IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION-MTHATHA)

CASE NO: 2848/2023

In the matter between:

SIPHOKAZI PRIMROSE MATANDABUZO **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT ON QUANTUM

NKELE AJ:

INTRODUCTION.

[1] The plaintiff was involved in a motor vehicle accident, on or about the 24th of October 2005, as a passenger in a motor vehicle with registration letters and numbers **C[...]**, driven at the time by Z.N Silinga who lost control of the vehicle and as result it veered off the road and capsized. In that accident the plaintiff sustained the following injuries:

1.1 A dislocation of the C4 and C5 motion segment level;

1.2 A fractured right distal radius;

1.3 She underwent surgery where a fusion of her neck and internal fixation was performed; and

1.4 Soft tissue injury.

[2] As a result of the injuries aforesaid, the plaintiff was hospitalised at Bizana Hospital and later transferred to Hibiscus Hospital where she underwent hospital and medical treatment for the injuries she sustained in the injuries.

[3] On or about the 13th of April 2006 the plaintiff the claimant directly lodged the claim for compensation in respect for general damages, loss of earnings and medical expenses with the East London branch of the Road Accident fund and was registered under claim number registered under claim number 3007/800899/01/0. That claim was settled by the defendant as follows;

(a) General damages **R 548 000.00;**

(b) An undertaking in terms of section 17(4)(a) of the Road Accident Fund Act no. 56 of 1996.

[4] The plaintiff engaged the services of her present attorneys of record who terminated the mandate of the defendant and formally lodged a claim for under settlement in respect of the loss of earnings aspect of the claim.

[5] Summons was issued, in respect of loss of earnings, and duly served upon the defendant on 14 July 2023 and an appearance to defend was entered and a plea timeously entered on 4 April 2024. Subsequent thereto the defendant failed to comply with the plaintiff’s Rule 35(1) notice and a consequence thereof the plaintiff approached the court for an order directing the defendant to comply with the Rule 35(1) notice within 30 days of the date of the court order. The defendant failed to comply with the court order authorising compliance with the Rule 35(1) notice, prompting the plaintiff to launch an application for the striking out of the defendant’s defence. Such an order was granted by the court on 3 December 2024.

[6] Following the court order striking out the defendant's defence, the plaintiff then set down the matter for default judgment on 17 September 2025. It is worth mentioning that at the hearing of this matter the defendant was represented by both its attorney and counsel, Mr Nabela, but did not present any evidence or cross-examined the plaintiff.

THE PLAINTIFF CASE.

[7] During evidence in chief the plaintiff testified that when she directly lodged a claim with the defendant on 13 April 2006, the only compensation she received was that relating to general damages. Later he engaged the services of the present attorney who lodged a claim for loss of earnings. To substantiate her claim for loss of earnings, the plaintiff testified that she was assessed by various specialists including an Orthopaedic Surgeon, an Occupational Therapist, an Industrial Psychologist and an Actuary, who assessed her and prepared medico-legal reports. The plaintiff also testified that she was also assessed by an Occupational Therapist and an Industrial Psychologist engaged by the defendant. Thereafter the defendant also instructed an Actuary to calculate loss of earnings.

[8] She further testified that she had to take early retirement, and consequently lost earnings, because she could not cope with the demands of her job. She then felt that she was not doing justice to the children she was teaching and decided to take early retirement. The example that she gave, which according to her clearly demonstrates that she was not coping, was that as a teacher she had to write on the chalk board and when she did so her right hand would easily get tired and when doing so, she had to hold her neck in a particular position. That made life very difficult for her such that she felt the task of teaching impossible, hence the decision to resign at age 60, instead of the mandatory age of 65. She also testified that she could not complete a degree she was doing due to lack of concentration and the fact that she couldn't finish writing the exams within the specified period of time.

[9] As a direct consequence of the serious injuries sustained in the accident, she had to take early retirement and the end result was that she lost income for which the defendant is liable to compensate her. Her loss of income has been actuarially

calculated, which calculations are based upon the assumptions and postulations of earnings experts such as the Occupational Therapist and an Industrial Psychologist. Both Occupational Therapists, that for the plaintiff and for the defendant, have converged and prepared a joint minute in which they, inter alia, agree that her vocational prospects have been negatively affected by the serious injuries she sustained in the accident such that she will most likely remain limited into the future. The specialists also ad idem that the plaintiff was justified, in the circumstances of her injuries, to request early retirement.

[10] The Industrial Psychologists acting for both sides also met and agreed her early retirement from her education career was a result of the serious injuries sustained in the accident and that, inevitably led to a significant loss of income. On the basis of an industrial report the plaintiff's earnings were actuarially calculated. The projected loss in terms of the plaintiff's actuary is a sum of **R 3 142 149.00**, without contingencies. On the other hand, the defendant's actuary has calculated the plaintiff's loss of earnings to be a sum of **R 3 486 215.00**.

THE GOVERNING LEGAL POSITION

[11] As far back as 1926 the then Transvaal Division of the Supreme Court acknowledged that once a pecuniary damage has been established, the court must determine an amount based on the available evidence.[1] Quite recently, the court stated that *"The court assesses loss of earnings by estimating what the plaintiff would have earned had the accident not occurred, compared to her current earning potential".*[2] IN I**.M obo A.M v Road Accident Fund,** in simplified terms, explained the formula for determining whether there is a causal connection between the delict and the harm suffered when it said *"A successful delictual claim entails proof of a causal link between a defendant's actions or omissions on the one hand, and the harm suffered by the plaintiff on the other. Legal causation must be established on a balance of probabilities, thar conduct of the defendant caused the harm. This consonant with the "but for*" test".[3]

[1] Hersman v Shapiro 1926 TPD 379.
[2] Masilela v Road Accident Fund (RAF 16/ 2023) [2025] ZANWHC 43; [2025] 2 All SA 546 (NWM) para [50].
[3] para [18].

