

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case no.: 9104/2021

(1) REPORTABLE: N

(2) OF INTEREST TO OTHER JUDGES: N

(3) REVISED: Y

Date: 29/10/2025

In the matter between:

MSELENI OKUHLE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Link no.: 5042872

CORAM: ZITHA, AJ

HEARD ON: 24 JUNE 2025

DELIVERED ON: 29 OCTOBER 2025

JUDGMENT

Zitha AJ

[1] The plaintiff is a female adult person with identity number 0[...] currently residing at Mfitshane location, Mqanduli, Eastern Cape Province, sues herein in her personal capacity as a result of her involvement in a motor vehicle accident.

[2] On 13 December 2018 at approximately 10:00 and in Mfitshane location, Mqanduli, Eastern Cape Province, the plaintiff was a passenger on a bakkie when the said vehicle was involved in an accident. This is an action for damages which the plaintiff suffered as a result of injuries she suffered in the accident. The plaintiff instituted the action in her personal capacity. The issue of liability has already been resolved between the parties.

[3] In terms of the particulars of claim the plaintiff suffered the following injuries:

"6.1 Right ankle salter II fracture -displaced;

6.2 Abrasions back; and

6.3 Haematoma forehead"

[4] At the commencement of the trial the defendant did not make any meaningful participation in the matter. The defendant was placed under

bar and there was no application to uplift the bar. There was no plea filed by the defendant. There were no medico-legal reports filed by the defendant. In fact, the plaintiff's medico-legal reports remained uncontested and or unchallenged. The plaintiff consequently requested at the commencement of the trial that an order be granted in terms of Rule 38(2) for the leading of evidence by way of affidavits. I granted the requested order.

- [5] I am consequently called upon to determine the future loss of income and or earning capacity of the plaintiff. In this regard the plaintiff is claiming an amount of R10 719 900. I am further called upon to determine the future medical expenses.

The evidence:

The plaintiff:

- [6] The plaintiff relied on the medico-legal reports to adduce evidence that dealt with the sequelae of the injuries that she sustained.

Documentary evidence:

- [7] As part of the plaintiff's case, the following expert reports, as confirmed by affidavits, were handed in as exhibits:

1. Mr Thapelo Kalanko, Industrial Psychologist;
2. Dr S.K Mafeelane, Orthopaedic Surgeon;
3. Dr S.M Mabika, Neurosurgeon;

4. Dr LT Kekana, Educational Psychologist;
5. Ms Linda Maye, Neuro/Clinical Psychologist;
6. Ms Ncumisa Ndzungu, Occupational Therapist; and
7. Mr Alex Munro, Actuary,

The Educational Psychologist medico-legal report:

Pre-accident:

[8] In respect of the pre-accident scenario, the expert noted and concluded as follows:

1. If the performance of her parents and sibling at school is taken into account, the fact that she has not failed any grade before the accident and looking at various factors that might determine the learner's education potential, including family members (both maternal and paternal educational background), environment, socio-economic factors of the family, it is likely before the accident she could probably pass grade 12 and obtain admission to a Bachelor's degree study. She could probably pursue the degree study course of her choice and obtain an NQF level 7 qualification. The trend now lately is that children often achieve more than their parents, academically and vocationally. The educational landscape has since changed to support the learners so that most are able to complete high school education.
2. No pre-existing conditions were reported.
3. Her gross developmental milestones followed a normal trajectory.

4. Her medical history does not include any significant medical illness prior to the accident.
5. She is staying with her parents and siblings. Their family relationships and interactions were reported to be satisfactory. She had been a Grade 9 learner at the time of the accident. She reportedly did not present with any cognitive difficulties as there were no cognitive challenges reported prior to the accident.
6. She had the ability to pass matric with a Bachelor Endorsement and the expert opine that she could have been able to obtain post-school qualification at NQF Level 7. (My emphasis)

Post-accident:

[9] With regard to the plaintiff's post-accident functioning, the expert stated as follows:

