

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

CASE NO: 38039/2013

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

05 June 2025

K. La M Manamela

In the matter between:

MABOTE, MALEHLOHONOLO SARAH

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 05 June 2025.

JUDGMENT

KHASHANE MANAMELA, AJ

Introduction

[1] The plaintiff, Ms Mmalehlohonolo Sarah Mabote, born on 30 November 1977, was injured in a motor vehicle accident which occurred on 17 April 2010 at approximately 14h00. She was a passenger in a van or bakkie motor vehicle with registration details J[...] ('the first insured vehicle') which collided with another motor vehicle with registration details W[...] ('the second insured vehicle') on Rhodes Avenue, Nigel, Johannesburg.

[2] As a result of the accident, the plaintiff sustained injuries and/or has *sequelae* as follows: (a) head injury; (b) painful back and neck; (c) lacerations on the forehead; (d) fracture of tibia and fibula, and (e) abrasions on the right hand. According to the plaintiff, she consequently, suffered damages, due to the injuries and their *sequelae*, as stated below.

[3] Summons was issued on behalf of the plaintiff on 10 October 2013 against the Road Accident Fund ('the RAF'), the defendant herein, in accordance with the provisions of the Road Accident Fund Act 56 of 1996 ('the RAF Act'). The plaintiff claims compensation for the damages she allegedly suffered due to the accident. She attributes the negligent driving of the driver of the second insured vehicle to be the sole cause of the accident. In her particulars of claim to the summons the plaintiff reflected the following heads of damages: (a) future medical and hospital expenses; (b) future loss of earnings and/or earning capacity; (c) general damages; (d) past medical expenses, and (e) past loss of earnings. The action was defended by the RAF and, ultimately, the matter ripened for a trial.

[4] The matter was set down for trial on 27 February 2025. Mr KT Ntsewa appeared for the plaintiff and Mr M Madasele appeared for the RAF. The trial commenced with a preliminary issue by way of the plaintiff's proposed amendment. The plaintiff had delivered a notice to amend her plaintiff's particulars of claim, about seven days before the trial, on 18 February 2025, but had effected the amendment

before expiry of the ten-day period allowed by Uniform Rule 28(2)¹ of this Court for objections to proposed amendments. The RAF's objection was raised, primarily, to address the non-compliance or irregularity and unfairness of the plaintiff's conduct in this regard. Mr Ntsewa for the plaintiff tried his earnest to explain the late delivery of the notice and premature amendment. His explanation included that the proposed amendment was to adjust the figures stated in the particulars of claim to those appearing in the latest actuarial calculations received by the plaintiff on 21 January 2025.² Although, it appeared that the plaintiff through her attorneys may have slightly delayed on the amendment, I considered the delay not inordinate or unreasonable; that the RAF has indicated no prejudice of a nature and extent as would warrant the rejection of the proposed amendment. I ruled - extemporaneously – that the amendment is allowed. Also, the RAF is to be held 100% liable for the plaintiff's proven and/or agreed damages.

[5] The trial proceeded on the issues relating to quantum, specifically in relation to loss of earnings and/or earning capacity, and future medical and hospital expenses. The issues relating to general damages are to be postponed *sine die*, as the RAF has not made an election regarding the serious nature of the plaintiff's injuries. After listening to closing oral argument or submissions by counsel, I reserved this judgment.

Brief background

[6] For a proper context to the matter, a brief narration of the issues in the background of the matter is necessary. This will be on the basis of the facts which are common cause between the parties, or not disputed.

¹ Rule 28 of the Uniform Rules reads in the material part: '(1) Any party desiring to amend any pleading or document other than a sworn statement, filed in connection with any proceedings, shall notify all other parties of his intention to amend and shall furnish particulars of the amendment.

(2) The notice referred to in subrule (1) shall state that unless written objection to the proposed amendment is delivered within 10 days of delivery of the notice, the amendment will be effected.' [underlining added]

² Munro Forensic Actuaries report, dated 15 January 2025, CaseLines ('CL') 014-1 to 014-5.

