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**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
LIMPOPO DIVISION, POLOKWANE**

**CASE NO: 5843/2024**

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 04-08-2025

SIGNATURE:

In the matter between:

**JERE, TAURAI GABRIEL YOLA**

**APPLICANT**

And

**ROAD ACCIDENT FUND**

**RESPONDENT**

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**JUDGEMENT**

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**MASHAMBA AJ**

## INTRODUCTION

[1] The Applicant is **Taurai Gabriel Yolan Jere**, an adult male person, Zimbabwean national, born on the 07<sup>th</sup> March 1993, with passport number F[...], and currently residing at Soshanguve, Pretoria, Gauteng Province.

[2] The Respondent is **THE ROAD ACCIDENT FUND**, a legal entity duly established in terms of Section 2 of the Road Accident Fund Act, 56 of 1996 ("the Act") with main place of business at 3[...] I[...] Street, Menlo Park, Pretoria, Gauteng Province.

[3] On the 20<sup>th</sup> August 2021, at N1 Kranskop Toll Plaza, Limpopo Province, the Applicant was a passenger in a white JMC bakkie bearing a registration numbers which are unknown to the Applicant ("insured motor vehicle"), at the time driven by P Mabika. The insured motor vehicle was towing another motor vehicle, a Nissan, when it drove in a higher speed and instantly applied brakes which caused the towed Nissan to knock it from the rear end. As a result of the accident the Applicant was injured, and later transported to FH Odendaal Hospital for medical treatment.

[4] As a result of the accident the Applicant instituted a delictual claim against the Respondent. The Applicant's claim was lodged on the 18<sup>th</sup> December 2023. The summons was issued on the 23<sup>rd</sup> September 2024. The defendant did not enter his notice of intention to defend.

[5] The Applicant issued an application for default Judgment on the 07<sup>th</sup> May 2025. The issues to be determined by this court is the merits of the case, a fair compensation for the Applicant's future medical expenses and his loss of earnings. The issues of general damages are to be postponed *sine die* since the Respondent did not take a decision of the seriousness or non-seriousness of the Applicant's injuries as required by regulation 3 of the Act.

[6] The matter was before this court in default hearing on the 23<sup>rd</sup> June 2025. The Applicant pursued that the Respondent shall pay him the amount of **R 7 593 232.45**

(Seven Million Five Hundred and Ninety-Three Thousand, Two Hundred and Thirty-Two Rand, Forty-five Cent) for past and future loss of earning. The Applicant pleaded the court to order the Respondent to issue an undertaking certificate in order to cover for his future medical expenses.

[7] The Applicant amended his particulars of claim in terms of rule 28 of the Uniform of Rules of the Court<sup>1</sup>. The Applicant claimed the amount of R 4 000 000.00 (Four million Rand) calculated as follows; (a) Past loss of income R 500 000.00; (b) Future loss of income R 2 500 000.00 (c) General damages R 1 000 000.00.

## **THE FACTUAL BACKGROUND**

[8] The Applicant alleged that he was a passenger in an insured motor vehicle JCM bakkie, with the registration numbers unknown to him. The Applicant alleged that the insured driver was negligent as he sped while towing another motor vehicle and as a result the towed motor vehicle collided with the rear end of the insured vehicle.

[9] The Applicant further alleged that as a result of the accident he was severely injured and transferred to FH Odendaal Hospital ("the hospital") for medical treatment. According to the hospital records the Applicant complained of a neck pain and pain on the side of the rib and left leg. The Applicant further had a laceration on his head. The Applicant testified that he was injured on his head, pain on his leg and back. The Applicant's head laceration was sutured and his GCS was 15/15. he was referred to X-ray. The X-ray was reviewed by a Dr, and no fracture was sustained. The Applicant was discharged further alleged that he was treated and discharged the same day with pain medication.

[10] Subsequent to his discharge, the Applicant never consulted a Dr related to injuries sustained in the accident in question. The Applicant testified that he did not consult a Dr because he was scared that he may be disabled because another Dr from the hospital advised him to refrain from doing heavy type of work because he

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<sup>1</sup> Uniform Rules of Court of South Africa, as amended on the 01 July 2019 (the rules)

may have a permanent spinal cord damage. He testified that he never attempted to do heavy type of work but he testified that he does light type of work. He further indicated that he does not feel pain every day but only during cold weather.

