Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

CASE NO: **1221/2019**

In the matter between:

JOSEPH NANGU Plaintiff

and

ROAD ACCIDENT FUND Defendant

Heard on: 1 September 2025
Delivered on: 28 November 2025
Coram: Olivier AJ
Summary: Civil trial – Motor vehicle accident – Quantum – Past and future loss of income / earnings – Contingencies.

ORDER

The following order is made:

1. The defendant shall be liable for 100% (ONE HUNDRED PERCENT) of the plaintiff's damages arising from the injuries sustained in a collision which occurred on 28 November 2015.

2. The defendant shall pay to the plaintiff, in respect of the plaintiff's general damages, the amount of R1 000 000,00 (ONE MILLION RAND), which amount is to be paid within 180 (ONE HUNDRED AND EIGHTY) days from date of this order.

3. The defendant shall pay to the plaintiff, in respect of the plaintiff's past and future loss of earnings, the amount of R4 983 382,00 (FOUR MILLION, NINE HUNDRED AND EIGHTY-THREE THOUSAND, THREE HUNDRED AND EIGHTY-TWO RAND), which amount is to be paid within 180 (ONE HUNDRED AND EIGHTY) days from date of this order.

4. The plaintiff shall not issue a writ of execution in respect of the amounts mentioned in paragraphs 2 and 3 above prior to the expiry of the period of 180 (ONE HUNDRED AND EIGHTY) days.

5. The defendant shall be liable for interest on the capital amounts at the prescribed rate of interest which will be calculated as from 14 (FOURTEEN) days from date of this order up and until date of final payment.

6. Payment of the amounts mentioned in paragraphs 2 and 3 *supra*, shall be effected directly into the banking account of the plaintiff's attorneys of record, the details of which will be provided to the defendant within 10 (TEN) days from date of this order.

7. The defendant shall provide the plaintiff with an Undertaking in terms of the provisions of Section 17(4)(a) of the **Road Accident Fund Act**, Act 56 of 1996, to compensate the plaintiff for 100% (ONE HUNDRED PERCENT) of the costs relating to the future accommodation of the plaintiff in a hospital or nursing home and/or for the future treatment of and/or the rendering of services to and/or the supplying of goods to the plaintiff after such costs have been incurred, on

condition that the defendant has to submit proof of incurring such costs, and on condition further that such costs must have arisen from the collision that occurred on 28 November 2015.

8. The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale to date, which shall include the costs of plaintiff's instructing and correspondent attorneys.

9. The defendant shall pay the taxed or agreed costs of plaintiff's counsel on Scale B in terms of Rule 67A(3), read with Rule 69(7) of the Uniform Rules of Court, such costs to include consultations in preparation for trial, advice of quantum, written submissions and/or heads of argument, trial preparation and appearance fees for 24 March 2025 and 1 and 2 September 2025.

10. The defendant shall pay any costs attendant upon the obtaining of payment of the amounts mentioned in paragraphs 2 and 3 above;

11. The defendant shall pay the taxed or agreed fees, qualifying expenses, reservation fees (including travel expenses actually incurred) and all costs attached to the procurement of medico-legal reports, addendum reports where relevant and other relevant reports as well as x-rays and scans and related costs in respect of the following experts:

11.1 Dr L van Oudenhove
11.2 Dr PA Olivier
11.3 Me E Burke
11.4 Dr L Panieri-Peter
11.5 Dr Z Domingo
11.6 Me M Stander
11.7 Mr D Malherbe, and
11.8 ARCH Actuaries

12. The aforesaid costs shall include the costs of attending all plaintiff’s and defendant’s medico-legal examinations, the amount(s) of which will be at the discretion of the Taxing Master.

13. The defendant shall pay the reasonable travelling, accommodation and related costs in respect of plaintiff as well as plaintiff’s legal representatives as well as plaintiff’s expert Mr D. Malherbe for attendance at trial on 24 March 2025, as well as 1 and 2 September 2025; and

14. The plaintiff shall comply with the provisions of Section 4(1) and Section 4(2) of the **Contingency Fees Act**, Act 66 of 1997, by filing the required affidavits with the Court within 20 (TWENTY) days from date of this order.

