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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 11385/16

REPORTABLE: NO

OF INTEREST TO OTHERS JUDGES: NO

REVISED

DATE 06 August 2025

SIGNATURE

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REPORTABLE: NO

OF INTEREST TO OTHERS JUDGES: NO

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In the matter between:

WILZARD THABANG MATHE

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MOGALE, AJ

Introduction

1. On 14 June 2014, on the R555 road next to Ngala Camp, Burgersfort, a collision occurred when a motor vehicle with registration number C[...], driven by P Rangkwe, a motor vehicle with registration number C[...], driven by N Cassim, a third motor vehicle with registration number C[...], driven by T Magabotte and a fourth motor vehicle, driven by an unknown driver, were involved in a collision.

2. The plaintiff, who was 24 years old at the time of the accident, was a passenger in the second motor vehicle, travelling from Burgersfort to Ga-Mampuru. As a result of the accident, the plaintiff sustained the following injuries: bruises on the face; a hard blow to the chest; a fracture of the left wrist; and hard blows to both his feet.

3. At the commencement of the trial, an application in terms of Rule 38(2) was granted. Both advocate S Maritz, acting for the plaintiff, and advocate Rangata, representing the defendant, informed the Court that the merits had been settled in favour of the plaintiff for 100% of the proven damages, including an undertaking in terms of section 17(4)(a).

4. On 20 June 2020, the Road Accident Fund Appeal Tribunal resolved and was satisfied that the plaintiff's injuries qualified as serious under the narrative test. Both the plaintiff and the defendant agreed that this Court has jurisdiction to hear the general damage claim.

5. Section 17 of the Road Accident Fund Act¹ and Regulation 3² provides that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.

6. It is settled law that a court cannot determine whether a plaintiff's injuries are so serious that such a plaintiff is entitled to a claim for general damages against the Road Accident Fund ("RAF"). The stipulation of Regulation 3(3)(c) is to the effect that the Fund shall only be obliged to pay general damages if the Fund and not the court is satisfied that the RAF Form has correctly assessed the claim as serious.³

¹ Act 55 of 1996.

² Regulation 3 of the Regulations promulgated under the Road Accident Fund Act in GN R 777 in the Government Gazette 31249 of 21 July 2008.

³ *Road Accident Fund v Duma* 2013(6) SA 9 (SCA) at par 19.

7. The Fund assessed and accepted that there was a claim for general damages but did not make any offer to the plaintiff. This court has jurisdiction to adjudicate the award of general damages.

Background

8. Following his involvement in an accident as a passenger, the plaintiff was transported by ambulance to Dilokong Hospital, where he received outpatient treatment for several hours for injuries sustained in the incident. He had a laceration that was sutured over the left thenar eminence, and his left wrist was placed in a cast. He was discharged on the same day and subsequently received follow-up treatment at Dilokong Hospital, followed by care at the Matlala Clinic.

9. Prior to the accident, the plaintiff had been selling sweets and chips as a hawker since 2007, with an approximate monthly income of R2000.00. He was also a seasonal farm worker at Schoeman Farm during 2014, earning R1,400.00. Due to the injuries sustained in the accident, he was unable to resume his duties immediately.

10. He experienced academic challenges from grades 5 through to 7, repeating the fifth grade three times. He successfully completed Grades 8 and 9; however, he dropped out of Grade 10 after failing Grade 9 three times in 2012. Therefore, his highest level of education is Grade 9.

Injuries sustained

11. The RAF Form 1 and medical report completed by Dr. OJ Mkhatswa, dated 5 August 2015, state that the plaintiff was admitted to casualty after sustaining the following injuries: bruises on the face; a hard blow to the chest; a fracture of the left wrist; and hard blows to both his feet.

12. X-rays were performed, revealing a laceration that was sutured over the left thenar eminence, and the left wrist was immobilised in a cast. The patient was discharged and prescribed analgesics to manage the pain.

13. Professor S L Biddulph, an orthopaedic surgeon, examined the plaintiff on 14 June 2014, and found as follows:

“The patient sustained a significant injury to the left wrist, which was managed conservatively with the application of a cast.^{[L]_{SEP}} Although not documented, the patient experienced pain during extension of the left shoulder. The reported injury to the left ankle and surrounding area demonstrated a nearly full range of motion, with pain occurring during extension.”

