

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

CASE NO: 20132/21

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED
20/06/2025

In the matter between:

SANGA LANGSON

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

LINK NO: 5053503

JUDGEMENT

NTHAMBELENI AJ

BACKGROUND OF THE ACTION

1. This is a personal injury claim action that was before me on the 30th of May 2025 and appeared on the roll as matter no 39. In this matter, both merits and quantum were still in dispute and the matter proceeded on an unopposed basis as there was no settlement between the parties. The claim is in terms of the Road Accident Fund Act 56 of 1996 as amended.

2. The Defendant's defence was struck out by the order of my brother the Honourable Justice Mabesela J on 11 December 2024.¹ There was no one appearing for the Defendant in court and the matter proceeded on that basis before me.
3. The notice of set down for this matter to proceed on Tuesday, May 2025 was served by hand on the Defendant on 22 April 2025 and uploaded on caselines.²

APPLICATION IN TERMS OF RULE 38(2)

4. The application to present evidence of the Plaintiff and his expert witnesses, and any other relevant witness by way of affidavit in terms of Rule 38(2) of the Uniform Rules was sought and granted as per prayer to of my draft order.³

THE MERITS

5. Counsel for the Plaintiff dealt with the merits and presented evidence in line with the merits bundle that appears in section 022 on caselines. The bundle is comprised of the copies of the Plaintiff's passport that appear on caselines at 022-1, driver's license at 022-2 to 022-3, affidavit deposed by the Plaintiff on 22 April 2025 at 022-5 to 022-9, consent form dated the 22 April 2025 at 022-10, pictures taken at the scene of the accident 22 April 2025 at 022-11 to 022-14.
6. In support of the evidence on merits, counsel presented two authorities in support being the matters of **Sieborger v South African Railways of Harbours**⁴ as well as **Southern Insurance Association Ltd v Cogill & Another**.⁵
7. Based on those submissions and the absence of any evidence from the Defendant, I awarded merits 100% in favour of the Plaintiff in the action.

¹ See pages 012-3 to 012-4 on Caselines.

² See Notice of Set Down at pages 026-1 to 026-6 on Caselines.

³ See Draft Order dated the 30th May 2025; Nthambeleni AJ on Caselines at pages 010-11 to 010-14.

⁴ 1961(1) SA 498(A) at 504 G-H

⁵ 1978(4) SA 128 (A) at 135 G-H

THE PLAINTIFF INJURIES AND QUANTUM

8. According to the Helen Joseph Hospital records; under provisional diagnosis, the Plaintiff suffers a right and midshaft femur; the date of discharge was recorded as 04/01/19 R midshaft femur.⁶ Further and according to the Hospital records, the following is recorded:

Accident 27 December 2018; Clinical findings: HR 69, BP 122/78 SATS 99

- *Airway self-maintained*
- *Breathing clear*
- *Circulation normal heart sound*
- *C-spine clear*
- *Small abrasions on the face*
- *R shoulder small 1 cm laceration*
- *Abdomen soft-non-tender*
- *Pelvis stable*
- *R leg shortened plus deformed- obvious fracture midshaft, neurovascular intact.*
- *X-ray midshaft femur fracture, **normal CT Brain + Spine**, CT angiogram*
- *Treatment.....nail R Femur;*

9. The above injuries accord with the Road Accident Fund's acceptance letter on General Damages dated 07 September 2023, which records the following; "*Claimant sustained a right midshaft femur fracture, a laceration of the right shoulder and small abrasions on the face. The patient has been left with disfigurement scarring which will benefit from surgical revision. The patient has been left with serious permanent disfigurement as a result of the accident*"
- The RAF 4 form by Dr. Leslie Berkowitz Orthopaedic Surgeon is therefore accepted in terms of Regulation 3(3) (C) and (d) of the Road Accident Fund Amendment Act 19 of 2005. The letter was signed by one Mr Hangwani Mutavhatsindi acting for the Road Accident Fund.*

⁶ See Caselines 023-1 to 023-23 Medical Records from Helen Joseph Hospital.

