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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Appeal Case No: **A206/2024**

Court *a quo* Case No: **63890/2019**

(1) Reportable: NO

(2) Of interest to other judges: NO

(3) Revised: NO

Date: 12 September 2025

Signature:

In the matter between:

BOB, MJ

Appellant

and

ROAD ACCIDENT FUND

Respondent

Coram: Retief J, Terblanche AJ and Leso AJ

Heard: 23 July 2025

Delivered: 12 September 2025. This Judgment was handed down electronically by circulation to the parties' legal representatives via e-mail, by being uploaded to CaseLines. The date of hand-down is deemed to be 11 September 2025.

JUDGMENT

TERBLANCHE AJ

- [1] The appellant appeals to this Court against the judgment handed down and the order made by the Court *a quo* on 17 October 2023. The appeal is with leave of the Court *a quo*.
- [2] The question at the heart of this appeal is whether the *Court a quo* erred in awarding a globular amount of R500,000.00 in respect of past and future loss of earnings and/or earning capacity, with an apparent disregard for the expert evidence and actuarial computations placed before the Court.
- [3] To consider the answer to the question is to consider all the facts before the Court *a quo*.

FACTS

- [4] The appellant is an adult male born on 10 April 1981, who instituted action against the respondent due to damages he sustained as a result of a motor vehicle collision which occurred on 11 December 2015. He was 42 years old on the date of the trial.
- [5] The respondent accepted liability for the appellant's damages.
- [6] On 28 October 2018, the issue of liability was resolved between the parties on the basis that the respondent is liable to the appellant for such damages that the appellant can prove.

- [7] At the trial, the issue regarding general damages was postponed *sine die* and was referred to the Health Professions Council of South Africa for adjudication.
- [8] For the appellant's future medical treatment, the appellant is entitled to an Unlimited Undertaking in terms of section 17(4)(a) of Act 56 of 1996.
- [9] The respondent did not oppose the further relief sought by the appellant and the matter proceeded by default.
- [10] The only issue that remained outstanding, was the determination of the appellant's past and future loss of earnings.
- [11] The Court *a quo* granted an Order in terms of rule 38(2) that the facts, assumptions and opinions as contained in the expert reports were admitted into evidence.¹ Consequently, the content of the experts' reports by Dr DA Birrell (Orthopaedic Surgeon), Dr M Mazabow (Clinical Neuropsychologist), Dr L Nel (Psychiatrist), Ms A Greeff (Occupational Therapist), Ms Noble (Industrial Psychologist) and Mr G Whittaker (Actuary), constituted evidence properly brought before the Court *a quo*.
- [12] According to the abovementioned experts the appellant sustained the following injuries:

11.1. A laceration to the right thumb;

¹ This evidence was accepted by the Court *a quo*. Practitioners would be well advised to, in future, heed the warning sounded by the Full Bench in **Van Schalkwyk v Road Accident Fund**, (A2024/106880) ZA GPJHB (29 July 2025), parr [26] to [42]

11.2. Soft tissue injury to the left shoulder;

11.3. Soft tissue injury to the lumbar back;

11.4. Shock and psychological trauma.

[13] Dr Birrell noted that the appellant was taken by ambulance from the scene of the collision to the Madibogo Health Centre where he received treatment including intravenous infusions and was transferred to the Mafikeng Hospital the following morning. He was x-rayed and his right thumb was cleaned and dressed, and he was discharged the same day with medication.

[14] Dr Birrell noted that the appellant, according to his follow-up addendum report, has the following post-accident complaints:

13.1. He has frontal headaches three times per week;

13.2. He has left shoulder pain with heavy lifting and carrying. He notes that this started just after the accident (he did mention right shoulder pain during the previous assessment);

13.3. He has right thumb pain with cold/inclement weather; and

13.4. He has lower back pain with heavy lifting and carrying, and when bending forward.

[15] With respect to the appellant's right thumb, on examination Dr Birrell noted that he still has scarring of the right thumb and that the tip of the thumb is "*quite bulbous*". There is also a central scar running down from the nail. The nail itself according to Dr Birrell, appears to have suffered a fungal infection.