[7] As stated above, the plaintiff was born on 30 November 1977 and was injured in the motor vehicle accident on 17 April 2010, while being ferried as a passenger. She was about 33 years old at the time of the accident and about 48 years of age at the time of trial.

[8] The plaintiff's highest academic qualification is grade 8 (although Dr MEC Kalane, the clinical neuropsychologist stated it as grade 10, but counsel clarified this to refer to Form 1 (i.e. grade 8)) obtained from Lebohang Bongani Secondary School in 1996. According to the medical reports the plaintiff's attributed her early school termination to financial constraints. But, the industrial psychologist lamented the absence of school reports, as would appear below.

[9] Following the accident the plaintiff was admitted at the Heidelberg hospital where her Glasgow Coma Scale or GCS was recorded at 15/15 upon admission. Three days later, on 20 April 2010, she was transferred to Natalspruit hospital. She was hospitalised for a period of about 9 weeks following the accident.

[10] The plaintiff's employment history is recorded as follows by the occupational therapist.³ After her grade 8 in 1996, the plaintiff obtained work as a farm worker which she lost through retrenchment. For a period of about six months in 1999, she was a general worker for the municipality until her contract ended. Then there is a gap for a part of 1999 of about six months until 2000. Between 2001 and 2002, the plaintiff was a cleaner at Dunson Park. Again there is a gap for the years 2003 to 2004. In 2005, it is reported that the plaintiff was again a general worker (construction related) for the municipality until her contract ended. This is followed by another gap for the years 2006 to 2009. Then, for the years 2010 to 2011 the plaintiff worked for a construction company directing trucks until she quit for accident related difficulties, it is reported. But, in some reports the flag-waving position at Group 5 Construction ('Group 5') is stated as for the period 2012 to 2013 at R1 500 per week and is stated as having terminated due to the ending of the contract.⁴ But, the issues relating to her remuneration do not seem to correlate with what the work history stated above. Her earnings from 2000 to 2010 range from R600 per month through

³ Pars [22]-[24] below, on further details from the occupational therapist's report.

⁴ Report of the Occupational Therapist ('OT Report') par 6.1, CL 013-87.

R3 500 per month to R1 500 per week (i.e. R6 000 per month).⁵ The latter peak in the plaintiffs income is attributed to her position as a flag lady at Group 5 between 2012 and 2013. She, reportedly, lost this job when a contract ended. In some of the reports it is stated that the plaintiff was unemployed at the time of the accident. She has been unemployed since 2012. The plaintiff has no formal or informal skills training or any vocational training.

Evidence and submissions (discussed)

General

[11] The plaintiff underwent assessment by medical experts retained on her behalf. The experts, subsequently, filed expert reports with regard to the injuries sustained by the plaintiff and their *sequelae*.

[12] The plaintiff's injuries in the medical reports are stated as follows: (a) mild head injury with loss of consciousness; (b) collarbone fracture; (c) ulnar/humerus fracture; (d) fractured right radius; (e) abrasions and lacerations on right arm and hand; (f) lacerations on forehead and the occipito-parietal region. No reports were filed on behalf of the RAF nor did the RAF tender oral evidence of any witness. Actuarial calculations - quantifying the plaintiff's loss of earnings or earning capacity - were filed on behalf of the plaintiff, as alluded to above.

[13] Mr Ntsewa for the plaintiff, at the commencement of the trial, moved an application on behalf of the plaintiff in terms of Rule 38(2) of the Uniform Rules to proceed on the basis of the medico-legal reports filed by the plaintiff and their contents confirmed under oath by the experts. The RAF did not object to the application and, thus, it was granted.

