

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 76402/2019

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
01/07/2025	[REDACTED]
DATE	SIGNATURE

In the matters between: -

SICAVILLE JOSE

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 1 July 2025

JUDGMENT

KEKANA, AJ

INTRODUCTION

[1] This is a claim against the Road Accident Fund for damages arising from a motor vehicle collision which occurred on or about 11 November 2018 at Orlando East, Gauteng Province.

[2] The issues for determination are (a) whether the defendant is liable for the plaintiff's damages; and (b) if liability is established, the quantification of the plaintiff's claim in respect of general damages and loss of earnings and/or loss of earning capacity. The plaintiff seeks an order directing the defendant to compensate him for 100% of his proven damages. The matter is defended.

[3] The defendant did not admit the RAF 4 serious injury assessment of the plaintiff; consequently, the issue of General Damages ought to be postponed *sine die*.

RULE 38(2) APPLICATION

[4] The Plaintiff brought an application that the evidence relating to the medico-legal reports of the medical experts and the actuarial report of the Actuary, be allowed by affidavit in terms of the provisions of Uniform Rules of Court 38(2). The court granted the application.

PLAINTIFF'S EVIDENCE

[5] The plaintiff testified that on or about 11 November 2018, at approximately 06h20, he was standing at the side of the road in Orlando East, Gauteng Province, in the company of Emmanuel Khoza. A white Nissan motor vehicle passed by them and then suddenly reversed at high speed, striking the plaintiff on his left side. The plaintiff did not observe the vehicle reversing and has not been able to identify the insured vehicle or its driver.

[6] The plaintiff sustained a left segmental femur fracture (femur neck and femur shaft). He was treated as follows: (a) X-rays and scans were done; (b) Skin traction of the left leg; (c) theatre for nailing of the left femur; (d) physiotherapy and he was provided with crutches, which he used for several months. Upon follow-up at the Chris Hani Baragwanath hospital, the sutures were removed and he underwent physiotherapy.

[7] The plaintiff's complaints are recorded as follows: He feels self-conscious about the scars sustained due to the accident. Pain over the left hip and thigh, especially when standing long time, when walking far, when handling heavy objects and when it is cold. He also struggles to stand for long and to walk far, and he is unable to jog and to jump due to the left leg injury sustained. He sometimes limps because of the pain. He has occasional flashbacks and nightmares of the accident. He gets nervous when walking next to the road and always walks far away from the road. He feels sad and frustrated due to his limitations.

LAW

[8] It is trite that the plaintiff bears the onus to prove negligence on the part of the defendant. Once a prima facie case is established, the defendant must rebut the inference of negligence or face an adverse finding.

[9] In assessing the issue of negligence, the court in *Ntsala v Mutual & Federal Insurance Co Ltd* 1996 (2) SA 184 (T) at 190 held that:

“Once the plaintiff proves an occurrence giving rise to an inference of negligence on the part of the defendant, the latter must produce evidence to the contrary: he must tell the remainder of the story, or take a risk that judgment be given against him.”

[10] In *Ngubane v South African Transport Services* 1991 (1) SA 756 (A), the court explained that contributory negligence is established when the plaintiff fails to act with the degree of care that a reasonable person would have exercised under the same circumstances. However, the onus rests on the defendant to prove such contributory negligence on a balance of probabilities.

ANALYSIS - MERITS

[11] The plaintiff's evidence regarding the circumstances of the accident was not seriously challenged in material respects. It is not in dispute that the plaintiff was a pedestrian who was standing on the sidewalk when an unknown motor vehicle reversed and hit him. The defendant did not call any witnesses, including the driver of the insured vehicle, and thus the only version before the court is that of the plaintiff. The defendant's failure to call the driver or offer any alternative version of events leaves the plaintiff's evidence uncontroverted.

[12] In *SANTAM Insurance Co Ltd v Vorster* 1973 (4) SA 764 (A), the Appellate Division held that in pedestrian-motorist collisions, courts must evaluate the evidence in its totality and determine whether the pedestrian contributed to the cause of the accident. In this case, there is no evidence to support a finding of contributory negligence.