[16] With respect to an examination of the appellant's left upper limb, Dr Birrell noted that he complains of pain in the left shoulder and stated that there might be a slight degree of impingement in the shoulder.

[17] With respect to the appellant's right thumb, Dr Birrell opined that the thumb should be removed, and the area treated with anti-fungal drugs.

[18] Dr Nel opined that prior to the accident the appellant was a healthy individual with no predisposition for psychiatric illness and no psychiatric history. To him his employment was a major part of his identity, and he always maintained good family relationships.

[19] Dr Mazabow particularly noted that the appellant has the following complaints:

18.1. Dizziness when bending over;

18.2. Memory difficulty;

18.3. Neck pain when sitting for long as well as pain in both shoulders which prevent him from lifting heavy objects;

- 18.4. Lower back pain when sitting for long and when bending over or when standing for long, also preventing him from lifting heavy objects;
- 18.5. Pain in his right thumb, which is worse in cold weather, and he often has to wear a glove in Winter;
- 18.6. Fatigability;
- 18.7. Increased alcohol consumption;
- 18.8. Social isolation;
- 18.9. Poor concentration;
- 18.10. Depression, anxiety and short temperedness;
- 18.11. Wording-finding difficulty; and
- 18.12. Erectile dysfunction.

[20] Dr Mazabow opined, in his follow-up addendum report, that the appellant continues to experience a chronic, severe depressive mood disorder, including suicidal thoughts and that his score of 33 on Beck's Depression Inventory is identical to that score given nearly four years ago at the initial evaluation.

- [21] The appellant also continues to experience chronic post-traumatic anxiety symptoms, persisting for more than 7½ years after the accident, reflecting his significant psychological traumatising following the accident.
- [22] Dr Mazabow also noted that the appellant has demonstrated a number of cognitive difficulties on formal evaluation and his brother also reported that he is subject to memory and concentration problems, with word finding difficulties, behavioural changes, including fatigability, short temper and social isolation.
- [23] Dr Mazabow opined that this is because of the combined effects of his chronic, severe depression, chronic post-traumatic anxiety and chronic pain effects.
- [24] Ms Noble, the Industrial Psychologist, noted that the appellant left school in the middle of his Grade 11 year, because he needed to go back home to look after his mother, after his father had been arrested.
- [25] With respect to the appellant's work history, Ms Noble noted that the appellant worked at a garden service company in Rustenburg from 2000 to 2003. After which he worked for 3 or 4 years for Mr Francois Basson at Stella Pharmacy, cleaning and doing deliveries per bicycle. He left when the pharmacy closed and was left unemployed and moved to Rustenburg.
- [26] Ms Noble noted that on 3 January 2007 the appellant began working at Lonmin Platinum at the Karee Mine in Rustenburg, as a conveyor belt operator on the surface. Ms Noble confirmed this with the appellant's

earnings certificates. The appellant also helped out underground when there was a shortage of staff. He was however discharged for being absent without permission and was unemployed for a period.

[27] Ms Noble noted that from a payslip for 3 November 2014, from the North West Department of Public Works and Roads, it is indicated that the appellant was appointed on 2 December 2013 as part of an Extended Public Works Programme (“EPWP”), Bophirima Region, earning a “*periodical payment*” (stipend) of R2 200.00.

[28] Ms Noble noted that the appellant was employed on 1 March 2015 (according to his payslips) at the Naledi Local Municipality in Stella, Vryburg where he worked on a contract basis, which was a 12-month renewable contract, as a Bomag Operator (a Bomag machine is used to repair potholes on the roads).

[29] Ms Noble opined that with respect to appellant’s job description that after potholes were filled and levelled, the appellant would use the Bomag vibrating machine to compact the tar. This was hard physical work and that he had to use “*power to turn it*” (i.e. the Bomag machine). He was on his feet for long stretches of time, using ear protection.