JUDGMENT

OLIVIER AJ

1. Summons was issued on behalf of the plaintiff on 29 May 2019 based on injuries sustained by the plaintiff during a motor vehicle accident that occurred on 28 November 2015 on the N14 road between Pofadder and Kakamas in the Northern Cape Province (“*the accident*”).

2. It was alleged in the plaintiff’s particulars of claim that the accident was caused by the negligence of the driver of the insured vehicle and it was not in dispute that, as a result of the accident, the plaintiff suffered various injuries, the details of which are irrelevant for purposes hereof.

3. The action was initially defended but became largely settled when the defendant accepted liability for 100% of the plaintiff’s proven damages and when the respective parties reached agreements in respect of the plaintiff’s claims for past

and future medical and related expenses as well as the amount of general damages to be paid to the plaintiff by the defendant.

4. I was tasked with determining the plaintiff's claim in respect of past and future loss of income/earnings and, as will become evident herein under, specifically the percentages of the contingencies that have to be applied in this instance.

5. In this regard the plaintiff relied on the testimony of Mr DG Malherbe (Counselling Psychologist), as well as on the following:

5.1 Medico-Legal Report by the afore-said Mr DG Malherbe (herein after referred to only as "***Mr Malherbe***"), dated 15 September 2020.

5.2 Addendum Report by Mr Malherbe dated 17 May 2021.

5.3 Joint Minute compiled by Mr Malherbe and Mr SJS Nteso (Industrial Psychologist) ("***Mr Nteso***"), dated 24 January 2024.

5.4 Report by Arch Actuarial Consulting (Pty) Ltd (Actuaries) ("***the actuaries***"), dated 30 January 2025.

6. Huge reliance was placed on behalf of the plaintiff on the joint minute prepared by Mr Malherbe and Mr Nteso in terms whereof they were *ad idem* that, as a result of the accident and the injuries sustained during the accident, the plaintiff must be regarded as unemployable as he will not be able to compete for alternative employment in the open labour market.

7. Mr Malherbe and Mr Nteso further agreed as follows in respect of the plaintiff's pre-morbid career path:

7.1 That the plaintiff left school after completing Grade 8 or 10 and that he had no further education or training but that he did obtain a driver's license.

7.2 That he performed some unskilled work early during his career before he gained some skills and supervisory responsibilities and that he subsequently worked in various capacities in employed and self-employed environments.

7.3 That, at the time of the accident, the plaintiff was permanently employed as a personal protection officer for the mayor of the Kai! Garib Municipality in Kakamas ("*the municipality*").

7.4 That the plaintiff had been employed as such for a period of a year prior to the accident and that he envisaged working for the municipality on a continuous basis.

7.5 That the plaintiff was 38 years old at the time of the accident, that his work was at a level where certain skills and qualifications were necessary (which was already advanced given his qualifications) and that, as a result, significant career progression was not expected; and

7.6 That the plaintiff would, in all likelihood, have worked until retirement age of 65 years.

8. In respect of the plaintiff's pre-morbid earnings, the joint minute states as follows:

8.1 That, although the plaintiff could not provide proof of income at the time of the accident, his salary in August 2020 was indicated as R24 094,00

(Twenty Four Thousand and Ninety-Four Rand) per month, which placed him on a municipal post grade of T10.

8.2 That the plaintiff's salaries in future would have been determined by negotiations.

8.3 That his salary in 2015 was on Notch 8 of Level 10 and that he would have received annual notch increases reaching Notch 12 in 2019.

8.4 That one job grade progression to Level 11 at around age 43 could not be excluded and that he would have received annual notch increases thereafter reaching Notch 12 in 2025.

9. Mr Malherbe and Mr Nteso agreed as follows in respect of the plaintiff's post-morbid career path:

9.1 That the plaintiff was injured at age 38 and that he returned to work at the municipality after a recovery period of between 7 and 9 months.

