



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

CASE NO: 128/2022

In the matter between:

SISONKE GCWABE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

RUSI J

[1] On 17 February 2018 at or near Woolwash Road Amalinda, East London, the plaintiff who was 34 years of age at the time, was involved in a motor vehicle accident. At the time of the accident, she was a passenger in the insured vehicle which collided with another motor vehicle after the insured driver lost its control. Resulting from the said accident, she sustained the left acetabulum fracture (a fracture in the socket of the hip joint where the femur joins the pelvis). She was

admitted at the Life Southernwood Hospital where she underwent an open reduction and internal fixation (ORIF) of the acetabulum.¹

[2] The plaintiff instituted this action against the defendant for damages resulting from the said accident in the total sum of R5 341 459.00 (five million three hundred and forty-one hundred thousand, four hundred and fifty-nine rands) representing R1 000 000.00 in general damages for shock; pain and suffering; discomfort; permanent disfigurement; loss of amenities of life; and past and future loss of earnings, R100 000.00 for past and future medical expenses, and R4 241 459.00 for past and future loss of earnings.²

[3] An Orthopaedic surgeon who assessed the plaintiff's injuries, Dr Malemo Maku, concluded that she had sustained a fracture of the acetabulum (healed at the time of examination) and had impairment/disability, with decreased joint space of the hip with implants in situ. He considered her injuries as being serious long-term impairment with whole person impairment (WPI) of 9%. Further according to Dr Maku, at the time of examination, the plaintiff had chronic disabling left hip pain but had a fair to good prognosis. He opined that the plaintiff would benefit from the surgical removal of the implants on her hip socket. He recommended provision of monthly pain and anti-inflammatory medication, and hip rehabilitation with physiotherapy.

[4] On 28 August 2018, in a settlement between the parties, the defendant conceded liability for 100% the plaintiff's damages and agreed to pay her R650 000.000 for general damages.

¹ This is according to the Orthopaedic Surgeon, Dr Maku's report, a fact that is common cause between the parties.

² These amounts appear in paragraph 9 of the plaintiff's amended particulars of claim.

[5] At the time of the accident, the plaintiff was employed by the Road Accident Fund (the Fund) as an Administrative Assistant at its East London Offices. She was in possession of a Matric Certificate and she was studying at the University of South Africa (UNISA) for a qualification in Public Management. As the Fund's Administrative Assistant, she earned a gross income of R174 880.92 per annum with a monthly salary of R14 573 .41. She also received income for overtime work where performed. The benefits attached to her remuneration were an annual bonus, pension contribution by the employer at the rate of 14% of her salary, two thirds of the total medical aid contribution, and housing allowance.

[6] The plaintiff was further examined by the Ms Rabelani Makuya, an Occupational Therapist, on 04 December 2020, and the Industrial Psychologist, Ms Busisiwe Pepu on 25 March 2022. These experts each compiled reports for use at the trial of the matter. Mr Tsepo Kalanko, an Industrial Psychologist, examined the plaintiff at the instance of the defendant on 21 February 2025. The defendant admitted all the reports that the plaintiff's experts compiled.

Ms Makuya's report

[7] According to Ms Makuya, the plaintiff had lower back and chronic hip pain which she considered as risk factors that would affect her productivity and efficiency. She displayed poor quality of movement patterns on the left hip and would benefit from the surgical removal of the implants on her hip. Often assisted by colleagues at work, the plaintiff had slight limitations with standing, walking, heel rising, climbing and handling of a full range of medium loads. She, however, retained the functional capacity to undertake sedentary to low range of medium type occupation with adjusted ways of task approach and execution, and special devices where applicable. She was reasonably accommodated in her workplace and was considered capable of continuing working in her capacity as an Administrative Assistant and met the inherent demands of that capacity. Further according to Ms

Makuya, the plaintiff would likely benefit from rehabilitative intervention for the improvement of her physical, functional and psychological abilities.