[11] The Applicant alleged that he was a self-employer manufacturing gamazine paint and that he continued with his pre-accident occupation but with some limitation. The Applicant testified that it took him approximately four (4) months to return to his employment, as a result of the injuries. The Applicant indicated that he did not receive a salary during his recuperation period, he survived from his savings.

[12] The Applicant further alleged that subsequent to his return to work, things were not the same, he lost many clients, he could not drive nor work anymore. He had to depend from his employee and further employed a driver because he could not drive for long distances. He had to add four (4) more other employees to assist in the company as he had to serve many customers post-accident.

[13] The Applicant testified that pre-accident his salary was ranging between **R 40 000.00 - R 45 000.00** per month and that post-accident his salary was ranging between **R 8000.00- R 10 000.00** per month. He further indicated that the reason he employed six (6) employees is because of the work demand and that when there are many customers, he divides them to different places to serve his customers.

[14] When the court requested the Applicant's pre-accident proof of earnings, the Applicant indicated that since he had registered his business in his mother's names, he could not retrieve the business information. The Applicant admitted that he does not have any proof of pre-accident earnings. He testified that after his deceased's mother, he registered another company namely; Goldenson Gamazine and Glamour Coat Supply (Pty) Ltd in 2024. The Applicant considered that he does not know the entire expenses of his company. The Applicant further testified that he did not furnish any experts with his business expenses. The Applicant testified that his accountants prepared the 2025 annual financial statement.

## **EXPERTS' OPINION AND EVIDENCE**

[15] In order to quantify the Applicant's loss of earnings and future medical expenses as a result of the injuries incurred due to the accident in question, the following experts were appointed to assess the Applicant;

- 15.1 Orthopaedic Surgeon- Dr L.F Oelofse
- 15.2 Neurosurgeon- Dr JJ Labuschagne
- 15.3 Physiotherapist- Shaun Michael
- 15.6 Occupational Therapist-Anoett Rossouw
- 15.7 Industrial Psychology- Danushka Jenkins
- 15.8 Actuary- Johan Sauer

[16] The Applicant was assessed by an **Orthopaedic surgeon** ("the Ortho") on the 25<sup>th</sup> April 2024. The Ortho reported that according to the Emergency Medical Services (EMS), the Applicant had the GCS of 15/15 on the scene and complained of pain over occipital lobe of the head. On the arrival at the hospital, the Applicant presented with a laceration on his head and complained of pain on the neck, left - sided ribs and left leg, according to the Applicant it was his left ankle. The Ortho noted during examination of the records found that the Applicant complained of a right-sided headache and left-sided rib pain; no loss of consciousness; No other complaints- mobilising well; Chest: Good air entry bilaterally- no dyspnoea; Abdomen soft and non-tender; and 3 cm long laceration right parietal area-no active bleeding. The records indicates that the Applicant was sent for X-rays (skull and chest) which reported no fracture. The Applicant was diagnosed with a soft tissue injury of the chest. Analgesics were administered and the laceration on his head was cleaned and sutured<sup>2</sup>. The Ortho confirmed that the Applicant was discharged from hospital the same day with a prescription of pain medication and rub-rub.

[17] The Ortho reported that according to the Applicant, he suffered from acute pain in his head, chest, neck and left ankle for approximately 2 (two) weeks. The Applicant further reported that a period of moderate pain for at least another two (2) - three (3) weeks. The Ortho opined that the Applicant continued to suffer from the sequelae of his head, chest, neck and left ankle injuries with pain that persisted and

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<sup>2</sup> Index Medico Legal Report, Bundle B, page 6

residual neurological symptoms related to his head injury that became more apparent as time progressed<sup>3</sup>.

[18] During the assessment of cervical spine, the Ortho noted moderate pain on palpation C4-T1 and Muscle spasms paraspinal, trapezius and suboccipital spasms. The neck has a mild reduction of movement in all directions. The spurling's Compression Test negative<sup>4</sup>.

[19] During the assessment of the left ankle, he noted a lateral joint tenderness and anterior joint tenderness. The ankle movement is normal<sup>5</sup>.