1. The expert noted and agreed that she presents with forgetfulness, short memory span and the inability to comprehend instructions as expected. Furthermore, she presents with physical and emotional complaints.
2. The expert noted and acknowledged that she failed Grade 10 post-accident.
3. It would seem that her neuropsychological, physical and emotional problems have impacted negatively on her scholastic and academic progress and on her quality of life. She experiences feeling of anxiety, inadequacy and uncertainty. Veliswa Quqa

Clinical psychologist and Linda Maye Counselling psychologist states that she has moderate Post Traumatic Disorder symptoms, mood dysregulation associated with presence of depression, anxiety and irritability. She failed grade 12 at the end of 2022. She wrote her supplementary examination in 2023. The said results were not uploaded on caselines.

4. The accident has rendered her academically vulnerable. The prognosis of her passing grade 12 seems bleak. She will thus not achieve her pre-accident potential. Her highest level of education is Grade 11 (NQF level 3) post accident.

The medico-legal report of the Clinical Psychologist:

Pre-accident:

- [10] The expert concludes that the plaintiff had no history of cognitive-, physical- or emotional challenges that would have impacted on the neuropsychological test results.
- [11] Socially, she had a good relationship with her family, she was sociable individual with good relations with her peers, she played netball socially and she also engaged in religious activities.
- [12] Physically, she had no physical difficulties or limitation noted. She would be considered to have been a healthy individual with no significant illnesses or injuries prior to the accident.
- [13] Cognitively, she had no difficulties in her scholastic studies and in completing grades R to 9. She reportedly just completed grade 9 when

the accident under discussion occurred and was to start grade 10 in January 2019. Her premorbid aptitude was reportedly average.

[14] Psychologically, she had never had any psychological or psychiatric ills nor any interventions reported prior to the accident. She had not reported on any prior traumatic incidents.

[15] Academically/Occupationally, she was a scholar at the time of the accident.

Post-Accident:

[16] With regard to the post-accident scenario, the expert concluded as follows:

1. Socially, there is a decline in her engagements with friends /peers due to increased irritability.
2. Physically, she is no longer able to participate in sporting activities due to her pain in the ankle. She currently suffers from headaches. She experiences dizziness about once a week. She reports on lowered energy levels (fatigue) which occur most of the time. Pain and physical difficulties affect her on a daily basis. As such she reports on difficulties with standing for long, playing netball, running, and walking long distances due to pain to her right ankle.
3. Cognitively, she has memory difficulties, with impact both within her living and educational settings. She has poor concentration and distractibility.
4. Psychological, she has decreased appetite. She experiences fatigability. She has increased irritability with verbal outbursts. She

has presence of moderate anxiety. She is anxious when travelling in a motor vehicle after the accident. She also presents with mild PTSD symptoms.

5. Academically/Occupationally, she is currently in grade 12. She reportedly failed grade 10 following the accident which was ascribed to poor concentration and pain experienced after the accident. She was a grade 12 learner at the time of the assessment and she indicated her post-accident scholastic performance as decreased due to memory and concentration difficulties.

The medico-legal report of the Neurosurgeon:

Post-accident:

[17] The expert concluded as follows:

1. The plaintiff sustained a head injury in the accident. The expert suggested a mild head injury as evident by a Glasgow Coma Scale 15/15 and no CT brain scan was performed. The head injury was treated conservatively.
2. Since the accident, she has been complaining of chronic post head injury headaches and right ankles pains when cold. They agreed that the headaches be treated medically with analgesia.
3. The plaintiff complains of memory problems, short temper, nightmares about the accident, anxiety and fears about cars,

decreased concentration problems and in this regard, they deferred to the reports of the clinical psychologists.