Mr Kalanko's report

[8] Regarding the plaintiff's employment after the accident, Mr Kalanko reported that confirmation was given to him by the plaintiff's supervisor, Ms Mbahla, that, although the plaintiff was coping well with her duties, she struggled with pain and often relied on her colleagues for assistance with carrying loads of files due to her inability to carry heavy objects. The plaintiff often missed work in order to receive medical treatment for the pain she experienced.

[9] At the time of Mr Kalanko's assessment of the plaintiff, no other collateral information was provided to him regarding her earnings at the Fund. He opined that her earnings at the time of the accident fell within the semi-skilled workers and between the median and upper quartile B1 according STATSSA Survey of Earnings noted in R. Koch's Quantum Yearbook (2018). As will be apparent later on in this judgment, in a subsequent assessment of the plaintiff by Ms Pepu, it emerged, from the collateral information that she provided, viz, her payslips and appointment letter at the Fund, inter alia, that her earnings fell in Quartile B4 for of semi-skilled work at the already mentioned gross income of R174 880.92 per annum with a monthly salary of R14 573 .41.

[10] Mr Kalanko further reported that during the period of recovery, which was four (4) months following the accident, the plaintiff did not lose income. It was conceded on behalf of the defendant that this view did not take regard of the overtime earnings that Ms Pepu considered. Mr Kalanko further opined that the plaintiff's earning capacity and future earnings have been curtailed, and that this will probably result in loss of income since, though employable, she still experienced pain and discomfort.

[11] He was of the further view that at the time of the accident, the plaintiff had not, at her age, reached her career plateau and earning capacity and would, subject to the availability of posts, have applied for other positions to advance her career growth and earnings. Depending on her health, motivation and the relevant retirement policy of her employer at the time, she would most likely retire at age 65.

[12] In Mr Kalanko's opinion, now that the accident has occurred, the plaintiff's occupational freedom has been slightly limited, and she will, to an extent, be limited in the type of employment that she is in, owing to the injuries she sustained and their effects. Even though she will likely continue earning on par with her current earnings, she may not reach her pre-accident capacity.

Joint minute of Ms Pepu and Mr Kalanko

[13] In their joint minute, Ms Pepu and Mr Kalonko were in agreement regarding the following:

- (a) The plaintiff had the capacity to secure a higher position in Grade task 10 at the Fund at a salary of R349 998 per annum, which would place her earnings between the median and upper quartile B4 according to Koch's 2024 Quantum Yearbook.
- (b) The DPSA alternative promotion scenario 2 would be the relevant scenario for the calculation of the plaintiff's earning capacity and future loss of income. Under this scenario, she would have progressed to salary job level 7, notch 2, according to 2019 PERSAL, and would likely have been earning R257 508 per annum with 37% benefits.
- (c) Thereafter she would have progressed from notch-notch with annual inflationary increases until retirement age of 65 years.

- (d) The plaintiff will likely remain in her current employment as an Administrative Assistant, although with challenges which seemingly affect her ability to execute her duties. While she will continue to earn on par with her current earnings, she may not reach her pre-accident earnings as she may not perform at the level of her pre-accident performance.
- (e) As regards contingencies, Ms Pepu and Mr Kalanko agreed that in the light of the plaintiff's poor cognitive, physical, emotional, social or behavioural aspects, a higher-than-normal contingency deduction was appropriate.

[14] A further promotion scenario, the DPSA promotion scenario 3, was apparently canvassed between the parties. This scenario subsequently formed part of the quantification by the actuary, Mr Wim Loots in a revised report dated 23 April 2025. I will return to this issue in the course of this judgment.

[15] On the issue of contingency deductions, both parties agreed that a deduction of 30% from an award that this Court would determine as being the extent of the plaintiff's loss of earning capacity and income, would be appropriate, representing a deduction of 10 % from the past loss of earnings, and 20 % from the future loss of earnings.

