

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 6713/18

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
20 June 2025	
DATE	SIGNATURE

In the matter between:

PHILLEMON KGOLOKO MAREDI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 20 June 2025.

Summary: A claim for loss of earning capacity. The onus to prove that a claimant has lost capacity to earn lies with the claimant. A Court must be satisfied that a claimant has indeed lost capacity to earn which translates into a patrimonial loss. A Court is not bound by opinions of experts who baselessly opine that the injuries have affected the earning capacity of a claimant. The plaintiff has failed to discharge the onus that he lost her earning capacity. Held: (1) The default

judgment in respect of a claim for loss of earning capacity and income is refused.

JUDGMENT

MOSHOANA, J

Introduction

[1] Before this Court featured an application for default judgment in terms of rule 31(2)(a) of the Uniform Rules of Court. The issue of the merits of the action was settled between the parties. What remained for determination was the past and future medical expenses and loss of earning capacity and earnings claims. With regard to past and future medical expenses, a section 17(4)(a) of the Road Accident Fund Act (RAFA) undertaking shall be ordered without any hesitation. In an action where a loss of earning capacity and earnings is claimed, the role of a Court is not relegated to the application of contingencies only. A Court must be satisfied on a balance of probabilities that the claimant has lost earning capacity as in a patrimonial loss. In *Road Accident Fund v Kerridge (Kerridge)*¹, the SCA had the following to say:

“Indeed, a **physical disability which impacts on the capacity to earn an income** does not, on its own, reduce the patrimony of an injured. There must be proof that the reduction in the income earning capacity will result in actual loss of income.

[2] The above legal position was already stated in *Rudman v Road Accident Fund (Rudman)*². It remains the onus of the claimant to prove on a balance of probabilities that the physical disability firstly impacts on his or her capacity to earn and secondly that an actual patrimonial loss shall follow due to the impact on the capacity.

¹ 2019 (2) SA 233 (SCA) para 25.

² 2003 (2) SA 234 (SCA).

- [3] Involved herein is an action for damages brought by Mr Phillemon Kgoloko Maredi ("Plaintiff") against the defendant, the Road Accident Fund (RAF). On 22 August 2016, the plaintiff was involved in a motor vehicle collision whilst he was driving a motor vehicle. He collided with the insured motor vehicle. Following the said motor vehicle collision, he sustained bodily injuries where his left humerus was fractured. Pertinent to the issues to be determined by this Court at this stage, as at the time of the injuries, the plaintiff was employed as a shift commander effective 01 July 2016. On the available evidence, the plaintiff in that capacity is mostly office bound and is assisted by a team of ten employees. According to the Industrial Psychologist (IP), the plaintiff will work in that capacity of a shift commander until the retirement age of 60 years. According to the Orthopaedic Surgeon (OS) due to the injuries, the plaintiff lost 10% of work capacity in relation to carrying of heavy objects.
- [4] Contrary to the collateral evidence from the plaintiff's employer, the Occupational Therapist (OT) was informed by the plaintiff that he attends to fire incidents and have to perform physical work together with his team. The station manager disclosed that the plaintiff's work progression has not been negatively impacted as he qualifies to be promoted to a position of a station manager should he apply for such a position.

Did the plaintiff lose earning capacity?

- [5] On the available evidence, the plaintiff as a shift commander does not work with heavy objects. His work is office bound and he is and was always assisted by a team of ten members. His ability to progress in his work was not affected and he can still function as a station manager should he apply for that position. The 10% loss of capacity affected his work as a fire fighter, which involves the carrying of heavy objects. As at the time of the accident he was already a month into working as a shift commander. The opinion of the OS is predicated on his work as a fire fighter and not a shift commander and potentially a station manager. There was no evidence that the plaintiff was a vulnerable employee facing potential dismissal which will render him an unequal competitor in an open market. He is in a position to work until the retirement age of 60 years

[6] Accordingly, this Court concludes that the plaintiff has, on the available evidence, not lost his earning capacity. There is no likelihood that his patrimony will be reduced in any manner as a result of the injuries sustained in the accident.

[7] On account of all the above reasons, I make the following order:

Order

- 1. The defendant is ordered to furnish the plaintiff with an undertaking limited to 80% in terms of section 17(4)(a) of the RAFA 56 of 1996, for the reasonable costs for the future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service to him or supplying of goods to him resulting from the injuries sustained by the plaintiff and of administering and enforcement of this undertaking, as a result of the motor vehicle accident which occurred on the 22nd August 2016, after such costs have been incurred and upon proof thereof.**
- 2. The default judgment application in respect of a claim for loss of earning capacity and earnings is refused.**
- 3. The defendant shall pay the plaintiff's costs on a party and party High Court scale, which costs shall include but not limited to the costs of reasonable travelling and accommodation costs of the plaintiff to attend medico-legal examination reports of the following experts:**
 - Dr I A Khan – Orthopaedic Surgeon (RAF4 and report)**
 - Radiologist report.**
- 4. The above costs to include the costs of appearance on 11 June 2025 in respect of plaintiff's counsel on scale B.**



**GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

APPEARANCES:

For the Plaintiff:

Mr K G Mongwe

Instructed by:

Rikhotso T H Attorneys, Pretoria

For the Defendant:

No appearance

Date of Hearing

11 June 2025

Date of judgment:

20 June 2025