Independent Medical Assessor

[14] Dr N Mogoru, an independent medical assessor, was retained on behalf of the plaintiff. He assessed the plaintiff on 20 April 2016, just over 4 years from the date of

⁵ OT Report par 6.1, CL 013-86 to 013-87.

the accident. He confirmed that the plaintiff has suffered a mild traumatic brain injury with loss of consciousness and the fractures of the right ulna and radius. The medical assessor, further, noted that the right radius has healed. In addition, the plaintiff is reported to have abrasions with scars considered cosmetically unsightly (albeit with deference to the plastic and reconstructive surgeon); memory problems due to neuro-physical injuries, as specified in this expert's report; right collarbone protrusion, and persistent pain in the right arm.

[15] Regarding the orthopaedic injuries it was noted that the orthopaedic hardware was still *in situ*. Her whole person impairment ('WPI') was scored by Dr Mogoru at 14%, but it is opined that the plaintiff's injuries will not lead to permanent disabilities.

Specialist Neurosurgeon

[16] The plaintiff was assessed by Prof P Lekgwara, a specialist neurosurgeon, on 7 February 2023, about 12 years and 10 months from the date of the accident. The opinions expressed by Prof Lekgwara, regarding the plaintiff included the following.

[17] The plaintiff suffered a mild traumatic brain injury (grade 3 concussion), and has notable neuropsychological problems. She suffers from post-concussion headaches, as despite it being over 12 years since the plaintiff was involved in the accident (at the date of the assessment by Prof Lekgwara) and, therefore, spontaneous resolution of the headaches is not expected. Prof Lekgwara scored the plaintiff's WPI at 23%.

Plastic and Reconstructive Surgeon

[18] Dr K Segwapa, a plastic and reconstructive surgeon, also assessed the plaintiff on 7 February 2023 and, thereafter, expressed opinions including what appears next. The plaintiff suffered excessively and continue to suffer due to the accident. Although, she has reached maximum medical improvement (or MMI) since the accident, she is still severely permanently disfigured, as she has permanent scars whose location and the fact that she is a woman, raises her WPI to 12% (only for scarring), according to Dr Segwapa. The plaintiff's case in this regard is more

levant to general damages, the determination of which is to be deferred, as stated above.

Clinical Neuropsychologist

[19] The plaintiff was also assessed by Dr MEC Kalane, a clinical neuropsychologist, also on 7 February 2023, regarding the impact of her head injury. Dr Kalane made findings and expressed opinions which included what appears next.

[20] The plaintiff suffered a significant head injury (stated as moderate to severe head injury) borne by several factors, as follows: (a) direct impact sustained to the forehead, face and back of her head; (b) reported loss of consciousness, which despite the GCS score of 15/15, which it is opined, does not negate the seriousness of her injury, and (c) post-concussive complaints.

[21] Dr Kalane, further, interpreted the plaintiff's assessment results to be indicative of limitations in simple attention, working memory, processing speed, verbal memory, visual problem-solving, and overall executive functioning. These cognitive changes, the clinical neuropsychologist opined, are likely due to the head injury *sequelae*, especially given the absence of any pre-morbid cognitive challenges on the part of the plaintiff, and the presence of emotional disturbances following the accident. Also, that the emotional disturbances and neurocognitive decline are likely to affect the plaintiff's occupational functioning.

Occupational Therapist

[22] Ms MOL Mashishi, an occupational therapist, assessed the plaintiff on 8 February 2023. Her views and opinions in relation to the plaintiff include what follows next. The plaintiff, reportedly, experiences difficulty carrying heavy objects and this triggers pain in the right upper limb. Other challenges reported by the plaintiff to the occupational therapist are as follows: (a) poor vision; (b) forgetfulness; (c) pain in right forearm when doing strenuous work; (d) headaches; (e) pain and swelling in right knee and leg, and (f) pain in the back region. This expert concluded that, the plaintiff experience is a limitation in the execution of instrumental activities of daily living, due to injuries sustained from the accident.

