

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable
Case no: 4359/2022

In the matter between:

LA LINTOE

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Lintoe v RAF* (4359/2022) [2025] ZAFSHC 279 (04 September 2025)

Coram: Ntanga AJ

Heard: 9 June 2025

Delivered: 04 September 2025

Summary: Civil procedure – motor vehicle accident claim – quantum of loss of earnings – defendant liable to compensate plaintiff for loss of earnings.

ORDER

1.1 The plaintiff's evidence on affidavit is admitted in terms of rule 38(2) and section 3 of the Law of Evidence Amendment Act 45 of 1988 and the Civil Procedure Evidence Act 25 of 1965.

1.2 The defendant is liable to pay 100% (one hundred percent) of the plaintiff's proven or agreed damages;

The defendant shall pay the plaintiff the sum of R3 562 802 in respect of past and future

loss of income capacity.

1.3 The defendant shall pay the abovementioned amount into the plaintiff's attorneys trust account with the following details:

ACCOUNT HOLDER:	VZLR INC
BRANCH:	ABSA BUSINESS BANK HILLCREST
BRANCH CODE:	6[...]
TYPE OF ACCOUNT:	TRUST ACCOUNT
ACCOUNT NUMBER:	3[...]

1.4 Interest shall accrue on such outstanding amount at 11.25% (at the *mora rate*, as per the Prescribed Rate of Interest Act 55 of 1975, as amended) per annum calculated from the due date, as per the Road Accident Fund Act 56 of 1996, until the date of payment.

1.5 The defendant shall pay the plaintiff's taxed or agreed party and party cost, up to and including the trial dates of November 19, 20 and 22, 2024, May 6 and 7, 2025 and June 9, 2025 which costs shall include, but not limited to, the following subject to the Taxing Master's discretion:

1.5.1 The fees of Counsel in terms of amended Uniform Rule 67A (3)(a) read with Rule 69(7) on scale B, which costs shall include but not limited to his fees of full preparation for the trial of November 19, 2024 and June 9, 2025 and preparing Heads of Argument, and his day fees for the trial dates as mentioned in this paragraph.

1.5.2 The reasonable taxable reservation fees of the following experts for November 19, 20 and 22, 2024:

- (a) Dr J P Marin – Orthopaedic Surgeon.
- (b) Dr S van Heerden – Plastic and Reconstructive Surgeon.
- (c) Dr M Kassen – Clinical Psychologist.
- (d) Ms M Olivier – Occupational Therapist.

1.5.3 The reasonable taxable reservation and qualifying fees of the following experts for November 19, 20, and 22, 2024:

- (a) Mr B Moodie – Industrial Psychologist.
- (b) Mr J Sauer – Actuary.

1.6 The reasonable taxable reservation fees of the following experts for May 6, 2025:

- (a) Dr J P Marin – Orthopaedic Surgeon.
- (b) Dr M Kassen – Clinical Psychologist.
- (c) Ms A Jansen – Occupational Therapist.

- (d) Dr I Wosu – Specialist Physician.
- (e) Dr A Naicker – Educational Psychologist.
- (f) Mr B Moodie – Industrial Psychologist.
- (g) Mr J Sauer – Actuary.

1.7 The reasonable taxable qualification fees of the following experts for their reports and addendum reports for the trial date of May 6, 2025:

- (a) Dr M. Kassen – Clinical Psychologist.
- (b) Ms M Olivier and Ms A Jansen – Occupational Therapists.
- (c) Dr I Wosu – Specialist Physician.
- (d) Dr A Naicker – Educational Psychologist.
- (e) Mr B Moodie – Industrial Psychologist.
- (f) Mr J Sauer – Actuary.

1.8 The reasonable taxable attendance fees at the court of the following experts for May 6, 2025:

- (a) Dr M Kassen – Clinical Psychologist.
- (b) Ms M Olivier and Ms A Jansen – Occupational Therapists.
- (c) Dr I Wosu – Specialist Physician.
- (d) Dr A Naicker – Educational Psychologist.
- (e) Mr B Moodie – Industrial Psychologist.

1.9 In the event of default on the costs payment, interest shall accrue on such outstanding amount 14 days after the date of taxation/settlement of the bill of cost, as per the Prescribed Rate of Interest Act 55 of 1975, as amended, per annum, calculated from the due date until the date of payment.

