IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: 5876/2022

In the matter between:

OLGA CAPASANA Plaintiff

and

ROAD ACCIDENT FUND
[LINK: 3816132] Defendant

Neutral citation:	Capasana, O v Road Accident Fund (5876/2022)
Coram:	Van Zyl, J
Heard:	11 September 2024
Delivered:	11 March 2025
Summary:	

Damages. Motor vehicle accident.. Loss of Earnings. Payment of damages ordered.

ORDER

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1. The determination of the plaintiff's general damages is postponed to the pre-trial roll of Monday, 14 April 2025.

2. The defendant is ordered to pay the plaintiff her total loss of earnings in the amount yet to be calculated in terms of paragraph 3, *infra.*

3. The plaintiff's attorney of record is ordered to forthwith request the actuary to prepare an updated actuarial calculation in respect of the plaintiff's total loss of earnings on the same basis as set out in the present calculation, but calculated as at 1 April 2025. A 5% contingency deduction in respect of the plaintiff's total past loss of earnings and a 20% contingency deduction in respect of the plaintiff's total future loss of earnings is then to be applied.

4. Leave is granted to the plaintiff to approach Van Zyl, J in chambers with a Draft Order once the aforesaid calculation is received to obtain a further order for the payment by the defendant to the plaintiff in the amount calculated accordingly.

5. The defendant shall pay the plaintiff's taxed or agreed party and party costs, which costs shall include, but not be limited to, the following:

   5.1 The reasonable qualifying fees of the following experts:

      5.1.1 Dr IA Khan (Orthopaedic Surgeon);
      5.1.2 Ms N Ndzungu (Occupational Therapist);
      5.1.3 Mr T Kalanko (Industrial Psychologist); and
      5.1.4 Mr W Loots (Actuary).

   5.2 Counsel's fees, including, but not limited to, the costs of the drafting of heads of argument, to be taxed on scale B.

   5.3 The aforesaid costs are also to include the additional costs for obtaining the newly calculated and updated report from the actuary as well as any consequential costs incurred in order for it to be made an order of court.

JUDGMENT

Van Zyl, J

[1] The plaintiff issued summons in this matter for damages she suffered as a result of a motor vehicle accident which occurred on 8 November 2013. At the time of the accident the plaintiff was a passenger in the insured vehicle when it capsized as a result of a tyre burst.

[2] The merits of the action have been settled on the basis that the defendant has accepted 100% liability for the damages to be proven by the plaintiff. I have been advised that a court order to this effect has already been issued.

[3] In terms of the amended particulars of claim the plaintiff is claiming general damages in the amount of R2 000 000.00. Based on the actuarial calculation done by the plaintiff's actuary, Mr W Loots, the plaintiff is seeking payment for her total loss of earnings in the amount of R5 298 830.00 (with contingencies to be applied).

[4] The claim for general damages was rejected by the defendant and the plaintiff elected to refer same to the HPCSA and at the time of the hearing of this matter, a decision in respect thereof was still pending. This issue will therefore have to be postponed to the pre-trial roll.

[5] The plaintiff, Ms Olga Capasana, testified in support of her claim and the plaintiff also called Mr T Kalanko, an industrial psychologist, as a witness. The defendant closed its case without calling any witnesses. Both Mr Maliwa, on behalf of the plaintiff, and Ms Booysen, on behalf of the defendant, filed heads of argument subsequent to the presentation of evidence.

[6] The issues for determination have been summarized in paragraph 2.1 of the defendant's heads of argument as follows:

'The Court is called to adjudicate only on the Plaintiff's claim on past and future income as parties do not agree on the issues that there is no collateral evidence supporting her claim for loss of earnings/earning capacity; and on the contingencies that were applied in terms of the Plaintiff's Actuarial Report dated the 5th May 2023.'

The evidence:

Ms Olga Capasana (the plaintiff):

[7] The plaintiff testified that she was born on 1 December 1984. She is married and four children were born from the marriage, all of whom are depending on her husband and herself for financial support. At the time of the plaintiff's evidence the eldest child was 23 years old, studying at the University of the Free State, the second child was 13 years old and in Grade 7 and the twin daughters were 10 years old and in Grade 4. The plaintiff lives at Tempe Military Base in Bloemfontein with her husband and four children.