[30] Ms Noble also noted that the appellant used to work overtime “*almost everyday*” and that he worked more overtime than the other employees as his job was last in line in the process and that he was “*sometimes*” paid for

overtime. He never had any disciplinary action taken against him and his contract was “ended”, and he was informed that it was not renewed.

[31] Ms Noble also noted that the appellant was on holiday at the time of the accident (11 December 2015) and that he returned to work in the first week of January 2016, and that his vacation leave was not changed from vacation leave to sick leave. On his return to work he did the same job for a while teaching a certain Mr Thomas Jacobs the job, who was later permanently appointed.

[32] In Ms Noble’s second addendum report, Ms Noble noted, *inter alia*, that according to a payslip dated August 2013, the appellant had in fact been appointed at the Naledi Local Municipality in Stella, Vryburg, on 1 May 2012 and thus he had been working at the Naledi Local Municipality for much longer than Ms Noble had initially been aware of. At the time of compiling her initial report payslips directly before and after the accident were unavailable, however, Ms Noble was provided with a payslip dated August 2015 (pre-accident – considering the accident occurred on 11 December 2015) indicating a basic salary of R1,680.00 per month and his January 2016 payslip (the month after the accident) of also R1,680.00 per month.

[33] Ms Noble opined that the basis of the quantification for the appellant’s “*but for the accident scenario*” is that at almost 35 years old at the time of the accident, the appellant’s work history is characterized by a variety of physically demanding, low-level labourer positions (garden services,

cleaner, doing deliveries per bicycle, general worker on surface and machine operator) interspersed with periods of unemployment.

[34] Furthermore, Ms Noble opined that due to the fact that the appellant taught Mr Jacobs how to become a Bomag Operator, as it was, albeit after the accident, postulated that the appellant would have been permanently employed after the completion of his first twelve months contract as Ms Noble opined that the appellant was obviously skilled in operating it.

[35] Ms Noble opined that machine operators (Operators Grade 2) work on a Patterson Level A2. Based on PECS' September 2015, general salary surveys, and operator grade 2 working in KZN (where the appellant was working) earned an annual guaranteed package of approximately R97 700,00 which, based on Mr Jacobs' reported "*current*" earnings, was recommended for quantification purposes, with yearly CPI increased until the normal retirement age of 65 years old.

[36] Having regard to the accident which occurred on 11 December 2015, Ms Noble considered the reports of the abovementioned experts, had a telephonic interview with Mr T Jacobs, as well as an interview with the appellant and telephonic follow-up interviews.

[37] Ms Noble noted the nature and extent of the appellant's problems, particularly that:

36.1. His biggest problem is his lower back, as he cannot sit for long (it was noted that he moved around in his chair, leaned back in the

chair and stood up during the consultation). He could not pick up heavy articles and there is “a lot” of things that he could not do after the accident. His local Clinic provides him with pain block and an ointment which he uses everyday.

36.2. He experiences headaches, which is not “*that bad*” “*three times a week*”. He however notes that he did not suffer from headaches before the accident and he uses pain block for this as well.

36.3. He can bend his right thumb, and experiences pain in the thumb in wintertime and then needs to wear a glove. His right hand is not as strong as before. His right arm at the shoulder sometimes “*get tired*” and he experiences “*needles-and-pins*” feeling, also when sleeping.

36.4. He reported that sometimes he sits with friends, drinks beer and does something on the weekend. On a Monday he will not be able to remember some of the things that happened over the weekend. He also indicated that he sometimes goes to the shop but will then totally forget what he wanted to buy. He indicated to Ms Noble that he is not good with dates as well as years and that he has to make notes in his diary.

36.5. He does not experience neck pain but it “*sometimes get tired*”.

36.6. He also indicated that he thinks too much which makes him drink alcohol. He says it works for him when he is drunk because he forgets all “*those things*”. He indicated that he drinks “*much more*”

than before the accident and he doesn't know if it is a problem or not, but he stated that it does help him. He is never involved in physical altercation when he is drunk, but he says he is "*short-tempered*".

