



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

Case No: 17722/2017

REPORTABLE

In the matter between:

ANDISIWE SITHELA

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA)

Defendant

HEARING DATE: 6 October 2025

DATE OF JUDGMENT: 19 November 2025 (Handed down Electronically)

ORDER

As a result, the following order is made:

1. The application in terms of Uniform Rule 38(2) is granted.
2. The experts' reports and joint minutes are admitted into evidence.
3. The defendant shall pay the plaintiff the sum of R14 462 064,40 (fourteen million four hundred and sixty-two thousand and sixty-four rand and forty cents).
4. The defendant shall pay the plaintiff's costs of suit, which shall include:
 - a) The costs of this application;

- b) The costs of counsel, including the preparation of heads of argument, on the party-and-party scale, including any reserved costs;
- c) The reasonable qualifying fees and expenses of the following experts:
 - i) Dr P A Olivier (orthopaedic surgeon);
 - ii) Mr E Rossouw (orthotist and prosthetist);
 - iii) Ms M Labuschagne (occupational therapist);
 - iv) Ms D Turner (human resource and earnings specialist); and
 - v) Munro Forensic Actuaries.

JUDGMENT

HIGGINS, AJ

INTRODUCTION:

[1] This matter concerns a claim for damages arising from a tragic incident on 27 February 2017, when the plaintiff, Mr Andisiwe Sithela, then aged 26, fell from a moving train operated by the defendant, the Passenger Rail Agency of South Africa (PRASA). The plaintiff sustained severe injuries, most notably a traumatic above-the-knee amputation of his left leg. Liability was settled on 28 October 2020, with the defendant conceding 70% responsibility for the plaintiff's proven or agreed damages. The matter now proceeds before this court solely for the determination of quantum, specifically future medical and related expenses, loss of earnings and earning capacity, and general damages.

[2] The plaintiff has brought an application under Uniform Rule of Court 38(2), read with Rule 39(20), seeking an order that:

2.1 The evidence of the parties' experts is to be adduced by affidavit, without viva voce testimony; and

2.2 The evidence in the experts' joint minutes is to be admitted without further proof.

[3] The trial was set down for 6 October 2025. The procedural history has been protracted: the matter was certified trial-ready by Mantame J in June 2023; the defendant's legal representation has changed, with Jose Attorneys now acting; and a judicial case management conference before Erasmus J in October 2024 led to a postponement for settlement discussions, which proved unsuccessful.

ISSUES:

[4] The key issues for determination are:

4.1 Whether to grant the Rule 38(2) application.

4.2 Quantification of damages under:

- a) Future medical and related expenses;
- b) Loss of earnings and earning capacity; and
- c) General damages.

4.3 Appropriate contingency deductions for loss of earnings.

4.4 Costs.

THE PLAINTIFF'S ARGUMENT:

[5] The plaintiff's case, as articulated in Ms Chimone Claassens' founding affidavit and Mr D F Claassens' heads of argument, is summarised below:

5.1 Rule 38(2) application: The parties agreed at a judicial case management conference to proceed under Rule 38(2). This application is precautionary. It promotes cost and time savings - critical amid congested

court rolls - and suits the largely uncontested expert evidence in reports and joint minutes.

5.2 Future medical expenses: Relying on joint minutes from orthopaedic surgeons, prosthetists, and occupational therapists, the experts agree substantially on the plaintiff's lifelong needs, including two advanced prostheses, future surgeries (e.g., stump revisions and overuse injury management), and ongoing conservative care. Accepting the defendant's more conservative actuarial figures, the plaintiff claims R17 183 250. The two prostheses are clinically essential for mobility and function, entitling the plaintiff to care that restores dignity and autonomy, regardless of their pre-accident socioeconomic status.

5.3 Loss of earnings: Industrial psychologists and actuaries align closely. Before the accident, the Grade 9-educated plaintiff worked as a trolley porter in a medium-demand, unskilled role. Following the accident, he is uncompetitive in the open market, likely earning only a negligible income from self-employment. The plaintiff adopts the defendant's actuarial global loss of R1 676 842 (R496 109 past; R1 180 733 future), incorporating 5% past and 15% future contingencies. The brief disability grant received should not be deducted.

5.4 General damages: The plaintiff seeks R1 900 000, citing the injury's severity, permanent limb loss, enduring pain (past and future), young age (26 at the time of the incident), and diminished life enjoyment. Inflation-adjusted comparable cases support this.

THE DEFENDANT'S ARGUMENT:

[6] In the heads of argument by Ms K D Masupye, the defendant opposes the application and contests the quantum:

6.1 Future medical expenses: The plaintiff must mitigate damages and cannot claim a costlier lifestyle than pre-incident. Two prostheses are a “luxury,” given the plaintiff’s management with one state-provided prosthesis since 2019. All treatment, including prosthetics and surgery, should be provided in public hospitals at the corresponding costs. The claims are excessive for someone in the plaintiff’s position.

6.2 Loss of earnings: The defendant doubts pre-accident employment due to absent payslips and the employer’s alleged non-operation. Higher contingencies (60% past, 50% future) are recommended, reflecting a precarious history.

6.3 The heads omit direct response to the Rule 38(2) application or a counter on general damages.

ANALYSIS:

A. The Rule 38(2) Application

[7] Rule 38(2) empowers the court to direct that evidence be adduced by way of affidavit in suitable cases, exercising its discretion judicially regarding cost and time savings, as well as the nature of the evidence. The parties’ prior agreement at a judicial case management conference weighs heavily in favour of granting the application.

