in a motor vehicle accident on 28 July 2021. She was a pedestrian along Quartz and Kotze streets in Hillbrow, Johannesburg when she was hit and injured by a white Mercedes Benz motor vehicle driven by an unidentified driver ('the insured driver'). The insured driver immediately drove away after the accident. The details of the insured driver and the registration details of the motor vehicle are unknown to the plaintiff. The plaintiff's pelvis and right limb were fractured. She also sustained other serious injuries and, consequently, suffered damages, due to the injuries and their *sequelae*, as set out below.

[2] On 20 July 2023, summons was issued at the instance of the plaintiff against the defendant, the Road Accident Fund ('the RAF'), in terms of the Road Accident Fund Act 56 of 1996 ('the RAF Act') for compensation of the plaintiff for her damages. She blames the negligent driving of the insured driver as the sole cause of the accident and, consequently, for her injuries and their *sequelae*. The following are the heads of her claim for her damages against the RAF: (a) past and future medical and hospital treatment; (b) loss of earnings and/or earning capacity, and (c) general damages. The RAF defended the action.

[3] The matter came before me for a trial on 21 January 2025. Ms AN Nyathi appeared for the plaintiff and Mr TH Ngomana appeared for the RAF. The trial, after addressing some preliminary issues, proceeded on issues relating to liability and quantum, although issues relating to general damages are to be postponed *sine die*. I reserved this judgment after listening to oral submissions by counsel.

Brief background

[4] What follows under this part is a brief narration of the issues in the background of this matter, in as far as they are common cause between the parties.

[5] The plaintiff was born on 03 September 1979 and was, therefore, about 43 years old at the time of the accident on 28 July 2021. She, therefore, was about 46 years of age at the time of trial on 21 January 2025. She was born and bred in KwaZulu-Natal. She also went to school there and passed grade 11 at Gawozi High School. This represents her highest educational attainment. The plaintiff says that she could not complete her schooling due to financial restraints. After school, the plaintiff obtained multiple other work-related certificates: (a) Grade E security certificate in 2001; (b) cashier certificate in 2001 or 2005, and (c) call centre certificate in 2019.

[6] The plaintiff was employed at various places as follows: (a) cook at 60's Restaurant (in 2000); (b) secretary and cashier at Auto Zone parts for Africa in 2006 (for one month, earning R2900 a month); (c) Pick 'n Pay (also for one month); (d) Shoprite stores (from 2006 to 2009), (e) assistant manager at Fish and Chips store (from 2012 to 2013, earning R3500 a month); (f) cashier at a KFC Ruimsig outlet (in 2012, earning R1500 a month); (g) call centre or sales agent at Buntu For Life (for 3 months in 2019, earning R2000 a month), and (h) cook on a casual basis for a street-vending employer in Hillbrow (in 2020, earning R400 a week). The plaintiff was unemployed at the date of trial.

[7] Summons, as already indicated, was issued at the instance of the plaintiff and served on the RAF on 20 July 2023. The RAF filed a plea incorporating special pleas after denoting its intention to defend the plaintiff's claim. After closure of pleadings and pre-trial activities, the matter was set down for a trial through delivery of a notice of set down on 20 February 2024. The set down was delivered just short of 11 months to the date of trial on 21 January 2025.

RAF's notice to amend and special plea of prescription

RAF's notice to amend

[8] On 20 January 2025, a day before trial, the RAF delivered a notice to amend its plea in terms of Rule 28 of this Court. The RAF's proposed amendment was in the form of a special plea to the effect that the plaintiff's claim has prescribed and, thus, ought to be dismissed with costs.

[9] Evidently, the prerequired 10-day period for objection in terms of the aforesaid rule has not yet prescribed, when Mr Ngomana on behalf of RAF tried to effect the amendment, on the day of trial (being hours after the delivery of the notice the previous day). But, Ms Nyathi for the plaintiff made it clear that plaintiff objects to the proposed amendment. It, therefore, comes as a surprise that, Mr Ngomana would later (in post-hearing supplementary submissions) submit that the amendment 'was effected on the date of the hearing and no formal objection to date, was raised by the plaintiff'.¹ The plaintiff was not yet bound to deliver a formal objection in terms of the rules, as already stated. However, the plaintiff's counsel clearly objected to the late amendment on the plaintiff's behalf when it was moved at the commencement of the trial. I say more about the events regarding the amendment at the trial, below.