JUDGMENT

Ntanga AJ

Introduction

[1] The plaintiff instituted an action against the Road Accident Fund (the defendant) for damages suffered as a result of injuries to which he sustained in a motor vehicle accident which occurred on July 14, 2019 at Thabong near Welkom, Free State Province involving a motor vehicle with unknown registration number driven by unknown driver, the first insured vehicle, and another motor vehicle with registration number

FFX[...], driven by HJ Lintoe, the second insured vehicle, in which vehicle the plaintiff was a passenger. The plaintiff avers that a collision occurred when the first insured vehicle turned in front of the second insured vehicle. It is averred that the second insured driver swerved to the left to avoid colliding with the first insured vehicle, lost control and collided with a fence.

[2] At commencement of trial, the parties' legal representatives moved for postponement of the claim relating to past medical expenses *sine die*, pending the finalisation of a similar issue by the Supreme Court Appeal.

[3] The plaintiff moved for an order in terms of rule 38(2) as set out in the notice of motion. After due consideration, I granted an order as set out in the court order dated May 7, 2025.

[4] The court was advised that the merits have been conceded per court order dated March 26, 2024. The defendant was ordered to pay an amount of R500 000 for general damages. The defendant was ordered to provide the plaintiff with an undertaking as provided for in s 17(4)(a) of the Road Accident Fund Act 56 of 1996 (the RAF Act).

Issues for determination

[5] This court is called upon to determine quantum in respect of past and future loss of earnings.

Background

[6] In his particulars of claim, the plaintiff avers that as a result of the collision he suffered *inter alia* the following injuries:

- (a) fracture right femur; and
- (b) pulmonary embolism.

[7] The plaintiff further averred that, as a result of the injuries, she suffered, *inter alia*, the following *sequelae*:

- (a) pain and discomfort;

- (b) loss of amenities of life;
- (c) she had to undergo medical treatment; and
- (d) may have a loss of earnings/earning capacity in the future.

The plaintiff's case

[8] It was submitted that the plaintiff was attending school and her mother as a teacher encouraged her to continue with her studies. The accident prohibited her from completing her studies. It was averred that the plaintiff will have a difficulty to work and perform duties that will require her to walk and do a physical job. The plaintiff could have continued working but for the accident. Her job entailed a lot of walking and standing.

[9] In the plaintiff's affidavit admitted into court as evidence, the plaintiff avers that she sustained the following injuries:

- (a) the right femur fracturer was treated with an intramedullary nail;
- (b) chronic musculoskeletal pain;
- (c) pulmonary embolism resulting in Pulmonary Thromboembolic Disease;
- (d) mild depression;
- (e) adjustment disorder;
- (f) phobic anxiety (travel anxiety);
- (g) partial post-traumatic stress disorder;
- (h) mild kinesiophobia;
- (i) disfigurement; and
- (j) deficits in certain cognitive functioning.

[10] In the affidavit, the plaintiff avers that due to the injuries she has and will in future have sequelae of the injuries and have and will suffer damages as more as fully set out in the medical expert opinion referred to as follows:

- (a) have and will have pain, discomfort, suffering and loss of life amenities; and
- (b) have and will have to undergo medical treatment.

[11] Regarding loss of earnings, the plaintiff's affidavit confirmed her qualifications and work experience as set out in the educational psychologist's report, as well as the industrial psychologist's report. She averred that her work history and career path, both pre-and post-morbid with income, have been dealt with fully by an industrial

psychologist who filed an expert report setting out the nature, extent and duration of her work history, loss of earnings in respect of pre-and post-morbid earnings, confirmed that she is still unemployed since she left employment at Bafokeng Funeral Parlour as a sales agent in January 2022. She also referred the court to an expert report by an occupational therapist and other served and filed expert reports dealing with the nature, duration extent of her sequelae and the impact it has on her prospects of performing work in the past and future and damages she suffered and will suffer in future.

[12] The plaintiff referred to the expert reports submitted and admitted into evidence by the court. It is trite that the court is not bound by the expert evidence. In *S v M*,¹ the Court stated that:

‘A court’s approach to expert evidence has been dealt with on many occasions. The court is not bound by expert evidence. It is the presiding officer’s function ultimately to make up his own mind. He must evaluate the expertise of the witness. He must weigh the cogency of the witness’s evidence in the contextual matrix of the case with which he is seized. He must gauge the quality of the expert qua witness; However, the wise judicial officer does not lightly reject expert evidence on matters falling within the purview of the expert witness’s field’.

