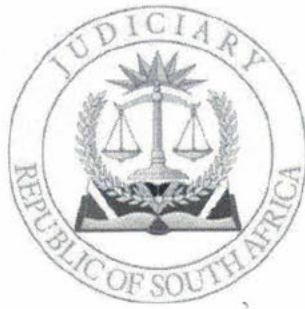
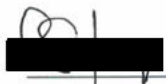




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 18114-2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>02/09/25</u>	
DATE	SIGNATURE

In the matter between:-

MOKOENA PULE KARABELO YA BOKAMOSO

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

Mfenyana J

- [1] The plaintiff instituted proceedings against the defendant, seeking damages for bodily injuries he sustained in a motor vehicle accident which occurred on 21 September 2015. The plaintiff, 12 years old at the time, was a passenger when the motor vehicle he was travelling in, driven by one Matshidiso Mokokoi, collided with another motor vehicle driven by a Bonginkosi Alson Mbatha.
- [2] As is the case with many of these matters, the defendant did not meaningfully defend the matter and filed no medico-legal reports despite a court order to that effect. The matter thus proceeded on a default basis.
- [3] Merits were conceded by the defendant on 18 April 2024 for 100% of proven or agreed damages. General damages were similarly settled on the same date, with loss of earnings postponed *sine die*. The matter thus proceeded only in respect of loss of earnings.
- [4] At the hearing of the matter, counsel acting on behalf of the plaintiff moved an application in terms of rule 38(2) for the evidence of all witnesses in respect of quantum to be given on affidavit. Having satisfied myself with the

merits of the substantive application brought in that regard, I granted the order.

[5] The plaintiff relies on expert reports prepared by the following experts:

- 5.1. Dr Hadebe – Orthopaedic Surgeon
- 5.2. Mr Malatse – Occupational Therapist
- 5.3. Mr Tsikai – Industrial Psychologist
- 5.4. Ms Mantsena – Educational Psychologist
- 5.5. Mr Waisberg - Actuary
- 5.6. Drs Verster, Mashao and Dzichauya – Diagnostic Radiologists
- 5.7. Dr Mutyaba – Neurosurgeon
- 5.8. Drs van der Merwe and Hoek – Maxillofacial and oral surgeons
- 5.9. Dr Oberholzer – Clinical Psychologist

[6] In his report, the neurosurgeon, Dr Mutyaba, states that he examined the plaintiff on 10 March 2019. He was 19 years old at the time and was accompanied by his mother. He further states that the plaintiff suffered a left orbital fracture, a left occipital soft tissue injury. He had no intracranial

haemorrhage. Dr Mutyaba noted no abnormalities on the cervical spine, abdomen and pelvis and deferred to Dr Hoek for the facial injuries.

[7] According to Dr Mutyaba, the plaintiff underwent surgical fixation of the left orbital fracture. He was hospitalised for 3 weeks and was out of school for 2 months. He experiences intermittent headaches, nosebleeds and is always tired. He has no seizures. Dr Mutyaba further noted that the plaintiff was attending a special school before the accident and has currently been offered a learnership for people with disabilities.

[8] According to Dr Mutyaba, the plaintiff suffered a mild traumatic brain injury, which is evident from the Glasgow Coma scale of 14/15, in addition to the facial fractures. He opined that this rarely results in neurocognitive or neuropsychological deficits. He pointed out that the plaintiff was already neurocognitively impaired when the accident occurred, as he was already in a special school. Importantly, Dr Mutyaba opines that the plaintiff has no realistic chance of improvement in his symptomology, as it had already been 5 years when he examined the plaintiff.

[9] Dr Mutyaba further reports that the plaintiff would need a sympathetic employer who can accommodate his pre-existing neurocognitive deficits and ongoing headaches, should he find employment. He would require treatment for pain management for the rest of his life, the cost of which is estimated at R700 per month. His retirement age and longevity have not been affected by the accident.

[10] Ms Mantsena, the educational psychologist, confirms that the plaintiff had pre-existing scholastic challenges, which are noted in her report. She assessed the plaintiff on two occasions, the last of which was in 2024. The plaintiff was 21 years old at the time. It is noteworthy that the plaintiff repeated Grade 2. He also struggled to cope with academic demands in Grades 4 and 5. At that stage, he was referred to a special school where he continued with his schooling until the date of the accident. Following the accident, he passed Grade 8 with no difficulties. He completed the set programme in 2021 and commenced his learnership programme in plant production in 2022.

[11] The orthopaedic surgeon, Dr Hadebe, who examined the plaintiff, opines that the plaintiff sustained a left clavicle fracture which is now united, with residual pain which can be managed with physiotherapy and pain medication when necessary. He opines that the pain in his left shoulder will limit his choice of occupation, as he cannot do any work that requires heavy lifting and thus affects his ability to compete in the open labour market. It is worth noting that the clavicle injury is not noted in the hospital records. Dr Hadebe records that this injury was missed during the initial assessment of the plaintiff. He opines that the plaintiff will not require any future orthopaedic surgery.

[12] The occupational therapist opines in this regard that the plaintiff is suited for light to medium work with reasonable accommodation. He is able to attend to his self-care and his day-to-day needs independently.

[13] The clinical psychologist reports that the plaintiff is emotionally traumatised by the facial scars caused by the accident. He lost his self-confidence and

cannot function normally in a social setting. This leads to anxiety, depression, hopelessness and negative emotions.