[20] The Ortho referred the Applicant for X-rays of the cervical spine and left ankle. The result shows the following; impression of slight radiolucency at the base of spinous processes of C4 and C5; however, the significance of this is not clear but no obvious displaced injury; there is normal cervical lordosis; Facets remain aligned; C4 and C5 slightly narrowed; No high-grade compression injury seen; C1-C2 articulation intact but within normal limits and on the frontal study a slight curve to the right which probably indicates some muscle spasm. The X-ray of the ankle showed everything normal<sup>6</sup>.

[21] The Ortho indicated that he agrees with the X-ray report. Ortho further state that the C4 and C5 spine spinous processes sustained an injury with the development of C4- 5 spondylosis<sup>7</sup>. The Whole Person Impairment was calculated equal to 7% and qualified for the narrative test, as a serious long-term impairment or loss of body function. The medical expenses related to Ortho injuries were properly articulated in the Ortho report. The ortho concluded that the Applicant's neck injury, chronic pains and progressing spondylosis will continue to have significant impact on all aspects of his life<sup>8</sup>. The Ortho further opined that the Applicant may retire five (5) years earlier than normal retirement.

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<sup>3</sup> Ibid. page 7

<sup>4</sup> Ibid. page 13

<sup>5</sup> Ibid. page 13, par 8.4

<sup>6</sup> Ibid. page 15

<sup>7</sup> Ibid. page 15, par 9.3

<sup>8</sup> Ibid. page 30, par 16.2.8

[22] The Applicant was further assessed by the **Neurosurgeon** ("neuro"), Dr J.J Labuschagne on the 26 April 2024. The neuro indicated that according to the Applicant he lost consciousness immediately after the accident and recovered consciousness at the hospital. The Ortho indicated that it appears that the claimant had a period of post-traumatic amnesia of more than 24 hours. The Applicant reported that he attended follow-up appointment subsequent to the accident<sup>9</sup>.

[23] The the Applicant's complaints which include short-term memory and that he has difficulty with concentration. The neuro opined that the Applicant suffered mild head injury with reported secondary residual memory and concentration disturbances and that he has 2% chances of epilepsy<sup>10</sup>. The neuro has stipulated the foreseen medical treatment which the Applicant may incur for his medical treatment.

[24] The Applicant was further assessed by the **Physiotherapist**("Physio"), Shaun Michael on the 25<sup>th</sup> April 2024. The physio confirmed the injuries as appears in the medical records and noted the orthopaedic injuries as opined by the Ortho. The physio indicated he opined that the Applicant injuries as a result of the accident has an impact on his function and productivity. The physio indicated that with successful treatment his productivity will improve<sup>11</sup>, however as the C4-5 spondylosis of the Applicant's cervical spine, the physio believe that he will never reach his level of function and productivity as he managed pre-accident. The Applicant will require a rehabilitation program which will consist of a combination of physiotherapy, biokinetics and gym exercises to strengthen his muscles and improve his function. The Physio concluded that the Applicant qualify for narrative test in terms of 5.1 due to the cervical spine injury. The physio recommended 60 physiotherapy treatment sessions. The medical costs were stipulated in the report.

[25] The Applicant was further assessed by the **Occupational Therapist** ("OT") Anoett Rossouw on the 25 May 2024. The OT noted that at the time of the accident, the Applicant was a self-employer as the owner of Goldenson Gamaziwe & Glamour Court supply. The Applicant type of work was classified as medium-heavy manual

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<sup>9</sup> Ibid, page 51

<sup>10</sup> Ibid, page 62

<sup>11</sup> Ibid, page 88, par 13.2

work. The OT indicated that the Applicant performed tasks as a field Technician or Installer as the owner of Gamazine & Decorative Coating performing all task himself. The OT assessed the Applicant and concluded that as a result of the injuries incurred, related to the accident, the Applicant is suited to light to medium tasks and further that with degeneration of the cervical spine, the Applicant may not sustain medium work until retirement age. The OT indicated that the Applicant is currently not suited to perform the full range of heavy task due to the C spine C4/C5 spinous process fracture. The OT recommended occupational therapist cost to alleviate the Applicant's pain.