[8] The plaintiff testified that in 2001 she left school in Grade 10 due to financial constraints. At that stage her mother was selling fruit for an income. The plaintiff subsequently started to assist her and opened at a new section next to her mother, selling fruit, vegetables, chips and sweets.

[9] During late 2004/early 2005 their neighbour obtained employment for the plaintiff to work at the scullery of a restaurant called Maria Maan Restaurant, at the Waterfront, Bloemfontein. She was employed at the said restaurant until 2009.

[10] During 2009 the plaintiff was appointed as a chef/cook at Ilanga Estate, Bloemfontein. She qualified for this position because of the experience she gained at Maria Maan Restaurant. She worked at Ilanga Estate until the accident occurred on 8 November 2013. After the accident she was unable to return to work due to the injuries she suffered in the accident. During the period 2009 to 2013 the plaintiff cooked food at Ilanga Estate, catering for conferences, weddings and she also cooked at the lodge. She was responsible for the organizing of the kitchen and the kitchen staff in her section. She received a salary of R3 500.00 per month plus overtime. When she received overtime, her salary was approximately R7 000.00 to R7 500.00 per month. Some months she did not work overtime and only received her basic salary. The salary used to be paid into an account which she held at Standard Bank.

[11] The plaintiff testified that late 2023 she went to Ilanga Estate to see the owner, but she was told that the owner was overseas. She later went back to Ilanga, where she found a new manager who did not know her. The plaintiff, however, received a cell phone number of the owner. She phoned the owner, who remembered her and

promised that she will write a letter in which she will provide the plaintiff's employee number and also copies of her payslips. The plaintiff waited for two weeks without receiving any feedback from the owner. She then went to the President Hotel, Bloemfontein, where the office of the owner was. She was also the owner of the said hotel. The plaintiff found the owner, who told her that one Hester was still busy with searching in the archives for the plaintiff's information. The plaintiff later again phoned the owner. The owner responded with a WhatsApp message in which she told the plaintiff that they were still searching. The plaintiff ended up not receiving any information regarding her employment from the owner of Ilanga Estate. The plaintiff subsequently went to Standard Bank to retrieve old statements as proof of her income, but was also unable to obtain same due to the lapse of time.

[12] The plaintiff explained in layman's terms that during the accident she broke her left arm and the doctors used screws to fix her arm. However, the nerve is not working correctly and she has no power at all in her left arm. Her spine/back is also stiff and painful and she cannot stand for longer than an hour, then she has to sit down. She cannot sit for long periods of time, either. She also suffers from splitting headaches which have the result that she cannot concentrate on one thing for long periods of time. She explained that the skin on her left elbow is very thin, since, during the accident, the bone of the elbow almost showed outside her skin. When it is cold, she has to bandage her elbow and then put on a jersey over the bandage in order to suppress the pain.

[13] The plaintiff testified that she could not go back to Ilanga Estate after the accident. At Ilanga she had to carry heavy pots and pans, which she was no longer able to do subsequent to the accident and the injuries she suffered during the accident. Her general manager requested her to resign as they could not wait for her any longer to recuperate. She was not paid any money when she resigned. The plaintiff testified that she not did not resign out of her own free will, as she would not have left her employment form which se procured an income. The general manager left her no other option but to resign, so that somebody else could be appointed in her position to continue with the obligations of cook/chef.

[14] The plaintiff testified that at the time when she resigned, her left arm was completely dysfunctional. Even now, she can't carry heavy objects and her arm

tires very easily. She had to wear a cast on her arm for almost a year after the accident.

[15] The plaintiff has since been unable to obtain new employment. She has been trying to earn an income by selling some quarter loafs of bread and fat cakes. Her sister helps her with the business, which she operates from her parental home in Phahameng, Bloemfontein. Her sister carries some of the items to the primary school and sells them there. The plaintiff herself sells ice cream and ice, chips and quarter loafs of bread at home, but business is very slow. She does not sell any items at Tempe since she is not allowed to do any selling there. She also bakes and sells fruitcakes. From the selling of the aforesaid items she makes a combined profit of approximately R800.00 to R1 200.00. per month.