The issues for determination

[16] There was no agreement between the plaintiff and the defendant regarding the amount of the defendant's liability for the plaintiff's claim for past and future loss of earnings. On the date of hearing, the parties agreed that the issue for this Court's determination was whether promotion scenario 1 or 2 or 3 of the updated actuarial calculations by Mr Loots dated 23 April 2025 should be applied in determining the extent of the plaintiff's loss of earning capacity and income.

The actuarial report

[17] The revised actuarial report of Mr Loots was compiled by him based on the joint minute of the two industrial psychologists and on the evidence that Ms Pepu adduced on 23 April 2025 in relation to the probability of the plaintiff's salary progression under the DPSA promotion alternative to salary level 8. The revised report was admitted by the defendant.

[18] In the revised report, Mr Loots calculated the plaintiff's loss of earnings based on three scenarios. The plaintiff's past and future loss of earnings under scenario 1 have been quantified to a total of R1 187 709.00 while under scenario 2 he quantified them to the sum of R3 005 134.00 having considered the effects of inflation and tax for the respective earnings. Under scenario 3 of the revised report, Mr Loots calculated the plaintiff's loss on the assumption that the timing of salary progression under salary level 8 would be similar to scenario 2 set out in the joint minute of Ms Pepu and Mr Kalanko.

[19] In terms of the promotion scenario 3, plaintiff's past and future loss of earnings are quantified to a total of R4 241 459.00. He did not apply any contingency deductions as no instructions were given to him in this regard.

The trial of the matter

[20] The matter served before me on 23 April 2025 for hearing on the point of dispute between the parties. The plaintiff contended that promotion scenario 3 should be applied, while according to the defendant, scenario 1 was the most relevant promotion scenario.

[21] The plaintiff bore the onus of proving her loss of earnings and earning capacity. She adduced the evidence of her expert, Ms Pepu. Her testimony was based on her report which the defendant had admitted and on the joint minute between her and Mr Kalanko, and the collateral information that the plaintiff

furnished to support her loss of the salary earned and to prove the post- morbid income. No countervailing evidence was adduced by the defendant.

The evidence of Ms Pepu

[22] Ms Pepu opined that based on the plaintiff's educational and employment level, in her uninjured state, she was likely functioning within average cognitive levels. She belonged to the semi-skilled work level and was fit for all type of work. At the Fund, she was employed in Task Grade 6. Had the accident not happened, she would have remained employed and earning R14 573.41 per month. Her promotion and earnings would be based on educational level, experience, intellectual functioning, assessment results, performance and age, depending on the sector in which she was employed. She would likely have taken advantage of on-the-job training opportunities in order to qualify for progression and/or promotion opportunities over the course of her career.

[23] In substantiating her opinion that the plaintiff's loss ought to be estimated in accordance with scenario 3, Ms Pepu contrasted the first two scenarios. The first scenario was based on the plaintiff's pay progression within the rungs of promotion at the Fund (promotion scenario 1), and the second scenario was based on alternative promotion in the Public Service and Administration sector, viz, the Department of Public Service and Administration (scenario 2).

[24] She opined that under promotion scenario 1, the plaintiff would have continued to seek alternative employment opportunities after the completion of her UNISA qualification during 2020/2021. Using the Task Grade system of employment levels at the Fund, she would have progressed to Task Grade 10 which requires a relevant 3-year tertiary qualification (a Diploma) in which she would function in positions such as executive assistant or Senior Administrative Officer or Officer determination, plus benefits. In this regard she considered the Fund's

Advert on careers for Task Grade 10 which reflected a total cost to company remuneration of R349 998.00 per annum with no additional contributions from the employer, which a successful candidate would structure to suit their needs.

[25] Ms Pepu went on to state that, under promotion scenario 3, the plaintiff would be in job level 7, notch 2 and according to 2019 PERSAL, she would likely have been earning R257 508 per annum with 37% of benefits. Her pay progression would be based on service for the required period and satisfactory performance rating for the period in question, after which she would have progressed on notch-to-notch annual inflationary increases until retirement. After 12 notches she would be eligible for progression to salary level 8. According to Ms Pepu, pay progression under the DPSA alternative promotion scenarios is not automatic but depends on the actual service for the required period of time and a satisfactory rating for the period in question.

