IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Not Reportable

Case no: 5272/2021

In the matter between

KARABELO SHAUN THABO TSOEU **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

Neutral citation: *Tsoeu v The Road Accident Fund* (5272/2021) [2025] ZAFSHC 389 (5 December 2025)

Coram: BOONZAAIER AJ

Heard: 7-8 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be at 11h00 on 5 December 2025.

Summary: Road Accident Fund Act 56 of 1996 – quantum – loss of future earning capacity – contingency deductions – uncontested expert evidence. The court emphasised the need to adjust contingency percentages in line with the claimant's personal circumstances, employment history and health.

ORDER

1 The defendant shall pay 100 percent of the plaintiff's proven or agreed damages.

2 The defendant shall pay to the plaintiff the sum of R 283 756 (two hundred and eighty-three thousand seven hundred and fifty-six rands), in respect of the plaintiff's claim against the defendant for future loss of earnings/earning capacity.

3 The aforesaid amount is to be paid into the following bank account:

Name of Account Holder:	Symington De Kok Attorneys
Name of Bank:	First National Bank
Account number:	6[...]
Branch Code:	250 655
Type of Account:	Trust Account
Reference:	TR0706fXT2374

4 The defendant shall be afforded a period of 180 calendar days from the date of this order to be effect payment herein, during which period the plaintiff will not be entitled to issue writ against the defendant.

5 The defendant is ordered to furnish the plaintiff within 180 days from date of this order an undertaking in terms of s 17(4) of the Road Accident Fund Act 56 of 1996, for payment of 100% of the costs of the future accommodation of the plaintiff in a hospital or nursing home, or treatment of or rendering of a service or supply of goods to him arising out of the injuries that he sustained in the motor vehicle collision that occurred on the 12 October 2019 and the sequelae thereof, after such costs have been incurred and upon proof thereof.

6 The defendant shall pay the plaintiffs taxed party and party costs on a High Court scale to date of this order, including all the travelling costs for the plaintiff to attend all medico -legal examinations arranged by the plaintiff legal representatives and attendance to trial, accommodation for the plaintiff and AV Theron and Swanepoel Attorneys, together with counsel fees (on scale B), and the fees for the following experts:

a Dr PJ Fisher (Orthopaedic Surgeon)

b Ms Enid Kruger (Occupational therapist)

c Dr Ziervogel (Orthopaedic Surgeon)

d Ms Lariska van Rooyen (Industrial Pshycologist)

e Human Morris Actuaries (Actuary)

7 The interest shall accrue at the prescribed statutory rate in respect of:

a The capital amount of the claim, calculated 14 (fourteen) days from date of this order to date of final payment, in the event that payment is not affected within the 180 days from date of this order as stipulated in prayer 4.

b The taxed or agreed costs, calculated from 14 (fourteen) days from date of taxation, alternatively date of settlement of such costs to date final payment in the event that payment is not affected within the 180 days from date of taxation, alternatively date of settlement of such costs.

JUDGMENT

Boonzaaier AJ

Introduction

[1] This matter is before the Court, for the determination of the quantum. The merits which served before this Court have become settled with a 100 percent apportionment in favour of the plaintiff. An undertaking in terms of s 17 of the Road Accident Fund Act 56 of 1996, has also been tendered which has been accepted by the plaintiff. The remaining issue thus in dispute, by agreement between the parties and which the Court is called upon to adjudicate upon is the loss of earnings, more specifically, the contingencies that need to be applied in respect of the future loss of earnings as well as whether the plaintiff is employable or largely unemployable.