36.7. He also indicated that what hurts him the most is "*not working*".

[38] Ms Noble considered the following opinions of the abovementioned experts, as set out in her first addendum report:

37.1. Dr Birrell – Orthopaedic Surgeon, estimated the appellant's loss of work capacity of not more than 6% as a labourer. Dr Birrell also stated that the appellant has a 5% or less chance of requiring an arthroscopy of the right shoulder and has a 1% to 2% chance of requiring surgery to either the neck or the lumbar spine.

37.2. Dr Nel – Psychiatrist, opined that the appellant has a psychiatric disorder, described as: Chronic Post-Traumatic Stress Disorder (PTSD) with a severe co-morbid depressive disorder, secondary to alcohol abuse. Dr Nel opined that the psychotherapeutic treatment will need to be long-term, but even when treated optimally, the prognosis seems poor. Therefore, no significant further improvement is likely to be expected in the following twelve months. Dr Nel also opined that the appellant will not reach his pre-accident level of functioning and will not be able to compete fairly in the open labour market.

37.3. Dr Mazabow – Neuropsychologist, opined that any concussion the appellant sustained would have been mild and that his cognitive, behavioural and interpersonal disturbances / changes are attributed to the combined effects of a chronic, severe depressive mood disorder, with chronic post-traumatic anxiety symptoms and chronic pain effects. Dr Mazabow opined that the appellant's prognosis for psychotherapeutic treatment of his depression is guarded, given the chronicity of his symptoms. If his pain symptoms persist in the long-term, Dr Mazabow opined that he will remain prone to the depression and its effects. Therefore, as a result of his clinical psychological disturbances, combined with the limiting effects of his chronic pain symptoms, the appellant would be regarded as a vulnerable employee, currently.

37.4. Ms Greeff – Occupational Therapist, opined that his impairment on the day of assessment revealed impeded hand strength; that he could not cope with the heavy component of the task due to poor biomechanical posturing, noted especially in relation to his spine; and that his rate of work in the execution of work tasks that requires light physical strength exertion and working with his arms on eye level and at times above his head, measured slower than what is normal. Furthermore, Ms Greeff could not secure a job match for performing employment as a Bomag Operator or as a Jackhammer Operator doing maintenance.

37.5. Ms Greeff noted the following barriers and factors contribute to his non-securing of a job match with long-term vulnerability and compromise expected: he retains symptomology, effective the efficacious use of his right dominant extremity and his lumbar spine; risk for lumbar spine surgery realising for him as he at such time would no longer be seen suited for work tasks that would fall in the medium or heavy ranges. He would then on a physical level only qualify for employment that falls in the sedentary / light ranges; sequelae from his psychological disturbances, rendering him poorly capable of coping with clerical administrative duties (sedentary / light strength exertion) in the open labour market; his identified depression and residual post-traumatic anxiety sequelae that results in him presenting with maladaptive coping mechanisms and reported increased alcohol consumption. Furthermore, Dr Birrell postulated that he will retain a 6% loss of capacity in the execution of employment as a labourer. Ms Greeff opined that it is accepted that this loss could be more in the event of spinal surgery, as he then would probably find himself unemployable.

[39] Ms Noble, as set out above, noted that at the time of the accident the appellant was a Bomag Machine Operator at the Naledi Local Municipality and was a beneficiary of an expanded public works programme.

[40] Ms Noble also noted that Ms Greeff was informed by the appellant that on his return to work he did light duty for a year after which his contract was not renewed.

[41] After his contract was not renewed, he, according to Ms Noble, did piece jobs instead Stella, fixing taps, plumbing, painting, garden work, etc. Ms Noble opined that *“he did whatever work he could get”*. He also apparently earned less than R500.00 per month from these piece jobs although it appears that he did not do these piece jobs every month. According to Ms Noble he did piece jobs once or twice a week.