[13] Dr Marin, the orthopaedic surgeon reported that:

(a) The plaintiff experienced acute pain in her chest, right thigh and right knee immediately after the accident. It is reported that the pain remained acute for approximately six weeks and moderate for approximately six weeks. The pain medication she received in the hospital offered sufficient pain relief. The plaintiff still suffers from pain in her right thigh. She rates the pain in her thigh as 5/10 on the pain scale. The pain progressively increased over time. The pain in her thigh is described as throbbing in nature. The surgical wound healed well with no complications, however, she was left with unsightly scarring. The pain associated with her chest and right knee dissipated over time. She continues to suffer from the sequelae on her right thigh injury. Activities of daily living such as performing her household chores are unbearable, due to the pain. Standing and walking for long periods aggravates the pain in her thigh.

¹ *S v M* [1991] 3 All SA 510 (T); 1991 (1) SACR 91 (T) at 99I-100A; see also *NSS (obo AS) v MEC for Health, Eastern Cape Province* [2023] ZASCA 41; 2023 (6) SA 408 (SCA) para 24.

(b) Regarding radiological examination it is reported that there was no detection of focal soft tissue abnormality. A spiral oblique fracture at the junction of the proximal and mid-thirds of the femur has been previously reduced and fixated by means of an intramedullary nail with a proximal compression hip screw and a distal threaded interlocking screw. There is periosteal callus formation and solid bridging osseous union with satisfactory alignment. There is degenerative subarticular sclerosis and marginal osteophytosis at the right hip, the right femoral head maintaining smooth and regular contour. The medial and lateral femorotibial compartment joint spaces are intact. No suspicious bone lesions are detected.

(c) Regarding productivity and retirement it is reported that the plaintiff was 27 years old at the time the report was compiled and is a single female. She sustained an injury to her right thigh in the accident and continues to suffer from the sequelae. The pain in her right thigh is aggravated when doing physical activities, such as standing and walking for prolonged periods. The plaintiff is a student at university. She finds it difficult to do her household tasks. With successful treatment, the plaintiff's productivity will increase. The plaintiff will be able to work to the normal retirement of 65 years.

[14] Dr M. Kassen, clinical psychologist reported that:

(a) The plaintiff consulted a psychologist post-accident as part of her recovery, and she appears to have responded favourably to this intervention. The plaintiff is presently unemployed, and she is actively looking for work and recently had an interview, also at a funeral parlour. Prior to the accident, the plaintiff used to jog and engage in light exercise at the gymnasium, using her then student discount for membership.

(b) The plaintiff directly experienced a traumatic event, and this involved emotional and physical injury to self. The plaintiff continues to experience pain and discomfort as a result of the injuries sustained in the accident, which impact on activities of daily living and present an ongoing reminder of the trauma. Results on the depression inventory together with clinical impressions indicate that the claimant is experiencing mild symptoms of depression. Results on the anxiety inventory together with clinical impressions indicate that the claimant is not experiencing any significant symptoms of generalised anxiety. She however experiences mild symptoms of phobic anxiety, i.e., kinesiophobia.

(c) Results on the post-traumatic stress disorder (PTSD) checklist together with clinical impressions indicate that the plaintiff is not experiencing symptoms consistent with a diagnosis of a PTSD. However, the claimant did endorse items consistent with hypervigilance. The Plaintiff's total score for overall response congruence was not significantly elevated. This suggests a response profile consistent with those reported by others who have genuine complaints.

(d) The clinical psychologist concluded that the plaintiff is experiencing mild difficulties in her adjustment to the injuries sustained in the instant accident and the resultant sequelae. She experiences mild depression, mild kinesiophobia and situation specific hypervigilance. She did not meet the threshold for a diagnosis of PTSD, nor did she present with significant symptoms of generalised anxiety. The injuries sustained by the plaintiff in the accident and sequelae have a restrictive impact on her functioning compared to previous levels of functioning. Her lifestyle has been diminished by the injuries as she experiences physical pain in her right leg, and this restricts her level of activity and results in discomfort.

