

**IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
(MBOMBELA MAIN SEAT)**

Case No.: 2779/2022

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED **YES/NO**

DATE 18 SEPTEMBER 2025

SIGNATURE NGWENYA AJ

In the application between:

NOMCEBO NDUBAZI

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

NGWENYA AJ

[1] The Plaintiff issued combined summons against the Road Accident Fund ("RAF") for the payment of R4 750 000.00 (Four Million Seven and Fifty Thousand Rand), following a motor vehicle accident that occurred on the 20th of October 2021 along the Bhayizane Gutswa Road.

[2] According to the Plaintiff's particulars of claim ("POC"), she was a passenger when an unknown vehicle ("insured vehicle"), with registration numbers and letters F[...], driven by an unknown driver ("insured driver"), drove in an incorrect lane of travel, negligently causing an accident.

[3] As a result of the accident, she sustained the following severe bodily injuries:

- 3.1 Severe head injury
- 3.2 Multiple vertebral injuries
- 3.3 An open deep sculp wound
- 3.4 Facial, open face, and scalp injuries and wounds
- 3.5 Open wounds on the forehead
- 3.6 Multiple fractures on the thoracic spine
- 3.7 Loss of 31-week foetus
- 3.8 Multiple bruises and abrasions

[4] As a consequence of the injuries, she:

- 4.1 Incurred medical expenses. R10 000.00 (Ten Thousand Rand) for past hospital and medical expenses. R290 000.00 (Two Hundred and Ninety Thousand) for future hospital and medical expenses. Suffered pain and suffering (general damages) in the amount of R1 850 000.00 (One Million Eight Hundred and Fifty Thousand Rand). Suffered a past loss of employment in the amount of R500,000.00 (Five Hundred Thousand Rand). Lastly, sustained a future loss of earnings from

employment in the amount of R3 100 000.00 (Three Million and One Hundred Thousand Rand).

[5] Therefore, the Plaintiff's total claim is R4 750 000.00 (Four Million Seven and Fifty Thousand Rand) as reflected in paragraph 1 above.

[6] The RAF defended the claim and filed a plea.

[7] At the trial, I was informed by the parties' legal representatives that all heads of damages had been settled except general damages. Therefore, the matter proceeded on the question of general damages. To that end, both parties agreed that affidavits of relevant experts admitted in terms of Rule 38(2) will serve as evidence. Accordingly, the parties relied on these reports and oral submissions and written heads of arguments to make their respective cases.

The Expert Report

[8] The Plaintiff submitted expert reports, and the RAF did not. This is reflected in the parties' joint statement in terms of Rule 37A(9)(a)(i)-(ii).

[9] The relevant experts are:

9.1 Dr KS Bhila, an orthopaedic surgeon. Dr Bhila found the following injuries:

(a) The Plaintiff sustained an open wound, thoracic spine fracture and C spine fracture. He recorded acute pain, including muscle atrophy and joint stiffness, as the sequelae from the injuries and subsequent surgery.

9.2 Dr WG Nkabinde, a neurosurgeon. Dr Nkabinde found the following injuries:

(a) The Plaintiff sustained a severe head injury. He recorded mood challenges like cognitive neurodecline as sequelae.

9.3 Dr Songababu, an obstetrician and gynaecologist. Dr Songababu found that the Plaintiff suffered loss of a foetus as a result of the accident, but found that the Plaintiff's future expectancy is not compromised and that her future reproductive career is not compromised as she can still conceive at her own will.

9.4 Dr Boitumelo Kenoshi, plastic and reconstruction surgeon. Dr Kenoshi testified that the Plaintiff suffered permanent, prominent, symptomatic, unsightly and disfiguring scarring on the face. She recommended a scar revision treatment, post-operative wound care, scar management, and scar modulation therapy to improve the appearance.

Parties' Submissions

[10] During the hearing, the Plaintiff's Counsel submitted as follows:

10.1 The Plaintiff was 29 years old at the time of the accident. She is now 33 years old.

10.2 Merits were settled at 100% and RAF conceded the seriousness of the injuries.

- 10.3 The Plaintiff suffered orthopaedic injuries, i.e. spine injuries, head injury, and scapula fracture.
- 10.4 There is a potential that she has a 15% potential of suffering epilepsy.
- 10.5 She lost a foetus at the time of the accident.
- 10.6 Physical and psychological trauma.
- 10.7 Photos on page 208 show severe scarring on the face.
- 10.8 That her life has been fundamentally altered in the following manner:
- (a) She suffers from back pain
 - (b) Neck pain
 - (c) Headaches
 - (d) Pain on the left side of the face
 - (e) Anger because of loss of foetus
 - (f) Panic attacks
 - (g) Altered body image

[11] I was then referred to case law in the heads of argument. I note that Plaintiff's Counsel referred me to case law and asked me to individualise the injuries for purposes of quantum. Put differently he wanted me to quantify each injury and determine compensation per that injury and then add up the different figures assigned to each injury. This is not our law.

[12] In conclusion, counsel for the Plaintiff urged me to make an award of R1 500 000.00 (One Million and Five Hundred Thousand Rand).

[13] Counsel for the RAF submitted that the determination of general damages requires an assessment of the injuries as a whole and not in isolation, as submitted by Counsel for the Plaintiff. I agree with this submission.

[14] Counsel for the RAF further submitted that fractures will heal and that each case must be decided on its merits.

[15] She further submitted that the head injury did not go to the brain.

[16] She concluded by submitting that an award of R800 000.00 (Eight Hundred Thousand Rand) is the appropriate award.

[17] Having considered the pleadings, the expert reports, the parties' oral submissions and written heads of argument, I find that the Plaintiff suffered severe injuries.

[18] Furthermore, I have considered the severity of the injuries, the potential of social rejection due to the scarring and the overall long-term impact on the Plaintiff's life and future, i.e., the fact that she would have to undergo long-term treatment for the spine injuries, including facial surgery. Therefore, I find that an award of R1 250 000.00 (One Million Two Hundred and Fifty Thousand Rand) is a fair and just amount.

[19] In the premises, I make the following order:

1. The application in terms of Rule 38(2) is granted.
2. The Defendant is ordered to pay the Plaintiff the amount of R1 250 000.00.

3. Interest on the amount above at the rate of 15.5% per annum from a date fourteen days after the judgment of payment.
4. The Defendant shall pay the Plaintiff's taxed or agreed party-to-party costs in the High Court scale to date at 15.5% interest per annum, subject to the taxing master's discretion, such costs to include the following:
 - (a) The costs of Counsel
 - (b) The costs of medico-legal and addendum reports, joint and expert reports served on the defendant, including costs of any and special medical investigation.
 - (c) The reasonable fees of experts.
 - (d) The reasonable costs incurred by and on behalf of the Plaintiff, as well as the expenses consequent to attending the medico-legal examination.

**T S NGWENYA AJ
ACTING JUDGE OF HIGH COURT,
MPUMALANGA, MBOMBELA**

Date of hearing: 19 MAY 2025
Date of judgment: 18 SEPTEMBER 2025

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