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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case no: 22165/2022
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 14/11/2025
SIGNATURE

In the matter between:

MBATSHAZWA NDLOVU

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PIENAAR (AJ)

Introduction

[1] This is an action for damages brought by the Plaintiff against the Road Accident Fund in terms of the provisions of the Road Accident Fund Act 56 of 1996 (“the RAF Act”), as amended.

[2] The notice of set down was served on the defendant on 15 August 2025. The Plaintiff served the notice of motion application on the Defendant on 11 September 2025.

[3] Both the merits and quantum are in dispute. The quantum involves the determination of past and future loss of earnings/income as well as Section 17(4)(a) undertaking for future hospital/medical expenses.

[4] The defendant had not made an election in respect of General Damages and I was requested to postpone general damages *sine die*.

[5] At the commencement of the hearing on 25 September 2025, Counsel moved an application in terms of Rule 38(2), which was granted. *Havenga v Parker 1993 (3) SA*

724 (T), confirmed by the Supreme Court of Appeal in *Madibeng Local Municipality v Public Investment Corporation* 2018 (6) SA 55 (SCA), found it is permissible to place expert evidence before the Court by way of affidavits in terms of Rule 38(2).

Accordingly, that application is granted.

Merits

[6] As far as negligence is concerned, the Plaintiff's statutory section 19(f) affidavit on CaseLines 2-2-13. The Plaintiff was a passenger on 8th January 2019 at 19:30 in motor vehicle with registration letters and number D[...]. They were traveling on the Old Pretoria Main Road. He doesn't have a clear recollection of the accident. According to information obtained from the accident report, the driver of the motor vehicle was traveling in executed an unsafe turn and the motor vehicle bearing the registration letters and number Z[...] collided with the back left of there vehicle.

[7] The OAR confirms that there were two vehicles involved in the motor vehicle accident. Vehicle B collided with Vehicle A. Similarly, the hospital records indicate that Mr M [N...] was taken to the hospital on 9 January 2019 after a motor vehicle accident. From this, I conclude that the plaintiff was involved in an accident on

8 January 2019 after which he was taken to hospital. As the plaintiff was a passenger, the defendant is liable for 100% of the plaintiff's proven damages. That deals with the merits of the case.

Quantum

[8] The plaintiff is a foreigner and as a result the evaluation of the claim for loss of income cannot be dealt with on the same basis as if he was a South African citizen. As a foreigner, a guest in South Africa, it is necessary, not only for this plaintiff but for all foreigners, to comply with all the applicable legislation governing their residency in South Africa and their participation in the labour market.

[9] Thus, to enable a foreigner to prosecute a claim for future loss of income in South Africa, evidence must be presented which addressed his status in the country, the nature of the work which it is anticipated that he would do in future, as well as the probabilities that he would be able to secure the necessary visas to perform such work.

[10] Considering the plaintiff, documentation has been presented before this Court in respect of foreigners. A passport appears on CaseLines 2-19 and an affidavit to confirm mortality - CaseLines 2-18

[11] This passport is valid from 4 June 2013 to 3 June 2023. The motor vehicle accident occurred on 8 January 2019.

[12] What is clear from the documentation referred to, as well as the fact that the plaintiff was employed as a general worker, it was his intention and desire to remain in South Africa. There is however no evidence that the plaintiff would have been able to remain in South Africa indefinitely. I believe that the documentation is sufficient to enable a claim for past and future impairment of capacity to be considered in terms of South Africa income scales.

[13] According to the Orthopaedic Surgeon, Dr Volkersz, the plaintiff sustained the following injuries: Femoral shaft fracture of the left femur, bony fragments were noted around the surrounding soft tissues, fracture of the left frontal sinus. Dr Volkersz reported that the Plaintiff will find it very difficult to work in any capacity where a lot of walking and full function of his left dominant arm is required, which will ideally confine him to a sedentary or light physical position, which will be difficult to find in view of his very basic level of education. He is a trained tiler. With regards to future medical treatment, an amount of R150 000,00 will have to be set aside, for the removal of the implants, the plate of the left clavicle and nail of the left femur. Accordingly, the Defendant is required to furnish the Plaintiff with an undertaking in terms of Section 17(4)(a).