[26] It was her testimony further, that the Public Management qualification is a qualification that holds relevance in the Public Service and Administration sector. Hence, in her opinion the most relevant scenario on promotion would be the DPSA scenario within the DPSA salary levels 1-12. In her view the plaintiff's entry level in the Public Service sector would have been salary job level 7 from which she would have moved 12 notches to level 8.

[27] Further factors that Ms Pepu considered, are that while the plaintiff remained in recovery from 19 February to April 2018 with full earnings, she lost overtime earnings of an estimated amount of R1500 to R1900 per month as a result of sick leave for 37 days. She took a total of 89 days off work for sick leave and annual leave from February to December 2018; she took 14 days' sick leave in 2019; and 8 days' sick leave in 2020. She was on sick leave for 11 days in 2021 and for 1 day in 2022. Ms Pepu extracted evidence of this partial loss from the plaintiff's payslips, and these were presented in evidence.

[28] As regards the plaintiff's loss of earning capacity now that the accident has happened, Ms Pepu testified that despite her efforts to continue with her UNISA qualification and a request she made for the extension of the registration date to June 2018, which was refused, her studies were eventually cancelled, owing to her inability to submit assignments during the period of February to June 2018. In her opinion, this was due to her poor cognitive level which in turn led to her low output. The assumption, she said, was that in an uninjured state the plaintiff's cognitive level would be adequate for the achievement of the qualification within the three-year period. Ms Pepu further testified that the plaintiff's chronic pain altered her cognitive ability, which was measured against problem-solving and analytical skills, resulting in her functioning at a poor cognitive level.

[29] The plaintiff's injured state, so Ms Pepu continued, disqualifies her from competing for employment against able-bodied individuals given her serious long-term impairment and chronic pain. Her poor cognitive functioning is likely to render her prone to making errors and becoming confused with complex details. This results from the cognitive impairment as a result of her injury. While she will remain in employment until the age of retirement, in the light of the 9% WPI and narrative test 5.1, chronic pain and declining cognitive function, productive employment span is likely to be reduced.

[30] Ms Pepu's evidence was not disputed by the defendant. Mr *Mlinganiso* who appeared on behalf of the defendant indicated that in the absence of opposing expert evidence for the defendant he would not have any questions for Ms Pepu.

[31] I may highlight at this point, that the joint minute of Ms Pepu and Mr Kalanko does not deal with the plaintiff's progression under the DPSA scenario 3, neither did Ms Pepu deal with it in her report, nor did she exercise her right to amend her report to encompass the plaintiff's career trajectory beyond salary level

7 under the DPSA promotion alternative scenario 2. I deal with this issue later on in this judgment.

The parties' submissions

[32] The parties requested and were granted leave to file written submissions subject to the court's directive should it require to hear them further on any of the issues dealt with during the trial of the matter. After the filing of the parties' written submission, no directive was necessary, calling them upon to make oral submissions in court on any of the issues raised during trial.

[33] In the plaintiff's heads of argument, Ms *Mashiya* submitted that the plaintiff would be at the public sector salary job level 7 and progressed from notch-to-notch to salary level 8 until she retired at 65 years. She took the view that even though the plaintiff's injury was an orthopaedic one, Ms Pepu's opinion establishes that it has rendered her cognitive levels poor, as a result her problem-solving and analytical skills have significantly deteriorated. She submitted, with reference to Mr Loots' revised actuarial calculations, that the total amount of R3 452 462.60 after the 30% contingency deduction is a reasonable award of damages for the plaintiff's loss of earnings.

[34] Mr *Mlinganiso* submitted, notwithstanding the joint minute of the parties' industrial psychologists, that promotion scenario 1 was the most relevant estimation of the plaintiff's loss.

