

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

CASE NO: 35054/20

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO

DATE: 02 September 2025

SIGNATURE OF JUDGE:

In the matter between:

MCUNUKELWA MVUSELELO

APPLICANT

and

ROAD ACCIDENT FUND

RESPONDENT

LEAVE TO APPEAL JUDGMENT

FLATELA J

[1] This is an unopposed application for leave to appeal to the Full Bench of this Division or to the Supreme Court of Appeal, against my judgment and order IV delivered on 17 January 2025. I granted absolution from the instance regarding the Applicant's claim for both past and future loss of income.

[2] The Applicant instituted legal proceedings against the Road Accident Fund for damages arising from injuries sustained in a motor vehicle accident that occurred on 25 October 2019, which was caused by the insured driver's negligent driving. The Applicant claimed that he was both a taxi driver and the owner of two taxis. At the time of the accident, he was not driving the taxi; rather, he was driving his private vehicle.

[3] The Applicant reported that he was managing the operation of one taxi while employing a driver to manage a second vehicle. He testified that his income from the taxi he personally operated ranged from R17,000 to R19,000 weekly, derived from long-distance drives between Mthatha and Johannesburg, operating six days a week. In addition, the second taxi generated earnings of approximately R1,500 to R2,000 per week. From this income, the Applicant provided the driver with a weekly compensation in the range of R500 to R700.

[4] The Applicant testified that following the accident, he was unable to work for an entire year due to the injuries sustained. During this period, he hired a driver to operate the taxi he had previously operated. However, the hired driver exhibited poor work conduct, often arriving at work under the influence of alcohol. This behaviour contributed to a significant loss of income, ultimately leading to the driver's termination and the subsequent sale of the taxi to avoid repossession.

[5] The Applicant claimed to have lost an amount of R6,340,915, for both past and future loss of earnings. To substantiate his claim, he presented bank statements from periods both before and after the accident, verification of his longstanding membership with the Taxi Association, which began in 1996, and copies of the taxi's license discs that documented the specific routes he was operating.

[6] Upon reviewing the presented evidence, including expert testimonies, I concluded that the Applicant sustained injuries as a result of the accident. However, I determined that the Applicant failed to prove on a balance of probabilities that these injuries had adversely affected his overall patrimony. In particular, the evidence failed to establish a decline in his earning capacity directly linked to the sustained injuries. As a result, I have exonerated the defendant from any liability in this matter.

Principles governing applications for leave to appeal.

[7] The principles governing whether leave to appeal should be granted are well established, but I summarise them for convenience.

[8] An application for leave to appeal is regulated by section 17(1) of the Superior Courts Act 10 of 2013 (Superior Courts Act), which provides:

- ‘(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –
- (a)
 - (i) the appeal would have a reasonable prospect of success; or
 - (ii) there is some other compelling reason why the appeal should be heard,
 - including conflicting judgments on the matter under consideration;
 - (b) The decision sought on appeal does not fall within the ambit of section 16(2)(a); and
 - (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.’

[9] Section 17(1)(a) of the Superior Courts Act states that leave to appeal may only be granted where a Judge or Judges are of the opinion that the appeal would have a reasonable prospect of success and if there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[10] In *The Mont Chevaux Trust v Tina Goosen & 18 Others*¹, Bertelsmann J held as follows:

¹ *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2335 (LCC).

It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new act. The former test of whether leave to appeal should be granted was a reasonable prospect that another Court might come to a different conclusion. See *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 342H. The use of the word "would" in the new statutes indicates a measure of certainty that another Court will differ from the Court whose Judgment is sought to be appealed against.'

Grounds of Appeal

[11] The grounds of Appeal are summarised as follows:

1. The Court erred in finding at paragraphs [17] and [63] that the Applicant did not adduce sufficient evidence of his income to enable the Court to assess and quantify his past and future loss of earnings or earning capacity.
2. The Court erred in that it failed to consider the bank statements (both pre-and post-accident), the membership certificate by the Applicant to the Uncedo Taxi Association confirming his membership since 1996, the license disc of the taxis owned by the Applicant and operating license containing the route on which the Applicant was operating. The court further failed to consider the applicant's testimony.
3. The Court erred at paragraph [64] and [69] in finding that the Applicant presented conflicting information regarding the sale of the second taxi and any effort to quantify the Applicant's claim for past and future loss of earning and or loss of earning capacity is likely to be speculative without any factual basis.
4. The Court erred in not finding that the Applicant did not suffer past loss of earnings in light of uncontested

evidence that he did not generate any income from the second taxi during his recuperation for an entire year.

5. The Court erred in finding that the Applicant did not suffer future loss of earnings and or earning capacity even though it was not disputed that as a result of the injuries sustain in the accident, the Applicant would not (and did not) reach his pre-accident potential.
6. The Court failed to consider the findings by the various medico-legal experts, and in particular the industrial psychologist, that the Applicant is no longer performing at his pre-accident potential as a result of the accident.
7. The Court erred in disregarding the fact that the Applicant, like most people in informal sector/taxi industry, did not have a complete record of all of the requested financial information.
8. There are reasonable prospects of success on appeal.

