

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:19905/2020

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

Date 15 August 2025

K. La M Manamela

In the matter between:

SIKELELA, MKAMISI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DATE OF REASONS FOR ORDER GRANTED AND VARIATION OF ORDER

GRANTED: These reasons for order granted and variation of order granted are issued by the Judge whose name is reflected herein and are submitted electronically to the parties/their legal representatives by email. The reasons are further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. Subject to paragraph [30] below, the date of the reasons for the order granted and variation of the order granted is deemed to be 15 August 2025.

**REASONS FOR THE ORDER GRANTED AND
VARIATION OF THE ORDER GRANTED**

KHASHANE MANAMELA, AJ

Introduction

[1] Mr Sikelela Mkamisi, the plaintiff in this civil action, was born on 28 November 1998. At the age of 19 he was injured in a motor vehicle accident on 29 April 2018. He was a passenger in the motor vehicle travelling along R61 National Road, in Nkonzo, Flagstaff in the Eastern Cape province when the driver lost control ('the insured driver') and he fell off the vehicle. He sustained injuries as set out below and suffered damages as a result.¹

[2] On 14 February 2020, he caused summons to be issued against the Road Accident Fund ('the RAF') in terms of the Road Accident Fund Act 56 of 1996 ('the RAF Act') for compensation. He blamed the insured driver's negligent driving as the exclusive cause of the accident and, consequently, sought compensation from the RAF as provided by the RAF Act. His claim consisted of the following heads (of claims): future medical treatment; future loss of earnings, and general damages. The RAF defended the action.

[3] The matter came before me for a trial on 26 November 2024. Ms N Soviti-Zwedala appeared for the plaintiff and Mr K Phokwane appeared for the RAF. The trial proceeded in respect of issues relating to quantum as issues relating to merits were settled between the parties with RAF fully conceding liability.² After listening to oral submissions by counsel, I reserved the order until 13 December 2024 ('the Order'),³ to reflect further on the issues. The Order would differ with the one appearing below due to variation of patent error(s) and omission(s) in the Order. I will explain this further, below.

[4] On 9 April 2025, plaintiff's legal representatives requested reasons for the Order. Essentially, they sought 'a breakdown of the order granted' as to the amounts granted for general damages and contingencies approved for loss of earnings ('these Reasons'). I, initially, undertook to furnish the calculations by way of a widely shared note on the CaseLines platform, but decided against this, when I noticed that

¹ Par [6] below.

² CaseLines ('CL') 018-1 to 018-2.

³ The Order also reflects court-stamped date of 13 December 2024, but the effective date is the date of trial on 26 November 2024. See CL 019-1 to 019-3.

the amount for general damages have been erroneously omitted from the order made. Regrettably, it took longer to furnish these Reasons than initially anticipated.

Brief background

[5] A brief narration of the background facts is necessary to place context of the issues to be determined. I would strive to do so from the common cause issues or identify the area of dispute.

[6] The plaintiff, as already stated was born on 28 November 1998 and was, therefore, 19 years old at the time of the accident on 29 April 2018. At the time of the trial the plaintiff was 26 years of age. The plaintiff claimed to have sustained the following injuries:

- [6.1] laceration occipital region X2;
- [6.2] laceration of the left side of the forehead;
- [6.3] laceration of the lip on the right side, and
- [6.4] abrasion on both hands, left thigh, both knees, right periorbital ecchymosis.

[7] The plaintiff's highest attained level of education is Grade 11. He was in Grade 12 or matric in 2018 when he met the accident. He returned to school in June 2018, despite his accident-related challenges, but failed. His subsequent attempts at this grade were also met with failures and, ultimately, he dropped out of school in February 2023 as, reportedly, he could not cope. He did not complete Grade 12. The plaintiff had failed grades before and after the accident.

[8] The plaintiff has never been employed. Prior to the accident, as stated above, he was still a learner in high school. After the accident and quitting school, he reportedly has remained unemployed.

Expert witnesses and evidence

General

[9] The plaintiff filed medico-legal or expert reports. I granted an order in terms of Rule 38(2) of the Uniform Rules of this Court for the evidence in the matter to be

adduced by way of affidavits.⁴ The reports or their contents as confirmed under oath by the respective experts, therefore, were accepted as evidence as envisaged by Rule 38(2). Below follows the pertinent aspects of some of these reports. The RAF did not file any reports or tender any evidence by any witness, although they had Mr Phokwane, as counsel, making oral submissions in respect of the quantum of the plaintiff's damages. Ms Soviti-Zwedala, for the plaintiff, also filed comprehensive heads of argument in addition to her oral submissions. I am grateful for her efforts in this regard.