[10] The amendment sought was as follows, as quoted from the notice to amend filed on behalf of the RAF:

SPECIAL PLEA OF PRESCRIPTION

1. The Plaintiff's claim against the Defendant is governed by the provisions of the Road Accident Fund Act, Act No 56 of 1996, as amended by Act No 19 of 2005 and its Regulations ("the Act").
2. The Plaintiff's claim arose out of a motor vehicle collision which occurred on the 28th of July 2021.
3. The Plaintiff issued summons dated the 19th of July 2023 and served same on the Defendant.
4. The Plaintiff alleges in her particulars of claim that she was hit by a motor vehicle whose particulars are unknown to the Plaintiff on the 28th of July 2021. at this stage, the particulars of such vehicle remain unknown.
5. The Plaintiff lodged the claim on the 1st of December 2022, however, the Plaintiff failed to lodge a valid claim. An objection letter addressing lodgement was sent to the Plaintiff on the 4th of January 2023.

¹ Defendant's Heads of Argument (undated) par 2.2.

6. In terms of Section 23 of the Act, and in the case of unidentified claims, the claim shall prescribe upon the expiry of a period of 2 years from the date upon which the cause of action arose.

7. The Plaintiff has, to date, failed to comply, rectify and cure the objection raised by the Defendant.

8. Consequently, and as a result of non-compliance with the Act, the claim has become prescribed.²

[11] As already indicated, the plaintiff objected to the proposed amendment, more so, on the basis of the late timing thereof. It was premature to effect the amendment given that the period for objection has not yet expired. And the proposed amendment was sought amidst a trial. Both these signify prejudice to the plaintiff, it was submitted on behalf of the plaintiff. I found merit in this objection. But, instead of having a full-blown argument on the amendment and its impact on the continuation of the trial, I thought that the issue could be resolved on another basis.

[12] In the original plea, filed by the RAF and dated December 2022, there are two special pleas included.³ But the issue I would like to refer to is elsewhere in the plea in the following part:

The Defendant denies that the Plaintiff has complied with the provisions of the [RAF] Act and the Plaintiff is put to the proof thereof. Defendant specifically denies that the Plaintiff has lodged a valid claim and avers further that the objection to the claim remains ⁴

[13] In my view, that part of the plea quoted above incorporated already the material in the proposed special plea of prescription. This is so in that should the plaintiff's claim be found not properly lodged, it would be barred and, probably, dismissed. Therefore, a ruling either way of the validity of the claim lodged would – *ipso facto* - dispose of the issue of prescription. For a claim which was properly or improperly lodged would render the special plea of prescription superfluous.

² RAF's Rule 28 Notice to Amend, CaseLines 27-1 to 27-4.

³ RAF's plea dated 13 December 2022, CaseLines 02-7 to 02-16. The date on the plea appears to be incorrect as summons was only issued in 2023.

⁴ RAF's plea dated 13 December 2022 par 10, CaseLines 02-13.

Ultimately, this proposition prevailed on the parties and the matter proceeded on the basis of the pleadings without the immature proposed amendment.

[14] After the hearing, I requested counsel to address specific issues regarding the lodging of the plaintiff's claim and the objection thereto by the RAF. I am grateful for the material furnished and will consider same for purposes of the discussion and ruling to follow.

Was the plaintiff's claim validly lodged?

General (including submissions on behalf of the parties)

[15] Claims against the RAF originate from section 17 of the RAF Act providing for the RAF's statutory liability as follows in the material part:

(1) The Fund or an agent shall-

(a) ...;

(b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established,

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.

[16] Section 24 of the RAF Act provides the procedure for lodging claims by claimants for compensation by the RAF. It reads in the material part:

(1) A claim for compensation and accompanying medical report under section 17 (1) shall-

(a) be set out in the prescribed form, which shall be completed in all its particulars;

(b) be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.