10. On the Plaintiff's heads of arguments,⁷ the following were recorded as injuries that were sustained by the Plaintiff; a mild traumatic brain injury, a fracture of the left maxilla bone, a right femur midshaft fracture, severe scarring on the right leg, abrasions on the face, lacerations on the right shoulder, PTSD, depression and anxiety see Dr Read's report, paragraph 1 at 008-9 to 008-10 caselines, Prof Kelly's report A(ii) at page 008-52; caselines Prof Berkowitz's report paragraph 4.2 at 008-27.
11. The Plaintiff's Orthopaedic Surgeon Dr Read recorded the following injuries sustained by the Plaintiff *"in paragraph 1 of his report under the heading "history of the accident"⁸*
- (a) The patient, Mr Langison Sanga, was the driver of a motorbike which was involved in an accident three years ago on 27 December 2018;*
- (b) following the impact, the patient was taken by ambulance to Helen Joseph Hospital, where he remained for approximately 8 days;*
- (c) According to the RAF1 form signed by Dr. J.N Ndove and the available medical records, the patient sustained the following injuries in this accident:*
- (i) A right midshaft femur fracture radiological investigation done at the time of hospital admission showed a right commuted midshaft femur fracture with adjacent soft tissue oedema and haematoma formation. No acute vascular injury was noted. The fracture was managed surgically with intramedullary nailing. The patient mobilised with crutches for a period of 1-month post-accident. The Orthopaedic hardware remains in situ.*
- (ii) Non-Orthopaedic Injuries*
- 2. A head injury and a small scalp laceration and a facial fracture. The patient was admitted for neurological observations; his Glasgow Coma Scale was 15/15. A CT brain scan showed no acute intracranial pathology. A left maxillary fracture was noted involving the alveolar ridge"*

⁷ See paragraph 7 under the heading quantum on page 7 of the Heads of Arguments at 028-7.

⁸ See Medico Legal Report of Dr Read at page 008-9 on Caselines.

12. It is important at this juncture to state that Defendant has not appointed any single expert to assess the alleged injuries and their extent as noted and recorded by Plaintiff's experts in this matter.
13. The Plaintiff obtained seven (7) medico-legal reports to evaluate his injuries, treatment, and damages in Dr Read (Orthopaedic Surgeon), Professor Kelly (Neurosurgeon), Dr Berkowitz (Plastic and Reconstructive Surgeon), Ms Prinsloo (Neuropsychologist), Ms Kaseberg, Ms Rubenstein (Occupational Therapist), Ms Du Toit (Industrial Psychologist) as well as Mr Loots (Actuary).
14. In cases of this nature, it is important for the Defendant to appoint their own experts to counter the Plaintiff's expert testimony and in this matter, none was appointed to counter seven (7) of the Plaintiff's experts. There is no doubt that under these circumstances the Plaintiff's experts will prevail against the Defendant.
15. The Plaintiff's counsel summarized the evidence of all the experts in his Heads of Arguments in brief⁹. There were no past hospital expenses as the Plaintiff was treated at Helen Joseph Hospital which is a Government Hospital.¹⁰ The future medical expenses are covered through an undertaking that is 100 % in favour of the Plaintiff and incorporated under prayer 6 of the draft order of this Court.

LOSS OF EARNING CAPACITY OF THE PLAINTIFF

16. In relation to this head damages reliance was placed upon the evidence of Ms Kaseberg, Ms Rubenstein (Occupational Therapist), Ms Du Toit (Industrial Psychologist) as well as Mr Loots (Actuary).

⁹ See heading: Brief Summary of the Plaintiff's Expert Witnesses at 028-10 to 028-42

¹⁰ See paragraph 38 of Plaintiff's Heads of Arguments at page 42.

17. Both the Occupational and the Industrial have classified the Plaintiff as a vulnerable employee compared to his peers in the open labour market and have classified him as a disadvantaged job seeker.¹¹
18. The Actuary Mr. Loots has applied a 30% contingency having regard to the accident which represents a 15% differential. Based on authorities in **Shield Ins Co Ltd v Booyen**¹², **Phalane v RAF**¹³ read together with **AA Mutual Ins CO v Van Jaarsveld as reported in Corbett & Buchanan**; The Quantum of damaged, Volume 360 at 367. The recommended contingency applied by the Actuary is acceptable to this court.
19. Mr. Loots also applied a 15% contingency deduction to the calculation disregarding the accident, this despite being higher than indicated applying the Koch method is reasonable considering the uncertainties of the plaintiff's employment.
20. Therefore, the total loss of earnings as per the Plaintiff's actuary is a total of R 155,537,00 [One Hundred and Fifty-Five, Five Hundred and Thirty-Seven Thousand Rands.