[23] Regarding the plaintiff's work potential, Ms Mashishi noted the academic qualifications of the plaintiff and the fact that the plaintiff has no formal or informal skills training. She also had regard to the plaintiff's work history. The occupational therapist attributed the plaintiff's inability to maintain the post-morbid position of a flag-lady to the ongoing symptomology in her right arm. She is thereby rendered a vulnerable competitor in her field of operation when compared to her uninjured counterparts. The expert is of the opinion that the plaintiff presented with the residual work capacity to actively engage in sedentary to light strength requirement workloads. But these, among others, should exclude work of a repetitive nature or sustained above shoulder or overhead level reach action. She is therefore suitable for occupations operating in an accommodative work environment in the open labour market with provisions of reasonable accommodation for her cognitive and physical deficits. Her residual capacity indicates that she is functioning at a diminished level of physical functioning when compared to her pre-accident level of functioning. Her educational and vocational history indicates that she was always reliant on her physical strength in order to secure a viable employment. Therefore, her vocational potential has been compromised by accident injuries. She is restricted to sedentary work. As a result the plaintiff is expected to experience prolonged periods of unemployment, although the occupational therapist defers to the opinion of the industrial psychologist on the plaintiff's loss of earnings.

[24] Counsel for the plaintiff, submitted that the plaintiff has been sympathetically employed post-morbid. And at 38 years of age she has no prospects.

Industrial Psychologist

[25] Ms Mirriam Magethi, an industrial psychologist, assessed the plaintiff on 5 December 2024 and found and/or opined as follows. The plaintiff was unable to return to work as a construction worker. She was replaced at all places she worked following her recuperation and return to work. She lives with pain and walks with an antalgic gait. I have to point out here that Prof Lekgwara had reported the plaintiff's

gait as normal, after he examined her, almost two years earlier, on 7 February 2023.⁶

[26] Ms Magethi agrees with Ms Mashishi, the occupational therapist, that the plaintiff has the following deficits or challenges: (a) forgetfulness; (b) concentration; (c) climbing stairs; (d) walking for long distances; (e) lifting heavy objects; (f) standing for long, and (g) walking as speedily and efficiently as she has to or wants to. Ms Magethi, further, is of the view that the plaintiff is unfit to continue working as a construction worker and to compete with her able-bodied peers in the intensive labour and physical strength category, her probable career area.

[27] The plaintiff's highest academic attainment is grade 8 and, thus, she relies solely on her physical strength. She cannot do sedentary work, given her lack of the requisite skills in this area, as she has only being exposed to heavy duty job construction work. According to the industrial psychologist, the plaintiff would retire earlier than the retirement age of 60 in her current condition, in the event that she secures sympathetic employment.

[28] Post-morbid, the plaintiff was able to secure temporary jobs occasionally, but was unable to sustain them due to her persistent pain and inability to carry out her work due to her ulnar condition. Also, employment prospects are limited by the plaintiff's advanced age at 48 years or the likelihood of the plaintiff competing successfully with young and able-bodied peers. But, even if the plaintiff were to find employment, she will not be able to compete with other able-bodied peers, given her age and experience.

[29] Although, the plaintiff was unemployed at the time of the accident, she reportedly was awaiting to commence working as a general worker at Group 5. She, reportedly, was going to be remunerated at R6 000 per month and it was a two year employment contract. She could not do so due to the accident. In August 2010 she, reportedly, secured employment on a contract basis as general worker at Knight Construction and Plant CC, which company was a subcontractor to Group 5. Upon

⁶ Report of the *Specialist Neurosurgeon* par B, CL 013-26.

ending of the latter employment, the plaintiff has since been unemployed. But, the industrial psychologist could not obtain any collateral information from the plaintiff and, also, tried her earnest to contact Group 5 in November 2024 from telephone numbers she had obtained from the internet, but in vain. When the industrial psychologist contacted the plaintiff, in November 2024, she confirmed that she has been unemployed since 2011. I must point out that this is contrary to her employment as a 'flag lady' at Group 5, as reported by the occupational therapist.⁷

Actuarial calculations

[30] Munro Forensic Actuaries calculated the plaintiff's potential loss of earnings in terms of which the plaintiff is projected to retire at the age of 65. The information underlying the calculation is set out in the report.⁸ The RAF Amendment Act cap is reported to have no bearing on the calculation.