[16] The plaintiff testified that she consulted with Mr Kalanko, the industrial psychologist. Her evidence is that her life has changed drastically since the accident, financially and in all other respects. Prior to the accident she was able to financially provide for herself and her family, who also included her mother and her sister. Presently she cannot provide like she used to, although she is attempting to by means of the products she is selling. Her husband is now the only one in the family who is employed and he is the sole breadwinner.

[17] A bundle of documents, consisting of 6 pages, was handed in as exhibit 'A' without any objection from the defendant. One of the documents is a formal letter from Standard Bank which confirms that the plaintiff used to have a banking account at the said bank, which account was opened on 21 July 2005 and closed on 15 July 2015. The bundle also consists of two affidavits from formed co-employees of the plaintiff from Ilanga Estate. The one employee confirmed that she was working as a bartender at Ilanga Estate and when she joined Ilanga Estate, she found the plaintiff working there as a cook/chef. That was in 2009 up to the time when the plaintiff was involved in the motor vehicle accident, where after the plaintiff did not return to work at Ilanga Estate. The second affidavit is also by a former co-employee of the plaintiff who used to work at Ilanga Estate as a gardener from the year 2006 up to the year 2020. He confirmed that he knows the plaintiff, since she was also an employee at Ilanga Estate where she worked as a cook in the kitchen. The ID documents of the two former co-employees are also attached to the bundle

of documents. The plaintiff confirmed the identity of the two former co-employees and also confirmed the correctness of the contents of their affidavits.

Cross-examination of the plaintiff:

[18] During cross-examination the plaintiff testified that she received a monthly salary at Maria Maan Restaurant of R4 200.00. At Ilanga Estate she received overtime payment the better part of the year, business was quiet only during winter time. However, during the Macufe Festival, Easter time, Christmas and the rest of the year it was very busy and she often had to work overtime.

[19] On a question on behalf of the defendant, the plaintiff testified that she has no payslips available, as more than ten years have lapsed since her employment. She did not keep her payslips, as she did not know that she will be needing them for purposes of her present claim against the defendant. Her efforts to obtain payslips and proof of her employment from the owner of Ilanga Estate were also in vain.

Re-examination of plaintiff:

[20] During re-examination the plaintiff again testified that she did not leave Ilanga Estate voluntarily. She was forced to resign, since the employer could no longer wait for her to recuperate from her injuries.

Mr T Kalanko (Industrial Psychologist):

[21] Mr Kalanko testified in court with reference to his medico-legal, dated 3 May 2023, regarding an assessment he made of the plaintiff on 30 March 2023. His report was handed in as exhibit 'B'.

[22] He referred to the following information obtained from the medico-legal RAF4 report by Dr Khan, the orthopaedic surgeon, who made the following diagnosis:

- Malunited left distal humurus fracture.
- Severe degloving injury to left elbow.
- Radial nerve neuropraxia.

- The patient has reached maximum medical improvement.
- Whole person impairment is 15%.
- The injuries have resulted in severe long-term impairment or loss of a body function and permanent serious disfigurement.

[23] Mr Kalanko also referred to the following information obtained from the report of Dr Khan:

- The claimant presents now with complaints of pain in the left arm and she regularly experiences cramps in the left arm and general weakness in the left arm.
- She is unable to fully use her left arm.
- On assessment there is loss of some movements in left shoulder.
- In her present state of left upper limb, she will only be able to perform light duties in future.
- Left elbow has a high chance of developing post-trauma osteoarthritis secondary to malunion of left distal humurus that has changed orientation or articular surfaces.
- Scars and loss of sensation are permanent.

[24] In his evidence Mr Kalanko also referred to extracts from the report of Ms N Ndzungu, the occupational therapist, who referred, *inter alia*, to the fact that at the time of the accident, the plaintiff was employed at Ilanga Estate as a chef and after the accident, she was unable to continue with her work due to accident-related limitations. Mr Kalanko referred to the following conclusion:

> 'In conclusion, the claimant's vocational prospects have been negatively affected and have been curtailed and will continue to remain limited into the future due to her physical deficits. If taken all of the above into consideration, level of education, work history, as well as the findings of the Orthopaedic Surgeon, the writer is of the opinion that for all practical purposes, the claimant is a lesser competitor in the open labour market.'