[14] According to the Neurosurgeon, Dr Mpanza, the plaintiff sustained a severe traumatic brain injury, femur fracture and chest injury.

[15] According to the Industrial Psychologist, Rene Pretorius, the Plaintiff relocated to South Africa in 2013. He was employed as a Tiler for Idlanathi Construction in Johannesburg, from 2014 to 2016. According to the Plaintiff he was earning R5000,00 per month in this position until the business closed down. He then commenced with employment as a Tiler for various individuals from 2017. This was his occupation at the time of the accident. Regarding his earnings, he reported that he earned R350,00 per day worked. No confirmation of his earnings was received as he reported to have remunerated in cash per day worked. His retirement age is 65 years.

[16] According to the Industrial Psychologist's report compiled by Ronel Burger, the Plaintiff worked as a tiler at the time of the accident. However, there are no affidavits from clients for whom he worked, and no proof of income has been provided.

[17] Post-morbidly, Mr Ndlovu is not suited to his pre accident occupation as a Tiler, or similar employment. The Plaintiff would have been dependent on his physical dexterity throughout his life to sustained employment. Taking a realistic and holistic approach, and considering his accident related deficits, his educational and employment background and the saturated South African labour market, it is Ms Pretorius opinion that the Plaintiff will likely not re-enter the labour market and generate work related earnings for the rest of his life.

[18] When, as in the case here, the industrial psychologist is of the opinion that the plaintiff is 100 percent unemployable then the next question is whether the plaintiff is entitled to remain in South Africa and if so on what legal basis?

[19] Based on the Industrial Psychologist's report, the Actuary calculated a total loss of earnings of R732,339.00, applying a 15% contingency for future income but for the accident. The court, however, disagrees with this assessment, as there is no proof of income, the Plaintiff did not have a work permit, and it is uncertain whether the Plaintiff will remain in South Africa for the remainder of his life.

[20] Having regard to all the documentation and the existing uncertainties, the court is of the view that a 50% contingency deduction would adequately address these uncertainties. The effect is that the plaintiff's claim in respect of past loss of income is allowed in the sum of R116,262.00, and the plaintiff's claim in respect of future loss of income or impairment of earning capacity is allowed in the sum of R300,849.00.

[21] Therefore, the total amount for loss of earnings or earning capacity/loss of income is R417,111.00.

ORDER

As result the following order is granted:

1. The Plaintiff application in terms of Rule 38(2) is granted.
2. The Defendant is 100% liable for the plaintiff's proven damages
3. The defendant is liable to provide the plaintiff with an undertaking as provided for in section 17(4)(a) of the Road Accident Fund Act for 100% of such future hospital, medical and ancillary expenses as the plaintiff may require and arising from the injury sustained in the accident on 8 January 2019.
4. The defendant is ordered to pay to the plaintiff the amount of R417 111,00
(Four hundred seventeen thousand one hundred eleven Rand only) as damages following injuries the plaintiff sustained in a motor vehicle accident which occurred on 8 January 2019 made up as follows (the capital amount):

Past loss of earnings R116,262.00

Future loss of earnings R300,849.00
5. The plaintiff's claim in respect of general damages is *postponed sine die*.
6. The plaintiff is awarded his party and party costs as taxed or agreed. Counsel's fees to be on Scale B.

PIENAAR AJ

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

The judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines. The date for hand down is deemed to be 14 November 2025.

Date of hearing : 25 September 2025

Date of judgment : 14 November 2025

APPEARANCES:

Applicant's Attorney : De Broglia Attorneys Inc

Applicant Counsel : Adv Serfontein

Respondent Attorney : Road Accident Fund

No appearance

Link no: unknown