...

(5) If the Fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.

[underlining added]

[17] The plaintiff lodged the claim with the Johannesburg office of the RAF through delivery of the prescribed RAF 1 form (and relevant attachments) under cover of her attorneys' letter dated 3 November 2022. This was after a period of about 15 months from the date of the accident on 28 July 2021. The delivery was by way of registered post on 1 December 2022.⁵

[18] The RAF responded to the Plaintiff's claim in terms of its letter dated 18 January 2022. Evidently, the year in the aforesaid date appears incorrect and should perhaps have been 18 January 2023. Mr Ngomana – in the post-hearing submissions – confirmed that the objection letter was indeed emailed in January 2023. Ms Nyathi submitted – post-hearing, as well – that it is accepted that there 'must have been a typing error' in this regard given the date of lodgement of her client's claim.

[19] The material part of the objection appears in the following extract from the letter:

⁵ Registered post slip dated 1 December 2022, CaseLines, 03-1.

1. To administer claims effectively and efficiently the Road Accident Fund (RAF), pursuant to section 4(1)(a) of the Road Accident Fund Act, 1996 (the Act) published the Stipulated Terms and Conditions Upon Which Claims for Compensation Shall Be Administered (the Terms and Conditions) in Board Notice 271 of 2022 ... on 6 May 2022. The Terms and Conditions, read with section 24 of the Act, stipulate what documents must accompany the claim documentation when submitting a claim for compensation.
2. We have pre-assessed the documentation posted by you on 01/12/2022 the following products General damages & Future medical expenses & Loss of earnings, for compliance with section 24 of the Act and the Terms and Conditions. We advise that the documents submitted do not meet the requirement(s) for a substantially compliant and valid claim ...
3. The RAF hereby objects to the validity of the claim submitted by you in accordance with paragraph 24(5) of the Act for the reasons set out in paragraph 2 above.
4. Consequently, we do not accept the documentation presented / posted / e-mailed by you as a valid claim for purposes of lodgement in terms of the Act and accordingly return the documents herewith.
5. Please note that prescription of a claimant's claim in terms of the Act will only be interrupted once a compliant and valid claim is lodged.
6. Further note that the RAF will raise a special plea should summons be issued as regards the objection as set out in paragraph 2.⁶

[20] A reply to the objection on behalf of the plaintiff was sent to the RAF under cover of the plaintiff's attorneys' letter dated 4 October 2023. The letter furnished documentation and information requested by the RAF, largely by way of proof of medical expenses.⁷ The latter communication was sent to the RAF by way of electronic mail or e-mail on 6 October 2023.⁸ It is submitted on behalf of the plaintiff that the email used the same address and was directed to those persons acting for the RAF as borne by the RAF's objection. The plaintiff's email in reply to the objection was even acknowledged, although the acknowledgement appeared to

⁶ RAF's objection letter of 18 January 2022, CaseLines 26-1 to 26-3.

⁷ Plaintiff's attorneys' letter of 04 October 2023, CaseLines 26-4 to 26-5.

⁸ Proof of dispatch by email of Plaintiff's attorneys' letter of 04 October 2023, CaseLines 26-8.

suggest a refusal to accept or consider the documents. Counsel for the RAF bemoans the timing of the reply to the objection by the plaintiff and argued that it implicates the prescription period in the RAF Act.

[21] The RAF objects to the aforementioned mode of communication (i.e. e-mail) as non-compliant with the procedure laid down in section 24 of the RAF Act. According to Mr Ngomana for the RAF, when an objection by the RAF based on section 24(5)⁹ of the RAF Act is lodged against a claim, the claimant ought to lodge the complete claim afresh. It is not proper to only furnish the required or previously omitted material, in addition to the claim documents already lodged. Further, the documents ought to be delivered, again, by either registered post or by hand, as prescribed in section 24(1) of the RAF Act. Delivery by e-mail is improper and not compliant with the RAF Act, the submission by Mr Ngomana concludes.

