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

Not reportable / Reportable

Case no: 1978/2021

In the matter between

MASOLANE, NEO JOHANNES

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

Link no: 5205012

Neutral citation: *Masolane v RAF* (1978/2021) [2025] ZAFSHC 170 (09 June 2025)

Coram: Deane AJ

Heard: 20 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 15:45 on 09 June 2025.

ORDER

1. The Defendant is liable for 100% of the Plaintiff's proven damages.
2. The Defendant shall pay to the Plaintiff a capital amount of **three million three hundred and thirty-one thousand seven hundred and forty-two rands (R 3, 331, 742)** being made up as follows:
 - 2.1. R 2, 831, 742.00 for loss of earnings;
 - 2.2. R500 000.00 for general damages.
3. Payment will be made directly to the trust account of the Plaintiff's attorneys of record, details as follows:

Holder:	Mokoduo Erasmus Davidson Attorneys Trust Account
Bank and Branch:	First National Bank (FNB), Rosebank
Account number:	6[...]
Code:	253305
Ref:	M3298

4. Payment of the capital amount referred to in paragraph 2 above shall be made on or before 180 (one hundred and eighty days) days from the date of this court order.
5. Interest *a tempore-morae* shall be calculated in accordance with the Prescribed Rate of Interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 56 of 1996, fourteen (14) days from the date in paragraph 4.
6. The Defendant is ordered to furnish the Plaintiff with the **100%** Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for the costs

of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the Plaintiff arising out of the injuries sustained by the Plaintiff in the motor vehicle collision which occurred on the 3 July 2020 after such costs have been incurred and upon proof thereof.

7. The statutory undertaking referred to in paragraph 6 above shall be delivered by the Defendant to the aforesaid Mokoduo Erasmus Davidson Attorneys on or before thirty (30) days from the date of this court order.
 8. The Defendant will pay the agreed or taxed party and party high court costs of the action up to and including the date on which this draft is made an order of the court, such costs to include:
 - 8.1. The cost of counsel (scale B);
 - 8.2. The costs attendant upon the obtaining of the capital amount referred to in paragraph 2 above;
 - 8.3. The reasonable cost of the Plaintiff's experts, such reports to include, but not limited to:
 - 8.3.1. Dr Makua – General Practitioner;
 - 8.3.2. Dr Scher – Orthopaedic Surgeon;
 - 8.3.3. Talita da Costa – Clinical Psychologist;
 - 8.3.4. S Fletcher – Occupational Therapist;
 - 8.3.5. L Leibowitz – Industrial Psychologist;
 - 8.3.6. W Loots – Actuary.
 - 8.4. Payment of the agreed or taxed party and party high court costs will made directly to the trust account of the Plaintiff's attorneys of record, within 180 (one hundred and eighty days) days from the date of the agreement / date of taxation.
-

JUDGMENT

Deane AJ

[1] The plaintiff instituted an action against the defendant claiming damages for injuries sustained in a motor vehicle accident on 3 July 2020, at about 18h40 along the R712 Road, between Phuthaditjhaba and Clarens. The plaintiff, born on 25 March 1996, was a passenger in the insured vehicle.

[2] When the matter came before me, it was set down for both merits and quantum. I was advised by counsel for the respondent that they had no instructions and requested leave to recuse themselves. Before being recused, it was confirmed by both parties that merits had been conceded 100% and that the issue of future medical expenses and general damages were postponed by agreement. However, at the time of the writing of this judgment it was brought to my attention (via email) that there was an offer and acceptance of an amount of R500 000.00 in respect of general damages. Therefore, the only issue before me was to determine the loss of earnings. The matter proceeded before me on a default basis.

[3] At the commencement of the trial, the plaintiff applied for the handing in of the plaintiff's expert reports, and in terms of rule 38(2) of the Uniform Rules of Court, the plaintiff's expert reports were admitted into evidence.