(e) Regarding cognitive factors, the plaintiff is reported to be functioning in the low average to average with most scores falling predominantly into the low average range, consistent with her premorbid academic profile. In the domain of verbal comprehension, she is functioning in the low average range. In the perceptual reasoning, scores revealed low average to average range. She performed within the low average range on the Block Design and Picture Completion subtest, while her performance on the Matrix Reasoning subtest fell within the average range and she showed good persistence on the latter task. The discrepancy in these scores is not highly significant but may suggest possible challenges in visual attention and her ability to visually construct designs. The latter may also be the likely result of a lapse in sustained attention. It is worth noting that these are abilities that she may be capable of developing further. In the domain of working memory, she is functioning in the impaired range. In the domain of processing speed, there were some mild discrepancies with low average scores on symbol research and average scores on the Coding subtest and RCFT copy completion time. This mild difference could be due to possible distractions or fatigue.

(f) The plaintiff's performance revealed intact abilities in the areas of cognitive functioning, cognitive processing of visual stimuli. Some deficits, ranging from mild to more significant, were noted across other areas of cognitive functioning on the

claimant's performance. These include mild problems with cognitive processing speed, compromised verbal reasoning, impairment in working memory, poor visuo-constructive memory visuo-constructive abilities, challenges in visual awareness and visual attention. She further revealed difficulties in her mental tracking ability as well sustaining attention and concentration.

(g) The residual pain stemming from the plaintiff's right leg injury will likely impact her future functioning at work. Further commentary on the physical effects of the injuries on future employment is deferred to the relevant professional. Given timely and effective remediation the plaintiff does not risk further losses across functional areas. However, she will face ongoing challenges in terms of her rehabilitative care following her traumatic musculoskeletal injury. The accident resulted in a number of losses including ongoing physical pain, compromised emotional stability, lowered overall enjoyment of life, and losses in occupational prospects. Based on her estimated level of functioning, the plaintiff is currently in a position to manage her financial and legal affairs with reasonable competency.

[15] Dr A Naicker, the educational psychologist reported that:

(a) The plaintiff emerges from a home where education is valued. Her mother who is an educator, placed her in an English-medium school to improve her vocational prospects. She benefits from social support due to access, redress and social reforms that were not afforded to her parents. She attended better schools than her parents did, with policies geared towards redress and transformation. As a learner post-democracy, she benefits from less rigid curricula, improved teaching quality than the past, nutritional programmes such as feeding schemes, welfare support such as SASSA grant and procedures aimed to reverse former marginalisation and address past injustices of disadvantaged populations that will scaffold her learning and vocational path.

(b) The plaintiff was able to pass all grades from one to five, despite learning in English which was not her mother-tongue. She failed three grades after transitioning to different schools. She is likely to have been in the low average to average range of intellectual functioning. The plaintiff was able to benefit from the guidance of her mother who is an Educator and in noting her struggles at school, she advised Lerato to enrol at an FET College after Grade 9 and her failure in Term 01 of Grade 10. The plaintiff was able to obtain a Level 2 in Hospitality with the aim of progressing to an N4. Lerato was able to

benefit from National Student Funding Aid Scheme (NSFAS) support to aid her studies, and she expressed that she enjoyed her course.

(c) The plaintiff's post-morbid scholastic profile reveals that she was unable to continue with her studies as her NSFAS bursary had ceased due to her discontinuation after the accident in 2019. She remains with a level 2 and partial completion of level 3 in hospitality. The writer was unable to obtain an academic statement as she reported that she has outstanding fees owing to Goldfields TVET College.

(d) The physical, emotional and cognitive sequelae of the injuries have undermined the plaintiff's overall functioning. These co-occur with each other and have incurred a cumulative deficit on her quality of life. The plaintiff is unlikely to advance her vocational pathway, beyond an NQF 2 or possibly and NQF 3, due to the *sequelae* she contends with. The plaintiff's functioning in the practical domain has been constrained by her ongoing pain, as well as the risks of advancing vocational demands on her mental health. The practical demands of most courses at TVET levels will take a toll on her reserves with pre-requisite levels of endurance and stamina. Her struggles with attention and memory will constrain her abilities to increase her fund of knowledge and integrate new information learnt. The plaintiff should receive intense rehabilitative care to optimise her daily functioning. Vocational counselling should be sought to guide her.