[25] Mr Kalanko referred to the plaintiff's previous employment at Maria Maan Restaurant until 2009 where the plaintiff earned approximately R4 000.00 per month. He also referred to the plaintiff's employment at Ilanga Estate from 2009 to

the date of accident where the plaintiff earned an average monthly income of R6 250.00.

[26] Mr Kalanko further referred to a Table in his report eflecting the lower quartile, median range and upper quartile of suggested earnings assumptions in the non-corporate sector of R. Koch, 2013. He further recorded the following notes:

> '[27] The claimant was unable to provide proof of income or contact details for her employment. Deference is thus given to the factual information in regard to her employment and earnings at the time of the accident in question.
>
> [28] The validation of the claimant's actual remuneration at the time of the accident was not possible. Therefore, considering the level of skill required, responsibilities and duties assigned as well as overall competencies, it is noted that the claimant's employment was semi-skilled in nature. Thus, it is recommended that the annual earnings falling within the median range and upper quartile for semi-skilled workers as per the suggested earnings assumptions for non-corporate workers noted in the quantum yearbook (R. Koch, 2013) as illustrated in Table 7 above, be used for quantification purposes."

[27] In his report, supported by his evidence, Mr Kalanko dealt with the different employment scenarios of the plaintiff. In this regard he recorded the following:

> **'Employed: pre-morbid (had an accident not occurred)**
>
> [32] At the time of the accident, Ms Capasana was employed as a chef for Ilanga Estate where she earned R72 000.00 per annum. However, due to the lack of financial information, deference is given to the factual information.
>
> [33] Based on the nature of her employment, it is evident that the claimant relied on her physical capabilities for gainful employment as indicated in her pre-accident duties in Table 5 above.
>
> [34] Considering the claimant's vocational exposure and her level of education, it is probable that the claimant would have either maintained her pre-accident employment or continued to be exposed to similar employment endeavours

(semi-skilled) in the open labour market, until the normal retirement age. Writer notes the earnings as per *Analytico* for Cooks between ages 45 to 49 as follows: **25th percentile: R67 893, 50th percentile: R119 320; and 75th percentile: R248 857** (see Table 8 below).

[35] It is likely that the claimant would have continued working in her pre-accident employment and experience continued upward progression and career growth. She would have thus likely reached her career ceiling earning within the 75th percentile for Cooks as per *Analytico*, by the approximate age of 45. These earnings are consistent with semi-skilled earnings for non-corporate workers within the upper quartile as noted below in Table 9.

[36] It is anticipated that workers generally retire at the age of 65. Therefore, it is postulated that the most probable scenario for retirement for the claimant would have been at a stipulated retirement age of 65 years, depending on her health, motivation and retirement policy of her employer at the time.

[37] **IT IS PROBABLE THAT MS CAPASANA WOULD HAVE CONTINUED WORKING IN HER PRE-ACCIDENT EMPLOYMENT OR SECURED SIMILAR EMPLOYMENT RELATED TO HER EDUCATION EXPERIENCE AND GENERAL SKILLS AND ABILITIES UNTIL THE NORMAL RETIREMENT AGE.**

Unemployed: post-morbid (situation due to the accident):

[38] Following the accident in question, Ms Capasana could not resume her pre-accident employment, owing to the limitations imposed on her as a result of the accident in question. Although she attempted being a vendor post-accident, she was unsuccessful and has not secured alternative employment. She remains unemployed to date. Her challenges and pains are comprehensively discussed in the injuries and complaints section above. According to Dr Khan (Orthopaedic Surgeon), the injuries have resulted in **severe long-term impairment or loss of a bodily function and permanent serious disfigurement**.

