

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: **A292/2024**

(1)	REPORTABLE:NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
3 December 2025	
DATE	SIGNATURE

In the matter between:

PHINDILE LUCY MASEKO

Appellant

and

ROAD ACCIDENT FUND

Respondent

JUDGMENT

**JANSE VAN NIEUWENHUIZEN J (VAN DER WESTHUIZEN et KUMALO JJ
concurring)**

Introduction

- [1] The appellant's claim against the respondent emanates from a collision that occurred on 5 March 2014. The appellant suffered injuries as a result of the collision and instituted an action for damages. The matter proceeded to trial and the court *a quo* awarded an amount of R 309 855, 60 to the appellant in respect of her claim for future loss of earnings.
- [2] This appeal lies against the aforesaid award.

Trial

- [3] At the commencement of the trial, the appellant's medico legal reports were admitted into evidence in terms of the provisions of rule 38(2). No further evidence was presented and counsel for the parties proceeded to address the court on the quantum of the appellant's claim for past and future loss of earnings.
- [4] The parties based their submissions on an actuarial calculation prepared by Johan Potgieter, an actuary. The calculation was done in accordance with a report by David de Vlamingh, an industrial psychologist. According to the calculations the appellant suffered a past loss of income in the amount of R 680 361, 00 and a future loss in income in the amount of R 523 609,00.
- [5] Counsel for the plaintiff submitted that a 15% pre-morbid contingency deduction should be applied to the past and future loss of income and a 25% contingency deduction post-morbid to the future income. In the result, the claim consisted of R 578 306, 85 in respect of past loss of earnings and R 599 277, 15 in respect of future loss of earnings.

Judgment

- [6] The court *a quo* had regard to the appellant's employment history, to wit that she only worked as a volunteer administration clerk at SA Nkosi High School from 2008 to 2013 and received a R 1000, 00 per month. At the time of the accident the appellant was unemployed, had no salary or income and the court held that the appellant did not suffer a past loss of income.
- [7] The appellant was still unemployed at the time of the trial. In assessing the future loss of earnings / earning ability, the court pointed to several inconsistencies in

the expert reports. The court further held that the appellant's unwillingness to undergo accident-related treatment and rehabilitation has a direct impact on her inability to perform certain work-related tasks. The court accepted that the appellant would struggle in the workplace due the back injuries she suffered as a result of the collision and held as follows: "*Consequently, I found that the appropriate award for loss of earning capacity would be an amount of R 309 855 after applying a 15% contingency on the amount of R 2 065 704.*"

Grounds of appeal and submissions

- [8] The appellant contends that the court *a quo* erred in rejecting her claim for past loss of income on the basis that she was unemployed at the time of the collision. According to the appellant an award for past loss of earnings is made in order to compensate a plaintiff for the difference between the value of a plaintiff's estate after the commission of a delict and the value it would have had if the delict had not been committed.
- [9] In support of the projection of the appellant's past income, she relied on the evidence of de Vlamingh. According to de Vlamingh and if the collision did not occur, the appellant would have been able to secure employment from 1 June 2014, earning between the lower and median quartile of the semi-skilled scale.
- [10] In respect of the appellant's claim for future loss of income/earning ability, the appellant submitted that the court *a quo* erred in rejecting the basis postulated by de Vlamingh. The court, furthermore, erred in applying the same future income both pre- and post-accident, thereby ignoring the actual loss in future calculated by Potgieter based on a career delay. The court also erred in applying a differential contingency on the same pre- and post-morbid income.

Discussion

Past loss of income

- [11] The appellant is correct that in terms of the law of delict, the amount of damages awarded for loss of income represents the difference between the value of a plaintiff's estate after the commission of the delict and the value it would have

had if the delict had not been committed. [See: *Dippenaar v Shield Insurance Co Ltd* 1979 (2) SA 904 (A)]

[12] Although the appellant was not employed at the date of accident, the question is whether she would have secured employment, but for the accident, between the date of the accident in 2014 and the date of trial in 2023. In other words, loss of past income or earning ability is not calculated at the date of accident but at the date of trial. In the result, the court *a quo* did err in rejecting the appellant's claim for past loss of income, merely because she was unemployed at the date of the accident.

[13] It is therefore necessary to consider the appellant's claim in this regard. The appellant sustained shoulder, back and ankle injuries during the accident. The most recent examination by Dr Close, an orthopaedic surgeon on 23 May 2023, revealed that the appellant's only complaint was in respect of pain in her left shoulder and arm and more particularly when she attempts to lift and carry heavy weights.

[14] Madri Snyman (Snyman), an occupational therapist, examined the appellant in September 2018 and in June 2023. In September 2018 the appellant stated that she does not experience any pain in her back. She did, however, experienced pain in her left shoulder when lifting items such as a bucket of water. Snyman noted that the appellant completed grade 12 schooling, obtained her N2 and N3 levels, completed a computer course and that she worked as a volunteer administration clerk from 2008 to 2013. The work was mainly of a sedentary nature and included typing, filing and the answering of phones.

[15] Importantly and in view of the aforesaid facts, Snyman opined as follows:

"Considering the information to hand it seems that the claimant's ability to perform tasks of a light nature with frequent ambulatory requirements does meet the physical demands of her previous employment as an admin clerk should she wish to return to such a position in future."

[16] Contrary to her opinion expressed in September 2018, Snyman stated the following in her report dated 27 June 2023:

“3.2.1 Ms Maseko’s workability has been affected by the pain and weakness experienced in her left shoulder as a result of the accident.

3.2.2 At present the claimant is limited to work with sedentary to light and light weight handling demands and working with her arms in elevation rarely due to the injury sustained to her left shoulder.

.....

3.2.4 From a physical perspective I anticipate that in future she will remain limited to tasks that do not exceed a light nature or working with her arms in elevation more than rarely, even following intervention.

3.2.5 As a result, she is limited in her choice of employment and disadvantaged compared to her counterparts competing for the same positions in the open labour market..

3.2.6 The claimant indicated that she would like to work as a tea lady. Considering that the typical demands of a tea lady position is mainly sedentary to light nature, I anticipate that she will be suited to work in such a capacity in future.

3.2.7 Positions that include cleaning work similar to that of domestic worker, may include elevated work more than rarely and weight handling work exceeding a light nature. Although the claimant may be able to perform certain tasks required of a domestic worker position, she will not be able to meet the physical demands of the heavier spring cleaning type of tasks required of a domestic worker position that exceeds a light nature.”

[17] I do not agree with the opinion expressed by Snyman in her June 2023 report.

Snyman's opinion in her September 2018 report accords with the fact that the injuries sustained by the appellant in the accident did not affect her ability to do the work she did prior to the accident. The value of the appellant's estate at present is no different from what it would have been had the accident not occurred.

[18] Due to the reasons stated *supra*, the court *a quo*'s dismissal of the appellant's claim for past loss of earnings was, albeit for other reasons, correct.

[19] I would also have, for the same reasons stated *supra*, dismissed the appellant's claim for future loss of income. There is no cross-appeal and the amount awarded by the court *a quo* in respect of future loss of income stands.

Order

The appeal is dismissed.



JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

DATE HEARD:

7 October 2025

DATE DELIVERED:

3 December 2025

APPERANCES

For appellant: Adv Bouwer

Instructed by: Frans Schutte & Mathews Phosa Inc

For the respondent: No appearance