[22] But in further submissions after the hearing, Mr Ngomane appears to suggest that the plaintiff did not have to lodge the complete claim afresh, but only to rectify same in terms of the objection within the prescription period for the claim to be valid. Ms Nyathi, argued for the plaintiff that, the requirement for lodging the claim afresh is not borne by the RAF Act. The initial lodgement may be valid in part and, thus, simply requiring supplementation and not a complete overhaul. To suggest otherwise would be adversely prejudicial to claimants, she concluded. Also, the RAF has no legislative authority to refuse to accept a claim lodged by a claimant in terms of the provisions of section 24 of the RAF Act.

[23] At the hearing, I reserved a ruling on the preliminary issue of lodgement of the plaintiff's claim and directed counsel to proceed with the remainder of the issues in the trial. It was said at the time that a ruling on the issue would precede that of all other issues in the judgment to be handed down, as it is possibly dispositive of the plaintiff's claim.

Legal position on the valid lodgement of claims

⁹ Par [12] above for a reading of s 24(5) of the RAF Act.

[24] In *Maarman and Others v Road Accident Fund*,¹⁰ in answering a question whether a claim and its accompanying documents lodged with the RAF constituted a valid claim under the RAF Act and its regulations, the court relied on the decision of the Supreme Court of Appeal ('the SCA') in *Pithey v Road Accident Fund*¹¹ for the principle that completeness of claim forms under the RAF Act are directory and, thus, require substantial compliance with the material requirements.¹² For the purpose of the RAF Act is to provide the widest possible protection to claimants whilst promoting cost-effective litigation.¹³

[25] The object of section 24 of the RAF Act is to enable the RAF to evaluate the merits of a claim lodged against it and whether such claim is valid or open to opposition.¹⁴ Consequently, claims are not to be rejected solely because the RAF consider information material for determining the quantum of damages incomplete, particularly where the claims are prone to prescription.¹⁵

Conclusion

[26] Therefore, on the basis of the above authorities, I find that the submission of the plaintiff's claim in the nature and extent it was done constitutes substantial compliance with section 24 of the RAF Act.

[27] I do not find any merit in the RAF's contention that once the RAF rejects a claim in terms of section 24(5) for whatever reasons a claimant has to launch a fresh claim instead of addressing the RAF's reasons for rejecting the claim. This would defeat the purpose of the RAF Act and likely to incentivise the RAF to reject claim

¹⁰ *Maarman and others v Road Accident Fund* (993/2023) [2025] ZAWCHC 106 (12 March 2025).

¹¹ *Pithey v Road Accident Fund* 2014 (4) SA 112 (SCA).

¹² *Pithey v Road Accident Fund* 2014 (4) SA 112 (SCA) [19]; *Maarman v Road Accident Fund* [2025] ZAWCHC 106 [56]; *Khomo v Road Accident Fund* (00667/2017) [2023] ZAGPJHC 1325 (15 November 2023) [29]; *Mautla and Others v the Road Accident Fund* (29459/2021) [2023] ZAGPPHC 1843; *Radebe v Road Accident Fund* (053998/2023; 074803/2023) [2024] ZAGPPHC 25 (1 January 2024).

¹³ *Multilateral Motor Vehicle Accidents Fund v Radebe* 1996 (2) SA 145 (A) at 152E-I; *Pithey v Road Accident Fund* 2014 (4) SA 112 (SCA) [18]; *Maarman v Road Accident Fund* [2025] ZAWCHC 106 [57]; *Road Accident Fund v Busuku* 2023 (4) SA 507 (SCA) [6].

¹⁴ *Maarman v Road Accident Fund* [2025] ZAWCHC 106 [63]; *Khomo v Road Accident Fund* [2023] ZAGPJHC 1325 [29].

¹⁵ *Ibid.*

which are likely to prescribe if they are to be lodged *de novo*.¹⁶ Also, such an approach would be irrational when considered against the purpose of existence of the RAF and the provisions of the RAF Act.