4. She is also suffering from speech impairment, and the expert defer to the reports of the clinical psychologists.
5. She suffered an orthopaedic injury of the right ankle and complains of right ankle pain.
6. The life expectancy of her has not been directly affected by the accident.
7. Permanent serious disfigurement is evident.
8. Severe long-term mental or severe long-term behavioural disturbance or disorder are evident. (My emphasis)
9. Expert suggested that she has a 1 – 2% chance of developing epilepsy in future. (My emphasis)

The medico-legal report of the Occupational Therapist:

[18] The expert concluded as follows:

1. During the occupational therapy assessment, the plaintiff struggled to perform various activities that require repetitive bilateral lower limbs movements as well as dynamic postures due to right ankle pain.
2. She had limitations in performing various body postures such as crouching and repetitive squatting. She demonstrated reduced endurance in standing and walking for prolonged periods. She was concluded to have limitations in lifting or carrying heavy objects. During the lifting protocol, her lifting or carrying capacity was within sedentary to light physical demands. These physical assessment

findings conclude compromised physical and functional capacity to perform strenuous daily activities.

3. Neurocognitive and mood challenges were noted. The writer opined that the presence of compromised neurocognitive, emotional and psychological well-being may have a further negative impact on her future work ability, interpersonal relations and day to day functioning. She is likely to struggle remembering items and would make unnecessary mistakes in cognitively demanding tasks.
4. The plaintiff aspired to be an educator and her work aspirations will require her to have good physical and cognitive abilities. She will be required to maintain prolonged standing, moving up and down and perform bilateral lower limb function. Due to her presenting limitations, the writer notes the following expected challenges if she works as an educator: reduced standing and walking endurance, inability to participate in extra mural activities and poor memory. Her limitations will limit her productivity at work if she manages to achieve future career aspirations. Her injuries will make her a lesser competitor in the open labour market compared to her peers.
5. She would thus require an understanding employer who will be willing to accommodate her physical and cognitive limitations in future; however, the writer notes that reasonable accommodation measures are not guaranteed. Due to accident related challenges, the plaintiff's career or job options are likely to be curtailed as she will have difficulty in coping with highly physical and cognitively demanding jobs.

6. The writer is of the opinion that the claimant's injury will prevent her from relying on her physical and cognitive abilities to secure and maintain employment should she wish to find employment in future. Her competitiveness in the open labour market is noted to be compromised. She will always be a disadvantaged employee from promotions and career growth. This validates that the plaintiff will not be a fair competitor in the open labour market amongst her uninjured peers. Her injuries will make her a lesser competitor in the open labour market amongst her uninjured peers.
7. Considering the above, the plaintiff does not retain enough physical vocational capacity to compete in the open labour market. She will have difficulty meeting the physical demands of her occupation role due to accident acquired impairment, her continued retention by her employer will entails sympathetic accommodation; this is not guaranteed in future and therefore she has significantly diminished future financial security. She is certainly a weaker competitor on the open labour market due to injuries sustained in the accident.

The medico-legal report of the Industrial Psychologist:

Pre-accident performance: (Had the accident not occurred)

[19] The plaintiff gross developmental milestones followed a normal trajectory. She reportedly not presented with any cognitive difficulties as there were no cognitive challenges reported. The plaintiff had the pre-accident ability to pass Matric with a Bachelor Endorsement and opined she could have been able to obtain post-school qualification at NQF

Level 7. She aspired to complete her studies and pursue a career as a teacher (My emphasis)

Post-accident functioning:(Situation due to the accident)

[20] The expert noted and concluded as follows:

1. Following the accident and reported cognitive challenges, as well as the psychometrics assessment results, it is unlikely that she will still be able to obtain a NQF Level 7 qualification. She will probably attain an NQF Level 3. She may need to be employed by a sympathetic employer with deference to an Occupational and Industrial Psychologist. (My emphasis)
2. Following the reported accident, she failed grade 10 and had to repeat it. The plaintiff subsequently failed her grade 12 in 2022. Her detailed complaints and difficulties are noted in the injuries and complaints section (paragraphs 14 & 15) above.
3. From a cognitive perspective, Dr Mabika (Neurosurgeon) noted that the plaintiff sustained Mild head injury (based on the history of a brief loss of consciousness, amnesia of less than 24 hours and GCS score recorded as 15/15 on arrival at the hospital. Furthermore, Dr Kekana (Educational Psychologist) noted that The accident has rendered her academically vulnerable. The prognosis of her passing grade 12 seems bleak. She will thus not achieve her pre-accident potential. Her sequelae also include psychological deficits as indicated by Ms Guqa and Ms Maye

(Clinical psychologists) who submitted that she is irritable with impact on her social function. she has short term memory problems, distractibility (with impact on being able to hold conversations with others) and reduced concentration with noted negative impact within her educational scholastic environment. Her impairments are thus considered to negatively impact on her intellectual and psychosocial functioning.