[16] Ms A Jansen and Ms Olivier the occupational therapists reported that:

(a) The plaintiff's physical capacity has reduced regarding her tolerance for walking and working in a forward bending position. She was unable to participate in weight handling tasks with the initial assessment. Her weight handling abilities are currently suited to light work. She continues to suffer pain in her right upper leg. The plaintiff's physical capacity has reduced with walking, forward bending and elevated work tasks. Her physical abilities are currently suited for sedentary work with load handling abilities suited to light work, indicating improvement in load handling abilities only and reduced tolerance for physically demanding tasks.

(b) The plaintiff continues to present with impaired cognitive functioning, and she was unable to complete her studies. Limitations in posture and ambulation tasks, such as walking, elevated, work, and forward bending have decreased since the initial assessments. These limitations impact on her ability to perform work that exceeds light work. Her physical limitations, and cognitive challenges, affect her overall employability.

Long-term employability may also be reduced by her vulnerabilities to cognitive errors and psycho-social limitations. The plaintiff's abilities are restricted to light work, reducing opportunities for physically demanding jobs.

(c) The plaintiff presents additional health concerns, which will affect her productivity in the workplace. Her functional endurance may remain reduced even following removal of the internal fixator given her thromboembolic disease and hypertensive state. The plaintiff's cognitive limitations will affect her overall employability. The right leg symptoms, in combination with the cognitive limitations and the thromboembolic disease, will exclude her from suitable light and medium physical demand occupations, while her lack of Matric qualification will render her not suited to sedentary roles. She will be a significantly disadvantaged job seeker and a vulnerable employee, should she manage to secure employment in the open labour market.

[17] Mr Ben Moodie, the industrial psychologist reported that:

(a) The plaintiff has remained unemployed from February 2022 to date of the report. Her past loss of income should be calculated against the background of the uninjured scenario. The plaintiff's functional capacity, physically, cognitively, and emotionally, would improve significantly through treatment, enabling her to complete her studies in Hospitality Management and follow a career trajectory similar to what was projected in her uninjured state. This would however require not only the reduction of chronic pain and physical limitations but also marked improvement in her cognitive functioning, particularly in working memory, attention, and the ability to process and integrate new information.

(b) The plaintiff is faced with further enduring physical pain that affects her stamina and capacity to engage in the practical demands of her field: while her cognitive challenges, specifically impairments in memory and concentration, present barriers to learning and adapting to complex, multistep tasks. Moreover, her psychological state, marked by low mood, situational anxiety, and diminished confidence, further limits her ability to cope with academic and workplace stressors. These challenges compounded each other, making it increasingly difficult for her to function at the level required to complete formal studies or maintain consistent, sustainable employment, especially in a labour market already strained by high unemployment and fierce competition.

(c) Considering the plaintiff's current limitations, the inability to advance academically and the likelihood of her remaining in a vulnerable position within the labour market, struggling to secure full-time or long-term employment, possibly managing only part-time or low-wage work, and facing prolonged periods of economic inactivity. The passage of time will likely further erode her competitiveness as her peers continue to gain experience and develop professionally, while she remains largely excluded from those opportunities. There is also the realistic risk that she may eventually disengage from the job market altogether due to ongoing pain, psychological fatigue, or demotivation. It is important to consider that the accident occurred in July 2019, nearly six years ago, allowing ample time for the long-term effects of her injuries to manifest. Furthermore, she reported being unemployed since February 2022, and the longer she remains out of the workplace, the more challenging it becomes for her to re-enter the open labour market.

[18] Dr I Wosu, the specialist physician reported that:

(a) The plaintiff has experienced significant physical and emotional suffering as a result of the injuries sustained in the accident. Her activities of daily living have been impacted, though her global assessment daily living score is 26/26. The plaintiff has suffered a significant and permanent injury in the form of pulmonary thromboembolic disease requiring lifelong anticoagulation treatment.

[19] Dr van Heerden, the plastic & reconstruction surgeon reported that:

(a) Scaring is present on the lateral surface of the thigh. The scar on the region of the hip joint measures approximately 8.5 cm x 1 mm. The scar is hyperpigmented. The scar is soft, smooth and pliable and is not adherent to the underlying structures. The scar is not amenable to surgical correction. On the mid-lateral portion of the thigh, a further surgical incision is present and measures approximately 1 cm x 1 cm. The colour, contour and consistency of the scar are that of the normal surrounding skin. Surgical correction is not indicated for the scar. At the distal end of the femur, a scar is present and it measures approximately 1 cm x 1 mm. The scar is stable and is not adherent to the underlying deeper structures. The scar does not influence the mobility of the knee joint. The scars are described as permanent and surgical correction is not indicated.