GENERAL DAMAGES

21. The injuries sustained by the Plaintiff in this matter are recorded in the medical records that appear under bundle 023-medical records on caselines. I have already recorded the injuries sustained by the Plaintiff according to the Hospital records from Helen Joseph Hospital where he was treated.
22. During his submission on general damages, Counsel for the Plaintiff rightfully conceded that General Damages are at the discretion of the court. However, he made submissions for an award for General Damages in the following manner:

"In considering the number of general damages, consideration has to

¹¹ See paragraph 40; 40.1 of Plaintiff's Heads of Arguments at 028-43.

¹² 1979 (3) SA 953 (A) at 965 G-H.

¹³ 481121 (2014) (2017) ZAGPPHC 759 7 November 2017.

be given to the fact that the plaintiff has suffered a mild traumatic brain injury, a fractured femur, and severe disfiguring scarring¹⁴”.

23. The Plaintiff's Counsel submitted several case laws to justify the amount of 1,5 million for General Damages in this matter¹⁵ in the heads of arguments to justify a bloated figure of general damages in the total amount of 1,5 million rands
[One Million, Five Hundred Thousand Rands].

24. Based on the injuries sustained by the plaintiff in the accident, I awarded an amount of R 650 000,00 [Six Hundred and Fifty Thousand] for general damages. I will demonstrate further reasons and legal basis as to why the amount of R 650 000,00 is appropriate in my analysis below.

ANALYSIS

25. Despite what is presented as the case and injuries of the plaintiff, it is important to note further that this court is not a rubber stamp of amounts being presented by the Plaintiff to support their case even though their matters is undefended by the Road Accident Fund.

26. The Court considers the total evidence presented to sustain the claims brought by the Plaintiff in any action. In matters of this nature where the defendant did not oppose the claim, the court is even extra-cautious to avoid being used as a rubberstamp of the plaintiff's claims. The Road Accident Fund is not a largesse as stated in **Pitt v Economic Insurance Co. Ltd**¹⁶ where the following was stated:

“ The courts must take care to see that its awards are fair to both sides-it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense”.

¹⁴ See page 028-47 of the Plaintiff's Heads of Arguments under paragraph 44.1.

¹⁵ See Plaintiff's Heads of Arguments on pocket 028 pages 028-48 to 028-49

¹⁶ 1957(3)SA 284 (D) at 287 E-F.

COMPARABLE AWARDS

27. In **Sandler v Wholesale Coal Supplies Ltd**¹⁷, Watermeyer JA held: “ *the amount to be compensation awarded as can only be determined by the broadest general consideration and the figure arrived at must necessarily be uncertain, depending on the Judge’s view of what is fair in all circumstances of the case*”.
28. The Supreme Court of Appeal has stated in **Protea Assurance Co Ltd v Lamb**¹⁸; “*Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards which can be used as a yardstick. The court in these cases has discretion*”.
29. When examining comparable cases, the court must not be parrotlike in following them but must be mindful of the fact that the cases serve as a guide. This much was stated in **Protea Assurance Co. Ltd v Lamb**.¹⁹
- “*Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time, it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration*”.
30. In the case of **Dikeni v Road Accident Fund**²⁰ Van Heerden J stated:
- “*Although these cases have been of assistance, it is trite law that each case must be adjudicated, on its own merit. No one case is factually the same as the other. It only provides a guide in the assessment of damages.*”

¹⁷ 1941 AD194 at 199.

¹⁸ 1971(1) SA 530 AD at p535 H-536A

¹⁹ Protea Assurance Co. Ltd v Lamb [1971 \(1\) SA 530](#) (A) (“Protea Assurance”) at para 534H – 535A

²⁰ Dikeni v RAF 2002 (5) 171 GP

31. In **Minister of Safety and Security v Seymour**²¹, the court held:

“The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that.”

