REPUBLIC OF SOUTH AFRICA

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NR: 85650/2018

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED:

DATE: 11/06/2025

SIGNATURE:

In the matter between:

NANCY MBIZA **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

Delivered: *This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 11 June 2025.*

JUDGMENT

MARUMOAGAE AJ

A INTRODUCTION

1. This is a delictual claim in which the plaintiff seeks compensation for damages allegedly suffered as a result of injuries sustained in a motor vehicle collision on 10 October 2015, in which the plaintiff was a passenger. To support her claim, the plaintiff presented reports of several experts, which were admitted into evidence.

2. While the defendant defended the action, it did not provide expert reports of its own to sustain its defence. Notwithstanding this, the defendant did not concede the merits. The court is called to determine whether the defendant should be held liable to compensate the plaintiff. If so, to also determine the amount of compensation that should be paid to the defendant in respect of pecuniary and non-pecuniary damages.

B FACTUAL MATRIX

i) Plaintiff's Case

3. On 1 October 2015, the plaintiff was a passenger in a motor vehicle driven by Mr. Mbiza, the defendant's insured driver. There was a collision between this vehicle and another vehicle driven by Mr. Mokwele. This collision was caused by the negligent driving of Mr Mbiza, who failed to keep a proper lookout, apply brakes timeously, or at all, failed to react to an emergency in which he placed himself, and travelled at an excessive speed.

4. Mr Mbiza failed to exercise reasonable care and skill to avoid the accident. He failed to maintain sufficient control over his vehicle and to establish whether his vehicle had defective brakes. As a result of the collision, the plaintiff sustained chest pains and C-spine injury.

5. To sustain her claim, the plaintiff relies on the written testimony of several experts. The Orthopaedic Surgeon confirmed that the plaintiff sustained lower back and chest injuries in the motor vehicle collision. He stated that these injuries had a profound impact on her amenities of life and working ability. Further, the plaintiff's residual chronic pain and motion deficit have affected her lower back. She suffered severe acute pain and takes pain medication for chronic pain in her back.

6. The plaintiff also provided a report by an Occupational Therapist who stated that the plaintiff was a self-employed vendor at the time of the accident.

    6.1. The plaintiff was unable to resume work for six months while she was recovering from her accident-related injuries. After recovering, she could not return to her occupation due to her lower back and residual postural deficits. She remained unemployed after the accident.

    6.2. The plaintiff is currently 55 years old and reliant on her family members for meal preparation, cleaning, and care. The plaintiff has difficulty carrying heavy parcels and walking long distances. The Occupational Therapist noted that the plaintiff will be able to cope with sedentary to light physical demand work on an occasional basis.

7. A report of an Industrial Psychologist was also provided to the court in these proceedings. In this report, it is stated that:

    7.1. the plaintiff did not progress beyond grade 9 in school, and she was a vendor at the time of the accident, earning an average income of R 4,000,00 per month;

    7.2. considering her age, qualifications, and employment history, the plaintiff already reached her career ceiling before the accident. Had it not been for the accident, the plaintiff would likely have continued with her self-employment until she reached 70 years old. She is entitled to be compensated for past loss of earnings; and

    7.3. because the plaintiff was unable to return to her workplace after the accident, she will also sustain future loss of income as a result of the accident.

8. The court was also furnished with the report of the actuary. According to the actuary, had the accident not occurred, the plaintiff would have suffered past loss

of earnings of R 606,715.00 and future loss of earnings of R 959,679.00. Further, the plaintiff's past loss of earnings, having regard to the accident, would be R 5,333,00, and future loss of income would be R 55,618,00. The actuary calculated the total loss of income to be R 1,505,443,00. The actuary did not apply any contingencies.

9. It was argued on behalf of the plaintiff that the court should consider applying 5% for past loss of earnings and 15% for future loss of earnings for pre-morbid earnings, and 5% for past loss of earnings and 25% for future loss of earnings for post-morbid earnings. This will render compensation to the plaintiff for loss of earnings to be R 1,345,326.55.

ii) Defendant's case

10. The defendant delivered its plea wherein it stated that the plaintiff failed to fasten the safety belt, which could have assisted her in avoiding being injured in the accident. According to the defendant, the plaintiff was negligent, and her negligence contributed to causing the sustained injuries.

C LEGAL PRINCIPLES AND ANALYSIS

11. In *Groenewald v Road Accident Fund*, it was correctly held that:

> *'[i]t is trite that the plaintiff, as a passenger claimant, need to prove only 1% negligence on the part of the insured driver in order to succeed with her claim against the defendant'.*[1]

12. It is not clear why the defendant decided not to concede the merits in this matter. The defendant does not dispute the fact that its insured driver was responsible for causing the accident. It also does not dispute the fact that the plaintiff was a passenger in the insured driver's vehicle and that she sustained injuries as a result of the insured driver's negligent driving. The negligence of the insured

[1] (74920/2014) [2017] ZAGPPHC 879 (5 October 2017) para 3.

driver is common cause, which establishes liability on the defendant's part. There can be no doubt that the defendant is liable to compensate the plaintiff in this matter.

13. The defence of contributory negligence is shocking to say the least and speculative at best. There is no evidence whatsoever placed before the court to sustain this allegation. The defendant also failed to place expert testimony before this court to rebut the plaintiff's case and maintain its defence. The plaintiff's version is more probable and is accepted. The defendant's defense is rejected. Given the fact that the plaintiff's expert witnesses are not contradicted by the defendant through its own expert testimony, there is no reason not to accept the contents of the plaintiff's experts' reports as truthful.

