



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: 10857/2021

In the matter between:

BRANDON KLAASEN

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Klaasen v Road Accident Fund* (Case no 10857/2021) [2025]

ZAWCHC ... (DDMMYY)

Coram: NUKU J

Heard: 9 and 22 September 2025

Delivered: 27 October 2025

Summary: Delictual claim – quantum of the plaintiff’s claim for loss of earnings – court to award costs based on ‘informed guess’ or ‘rough estimate’ where damages are not capable of precise calculation.

ORDER

1. The plaintiff’s claim succeeds with costs on a party and party scale, including costs of counsel on scale B
 2. The parties are directed to submit a draft order based on paragraphs [28] and [29] of this judgment so that a final order can be made.
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JUDGMENT

Nuku J:

[1] On 15 November 2019, the plaintiff was riding his bike at the corner of Halt Road and Viking Way in Elsies River, Western Cape, when he was hit by a motor vehicle with registration number J[...] (“the insured vehicle”), driven by Mr. Gcobani Maqula (“the insured driver”). He filed a claim with the defendant under the Road Accident Fund Act, 56 of 1996, seeking compensation for damages he suffered because of the injuries he sustained in the collision.

[2] The issue of the defendant’s liability to compensate the plaintiff was resolved between the parties on the basis that the defendant shall pay the plaintiff 50% of the damages that he is able to prove. The various heads of damages have also been settled between the parties, leaving only the claim for loss of earnings.

[3] Both parties involved industrial psychologists to assess the plaintiff's loss of earnings. The experts each prepared their own reports and then issued a joint minute outlining the issues they agreed on and those they did not.

[4] The two experts agreed on two assumptions regarding the plaintiff's earning capacity after the accident. The first assumption was that the plaintiff would continue his informal bin-cleaning service and earn R900 per month until retirement. Based on this assumption, the plaintiff's total earnings until retirement amounted to R252 100.

[5] The second assumption was that he might find alternative employment with a sympathetic employer and earn R28 600 per year starting 1 January 2026. Based on this assumption, the plaintiff's earnings until retirement would total R649 700.

[6] The two experts disagreed on what the plaintiff's potential career path would have been if the accident had not occurred. In this regard, the defendant's experts proposed two possible career options for the plaintiff, with the plaintiff's expert suggesting one.

[7] The first career option proposed by the defendant's expert was that the plaintiff would have entered the public sector at the salary level of a police constable. Under this career path, the plaintiff's earnings until retirement would be approximately R6 842 100. Alternatively, if the plaintiff had been a semi-skilled worker, his earnings until retirement were estimated to total around R2 974 000.

[8] The plaintiff's industrial psychologist assumed that the plaintiff's basic earnings of R1 821.47 per week would increase by R73 846 annually in real terms each January, reaching R2 190.70 per week by 2030, then rising by R64.56 per week annually in real terms each January until 2040, followed by inflation-based increases until retirement. Based on these assumptions, the plaintiff's earnings until retirement would total R3 456 700.

[9] The scenarios described above were sent to an actuary, with a request to calculate the loss of earnings for each. This process resulted in six calculations: two based on the assumptions made by the plaintiff's expert and four based on the defendant's expert.

[10] During the hearing, the following reports were submitted by agreement as exhibits: (a) the joint minute signed by the parties' industrial psychologists, Mr. Dawie Malherbe ("Mr Malherbe") for the plaintiff and Ms. Amirah Davids ("Ms Davids") on behalf of the defendant, along with an addendum dated June 30, 2025; (b) a medico-legal report prepared by Mr. Malherbe dated June 7, 2022; (c) a medico-legal report prepared by Dr. J. Reid dated January 20, 2022; (d) a medico-legal report prepared by Dr. Chris George dated February 2, 2021; and (e) a medico-legal report prepared by Ms. Elspeth Burke dated November 22, 2021.

[11] Mr. Malherbe was the only witness called, and his testimony aligned with my summary above regarding the agreements and disagreements he had with Ms. Davids, the defendant's industrial psychologist. He also confirmed that the plaintiff has not been able to find employment and continues to make a living through his informal bin-cleaning service. His cross-examination was uneventful, and the

plaintiff's case was closed after Mr Malherbe's evidence. The defendant followed suit and closed its case.

[12] During argument, the Court was informed that the parties had further narrowed the issues by agreeing on the percentage to deduct from the plaintiff's uninjured earnings. The plaintiff initially proposed 70%, and the agreement was to deduct 60%.

[13] The limited issues that remained to be determined were (a) which of the six calculations should be used as the basis of calculating the plaintiff's loss of earnings, (b) the general contingencies to be deducted, and (c) costs.

[14] Regarding the calculations, the plaintiff's counsel urged the Court to take a practical approach by averaging the six calculations rather than preferring any one of them. This was based on the argument that the plaintiff's future loss of earnings cannot be precisely calculated, and based on what was stated in *Esso Standard SA (Pty) Ltd v Katz*¹, it was argued that the Court is not released from the duty to assess damages with the evidence available and that a plaintiff cannot be nonsuited simply because their damages cannot be precisely calculated.