9.2 That it was uncertain whether he suffered any financial losses during the period of his absence.

9.3 That he continued working for the municipality, but that he had to be alternatively accommodated as a result of his physical and cognitive deficits.

9.4 That the plaintiff's services were eventually terminated on 4 February 2021 as he could no longer be accommodated due to his cognitive and psychological difficulties and the fact that he experienced difficulties in getting along and working with others.

9.5 That, since the termination of his services and other than receipt of his provident fund savings, the plaintiff has not received any further payments; and

9.6 That the plaintiff is unable to meet the physical demands of his pre-accident job and that he must be regarded as being unemployable.

10. Mr Malherbe and Mr Nteso further agreed as follows in respect of the plaintiff's pre-morbid career path:

10.1 That subsequent to the accident, the plaintiff continued to earn at anticipated pre-morbid levels, but that this situation ended in February 2021 upon the resignation of the plaintiff.

10.2 That since his resignation, the plaintiff has been unable to generate any income; and

10.3 That the plaintiff will, most likely, remain unemployed for the remainder of his working life.

11. The contents of the joint minutes and the issues agreed upon were not questioned or repudiated by the defendant and in keeping with the current legal position, I am of the view that the plaintiff should be entitled to rely on the contents of the joint minute and proceed on the basis that the matters agreed upon are not in issue and that this Court is further also entitled to accept these matters as uncontested.[1]

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[1] ***Bee v Road Accident Fund*** [2018] ZASCA 52 (29 March 2018), paras 64 and 65; ***Van Der Merwe obo MH v Member of the Executive Council for Health and Social Development, Gauteng Provincial Government*** [2024] ZAGPJHC 437 (4 April 2024), par 29.

12. In amplification of the plaintiff's earning capacity post-accident, it was stated by Mr Malherbe that after it became obvious that the patient would not be able to fulfill his duties as personal protection officer at the municipality any longer, the municipality attempted to assist him to remain in service as long as possible and that the plaintiff was utilised in various posts at the municipality, amongst others as customer services officer, as roads works supervisor and as an inspector in the water and electricity department.

According to Mr Malherbe, the above meant that the plaintiff, subsequent to the accident and whilst still in the employ of the municipality, did not suffer any loss in remuneration and that, as a consequence, the plaintiff did not experience a clear loss of earnings prior to his resignation in February 2021.

13. It is evident from the various expert reports and from the evidence presented by Mr Malherbe that, although the plaintiff's future career path at the municipality did not promise a steep incline, he would have been able to work at the municipality until his retirement at age 65 (if it was not for the accident) and that he would have received his normal annual salary adjustments.

14. The plaintiff did, however, unfortunately continue to experience cognitive difficulties as a result of the accident which lead to difficulties in dealing with customers and his services were eventually terminated on 4 February 2021 by way of resignation.

15. Mr Malherbe reiterated the fact that the plaintiff is in fact unemployable in the open labour market as he would not find alternative employment in his current condition and that, if it was not for the municipality that treated him with a great amount of sympathy, his services could have been terminated at an earlier stage already.

16. Mr Kagee, who appeared for the defendant, did not dispute the fact that the plaintiff is unemployable, but during his cross-examination of Mr Malherbe, Mr Kagee attempted valiantly to show that the plaintiff should in fact have been subjected to a medical assessment and that his duties should have been terminated on medical grounds, and that he should not have been required to resign.

It became evident during the testimony of Mr Malherbe that the municipality was considering terminating the plaintiff's services on medical grounds, but that the prescribed process for doing so would have taken too long and that the parties (the plaintiff and the municipality) agreed that the plaintiff would resign.

Mr Kagee's argument was that if the plaintiff was not in effect forced to resign, he could have been in the employ of the municipality for a longer period.

17. Mr Malherbe conceded that, if the plaintiff was not required to resign, he could have continued with his employment but he stated that, at the time, the termination of the plaintiff's duties was on the cards in any event due to the fact that he could not perform the duties for which he had been appointed.

