

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2024/62241

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES:NO
(3) REVISED: NO

16 MAY 2025

DATE:

SIGNATURE

In the matter between-

Nkoliso Manzimela

Plaintiff

And

The Road Accident Fund

Defendant

JUDGMENT

[1] This matter was before me on 15, 16 & 17 April 2025, on 6, 9, 13 & 15 May 2025 and again today, 16 May 2025.

[2] On 13th May 2025 I handed down an order in respect of which I indicated that I would hand down reasons later.

[3] The first 7 paragraphs of that order read as follows:

1. The Plaintiff's Application in terms of Rule 38(2) and Section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988, read with Section 34 of the Civil Proceedings Evidence Act 25 of 1965 is granted.
2. The Defendant is liable to compensate the Plaintiff for **100%** of the damages that he suffered as a result of the injuries that he sustained due to a motor vehicle accident that occurred on **10 December 2022 ("the accident")**.
3. In terms of Rule 33(4), the issue of general damages is separated from all other issues.
4. The Defendant shall, by no later than **08:00 on Thursday, 15 May 2025**, furnish the Plaintiff's attorneys of record with its election in writing as to whether or not the Plaintiff's injuries are serious in terms of the applicable Regulations.
5. In the event that the Defendant assesses the injuries as not serious or fails to adhere to the order contained in paragraph 4 above, the relevant manager of the Defendant shall appear in Court 8A at **10:00 on Thursday, 15 May 2025**, to give oral evidence as to the reasons for its failure or dissatisfaction.
6. In the event that the Defendant is so satisfied, the determination of the issue of General Damages is postponed to **Friday, 16 May 2025**.
7. The Defendant shall pay to the Plaintiff the capital amount of **R2 255 810.00** in respect of the Plaintiff's claim for Past and Future Loss of Earnings.

Reasons for the above order:

[4] Summons was served on the Defendant on 11 June 2024. The Defendant entered Appearance to Defend on 13 June 2024 but failed to deliver its Plea. Notice of Bar was delivered on 15 July 2024, and the Defendant failed to deliver its Plea.

Accordingly, the Defendant was *ipso facto* barred from pleading and the trial proceeded by way of default.

[5] At the commencement of the proceedings counsel for the Plaintiff moved an application in terms of Rule 38(2) to have his evidence heard on affidavit. The application is on CaseLines at CL04-57. The application was granted.

[6] It was alleged that on 10 December 2022 at about 16:00 and along the R61 from Magusheni Junction to Flagstaff, Eastern Cape, Mr Thulani Jama ("the insured driver") was the driver of a Toyota Quantum motor vehicle with number plate number HRY 622 EC ("the insured vehicle") when he lost control of the insured vehicle while approaching the Mzalweni bus stop, causing it to overturn. The Plaintiff was a passenger in the vehicle.

[7] The Defendant never conceded that the Plaintiff was a passenger, or that he was in the vehicle at all. Only when the matter was before me for the 4th time, did the state attorney indicate that the Defendant was disputing the claim because the details of the Plaintiff were only added to the Officer's Accident Report (OAR) six months after the accident and in different handwriting to what the details of all the other passengers in the vehicle were recorded in. On this occasion the Defendant's representative added that an investigator had been appointed by the Defendant to investigate the circumstances of the inclusion of the Plaintiff's details in the OAR, but that this investigation had not yet been concluded.

[8] This court was desirous of finalising the matter during this appearance in order to avoid causing an already severely compromised Plaintiff further discomfort by allowing the Defendant to continue with investigations which ought to have been conducted prior to the issuing of Summons. The Defendant, being aware of the extent of the Plaintiff's injuries and with full knowledge of the pending litigation, took no steps to expedite finalisation of its investigations and neither did it attempt to uplift the Bar in order that it may properly participate in the litigation and plead its defence.

[9] In order to address the Defendant's concerns, it was arranged that the Plaintiff and one of the passengers in the vehicle in which he was allegedly a passenger, would testify *via* video link from the Eastern Cape where they reside. Regretfully this was not possible, given the remote area where they found themselves. This resulted in the

Plaintiff being strapped to his wheelchair and conveyed by bus from the Eastern Cape, with the other passenger to testify in person.

[10] Their evidence was led on 9 May 2025 with the assistance of an interpreter. Despite the Defendant being under Bar and in an attempt to ensure that the Defendant had every opportunity to dispel its concerns, the Defendant's representative was given an opportunity to cross examine the Plaintiff and his witness, to which counsel for the plaintiff did not object.

[11] The evidence of the Plaintiff and his witness is summarised in abbreviated form as follows:

The taxi was specifically hired to convey a group of workers home. They all knew each other as they worked together. They earned a living cutting sugarcane. The driver was travelling too fast and lost control of the vehicle in a curve, causing it to leave the road and overturn. Everybody in the vehicle was injured and there were some fatalities.