4. From a physical perspective, it appears that the sequelae of the injuries sustained have negatively affected her optimal physical functioning. Dr Mafeelane (Orthopaedic Surgeon) noted that her injuries qualify under the narrative test for serious long-term impairment or loss of body function. Considering her reported deficits, she will likely be precluded from performing work that is physically demanding or strenuous in nature. This is concurred by Ms Ndzungu (Occupational Therapist) who noted that due to accident related challenges, the plaintiff's career or job options are likely to be curtailed as she will have difficulty in coping with highly physical and cognitively demanding jobs. Taking her diminished residual physical capacity into account, it is therefore evident that her overall physical functioning has been diminished and she can no longer perform in her pre-accident physical capacity.
5. It is therefore anticipated that the sequelae of the injuries sustained has considerably affected her optimal performance from a scholastic and vocational standpoint, of which will affect her occupational freedom and functioning. The plaintiff will unlikely be able to complete her matric as noted by Dr Kekana, which will limit

her employment to unskilled / semi-skilled work. It is trite that people without matric are bound for employment which requires physical agility in order to secure and maintain gainful employment and such will be the case for the plaintiff. However, when factoring in her physical sequelae she will not be a fair competitor for unskilled / semi-skilled work with a reliance on her physical agility in a saturated labour market. Taking into account the limitations imposed on her (both physical and mental) , she may suffer from considerable discrimination in terms of the type of employment she will be able to accept or pursue in the open labour market. It is therefore accepted that she has been rendered an unequal and vulnerable competitor in the open labour market and will be subject to extended periods of unemployment in the open labour market

6. It is probable that the plaintiff will face lengthy periods of unemployment, due to the limitations imposed on her (both mentally and physically), she will not be able to compete on par with her healthier, uninjured peers in the open labour market , she has been rendered a vulnerable competitor for the rest of her career , the plaintiff will likely remain unemployed for the rest of her life.

Pre-accident:

- [22] I considered the evidence in this regard, especially that an Industrial Psychologist may choose which scales to use. In the circumstances, I can find no reason to deal with the different scales and earnings

information. I prefer to make use of the Paterson grading system and Robert Koch's estimated salary scales, like we have been doing in our Courts for many years now.

Career path and loss of future earnings:

[22] As already evident, there is no past loss of earnings applicable, only future loss of earnings. Pre-accident the plaintiff aspired to complete her studies and pursue a career as a teacher. Post-accident her aspirations remain the same.

Past loss of earnings:

[23] Considering that the plaintiff was a student at the time of the accident, it is surmised that she did not suffer past loss of income.

[24] In light of the totality of the evidence, I find that, on probabilities, with a Degree (NQF Level 7) level of education, She would have entered the open labour market at a Paterson Level A3, and progressed, reaching her career ceiling earning at the upper quartiles of Paterson Level D1, at age around 45 years, and she would have received inflationary increases thereafter.

Future loss of earnings:

[25] It is probable that the severe sequelae of the injuries sustained has affected the plaintiff's optimal scholastic and vocational functioning and thus, she will experience challenges competing on par with her healthier, uninjured peers in the open labour market. Owing to the nature of the injuries sustained, she has been rendered an unequal competitor and thus will no longer be able to perform in her pre-accident capacity. It is opined that the difference between her pre-accident and post-accident vocational potential be used to determine future loss of income.

[26] The Industrial Psychologist opines that she will work in the open labour market until the normal retirement age of 65 years, depending on a variety of factors, such as health status, personal circumstances, personal preferences and conditions of employment, etc.