[39] When one considers the claimant's skills and occupational experiences, they lie within the unskilled/semi-skilled sector and such sector generally requires a worker to be physically fit as they are physically demanding in nature. Ms

Ndzungu (Occupational Therapist) noted **that prior to the accident in question the claimant's jobs as a chef which is within light demands of work and demands standing, lifting and carrying objects and bilateral hand functioning.** Ms Ndzungu further submitted that **after assessing and comparing her pre-accident versus post-accident state, the writer is of the opinion that she will be unable to cope with any highly physically demanding duties in a variety of occupations during this post-accident period. She is better suited for sedentary or office-based work, entailing less repetitive upper limb movements, avoiding elevated arm work and lifting or carrying of heavy objects.** Thus, taking into account that the claimant is now limited with regards to her limb functionality, *it is opined that she will not be able to return to her pre-accident employment, nor secure alternative employment within the unskilled/semi-skilled sector.* This is evidenced by her inability to return to her pre-accident employment or secure gainful employment almost ten years' post-accident. (My emphasis)

. . .

[41] Therefore, the writer surmises that it is evident that the claimant's occupational functioning has been curtailed and, she can no longer perform in her pre-accident capacity. Ms Ndzungu notes that she is currently suited for sedentary work; however, the claimant does not have the necessary experience or qualification to undertake such work. The accident has thus rendered the claimant less competitive and she will likely struggle to secure alternative employment. *Ms Capasana will likely remain unemployed for the remainder of her natural life.* (My emphasis)

[42] The writer submits that the granting of contingencies remains the prerogative of the court and a matter of negotiation by the legal experts.

[43] **IT IS OPINED THAT THE CLAIMANT HAS BEEN RENDERED A VULNERABLE COMPETITOR IN THE OPEN LABOUR MARKET, THEREFORE SHE MAY NOT BE ABLE TO RE-ENTER INTO EMPLOYMENT LABOUR MARKET**.'

[28] At paragraph [45] of his report Mr Kalanko opined that the plaintiff suffered past loss of earnings. After the accident she was admitted to hospital for two months. Thereafter, she was discharged and continued her recuperation and rehabilitation

at her residence for a year and a half. From the report of Dr Khan it is evident that it took a year for the radial nerve to recover.

[29] In respect of the plaintiff's future loss of earnings, Mr Kalanko concluded as follows at paragraphs [46] and [47] of his report:

> '[46] The calculations done in this report are not an accurate depiction of the claimant's situation, rather they serve as an example indicating the change in the available income that the claimant has pre-morbid and post-morbid. These calculations are simply used as a guideline in establishing the claimant's ability to provide support for the family both in daily expenses as well as child care if there are dependents. For actual income and loss calculations, the writer defers to an actuarial report.
>
> [47] It is assumed that the accident in question has affected the claimant's overall functioning, which will likely result in future loss of income as she is not able to compete on par with her healthier uninjured counterparts in the open labour market. Owing to the seriousness and nature of the injuries sustained, she will be regarded a vulnerable competitor for the remainder of her career. **It is also noted that she will likely remain unemployed for the rest of her life**. The difference between her pre-accident and post-accident earnings potential must be used when calculating the future loss of earnings. ...

[30] In his evidence Mr Kalanko testified that what the plaintiff is presently doing by selling the items like she testified, is not sustainable. She is in constant pain and her residual capacity is not on level to her pre-morbid capacity. The plaintiff is struggling to persevere with the selling of the items and she can in any event not do it independently without the assistance of her sister.

[31] Only one question was posed to Mr Kalanko in cross-examination. He was only asked whether he had any collateral information regarding the past career and past income of the plaintiff, to which he responded in the negative and testified that he relied on what the plaintiff told him.