[15] It has been further argued that if the Court cannot determine more precisely, it must base an award of damages on a "rough estimate."² Lastly, it has been submitted that a plaintiff must present to the court, which the plaintiff has done in

¹ *Esso Standard SA (Pty) Ltd v Katz* 1981 (1) SA 964 (A).

² *Caxton Limited v Reeve Forman (Pty) Ltd* 1990 (3) SA 547 (A) at p 573.

this instance, such evidence as is available, even if that evidence is not sufficient to remove all the uncertainties about matters bearing upon the quantum of damages.³

[16] Four of the calculations were derived from the insights of the defendant's industrial psychologist. One calculation represented the plaintiff's best-case scenario, and another represented the worst-case scenario. The defendant argued for using the calculation that would yield the worst-case outcome for the plaintiff, asserting that the evidence from the plaintiff's experts shows that the plaintiff can complete his studies and perform sedentary work.

[17] The defendant's argument that one calculation should be preferred over the others is not based on the evidence presented to the Court but on the defendant's selective reading of certain reports that were not even debated with the relevant experts in Court. The fact of the matter is that the defendant's own expert, as reflected in the joint minute, did not suggest any preference between the two career options she proposed, even though she had the report that the defendant relies on.

[18] It would, in my view, be entirely arbitrary to prefer one calculation over others when both industrial psychologists employed by the parties did not even attempt to do so. What is clear, though, is that the plaintiff has suffered a loss of earnings and will, going forward, continue to suffer a loss of earnings for which he must be compensated.

³ *De Klerk v Absa Bank Limited* 2003 (4) SA 315 (SCA) at para 33.

[19] As submitted on behalf of the plaintiff, the plaintiff cannot be nonsuited due to the difficulties in calculating his loss. The Court has the evidence from which it must award damages as best as it can.

[20] The argument for averaging the six calculations has some merit. As mentioned earlier, the calculations based on the defendant's expert have yielded the best- and worst-case scenarios. In contrast, the one based on the plaintiff's expert has yielded a middle ground. The plaintiff is not even arguing for the middle ground based on its expert calculations, because that would also be arbitrary, since his expert did not and could not justify the preference of his assumption over those of the defendant's expert.

[21] Averaging the six calculations prevents the preference of one over others and, in my view, is fair to both sides. The defendant cannot complain if four of its calculations are included in the final result. Similarly, the plaintiff should not feel wronged when two of his calculations are taken into account. For all these reasons, the plaintiff's loss of earnings will be calculated by averaging the six calculations referred to above.

[22] The next issue is determining the appropriate general contingency deduction for the plaintiff's future uninjured earnings. The plaintiff argues for a 20% deduction, while the defendant argues for a 25% deduction.

[23] The defendant justifies the 25% deduction by arguing that the plaintiff did not complete his schooling. He had spent two years prior to the accident without

attempting to complete his high school diploma and instead chose to work. Additionally, he attended a technical school, and his father has a Grade 10 qualification.

[24] For his part, the plaintiff supported the 20% deduction referencing the decision of the Supreme Court of Appeal (“SCA”) in *Road Accident Fund v Kerridge*.⁴ The SCA in that case referred to another decision of the Court which had applied a 20% deduction for a 26-year-old man. As the plaintiff is of a similar age, it was submitted that a 20% deduction should be applied.

[25] The factors relied upon by the defendant do not justify a higher percentage because they are only some of the issues to consider when determining a contingency deduction. The fact that a 20% deduction was applied in respect of a similarly aged person leads me to use a similar percentage, a 20% deduction, which will therefore be applied.

[26] The plaintiff has been successful, and the costs will follow the outcome. The defendant submitted that costs should be awarded on a party-and-party basis, with counsel's costs on scale B.

[27] The plaintiff sought counsel’s costs at scale C. I do not believe such costs are warranted. The case is not sufficiently complex to justify costs at scale C. Costs will therefore be awarded on a party and party scale, with counsel’s costs on scale B

⁴ 2019 (2) SA 233 (SCA).

Conclusion

[28] To summarize, the plaintiff's claim is to be calculated by averaging the six calculations contained in the report prepared by Mary Cartwright Consultants CC dated 1 July 2025. The contingency deductions remain unchanged except for the plaintiff's future uninjured earnings, in respect of which the parties have agreed on a 60% deduction in place of the 70% deduction that was used in the actuarial calculations.

[29] The draft order submitted on behalf of the plaintiff indicated a capital sum of R1 842 313.00, which was based on the 70% deduction mentioned earlier and which the parties have now agreed to revise to 60%. The parties are therefore asked to submit a revised draft order reflecting an amount based on the revised 60% deduction instead of the 70% deduction used in the actuarial calculations, so that an order can be issued accordingly. That draft order should also amend the costs to show that the costs of counsel are awarded on scale B.

Order

[30] As a result, the following order shall issue:

- (a) The plaintiff's claim succeeds with costs on a party and party scale, including costs of counsel on scale B, and
 - (b) The parties are directed to submit a draft order based on paragraphs [28] and [29] of this judgment so that a final order can be made.
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LG NUKU
JUDGE OF THE HIGH COURT

Appearances

For plaintiff: HG McLachlan
Instructed by: Kruger & Co, Goodwood

For defendant: C Thomas
Instructed by: State Attorney, Cape Town.