14. Dr. Vic Oelofse, an Orthopaedic Surgeon, examined the plaintiff on 19 March 2025. According to the surgeon’s findings, the orthopaedic injury sustained to the claimant’s left wrist in the incident satisfies the criteria for a serious injury under the narrative test, as the claimant remains symptomatic with significant functional impairment. This is evidenced by reduced grip strength in his left hand, accompanied by pain when gripping and manipulating light objects. He is no longer capable of performing heavy manual labour. There is structural impairment, and he will in future need invasive surgery. This would necessitate continuous conservative treatment and even surgery.

15. Dr K.D. Rosman, a neurologist, examined the plaintiff on 9 July 2018. He opined that the plaintiff sustained injuries to the left wrist and left leg, as described by the orthopaedic surgeon. According to the doctor, the patient also suffered a head injury; this conclusion is based on the admission Glasgow Coma Scale of 15/15, which indicates he experienced a mild diffuse concussive head (brain) injury. A mild head injury often results in significant headaches. However, it is unlikely to cause any serious long-term neurophysical or neurocognitive issues. His headaches are probably due to the accident. He experiences headaches about three times a week. These should be managed by a neurologist.

16. He had excessive alcohol use, memory issues, and anger control problems, possibly linked to the accident’s psychological effects and his inability to work afterwards. Orthopaedic treatment should improve his function and daily activities. A

clinical psychologist's assessment could help differentiate whether his symptoms are due to alcohol or psychological effects. He is not at increased risk of future epilepsy, and neurological issues are not affecting his earnings.

17. Bridget Westwood, a Clinical Psychologist, examined the plaintiff on 26 May 2025. Her findings show the plaintiff has impairments in attentional processing, processing speed, visual scanning, mental tracking, incidental learning, learning curve, executive functions, planning, sequencing, and self-monitoring. There are also deficits in his immediate memory span, verbal long-term memory, and visuomotor functions. The visuospatial abilities and construction deficits probably resulted from the accident, likely a mild diffuse concussive head injury. Mr. Mathe suffers from severe depression due to the incident, which has negatively impacted his emotional health, overall functioning, relationships, and job capabilities.

18. Doctor Bernard Oosthuizen, an industrial psychologist, examined the plaintiff and stated Mr. Mathe was employed as a farm worker at the time of the accident. It's assumed he would have continued in that role or found work suited to his education, experience, communication skills, and abilities. It is assumed he had reached his career and earning potential as a farm worker. Additionally, he was a self-employed vendor, and it's assumed he would have continued in that capacity. It is further assumed he could have worked until retirement or as long as his health permitted. Mr. Mathe has not resumed employment since his accident and has not worked since then. With treatment, he could perform jobs suited to his education and skills within his physical limits. However, his options are limited, and he is an unequal competitor in the labour market due to his injuries. If employed, he could likely work until retirement or as long as his health permits, if the job fits his physical capabilities.

19. Moleboge Setoaba, an occupational therapist, examined the plaintiff three times and found that Mr. Mathe reported being independent in self-care. He prefers using a large, portable basin but struggles with carrying it when it is full, sometimes needing assistance. He has difficulty removing his T-shirt and vest because he requires both hands, but has no trouble with buttoned shirts. Based on his job tasks and the Dictionary of Occupational Titles (DOT) guidelines, his pre-accident job is classified as medium physical demand. Depending on the sack size, weight, lifting

frequency, and other tasks, the demands of his job may sometimes approach the lower end of heavy work.

Oral submissions relating to general damages

20. In determining the issue of general damages, counsel for the plaintiff argued that the plaintiff has memory problems, thenar eminence, is depressed and in constant pain because of the accident. The plaintiff relied on the case of *Mohlaba v Road Accident Fund*⁴ to serve as a guideline in deciding the appropriate award for the plaintiff's general damages and suggested the award of R800,000.00 as appropriate.

21. The defendant, in contrast, contended that the injuries in the *Mohlaba* case are considerably more severe than those in this matter and referred the Court to the case of *Legodi v Road Accident Fund*⁵ when determining an appropriate award for the plaintiff's general damages and proposed the award of R500,000. The defendant also contended that when deciding an appropriate award, the Court should take into consideration that the plaintiff sustained a head injury in 2012 during a fight.

Oral submissions relating to the loss of income

22. The plaintiff directed the Court's attention to the income affidavit and contended that the plaintiff incurred a loss as a result of the accident. He was working at Schoeman Farm during 2014, earning R1 400,00. Since the accident on 14th June 2014, he has not returned to work.