[42] After Ms Noble’s report she was provided with the appellant’s Capitec bank statements from 1 January 2015 to 8 June 2021, which caused Ms Noble to compile her addendum report. Ms Noble noted the payments per month and opined that the amounts deposited into his bank account do not correspond with the available payslips, and in this regard noted that *“it often happens that EPWP workers are not paid regularly and that months are skipped and then paid in one amount, which may be a consideration. However, the writer however cannot explain the bank statements, inclusive of the two payslips without corresponding bank deposits below, have no regard to the available earning certificate from the Naledi Local Municipality”*. Ms Noble then noted various payments including payments from UIF on 19 November 2018 which continued until May 2019.

[43] With respect to past loss of earnings, Ms Noble noted that during the first week of January 2016, the Municipality opened after the summer holidays and Dr Birrell opined that any time off work was justified and due to the accident. Ms Noble noted that Dr Birrell was informed that the appellant performed lighter duties for ten months and that his salary was decreased, and after obtaining the 2015 payslips Ms Noble could confirm that his rate

per day of R80.00, remained the same in 2016, but increased to R150.00 in 2017, indicating that his rate per day remained the same in 2016 and then increased in 2017.

[44] Ms Noble perused an earnings certificate, which indicated that the appellant's last day at the Naledi Municipality was 31 August 2018, when his basic salary was noted as R1,980.00 per month. Ms Noble, however, noted that according to his Capitec bank statement he was paid R1,783.00.

[45] Ms Noble contacted Mr Jacobs and conducted a telephonic interview wherein he confirmed that the appellant no longer had "*the power*" to operate the Bomag machine and that he did "*soft*", "*not heavy*" work. Mr Jacobs also indicated that the appellant lost his work because his contract was "*almost done*" and he could no longer operate the Bomag machine. Mr Jacobs also indicated that he never found the appellant to be under the influence of alcohol at work and was unaware of the appellant's alcohol use at home.

[46] Ms Noble noted that the appellant was then unemployed during the Covid 19 pandemic, and that during 2021 at some point he worked as a driver on contract for four months for a company involved in pole and network testing. He stopped working there as he was paid R1,200.00 per month, which was too little.

[47] The appellant currently works, according to Ms Noble, in another EPWP, in a feeding scheme at a school which he calls "*NSNB*". Ms Noble noted that

his job description consists of him and four ladies cooking food for the children at the school. He works 5 days per week from 05h00 to either 12h00 or 13h00. He needs help to stir “*pap*” because he experiences pain in his spine. The pain is much more during cold weather. In April 2024, when he would be working there for a year, he reportedly must give someone else a chance to work. Ms Noble noted that the EPWP wage amounts to R13.97 per hour, effective 1 March 2023. He began working there in April 2022 and was still working there at the time of Ms Noble’s first addendum report, earning R1,740.00 per month.

[48] Ms Noble confirmed in her second addendum report that according to his bank statements his earnings at Rekgarathile Secondary School, were R1,640.00 per month and increased to R1,712.00 per month on 26 April 2023.

[49] Ms Noble suggested that the basis of the quantification for the appellant’s “*having regard for the accident*” scenario be that he continued working at the Naledi Local Municipality until 31 August 2018, earning R1,980.00 per month (according to the earnings certificate) (i.e. 2 years and 8 months post-accident). Considering his payslip for June 2017, with a rate per day of R150.00 he, according to Ms Noble, received another two twelve-month contracts post-accident, during which time Mr Jacobs reported that the appellant was not used as a Bomag Operator and only performed light duties. Ms Greeff established that a job match could not be secured for performing employment as a Bomag Operator or a Jackhammer Operator during maintenance and therefore Ms Noble opined that he lost out on the

opportunity to be appointed permanently at the Naledi Local Municipality. Without a skill that made him more valuable to his employer (Bomag Machine Operator) and probably also due to the negative effect of his alcohol abuse and PTSD, with severe co-morbid depressive disorder, it is accepted that his eventual loss of employment at the Naledi Local Municipality, was a direct result of the sequelae of the accident, according to Ms Noble.

[50] Ms Noble then opined that the appellant's work record from September 2018 is "*poor*" and based on the opinions of Dr Birrell and Ms Greeff, the appellant is considered "*a poor competitor for a suitable position based on the fact that he is excluded from a wide range of general worker positions he pre-accident would have been considered for*".