Quantum

[4] The Plaintiff has served and filed the following medico-legal reports on the defendant:

- (a) General Practitioner: Dr Makua
- (b) Orthopaedic Surgeon: Dr Scher
- (c) Clinical Psychologist: T. Da Costa
- (d) Occupational Therapist: S. Fletcher

(e) Industrial Psychologist: L. Leibowitz

(f) Actuarial Report: W. Loots

[5] I will limit the consideration of the expert reports only to their findings and opinions as may be relevant for the determination of loss of earnings, and not to reproduce their reports.

Expert Reports

[6] The industrial psychologist provided a detailed report and indicated the following.

RE: Pre-Accident

'Given the plaintiffs young age, the promotions that he managed to secure post-accident and his own reporting of wanting to improve himself / find work in relation to his qualification, it would be reasonable to assume that in time, he would have progressed further.

Based on the plaintiff's reporting, it appears that an individual with a Mechanical Engineering qualification can work in a wide variety of contexts and industries, such as within the mining sector, with motor vehicles and in power plants. To this end and for the purposes of this report, the writer opted to follow a more generic approach considering the complexity of roles for which an individual would be eligible. His future earnings would depend on his work context, hours worked and so on.'

RE: Post-Accident

[7] The report indicated that the plaintiff is not functioning at his pre-morbid levels or in line with his uninjured peers and that his overall functioning has been undermined as a result of his injuries and related *sequelae*. Whilst the plaintiff does remain employable, he has been rendered less competitive and would be at a disadvantage and face increased risks in his occupational pursuits due to the cumulative impact of his injuries. He has sustained a serious orthopaedic injury (in relation to his left humerus) and presents with physical/functional limitations. His job options would be restricted, and he would always need to be selective as to his choice of work context. His left elbow limits his bilateral arm usage (as per the occupational therapist) and this is likely to negatively impact his performance. He would likely be less productive and efficient when experiencing symptomology. He also presents with psychological difficulties which would undermine his ability to function optimally. The aforementioned could culminate in

the plaintiff tending to be overlooked for opportunities and possibly taking longer to reach his career or earnings ceiling.

[8] The orthopaedic surgeon provides for surgical intervention. He reports that should the plaintiff be employed at this time, he would need to absent himself from the workplace to attend treatment. Any time off work would lead to a loss of earnings.

[9] Overall, the industrial psychologist is of the opinion that there are factors which would be expected to exert a negative effect on the plaintiff's post-accident future career and earnings. Perhaps the most reasonable way of addressing these factors would be by means of the application of a higher post-accident contingency. In this regard, the plaintiff's actuary based their findings using the plaintiff's industrial psychologist's report.

Algorithm Actuaries

[10] According to the updated actuary report, a 20% contingency has been applied for pre-accident scenario and 40% apportionment has been applied for post-accident scenario. It is trite that it is for the court to determine the percentage of contingencies to be applied. Contingencies 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 N.O.*¹:

'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).'

[11] Based on the plaintiff's medical expert reports on the impact that the plaintiff's pre-existing conditions, the calculations are as follows:²

LOSS OF EARNINGS	FUTURE
Earnings had the accident not occurred	14 158 707

¹ *Southern Insurance Association Ltd v Bailey N.O.* 1984 (1) SA 98 (A) at 113G and 116G-117A.

² As per the unpaginated updated Actuarial Report, court stamped 21/05/2025.

Less 20% contingency deduction	2 831 741
Subtotal	11 326 966
Earnings having regard to accident	14 158 707
Less 40% contingency deduction	5 663 483
Subtotal	8 495 224
Loss of Earnings	2 831 742

[12] In the circumstances, having considered all of the evidence and taking into account the probabilities of the circumstances of the matter, I make the following order:

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DEANE AJ

Appearances

For the Appellant:	DC Hattingh-Boonzaaier
Instructed by:	MED Attorneys
For the Respondent:	No Appearance
Instructed by:	Office of the State Attorney