The legal principles

[35] As held in *Rudman v Road Accident Fund*³, a physical disability which impacts upon capacity to earn does not necessarily reduce the estate or patrimony of the person injured, although in some cases it may follow quite readily that it

³ [2002] 4 All SA 422 (SCA) at para 11.

does. There must be proof that the reduction in earning capacity indeed gives rise to pecuniary loss.

[36] The approach to be followed in assessing the extent of the plaintiff's loss of earning capacity was laid down in *Southern Insurance Association Limited v Bailey NO*⁴, where Nicolas JA stated.

‘[A]ny 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 the 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 which seems to him to be fair and reasonable. That 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 upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a non possumus attitude and make no award. In a case where the Court has before it material on which an actuarial calculation can usefully be made, the first approach does not offer any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an "informed guess", it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial Judge's "gut feeling" as to what is fair and reasonable is nothing more than a blind guess.’⁵

Further, on the weight to be accorded to actuarial computation, the learned judge said:

‘Where the method of actuarial computation is adopted in assessing damages for loss of earning capacity, 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”.’⁶

⁴ 1984 (1) SA 98 (A) 99.

⁵ at 113G – 114A-D.

⁶ Ibid, at 116G.

[37] The extent of the reduction of the plaintiff's ability to earn income as a result of injuries sustained in the accident is the issue to which I now turn, with these legal principles in mind.

Discussion

[38] That the plaintiff suffered a permanent disability as a result of the injury she sustained in the motor vehicle accident on 17 February 2017 is beyond dispute. In considering the evidence of Ms Pepu, the principle enunciated in *NSS obo AS v MEC for Health, Eastern Cape Province*,⁷ is instructive, where the Court said:

‘[I]n order to evaluate expert evidence, the Court must be appraised of and analyse the process of reasoning which led to the expert's conclusion, including the premises from which that reasoning proceeds. The court must be satisfied that the opinion is based on facts and that the expert has reached a defensible conclusion on the matter. The purported admission by the defendant cannot, and does not, absolve the court from this duty. . .’

[39] A determination of the plaintiff's loss of earning capacity takes into consideration factors such as her age, career trajectory, skill development potential, the likelihood of entering into more lucrative fields of work, had the accident not occurred, and the lasting impact of their injuries are of relevance. What is evident from Dr Maku's report is that even though the plaintiff would benefit from the removal of the implants and from hip therapy and physiotherapy, and even though she has been said to have a fair to good prognosis, this intervention would not result in 100% recovery that would improve her agility and range of movement on her left hip. Hence, she would require chronic pain and anti-inflammatory medication to alleviate her pain and discomfort. Ms Pepu's opinion that the plaintiff's injured state disqualifies her from competing for employment against

⁷ 2023 (6) SA 408 (SCA) at para 25; *Road Accident Fund v Kerridge* 2019 (2) SA 233 (SCA) at para 50.

able-bodied individuals given her serious long-term impairment and chronic pain must, therefore, be accepted as correct.

[40] The joint minute of Ms Pepu and Mr Kalanko indeed establishes that immediately after the accident the plaintiff's employment situation became fundamentally altered and that the quality and extent of her choices to find other employment became limited. As Ms Pepu opined, this became evident, *inter alia*, from the plaintiff's failure to achieve success in her studies for the Public Management qualification, which, but for the accident, she would have completed in 3 years from 2018, and it would have opened different career paths.

[41] Where a person's earning capacity has been compromised, that incapacity constitutes a loss, if such loss diminishes her estate and she is entitled to be compensated to the extent that her patrimony has been diminished.⁸ I accept that whether the plaintiff would have moved up the rungs the Fund's Task Grade system or even secured employment in the public sector is both a matter of chance and self-development.

[42] I have taken into consideration, the fact that from the Ms Pepu's evidence and the joint minute between her and Mr Kalanko, the plaintiff's career trajectory, skill development potential, and even the likelihood of entering into more profitable fields of work, have become compromised now that the accident has occurred. I have no reason to reject Mr Pepu's evidence that when regard is had to the adequacy of the plaintiff's cognitive ability before the accident, she would have completed her qualification in Public Management by 2021.