Evidence and submissions (discussed)

General

[28] The plaintiff, at the commencement of the trial, moved an application in terms of Rule 38(2) of the Uniform Rules of this Court to proceed on the basis of the medico-legal reports filed by plaintiff, as confirmed under oath by the experts. This included the plaintiff's own statement on the merits of the matter. There was no objection on behalf of the RAF to the application and, consequently, it was granted. The RAF did not file any reports or tender any evidence by any witness. The defence of the matter was solely based on the submissions made by Mr Ngomana appearing for the RAF.

Merits / Cause of the accident

[29] The issue of liability was still up for determination at the hearing. The plaintiff's statement in terms of section 19(f) of the RAF Act, deposed to on 3 November 2022, sets out the particulars of the accident which gave rise to her claim against the RAF. The statement, as stated above, was admitted as evidence under Rule 38(2).

[30] The material part of the plaintiff's statement - for current purposes - is the following:

3. On or about the 28th of July 2021 at around 10h00 hours, I was involved in a motor vehicle accident. I was walking along Quartz street in Hillbrow, as I was about to cross Kotze street a white Mercedes Benz approached at a high speed and bumped me. The driver drove off.

4. As a direct result of the accident I suffered severe injuries and was conveyed by a private car to Hillbrow Community Clinic where I was treated.¹⁷

¹⁶ *Maarman v Road Accident Fund* [2025] ZAWCHC 106 [63]; *Khomo v Road Accident Fund* [2023] ZAGPJHC 1325 [29].

¹⁷ Plaintiff's affidavit in terms of section 19(f) of the RAF Act, CaseLines 03-35.

[31] The above quoted version matches exactly the statement made earlier by the plaintiff when she reported the matter to the police on 18 August 2021.¹⁸ Ms Nyathi for the plaintiff submitted that the driver of the insured car was never found and the police case was eventually closed.

[32] Ms Nyathi, on a question from the bench, wasn't sure on whether the intersection at which the accident happened was controlled by a traffic light or not, but she indicated that the plaintiff was about to cross the road. She, therefore, submitted that the RAF ought to be held fully liable for the plaintiff's damages arising from the accident on the basis of the evidence of the plaintiff.

[33] Mr Ngomana for RAF challenged - from the bar - accuracy and veracity of the contents of the plaintiff's statement, especially the fact that it is not stated exactly how the accident happened. He also referred to the fact that the investigating officer of the accident appears to have complained about lack of success in contacting the plaintiff, ostensibly for purposes of investigating the accident. I searched in vain for any merit in these submissions.

[34] I contemporaneously made an order holding the RAF fully (i.e. 100%) liable for the proven or agreed damages suffered by the plaintiff. The facts of and evidence in the matter supports this finding.

Orthopaedic Surgeon

[35] On 8 September 2022, the plaintiff was examined by Dr RS Ngoben, an orthopaedic surgeon. This expert compiled a report on her assessment and opinions dated 17 November 2022.¹⁹ She had access to hospital records from Edenvale hospital and Hillbrow Community Health Centre, as well as RAF form completed by Dr G Mapope-Ndyile.

[36] The orthopaedic surgeon noted that, according to the plaintiff, she lost consciousness but still regained it at the scene of the accident. Further, that the

¹⁸ Plaintiff's statement to the police dated 18 August 2021, CaseLines 03-52.

¹⁹ CaseLines 08-23 to 08-32.

plaintiff suffered injuries to her back and left foot. But, that, according to the hospital records, the plaintiff's injuries were diagnosed as fractures of the second and third metatarsal, only. Dr Ngobeni concluded that the plaintiff suffered from post-traumatic left foot metatarsal chronic pain. The plaintiff complains of persistent left foot pain after walking long distance or standing for long periods. She reports intermittent headaches with nose bleed. She complains of lower backache. She walks with an antalgic gait and uses no assistive device. The findings from radiological X-rays done on 6 October 2022 (and accompanied by a report compiled by Dr Errol Judelman) are that there are no abnormalities on x-rays of the lumbar spine and left foot, noted. Loss of lumbar lordosis on X rays was noted. On the day of the X rays of the plaintiff's hip and pelvis, a possibility of lower back complaints were indicated and, clinically, the plaintiff had para-spinal tenderness with full painful back ranges.