18. It therefore appears to be inevitable that the plaintiff's services would have been terminated by the municipality on medical grounds if he did not resign during February 2021.

19. In view of the above and the undisputed fact that the plaintiff is unemployable and that he has suffered a loss of earnings, the only aspect that in fact needed to be determined is the appropriate contingency deductions that should be applied in respect of the loss of earnings suffered by the plaintiff.

20. In terms of the actuarial report submitted by the plaintiff (which stands uncontested since the defendant has not filed a similar report), the plaintiff suffered a total loss of earnings in the amount of R4 983 382,00 (Four Million, Nine Hundred and Eighty-Three Thousand, Three Hundred and Eighty-Two Rand) after taking into consideration the relevant “cap” and contingencies.

The above calculation done by the actuaries, is based on a 7,5% contingency deduction in respect of past loss of earnings and a 10% contingency deduction in respect of future loss of earnings as they were requested to do by the attorneys for the plaintiff.

21. Mr Kagee argued that the normal contingencies should not apply seeing that there was, despite the evidence presented by Mr Malherbe, no physical evidence to suggest that the plaintiff’s services would have been terminated by way of dismissal or retrenchment, and he submitted that the Court should consider applying higher contingencies or setting some perimeters in respect of the contingencies to be applied for the actuaries to do further calculations on.

22. Mr Coughlan, who appeared for the plaintiff, argued that even if higher contingencies as proposed by Mr Kagee were to be applied, it would have no effect on the amount as calculated by the actuaries after the required “*cap*” was applied.

Mr Coughlin even boldly suggested that one can in fact do away with the contingencies all together and only apply the required “*cap*”, and that the end result would be exactly the same.

23. The fact of the matter is that the uncontested report by the actuaries, that was based on the contents of the joint minutes, indicates that after the above contingency deductions of 7,5% and 10% were applied, and before the

prescribed "*capping*" of the *quantum* was done, the total amount of loss of income came down to R7 154 251,00 (Seven Million, One Hundred and Fifty-Four Thousand, Two Hundred and Fifty-One Rand).

The application of the prescribed "*cap*" consequently significantly reduces the amount of compensation due to the plaintiff to the end-amount of R4 983 382,00 (Four Million, Nine Hundred and Eighty-Three Thousand, Three Hundred And Eighty-Two Rand).

24. I agree with Mr Coughlin's contentions in this regard as it became obvious, after testing various scenarios, that even if significantly higher contingencies were to be applied, it will have no bearing on the end result of the actuaries' findings in respect of past and future loss of income after the required "*cap*" was applied.

I can also see no reason why further time, effort and costs should be wasted by the Court requesting the actuaries to do further calculations based on scenarios given to the actuaries by the Court as suggested by Mr Kagee.

No propositions in this regard was made on behalf the defendant in any event.

25. In as far as costs are concerned, Mr Coughlin argued that costs should be awarded on Scale C as provided for in Rule 67A(3), read with Rule 69(7) of the Uniform Rules of Court, based thereon that the matter was sufficiently complex, especially given the fact that 8 (eight) expert witnesses were utilised and since the claim itself, was not a straightforward claim.

Mr Coughlin further argued that the defendant's conduct added to the complexity of the matter in the sense that the matter became settled, in as far as the merits are concerned, only shortly before trial and general damages were settled during the course of trial.

It was argued that the plaintiff had to be prepared to present evidence and to argue his claim to the very end and that this should be taken into consideration by the Court.

Mr Coughlin also submitted that the present matter holds significant importance to the plaintiff as he is an innocent victim whose life has been altered as a result of the accident which rendered him unemployable.

26. Mr Kagee argued that the matter was not complex and that, although the plaintiff utilised the services of 8 (eight) experts, the issues in the matter was in fact simplified by the joint minute referred to herein above.