[26] The Applicant was assessed by an **Industrial Psychologist** ("IP"), Danushka Jenkins, on the 25<sup>th</sup> April 2025. The IP reported that the Applicant's highest qualification is certificate: motor mechanic and that he did not aspire to further his education before and after the accident in question. The IP further reported that at the time of the accident, the Applicant was working for Goldenson Gamazine and Glamour Supply (self-employed). The Applicant worked as a self-employed for a period of a year and half before the accident occurred. The Applicant reported that he was earning the salary in the amount of R 40 000.00 - R 45 000.00 per month, 2021 term (average of R 510 000 per annum). The IP indicated that these earnings are comparable to the MED and UQ earnings for production and operations department managers in construction (R 467 931.00 per annum, 2021 term; Analytico) annexure A<sup>12</sup>.

[27] The IP accepted that the Applicant was earning the reported amount<sup>13</sup>. The IP postulated that given the Applicant's age and career trajectory the IP opined that it is reasonable to assume that the claimant would have reached his career ceiling by the age of 45, earning comparable to the UQ earnings scale for production and operational department managers in the construction non-corporate formal sector. Straight line increases are anticipated during this stage. The Applicant would benefit from an annual inflationary increase until retirement. Pre-accident early retirement was not anticipated.

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<sup>12</sup> Bundle D, page 31, par 31

<sup>13</sup> Bundle D, page 24, par 15.3.1

[28] The IP reported that following the accident, the Applicant mentioned that he returned to work after three months, and noted that he did not receive salary during his convalescence. The IP reported that the Applicant returned to pre-accident occupation but hired more assistance as he is no longer able to manufacture and apply the gamazine himself. According to the affidavit dated 22 May 2025, the Applicant's current earnings amount to approximately R 10 000.00 per month, 2025, R 120 000 per annum, 2025 term, depending on the work received and completed. The IP noted that these earnings are comparable to below the LQ earnings for production and operations department managers in construction (145,662.00 per annum) 2025 terms; Analytico referred in annexure A1<sup>14</sup>.

[29] The IP postulated that the Applicant would likely reach his career ceiling at the age of between 50-55 on the MED-UQ scale for production and operations department managers in construction (R 610 879.50, 2025 term). Hereafter the Applicant will probably benefit only from annual inflationary increases until the normal retirement age of 65.

[30] During the preparation of the Industrial report, the IP had photos of the projects done, Suppliers Transaction Report and April-May 2025 bank statement. The IP made deference to a **forensic accountant** to determine the impact that the accident has had on the Applicant's business.

[31] Johan Sauer Actuaries, were appointed to calculate the Applicant loss of earnings as postulated by the IP, considering the contingencies of 5% pre- and post-morbid past, 5% pre-morbid future earnings and 45% post morbid future earnings. The calculation was done as follows;

|                      | <b>Pre-morbid</b> | <b>post-morbid</b> | <b>Loss</b>      |
|----------------------|-------------------|--------------------|------------------|
| <b>(difference)</b>  |                   |                    |                  |
| Past earnings        | 1 633 919         | 460 865            |                  |
| Minus 5%/5%          | -81 696           | -23 043            |                  |
| Past loss of earning | <b>1 552 223</b>  | <b>437 822</b>     | <b>1 114 401</b> |

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<sup>14</sup> Ibid,31

|                      |                 |                  |                  |
|----------------------|-----------------|------------------|------------------|
| Future contingencies | 12 276 117      | 7 192 488        |                  |
| Minus 5%/45%         | -613 806        | 3 236 620        |                  |
| Future Loss          | <b>11662311</b> | <b>3 955 868</b> | <b>7 706 443</b> |
| <b>Net Total</b>     |                 |                  | <b>8 820 844</b> |
| Minus RAF cap        |                 |                  | <b>- 41 713</b>  |
| <b>TOTAL LOSS</b>    |                 |                  | <b>8 779 131</b> |

[32] The plaintiff submitted that considering the conclusion of the medical experts' reports discussed above the Applicant has been adversely affected by the accident. The Applicant further indicated that 30 % differential contingency deduction of future loss in light of the Applicant's circumstances and with regard to the case laws referred in the Applicant's heads of argument is reasonable. The Applicant submitted that the amount **R 7 593 232.45** in respect of the loss of earnings will be fair and reasonable to compensate the Applicant. The Applicant relied on his heads of argument which was handed over to the court, during the hearing of this matter.