[37] Regarding future work capacity, the orthopaedic surgeon, noted that the plaintiff was then unemployed, as she could not work after sustaining left foot metatarsal fractures. She was rendered destitute and lived in the streets. She concluded that the plaintiff is not suitable to perform duties requiring long periods of standing or walking, until she has suitable shoe adjustment or device to support her foot, and proper rehabilitation and analgesics. The doctor opined that the plaintiff is disadvantaged when compared to her peers in competing for general duties, but deferred to the expert opinion of an occupational therapist and an industrial psychologist.

Occupational Therapist

[38] On 14 June 2022, the plaintiff was assessed by an occupational therapist, Ms Daphney Mathebula. The report of this expert witness is dated 13 December 2022.²⁰ She had access to the same documents as Dr Ngobeni, as well as the latter's report and the radiological report by Dr Judelman. The plaintiff, when assessed by this expert, repeated the complaints about her lower back and left foot pain. The pain is experienced when sitting, standing and walking for prolonged period. The pain persists also in cold weather.

²⁰ CaseLines 08-34 to 08-58.

[39] The occupational therapist noted the plaintiff's educational qualification and work history, referred to above.²¹ She relied on the expert reports, referred to above, for her opinions that: (a) the plaintiff 'retains the competency for light to low medium duties with reasonable accommodation'; (b) the plaintiff's pain in the lower back, left ankle and foot would 'negatively affect her work speed, endurance and productivity at any occupation that falls within light to low medium duties where prolonged standing, walking, climbing and squatting is a prerequisite'; (c) she would secure and retain employment in a physically demanding job from a sympathetic employer with reasonable accommodation; (d) her ability to compete with her non-injured counterparts in the open labour market has been negatively affected by the injuries from the accident, and (e) an evaluation by the industrial psychologist on her past and future loss of earnings was warranted.

[40] The occupational therapist re-assessed the plaintiff on 09 December 2024 and compiled an addendum report on 17 January 2025. The addendum contains significantly the same opinions and conclusions as the main report, above.

Industrial Psychologist

[41] On 14 June 2022, the plaintiff was assessed by Ms Zaheerah Fakir, an industrial psychologist, of FirstLeap Consulting. This expert compiled a report dated 10 February 2023.²² She also had access to the reports of the other expert witnesses, referred to above.

[42] The industrial psychologist noted the same personal details and work history as the other experts, including the injuries and their *sequelae*. Regarding the plaintiff's work history, Ms Fakir stated that the plaintiff was, mainly, employed as an unskilled worker in the informal sector, due to her level of education and work experience. Although the plaintiff earned well below, the earnings for unskilled employees in the non-corporate sector were in the range of R21 400 – R37 200 – R88 000 per annum, as per the Quantum Yearbook, 2021.

²¹ Pars [5]-[6] above.

²² CaseLines 08-60 to 08-77.

[43] Had the accident not occurred, the plaintiff would have been able to continue working in her pre-accident capacity or to procure alternative unskilled jobs in the labour market with earnings as pre-morbid or similar. The scales of earnings for unskilled employees in the non-corporate sector ranged between R24 200 – R43 700 – R97 000 per annum, as per the Quantum Yearbook, 2022. The plaintiff would have benefited from annual inflationary increases until her normal retirement age of 65 years.

[44] Now that the accident has occurred, the plaintiff – unemployed since the accident – according to the industrial psychologist, ‘has been left compromised as an employee in the open labour market’. Further, that the plaintiff who – pre-morbid - was limited to working physically demanding work in the informal sector, appears - post-morbid- to have even limited chance of securing and maintaining a job. She would be limited in the type of occupation she is capable of obtaining, as she would require an accommodative employer. Without the required level of education and work experience, the plaintiff is not a candidate for sedentary to light jobs. Also, due to the high competition of the saturated labour market, the plaintiff’s chance of easily gaining re-employment ‘can be viewed as minimal’. Therefore, the plaintiff would likely remain unemployed for the rest of her life.

