

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

Case no: 53505/2016

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED.

DATE: 16/9/2025

SIGNATURE:

In the matter between:

JOSEPH HAPPY MLOTSHWA

Applicant/Plaintiff

and

ROAD ACCIDENT FUND

Respondent/Defendant

JUDGMENT

PIENAAR AJ

Introduction

[1] This was on the default judgment roll for the 25 June 2025. When the matter was called, there was no appearance for the RAF, despite due notice of the trial date being given to it. The matter proceeded on a default basis.

[2] The Defendant defence has been struck off before the Honorable Judge Basson for non-compliance with the Court Order dated 15 August 2022.

[3] The plaintiff lodged a claim with the defendant (“the RAF”) in terms of the provisions of the Road Accident Fund Act, No, 56 of 1996 (“the Act”) claiming damages resulting from the injuries sustained in the collision.

[4] Ms Tsabedze, the Attorney for the Applicant, proceeded to present her case in respect of all issues of liability and quantum [excluding the claim for General Damages, because the RAF hasn’t elected yet the RAF 4 assessment reports].

[5] Plaintiff served a notice of amendment of the Particulars of Claim on the Defendant on 14 March 2025, which the following amounts has been amended:

5.1	Past loss of earnings	R1 000 000,00
5.2	Future Loss of earnings	R5 000 000,00
5.3	General Damages	R2 000 000,00

[6] Application was made in terms of Rule 38(2) of the Uniform Rules of Court that I hear evidence on affidavit, as it would be expedient to do so. The affidavits deposed to by all the expert witnesses are filed of record.

[7] Havenga v Parker 1993 (3) SA 724 (T), confirmed by the Supreme Court of Appeal in Madibeng Local Municipality v Public Investment Corporation 2018 (6) SA 55 (SCA) found it is permissible to place expert evidence before the Court by way of affidavits in terms of Rule 38(2). Accordingly, that application was granted.

[8] After hearing the evidence of the Plaintiff Attorney, Ms Tsabedze, I reserved judgment.

Merits

[9] The Plaintiff bears the onus to prove that the RAF is liable under the provisions of the Act, to compensate him for damages suffered because of the injuries in the collision.

[10] According to the Plaintiff's Section 19(f) affidavit the following occurred: "On or about the 9 August 2015, I was involved in a car accident. I was a pedestrian walking on the left side of the road in Bronkhorstspuit. While so walking a motor vehicle with registration number D[...] came at a high speed from the opposite direction. The said motor vehicle failed to negotiate a curve and collided with me outside the road. I was badly injured and lost consciousness as a result of the impact and regained it same day at Kwa Mhlanga hospital and I was hospitalized there for four days"

[11] The next document of relevance is the Accident Report. From it one deduces that the 9 August 2015 was a Sunday. The Accident Report Form does not contain any version of how the accident may have occurred.

[12] According to Kwa Mhlanga Hospital records he was admitted on 10 August 2015 and was diagnosed with right tibia fracture and was discharged on 12 August 2015.

[13] Ms Tsabedze for the plaintiff referred the Court to case law which is to the effect that as a pedestrian walking on a sidewalk the plaintiff will not foresee a vehicle without warning coming from behind to strike him.

[14] With only the plaintiff's version before the Court, I accept this version on how the accident occurred and, therefore, found negligence to have been established on the part of the insured driver. Consequently, I find that the liability of the defendant has accordingly been established. Therefore, I will hold the defendant fully (i.e. 100%) liable for any damages proven on behalf of the plaintiff arising from the injuries sustained by the plaintiff and/or their sequelae caused by the negligence of the insured driver whose vehicle hit the plaintiff on 9 August 2015.

Quantum

[16] It is trite that the Plaintiff bears the onus to prove how the injuries have affected him in respect of his earning capacity.

[17] It is trite that any enquiry into damages for loss of earning capacity is by nature speculative. All the court can do is estimate the present value of the loss whilst it is helpful to take note of the actuarial calculations, a court still has the discretion to award what it considers right.

Dr Joseph Sibanyoni - Orthopedic Surgon

[18] With the above as background I now turn to the medico legal reports filed of record. The first of these that must be considered is that of the Orthopaedic Surgeon, Dr Joseph Sibanyoni. He assessed the Plaintiff on 10 July 2023. The Plaintiff sustained the following injuries as result of the accident: Right tibia/fibula fracture, left leg distal tibia laceration, right heel injury and left shoulder soft tissue injury. He was admitted and discharged the following day to go home on pain medication.

