IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 42731/19

DELETE WHICHEVER IS NOT APPLICABLE (1) REPORTABLE: NO (2) OF INTEREST TO OTHER JUDGES: NO (3) REVISED: NO [redacted] .....13/10/2025.......... .... DATE SIGNATURE

In the matter between:

SIBUSISO ACHIBOLD SIBISI PLAINTIFF

And

THE ROAD ACCIDENT FUND DEFENDANT

JUDGMENT

MOGOTSI AJ

1. This is an action against the Road Accident Fund (hereinafter referred to as RAF) instituted by the plaintiff as a result of injuries he sustained as a result of a motor vehicle accident which occurred on 09 July 2019

and at approximately 22h00 and along Vundla Drive, Rockville, Soweto, when the, who was a pedestrian, was knocked down by an unknown motor vehicle driven by an unknown driver.

2. The matter was allocated to me in the default trial court for the determination of the issue of merits, loss of earning capacity and general damages.

3. The Plaintiff alleges that the Defendant is liable to compensate him a sum of R3,192,895.00.

4. The Plaintiff sustained a head injury and a fractured skull as a result of the accident. Currently, the plaintiff experiences stiffness and numbness in the right leg and the left arm. He has headaches; experiences difficulties walking, standing and sitting for prolonged periods; He experiences difficulties carrying heavy objects. He experiences nose bleeds and is easily irritable, preferring isolation.

5. The evidence in this matter was presented by way of affidavit pursuant to a Rule 38 (2)[1] application launched by the plaintiff and granted by the court.

6. In the matter of Baliso v Firstrand Bank Limited t/a Wesbank[2] [2016] ZACC 236, the Constitutional Court outlined the law relating to the evaluation of evidence in cases of default judgment as follows:

"In terms of our civil procedure, a 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 typically provides evidence only 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."

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[1] Rule 38 (2) of the Uniforn Rules of the court.

[2] Baliso v Firstrand Bank Limited t/a Wesbank [2016] ZACC 236

The factual matrix

7. A neurologist, Dr B. K. Cheyip, stated that the plaintiff sustained moderate-severe concussive brain injury as evidenced by the duration of loss of consciousness and initial GCS of 11/15, and the presence of the skull fracture. Neuropsychological impairment, he has clinical features that could be suggestive of Post-Traumatic Stress Disorder and such as fear of boarding cars and headaches that are made worse by overthinking and talking a lot. The plaintiff has not been able to go back to work as a driver after the accident due to his fear of cars and accidents, and is currently employed.

8. Dr Madumo, a neurosurgeon, opines that post-accident, the plaintiff is suffering from chronic headaches and poor short-term memory. The injuries occurred over 3 years ago and, therefore, he has reached MMI. As per the AMA Guides Sixth Edition, he qualifies for the following: MSCHIF Alteration = 10% WPI (Table 13-8, pg. 331). Pain Disability Questionnaire (PDQ) score of 75 = 3% WPI (Table 3-1, pg. 40). Combined WPI = 10% as per the Combined Values Chart.

9. Dr LA Fine, a psychiatrist, opined that the plaintiff, having sustained a head injury with such significant organic brain damage as assessed, the functional effects can be considered permanent and irreversible, and also leave him vulnerable to the development of an array of organically based psychiatric disorders over his future lifetime, which would require treatment at those times. He considered the plaintiff as being severely compromised physically, cognitively, and mentally, being a vulnerable individual, and unable to function competitively on the open labour market as a result of the accident.

10. According to Dr LK Tshikovhele, a clinical psychologist, the plaintiff, pre-accident, completed grades 1-1. Based on his performance on the WAIS-IV assessment, it is probable that he is within the extremely low range of intelligence. Post-accident is experiencing accident-related difficulties, in addition to adjusting to his altered life circumstances from physical injuries and the limitations and pain thereof. Mr Sibisi is being negatively impacted due to his psycho-emotive difficulties, which appear to have been affecting all domains of functioning. His interpersonal relations have been impacted, in addition to his daily activities and his sense of self and well-being. Pre-accident, the plaintiff was mainly employable in the unskilled to semi-skilled categories of employment. Post-accident, he could not resume work due to the injuries he sustained

in the accident under review. He started selling clothes in 2020. At the time of the consultation, the plaintiff reported that he remains self-employed, generating a profit of approximately R1000, 00 to R1500, 00 per week until August 2022 because the business was not generating enough income to keep the business operating. He is currently financially dependent on his family.

11. When determining general damages, Holmes J in Pitt v Economic Insurance Co Ltd [3]1957 (3) SA 284 (D) at 287E–F said '[T]he court must take care to see that its award is fair to both sides – it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense.'

12. The plaintiff's counsel referred the court to the matter of I E v Road Accident Fund[4] (39925/2016) [2018]ZAGPJHC 559 (2121) Aug 2018 and argued that it should considered as one of the comparable · In this matter the Plaintiff sustained the following injuries: head/brain injury with occipital lacerations and 20 minutes loss of consciousness; burst laceration of the elbow; blunt abdominal trauma with bowel rupture; open fracture of the right patella; and an amount of R640 000.00 was awarded to the Plaintiff in regards to General Damages which amounts to R834,319.19.

13. I am persuaded by the submissions of counsel for the plaintiff. It follows that an amount of R800 000,00 is fair and reasonable in the circumstances of this matter.

14. Regarding loss of earning capacity, an industrial psychologist, Dr Zurayda Shaik, opines that with limited varied skills, and considering his age and occupational limitations, the plaintiff would experience difficulties securing and sustaining employment in the open labour market. This implies that he has been rendered practically unemployable in the open labour market, noting the combination of his physical, cognitive, and psychiatric limitations post-accident.

15. Ms N. R. Baartman, an occupational therapist, concurs with the industrial psychologist that the plaintiff suffered residual physical capacity and his employability is negatively impacted.

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[3] Pitt v Economic Insurance Co Ltd 1957 (3) SA 284 (D) at 287E–F

[4] I E v Road Accident Fund (39925/2016) [2018]ZAGPJHC 559 (2121)

16. The traditional principle and rationale guiding restitution for loss of earning capacity was expressed in Dippenaar v Shield Insurance Co Ltd[5] 1979 (2) SA905 (A) per Rumpf JA where he held that:

"In our law, under the lex Aquilia, the defendant must make good the difference between the value of the plaintiff's estate after the commission of the delict and the value it would have had if the delict had not been committed. The capacity to earn money is considered to be part of a person's estate, and the loss or impairment of that capacity constitutes a loss, if such loss diminishes the estate."

17. Regarding the applicable contingency on loss of earning capacity, the plaintiff relies on the following actuarial calculations compiled by Actuary, Ekhaya Risk Services, amounting to R2 392 895.00, taking the contingency deductions into account.

18. In respect of future medical expenses, an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act is awarded to the plaintiff on a 100%.

19. Having carefully considered the matter, coupled with the fact that the defendant failed to produce credible evidence to controvert that of the Plaintiff. I am of the concerted view that an amount of R3,192,895.00 amounts to fair and reasonable compensation to the plaintiff.

Order

Therefore, the following order is made.

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

[5] Dippenaar v Shield Insurance Co Ltd 1979 (2) SA905 (A)

[redacted]

P J MOGOTSI

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Appearances

Appearances

Counsel for applicant: Adv Molope-Madondo

Attorney for applicant: SS Ntshangase Attorneys

Attorney for respondents: Sate Attorney

Date heard: 12 August 2025

Date of Judgment: 13 October 2025