[51] Furthermore, Ms Noble opined that the appellant is considered "*falling into the odd-lot category of job seekers, i.e. one who, though not altogether incapacitated for work, is so handicapped (in his case physically and psychologically, where the recommended psycho-therapeutic intervention has a poor prognosis or a guarded prognosis, that he will not be employed regularly*".

[52] Based on the available information and expert opinions, Ms Noble opined that it is accepted that his future work will play out much the same as the past three plus years, i.e. doing piece jobs or contract work, earning a variable amount.

[53] Therefore, for quantification purposes, Ms Noble suggested the EPWP wage of R13.97 per hour, effective 1 March 2023, working 40 hours per week. Ms Noble also recommended a higher post-accident contingency deduction as long periods of unemployment are expected due to his physical and psychological condition, inclusive of alcohol abuse with a poor / guarded psychotherapeutic prognosis, and probable permanent unemployment post-surgery, if such realises.

[54] Mr Whittaker compiled a calculation based on the abovementioned reports, specifically the addendum reports.

[55] Mr Whittaker calculated the past loss of earnings and/or earning capacity with a 5% contingency deduction on the uninjured scenario and a 5% contingency deduction on the injured scenario which equates to a total past loss of R738,411.00.

[56] With respect to the appellant's future loss of earnings, Mr Whittaker applied a 20% contingency deduction on the uninjured scenario and a 30% contingency deduction on the injured scenario which equates to a total future loss of R1,376,665.00.

[57] This provides a total loss of earnings and / or earnings capacity of R2,115,076.00.

[58] The Respondent did not dispute any of the evidence accepted by the Court *a quo*. The opinions of the experts stood uncontested and the actuarial

calculations by Mr Whittaker was not disputed or questioned. How did the Court A quo then determine the globular value?

COURT A QUO'S REASONING

[59] The Court *a quo* relied on the principles as set out in **Southern Insurance Association v Bailey N.O.**,² where the then Appellate Division observed that:

“where the method actuarial calculation is adopted, it does not mean that the trial Judge is tied down by inexorable calculations. He has a large discretion to award what he considers right”.

[60] The Court *a quo* reasoned, with reference to **Bailey** that it had a large discretion to award what it considered right and that the amounts to be awarded in respect of past and future loss of earnings, depended on what the trial court considered to be fair.

[61] The Court *a quo* then, without considering the correctness of the actuarial computation done by Mr Whittaker, held that the sum of R500,000.00 is a just and fair award for the appellant's past and future loss of earnings and awarded a globular amount of R500,000.00 in respect of both past and future loss of earnings.

[62] The Court *a quo* unfortunately did not give any reasons as to how it arrived at the amount of R500,000.00. It did not disclose the basis upon which it

² 1984 (1) SA 98 (A).

calculated the said amount. It did not say whether it considered Mr Whittaker's actuarial computation and/or on what basis it decided to disregard the computation by Mr Whittaker. The reader of the judgment is left to wonder which facts the Court *a quo* accepted and which facts it did not, whether the Court *a quo* had any basis for arriving at the amount awarded or whether it was just a guess, whether the Court *a quo* had regard to the opinions of the experts and the actuarial computation done by Mr Whittaker and whether the Court *a quo* accepted or rejected those opinions and the actuarial computation by Mr Whittaker.

[63] The failure to give reasons for the decision to award a globular amount of R500,000.00 is unfortunate and left the parties in the position where they have no way of knowing how the Court *a quo* exercised its discretion and arrived at its decision to award a globular amount of R500,000.00. There is no indication as to why the Court *a quo* decided to reject Mr Whittaker's actuarial computation.

[64] The duty to give reasons for a decision by a Court is of great importance. It is even restated in the Judicial Code of Conduct.³ In the absence of reasons, a Court of Appeal is in the unfortunate position of not being able to properly consider the correctness of the Court *a quo*'s decision.⁴

[65] The only sensible approach to the resolution of the problem is for the Court of Appeal to consider the evidence of all the experts, including Mr

³ See also: **Vodacom (Pty) Ltd v Makate and Another**, [2025] ZACC 13, paragraphs [54] to [58]

⁴ **Makate**, par [58]

Whittaker, and to, on the basis thereof, determine the amounts which it would have awarded in respect of past loss of earnings and future loss of earnings.