Dr P M Mpanza - Neurosurgeon

[19] Dr Mpanza summaries that the claimant sustained a mild concussion with loss of consciousness of unknown duration and the recorded admission, GCS is 15/15 with no documented head injury. He suffers from chronic headaches. Dr Mpanza reported that he does not qualifies under 5.3 on the narrative test.

Itumeleng Faku - Clinical Psychologist

[20] Dr Faku assessed the Plaintiff on 12 February 2025. Based on the information obtained and psychological assessment, the Plaintiff has sustained significant injuries as the direct results of the reported accident.

Sagwati Pearl Sebapu - Occupational Therapist

[21] Having regard to the diagnosis and prognosis, the claimant is limited to sedentary to light occupations. He is therefore a poor match for this pre and post accident occupations.

Talifhani Ntsieni - Industrial Psychologist

Pre accident

[22] Mr Mlotshwa reported that he passed Grade 12 level of education, Skills Program, Blasting Assistant in Surface Mines and Quarries Certificate and Articulated Dump Truck Operator (ADT) Certificate and a Haul and Dump Material Using a Haul Truck Bell B40E (NQF Level 2) Certificate. At the time of the accident he was employed by Aircycle Refrigeration CC as Casual and has earned R1350,00 basic pay per week and R1350,00 total earnings per week, as per the pay slip.

[23] Ms Ntsieni reported that he has a Code 10 driver's license, it is accepted that Mr Mlotshwa would have secured employment/ better prospects as a Truck Driver within 12-24 months with his earnings ranging slightly above the lower quartile of the Truck Driver's scale and he would have managed to progress his career and earnings to reach his ceiling toward the upper quartile of the Truck Driver's earnings at the approximately age of 55 years, through promotions, changes of jobs and or for better prospects.

Post accident:

[24] During July 2023 Mr Mlotshwa was given an ADT Operator position (light duty) as he was not able to cope with his duties as a General Worker/Blasting Assistant due to accident related challenges (he complained of pains on the right leg, could not stand/ walk for long and he was also not able to carry heavy objects).

[25] Mr Mlotshwa's performance was very poor and he was not able to cope with his duties, he complained of pains on his right leg and he would get tired easily.

[26] He is an unequal competitor at the open labour market compared with his healthier peers and he will not be able to perform functions efficiently and effectively as compared to his counterparts.

Munro Actuaries

[27] The calculations of loss of earnings is based on two Scenario's. Scenario one is in the formal sector and Scenario two is based as a truck driver. The court is of the view that Scenario two is the better option, based on the expert reports.

[28] Munro Actuaries applied a 15% contingency for pre morbid future and 25% for post morbid future contingencies. The total amount of damages awarded under this head is therefore R3 776 460,00.

Order

[29] In the circumstances, the following order is made:

1. The Defendant is declared to be liable for 100% of the Plaintiff's proven damages.

2. The Defendant is ordered to pay the Plaintiff an amount of R3 776 460,00 (Three Million Seven Hundred and seventy six thousand and four hundred and sixty rand only) in respect of the Plaintiff's claim for Loss of Earnings, payable into the Plaintiff's attorneys of record's trust account with the following details:

Account Houlder : Mariana Mashedi Inc Attorneys

Bank name :

Branch code :

Account number :

3. The Defendant shall be liable for interest on the aforementioned amount from the 15th day after date of this order, at the prevailing rate of interest, as determined from time to time, in terms of the prescribed rate of interest Act 55 of 1975, as amended.

4. The Defendant is ordered to furnish the plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for the

payment of 100% of the costs of future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the injured after such costs have been incurred and on proof thereof, relating to the injuries sustained by the Plaintiff on 9 August 2015.

5. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs on the High Court scale in accordance with Rule 70 of the High Court, subject to the discretion of the taxing master.

6. The costs of Ms Tsabedze, briefed and appearing for the trial.

7. The above costs shall be payable within 14 days from the date of upon which the costs are taxed by the taxing master and/or agreed between the parties .

8. In the event that the Defendant fails to pay said costs timeously, it shall be liable for interest on the taxed and/ or agreed party and party costs at the prevailing rate of interest, as determined from time to time in terms of the prescribed rate of interest Act 55 of 1975 as amended.

9. it is noted that there is what appears to be a valid contingency fee agreement between the plaintiff and the plaintiff's attorneys of record.

M PIENAAR
ACTING 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 hand-down is deemed to be 16 September 2025

Date of hearing : 25 June 2025

Judgment delivered : 16 September 2025

APPEARANCES

For the Plaintiff : Ms B M Tsabedze

Attorney for the Plaintiff : Mariana Mashedi Inc

For the Defendant : Road Accident Fund
No appearance
Link no: 3859286