**REPUBLIC OF SOUTH AFRICA**

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

CASE NO:2020/33489

**DELETE WHICHEVER IS NOT APPLICABLE**
(1) REPORTABLE: [redacted]/NO
(2) OF INTEREST TO OTHER JUDGES: [redacted]/NO
(3) REVISED:

01/10/2025 [redacted]
DATE SIGNATURE

In the matter between:

**KHOZA SICELO** Plaintiff

and

**THE ROAD ACCIDENT FUND** Defendant

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**JUDGMENT**

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**MOGOTSI AJ**

*Introduction*

1. This is an action against the Road Accident Fund (hereinafter referred to as RAF) due to injuries sustained by the plaintiff, as a result of an accident which occurred on 23 December 2018, along Alfred Nzo Street, Alexandra, Johannesburg,

2. The matter was allocated to the default trial court on 12 August 2025, in the virtual court for the determination of liability, future medical expenses, as well as past and future loss of earnings

3. The plaintiff sustained the following injuries, ankylosis of the right elbow, amputation of the second metacarpal (index finger) of the right hand, contracture MP joints of the middle, ring and small fingers of the right hand, constructure PIP joints of the middle and ring fingers of the right hand, amputation of the DIP joints of the middle and ring fingers of the right hand, severe muscle atrophy of the ring fingers of the right hand, severe muscle atrophy of the right upper limb. Multiple post-surgical and post-traumatic scars, a brachial artery and degloving injury of the right upper limb with fixed flexion deformity of the right elbow and ankylosis of the right wrist, with amputation of the thumb and index finger.

4. Dr A.J. Dybala, orthopaedic surgeon, who compiled the RAF 4 serious injury assessment, the plaintiff has a WPI of 64% and qualifies for general damages on the Narrative Test, for serious long-term impairment or loss of bodily function. The general damages will have to be referred to the HPCSA and will accordingly be postponed.

*The factual matrix*

5. According to a Section 19 (f)(i) affidavit, the plaintiff was a pedestrian at the time of the accident.

6. Regarding future medical expenses. The actuary, H Solanki, estimated the future medical expenses to be R 782 204. 00. In the premises, the defendant should

furnish the plaintiff with an undertaking as contemplated in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996.

7. Regarding loss of earning capacity, the plaintiff launched an application in terms of Rule 38 (2) to lead to evidence of the experts by way of affidavit and the same was granted.

8. According to the orthopaedic Surgeon, Dr Dybala, the plaintiff sustained a traumatic amputation of the right thumb and index finger, a partial amputation of the middle and ring fingers. His right elbow is in a 40-degree contracture position. He cannot straighten it or flex it and is unable to use his right arm. He has no active movement in the right arm, posttraumatic osteoarthritis and ankylosis of the right wrist with residual pain.

9. He opined that the plaintiff will always retain severe impairment, particularly due to the amputation, which is a determining factor in the quality and enjoyment of life and working capacity throughout his lifetime. Chances of finding employment are unlikely. His right upper limb at present is almost useless; only extensive reconstruction surgery can improve function, and even then, the right upper limb will have minimal function, permanently diminishing his quality of life and working capacity for the rest of his life.

10. Dr N De Bree, an occupational therapist, opined that even with recommended treatment, the plaintiff will still be considerably limited in the right upper limb and would still only be suited to sedentary work and considering his education level and previous work history, it is unlikely that the plaintiff would be able to secure employment of a sedentary nature in the open labour market. The plaintiff will likely remain unemployed in the future due to limitations in the right upper limb. The accident had significantly impacted his career choices.

11. Dr N Gerber, Industrial Psychologist. Opined that the plaintiff's pre-accident earnings or earnings potential would likely have fluctuated around the 50th percentile (i.e., R51,865.00 gross earnings per annum) for male individuals aged

25 to 29 with a Grade 11 level of education performing unskilled work in Gauteng (all sectors) as obtained from Analytico (in January 2022 values). He would likely have continued experiencing earnings growth at this level, reaching the pinnacle of his career with gross earnings approximately consistent with R101,082.00 per annum by the approximate age of 55 to 59. Thereafter, earnings growth would likely be based on annual inflationary increases as granted until retirement.

12. Post-morbid, he opined that the plaintiff has been significantly and permanently compromised from a physical perspective because of the brachial artery and degloving injury of the right upper limb sustained in the reported incident and the sequelae thereof. The plaintiff has been rendered functionally unemployable because of the injuries sustained in the reported accident and the sequelae thereof, and will suffer a total loss of earnings for the rest of his working life.

13. The following calculations were provided by H Solank, an actuary:

Past loss: R 224 017-00 7.9.1.2. Future loss: R 1 528 484-00.

*The law*

14. In *Baliso v Firstrand Bank Limited t/a Wesbank*[1], the Constitutional Court articulated the approach to be followed in default judgment proceedings as follows:

> *"In terms of our civil procedure, default judgment for a debt or liquidated demand is granted on an acceptance of the allegations as set out in the summons, without any evidence. Where the claim is not for a debt or liquidated demand, the court may, after hearing evidence, grant judgment. This is usually only evidence on the amount of unliquidated damages. The reason for not hearing evidence on the other factual allegations made in the summons or particulars of claim is that, because the claim is not opposed, it may be accepted that those allegations are admitted or not disputed."*

[1] CCT150/15 [2016] ZACC 23.

15. The approach to determining loss of earnings and applicable contingencies was recently explained by the Supreme Court of Appeal in *Road Accident Fund v Kerridge*[2], wherein it said:

> *"Any claim for future loss of earning capacity requires a comparison of what a claimant would have earned had the accident not occurred, with what a claimant is likely to earn thereafter. The loss is the difference between the monetary value of the earning capacity immediately prior to the injury and immediately thereafter. This can never be a matter of exact mathematical calculation and is, of its nature, a highly speculative inquiry. All the court can do is make an estimate, which is often a very rough estimate, of the present value of the loss."*

*Analysis*

16. In my view, the plaintiff was 28 years old at the time of the collision and is currently 35 years old. He sustained severe orthopaedic injuries, causing serious long-term impairment or loss of a body function and has been rendered functionally unemployable as a result of the accident. The defendant, as per usual, failed to file expert evidence, and I am duty-bound to follow the principle enunciated supra.

*Order*

17. In the circumstances, I make the following order

The draft order marked "X" is made the order of the court.

[redacted]

**J MOGOTSI**

**ACTING JUDGE OF THE HIGH COURT**

[2] 1024/2017 [2018] ZASCA 151 (01 November 2018).

**JOHANNESBURG, GAUTENG**

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| **Date of Hearing:** | **12 August 2025** |
| **Date of Order:** | **12 August 2025** |
| **Date of Judgment:** | **01 October 2025** |
| **For the Plaintiff:** | **Adv C Botha instructed by Van Der Lith Incorporated** |
| **For the Defendant:** | **Mr L Klaas (State Attorney) instructed by The Road Accident Fund** |