[14] The industrial psychologist, Mr Tsikai, reports that the plaintiff's future employability has been compromised as a result of his injuries. He operates at a diminished capacity due to his post-morbid sequelae and the cognitive, emotional and physical ramifications that he sustained in the accident. It is worth noting in this regard that the neurosurgeon concluded that the plaintiff's cognitive functioning was not affected by the mild brain injury he sustained in the accident. It is common cause that he had a pre-existing cognitive impairment before the accident.

[15] Mr Tsikai postulates the plaintiff's earnings, taking into account his age, current work situation, and reported income, which falls within the Lower Quartile of unskilled workers at the age of 25, presented at R27 600.00 per annum. Mr Tsikai opines that this would be considered as the plaintiff's career and his earnings ceiling level, considering the deficits he is faced with. He would thereafter continue to receive annual inflationary increases

until the retirement age of 65. He further opines that the plaintiff will struggle to sustain employment in the open labour market due to his sequelae. As a result thereof, he will incur future loss of earnings, which comprises the difference between what he will earn and what he would have earned had the accident not occurred. The industrial psychologist recommends higher than normal post-accident contingencies.

[16] It was submitted that the plaintiff receives a stipend from his learnership, which should not be regarded as a salary, as he is not in formal employment. The defendant, however, contends that the plaintiff has been rendered fit to do light to medium duties. In this regard, the defendant noted that the Occupational Therapist's report is of paramount importance, which the plaintiff submitted has been taken by the industrial psychologist. The defendant's contention is thus, that the plaintiff was already compromised at the time of the accident and can still earn an income as he currently does.

[17] Thus, the defendant contends that the plaintiff has suffered a loss of earning capacity as opposed to a total loss of earnings. However, the industrial

psychologist suggests a total loss of income owing to the fact that the plaintiff is currently operating at a diminished capacity due to his post-morbid sequelae.

[18] Counsel for the defendant submitted that a 20% to 25% differential should be applied as the plaintiff's future was uncertain even before the accident. The submissions made on behalf of the defendant came as a surprise to the plaintiff's counsel, who, in turn, submitted that the defendant was not permitted to challenge the plaintiff's expert report while it had not submitted any.

[19] While I agree with the plaintiff that the time for the defendant to challenge the reports of the plaintiff's experts is long gone, nothing prevents the defendant from making submissions based on the plaintiff's reports. This is a view I took, and I thus permitted the defendant's counsel to address the court purely on the reports filed by the plaintiff.

[20] The figures postulated by industrial psychologists are not supported by the evidence, nor are they substantiated by any documentary proof. There is no dispute that the plaintiff had pre-existing cognitive deficits. His current earnings should be taken into account in calculating his loss of earnings/earning capacity.

[21] It is trite that the determination of contingencies is a matter solely within the discretion of the court. It is incorrect to assume that the plaintiff would have achieved an NQF 5 in view of his pre-existing cognitive challenges and academic performance. Moreover, the calculations as reflected in the report by the actuary are incorrect, as they assume the plaintiff's earnings, in line with a person who would have completed tertiary studies.

[22] Taking into account the reports, in particular that of the educational psychologist, it is evident that, pre-morbid, the plaintiff was not a candidate for tertiary education, in the plaintiff's academic trajectory post-morbid.

[23] In *Bailey*¹ the erstwhile Appellate Division held:

“Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that a court can do is to make an estimate, which is often a very rough estimate of the present value of the loss. It has open to it two possible approaches. One is for the judge to make a round estimate of an amount that seems to him to be fair and reasonable. This is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment by way of mathematical calculations on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative.... 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.”²

[24] In *Goodall v President Insurance Co*³ the court held that:

“In the assessment of a proper allowance for contingencies, arbitrary considerations must inevitably play a part, for the art of foretelling the future, so confidently practised by ancient prophets, soothsayers and by modern

¹ *Southern Insurance Association v Bailey* NO 1984 (1) SA 98 AD.

² At 113 G-H.

³ 1978 (1) 389 (W).

authors of a certain type of almanack, is not numbered among the qualifications of a judicial officer.”⁴

[25] In *Coertse v Road Accident Fund*⁵, Motha J observed that “as much as the court is not slavishly tied to actuarial calculations, it is similarly not bound by the so-called normal contingency allowances…” I align myself with this reasoning.

[26] Using the actuarial figures provided, I am of the view that the pre-morbid and post-morbid scenario would be the same, as the plaintiff has achieved the postulated pre-morbid scenario. A 20% differential in these circumstances is therefore warranted. The plaintiff’s future work prospects were, to a certain extent, already implicated by his pre-existing neurocognitive challenges. I am therefore of the view that an amount of R1 414 367.00 is appropriate in the circumstances.

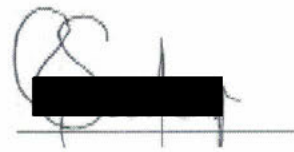
Order

In the result, I make the following order:

- a. The defendant shall pay an amount of R1 414 367.00 in respect of the plaintiff’s loss of earnings.
- b. The defendant shall pay the costs on a party and party scale-scale A.

⁴ At 392H.

⁵ Case No. 85818/2016, ZAGPPHC (Unreported - 2 December 2024).



S MFENYANA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

For the plaintiff	:	Adv Mbiko instructed by Fout Attorneys info@foutattorneys.com
For the defendant	:	Mr M Madasele instructed by the State Attorney
Date of hearing	:	26 February 2025
Date of judgment	:	02 September 2025