It was argued by Mr Kagee that the question is not what the importance of the matter is for the plaintiff since all claims will be important to all plaintiffs, but that the question that should rather be asked is what the importance of the matter is to the public.

27. I have to agree with Mr Kagee’s arguments in respect of the issue of costs.

The joint minute did in fact simplify the matter significantly and in the end, probably saved a lot in as far as time and costs are concerned.

28. I am also not persuaded by the argument that costs should be awarded on Scale C, because the matter holds significance for the plaintiff and, if regards are to be had to all the circumstances of the present matter, I can find no other reason why costs should be awarded on any other scale than Scale B.

<u>ORDER</u>:

29. On the above premises, the following order is made:

1. **THE DEFENDANT SHALL BE LIABLE FOR 100% (ONE HUNDRED PERCENT) OF THE PLAINTIFF'S DAMAGES ARISING FROM THE INJURIES SUSTAINED IN A COLLISION WHICH OCCURRED ON 28 NOVEMBER 2015.**

2. **THE DEFENDANT SHALL PAY TO THE PLAINTIFF, IN RESPECT OF THE PLAINTIFF'S GENERAL DAMAGES, THE AMOUNT OF R1 000 000,00 (ONE MILLION RAND) WHICH AMOUNT IS TO BE PAID WITHIN 180 (ONE HUNDRED AND EIGHTY) DAYS FROM DATE OF THIS ORDER.**

3. **THE DEFENDANT SHALL PAY TO THE PLAINTIFF, IN RESPECT OF THE PLAINTIFF'S PAST AND FUTURE LOSS OF EARNINGS, THE AMOUNT OF R4 983 382,00 (FOUR MILLION, NINE HUNDRED AND EIGHTY-THREE THOUSAND, THREE HUNDRED AND EIGHTY-TWO RAND) WHICH AMOUNT IS TO BE PAID WITHIN 180 (ONE HUNDRED AND EIGHTY) DAYS FROM DATE OF THIS ORDER.**

4. **THE PLAINTIFF SHALL NOT ISSUE A WRIT OF EXECUTION IN RESPECT OF THE AMOUNTS MENTIONED IN PARAGRAPHS 2 AND 3 ABOVE PRIOR TO THE EXPIRY OF THE PERIOD OF 180 (ONE HUNDRED AND EIGHTY) DAYS.**

5. **THE DEFENDANT SHALL BE LIABLE FOR INTEREST ON THE CAPITAL AMOUNTS AT THE PRESCRIBED RATE OF INTEREST WHICH WILL BE CALCULATED AS FROM 14 (FOURTEEN) DAYS FROM DATE OF THIS ORDER UP AND UNTIL DATE OF FINAL PAYMENT;**

6. **PAYMENT OF THE AMOUNTS MENTIONED IN PARAGRAPHS 2 AND 3 SUPRA, SHALL BE EFFECTED DIRECTLY INTO THE BANKING ACCOUNT**

OF THE PLAINTIFF'S ATTORNEYS OF RECORD, THE DETAILS OF WHICH WILL BE PROVIDED TO THE DEFENDANT WITHIN 10 (TEN) DAYS FROM DATE OF THIS ORDER;

7. THE DEFENDANT SHALL PROVIDE THE PLAINTIFF WITH AN UNDERTAKING IN TERMS OF THE PROVISIONS OF SECTION 17(4)(A) OF THE ROAD ACCIDENT FUND ACT, ACT 56 OF 1996 TO COMPENSATE THE PLAINTIFF FOR 100% (ONE HUNDRED PERCENT) OF THE COSTS RELATING TO THE FUTURE ACCOMMODATION OF THE PLAINTIFF IN A HOSPITAL OR NURSING HOME AND/OR FOR THE FUTURE TREATMENT OF AND/OR THE RENDERING OF SERVICES TO AND/OR THE SUPPLYING OF GOODS TO THE PLAINTIFF AFTER SUCH COSTS HAVE BEEN INCURRED ON CONDITION THAT THE DEFENDANT HAS TO SUBMIT PROOF OF INCURRING SUCH COSTS AND ON CONDITION FURTHER THAT SUCH COSTS MUST HAVE ARISEN FROM THE COLLISION THAT OCCURRED ON 28 NOVEMBER 2015;