## THE LAW

[33] Regarding the evaluation of credibility and reliability of expert evidence, Wallis JA (Fourie and Koen AJJA concurring) in *Pricewaterhouse Coopers Incorporated and Others v National Potatoe Co-operative Ltd and Another*<sup>15</sup> referred to *Wightman v Widdington (Succession de)* 2013 QCCA 1187 CanLII) where it was remarked thus:

### **"Legal principles and tools to assess credibility and reliability"**

[326] *"Before any weight can be given to an expert's opinion, the facts upon which the opinion is based must be found to exist"*

[327] *"As long as there is some admissible evidence on which the expert's testimony is based it cannot be ignored; but it follows that the more an expert relies on facts not in evidence, the weight given to his opinion will diminish".*

[328] *An opinion based on facts not in evidence has no value for the Court.*

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<sup>15</sup> *Pricewaterhouse Coopers Incorporated and Others v National Potatoe Co-operative Ltd and Another* [2015] 2 All SA 403 (SCA)At page 441 para [98]

[329] *With respect to its probative value, the testimony of an expert is considered in the same manner as the testimony of an ordinary witness. The Court is not bound by the expert witness's opinion.*

[330] *An expert witness's objectivity and the credibility of his opinions may be called into question, namely, where he or she:*

- *accepts to perform his or her mandate in a restricted manner;*
- *presents a product influenced as to form or content by the exigencies of litigation;*
- *shows a lack of independence or a bias;*
- *has an interest in the outcome of the litigation, either because of a relationship with the party that retained his or her services or otherwise;*
- *advocates the position of the party that retained his or her services; or*
- *selectively examines only the evidence that supports his or her conclusions or accepts to examine only the evidence provided by the party that retained his or her services."*

[34] In *Ruto Flour Mills v Adelson (1) 1958 (4) SA 235 (T)*<sup>16</sup> Boshoff J stated that a party seeking to introduce expert evidence must satisfy the court that the witness not only has specialist knowledge, training, skill or experience but that he/she can, on account of these attributes or qualities, assist the court in deciding the issue, that he/she is an expert for the purpose for which he/she has been called upon to express an opinion,<sup>17</sup> the witness does not or will not express an opinion on hypothetical facts that have no bearing on the case or which cannot be reconciled with all the other evidence in the case.<sup>18</sup>

[35] When deciding issues of past and future loss of earnings, this court has considered a decision in *Southern Insurance Association Ltd v Bailey NO*<sup>19</sup> Nicholas JA stated as follows:

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<sup>16</sup> *Ruta Flour Mills v Adelson (1) 1958 (4) SA 235 (T) At 237C-D.*

<sup>19</sup> *Southern Insurance Association Ltd v Bailey NO 1984 ( 1) SA 98, par 116-117*

*"Where the method of actuarial computation is adopted, it does not mean that the trial Judge is "tied down by inexorable actuarial calculations". He has "a large discretion to award what he considers right" ..... One of the elements in exercising that discretion is the making of a discount for "contingencies" or the "vicissitudes of life". These include such matters as the possibility that the Plaintiff may in the result have less than a "normal" expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case."*

## **COURT'S FINDINGS**

[36] The Applicant was the only witness to adduce evidence and he did not call other witness to corroborate his testimony about his pre-accident employment. The Applicant did not provide any evidence to prove that pre-accident he was earning an alleged salaries ranging between R 40 000.00-R 45 000.00. The Applicant post-accident salary was not proven except furnishing the Court with a customer transaction report from Hippo Industrial Minerals CC and photos depicting his alleged customers houses his company completed. The Applicant alleged that he gave his bank statements to his legal representative and further shared the same with his respective medical experts but the same was not filed to the Court.

[37] According to the amended particulars of claim, the Applicant claimed the amount of **R 4 000 000.00** (four million) calculated as follows; (a) past loss of earnings R 500 000.00; (b)Future loss of earnings R 2 500 000.00; General Damages R 1 000 000.00.