[12] The Plaintiff's evidence was that due to the severity of his injuries he was transferred from hospital to hospital and only approximately six months after the accident two Police Officers visited him in hospital to take his statement and his details. He was eventually discharged from hospital during September 2023, approximately 9 months after the accident. In cross examination the Plaintiff was specifically asked whether he contacted the Police or whether he arranged the visit *via* an attorney. This was denied and there was no reason to doubt his version. The Plaintiffs explanation for why his details were only added to the OAR 6 months after the accident and in a different handwriting was reasonable.

[13] The witness testified that he worked with the Plaintiff, cutting sugarcane and that he was in the taxi with the Plaintiff when the accident occurred. He was also injured but not to the extent that he did not have a recollection of what occurred on the scene of the accident, before he was evacuated via ambulance. He said that he saw the Plaintiff lying with the deceased passengers, covered with a black plastic sheet. At that stage he assumed the Plaintiff was also dead. He could not say when someone realised the Plaintiff was not dead.

[14] Counsel for the Plaintiff took the court through the hospital records showing the evidentiary trail from the accident scene to admission to hospital and further. The most important documents in this regard are to be found on CaseLines at CL25-293, 25-288 and 25-287.

[15] Given the oral evidence presented, read with the documentary evidence, the court had no hesitation in finding that the Plaintiff was indeed a passenger in the taxi at the time of the accident and that he was injured as a result of the accident. The negligence of the driver was also confirmed, both in the documents and the oral evidence and based on the contents thereof the Defendant is 100% liable for such damages as the Plaintiff may be able to substantiate.

[16] The Plaintiff sustained a fracture of the cervical spine resulting in quadriplegia and a head injury.

[17] Dr J Breytenbach, orthopaedic surgeon, recorded as his primary diagnosis a fracture of the cervical spine at C3 and C4, resulting in non-functional quadriplegia, alongside a head injury with a left frontal fracture.

[18] Dr AB Mazwi, specialist neurosurgeon, tendered as his diagnosis a severe cervical spine injury at C3-C4, resulting in quadriplegia with paralysis of all limbs, as confirmed by both the Plaintiff's account and hospital records. Additional injuries comprise a mild head injury with abrasions to the head, headaches, and poor recall, as well as incontinence of bladder and bowel. The Plaintiff is wheelchair-bound due to his quadriplegia, with bilateral arm and leg weakness rated at 1/5th power.

[19] Psychologically, the Plaintiff exhibits extreme depression, moderate anxiety, and severe post-traumatic stress disorder (PTSD), identified through the Beck Depression Inventory, Beck Anxiety Inventory, and PTSD Checklist, with symptoms such as suicidal ideation, persistent nightmares, flashbacks, and social withdrawal. Cognitively, he demonstrates significant deficits in attention, concentration, memory (verbal and visual), social reasoning, abstract reasoning, language ability, and intellectual functioning, all falling within the impaired range.

[20] The original actuarial reports obtained on behalf of the Plaintiff were not acceptable as it had been prepared on the basis that he has a normal life expectancy, whereas both the neurosurgeon and the urologist indicated that his injuries and its

sequalae have negatively affected his life expectancy, albeit that neither committed themselves to a value in this regard. The court requested counsel to request the experts to commit themselves on an expected curtailment of the Plaintiff's life expectancy and to have revised calculations prepared on the basis thereof. Counsel did so and the court is grateful for his assistance and the assistance of the experts and actuaries in this regard, as this aspect had the potential of further delaying the matter.

[21] Prior to the accident, the Plaintiff worked as a farm worker, an unskilled labour role requiring physical capability. He had a history of intermittent employment.

[22] His earliest recorded job was from 2008 to 2010 with "Peter - Farm" as a general worker, harvesting sugarcane, earning R7,000 monthly. He resigned for better prospects.

[23] He then worked briefly for "Pinkie" as a labourer for one month (year unspecified) at R500 per fortnight, ending when the contract expired.

[24] From 2011 to 2017, he was unemployed. He subsequently worked for "Bruce" as a farm worker (dates unspecified) at R6,500 monthly, followed by employment at "Rotenberg Estate" in Port Shepstone from 2018 until the accident on 10 December 2022.

[25] At "Rotenberg", he harvested and cleaned sugarcane, living on the property, and working Monday to Sunday with no fixed breaks. This employment aligned with medium to heavy physical demand categories.

[26] His employer's certificate at "Rotenberg" records an annual remuneration of R68,840 (R6,884 monthly) for the period from 7 March 2022 to 9 December 2022, though this was subject to deductions for living expenses.

[27] Bank statements from May to December 2022 show net monthly deposits ranging from R2,783.63 to R5,283.07, averaging R3,569.13 after deductions, reflecting his actual take-home pay.

[28] This income falls between the lower quartile (R24,200) and median (R73,700) for unskilled workers per the Quantum Yearbook of 2022.

[29] Past Loss: From the accident date (10 December 2022) to the calculation date (24 March 2025), is a period of 2.28 years, based on his pre-accident annual income of R68,840 (2022 terms) adjusted for inflation. This the period used for the calculation of past loss of income.