⁸ *Rudman v Road Accident Fund*, footnote 2 *supra*, at para 11, where the Supreme Court of Appeal affirmed the court's application of this principle.

[43] That being said, here is an aspect of Ms Pepu's evidence which presents me with great difficulty: there is a paucity of facts supporting her opinion that under the DPSA scenario 3 the plaintiff would have progressed to salary level 8 in her uninjured state.

[44] What Ms Pepu did, in essence, when she gave opinion on the appropriateness of scenario 3 for the quantification of the plaintiff's loss, was to deviate from the agreements between her and Mr Kalanko regarding the trajectory of the plaintiff's earning capacity in her uninjured and injured state. It is settled law that the joint minutes of experts serve to limit the issues on which evidence is needed, and in the absence of repudiation, the other litigant is entitled to run the case on the basis that the matters agreed between the experts are not in issue. In *Bee v RAF*,⁹ the court, dealing with a departure by the Fund's Forensic expert from agreements that were made in the joint minute of expert, said the following:

‘[68] There may be cases where the expert rather than the litigant wishes to depart from what he or she previously agreed. The same rules of fair play apply. The expert should notify the attorney through whom he or she was engaged and due warning should be given to the other side. In such a case there will often be a further procedural requirement, namely the furnishing of a supplementary report by the expert whose views have changed.

[69] The limits on repudiation, particularly its timing, are matters for the trial court. The important point for present purposes is that repudiation must occur clearly and timeously. The reason for insisting on timeous repudiation is obvious. If the repudiation only occurs during the course of the trial, it might lead to a postponement to allow facts which were previously uncontentious to be further investigated. It might be necessary for a party to recall witnesses, including his or her expert. Whether a trial court would allow this disruption would depend on the circumstances. The trial court would be entitled to insist on a substantive application from the repudiating litigant.’

⁹ 2018 (4) SA 366 SCA.

[45] Apart from the fact that in the present case no substantive explanation was proffered for Ms Pepu's deviation from the agreements contained in the joint minute, no supplementary report was presented by Ms Pepu on the basis of which she sought to deviate from those agreements. This kind of conduct was deprecated by the Court in *HAL obo MML v MEC for Health, Free State*¹⁰ where the need for fairness in the conduct of legal proceedings and the avoidance of trial by ambush was emphasized.¹¹

[46] Over and above the foregoing, I can do no better than quote Dambuzza JA in *Road Accident Fund v Kerridge* 2019 (2) SA 233 (SCA) at para 50, when she said

‘The role of experts in matters such as these and the opinions they provide can only be as reliable as the facts on which they rely for this information. Too readily, our courts tend to accept the assumptions and figures provided by expert witnesses in personal injury matters without demure. The facts upon which the experts rely can only be determined by the judicial officer concerned. An expert cannot usurp the function of the judicial officer who is not permitted to abdicate this responsibility – the court should actively evaluate the evidence. Ideally, expert evidence should be independent and should be presented for the benefit of the court. It is not the function of an expert witness to advocate the client's cause and attempt to get the maximum payout, as most seem to believe. This problem is exacerbated by the Road Accident Fund (the Fund) which fails to properly investigate the true situation of a claimant and is content to rely on projections and assumptions of experts with no factual basis.’

[47] I make no pronouncement on whether Ms Pepu's evidence was an attempt to secure the maximum payout for the plaintiff. Be that as it may, it ought to follow that had the accident not occurred, and equipped with the qualification in Public Management, the plaintiff would have sought other employment in the public sector or other similar field and thereby advance her career growth and earnings. What lends credence to the DPSA promotion scenario 2, which Ms Pepu and Mr

¹⁰ *HAL obo MML v MEC for Health, Free State* (Case no 1021/2019) [2021] ZASCA 149 (22 October 2021).

¹¹ *Ibid*, para 217.