[27] From the totality of the evidence, I agree with the opinion of the plaintiff's experts and the plaintiff is to be considered as practically unemployable in the open labour market. However, having said that, I do intend to properly discount the vicissitudes of life, specifically in respect of the plaintiff personally, by means of a reasonable and fair contingency.

[28] With regard to the post-accident future earnings, after consideration of all the relevant evidence, I am of the view that the plaintiff will be a jobseeker with NQF level 3 in the skills development sector who could enter the open labour market as an unskilled labourer earning at the lower quartiles of Paterson Level A3 and progress to a career ceiling

earning at the median quartiles at Paterson Level D1 at around the age of 40 – 45 years, receiving inflationary increases thereafter.

Contingencies:

[29] It is trite that it is for the court to determine the percentage of contingencies to be applied in a matter such as this.

[30] Contingencies discount the vicissitudes of life and it is a method used to arrive at fair and reasonable compensation. The determination of contingencies was dealt with in **Southern Insurance Association Ltd v Bailey N.O.** 1984 (1) SA 98 (A) at 113G and 116G – 117A:

“Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.

...

Where the method of actuarial computation is adopted, it does not mean that the trial Judge is ‘tied down by inexorable actuarial calculations’. He has ‘a large discretion to award what he considers right’ (*per* HOLMES JA in *Legal Assurance Co Ltd v Botes* 1963 (1) SA 608 (A) at 614F). One of the elements in exercising that discretion is the making of a discount for ‘contingencies’ or the ‘vicissitudes of life’. These include such matters as the possibility that the plaintiff may in the result have less than a ‘normal’ expectation of life; and that he may experience

periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case. See *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) at 114 - 5. The rate of the discount cannot of course be assessed on any logical basis: the assessment must be largely arbitrary and must depend upon the trial Judge's impression of the case.

...

It is, however, erroneous to regard the fortunes of life as being always adverse: they may be favourable. In dealing with the question of contingencies, WINDEYER J said in the Australian case of *Bresatz v Przibilla* (1962) 36 ALJR 212 (HCA) at 213:

'It is a mistake to suppose that it necessarily involves a 'scaling down'. What it involves depends, not on arithmetic, but on considering what the future may have held for the particular individual concerned... (The) generalisation that there must be a 'scaling down' for contingencies seems mistaken. All 'contingencies' are not adverse: All 'vicissitudes' are not harmful. A particular plaintiff might have had prospects or chances of advancement and increasingly remunerative employment. Why count the possible buffets and ignore the rewards of fortune? Each case depends upon its own facts. In some it may seem that the chance of good fortune might have balanced or even outweighed the risk of bad.'

[31] In the judgment of **Gillbanks v Sigournay** 1959 (2) SA 11 (N) the following was stated at 17 E – F in respect of contingencies in an estimation of a plaintiff's claim for loss of earnings:

“In any estimate of a person's loss of earning capacity allowance must be made for all contingencies including the accidents of life and certain deductions must be made from the estimated gross income to allow for unemployment benefits, insurance and so on. These contingencies would include -

- (i) a possibility that plaintiff's working life may have been less than sixty-five years;
- (ii) a possibility of his death before he reaches the age of sixty-five years;
- (iii) the likelihood of his suffering an illness of long duration;
- (iv) unemployment;
- (v) inflation and deflation;
- (vi) alterations in the cost-of-living allowances;
- (vii) an accident whilst participating in sport such as hockey or cricket, or at any other time which would affect his earning capacity; and
- (viii) any other contingency that might affect his earning capacity.”

[32] In the judgment of **Dlamini v Road Accident Fund** (59188/13) [2015] ZAGPPHC 646 (3 September 2015) at paras [29] – [31] the court dealt with and applied some guidelines referred to by Koch in The Quantum Year Book:

[29] In his book *The Quantum Yearbook*, Koch states that when assessing damages for loss of earnings or support it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is in the prerogative of the court. General contingencies cover a wide range of considerations which may vary from case to case and may include: taxation, early death, loss of employment, promotion prospect, divorce etc. (My emphasis)

[30] Koch refers to the following as some of the guidelines as regards contingencies:

‘Normal contingencies’ as deductions of 5% for past loss and 15% for future loss.