[13] In *Pretorius v Road Accident Fund* (20663/2016) [2021] ZAGPJHC 868, the court found that since sidewalks are not designed for vehicles, the plaintiff could not have foreseen that a vehicle would unexpectedly mount the sidewalk and cause a collision. The court found no evidence of contributory negligence on the part of the plaintiff and concluded that the plaintiff could not be held partially responsible for the accident.

[14] Similarly, in the current matter, the plaintiff was lawfully present at the roadside and had no reason to foresee that a motor vehicle would reverse into him at speed. There is no evidence suggesting any contributory negligence on his part.

[15] Accordingly, I find that the plaintiff acted reasonably in the circumstances and that the sole cause of the accident was the negligent conduct of the driver of the insured vehicle. The defendant is therefore liable for 100% of the plaintiff's proven damages.

Expert Evidence

[16] The plaintiff's claim for damages, loss of earning capacity and future loss of earnings was supported by a range of expert reports, which were placed in terms of Rule 38(2) before the court and are summarised below.

RAF 4 Report – Dr HET Van den Bout

[17] Dr Van den Bout assessed the plaintiff and completed the RAF 4 form. According to that orthopaedic assessment forming part of the RAF 4 report, the plaintiff satisfies the narrative test for a serious injury in two respects:

(a) he has sustained a serious long-term impairment or loss of a body function resulting from the segmental fracture of the left femur. This injury is accompanied by persistent pain, restricted mobility, and a reduced capacity for physical work.

(b) the plaintiff qualifies as having suffered permanent serious disfigurement, due to the visible scarring caused by the injuries and surgical intervention.

Dr H.E.T. Van den Bout (Orthopaedic Surgeon)

[18] Dr Van den Bout confirmed that the plaintiff sustained a segmental fracture involving the neck and shaft of the left femur. He underwent surgery involving the nailing of the femur, received physiotherapy, and required crutches for mobility for several months.

[19] During a subsequent assessment, the plaintiff reported ongoing pain in his left hip and thigh, worsened by physical activity or cold weather. He walks with a limp, cannot jog or jump, and experiences difficulty standing or walking for long periods.

[20] Psychologically, the plaintiff reported having flashbacks and nightmares of the accident, expressed anxiety when he is near the road, and exhibited frustration over his limitations. He also feels self-conscious about his scarring.

Ms Sabatha Mogoane (Occupational Therapist)

[21] Ms Mogoane assessed the plaintiff's pre- and post-accident work capabilities. She noted that (a) before the accident, the plaintiff was medically and physically fit to engage in work across all levels of physical demand, including heavy and very heavy labour; (b) following the accident, the plaintiff's capacity has been restricted to medium work, and even this is only possible with reasonable accommodation. She opined that the plaintiff is no longer suited to the heavy manual labour that characterised his pre-accident employment.

[22] She concluded that the plaintiff's limitations, combined with his Grade 9 educational level and lack of experience in light or sedentary roles, render him an unequal competitor in the open labour market. She stated that he is unlikely to find work without a sympathetic employer and may not remain employed until normal retirement age due to ongoing pain and functional restrictions.

Ms Monique Engelbrecht (Industrial Psychologist)

[23] Ms Engelbrecht reported that the plaintiff was self-employed at the time of the accident, earning approximately R4,000 per month, which placed him slightly below the median-to-upper quartile earnings for unskilled workers. She opined that, but for the accident, he would have continued working in a similar capacity, likely reaching the upper quartile for unskilled earnings between ages 45 and 48, and remaining economically active until age 65.

[24] Since the accident, he has not resumed work and has suffered a complete past loss of income. In the future, he is expected to earn no more than 75% of his pre-accident income, even with successful intervention, and will likely face intermittent unemployment. She advised that a 3 to 6 month period be allowed for rehabilitation and reintegration into work. She further recommended the application of a higher post-morbid contingency due to his diminished competitiveness and reliance on employer goodwill.