14. It was submitted on behalf of the plaintiff that the court must order the defendant to pay an amount of R 800,000,00 general damages. I am not convinced that the court should make this order at this stage. Since the defendant's liability has been established, there is no reason why the defendant should not make an offer for general damages to the plaintiff. I am of the view that the defendant should be allowed space to do so by postponing this aspect *sine die*.

15. I am of the view that the issue of pecuniary damages can be disposed of. The evidence before the court clearly illustrates that the plaintiff's employment prospects are non-existent. Given her level of education and age, she is unlikely to be employed again. The plaintiff's experts indicated that the injuries she sustained in the accident negatively affected her, and she has not returned to her self-employment since the accident. The accident impacted her income, which justifies being adequately compensated.

16. Regarding past and future loss of income, an actuary made a recommendation in his actuarial report. It was suggested to the court that the contingencies recommended above should be considered. It is trite that the determination of contingency deductions falls within the discretion of the Court.[2]

[2] *R.J.M v Road Accident Fund* (60042/2019) [2024] ZAGPPHC 238 (4 March 2024) para 18.

17. This discretion is guided by various factors, which include the expertise of actuaries. There is no need to deviate from the actuary's recommendation. I am also of the view that the percentages of contingencies suggested by the plaintiff's legal representative appear to be fair.

18. Section 17(4)(a) of the RAF Act makes provision for the plaintiff where he has claimed among others, costs for future accommodation in a medical facility and where an undertaking has been provided by the defendant or where the defendant has been ordered to provide such an undertaking, to compensate the plaintiff of the costs associated thereto. There is no reason why the plaintiff cannot be compensated for these costs upon furnishing the relevant proof thereof to the defendant.

E CONCLUSION

19. I accept the calculations and estimations made by the actuary. I agree with the plaintiff's legal representative on the suggested contingencies that should be applied in this case.

ORDER

20. In the premises, I make the following order:

    20.1. The defendant is liable to compensate the plaintiff 100% for her proven damages;

    20.2. The Defendant shall pay to the Plaintiff an amount of R1,345,326.55 in respect of past and future loss of earnings;

    20.3. The amounts referred to in paragraph 20.2 must be paid to the Plaintiff's Attorneys, A **NDLOVU ATTORNEYS INC**, by direct transfer into their trust account, details of which are the following;

BANK NAME: STANDARD BANK
ACCOUNTHOLDER: A NDLOVU ATTORNEYS INC.
ACCOUNT NUMBER: 0[...]
ACCOUNT TYPE: ATTORNEYS TRUST ACCOUNT
BRANCH CODE: 0[…]
REFERENCE: ANA/RF/056

20.4. The Defendant is to deliver to the Plaintiff an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act No 56 of 1996, to pay the Plaintiff's costs of future accommodation in a hospital or nursing home or treatment of, or rendering of a service or supplying of goods to her, arising out of the injuries sustained by her in the motor vehicle collision on 10 October 2015, and to pay after such costs have been incurred and upon proof thereof;

20.5. The Undertaking in terms of Section 17(4)(*a*) shall be delivered to A Ndlovu Attorneys Inc. within 180 (One Hundred Eighty) days from the date of this order;

20.6. The Defendant is ordered to pay the party and party costs of suit to date, on the High Court scale, subject to the discretion of the taxing master, which costs include (but not be limited to);

20.6.1. The reasonable costs of obtaining all the medico-legal, addendum reports, as well as the radiologist costs, inclusive of any other expense incurred to, formulate reports, if applicable,

20.6.2. The reasonable costs of and consequent to the employment of Counsel, including Counsel's fees in respect of his perusal and preparation as well as his day fee and, cost for drafting heads of argument, drafting of joint settlement memorandum and reasonable fees for preparation for trial as well as appearance on date of this settlement confirmation, 20.6.3. The costs of the Attorney; including perusal of all documents and medico-legal reports, consultation with Plaintiff and Attorney; preparation for trial,

20.6.4. The cost in respect of obtaining all documents and lodging of the Plaintiff's claim,

20.6.5. The accommodation and travelling costs of the Plaintiff in order to attend medico-legal examinations, if any,

20.6.6. The costs of and consequent to the Plaintiff's trial bundles and witness bundles as well as the costs related to uploading the bundles to CaseLines,

20.6.7. The reasonable costs of the attorney and counsel, which includes reasonable travelling costs, costs for preparing for Pre-Trial Conferences and costs for actual attendances to all Pre-Trial Conferences, all Rule 35(9) notices Rule 37(4) & Rule 37(6) notices, Rule 36(10) notices, filing notices, Pre-trial Agendas, List of Admissions, Further Particulars, costs of formulating the draft order;

20.7. Should the Defendant fail to pay the Plaintiffs party & party costs as taxed or agreed within 180 (One Hundred Eighty) days from the date of taxation, alternatively date of settlement of such costs, the Defendant shall be liable to pay interest at the applicable rate of interest per annum, such costs as from and including the date of taxation, alternatively the date of settlement of such costs up to and including the date of final payment thereof.

20.8. The Defendant shall pay the agreed or taxed party & party costs, within the period of 180 (One Hundred and Eighty) days from taxation along with all interest incurred, into the Plaintiff's Attorneys, **A NDLOVU ATTORNEYS INC**., by direct transfer into their trust account.

20.9. There is a valid contingency fee agreement applicable.

20.10. The issue of General Damages is postponed *sine die*.

C MARUMOAGAE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

PRETORIA

COUNSEL FOR THE PLAINTIFF	: Adv LB Maphelela
INSTRUCTED BY	: A Ndlovu Attorneys Inc
COUNSEL FOR THE DEFENDANT	: No appearance
INSTRUCTED BY	: No appearance
DATE OF CONSIDERATION	: 29 May 2025
DATE OF JUDGMENT	: 11 June 2025