[38] The Applicant's Counsel argued that the Applicant should be compensated for the past and future loss of earnings in the amount of **R 7 593 232.45**, he further submitted that the Applicant should be awarded an undertaking certificate in terms of Section 17(4) of the Act to cover for his future medical expenses. The Applicant submitted that the issues of general damages should be postponed sine die, since the Respondent first have to take a decision whether the Applicant's injuries are

regarded as serious or not in terms of regulation 3 of the Act. If the Respondent may regard the injuries as non-serious, the Applicant may decide to refer the matter to HPCSA for the tribunal to determine the Applicant's seriousness or non-seriousness of his injuries. The issues of general damages can solely be entertained by the Court after the seriousness of the injuries was found to be serious either by the Respondent or the HPCSA tribunal.

[39] The amount of R 7 593 232.45 was not pleaded, although the Applicant's counsel submitted that the Applicant should be compensated the amount of R 7 593 232.45 for his past and future loss of earnings. The Court will determine the Applicant's loss of earnings in consideration of the amount claimed in the Applicant's amended particulars of claim.

[40] The Applicant was a passenger in a motor vehicle with registration numbers unknown, which was towing another motor vehicle which the registration is not known to him. The court finds that the Applicant proved his case on merits against the Respondent. The Respondent should compensate the Applicant 100% for his proven damages.

[41] The Applicant's Counsel argued that the Court should rely on the experts' opinion to determine the Applicant's loss of earnings. The Counsel further submitted that as he is not an expert, he relied on the experts' opinion to determine the Applicant's past and future loss of earnings and taking in to consideration a reasonable contingency deduction. The Counsel further argued that this Court should also rely on the experts' opinion as the only available evidence to be considered and that the Court should accept experts' opinion because the Court has no expertise to reject the opinion by the experts. Apparently, the Counsel is misinformed on the issues related to the principles regarding credibility and reliability of experts' opinion. It is not correct to assume that the Court is bound by the experts' opinion. The probative value of an expert's opinion should be tested and if such opinion is not supported by evidence the Court may reject it.

[42] The IP postulated the Applicant's premorbid earnings as per his qualifications, age and his alleged earnings. The IP did not verify the alleged Applicant's premorbid

earnings. The IP accepted the Applicant's allegations without providing proofs, therefore, his opinion was not credible nor reliable. The IP had no enough information to postulate the Applicant's premorbid earnings and the postulation was overstated. The IP was not in possession of the financial statement nor bank statement of the Applicant's pre-accident income but accepted that the Applicant's salary was between R 40 000.00- R 45 000.00. The Court finds that the estimated premorbid income was inflated. The Applicant did not provide any proof that his alleged mother's business was paying him a salary of between R 40 000.00- R 45 000.00 per month. The IP used exorbitant amount to postulate the Applicant's premorbid earnings potential.

[43] The Applicant was not frank with his postmorbidity salary because he did not even know how much is his company's expenses. The Applicant in his viva voce evidence, he stated that his accountant has prepared the 2025 financial statement for his business, although such was not furnished to Court. The Court needs evidence in order to determine the Applicant's loss of earnings, therefore, on the 02<sup>nd</sup> July 2025 the Court through the Judge's Secretary requested the Applicant to furnish the Court with his company's 2025 Annual Financial Statement and his company registration certificate in line with his evidence. The Applicant replied to the email by attaching business certificate which confirmed that his business was registered in February 2024 and he further attached his affidavit with the following contents;

*"There are no financial statements done by the bookkeepers I meant to say Bank Statement"*

[44] Apparently, the Applicant misled the Court when he stated that his accountants have prepared 2025 annual financial statement. The Court finds that the Applicant is not a reliable witness, because he is the one who testified under oath that his accountants has prepared his company's 2025 annual Financial Statement however, when he had to provide the proof, he turned against his own testimony. The Applicant did not provide the Court with his business and personal bank statement but alleged that it was furnished to his experts. The Court will not pin point every doubtful allegation made by the Applicant but it is enough to state that he exaggerated his loss of earnings.

[45] The Applicant lowered his postmorbidity earnings with an attempt to open a huge difference between the pre and post morbidity loss of earnings with a vision of scoring higher compensation for his past and future loss of earnings. The Applicant chose not to call any witness to corroborate his past and future earnings capacity. The Applicant was a single witness who attempted to score higher loss of earnings without any confirmation of his allegations. The experts' reports were concluded based on the Applicant's unverified information.