(b) From a plastic surgery perspective, no conservative or surgical treatment is indicated. The scars are visible, permanent and disfiguring. The scars do not have any effect on the plaintiff's activities of daily living applying the criteria according to the Guides to the Evaluation of Permanent Impairment 6th Edition. The scars are not amenable to surgical correction and will always be visible and permanent. The plaintiff's loss of productivity is projected to be minimal. The scarring will not only have a physical but also have a psychological effect.

[20] Mr J Sauer, the actuary reported that:

(a) The plaintiff's pre-morbid retirement age is projected to the age of 65 years and the post-morbid retirement age is projected at 65 years. The report was provided in two scenarios, the first one being on a post-morbid minimum wage working half-days or 2 to 3 days per week. The second scenario was based on a post-morbid minimum wage of full time employment. Having regard to the report of the Industrial Psychologist it is acknowledged that the plaintiff was a student at the time of the accident. Thereafter she will be able to earn an income, on par with the national minimum wage, but only half-days or 2 to 3 days per week of R 576 ($R28.79 \text{ per hour} * \text{an assumed 4 hours per day} * \text{an assumed 5 days per week}$) per week in current monetary terms. With an annual income of R29 942 ($R576 * 52$) in current monetary terms.

(b) Regarding post-morbid minimum wage fulltime employment, the plaintiff will be able to earn an income, on par with the national minimum wage, of R1 152 ($R28.79 \text{ per hour} * \text{an assumed 8 hours per day} * \text{an assumed 5 days per week}$) per week in current monetary terms. Thus an annual income of R59 883 ($R1 153 * 52$) in current monetary terms.

(c) The actuaries illustrated a higher future post-morbid contingency deduction to allow for increased employment vulnerability, labour incapacity, uncertainty, possible long periods of unemployment and early retirement.

The defendant's case

[21] The defendant argued that an amount of R874 943 constitutes a fair and reasonable amount to be awarded in respect of the plaintiff's claim for loss of earnings and/or earning capacity. There was no argument submitted to substantiate this submission by the defendant. The defendant's counsel submitted that she had no instructions as to how the amount was arrived at by the defendant. This submission is

not assisting the court as no explanation was provided on the basis upon which the defendant arrived at this amount. No further further evidence was led by the defendant to dispute the plaintiff's evidence which include expert reports that were admitted in Court as evidence.

Legal framework and evaluation of evidence

[22] The Road Accident Fund has a statutory duty, in terms of the RAF Act, to compensate a person who suffered injury caused by the negligent driving of the driver, owner or employee of a motor vehicle.

[23] The court has a discretion to determine contingencies applicable after having considered relevant factors and circumstances of the plaintiff. Compensation for future loss of earnings is assessed based on percentage of the value of the loss.² The purpose of this compensation regime is to consider what the claimant would have earned before sustaining injuries and what the injured person will earn after sustaining injuries. The past loss of earnings represent what the injured person lost from accident to date of finalisation of the matter. Actuaries make calculations to assist the court in determining the monetary value of what should be awarded for loss of earnings or earning capacity.³ In *Southern Insurance Association v Bailey NO (Southern Insurance Association)*,⁴ the court stated that:

'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 "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 circumstances . . . The rate of the discount cannot of course be assessed on any logical basis: the assessment must be largely arbitrary and must depend upon the trial Judge's impression of the case.'

[24] Robert Koch provides the following guidelines regarding contingencies:

² RJ Koch *Damages for Lost Income* (1984) at 31.

³ *Ubisi v Road Accident Fund* [2023] ZAMPMBHC 33 para 57.

⁴ *Southern Insurance Association v Bailey NO* 1984 (1) SA 98 (A) at 116G-117; see also *Van Der Plaats v South African Mutual Fire & General Insurance Company Limited* 1980 (3) SA 105 (A).

'Sliding scale: 0.5 % per year to retirement age, 25% for a child, 20% for youth, 10% for middle aged. Normal contingencies are usually deducted at 5% for past loss and 15% for future loss and this depends on the facts of the case.'