Actuarial Report:

[32] Mr W Loots, an actuary, prepared an actuarial report. The said report is dated 5 May 2023. The loss of earnings of the plaintiff was calculated as at 1 July 2023. The actuary based his report and calculations on the report of Mr Kalanko. No evidence was presented by the defendant to gainsay the report and evidence of Mr Kalanko. With regard to the post-morbid earnings of the plaintiff, the actuary stated in his report that the plaintiff has remained unemployed since the accident and is in Mr Kalanko`s opinion unemployable in future for the reasons stated in his report and therefore he (the actuary) assumed nil earnings. Mr Loots consequently calculated the plaintiff loss of earnings to be the following (calculated without any contingency deductions):

(a)	Past Earnings pre-morbid	R1 207 979
(b)	Future Earnings pre-morbid	R4 090 851
(c)	Past Earnings post-morbid	0
(d)	Future Earnings post-morbid	0
Total Loss of Earnings		**R5 298 830**

[33] Ms Booysen submitted that since no proof of the plaintiff's past employment and income have been obtained, no collateral evidence is available in support of the plaintiff's version in this regard. She submitted that the plaintiff is therefore not entitled to any past loss of earnings. In respect of pre-morbid future loss of earnings Ms Booysen submitted that a 45% contingency deduction would be appropriate and in respect of post-morbid future loss of earnings a contingency deduction of 60% would be fair and reasonable. Her submission in support of these high contingencies is based on the absence of collateral evidence.

The absence of collateral evidence:

[34] There is not a complete lack of collateral evidence, considering the affidavits of the two former co-employees of the plaintiff. The plaintiff was also not cross-examined on her evidence regarding her past career and her past income. Her evidence in this regard stands completely undisputed. In any event, the trite principle is that where a plaintiff has proved some patrimonial loss but there is insufficient evidence (which is, in my view, not the case in the present matter) to

enable (precise) assessment, the court may in some instances estimate damages on the best available evidence. In *De Klerk v Absa Bank Ltd* 2003 (4) SA 315 (SCA) at 333H this principle was enunciated on as follows:

> 'There have been numerous decisions in which our Courts have said that a Court will come to a plaintiff's aid in a case of uncertainty and make an estimate in his favour, provided he has led the best evidence available - see, for instance, *Enslin v Meyer* 1960 (4) SA 520 (T) at 523F - 524A.'

See also *Dube v Road Accident Fund* (2015-03387) [2024] ZAGPJHC (6 March 2024)

[35] The plaintiff gave detailed evidence as to how she attempted on numerous occasions to obtain proof regarding her employment and her income at Ilanga Estate, but without success. In the circumstances of this case and considering what I also stated in the previous paragraph, there is, in my view, no basis upon which the plaintiff's evidence in this regard is not to be accepted and consequently also so the actuarial calculation which is based on the said evidence. I consequently find that the plaintiff duly proved her total past loss of earnings and total future loss of earnings.

Contingency deductions:

[36] The determination of a suitable contingency deduction falls within the discretion of the court.

[37] Contingencies discount the vicissitudes of life and it is a method used to arrive at fair and reasonable compensation. The question of contingencies was dealt with in *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A) at 113G and 116G to 117D:

> 'Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.
>
> . . .

Where the method of actuarial computation is adopted, it does not mean that the trial Judge is "tied down by inexorable actuarial calculations". He has "a large discretion to award what he considers right" (*per* HOLMES JA in *Legal Assurance Co Ltd v Botes* 1963 (1) SA 608 (A) at 614F). One of the elements in exercising that discretion is the making of a discount for "contingencies" or the "vicissitudes of life". These include such matters as the possibility that the plaintiff may in the result have less than a "normal" expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case. See *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) at 114 - 5. The rate of the discount cannot of course be assessed on any logical basis: the assessment must be largely arbitrary and must depend upon the trial Judge's impression of the case.

. . .

It is, however, erroneous to regard the fortunes of life as being always adverse: they may be favourable. In dealing with the question of contingencies, WINDEYER J said in the Australian case of *Bresatz v Przibilla* (1962) 36 ALJR 212 (HCA) at 213:

> "It is a mistake to suppose that it necessarily involves a 'scaling down'. What it involves depends, not on arithmetic, but on considering what the future may have held for the particular individual concerned... (The) generalisation that there must be a 'scaling down' for contingencies seems mistaken. All 'contingencies' are not adverse: All 'vicissitudes' are not harmful. A particular plaintiff might have had prospects or chances of advancement and increasingly remunerative employment. Why count the possible buffets and ignore the rewards of fortune? Each case depends upon its own facts. In some it may seem that the chance of good fortune might have balanced or even outweighed the risk of bad.'"