[12] Our courts have always emphasised the importance of actuarial calculations, while acknowledging the discretion of the court in deciding the final award, in the determination of loss of earnings. Quite recently, the **North West High in K.M v Road Accident Fund** [4]lucidly explained the position as follows *"In road accident claims involving serious bodily injuries and financial loss, actuarial evidence serves as a cornerstone in the quantification of damages. Actuarial reports assist the court in calculating both past and future loss of earnings and earning capacity by employing structured projections based on the claimant's age, life expectancy, career prospects and anticipated retirement age. These projections provide a framework for assessing financial loss in a logically coherent manner"*.[5]

[13] While the value of actuarial calculations is acknowledged in assisting the court in arriving at a just and fair compensation in cases involving loss of earnings and earning capacity, our jurisprudence is quite plain that they are not binding to the court but are merely persuasive, to say the least.[6] All that the court does is to weigh the calculations against the facts of the case in an endeavour to arrive at a fair, just and equitable compensation. In other words, the court will not blindly follow the calculations without having regard to the prevailing factual matrix. The then Appellate Division in **Southern Insurance Association Ltd v Bailey NO** made the following pertinent remarks in this regard *"While it has been stated that an actuarial computation is not a substitute for the exercise of a sound judicial discretion, it is nevertheless a useful basis for exercising that discretion… What the court is bound to determine is the actual loss suffered by the plaintiff… It would be unrealistic to expect from the plaintiff more than he is able, in the circumstances, to prove".*[7]

[14] In fact, as was stated in **De Jongh v Du Pisanie**, actuarial calculations have a dual role. It offers technical precision, but must be evaluated through the lens of

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[4] (RAF 276/2022) [2025] ZANWHC 133 (25 July 2025).
[5] para [32] of the judgment.
[6] K.M v Road Accident Fund para [33].
[7]1984 (1) SA 98 (A) at 113H-114E.

judicial discretion. Courts must still make a value judgment that incorporates both expert opinion and the realities of the claimant's circumstances.[8]

EVALUATING PLAINTIFF'S EVIDENCE ON QUANTUM

[15] As already adumbrated above, it is common cause between the parties' Industrial Psychologists that the plaintiff has suffered a measure of loss of earnings in that due the serious nature of the injuries she sustained in the accident, she has had to take early retirement. To put it bluntly, she was supposed to retire at the age of 65 years but had to do so at the age of 60. That, of course, resulted in loss of earnings for a significant period of 5 years. The agreement between the Industrial Psychologists is recorded in a joint-minute dated 30 May 2025. On the basis of that joint-minute, as has already been alluded, the parties instructed different Actuaries to calculate loss of earnings. I now turn to analyse the plaintiff's loss of earnings as projected in the Actuarial reports.

[16] The plaintiff's actuary has calculated her loss of earnings to be a sum of **R3 142 149.00**, while the defendant's one has arrived at an amount of **R 3 486 215.00**. I propose to the plaintiff's calculations into account in deciding on the amount that the plaintiff will be entitled to for loss of earnings. In fact, as I understand it, that has been the stance of the plaintiffs throughout the proceedings, to rely of her actuary. What now remains to be considered is the question of contingencies that are necessarily deductible.

[17] As was stated in **Van Der Merwe v Road Accident Fund**, the determination of loss of earnings and the incorporation of contingencies falls within the ambit of judicial discretion, the Court has to court has to decide on the approach peculiar to the facts of the present matter.[9] By definition, contingencies are adjustments made to account for the uncertainties of life, including the risk of unemployment, illness,

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[8] 2005 (5) SA 457 (SCA).
[9] (7407/2022) [2025] ZAWCHC 158 (3 April 2025) para [20].

economic downturns, changes in carrier path or early death. They recognise that a person's working life rarely proceeds without interruption.[10]

[18] In the present matter, the plaintiff is a sixty-four-year-old pensioner, a former teacher, who was born on the 16th of November 1960. Because of the injuries she was compelled to take an early retirement at the age of 60, as postulated in the joint-minutes by the Industrial Psychologists, and the calculations relating to loss of earnings are based on her earnings as a teacher. Currently the plaintiff remains unemployed, to some extent, and lives on her early retirement salary, as stated above. Against the above conspectus of facts, it is now time to consider the appropriate measure of percentage to apply to the figure projected by the plaintiff's actuary.

[19] In the circumstances, I consider it appropriate to apply 20% per cent to future loss of earnings. The end result will be a sum of **R 2 513 719. 20**, which I consider to be a fair and reasonable amount of the plaintiff's compensation for loss of earnings.

[20] In the result I make the following order.

(a) **Defendant is ordered to pay the plaintiff the sum of R 2 513 719.20 (Two Million Five Hundred and Thirteen Thousand Seven Hundred and Nineteen Rand Twenty Cents) as and for loss of earnings;**

(b) **Defendant is ordered to pay the plaintiff's taxed or agreed party and party costs, which costs shall include costs of counsel and experts, if any**.

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T.A. NKELE

[10] K.M v Road Accident Fund (RAF 276/2022) [2025] ZANWHC 133 (25 July 2025) para [38].

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

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Matter heard on	:	17 September 2025
Judgment delivered on	:	23 October 2025