32. In **Peter v Road Accident Fund**²²: In this case, the Plaintiff suffered major injuries including a fracture of the pelvis and acetabulum. Furthermore, he suffered two scalp lacerations and what was described as multiple deep abrasions to the right shoulder and upper arm and over the lumbar spine. This left him with some marked scarring on the right arm for which plastic surgery could achieve a 50% improvement. The R180 000.00 General Damages translates to some R 565 000.00 in current terms.

33. In **Union and South West Africa Insurance Co Ltd v Humphrey**²³, A 15-year-old girl, injured while riding a pillion on a motorcycle, sustained fractures to the tibia and metatarsals, along with severe scarring to her lower leg. In addition to orthopaedic interventions, she underwent further surgeries, including one for skin grafting. The scarring on her foot was described as a definite cosmetic blemish. The award for general damages of R8 500.00 at the time translates to approximately R374 000.00 in 2024.

34. Recently, in the matter of **De Meyer v Road Accident Fund**²⁴, the Full Court of this Division addressed the issue of general damages in relation to disfigurement. In that case, the court held that the plaintiff would possibly require surgery due to the disfigurement of the foot. The court awarded a sum of R325 000.00 for General Damages.

²¹ [2006] ZASCA 71; 2006 (6) SA 320 (SCA) at para 17

²² 2003 (5F3) QOD 9 (BHC)

²³ 1979 (3E5) QOD 58 (A)

²⁴ [2025] ZAGPPHC 307

35. Therefore, the award of General Damages for R650 000,00 accords with the injuries that were sustained by the Plaintiff in this case and the suggested amount by the Plaintiff of R1,5 million is therefore unjustifiable and unsustainable in the circumstances of the case before this court, in that the Plaintiff's own neurosurgeon Dr. A Kelly²⁵ as well as Dr. Berkowitz the Plastic and Reconstructive Surgeon at 008-26 of his report under history where it was recorded under history, that the Plaintiff sustained; *"1.1 Mr. Sanga was involved in a motorcycle accident on the 27 December 2018; 1.2 The following injuries were sustained; 1.2.1 Small abrasions on the face; 1.2.2 A laceration of the right shoulder; 1.2.3 A fracture of the right femur."* The Neurosurgeon also confirmed that his recorded Glasgow Coma Scale was 15/15 on admission.

COSTS

36. It is trite that the award of costs falls within the discretion of this Court. Rule 67A(3) which came to effect on 12 April 2024, requires that the Counsel's fee in the context of a party-and-party costs in the High Court be awarded on scale A, B, or C as the case may be. This amendment applies prospectively in relation to work done on a matter after 12 April 2024. Rule 67A addresses itself only to awards of costs as between party and party with the purpose to exercise control over the rate at which Counsel's fees can be recovered under such award²⁶.

37. Rule 67A (3) (b), in relation to the scale of Counsel's fees, refers to considerations which may include the complexity of the matter, the value of the claim, and the importance of the relief sought. This is clearly not an exhaustive list but it is used as a guiding tool in the award of costs.

38. Similarly in this case the costs are at the discretion of this Court and in this matter, I awarded the costs in scale B. This matter is neither complex nor are the papers voluminous, and the amount involved is not substantial relative to the overall context. Counsel's request for scale C is unmeritorious.

²⁵ Dr A Kelly see 008-65 of the Neurosurgeon's Report on Caselines.

²⁶ See the discussion in *Wanga v Road Accident Fund: 4503/2021*; Unreported judgement of the Western Cape High Court per Adams AJ delivered on 19 November 2024 at paras 7-11.

ORDER

39. The order of this court is as attached on Caseslines at 010-6 and is annexed to this judgment.

**RR NTHAMBELENI
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

HEARD: 29 MAY 2025

DELIVERED ON: 20 JUNE 2025

APPEARANCES

COUNSEL FOR THE PLAINTIFF: Mr. SEAN MULLIGAN

INSTRUCTED: LEVIN TATANIS INC

ATTORNEYS FOR THE PLAINTIFF

REF: Ms. I Hassalonidis L383

COUNSEL FOR THE FIRST DEFENDANT: NO APPEARANCE

Instructed: Road Accident Fund

REF: 502/12818720/304/1

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