[66] In the matter of **Bailey**, the then Appellate Division stated that in an inquiry into damages for loss of earning capacities, that because of its speculative nature it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, arguers 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.

[67] The Appellate Division further stated that the Court 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 speculative. It is manifest that either approach involves guesswork to a greater or lesser extent.

[68] 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. The Appellate Division held that on the contrary, while the results 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. It is true that, in the case of a young child, the assessment of damages for loss of earnings is speculative in the extreme. Nevertheless, even in such a case, it is not wrong in principle to make an assessment on the basis of actuarial calculations.

- [69] The Appellate Division went on to state that 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 retains his large discretion. However, 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 Applicant may in the result have a 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 or unrest or general economic conditions. The amount of any discount may vary, depending on the circumstances of the case. The rate of discount cannot, of course, be assessed on any logical basis: the assessment must be largely arbitrary and must depend on the trial judge's impression of the case. In making such a discount for "*contingencies*" or the "*vicissitudes of life*", it is, however, erroneous to regard the fortunes of life as being always adverse: they may be favourable.

[70] The Court *a quo* also referred to the decision of **Road Accident Fund v Guedes**.⁵ The Supreme Court of Appeal in **Guedes**, noted the **Bailey** judgment and noted that Courts have adopted the approach that in order to assist in such a calculation, an actuarial computation is a useful basis for establishing the quantum of damages. The Supreme Court of Appeal further stated in **Guedes**.⁶

“(c) Where the amount of damages is a matter of estimation and discretion, the Appeal Court is generally slow to interfere with the award of the Trial Court – an appellant Tribunal cannot simply substitute its own award for that of the Trial Court. However, once it has concluded that interference is justified in terms of the principles set out in (d) below, the Appeal Court is entitled and obligated to interfere;

(d) The Appeal Court will interfere with the award of the Trial Court:

(i) where there has been an irregularity or misdirection (for example, the court considered relevant facts or ignored relevant ones; the court was too generous in making a contingency allowance; the decision was based on totally inadequate facts);

(ii) where the Appeal Court is of the opinion that no sound

⁵ 2006 (5) SA 583 (SCA).

⁶ At para 8: pp 576 to 578.

basis exists for the award made by the Trial Court;

- (iii) *where there is a substantial variation or a striking disparity between the award made by the Trial Court and the award which the Appeal Court considers ought to have been made. In order to determine whether the award is excessive or inadequate, the Appeal Court must make its own assessment of the damages. If upon comparison with the award made by the Trial Court there appears to be a ‘substantial variation’ or a ‘striking disparity’, the Appeal Court will interfere”.*

[71] The principles enunciated by the then Appellate Division in **Bailey** have stood for more than 40 years, have been confirmed and referred to with approval by many courts and, most recently, by the Supreme Court of Appeal in **Vodacom (Pty) Ltd v Makate & Another**, 2024 (3) SA 347 (SCA), fn 44 to par 151, p 388. Those principles have to be applied by the courts in assessing claims for past and future loss of earnings.

[72] It is not clear from the judgment why the Court *a quo*, which had the benefit of extensive expert evidence and an actuarial computation of the past and future loss of earnings placed before it, decided to completely disregard the actuarial computation.

[73] In the absence of reasons given by the Court *a quo*, the only reasonable inference is that it misconstrued the nature of the discretion vested in it and so misdirected itself.

[74] It is worth mentioning that the long-standing practice in this Division is for the Court to be guided by the expert evidence and the available actuarial computations of damages, in the manner and subject to retaining the discretion explained in **Bailey**.⁷

[75] In **Chivambo**⁸ it was held that the actuarial calculations must be based on proven facts and realistic assumptions regarding the future. The actuary guides the Court in making calculations. The Court has a wide judicial discretion and therefor the final say regarding the calculation.