[38] In *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) at 115C – D the court held that it has a discretion in allowing contingencies. The said discretion must be based upon the circumstances of the particular case.

[39] In *Dlamini v Road Accident Fund* (59188/13) [2015] ZAGPPHC 646 (3 September 2015) at paras 30 – 31 the court dealt with and applied some guidelines referred to by Koch in *The Quantum Year Book*:

'[30] Koch refers to the following as some of the guidelines as regards contingencies:

"Normal contingencies" as deductions of 5% for past loss and 15% for future loss.
"Sliding scale": 1/2 % per year to retirement age, i.e. 25% for a child, 20% for a youth and 10% in the middle age and relies on Goodall v President Insurance 1978 (1) SA 389.
"Differential contingencies" are commonly applied, that is to say one percentage applied to earnings but for the accident, and a different percentage to earnings having regard to the accident.'

[40] In my view and considering the findings I have already made, there is no reason why a substantial higher percentage of contingency is to be deducted from the plaintiff's loss of earnings. I consider a contingency deduction of 5% in respect of the plaintiff's total past loss of earnings and a contingency deduction in respect of the plaintiff's total future loss of earnings of 20%, to be fair and reasonable in the circumstances of this matter.

[41] As mentioned earlier, the calculation date of the actuary was as at 1 July 2023. The calculation is consequently to be updated. The actuary is therefore to be requested to prepare an updated actuarial calculation in respect of the plaintiff's total loss of earnings on the same basis as set out in the present calculation, but calculated as at 1 April 2025. A 5% contingency in respect of the plaintiff's total past loss of income and a 20% contingency in respect of the plaintiff's total future loss of income is then to be applied. Once the calculation is available, I am to be approached in chambers with a Draft Order to make an order accordingly.

Costs:

[42] There is no reason why costs should not follow the outcome of the case.

[43] In view of the totality of the facts to be considered in terms of Uniform Rule 67(A)(3)(b), as well as the facts and circumstances of the present matter, I consider scale B to be the appropriate scale for counsel's fees.

Order:

[44] The following order is made:

1. The determination of the plaintiff's general damages is postponed to the pre-trial roll of Monday, 14 April 2025.

2. The defendant is ordered to pay the plaintiff her total loss of earnings in the amount yet to be calculated in terms of paragraph 3, *infra.*

3. The plaintiff's attorney of record is ordered to forthwith request the actuary to prepare an updated actuarial calculation in respect of the plaintiff's total loss of earnings on the same basis as set out in the present calculation, but calculated as at 1 April 2025. A 5% contingency deduction in respect of the plaintiff's total past loss of earnings and a 20% contingency deduction in respect of the plaintiff's total future loss of earnings is then to be applied.

4. Leave is granted to the plaintiff to approach Van Zyl, J in chambers with a Draft Order once the aforesaid calculation is received to obtain a further order for the payment by the defendant to the plaintiff in the amount calculated accordingly.

5. The defendant shall pay the plaintiff's taxed or agreed party and party costs, which costs shall include, but not be limited to, the following:

    5.1 The reasonable qualifying fees of the following experts:

        5.1.1 Dr IA Khan (Orthopaedic Surgeon);
        5.1.2 Ms N Ndzungu (Occupational Therapist);
        5.1.3 Mr T Kalanko (Industrial Psychologist); and
        5.1.4 Mr W Loots (Actuary).

    5.2 Counsel's fees, including, but not limited to, the costs of the drafting of heads of argument, to be taxed on scale B.

5.3 The aforesaid costs are also to include the additional costs for obtaining the newly calculated and updated report from the actuary as well as any consequential costs incurred in order for it to be made an order of court.

[redacted]

C. VAN ZYL, J

Appearances:

For the Plaintiff:	Adv S H Maliwa
Instructed by:	Z Xakwe Attorneys Inc. C/o Gcasamba Attorneys BLOEMFONTEIN E-mail: gcasambainc@gmail.com
For the Defendant:	Ms M Booysen
Instructed by:	Office of the State Attorney BLOEMFONTEIN E-mail: meganb@raf.co.za