Neurosurgeon

[10] On 27 March 2023, the plaintiff was examined by a neurosurgeon, Dr AB Mazwi. This was about 4 years and 8 months after the accident. The plaintiff mentioned to Dr Mazwi that he had suffered head injury, occipital head laceration, forehead abrasions, upper lip laceration and bilateral leg abrasions. The plaintiff complained to this expert of the following: (a) difficulty with concentration; (b) memory disturbances, and (c) post injury headaches. It is also mentioned that the plaintiff reported that he lost awareness after the accident and woke up in an ambulance. Dr Mazwi's conclusions include that the plaintiff lost consciousness and had amnesia keeping with a mild head injury. Dr Mazwi calculated the plaintiff's whole person impairment ('WPI') at 24%, as he has long term mental disturbances.

Neuropsychologist or Clinical Psychologist

[11] On 28 March 2023, the plaintiff was examined by Dr Joachim FL Mureriwa, a neuropsychologist or clinical psychologist. Dr Mureriwa's report is dated 13 September 2024. The examination took place 4 years and 10 months after the accident. The plaintiff repeated what he told the other expert above regarding his injuries and complaints, including that he was taken to Greenville Provincial hospital where he remained overnight. After his discharge from hospital, he had follow-up treatment between May and October 2018. He was away from school for six weeks. Other than the complaints or symptoms already mentioned, the plaintiff presented or

⁴ Rule 38(2) reads: 'The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.'

reported the following to Dr Mureriwa: blurred vision; partial deafness in left ear; dizziness; back pain; headaches; forgetfulness; irritability and feeling sad most times. Dr Mureriwa's diagnosis was that the plaintiff had a mild head injury and he recommended psychotherapy to address accident-related pain, discomfort and emotional distress.

Plastic Surgeon

[12] On 17 September 2024, the plaintiff was assessed by Dr SS Selahle, a plastic surgeon. Dr Selahle noted the injuries reported above regarding the plaintiff. Of particular relevance to his specialty, this expert noted scars on the plaintiff's scalp and face and that he complained of recurring headaches. The plaintiff has a 10 cm inverted 'T' shaped scar on occipital scalp; 3 cm scar on the left side of the forehead, and 1 cm scar on the upper lip. He observed that the scars have no features of scar hypertrophy, although they are disfiguring and cosmetically unsightly. The scars are permanent with some prospects of improvement by scar revision techniques. He calculated the WPI at 7%.

Occupational Therapist

[13] On 17 September 2024, the plaintiff was assessed by Ms Ncumisa Nzungu, an occupational therapist. Ms Nzungu's report is dated 30 October 2024. The complaints made to this expert by the plaintiff are similar to those made to the other experts, but further included poor vision; rib cage pain, and general fatigue. The plaintiff, also, has reduced bending and standing endurance. Bending elicits pain. He is unable to lift or carry heavy objects. Ms Nzungu concluded as follows: '... when taking into consideration the claimant's reported low back pain as well as limitations when attempting to perform lifting tasks, it can be concluded that the claimant is suited for the physical demand characteristics of work sedentary and light physical demand'.⁵ Overall, this expert concluded that the plaintiff is not equally competitive, but a vulnerable employee in the future, in the open labour market due to his deficits. Given his level of education of only grade 11, he is eligible for unskilled jobs, which are most heavy in nature.

⁵ Occupational therapist's report, CL 007-133.

Industrial Psychologist

[14] On 16 September 2024, the plaintiff was assessed by an industrial psychologist, Ms Talifhani Ntsieni. Ms Ntsieni compiled a report dated 31 October 2024. She had access to the reports of the other expert witnesses referred to above and, thus, was aware of their respective opinions. This included the opinion that had the plaintiff would have passed matric or attained a grade 12 certificate in 2018 and, thereafter, acquired an NQF level 5 qualification – in the form of a two-year post-matric certificate - in 2020. But now that the accident had occurred he will only remain unemployable with an NQF level 3 education in the form of his grade 11 educational attainment.

