



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 614/2019

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES/NO


SIGNATURE

18/09/2025
DATE

In the matter between:

SANDISILE CLEOPATRA KHOZA

APPLICANT

and

ROAD ACCIDENT FUND

RESPONDENT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 18 September 2025 at 10:00.

JUDGMENT

Mangena AJ

[1] The plaintiff is Ms Sandisile Cleopatra Khoza, an adult female person who instituted legal proceedings for payment of damages against the Road Accident Fund ("the RAF/ the Fund").

[2] The claim arises out of the following brief facts: On 30 September 2018, the plaintiff was a passenger in a motor vehicle which collided with another motor vehicle. She sustained soft injuries to the head, according to the medical records on file. She lodged a claim with the RAF on 17 October 2018 by submitting lodgement documents, including the RAF 1 claim form, at the Mbombela offices. From the documents in the court file, it appears that the RAF 1 claim form was completed by a medical practitioner on 7 February 2019. The summons was issued by the Registrar on 22 February 2019 and served at the RAF Mbombela office on 11 March 2019.

[3] The Road Accident Fund Act 56 of 1996 ("the RAF Act") requires the Fund to object to the validity of the claim within 60 days of lodgement, failing which it is deemed to be valid in all respects. Section 24(6) of the RAF Act affords the Fund a period of 120 days from the date of lodgement to investigate the claim and prohibits the claimant from issuing summons prior to the expiry of that period. This is to afford the Fund the opportunity to investigate the claim and assess the merits. This did not happen in this case, as the timelines sketched above show.

[4] The above notwithstanding, the merits were settled, and so was the general damages component of the quantum. There is nothing in the file confirming this aspect. I will, however, accept the correctness of the statement as presented by both counsel and confine myself to the issue I am required to determine. I, however, need to state that it is difficult for me to shed the thought that this claim was probably settled without the merits being investigated.

[5] The Fund was unduly pressured and deprived of a statutorily prescribed opportunity to investigate the claim. It is a notorious fact that the RAF and its personnel are not coping with the volume of claims they receive. The least members of the profession could do is to comply with the law and ensure that they protect the integrity of their profession by doing the right thing. Regrettably, this is not what happened in

this case. One only hopes that this is an isolated incident and not reflective of the conduct of the legal practitioners. Indeed, one swallow does not make summer.

[6] When the matter came for trial on 25 August 2025, counsel informed me that the only issue in dispute is past and future loss of earnings. The basis for the disagreement was the extent of the head injury and its effect on the earning capacity of the plaintiff. In its plea, the defendant has indeed disputed that the plaintiff suffered any loss of earnings.

[7] The plaintiff filed five expert reports in support of her claim for future loss of earnings. The reports were prepared by a neurosurgeon, a neuropsychologist, an occupational therapist, an industrial psychologist and an actuary. By consent between the parties, the actuarial report was admitted into evidence in terms of Rule 38(2) of the Uniform Rules of Court.

[8] The plaintiff was the first witness to testify in support of her claim. She testified that at the time of the accident, she was an intern at M S Mabuya Civil Laboratory together with four other people. She was able to perform her duties and complete her allocated tasks with ease and to the satisfaction of her "employer". After the accident, she was not able to complete her allocated tasks due to severe headaches. She also testified that she would often forget some of the tasks, and this affected her performance. She was asked to stay at home. She subsequently secured another internship with the Department of Education, where she was assisting in the matric examination section. Once again, she could not cope due to the unbearable headaches and memory loss she was experiencing.

[9] She was cross-examined on various aspects of her internship and her qualifications. She stood firm that her continuous headaches are a result of the accident, and that they have made it difficult for her to sustain the work opportunities she was able to secure as an intern.

[10] The plaintiff's evidence was corroborated by Ms Nqobile Ntuli, who testified that she was her supervisor at M S Mabuya Civil Laboratory. She stated that she was a hard-working intern who stood a chance of being appointed by the company. Her

performance started to deteriorate after the accident as she became forgetful and often failed to complete her allocated tasks. She was laid off due to a drop in her performance, which, by all accounts, came after the accident. When cross-examined, Ms Ntuli stated that she does not know if Ms Khosa was paid for her services and if she was who was paying her, and how much.