[25] In *De Jongh v Gunther and Another*,⁵ the court stated that:

'In a case where a plaintiff sues for his own future loss of earnings, it is only contingencies which affect him personally which have to be considered. In his judgment in *Van Rensburg v President Versekerringsmaatskappy* (W.L.D. 21.11.68 quoted in Coberdt and Buchanan, *The Quantum of Damages*, vol II, p. 62 at p.65), Ludorf, J., referred to the fact that it has become almost customary, at any rate in this Division of the Supreme Court, for the Court to make the deduction, for unforeseen circumstances of life, of one-fifth. That is, it is true, a rough and ready approach, but the nature of the problem is such that one can do no better than adopt a rule of thumb of this kind.'

[26] In *De Jongh v Dupisane*,⁶ the plaintiff was 35 years old male engineering assistant at the time of collision. The Court confirmed 10% contingency deduction applied by the trial court. The plaintiff argued that the practice appears to be to apply contingency deductions of 5% to accrued loss and 15% to prospective loss.

[27] In *Mohapi v Road Accident Fund*,⁷ the court followed *Zarrabi v RAF*,⁸ where the court applied 15% contingency for future loss of earnings in respect of a 30 year old female claimant who sustained severe injuries.

[28] The plaintiff referred to the decision of *Raupert v Road Accident Fund*,⁹ where the court found that a deduction of 20% contingencies would be appropriate. This was in respect of a 20-year-old female photography student. The plaintiff's counsel referred to various judgments where 15% contingency was applied by the court.

[29] The defendant did not call experts to give evidence on its behalf. There is no evidence before this court to rebut the evidence of the experts called by the plaintiff. I

⁵ *De Jongh v Gunther and Another* 1975 (4) SA 78 (W) at 80F-H.

⁶ *De Jongh v Dupisane* [2004] ZASCA 43; [2004] 2 All SA 565 (SCA); 2005 (5) SA 457 (SCA).

⁷ *Mohapi v Road Accident Fund* [2020] ZAGPJHC 40.

⁸ *Zarrabi v RAF* 2006 (5B4) QOD 231 (T).

⁹ *Raupert v Road Accident Fund* [2011] JOL 26911 (ECP).

am mindful of the trite principle that the court is not bound by the expert evidence. In applying the decision of *S v M*, I have no reason to reject the evidence of experts called by the plaintiff. I find the evidence of the experts called by the plaintiff to be conclusive in proving the issues raised before this court.¹⁰ The plaintiff's evidence including her experts is probable and I find that she has proved her case on a balance of probabilities. The plaintiff therefore should succeed to be granted judgment in her favour.

[30] The plaintiff was 25 years old when the accident occurred and is currently 31 years old. The plaintiff suffered injuries in a motor vehicle collision and these injuries have diminished the quality of her life. The evidence adduced before this court demonstrate that she is in continuous pain as result of the accident. The evidence indicates the plaintiff's current limitations, the inability to advance academically and the likelihood of her remaining in a vulnerable position within the labour market, struggling to secure full-time or long-term employment, possibly managing only part-time or low-wage work, and facing prolonged periods of economic inactivity. Furthermore, evidence points to a risk that she may eventually disengage from the job market altogether due to ongoing pain, psychological fatigue, or demotivation. There is merit for the plaintiff to be compensated for future loss of earnings. A fair and reasonable compensation for the plaintiff must be determined by this court.

[31] The case law that I considered has provided guidance in determining a fair and reasonable compensation to the plaintiff. I have taken into consideration variation of injuries in cases considered. I have considered expert reports which detail the impact of the accident and injuries sustained by the plaintiff. Having considered the injuries sustained by plaintiff and comparative case law, I am of the view that a deduction of 15% for the contingencies would be appropriate. The calculations should be as follows:

(a) Pre-morbid earnings (had the accident not occurred)

Past loss of earnings R287 230

Less 5% contingency R14 362

Total pre-morbid earnings R272 868

(b) Pre-morbid earnings (having regard to the accident

Future loss of earnings R4 340 207

¹⁰ *Prince v Road Accident Fund* [2018] ZAECGHC 20.