[8] The expert evidence is comprehensively detailed in the reports and joint minutes, with a remarkable degree of consensus. The orthopaedic surgeons note no disagreements. The occupational therapists and industrial psychologists concur on all material aspects, with only minor differences noted. As held in *Bee v Road Accident Fund*, agreements recorded in a joint minute bind the parties unless they are timely repudiated, which is absent here.

[9] Given that the facts and expert opinions are largely uncontested, and the disputes are chiefly legal and policy-based, determination by way of affidavit is appropriate. Requiring live specialist testimony in these circumstances would be an inefficient use of scarce judicial and legal resources, contrary to the interests of justice and the efficient administration of the court roll. The application is therefore granted.

B. Future Medical and Related Expenses

[10] The central dispute here revolves around the defendant's contention that the care recommended by the experts constitutes a "luxury" that elevates the plaintiff beyond his pre-accident station in life, and that public sector alternatives are sufficient.

[11] This view fundamentally misconstrues our constitutional order, which is founded on human dignity, the achievement of equality, and the advancement of human rights and freedoms. Section 9 of the Constitution guarantees the right to equal protection under the law. It prohibits unfair discrimination, directly or indirectly, on one or more of the listed grounds, which include grounds associated with socioeconomic status.

[12] Section 27(1)(a) guarantees everyone the right to have access to health care services. While the state's duties in this regard are qualified by its available resources and must be progressively realised, this constitutional framework cannot be used to justify a delictual damages regime that entrenches a tiered system of compensation, condemning an injured person of limited means to a lifetime of substandard care that they would not have required but for the defendant's negligence. Such an approach would perpetuate the very inequality the Constitution seeks to dismantle.

[13] As the Constitutional Court emphasised in *Minister of Health v Treatment Action Campaign*, the realisation of rights must be reasonable, and measures cannot exclude a significant segment of society. By analogy, a delictual award for

future medical expenses must be reasonable and aimed at adequately restoring the plaintiff, rather than perpetuating their pre-accident socioeconomic disadvantages. The purpose is to provide the plaintiff with adequate care to ensure a life of dignity and function, not to compensate him for his loss by cementing him in a position of deprivation.

[14] The expert evidence is unanimous and compelling: two prostheses are essential for functionality, maintenance, hygiene, and adaptability. These are not luxuries but necessities for basic mobility, independence, and a semblance of a quality life. To relegate the plaintiff to the public healthcare system for his prosthetic needs, in the face of this evidence, would be to undervalue his constitutional rights to dignity and access to healthcare, and to penalise him for his poverty effectively.

[15] The defendant's reliance on cases such as *Mogano v PRASA and Dysse/NO v Shield Insurance* misapplies the principle of mitigation. A plaintiff is required to act reasonably. Seeking the necessary care as endorsed by a full suite of experts, and preferring a privately funded solution over an under-resourced public one where funding is available through a court award, is eminently reasonable.

[16] The plaintiff has prudently accepted the defendant's own actuarial calculation of R17 183 250, which is grounded in the joint minutes of the experts. I find no reason to deviate from this figure, and it is accordingly awarded.

C. Loss of Earnings and Earning Capacity

[17] The joint minute of the industrial psychologists, Ms. Turner and Mr. Malherbe, provides a sound basis for assessment: the plaintiff had a pre-accident capacity for unskilled labor, and post-accident, he is doubtful to secure formal employment and will, at best, earn a negligible income from self-employment.

[18] The defendant's suggestion of applying contingency deductions of 50% or 60% is without merit. The case of *AA Mutual Assurance Association Ltd v Maqula*, upon which the defendant relies, involved a plaintiff with a sporadic work history. In the present matter, the plaintiff's employment at the time of the incident is not seriously challenged, and the defendant has adduced no credible evidence to the contrary. The absence of payslips is not fatal to his claim. The contingencies applied by the defendant's own actuary (5% for past loss and 15% for future loss) are in line with conventional practice and are fair in the circumstances.

[19] I therefore accept the calculation of the global loss of earnings in the amount of R1,676,842. The defendant's argument for a deduction of the disability grant is rejected. Such grants are a fulfilment of the state's constitutional and statutory duties and are distinct from delictual compensation.

D. General Damages:

[20] The assessment of general damages is a matter of discretion, with reference to comparable cases, while acknowledging that each case is unique. The plaintiff, a young man at the time of the incident, has suffered a permanent and profound loss. He has endured and will continue to endure significant pain and discomfort, psychological trauma, severely restricted mobility, and the prospect of future surgical procedures.

[21] The plaintiff's counsel provided a helpful analysis of comparable cases, adjusted for inflation, suggesting a range of R1,700,000 to R1,900,000. Having considered the nature and sequelae of the injury, the plaintiff's age, and the profound impact on his life, I am of the view that an award of R1 800 000 is fair and reasonable.

CONCLUSION:

[22] The damages, before the apportionment in terms of the liability settlement, are therefore as follows:

- a) Future medical expenses: R17 183 250
 - b) Loss of earnings: R1 676 842
 - c) General damages: R1 800 000
- Total: R20 660 092

[23] Applying the 70% apportionment in the plaintiff's favour, the total award payable by the defendant is R14 462 064,40.

ORDER:

[24] As a result, the following order is made:

- 5. The application in terms of Uniform Rule 38(2) is granted.
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HIGGINS, AJ
JUDGE OF THE HIGH COURT

APPEARANCE:

Applicant's Counsel:	Adv. D F Claassens
Instructing Attorney:	Laubscher & Hattingh
Respondent's Counsel:	Adv. K D Masupye
Instructing Attorney:	Jose (Attorney)