[15] Ms Ntsieni, the industrial psychologist, concluded regarding the plaintiff's prospects of employment, including as follows:

[There] are incapacitating factors present that limit and will limit Mr. Mkamisi's employability, future career choices and income potential in the future. He has sustained the nature of injuries that have compromised his health and therefore affecting his neurosurgical, cognitive, psychological, learning and occupational abilities. The writer opines that considering these changes, he is an unequal competitor in the open labour market compared with his healthier peers and that he will not be able to perform functions efficiently and effectively as compared to his counterparts. Thus, it is the writer's view that the injuries sustained from this accident hinders Mr. Mkamisi's career and future employability in that regard. Therefore, the writer is of the opinion that Mr. Mkamisi has suffered a medically justifiable loss of work capacity as indicated by the experts as a direct result of the accident which translates into loss of earnings as discussed on 7.2 above.⁶

Loss of earnings or earning capacity

[16] The plaintiff provided actuarial calculations by Munro Forensic Actuaries dated 1 November 2024. The calculations in the report were made as at 1 December

⁶ Industrial psychologist's report par 8, CL 007-172.

2024. The calculations were on the basis that the plaintiff would remain unemployed for the rest of his future working life. Further that, had the accident not occurred the plaintiff would have passed matric or grade 12 in 2018 and acquired a two-year post-matric certificate or an NQF level 5 qualification in 2020 to begin his working career until retirement at 65 years of age. Consequently, his loss was estimated at R947 300 for past loss and R7 790 000 for future loss, after effecting thereto contingency deductions of 5% and 15% respectively. The aforesaid equated to an estimated total loss of R8 737 300. The aforesaid figures are impacted by the application of the cap introduced by the Road Accident Fund Amendment ('the RAF cap').

[17] Counsel for the plaintiff submitted that the loss estimated in the actuarial calculation accords with the evidence in the medico-legal reports and further that the contingencies applied are fair. She urged the Court to adopt the suggested figures for plaintiff's loss.

[18] Counsel for the defendant, among others, submitted that the injuries alleged to have been sustained by the plaintiff do not make sense. Whilst the plaintiff's main injury is said to be a head injury, according to Dr Mazwi, the neurosurgeon, this is only classified as a mild head injury. Further, counsel submitted that the plaintiff delayed in reaching matric and he repeated grade 4 as stated in the educational psychologist's report. Counsel motivated two scenarios to the Court, with one of them suggesting an award to the plaintiff for his loss in the amount of R1 768 790.

[19] On 6 December 2024, I caused the following communication or directive to be sent to the legal representatives of the parties and uploaded on CaseLines:

1. The above matter and the trial which took place before Justice Manamela, AJ on 26 November 2024 refer.
2. The judge is requesting that actuarial calculations be furnished reflecting
Contingency deductions of 35% and 40% on the pre-morbid future earnings of R9 165 800. It is the judge's preliminary opinion that

the accident is not the only reason the plaintiff would be unemployed as there were pre-morbid learning challenges and the prospect of future employment cannot be completely ruled out.

3. The calculations couldn't be done by the Court as the paragraph 4.6 of the Actuarial report states that the amount of R7 790 000 which is the capital value loss factoring or reduced by the RAF Amendment Act cap. Therefore, the two set of figures or calculations (reflecting the requested contingency deductions) should be done by the actuary and furnished in compliance with the statutory cap.
4. The judge has requested that the abovementioned calculations be uploaded as soon as possible to facilitate the finalisation of the matter.⁷

[20] On 9 December 2024, the plaintiff's legal representatives furnished revised calculations in terms of the above directive.⁸ The revised figures in 'scenario b' reflected the plaintiff past loss in the amount of R1 002 600 with a contingency deduction of 5% to equate to R952 470 and future loss in the amount of R9 165 800 with a contingency deduction of 40% to equate to R5 499 480. The aforesaid amounted to an estimated total loss in the amount of R6 451 950.

[21] The plaintiff is said to be limited to his grade 11 education and, therefore, with lesser employment prospects than his pre-morbid projected NQF level 5 post-matric qualification would have availed. I do not think that the accident was solely to blame for the plaintiff's inability to obtain matric and the post-matric qualification. He had challenges even before the accident. Also, considering his age – even with his reach of the maximum medical improvement – one cannot fully rule out the possibility of him earning some form of income. Therefore, I adopted the figure of R5 499 480 for plaintiff's future loss of earnings, as it reflected the 40% contingency mentioned in

⁷ CL 000-1 to 000-2.

