IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

...13/10/2025.....
DATE

[redacted]
SIGNATURE

CASE NO: 1597/2019

In the matter between:

TSHIDISO SETHLAKO Plaintiff

And

THE ROAD ACCIDENT FUND Defendant

JUDGMENT

MOGOTSI AJ

1. This is an action against the Road Accident Fund (hereinafter referred to as the RAF) due to injuries sustained by the plaintiff, who was a pedestrian, who was

knocked down by a motor vehicle driven by an unknown driver on 20 May 2018, along Manotshi Street, Mapetla, Gauteng Province. The Plaintiff was 33 years old at the time of the accident.

2. The plaintiff suffered the following injuries: traumatic head injury with a GCS of 10/15 and right ankle.

3. The matter was allocated to the default trial court on 11 August 2025, in the virtual court for the determination of liability, future medical expenses, as well as past and future loss of earnings.

4. The Plaintiff approached the court with an application in terms of Rule 38 (2) of the Uniform Rules of the Court for his confirmatory affidavits of the experts to be accepted and allowed as constituting admissible hearsay in terms of Section 3(1) (c) of the Law of Evidence Amendment Act 45 of 1988.

5. It is trite law that the onus rests on the plaintiff to prove the defendant's negligence on a balance of probabilities, and for the latter to avoid liability, it is required to produce evidence to disprove the inference of negligence. Where the defendant pleaded contributory negligence and an apportionment, the defendant would have to adduce evidence to establish negligence on the part of the plaintiff on a balance of probabilities.

6. Road Accident Fund v Grobler[1] 2007 (6) SA 230 (SCA) at para [3]

"The party alleging contributory negligence bears the onus of proof".

The factual matrix

7. In my view, and based on the uncontroverted version of the Plaintiff, it follows that the defendant should be held liable for 100% of the Plaintiff's proven/agreed damages.

8. Dr Mjuza, an orthopaedic surgeon, opined that the plaintiff sustained head and right ankle injuries. Currently, he complains of severe pain and swelling of the right ankle every morning and memory loss. He struggles to carry heavy

objects. He experiences dizzy spells, sometimes blackouts, which last about 10 minutes, which led him to quit his job, and he is unable to concentrate for long periods

.

9. He experiences headaches 2-3 times per week, and his memory is impaired. He lost interest in having canal intercourse with his partner. He has become lazy, lacks concentration, and is short-tempered and irritable.

10. He walks with a mild limp on his right ankle, but does use walking aids. • There is a mild swelling over his lateral malleolus; the swelling is not hot or tender to touch; most probably due to synovitis. He has a normal overall shape of his right ankle and has a reduction of ankle movements due to pain.

11. He further opined that the plaintiff suffers from sequelae of his head and ankle injury; viz, traumatic brain injury with development of memory losses, blackouts and a period of mental blankness(epilepsy); chronic pains and swelling of his right lateral malleolus, with abnormal radiological findings. The plaintiff's right lateral malleolus abnormal union has an increased probability of resulting in chronic symptoms, and development of ankle arthritis in the future and should remain under care of Orthopaedic doctors, in the future.

12. Regarding future complications, a neurosurgeon, Dr LF Segwapa, opined that the plaintiff's risk of developing epilepsy is currently at 5% and if it develops, he will require antiepileptic medication for at least 5 years or longer, depending on clinical response. He will require further management of the headaches, which require analgesics. Treatment of epilepsy will cost +R16 000,00 per annum, depending on the type of treatment given.

Regarding loss of earning capacity, it is opined that he had lost the ability to generate income. The occupational therapist and industrial psychologist should evaluate the impact of his current functional status on his ability to compete in an open labour market.

13. Dr Rosman, a neurologist, opined that he has a head and scalp laceration with a GCS of 10/15 and a skeletal right tibia or fibula fracture. Currently, he complains of headaches, memory problems and right leg pains.

14. Neurological Examination revealed that he has neurocognitive impairments and that he should undergo a formal neuropsychological evaluation by a clinical psychologist to determine the extent of his cognitive impairments. Regarding medical expenses, the global amount of +R15 000,00 will suffice for future treatment of the headaches.

15. The expert concluded that it would be fair to award adequate compensation for the damages incurred as a result of the injuries sustained in the accident, and further that he sustained direct trauma to the head. He reported immediate loss of consciousness from which he recovered in the ambulance on

the way to the hospital, and his admission GCS was 10/15, which are symptoms of a mild to moderate traumatic brain injury.

16. A neurologist, Dr Mudau, opined that his life expectancy can be affected by epilepsy if it develops. Regarding future medical treatment and costs, he opined that the cost of analgesia is +/- R6000,00 per annum, the cost of MRI and EEG is R20 000.00, and that of antiepileptic drug is R1000,00 per month. He concluded that it would be fair to award the claimant adequate compensation for the injuries incurred during the accident.