23. The plaintiff also referred the Court to an employer's certificate indicating that he was employed at General Farm Water for five days per week from 1 June 2021, to 30 June 2021, with a earning of R21.69 per hour. Consequently, the plaintiff is entitled to an award amounting to R777,968.00 for loss of earnings. In response to the defendant's request for an increased contingency, the plaintiff proposed that the

⁴ [2024] ZAGPPHC 547.

⁵ [2021] ZAGPPHC 655.

court apply a standard contingency of 10% for pre-accident earnings and 20% contingency for future loss.

24. The defendant contended that the occupational therapist's report indicated that he was a seasonal worker involved in orange picking during specific seasons. It was also noted that he had repeated grade 9 on three occasions and, as a hawker, intended to continue selling cigarettes and potato chips. Consequently, a 30% contingency should be applied to pre-accident earnings, with a 50% contingency for future earnings. The plaintiff is therefore entitled to receive R511,432 for loss of earnings. The defendant also argued that the Court should consider the attached employer's certificate in determining the appropriate contingency fee to be awarded. The income affidavit deposed to by Wilzard Thabang Mathe mentioned that the plaintiff never returned to work after the accident.

Applicable law

25. It is well established that the court has a discretion to determine an appropriate general damages award. The exercise of this discretion is not an easy task. In the decision of *Minister of Safety and Security v Seymour*⁶, the court held that:

“...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...”

26. In *Ngomane v Road Accident Fund*⁷, the plaintiff in this matter was, at the time of the incident, 24 years old and had sustained a severe fracture of the right humerus as well as the right radius and ulna. Since the incident, Ngomane had been left with a dysfunctional left arm and visible scarring. The orthopaedic surgeon further indicated that Ngomane exhibited a weak grip on his right side and was unable to lift and carry heavy objects. Ngomane also reported experiencing headaches intermittently. More critically, Ngomane suffered a radial nerve injury

⁶ 2006 (6) SA 320 (SCA) at para 17.

⁷ [2017] ZAGPPHC 401.

affecting his active wrist. The court awarded R450,000.00 in general damages, which approximately amounts to R600,000.00 in current value.

27. In *Dlamini v Road Accident Fund*.⁸ Dlamini was still in school when the accident occurred. He sustained a fracture of the right humerus at the junction of the middle and distal thirds. Also being hospitalised, his arm was immobilised with a U-slab. He was transferred to another hospital. It was noted that he had an isolated injury to his right humerus with no distal neurovascular deficit. The position of the fracture was found to be unsatisfactory, and he again underwent surgery. He was noted to have a right radial nerve palsy post-operatively and was fitted with a cock-up splint and subsequently discharged. Also of note is that Dlamini had a 6cm post-surgical scar over the medial aspect of the right upper arm and a 4cm post-surgical scar over the lateral aspect of the right upper arm. There was a 2cm post-surgical scar over the anterior aspect of the right upper arm. There was a shortening of the right forearm. It was further recorded that there were some irregularities of the articular surface of the elbow joint compatible with post-traumatic osteoarthritis in the elbow. In *Dlamini*, the court placed notable weight on the fact that he was quite young, 14 years of age when the accident occurred, and the injuries resulted in him suffering from early post-traumatic osteoarthritis in his right elbow. He was permanently disabled in that the right elbow experienced pain with strenuous physical activity and had a loss of range of movement in the right elbow joint. The court held that he would experience most of his life in an injured state, and that he was injured when he had not obtained any skills and was left unable to compete for any physical work. The court awarded R550,000.00 in general damages.

28. I acknowledge that the plaintiff experienced head injuries prior to the incident. It is also documented that he had experienced headaches following the head injury incurred during the incident. It has been suggested that the plaintiff engaged in excessive alcohol consumption, however, the clinical psychologists did not evaluate whether his persistent headaches were attributable to alcohol or psychological factors.

29. Mr. Mathe has not resumed employment since his accident and has not worked since then.

⁸ [2023] ZAKZPHC 29.

30. Considering the medical reports submitted and the plaintiff's argument, I am of the view that a fair and reasonable amount to be awarded to the plaintiff for general damages is R650,000.00 (six hundred and fifty thousand rands only).