[31] The plaintiff's total loss of earnings is estimated to be in the total amount of R1 969 835 as at 1 February 2025. This amount is calculated as follows:

[31.1] past loss: for an estimated plaintiff's pre-morbid income of R1 039 300, a contingency deduction at 5% is effected to arrive at R987 335, whilst no deduction is made to the post-morbid income of R33 900. The result when deducting R33 900 from R987 335 is the amount of R 953 435 for the plaintiff's past loss.

[31.2] future loss: for an estimated pre-morbid income of R1 548 000, a 15% contingency deduction is effected to arrive at pre-morbid net loss of R1 315 800. On the estimated post-morbid income of R399 200, a 25% contingency deduction is effected to arrive at a post-morbid net loss of R299 400. The result when deducting R299 400 from R1 315 800 is the amount of R1 016 400 for the plaintiff's future loss.

[31.3] when R 953 435 (for past loss) is added to R1 016 400 (for future loss), the result is the amount of R 1 969 835 for the plaintiff's estimated total loss.

⁷ OT Report par 6.1 at 013-87. See also par [10] above.

⁸ Actuarial report par 3, CL 014-2.

[32] Mr Ntsewa for the plaintiff fully associate with the above calculation, save for a, rather tentative, minor concession regarding the past loss. He conceded that there was plenty of interruptions in the plaintiff's employment history and for this he would go along with a further 10% deduction to the amount of R 953 435 for past loss.

[33] Mr M Madasele for the RAF highlighted the apparent contradictions in the medical reports filed on behalf of the plaintiff. His submissions included the following in this regard. The plaintiff was able to acquire or secure employment after the accident according to the expert evidence. Counsel, further, highlighted the five year gap in unemployment in 2005.⁹ He also lamented the lack of collateral information. Counsel, further, argued that there is no past loss, when consideration is given to the fact that the plaintiff had been employed on contract basis. With regard to the future loss, counsel expressed no problem with the estimations, save that he submitted that a contingency deduction of 45% be effected to the pre-morbid estimated future income of R1 548 000.

Conclusion and costs

[34] I accept that the plaintiff sustained injuries from the accident, which took place over 15 years ago, on 17 April 2010. I also accept that the plaintiff suffers from cognitive and physical deficits arising from the accident affecting her ability and capacity to be employed in her pre-morbid type of work and sustain such employment as she did pre-morbidly. I can only wonder why when summons was issued promptly in 2013 the plaintiff was only medically assessed for her claim, save for the so-called independent medical assessor, only in February 2023. But, as the medical experts did not express a view on the relevance of this to (or its bearing on) the plaintiff's injuries and/or their *sequelae*, nothing would turn on this.

[35] Considering the facts and evidence in this matter, some of which appear above, I would make an award in the total amount of R1 451 280, calculated as follows:

⁹ Par [10] above, where it is stated that the employment stint in 2005 is followed by another gap for the years 2006 to 2009.

[35.1] past loss: for the estimated plaintiff's pre-morbid income of R1 039 300, I will effect a contingency deduction at 40% (significantly, due to the fact that the plaintiff, pre-morbid, had contract-based or non-continuous employment, which cannot be fully discounted as a probability for her post-morbid scenario) to arrive at R623 580, whilst I will make no deduction to the limited post-morbid income of R33 900. The result when deducting R33 900 from R623 580 is the amount of R589 680 for the plaintiff's past loss.

[35.2] future loss: for an estimated pre-morbid income of R1 548 000, I will effect a 25% contingency deduction to arrive at a pre-morbid future net loss of R1 161 000. On the estimated post-morbid income of R399 200, I will accept the suggested 25% contingency deduction to arrive at a post-morbid future net loss of R299 400. The result when deducting R299 400 from R1 161 000 is the amount of R861 600 for the plaintiff's future loss. The reasons for the approach in this part are the same as those for the plaintiff's past loss. The accident cannot be solely blamed for the plaintiff's future post-morbid loss, as the plaintiff never had stable or continuous employment even without the injuries from the accident. Also, the plaintiff (although it is appreciated that it was not without challenges) was able to secure employment, post-morbid, which she lost due to the employment contract(s) coming to an end.