17. Dr N Ntle, a clinical psychologist, opined that a neuropsychological evaluation confirmed the presence of neurocognitive challenges and should be afforded treatment under the care of a neurologist. He concluded that, as a result of the information obtained during his assessment, the plaintiff has been rendered psychologically more vulnerable. In this regard, the following needs to be considered: He has fluctuating attention abilities, which are expected to result in memory difficulties and forgetfulness, and variable abstract reasoning abilities may result in potential difficulties in the occupational domain.

18. Dr Fine, a psychiatrist, opined that, the plaintiff having sustained a head-injury with such organic brain damage as, the functional effects can be considered to be permanent and irreversible, and also leave him vulnerable to the development of an array to organically based psychiatric disorders which would require treatment and an Undertaking is required for the cost of all such present and future psychiatric treatment.

19. According to Ms Nkosi, an occupational therapist, the plaintiff was 32 years of age at the time of the accident and was self-employed as a Disc Jockey, which can be classified as light physical work with occasional medium demands, since 2007. He is unable to continue working due to residual limitations; however, after his recovery, he baked and sold muffins on the streets, but the income was not meaningful. He then secured a job as a call centre agent at Market Force in October 2021. He stated experiencing lower back pain and struggles to sustain concentration. He experiences dizzy spells and headaches. The residual symptom precludes him from medium and all heavy and very heavy occupations. He is a good candidate for sedentary to occasional light duties, and there is a need for reasonable accommodation.

20. The combination of cognitive, psychological, and physical limitations means that the plaintiff is likely to remain a compromised employee, functioning at a reduced capacity. Further studies may not be feasible because of his neurocognitive and neuropsychological sequela. He is still young and not completely precluded from working in the open labour market, and his vocational prospects have been significantly reduced.

21. Mr Tshepo Tsiu, industrial psychologist, projected that the plaintiff may re-enter the labour market in two to four years following a job search and after

undergoing recommended treatment interventions and earnings at the average of the lower quartile and median (R63 850 per annum, guided by Koch Quantum Yearbook 2025) are recommended for him and will likely receive these earnings with annual inflationary increases until retirement age.

22. Regarding general damages. The plaintiff's counsel relied on the following matters to justify the amount claimed.

23. In Kruger v Road Accident Fund[2] (27383/2009) [2022] ZAGPPHC 73 the Plaintiff suffered a skull fracture, which resulted in a moderate to severe brain injury, resulting in deficits in his neuro psychiatric, neuro behavioural and neuro psychological functions. The court awarded R1 400 000,00 for general damages, which is equivalent to R1 574 000,00 in 2025.

24. In Claassens v Road Accident Fund[3] (35716/2016) [2019] ZAGPPHC 471, a 34-year-old male was involved in a motor vehicle collision. He suffered several injuries, including a moderate to severe traumatic brain injury, rib fractures, and a lung infection developed in the ICU. Claassens suffered from chronic headaches, traumatic brain injury sequelae with loss of short-term memory, chronic chest pain, severe surgical scarring, chronic lower backache and an altered ability to work in the open labour market. The court awarded general damages of R1 200 000,00, which is equivalent to R1 512 000,00 in 2025.

25. I am of the concerted view that the matters referred to above provide clear guidance in deciding a fair and reasonable amount for general damages. Having carefully considered the cases mentioned supra, the injuries sustained by the plaintiff and the sequelae thereof, as well as his age, I am of the view that an amount of R1 200 000.00 amounts to a fair and reasonable award in respect of general damages.

26. The approach to determining loss of earnings and applicable contingencies was explained by the Supreme Court of Appeal in Road Accident Fund v Kerridge[4] (1024/2017) [2018] ZASCA 151, 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 before the injury and immediately thereafter.

---

[2] Kruger v Road Accident Fund (27383/2009) [2022] ZAGPPHC 73
[3] Claassens v Road Accident Fund (35716/2016) [2019] ZAGPPHC 471
[4] Road Accident Fund v Kerridge (1024/2017) [2018] ZASCA 151

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."

27. In respect of loss of income, Ekhaya Actuaries & consultants provided the following calculations:

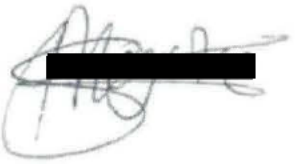
	Uninjured earnings	Injured earnings	
Past loss	R898 549 -5% R853 620	R395b873 -5% R376 079	**R477 541**
Future loss	R3 436 389 -15% R2 920 931	R930 840 -25% R698 129	**R2 222 802**
TOTAL LOSS	**R2 700 343**		

28. Having considered the calculations mentioned supra, which in my view are normal calculations RAF usually applies, I cannot fault the same because of the injuries the Plaintiff sustained and the sequelae thereof.

Order

29. In the circumstances, I make the following order

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



P J MOGOTSI

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION,

JOHANNESBURG

Appearances

Counsel for applicant: Adv Ndumani

Attorney for applicant: SS Ntshangase Attorneys

Attorney for respondents: State Attorney (RAF)

Date heard: 12 August 2025

Date of Judgment: 13 October 2025