The Applicant prays for an order, granting leave to appeal to the Full Court of this Division, and costs shall be costs in the appeal.

Discussion

[12] It is trite that in a loss of earnings claim, the Plaintiff must prove the extent of her loss, as well as the amount of damages that should be awarded on a balance of probabilities.

[13] The Applicant aptly noted that to determine the plaintiff's entitlement to compensation for loss of earnings, the burden of proof lies with the plaintiff. Specifically, the plaintiff must demonstrate that they have indeed suffered loss of earnings and a loss in earning capacity. In this context, the Applicant emphasised that the plaintiff is required to present sufficient evidence to facilitate the court's assessment and quantification of the alleged economic loss.

[14] On 16 July 2024, the Applicant filed what he referred to as "proof of earnings". The documents were:

- a. A confirming letter from Uncedo Taxi Association, Flagstaff, confirming the Plaintiff's membership.
- b. Absa cheque account statement from 2 June 2019 to 1 July 2019(pre-accident)
- c. The licence disc and an operation card for Toyota Combi F[...]

[15] The Applicant claimed that the income generated was considerably less than his pre-incident income; however, this claim was not supported by evidence. I directed the Applicant to submit bank statements for the year 2024. The Applicant filed the FNB Premier Cheque account statement for the period from 13 December 2016 to 13 March 2017. The statement had a bank stamp of 31 October 2024.

[16] Although I found that the Applicant sustained injuries, the extent of these injuries remains to be determined by the HPCSA. There was insufficient evidence to justify any form of compensation for the Applicant. Based on the evidence presented, I was not convinced that the Applicant experienced any loss of earning capacity.

[17] In **Rudman v Road Accident Fund** ², the court held

"I believe this conclusion is correct. The fallacy in *Mr Eksteen's* criticism is that it assumes that Rudman suffers loss once he proves that his physical disabilities bring about a reduction in his earning capacity; thereafter all that remains is to quantify the loss. This assumption cannot be made. A physical disability which impacts upon capacity to earn does not necessarily reduce the estate or patrimony of the person injured. It may in some cases follow quite readily that it does, but not on the facts of this case. There must be proof that the reduction in earning capacity indeed gives rise to pecuniary loss.

² [2002] 4 All SA 422 (SCA) at para 11. See also *Kannenber v Road Accident Fund* (45549/16) [2018] ZAGPPHC 630 (20 August 2018).

[18] The Applicant asserts that I neglected to consider the bank statements—both those preceding and subsequent to the incident—along with the correspondence from Uncedo and the vehicle’s license disk. However, I find this assertion to be disingenuous. I did, in fact, examine these documents and subsequently adjourned the court proceedings to allow the Applicant an opportunity to provide clarification and additional documentation. Unfortunately, the Applicant’s legal representatives did not take advantage of this opportunity, which ultimately constrained my analysis to speculative conclusions due to the lack of evidence.

[19] In paragraph 15 of the heads of argument, the Applicant asserted that the plaintiff’s obligation was to present sufficient evidence to enable the Court to determine appropriate compensation for his inherently unquantifiable losses. Thus, the Court should not be required to engage in an extensive exercise of guesswork.

[20] In *Goldie v City Council of Johannesburg*³ the court held that:

“Mr Hart, who argued the case for the defendant, quoted a number of cases, such as *Union Government (Minister of R & H) v Clay* (1913 AD 385) *Hulley v Cox* (1923 AD 234) and *Craig v Franks* (1936 SR 41) in support of the proposition that it is wrong to calculate the amounts to be awarded under these heads of damage on the basis of annuity, and that whilst such actuarial calculations affords useful guidance, the true basis is what the court considers, under the circumstances of the case, to be fair and reasonable amount to be awarded the plaintiff as compensation. This may be so, but in the case where it is necessary to award compensation for loss of future earnings, I have difficulty in appreciating what better starting point there can be than the present value of the future income which the plaintiff has been prevented from earning. From this point proper allowance must be made for contingencies, but if the

³ 1984(1) SA 98 (A) at 112E-114F

fundamental principle of an award of damages under *lex Aquilia* is compensation for patrimonial loss, then it seems to me that one must try to ascertain the value of what was lost on some logical basis and not impulse or by guesswork.”

[21] After reviewing the grounds for the application and the arguments made by the applicant's counsel in favour of granting leave to appeal, I am not persuaded that a different court would reach a different conclusion.

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

1. The application is dismissed.

FLATELA L
**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

This Judgment was handed down electronically by circulation to the parties and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand-down is deemed to be 10h00 on 02 September 2025

Counsel for Plaintiff	:L Haskins
Instructed by	:Sotshintshi Attorneys
Date of the Hearing	: 15 May 2025
Date of the Judgement	: 02 September 2025