[46] The injuries in terms of medical records were not serious and no fractures were noted but the Ortho who assessed the Applicant's cervical spine noted fractures which was not mentioned in the radiologist X-ray report. It is not clear if there are any fractures or not, and how the fractures are related to the accident as there was no fracture noted in the medical records from the first treating Doctor. No loss of consciousness was noted in the medical records and such was not even confirmed by any witness. The Applicant did not testify that he is forgetful or experience loss of concentration. No clinical psychologist was appointed to confirm the sequelae of the head injury. The Applicant reported shoulder pain to the Ortho and such pain was not examined by the Ortho because it was found to be not connected to the injuries mentioned in the hospital records.

[47] The Court accepts that the Applicant might have lost income as a result of the injuries sustained in the accident but the loss was over exaggerated. In order to determine the reasonable amount to compensate the Applicant, the Court considered all the experts' report, the Applicant's oral evidence and the hospital medical records. The Court is going to apply higher contingency deduction considering the inflated premorbidity loss of earnings and further taking note of the fact that the Applicant did not provide collateral information.

[48] The Court considered the actuarial calculations in para 14 *supra*. The Court is of the view that the contingency deduction shall be 50% for premorbidity past, 50% for premorbidity future, 5% for postmorbidity past and 25% for postmorbidity future. The future loss of earnings after the abovementioned contingencies will read as follows;

| <b>(difference)</b>  | <b>Pre-morbid</b>   | <b>post-morbid</b> | <b>Loss</b>         |
|----------------------|---------------------|--------------------|---------------------|
| Past earnings        | 1633919             | 460 865            |                     |
| Minus 50%/5%         | -816 959.50         | -23 043            |                     |
| Past loss of earning | <b>816 959.50</b>   | <b>437 822</b>     | <b>379 137.50</b>   |
| Future contingencies | 12 276 117          | 7 192 488          |                     |
| Minus 50%/25%        | -6 138 058.50       | 1 798 122          |                     |
| Future Loss          | <b>6 138 058.50</b> | <b>5 394 366</b>   | <b>743 692.50</b>   |
| <b>TOTAL LOSS</b>    |                     |                    | <b>1 122 830.00</b> |

[49] In the circumstances, the Court finds that the appropriate amount to be awarded to the Applicant in respect of past and future loss of earnings capacity should be in the sum of **R 1 122 830.00** (One Million, One Hundred and Twenty-two Thousand, Eight Hundred and Thirty Rand).

## **COSTS**

[50] The plaintiff has made out its case, and the cost should follow the suit.

## **ORDER**

[51] In the circumstances, the Court make the following is the Order;

1. The Respondent shall pay the Applicant the sum of **R1 122 830.00** (One Million, Three Hundred and Eleven Rand, Ten cent) in respect of Past and future loss of earnings.
2. The Respondent shall furnish the Applicant with an undertaking in terms of section 17 (4) (a) of Act 56 of 1996 within 30 days from the date of delivery of the Court Order.
3. The Amount in paragraph 1 above shall be paid into the Applicant's attorneys trust account.

4. The Respondent shall be liable to pay interest on the aforesaid amounts *tempore morae* at the rate of 11,75% per annum from 180 days after the date of this order to date of the payment.
5. The Respondent shall pay the Applicant 's taxed or agreed party and party costs until the date of this order including costs of a counsel scale B.
6. The issue of general damages is postponed *sine die*.

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**E MASHAMBA**  
**ACTING JUDGE OF THE HIGH COURT,**  
**POLOKWANE; LIMPOPO DIVISION**

**APPEARANCES**

**FOR THE APPLICANT:            ADV JACO BAM**  
**INSTRUCTED BY:                AJ ALDERSON INC**  
**Email: [highcourt@ajatt.co.za](mailto:highcourt@ajatt.co.za)**

**FOR THE RESPONDENT:        NO APPEARANCE**

**DATE OF HEARING:              23<sup>RD</sup> JUNE 2025**  
**DATE OF JUDGEMENT:         04<sup>TH</sup> AUGUST 2025**

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