[11] Mr Mhlanga testified that he is a neuropsychologist. He consulted with the plaintiff and perused the medical records of the plaintiff from her hospital file. He was also given a copy of the report prepared by the neurosurgeon. Based on his knowledge, skill and experience, the continuous and severe headaches the plaintiff is experiencing are consistent with the nature of the injuries sustained during the accident. The report by the neurosurgeon said that she had a “mild concussive brain injury”. In his experience, the hospital nurses seldom pick up the severity of the injuries to the head and will record what they are able to see. The same applies to ambulance personnel who seldom keep notes on the treatment administered to patients whilst being transported to the hospital. He remained firm in his opinion that the head injury was the cause of the headaches and poor memory the plaintiff is experiencing.

[12] The two other witnesses who testified for the plaintiff were Ms Nkabinde, the occupational therapist and Ms Aimee Esterhuyzen. Both of them indicated that the plaintiff deserves to be compensated for the financial loss she suffered and will suffer as a result of the effect of the accident on her earning capacity. They were cross-examined on their reports. Significantly, none of the experts had any document in their possession confirming that Ms Khosa was engaged as a paid intern or a volunteer.

[13] The parties submitted written closing arguments, and I have given them due consideration in the preparation of this judgment.

[14] Ms Tsebane submitted on behalf of the defendant that I should dismiss the claim for loss of past and future earnings. She based her submissions on the fact that the plaintiff did not call the neurosurgeon. This cannot be a reason for the dismissal of a claim. The defendant had in her possession a copy of the report by the neurosurgeon. She knew that the plaintiff was relying on it for the purpose of proving her claim. If the report contained any information relevant to the defence, there was nothing precluding

the defendant from calling her to come and testify. The plaintiff saw no need to call her, and in my view, no negative inference should be drawn from this. All the other experts who testified based their reports on her report.

[15] With the above said, I, however, agree with Ms Tsebane regarding the plaintiff's failure to satisfy the onus required of her. During the cross-examination, the plaintiff was asked questions regarding the payments she received as an intern. The answers she gave were not satisfactory in relation to how much she was paid. She has also not presented evidence of remuneration from any of the institutions she served during her internship. None of the experts who consulted with her obtained copies of her bank statements or confirmation of payment from the institutions where she served her internship.

[16] The last internship Ms Khosa secured was with the City of Mbombela, according to the report by the industrial psychologist. In the telephone consultation held on 5 August 2025, Ms Khosa told the industrial psychologist that she had been employed at the municipality for 5-6 months and was asked to leave due to poor work performance. She told her that she was earning R7500.00. Once again, it is unclear whether she was paid by the municipality or the Seta, or whether she was volunteering. This is significant when one has regard to the fact that when she was engaged by the municipality, she had already instituted her claim against the RAF for R5 800 000.00.

[17] The plaintiff's attorneys would have kept records of her payments and obtained letters from the institutions regarding the basis for her termination of engagement as an intern. They would also have advised her to provide copies of her bank statements as proof of the loss she suffered as a result of the accident. I therefore doubt that she ever worked as a paid intern at any of these institutions. I say so because the figures the actuary used in her calculations were assumed and not based on any tangible and credible evidence.

[18] The Mbombela municipality and the Department of Education are government institutions that are, in law, required to keep records of the people they engage either as temporary or permanent employees. The plaintiff knew the people she was reporting to in these institutions, and it would not have been difficult for her to get them

to confirm her terms of engagement in writing and supported by documentary evidence. The plaintiff could have also furnished her attorneys with her bank statement for the period she was engaged as an intern to prove that she was paid.

[19] The plaintiff bore the onus to prove that she sustained severe injuries which negatively affected her performance at work, and as a result, she lost her income and will continue to do so in the future.

[20] On the totality of her evidence, I am not satisfied that she met the requisite threshold of a balance of probabilities. Her evidence was unsatisfactory in material respects when it came to the effect of the accident on her earning capacity. One would have expected her to obtain letters confirming the terms of her engagement and the reasons why she was laid off. As already indicated, these institutions are still in existence, and there has not been any credible reason advanced as to why the information could not be obtained.

[21] In the circumstances, the claim for past and future loss of earnings does not succeed.

[22] Consequently, it is ordered as follows:

1. The claim for past and future loss of earnings is dismissed.
2. Each party shall pay its own costs.


MANGENA AJ
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances

For the plaintiff: Adv. Mabaso
Instructed by: QQ Mkhathshwa Inc.

For the respondent: Ms. Manini Tsebane
State Attorney (Mbombela)

Date Heard: 25 August 2025
Judgment Delivered: 18 September 2025