‘Sliding scale’: 1/2 % per year to retirement age, i.e. 25% for a child, 20% for a youth and 10% in the middle age and relies on *Goodall v President Insurance* 1978 (1) SA 389.

‘Differential contingencies’ are commonly applied, that is to say one percentage applied to earnings but for the accident, and a different percentage to earnings having regard to the accident.

[31] When a court is called upon to exercise an arbitrary discretion that is largely based on speculated facts it must do so with necessary circumspection. In the absence of contrary evidence, the court can assume that a reasonable person in the position of the plaintiff would have succeeded to minimize the adverse hazards of life rather than to accept them. Both favourable and adverse contingencies have to be

taken into account in determining an appropriate contingency deduction. Bearing in mind that contingencies are not always adverse, the court should in exercising its discretion lean in favour of the plaintiff as he would not have been placed in the position where his income would have to be the subject of speculation if the accident had not occurred.”

[33] Mr Mabunda submitted during argument that 30% contingency deduction for loss of earnings should be applied. In the heads of argument a different percentage of 50% contingency deduction for loss of earnings was suggested that it should be applied as being fair and just. As a result we sat with two different contingency proposals.

[34] There appears to be an actuarial report, the first one is dated 12 April 2022, drafted by Ms Valentini of Munro Forensic Actuaries, and which was handed in by the plaintiff as exhibit “G”. The second “revised” report was also drafted by Ms Valentini, also on request of the plaintiff’s attorneys, dated 31 July 2023,

[35] Mr Mabunda is relying on the actuarial calculations, where contingency deductions of 50% is made and the total loss of future earnings amounts to R 6 855 600.

[36] Be that as it may, since I have made same findings similar to those postulated in the actuarial calculations scenario presented by the actuary, same are in order.

[37] With regard to the post-accident contingency, I take the following relevant information into consideration in exercising my discretion:

1. She has been rendered a vulnerable employee/jobseeker in the open labour market.
2. The Educational Psychologist concludes that she may struggle to complete NQF Level 3. She may need to be employed by a sympathetic employer.
3. The Clinical Psychologist concludes that the plaintiff's neurocognitive deficits would affect her academic outcomes.
4. The Neurosurgeon agreed that severe long-term mental or severe long-term behavioural disturbances or disorders are evident. The expert also suggested that she has a 1 – 2% chance of developing epilepsy in future.
5. The Industrial Psychologist also concludes that with psychological limitations and potential health decline, her employability has been compromised in the open labour market. The Educational Psychologist opined that she may need to be employed by a sympathetic employer. The Industrial psychologist agreed that sympathetic employment is rare, thus she has been rendered an unequal competitor and a vulnerable jobseeker in the open labour

market. She may experience difficulty securing and sustaining employment in her injured state.

6. She will probably still need to be employed by a sympathetic employer, due to her neurological and cognitive deficiencies. She is not on par with jobseekers who do not have these deficiencies. There is also the possibility of periods of unemployment in-between.

[38] I am consequently of the view that a 50% contingency for future earnings post-accident will be fair and reasonable in all the circumstances.

Costs:

[39] There is no reason why the costs are not to follow the outcome.

Order:

[40] The following order is consequently made:

1. The defendant shall furnish the plaintiff with an Undertaking, in terms of Section 17(4)(a) of Act 56 of 1996, in respect of future accommodation of the plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods of a medical and non-medical nature to the plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on 13 December 2018.

2. The plaintiff is awarded an amount of R 6 855 600 (Six Million Eight Hundred Fifty Five Thousand Six Hundred Rands) as compensation for future loss of earnings.
3. The issue of general damages is postponed sine die.

JT Zitha
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

Appearances:

On behalf of the plaintiff: Adv. Mabunda

Instructed by: Bilibana Attorneys

On behalf of the defendant: No appearance