Less 15% contingency earnings R651 031
 Total pre-morbid earnings R3 689 176
 Less post-morbid contingency future earnings R399 242
 Net loss: R3 562 802

Costs

[32] Concerning the costs of this matter, I see no reason that costs should not follow the results. The Defendant should therefore pay the plaintiff's costs.

Order

[33] In the circumstances, I make the following order:

1.1 The plaintiff's evidence on affidavit is admitted in terms of rule 38(2) and section 3 of the Law of Evidence Amendment Act 45 of 1988 and the Civil Procedure Evidence Act 25 of 1965.

1.2 The defendant is liable to pay 100% (one hundred percent) of the plaintiff's proven or agreed damages;

The defendant shall pay the plaintiff the sum of R3 562 802 in respect of past and future loss of income capacity.

1.3 The defendant shall pay the abovementioned amount into the plaintiff's attorneys trust account with the following details:

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TYPE OF ACCOUNT:	TRUST ACCOUNT
ACCOUNT NUMBER:	3[...]

1.4 Interest shall accrue on such outstanding amount at 11.25% (at the *mora rate*, as per the Prescribed Rate of Interest Act 55 of 1975, as amended) per annum calculated from the due date, as per the Road Accident Fund Act 56 of 1996, until the date of payment.

1.5 The defendant shall pay the plaintiff's taxed or agreed party and party cost, up to and including the trial dates of November 19, 20 and 22, 2024, May 6 and 7, 2025 and June 9, 2025 which costs shall include, but not limited to, the following subject to the Taxing Master's discretion:

1.5.1 The fees of Counsel in terms of amended Uniform Rule 67A (3)(a) read with Rule 69(7) on scale B, which costs shall include but not limited to his fees of full preparation for the trial of November 19, 2024 and June 9, 2025 and preparing heads of argument, and his day fees for the trial dates as mentioned in this paragraph.

1.5.2 The reasonable taxable reservation fees of the following experts for November 19, 20 and 22, 2024:

- (a) Dr J P Marin – Orthopaedic Surgeon.
- (b) Dr S van Heerden – Plastic and Reconstructive Surgeon.
- (c) Dr M Kassen – Clinical Psychologist.
- (d) Ms M Olivier – Occupational Therapist.

1.5.3 The reasonable taxable reservation and qualifying fees of the following experts for November 19, 20, and 22, 2024:

- (a) Mr B Moodie – Industrial Psychologist.
- (b) Mr J Sauer – Actuary.

1.6 The reasonable taxable reservation fees of the following experts for May 6, 2025:

- (a) Dr J P Marin – Orthopaedic Surgeon.
- (b) Dr M. Kassen – Clinical Psychologist.
- (c) Ms A Jansen – Occupational Therapist.
- (d) Dr I Wosu – Specialist Physician.
- (e) Dr A Naicker – Educational Psychologist.
- (f) Mr B Moodie – Industrial Psychologist.
- (g) Mr J Sauer – Actuary.

1.7 The reasonable taxable qualification fees of the following experts for their reports and addendum reports for the trial date of May 6, 2025:

- (a) Dr M Kassen – Clinical Psychologist.
- (b) Ms M Olivier and Ms A Jansen – Occupational Therapists.
- (c) Dr I Wosu – Specialist Physician.
- (d) Dr A Naicker – Educational Psychologist.
- (e) Mr B Moodie – Industrial Psychologist.
- (f) Mr J Sauer – Actuary.

1.8 The reasonable taxable attendance fees at the court of the following experts for May 6, 2025:

- (a) Dr M Kassen – Clinical Psychologist.
- (b) Ms M Olivier and Ms A Jansen – Occupational Therapists.

- (c) Dr I Wosu – Specialist Physician.
- (d) Dr A Naicker – Educational Psychologist.
- (e) Mr B Moodie – Industrial Psychologist.

1.9 In the event of default on the costs payment, interest shall accrue on such outstanding amount 14 days after the date of taxation/settlement of the bill of cost, as per the Prescribed Rate of Interest Act 55 of 1975, as amended, per annum, calculated from the due date until the date of payment.

M NTANGA
ACTING JUDGE OF THE HIGH COURT,
FREE STATE DIVISION

Appearances

For the plaintiff:	D Marx
Instructed by:	VZLR Inc, Pretoria c/o Du Plooy Attorneys, Bloemfontein
For the defendant:	J Gouws
Instructed by:	State Attorney, Bloemfontein.