Kalanko agree is the most relevant scenario for the determination of the plaintiff's loss of earning capacity and future loss of earnings, is the undisputed fact that the Public Management qualification would have more relevance in the public sector than in her employment at the Fund. But as regards her progression in her uninjured state from salary level 7 to 8 in the DPSA scenario 3, Ms Pepu's evidence is lacking in detail.

[48] I must, therefore, decline the invitation to consider the evidence given belatedly by Ms Pepu in deviation from the joint minute as the basis for a finding that the DPSA scenario 3 must be held to be the most relevant estimation of the plaintiff's future loss of earning capacity. An inescapable finding is that the plaintiff has not proven loss of earnings to the extent postulated by Ms Pepu under the DPSA scenario 3.

[49] With that said, I am unable to agree with Mr *Mlinganiso*'s contention that the plaintiff ought to be compensated in accordance with the RAF promotion scenario 1. The Fund did not adduce countervailing expert opinion against that of Mr Pepu which I have accepted as being appropriately reasoned against the backdrop of the common cause factual basis and the agreements between Mr Pepu and Mr Kalanko.

[50] In the final analysis, I make the finding that on the totality of the aforementioned facts and expert opinions, the plaintiff has proven her past and future loss of earning capacity to the extent postulated under the DPSA scenario 2.

The contingency deduction

[51] On the score of the appropriate contingency deduction, the starting point is the fact that the accident and its sequelae resulted in the plaintiff having poor cognitive levels and diminished her problem solving and analytical skills. A translation of the pay progression between the salary levels from notch-to-notch as

gleaned from the actuarial report and as set out by Ms Pepu, suggests that the plaintiff, under scenario 2 would have reached notch 12 at age 48. This would be after a period of 12 years in salary level 7. No evidence was adduced regarding how her reduced or poor post-morbid cognitive abilities would have affected her performance for the purposes of the salary progression assessments within the required time period of time to the next service level after the 7th.

[52] The basis for the determination of contingency deductions is various factors which vary from case to case. Those factors including taxation, early death, loss of employment, promotion prospects, etc.¹² The accepted normal contingency deduction is 5 per cent and 15 per cent for past and future loss, respectively.¹³ It has been held that the younger the victim, the longer the period over which the vicissitudes of life will operate and the greater the uncertainty in assessing the claimant's likely career path.¹⁴

[53] The view adopted by Ms Pepu and Mr Kalanko in their joint minute, that a higher-than-normal contingency be applied in the light of her noted lack in the plaintiff's cognitive, physical, emotional, social or behavioural aspects, must be accepted as correct. I conclude that a deduction of 10 percent from the past earnings, and 20 per cent from the future earnings is appropriate in the present case.

[54] For all the foregoing reasons, I make the following order:

1. The defendant shall pay the plaintiff the amount of R2 440 628.50, (Two million, four hundred and forty thousand, six hundred and twenty-eight rand and fifty cents) in past and future loss of earnings, under scenario 2 of the DPSA promotion alternative, made up as follows:

¹² *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA), at paragraph [3].

¹³ R Koch Quantum Yearbook (2023).

¹⁴ *Bee v Road Accident Fund* 2018 (4) SA 366 SCA (Bee) at para 116.

Past loss		R365 213.00	
Less	10%	contingencies	(R36 521.30)

Sub-total	R328 691.70
Future Loss	R2 639 921.00
Less 20% contingencies (R527 984.20)	
Sub-total	R2 111 936.80
Total	R2 440 628.50

2. Interest on the above amount at the rate of 9% per annum, from the date of this order to date of payment.
3. The defendant shall pay the plaintiff's costs of suit.

L. RUSI

JUDGE OF THE HIGH COURT

Appearances:

For the plaintiff	:	Adv. Z Mashiya
Instructed by	:	Mjulelwa INC. Attorneys, East London
For the defendant	:	<i>Mr S Mlinganiso</i>
		The Office of the State Attorney, East London

Date heard : 23 April 2025

Date delivered : 02 September 2025