

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 29643-2019

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
(3)	<u>REVISED.</u>
27/8/2025	
.....	
DATE	SIGNATURE

In the matter between:

SEEPAMORE NALEDI CECILIA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PIENAAR AJ

Introduction

[1] This matter was on the default judgment roll for the 27 May 2025. When the matter was called, Ms Ameersingh was there on behalf of the Defendant.

[2] There is an Court Order granted on 11 June 2024 by the Honourable Judge Raubenheimer (AJ) dealing with the striking out of the Defendant's defence in the event of non-compliance of the Respondent to attend a pre-trial conference.

[3] The court asked Plaintiff's Counsel, Mr. Manzi, whether the State Attorney, Ms. Ameersingh, could participate in the proceedings. He confirmed that he had no objection to her making submissions in the matter.

[4] The Plaintiff served the Defendant with a Rule 28 notice of intention to amend on 12 September 2024. No formal amendment was effected following the aforementioned notice. The State Attorney did not raise any objections in this regard. Therefore, the matter will proceed on this basis.

[5] The Plaintiff's applied in terms of Rule 38(2) of the Uniform Rules of Court for the expert affidavits to be admitted into evidence. The Rule 38(2) application was not served on the Defendant ("the RAF"). Under rule 38, the plaintiff seeks an order:

5.1 That the application will be made to the above Honourable Court on the date of 29th October 2024.

5.2 That the factual evidence of the Plaintiff and witnesses as well as the reports of the following experts, be admitted into evidence at the hearing on affidavit in terms of Rule 38(2)

5.3 The costs of this application shall be costs in the cause.

[6] I have no doubt that, given the current state of the defendant, it would most likely be convenient and justifiable for the plaintiff to lead evidence by way of affidavit. However, I do not agree that it is justifiable not to comply with the Uniform Rules of Court insofar as giving the defendant a reasonable notice of such an application under rule 38, even when it is inevitable that the defendant is not participating in the legal process.

[7] According to the Rule 38(2) application, the hearing date is stated as 29 October 2024, which is incorrect. Furthermore, in prayer 2, the applicant seeks that costs be costs in the cause, despite the fact that this application was never served on the defendant.

[8] It must be noted that two experts testified during the trial, namely the Educational Psychologist and the Industrial Psychologist; however, I will address this at a later stage in the judgment.

[9] At the start of the trial I was informed that the merits have become settled in that the defendant offered a concession on merits 100% in favour of the plaintiff and the plaintiff accepted the offer. Also the issue of General Damages was settled previously between the parties for the amount of R950 000,00

[10] The only issue for determination by this court is therefore the quantum of past and future loss of earnings/ earning capacity.

[11] In the particulars of claim at paragraph 6 the plaintiff alleges that as the result of the said accident, the plaintiff sustained the following injuries:

11.1 Laceration on the left knee

11.2 Head injury with GCS of 7/15

Quantum

Dr M F Mkhonza (Neurosurgeon)

[12] Dr Mkhonza assessed and examined the plaintiff on 19 February 2020 and served the report on the Defendant on 2nd November 2021. This means the report is five years old and outdated. The issue was raised with the Plaintiff's Counsel; however, according to Dr. Manzi, the Plaintiff has since served an addendum report from the Clinical Psychologist. Dr. Manzi states that the claimant sustained a severe traumatic brain injury, facial lacerations, and soft tissue injuries to the left knee and right leg. These injuries were not included in the Particulars of Claim, as noted in paragraph 8 above (except of the soft tissue injury of the right knee). A further addendum report is required, and Dr. Manzi must also address the need for the appointment of a *Curator ad litem*.

Lugano Modipa (Clinical Psychologist)

[13] Ms Lugano Modipa assessed the Plaintiff on 18 February 2020 and an addendum report was done on 8 October 2024. According to Ms Modipa she had smell of alcohol and mentioned that she took alcohol a day before. Ms. Modipa noted in her report, at paragraph 6.5.7, that the claimant reported an increase in

alcohol consumption since the motor vehicle accident. The claimant admitted to having consumed alcohol the day before the assessment. This issue raises concerns for the court. Ms. Modipa's findings are based on Dr. Manzi's report, which is outdated.

Ms Portia Molepo (Educational Psychologist)

[14] Ms Molepo assessed the Plaintiff on 13 May 2022 and an addendum report was done on 3 October 2024. According to paragraph 3 of the report, the documents received and reviewed included the report of Dr. Mkhonza (neurosurgeon) and that of Dr. Modipa (clinical psychologist); however, only the original report was considered—not the addendum. Therefore, the addendum report by Ms. Molepo is also outdated, as it was based on old expert reports. As such, the court cannot accept this report or her testimony as evidence to assist in quantifying the loss of earnings.

Mr Talent Maturure (Industrial Psychologist)

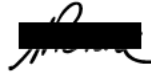
[15] Mr Maturure assessed the Plaintiff on 25 February 2020 and served the report on the defendant on 26 September 2024. This means the report is five years old and outdated. According to paragraph 1.3 of the report, the supporting documentation provided for the purpose of the evaluation included reports by Dr. Mkhonza (Neurosurgeon – 2020), Mr. Makananisa (Occupational Therapist – 2020), and Ms. Modipa (Clinical Psychologist – 2020). As these reports are more than five years old, they are outdated. Consequently, his testimony cannot assist the court in quantifying the loss of earnings, based on the reasons mentioned above.

[16] In **Tshuma**, the court referred to **Twine and Another v Naidoo and Another (38940/14) [2017] ZAGPJHC 288; [2018] 1All SA 297 (GJ)**, where the court held that the admission of expert evidence should be guarded as it is open to abuse. The court held that expert testimony should only be introduced if it is relevant and reliable. A court is not bound by, nor obliged to accept the evidence of an expert witness. The presiding officer must base his findings upon opinions properly brought forward and based upon foundations which justified the formation of the opinion. The court should actively evaluate the evidence. The cogency of the evidence should be weighed "in the contextual matrix of the case with which (the Court) is seized.

[17] There is insufficient evidence before the Court in respect of the quantum of the Plaintiff's claim.

In the circumstances I make the following order:

1. This matter is hereby removed from the default judgment roll,
2. The issue of loss of earnings is postponed sine die;
3. There is no order as to costs.



M PIENAAR

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to Case Lines. The date and time for hand-down is deemed to be 27 August 2025.

Heard on : 27 May 2025

Delivered on : 27 August 2025

Appearances :

On behalf of the Plaintiff : Adv Rodney Manzi

Instructed by : T Mahashe Attorneys

On behalf of the Defendant : Ms Ameersingh

Instructed by : Road Accident Fund

Link no: 4571253