31. In light of the evidence presented by the industrial psychologist, the plaintiff was employed as a farm worker at the time of the accident. He was able to function properly as a hawker. It is presumed he would have continued in that role or secured employment appropriate to his education (grade 9), experience, communication skills, and abilities. It is further presumed that he had attained his career and earning potential as a farm worker.

32. The expert observed that the plaintiff did not return to work following the incident. This testimony contradicts the employer's certification, which confirms that he was employed at General Farm Water five days per week from 1 June 2021 to 30 June 2021, with earnings of R21.69 per hour. It is my view that, apart from generating income through his ongoing activities as a hawker, the plaintiff did not engage in any other employment.

33. The Actuary calculated the plaintiff's value of loss as follows:

Income if accident did not occur: 511 473
Less: R943.00
Subtotal: R510,530.00
Income given accident did occur: R1,209,408.00
Less: R1,179,893.00
Subtotal: R29,515.00
Total value loss: R540,045.00

34. As previously mentioned, the earning potential provided by both the plaintiff and the defendant before and after the incident varies; accordingly, I will implement a contingency spread of 35% on the post-accident earnings. The outcomes of my calculations are as follows:

Income if the accident did not occur: R511,473.00
Less: 10%

Subtotal: R460,325.70

Income, having regard to the post-accident: R1,209,408.00

Less: 35%

Subtotal: R786,115.20

Total value loss: R1,246,440.90 less 45% = R685,542.49

35. Consequently, the following order is granted:

1. The application in terms of Rule 38(2) is granted.
2. The defendant shall pay 100% of the Plaintiff's proven or agreed damages.
3. The defendant is ordered to pay the plaintiff a capital amount of R1,335,542.49 (one million three hundred and thirty-five thousand, five hundred and forty-two rand and forty-nine cents), the amount shall be paid into the trust account of Savage Jooste & Adams incorporated, with banking details:

Nedbank name	Standard Bank
Account type	Trust Account
Branch code	White River
Account no	0[...]
Plaintiff Attorney	Frans Schutte & Mathews Phosa INC

4. The above capital amount is comprised of the following:
 - 4.1. R685 542. 49 (six hundred and eighty five thousand five hundred and fourty two rand and forty nine cents) in respect of the past and future Loss of earnings.
 - 4.2. R650 000 (six hundred and fifty thousand rands) in general damages.
5. The capital amount shall be paid into the abovementioned trust account of Frans Schutte & Mathews Phosa Inc. within 180 (one hundred and eighty) days

from the date of this Order. Should the defendant fail to make payment of the capital amount within 180 (one hundred and eighty) days from the date hereof, defendant will be liable for interest on the amount due to the plaintiff at the prescribed rate per annum, from the 15th (fifteenth) day from the date of this order to the date of final payment.

6. The Defendant shall furnish the Plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996 to pay the costs of the future accommodation of the Plaintiff, in a hospital or nursing home, or treatment of or rendering of a service or supplying of goods to him arising from injuries sustained by him in a collision on 14 June 2014 after the costs have been incurred.
7. The evidence on affidavits of the following experts and the reports of the following experts, in respect of notices in terms of Rule 36(9)(b) of the Uniform rules of court, which were served on the Defendant, are admitted into evidence on the trial date and at the hearing of this matter, in terms of Rule 38(2).

7.1. Prof S L Biddulph-Orthopaedic surgeon

7.2. Dr Oelofse-Orthopaedic surgeon

7.3. Dr Rosman-neurologist

7.4. B. Westwood-Clinical psychologist

7.5.M Setoane-Occupational therapist

7.6.B Oosthuizen-industrial psychologist

7.7. GRS Consulting -Actuary

8. The Defendant is ordered to make payment of the Plaintiff's taxed or agreed party and a party scale on a high court scale in respect of the action, which costs include but are not limited to (subject to the taxing master's discretion:

8.1. Costs of counsel on scale B

8.2. Costs of the medico-legal reports served on the defendant.

8.3. Qualifying fees of the experts (if any);

8.4. Reasonable costs incurred by the plaintiff in attending the medico-legal examination.

8.5. Costs of the application in terms of Rule 38(2)

9. The plaintiff has entered into a contingency Fee Agreement with the attorney.

**K MOGALE,
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Date of hearing: 21 July 2025

Date of judgment: 06 August 2025

APPEARANCES

Applicant's council: Advocate Sophie Maritz

Instructed by: Franse Schette & Matthew's Phosa Attorneys

Respondent's: Advocate Brenda Rangata

Instructed by: Road Accident Fund