[35.3] when the amount of R589 680 (for past loss) is added to the amount of R861 600 (for future loss), the result is the amount of R1 451 280 for the plaintiff's estimated total loss.

[36] I consider the amount of R1 451 280, to be awarded, to be fair and equitable on the facts and evidence in this matter. I also consider established the plaintiff's claim regarding the necessity of her future medical and hospital treatment and, thus, the RAF will be directed to furnish an undertaking regarding payment of the relevant expenses as provided for by section 17(4)(a) of the RAF Act. Costs will follow this result at party and party scale, at scale B.

Order

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

1. the Defendant is liable for **100%** of the Plaintiff's proven and/or agreed damages resulting from the injuries she sustained in a motor vehicle collision which occurred on the **17th April 2010**;
2. the Defendant shall pay to the Plaintiff's Attorney the sum of **R1 451 280 (one million four hundred and fifty-one thousand two hundred and eighty rand)** in settlement of the Plaintiff's claim for loss of earnings arising out of the motor vehicle collision on 17th April 2010 in which the Plaintiff was injured;
3. the abovementioned amount is made up as follows:
 - 3.1 general damages (to be postponed *sine die*): Nil;
 - 3.2 past & future loss of earnings: R1 451 280.00, and
 - 3.3 total R1 451 280.00.
4. the Plaintiff nominates, as the account into which the amount in 2 of this order must be paid, the following trust account:

ACCOUNT NAME : C[...] N[...] A[...]

BANK : STANDARD BANK

ACCOUNT NO : 0[...]

BRANCH NO : 0[...]

REF : M[...]
5. the Defendant is ordered to furnish to the Plaintiff's Attorney an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for 100% of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to the Plaintiff arising out of injuries sustained by the Plaintiff in the motor vehicle collision that occurred on 17th April 2010, in terms of which undertaking the Defendant will be obliged to compensate the Plaintiff in respect of the said costs after the costs have been incurred and on proof thereof.
6. if the Defendant defaults to pay the amount stipulated in 2 of this order within 180 days from date of this order, the Plaintiff will be entitled to recover interest at the rate prescribed by the Minister in accordance with the Prescribed Rate of Interest Act 55 of 1975 per annum from date of judgment to date of final payment;

7. the Defendant shall pay the Plaintiff's party and party costs on the High Court scale either as taxed or agreed, which costs will inter alia include

7.1 the costs of counsel, at scale B;

7.2. the costs consequent to the preparation and obtaining of all medico legal and actuary reports that were served on or provided to the Defendant, and

7.3. the costs of making all the trial bundles.

8. the party and party costs on the High Court scale either as taxed or agreed shall include any costs attendant upon obtaining of payment referred to in paragraph 2 of this order, subject to the following conditions:

8.1. the Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant; and

8.2. the Plaintiff shall allow the Defendant 14 (fourteen) court days to make payment of the taxed costs.

9. should payment of the costs not be made timeously, the Plaintiff will be entitled to recover interest at a rate prescribed by the Minister in accordance with the Prescribed Rate of Interest Act 55 of 1975 per annum from the date of allocator to date of final payment;

10. issues relating to general damages are postponed *sine die*, and

11. it is recorded here that the Court was informed that there is no valid contingency fee agreement that was entered into between the Plaintiff and the instructing attorney.

Khashane La M. Manamela
Acting Judge of the High Court

Dates of Hearing: 27 February 2025

Date of Judgment: 05 June 2025

Appearances:

For the Plaintiff: Mr K.T Ntsewa

Instructed by: Connie Ntsoko Attorneys, Pretoria

For the Defendant: Mr M Madasele

Defendant's Attorneys: State Attorney, Johannesburg