Loss of Earning Capacity and Future Loss of Earnings

[25] The plaintiff sustained a segmental fracture of the left femur, involving both the femoral neck and shaft. This injury has resulted in persistent pain, reduced mobility, and functional limitations in the left lower limb. The orthopaedic surgeon confirmed that the plaintiff suffers from a permanent orthopaedic impairment and passes the narrative test for both serious long-term impairment of a body function and permanent disfigurement.

[26] The occupational therapist noted that while the plaintiff may retain the physical capacity for work within the medium category, he would require reasonable accommodation even in such roles. He is no longer suited to heavy or very heavy physical work, which previously formed the core of his income-generating activities. The therapist further concluded that, given his limited education, absence of transferable skills to lighter work categories, and persistent pain, the plaintiff is an unequal competitor in the open labour market and will have difficulty securing employment without a sympathetic employer.

[27] The industrial psychologist opined that, but for the accident, the plaintiff would have remained economically active until the normal retirement age of 65, potentially progressing to the upper quartile earnings bracket for unskilled workers. Post-accident, however, the plaintiff has not resumed employment and is unlikely to earn more than 75% of his pre-accident income, even with successful rehabilitation. Furthermore, periods of unemployment are expected to increase, and his dependence on sympathetic employment renders him particularly vulnerable in the open labour market.

[28] According to the industrial psychologist, the plaintiff was self-employed as a carpenter and general construction worker at the time of the accident. He earned an average monthly income of R4,000, totalling R48,000 per annum. He had been engaged in physically demanding work, such as erecting shacks, carpentry, and flooring, relying solely on his physical capabilities to generate an income. This information was obtained from the plaintiff.

[29] Collateral information was provided in the form of an assessor's report, which included the affidavits from clients and an assistant. The plaintiff did not call the author of the report or the

deponents of the affidavit to testify. Consequently, the expert reports are based on information that has not been proved before this court.

[30] In *Nkala v RAF* (16158/2018) [2025] ZAGPJHC (10 March 2025) para 5 it was stated that: “The plaintiff is required to prove its case, which includes the claim for loss of earnings. In the absence of factual proof of income, the postulations hold no merit relating to a claim for loss of income.”

[31] In *Mathebula v RAF* [2006] ZAGPHC 261 at para 13, the court held that expert evidence must be based on facts established through admissible evidence during trial unless admitted or proven by competent witnesses. The failure to adduce oral evidence renders their opinions of no evidentiary weight. See also *Mlotshwa v RAF* (9269/2014) [2017] ZAGPPHC 109 (29 March 2017) at para 20-22 and *Boy Petrus Modise v Passenger Rail Agency of South Africa* case number A5023/2013 (11 June 2014) at para 10.

[32] In this matter, the information regarding the plaintiff’s income that the experts relied on was not established through admissible evidence before this court. The Rule 38(2) application was granted in respect of medical experts and the actuary. The assessor’s report was not included in the Rule 38(2) application and therefore constitutes hearsay evidence. Consequently, the opinion of the industrial psychologist and the actuary regarding the plaintiff’s income is of no evidentiary value.

[33] I therefore find that the plaintiff has failed to prove his claim for loss of earnings.

CONCLUSION

[34] The plaintiff has proved that the defendant is liable for 100% of his proven damages. The experts also agree that the plaintiff will require future medical treatment.

In the result, I make the following order:

1. Application in terms of rule 38(2) is granted.
2. The defendant is liable for 100% of the plaintiff's proven damages.
3. Absolution from the instance in respect of loss of earnings.
4. The defendant shall provide the plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996 to compensate the plaintiff for 100% the costs relating to future accommodation in a hospital or nursing home or treatment of or the rendering of service or supplying of goods to the plaintiff after the costs have been incurred and on proof thereof, as a result of the injuries sustained by the plaintiff in the motor vehicle accident which had occurred on 11 November 2018.
5. The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on High Court Scale B.


P D KEKANA
ACTING JUDGE OF THE COURT

DATE OF HEARING: 10 FEBRUARY 2025

DATE OF DELIVERY: 01 JULY 2025

APPEARANCES:

On behalf of the plaintiff: Adv Masina

On behalf of the defendant: No appearance