[45] Ms Fakir compiled an addendum report on 20 January 2025.²³ She had received an updated addenda from the other experts and, also, new information. She effectively repeated the opinions and conclusions in her main report, above. These include the plaintiff’s pre-accident employment prospects and her earning potential. Ms Fakir provided a revision of the earnings for unskilled employees in the non-corporate sector in terms of the Quantum Yearbook, 2025, as R28 800 – R52 000 – R115 000 per annum. She emphasised that the plaintiff earned below the aforesaid scales. She also mentioned that the plaintiff was able to work for one month in 2024, as ‘a vegetable handler and dish washer’. This job falls within light duties in physical demands. As in the main report, Ms Fakir concluded that the plaintiff is likely to remain unemployed for the rest of her life and, thus, suffer a total loss of income.

²³ CaseLines 08-89 to 08-97.

Plaintiff's counsel's further submissions

[46] Some of the aspects or the evidence relating to proof of the loss of earnings have already been dealt with above. There is no need to repeat same under this part, save as stated next.

[47] The further submissions by Ms Nyathi on behalf of the plaintiff included the following. After the plaintiff was injured in the accident, she received medical treatment at Hillbrow Community Clinic in Johannesburg. She, thereafter, was referred to Edenvale Hospital. The plaintiff's version of her injuries in terms of her statement accords with the accident report and the hospital records. She referred to the fact that the clinical notes kept by the Hillbrow Community Clinic and the RAF1 form confirm that the plaintiff sustained injuries in the form of the fracture of the 2nd and 3rd metatarsal, as well as lower backache.

Defendant's counsel's further submissions

[48] As stated above, Mr Ngomana on behalf of the RAF dedicated his defence of the plaintiff's claim to that the plaintiff's statement in terms of section 19(f) of the RAF Act does not state how the accident happened. He begrudged the lack of details in the statement. I remember telling him that the statement may be frugal in details but in the absence of a contradictory version from the RAF it cannot be faulted for brevity or skeletal nature. As stated above, I found the statement sufficient for a finding that the RAF is fully liable for the plaintiff's damages.

[49] Counsel also referred to the medical records to dispute the nature and/or extent suffered by the plaintiff. He referred to the clinical notes by the Hillbrow clinic to point out that there is only reference to the '[m]alunion of 3rd' metatarsal and nothing about the pelvic or lumbar injury.²⁴

²⁴ Application for transfer of the patient, CaseLines 03-31.

[50] He pointed out that the job of a cook the plaintiff did subsequent to the injuries fall within light to medium duties, as opined by Ms Mathebula, the occupational therapist. Mr Ngomana reacted to the fact that

11.7. Vocationally, Ms Ndebele retains the competency for light to low medium duties with reasonable accommodation...

11.8. The physical demands of her pre-accident occupation as a cooker falls within light to medium duties... ²⁵

[51] Counsel further criticised the fact that there was no collateral information furnished by the plaintiff, such as payslips. Also, that the plaintiff is able to work and not unemployable. She only has a diminished capacity.

[52] Ms Nyathi for the plaintiff pointed out that the issue of back pain is mentioned in the orthopaedic report, in the same report relied upon by the counsel for the defendant for his submissions.²⁶ The condition and/or injury is also confirmed by the X-rays, referred to above.²⁷ Considering the plaintiff's circumstances it would be difficult to get a job, the submission concludes.

Actuarial Calculations

[53] The plaintiff employed Ekhaya Risk Consultants and Actuaries for the calculation of her loss of earnings or earning capacity. Mr Robert Amos Oketch compiled and signed the report dated 17 February 2023²⁸ and later confirmed its contents under oath.²⁹

[54] The actuaries value the plaintiff's past loss at R34 327 and suggest a contingency deduction of 5% (i.e. R1 716) to amount to a figure of R32 611 for past loss, as nothing is provided in respect of the post-accident income as the plaintiff has

²⁵ Medico-Legal report by the occupational therapist, Ms Mathebula, pars 17-18, CaseLines 08-53 to 08-55.