⁸ CL 000-1 to 000-5.

my directive to the parties above. But, regarding the past loss of earnings I effected a 15% contingency deduction on the figure of R952 470 to end up with a figure of R809 599. The total loss of earnings was calculated in the amount of R6 309 079. The latter figure is the one reflected in the Order granted.⁹

[22] However, effecting a 15% contingency deduction on the figure of R952 470 (which represented an amount after contingency deduction of 5%) was a regrettable patent error on my part. The correct application of the 15% contingency deduction ought to have been on the figure of R1 002 600 for past loss. The latter figure has featured in both the plaintiff's original and revised actuarial calculations. The result of this is the amount of R852 210. Therefore, the patent error in the Order granted will be corrected by replacing the amount of R6 309 079 for the plaintiff's total loss of earnings with the figure of R6 351 690 (i.e. R5 499 480 adopted for future loss and R852 210 for past loss).

General damages

[23] Another patent error made was by omitting to reflect the amount awarded for general damages in the Order granted. This is also regretted.

[24] Some of the plaintiff's injuries and complaints relevant to the determination of general damages appear above. They include that the plaintiff has scars on his scalp and face of about 10 cm and 3 cm in size, respectively. The scars are reported not to have features of scar hypertrophy, although they remain disfigurements and are unsightly from a cosmetic point of view. Also, the scars are permanent and have prospects of improvement by scar revision techniques. Plaintiff also complained of recurring headaches. These deficits are said to have an effect on the plaintiff and, in the main, to have resulted in moderate to severe cognitive, emotional and behavioural problems which may cause serious and long-term psychological disorders, especially depression. The latter would interfere with the plaintiff's cognitive social functioning. The plaintiff's condition is expected to improve with psychotherapy, but he would continue to endure significant psychological symptoms because of the persistent pain, mainly in the form of the headaches, and discomfort.

⁹ The Order also reflects court-stamped date of 13 December 2024, but the effective date is the date of trial on 26 November 2024. See CL 019-1 to 019-3.

[25] Counsel for the plaintiff referred the Court to previous comparable decisions including what follows. In the case of *Makeke v Road Accident Fund*,¹⁰ decided on 23 November 2010, the plaintiff had lost three teeth and sustained injuries to his jaw and minor injuries to his shoulder and neck. He was awarded R387 000 in general damages with an estimated value of R767 604. 27 in 2024. Further, counsel referred to the matter of *TJ Tobi v Road Accident Fund*,¹¹ concerning a 49-year-old male plaintiff. He, among others, had lots of scarring on his left leg and less scarring on the right leg, as well as disfigurement and pain in both legs and knees. He was awarded the amount of R460 000, as general damages, in 2013, which equated in 2024 to R665 088.16. Another matter referred to by counsel for the plaintiff is that of *April v Road Accident Fund*,¹² which dealt with a claim of a grade R teacher who sustained injuries to her head and spine with cognitive fall-out from the accident disabling her to remember things and depending on notes to remind herself of her duties and daily tasks. She was awarded an amount of R750 000 as general damages in September 2021, which counsel submitted equates to R870 000 in 2024 terms. Plaintiff's counsel submitted that the latter case compares well with the one currently before the Court, due to the head injury. Consequently, counsel submitted that compensation of the plaintiff in the amount of R900 000 for his general damages would be appropriate.

[26] Counsel for the defendant's submissions on issues of comparable cases on general damages which may be awarded to the plaintiff included the following. In *Fouche v Road Accident Fund*,¹³ decided on 11 March 2024, the claimant was injured when he was about 13 years old. His injuries included fracture of the right clavicle; fracture of the left humerus; fracture of the left scapula; fracture of the left rib; lacerations to the face and mild concussive head injury. The court awarded an amount of R525 000 as compensation to the general damages. Counsel, further, referred to the case of *April v Road Accident Fund*¹⁴ in which a minor child was

¹⁰ *Makeke v Road Accident Fund* (611/09) [2010] ZAECBHC 18 (23 November 2010).

¹¹ *TJ Tobi v Road Accident Fund* (unreported) Case no 868/2010, Eastern Cape Grahamstown (9 September 2013).