CONCLUSION

[76] In the absence of any evidence to contradict the evidence of the experts placed before the Court *a quo* and in particular any evidence or even argument to dispute, contradict or even qualify the evidence, opinion and calculations by Mr Whittaker, there appears to be no reason for the Court to deviate from Mr Whittaker's computation of the amounts of the appellant's past loss of earnings and future loss of earnings. The computation done by Mr Whittaker is in accordance with the evidence of Ms Noble and the contingency deductions made by him are realistic. He clearly did not misdirect himself in any respect and there was no basis for the Court *a quo* not to accept his computation.

⁷ **Chivambo v Road Accident Fund**, (2021/54368) [2025] ZA GPJHC 756 (29 July 2025); **PN obo KNN v Road Accident Fund**, (2020/27135) [2025] ZA GPPHC 759 (28 July 2025); **Van Schalkwyk v Road Accident Fund**, (A2024/106880) GP JHB (29 July 2025)

⁸ In par [51]

[77] It follows that this Court would have awarded the amounts computed by Mr Whittaker.

[78] In considering the matters of **Bailey** and **Guedes**, it is evident that the Court *a quo* erred in not making an assessment of the loss of earnings and/or earning capacity on the basis of the actuarial calculations provided to the Court on the basis of assumptions resting on the evidence of the experts which was accepted by the Court *a quo*.

[79] No sound basis exists for the making of an award in a globular amount with a complete disregard for the expert evidence and actuarial computations placed before the Court.

[80] The Court *a quo* erred in disregarding relevant facts as set out in evidence by the appellant's experts and in so doing the Court *a quo* erred in not applying a sound basis for the award made with respect to past and future loss of earnings and/or earning capacity.

[81] There is thus a striking disparity between the award made by the Court *a quo* in the amount of R500,000.00 with respect to the appellant's loss of earnings and/ or earnings capacity, and the award which this Court considers ought to have been made.

[82] The amount which should have been awarded by the Court *a quo* is R2,115,076.00.

[83] This Court is therefor compelled to interfere with the award of the Court *a quo*.

[84] In the premises the following order is made:

83.1. The appeal is upheld with costs, which costs shall include:

83.1.1. The costs of the application for leave to appeal; and

83.1.2. The costs consequent upon the employment of counsel in the aforesaid application for leave to appeal and the appeal, on Scale B.

83.2. Paragraph 3 and 4 of the Order of the Court *a quo* is set aside and substituted with the following:

‘3. *The Defendant shall pay the total sum of R2 116 076.00 (Two Million One Hundred and Sixteen Thousand and Seventy-Six Rand) to the appellant’s attorneys, Adams & Adams, in full and final settlement of the appellant’s claim for past and future loss of earnings and/or earning capacity.*

4. *The aforesaid total sum of R2 116 076.00 (Two Million One Hundred and Sixteen Thousand and Seventy-Six Rand) shall be payable by direct transfer into the Trust Account of Adams & Adams Attorneys, the details of which are as follows:*

Account Holder:

Adams & Adams Trust Account

Bank: Nedbank
Account Number: 1[...]
Branch Code: 198765
Branch: Pretoria
Ref: DBS/LKG/P3721'''

TERBLANCHE AJ
Acting Judge of the High Court
Gauteng Division

I agree:

L.A. RETIEF J
Judge of the High Court
Gauteng Division

I agree:

LESO AJ
Acting Judge of the High Court
Gauteng Division

Appearances:

Applicants:

Counsel for the Appellant: Adv. DS Gianni
Cell: 0828417283

Instructed by Attorneys: Adams & Adams
Tel: 0124326171

Email: David.Scheepers@adams.africa

Lindo.Gwala@adams.africa

Respondent:

Counsel for the Respondent:

Adv. Mabuyisa

Instructed by Attorneys:

State Attorneys

Tel: 0124295000

Email: lorrainemb@raf.co.za

Date of hearing:

23 July 2025

Date of Judgment:

12 September 2025