8. THE DEFENDANT SHALL PAY THE PLAINTIFF'S TAXED OR AGREED PARTY AND PARTY COSTS ON THE HIGH COURT SCALE TO DATE, WHICH SHALL INCLUDE THE COSTS OF PLAINTIFF'S INSTRUCTING AND CORRESPONDENT ATTORNEYS;

9. THE DEFENDANT SHALL PAY THE TAXED OR AGREED COSTS OF PLAINTIFF'S COUNSEL ON SCALE B IN TERMS OF RULE 67A(3) READ WITH RULE 69(7) OF THE UNIFORM RULES OF COURT, SUCH COSTS TO INCLUDE CONSULTATIONS IN PREPARATION FOR TRIAL, ADVICE OF QUANTUM, WRITTEN SUBMISSIONS AND/OR HEADS OF ARGUMENT, TRIAL PREPARATION AND APPEARANCE FEES FOR 24 MARCH 2025 AND 1 AND 2 SEPTEMBER 2025;

10. THE DEFENDANT SHALL PAY ANY COSTS ATTENDANT UPON THE OBTAINING OF PAYMENT OF THE AMOUNTS MENTIONED IN PARAGRAPHS 2 AND 3 ABOVE;

11. THE DEFENDANT SHALL PAY THE TAXED OR AGREED FEES, QUALIFYING EXPENSES, RESERVATION FEES (INCLUDING TRAVEL EXPENSES ACTUALLY INCURRED) AND ALL COSTS ATTACHED TO THE PROCUREMENT OF MEDICO-LEGAL REPORTS, ADDENDUM REPORTS WHERE RELEVANT AND OTHER RELEVANT REPORTS AS WELL AS X-RAYS AND SCANS AND RELATED COSTS IN RESPECT OF THE FOLLOWING EXPERTS:

11.1 DR L VAN OUDENHOVE
11.2 DR PA OLIVIER
11.3 MS E BURKE
11.4 DR L PANIERI-PETER
11.5 DR Z DOMINGO
11.6 ME M STANDER
11.7 MR D MALHERBE; AND
11.8 ARCH ACTUARIES

12. THE AFORE-SAID COSTS SHALL INCLUDE THE COSTS OF ATTENDING ALL PLAINTIFF'S AND DEFENDANT'S MEDICO-LEGAL EXAMINATIONS, THE AMOUNT(S) OF WHICH WILL BE AT THE DISCRETION OF THE TAXING MASTER;

13. THE DEFENDANT SHALL PAY THE REASONABLE TRAVELLING, ACCOMMODATION AND RELATED COSTS IN RESPECT OF PLAINTIFF AS WELL AS PLAINTIFF'S LEGAL REPRESENTATIVES AS WELL AS

PLAINTIFF'S EXPERT MR D. MALHERBE FOR ATTENDANCE AT TRIAL ON 24 MARCH 2025 AS WELL AS 1 AND 2 SEPTEMBER 2025; AND

14. THE PLAINTIFF SHALL COMPLY WITH THE PROVISIONS OF SECTION 4(1) AND SECTION 4(2) OF THE CONTINGENCY FEES ACT, ACT 66 OF 1997 BY FILING THE REQUIRED AFFIDAVITS WITH THE COURT WITHIN 20 (TWENTY) DAYS FROM DATE OF THIS ORDER.

[redacted]

A.D. OLIVIER
ACTING JUDGE
NORTHERN CAPE DIVISION

REPRESENTATIVES OF PARTIES:

For Plaintiff:	**ADV. W.S. COUGHLAN**
On instructions of:	**Lester & Associates** Cape Town c/o **Roux, Welgemoed & Du Plooy** Kimberley
For Defendant:	**MR M.R. KAGEE** **The State Attorney** Kimberley