²⁶ Medico-Legal report by the orthopaedic surgeon, Dr Ngobeni, pars 10.2, CaseLines 08-30.

²⁷ Par [36] above.

²⁸ Plaintiff's Actuarial report compiled by Ekhaya Risk Consultants and Actuaries dated 14 February 2023, CaseLines 08-78 to 08-88.

²⁹ Affidavit by Mr Robert Amos Oketch, deposed to in December 2024, CaseLines 25-3 to 25-4.

been unemployed. With regard to future loss the plaintiff's loss is calculated at R367 119 and a contingency deduction of 15% in the amount of R55 069 is suggested with the net past loss of R312 050, as there is no future post-accident income postulated. The plaintiff has been ruled by the experts to be unemployable. The two figures (R32 611 for past loss and R312 050 for future loss) means that the plaintiff's total loss is in the amount of R344 661.00.

[55] Counsel for the plaintiff urged the Court to accept as fair the contingencies suggested above, as according to her the normal contingencies are 5% for past loss and 25% for future loss.

Conclusion and costs

[56] I accept that the plaintiff has been rendered unemployable and that it is improbable she would pursue any of her pre-morbid employment opportunities to earn an income. I, also, accept the contingency deductions suggested for pre-morbid past loss and therefore would award to the plaintiff the amount of R32 611 for past loss. For future pre-morbid earnings of R367 119 I will apply a contingency deduction of 20% in the amount of R73 423, 80 to the gross amount of R367 119 with the total future loss being in the amount of R293 695, 20. Therefore, the total award for the plaintiff's loss of earning capacity is in the amount of R326 306.20. I consider this amount fair and appropriate considering the facts and evidence in this matter.

[57] Regarding future medical expenses, the plaintiff sought that the RAF be directed to furnish an undertaking in terms of section 17(4)(a) of the RAF Act for the plaintiff's proven future medical, hospital and related expense. An order will be made in this regard.

[58] Costs will follow the result at party and party scale .

Order

[59] In the premises, I grant an order in the following terms, that:

1. it is declared that the Plaintiff's claim was lodged in compliance with the Road Accident Fund Act 56 of 1996;
2. the Defendant is 100% liable to pay the Plaintiff's proven or agreed damages;
3. the issue of general damages is postponed *sine die* and will be referred to the HPCSA Tribunal for determination;
4. the Defendant shall pay the amount of **R326 306.20 (Three Hundred and Twenty Six Thousand, Three Hundred and Six Rand and Twenty Cents)** as final settlement of the Plaintiff's claim for loss of earnings and earning capacity suffered as a result of the motor vehicle accident on the 28th of July 2021;
5. the aforesaid amount shall be paid after One Hundred and Eighty (180) days of this order directly into the Trust Account of the Plaintiffs' Attorneys with the following details:
 - **NAME OF ACCOUNT : DIKE ATTORNEYS TRUST**
 - **BANK : S[...] B[...]**
 - **ACCOUNT NUMBER : 3[...]**
 - **BRANCH CODE : 0[...]**
6. should the Defendant fail to effect payment after the 180 calendar days, the capital amount referred to in paragraph 4 above will bear interest at the prescribed rate per annum calculated from the day after the 180 days up to and including the date of payment thereof;
7. the Defendant shall pay taxed or agreed costs on party and party High Court scale including all costs of obtaining expert's reports and costs of counsel for the appearance, drafting and/attendance on Scale B;
8. the Plaintiff shall serve the notice of taxation on the Defendant's Attorneys of record and such costs shall be taxed on party and party High Court scale B, and
9. the Plaintiff shall serve the order and notice of taxation on the Defendant and allow the fourteen (14) days to make payment of the taxed costs thereafter the order will be executed.

Khashane La M. Manamela

Acting Judge of the High Court

Date of Hearing: 21 January 2025

**Dates of supplementary :
submissions** 03 and 17 February 2025

Date of Judgment: 17 April 2025

Appearances:

For the Plaintiff: Ms AN Nyathi
c/o Dike Attorneys Inc, Johannesburg

For the Defendant: Mr TH Ngomana
c/o State Attorney, Pretoria