[30] Future Loss: From the calculation date to the assumed retirement age of 65 (25.03 years), his earnings trajectory assumes an increase from R110,454 annually in 2025 (inflation-adjusted) to a career ceiling of R157,500 (2025 terms) by age 45 (2030), then salary inflation (CPI + 1%) until retirement.

[31] It has been assumed that Mr Manzimela can expect an impaired life expectancy based on his socio economic circumstances (Life Table 5 Males – Quantum Yearbook 2025). Normal life expectancy is represented in Life Table 2, with a life expectancy of 34.57 years (As per the Quantum Yearbook 2025). Due to the fact that Mr Manzimela is a wheelchair-bound quadriplegic and unable work, a life expectancy reduction 5.5 years was accepted.

[32] Gross accrued value of earnings	R 215,166
--------------------------------------	-----------

Less contingency 5%	R 10,758
---------------------	----------

Total Past Loss of Earnings	R 204,408
-----------------------------	------------------

[33] Projected value of future earnings	R 2,279,336
---	-------------

Less contingency 10%	R 227,934
----------------------	-----------

Total Future Loss of Earnings	R 2,051,402
-------------------------------	--------------------

[35] Total value of loss of earnings, past and future: **R 2,255,810**. This was then also the amount that was included in this court's order of the 13th May 2025.

The foregoing constitutes the reasons for the order handed down on the 13th May 2025.

[36] The only remaining issue that needs to be addressed is the Plaintiff's claim for general damages.

[37] When the matter was called during the first session on the 15th May 2025 the court was advised that the Defendant opted to reject the Plaintiff's claim for general

damages. A formal letter of rejection had been served on the Plaintiff's legal representatives and during the discussion of the matter in court it was also uploaded onto CaseLines.

[38] The basis for the objection was that the Defendant disputed the *nexus* between the accident and the Plaintiff's quadriplegia. This was problematic as this court already in its order of the 13th May 2025 found the Defendant liable, i.e. the *nexus* was established and accepted by the court, and therefore no longer in issue. On the issue of *nexus* the court was *functus officio* and the way forward for the Defendant was to proceed with an application for leave to appeal against the order of the 13th May 2025. It was not open for the Defendant to reject the Plaintiff's claim for general damages on the basis of a disputed *nexus* as, *strictu sensu*, that would be contempt of court. The state attorney was afforded an opportunity to take further instructions.

[39] At the commencement of the second session the state attorney advised that the Defendant had reconsidered its position and the Plaintiff's entitlement to general damages was no longer in dispute.

[40] The Plaintiff's injuries and its sequelae had been dealt with above in paragraphs 16 to 19 and will not be repeated here. What is left is for the court to evaluate the injuries in comparison to the available case law that might provide some guidance. In consideration of the matter I took cognisance of the following three cases:

- *Mertz v RAF 2023 (8A2) QoD 6 (GNP)*: Original value R3 500 000, current value R4 288 000.
- *Marine and Trade v Katz NO 1979 (4) SA 961 (A)*: Original value R90 000, current value R4 196 000.
- During his submissions on general damages counsel for the Plaintiff urged me to also take note of the matter of *Sibanda v RAF (94691/2016) [2019] ZAGPJHC 554*. In this matter the current value of the court's award is R4 000 000.

[41] Much has been written, and strong legal guidelines have been given that an award for general damages must be fair to both parties. The purpose is not to "punish" the Defendant, and neither is it to pour from the horn of largesse in favour of the Plaintiff. At the same time this court is also of the view that many less serious matters in which

general damages awards are made on the strength of narrative tests, are overcompensated whereas matters which is truly serious with severe injuries or sequelae such as quadriplegia, tetraplegia, paraplegia, hemiplegia, upper and/or lower limb amputations, blindness, being deaf or dumb are, in comparison, under compensated.

[42] I add as *obiter dictum* that I do not include brain injuries in the above list as those are assessed on an individual, and slightly different basis as far as general damages are concerned as certain types of brain injuries have the effect of a patient not being aware- or not experiencing his or her injuries to the fullest extent or in some cases at all.

[43] *In casu* the Plaintiff is quadriplegic, with a head injury, bowel and bladder incontinence and with severe psychological long term sequelae. It deserves the upper parameter of what is reasonable, in line with the available case law, and fair to both parties. In exercising my discretion I am of the opinion that an appropriate award for general damages is an amount of R4 500 000.

In addition to the order of the 13th May 2025 the following:

1. The Defendant shall pay the Plaintiff the sum of R4 500 000 in respect of the Plaintiff's claim for general damages;
2. The Defendant is liable for the Plaintiff's further legal costs, incurred after the 13th May 2025, on the party and party scale as taxed or agreed, and not provided for in that order. This order includes counsel's further fees for the 15th May 2025 on scale B and a fee for the noting of the judgment on the 16th May 2025.



D. WEIDEMAN
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES:

Applicant's counsel: Adv. D Smit
danielj.smit@icloud.com

Applicant's Attorneys: Sandile Attorneys
Mpumelelosandile879@gmail.com

Respondent: Road Accident Fund
xoloswam@raf.co.za
elliasm@raf.co.za