¹² *April v Road Accident Fund* (2338 /2018) [2021] ZAFSHC 206 (15 September 2021).

¹³ *Fouche v Road Accident Fund* [2024] JOL 63577 (FB).

¹⁴ *April v Road Accident Fund* [2021] JOL 51777 (FB).

injured with head abrasions was awarded the amount of R500 000 in 2021 as general damages, which equated to R630 000 in 2024 terms.

[27] I considered the above submissions against the facts of this matter. In my view a fair and reasonable compensation for plaintiff's claim for general damages is in the amount of R600 000. Obviously, this amount was erroneously not included in the amount reflected in the Order made on 13 December 2024.

Conclusion and costs

[28] Therefore, the amounts awarded to the plaintiff as compensation are R6 351 690 for past and future loss of earnings, and R600 000 for general damages. The total for these figures is R6 951 690. I considered these amounts to be fair and reasonable compensation under the circumstances of this matter. Costs also followed this result. As previously, the date of the Order will be deemed to be 26 November 2024.

[29] As indicated above, when I received the revised actuarial calculation, I immediately inserted in the draft, a figure that was incorrect and did not accord with the judgment reached on the matter. The request for these Reasons alerted me to the patent errors made. Therefore, the previous order granted would be varied in terms of Rule 42¹⁵ of the Uniform Rules of this Court. To facilitate matters any of the parties can avail for signature, a draft order reflecting the relief appearing below.

Order

[30] In the premises, the following order is made:

1. the order granted on 13 December 2024 and reflecting the date stamp of 13 December 2024 by the Registrar, appearing on CaseLines 019-1 to 019-3 is hereby rescinded in terms of Rule 42(1)(b) and substituted with the following order, with the date of the order deemed to be 26 November 2024:

¹⁵ Uniform Rule 42(1)(b) reads as follows: '[t]he court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:

(a) ...

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission...'

- 1.1 the Defendant is 100% liable for Plaintiff's proven or agreed damages;
- 1.2 the Defendant is hereby ordered to pay the Plaintiff the sum of R6 951 690 (six million nine hundred and fifty one thousand six hundred and ninety rand) in respect of general damages and loss of earnings or earning capacity;
- 1.3 the sum referred to in 1.2 above shall be payable within 180 (One Hundred and Eighty) days from the date hereof;
- 1.4 the Defendant shall not be liable for interest on the aforesaid amount, if paid as per paragraph 1.3 above. Should the Defendant fail to make payment as aforesaid, then the Defendant shall be liable to pay interest at the prescribed rate.
- 1.5 the Defendant shall pay the sum referred to in 1.2 above into the Plaintiff's attorneys of record's trust account as follows: -
- | | | |
|-----------------|---|-----------------------|
| Name of Bank | : | First National Bank |
| Account Holder | : | Sotshintshi Attorneys |
| Account Number | : | 6[...] |
| Branch Number | : | 2[...] |
| Type of Account | : | Trust Account |
| Branch Name | : | Hatfield (PRETORIA) |
- 1.6 the Defendant is ordered to furnish the Plaintiff with undertaking certificate in terms of Section 17 (4) (a) of Act 56 of 1996, for the cost of future accommodation of ('the patient') in a hospital or nursing home, or the treatment of or rendering of a service or the supplying of goods to him arising out of injuries sustained by patient in a motor vehicle collision which occurred on the 29th April 2018;

1.7 subject to the discretion of the taxing master, the Defendant shall pay Plaintiff's

taxed or agreed costs on the High Court party and party scale, which costs shall be:

1.7.1 the costs of Counsel up to and including the costs for 11 and 26 November 2024 subject to scale B of sub-rule (3) of rule 67A;

1.7.2 the costs of making bundles for trial;

1.7.3 the costs of obtaining, by the Plaintiff, of all experts reports, including reasonable travelling, accommodation and subsistence costs.

1.7.4 the reasonable travelling costs including reasonable accommodation costs when attending trial.

1.8 there is a valid contingency fee agreement entered into between the Plaintiff and the attorney.

Khashane La M. Manamela
Acting Judge of the High Court
15 August 2025

Appearances:

For the Plaintiff : Ms N Soviti-Zwedala
Instructed by : Sotshintshi Attorneys Inc, Pretoria

For the Defendant : Mr K Phokwane
Instructed by : State Attorney, Pretoria