[2] The plaintiff has filed the following expert reports:[1]

a Dr. PJ Fisher (Orthopedic surgeon)

b Ms Enid Kruger (Occupational therapist)

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[1] Expert bundle.

c Dr Ziervogel (Orthopedic surgeon)

d Ms Lariska van Rooyen (Industrial psychologist)

e Human Morris Actuaries (Actuary)

[3] The defendant has not filed any expert reports and the plaintiff's expert reports are thus uncontested. The parties have agreed that the plaintiff be granted leave to present his evidence in respect of the issues of quantum in terms of rule 38(2) of the Uniform Rules of Court, read together with s 3(1)*(c)* of the Law of Evidence Amendment Act 45 of 1988. The confirmatory affidavits of all of the above expert witnesses has been handed in to Court and the parties request that same be regarded as admissible evidence.

[4] The parties are *ad idem* as to the following:

a The plaintiff has suffered a loss of future income;

b The plaintiff`s latest actuarial calculations correctly reflect the amount of the plaintiff's loss of future income;

c The evidence of the plaintiff`s experts were not in dispute and would serve before the court for purposes of the argument to be presented by the parties on the issue of actuarial contingencies; and

d That the postulated pre-morbid income and contingency to be applied (being 15 percent)

Background of the matter

[5] On 12 October 2019, at Bergius Road, Sasolburg, Free State, within the jurisdiction of this Court, a collision occurred involving a motor vehicle bearing registration number H[...] (hereinafter the insured motor vehicle). The vehicle was at the time driven by Mr Thabang Justice Nyaka, who lost control of it, causing it to overturn. The plaintiff was a back-seat passenger in the insured vehicle. He was found unconscious at the scene and transported to Fezi Ngubentombi Hospital, where he later regained consciousness. He sustained injuries to his right knee and right wrist, as well as head and tongue injuries. X-rays were taken, he was assessed, and he was discharged on the same day. He did not attend any follow-up treatment. He returned to school one week later.

[6] As a point of departure regarding the plaintiff's future loss of earnings, it is appropriate, to outline his educational and employment background:

a The plaintiff was born and raised in Sasolburg by his parents. His father passed away in 2009, after which he was raised by his mother, who is currently 58 -years old and employed as a cleaner. He has two brothers and one sister, all of whom are employed. The plaintiff is single, unmarried, and has no dependants.

b The plaintiff reported that he failed Grade 10 twice and Grade 11 once. At the time of the accident, he was repeating Grade 11 at Iketsetseng Secondary School. He passed Grade 11 at the end of 2019.

c The plaintiff's highest level of education is Grade 12, which he completed post-accident at the aforementioned school in 2020, at the age of 22. According to his National Senior Certificate, he met the minimum requirements for admission to a Diploma or Higher Certificate programme as gazetted.

d The plaintiff reported that he aspires to train as a firefighter. He further indicated that he applied for admission to the Police Academy and stated that he passed the first two screening tests. During a follow-up consultation with Ms Lariska van Rooyen in November 2023, he confirmed that he is still in the process of applying; however, several requirements remain outstanding before he may be accepted into the academy, if at all.

e The plaintiff worked as a general worker on contract for a period of four months during 2021, earning R1 900.00 every two weeks. It appears that he did not work for longer than four months due to experiencing significant pain in his lower back and right wrist. He has remained unemployed since. The plaintiff could not recall the contact details of his previous employer, and no collateral information in this regard could be obtained. Despite numerous requests, he also failed to provide documentation or proof of the screening tests he claims to have passed with the South African Police Services (SAPS).

Quantum

Loss of Earnings and earning capacity

Plaintiff`s submissions regarding the contingencies to be applied

[7] In regard to contingencies to be applied in the uninjured scenario, the plaintiff suggests that the normal contingency deduction of 15 percent be applied to the plaintiffs uninjured future income. The defendant did not present any evidence to

show that there are any negative factors that should have been accepted by the court to increase the future uninjured contingency percentage.[2] In regard to the contingencies deduction to be applied in the injured scenario, cognizance must be taken of the significantly increased vulnerability of the plaintiff following the accident. The plaintiff will need reasonable workplace accommodation in the performance of his duties and that he will be reliant on a somewhat sympathetic and /or accommodative employer. Another factor which must be taken into account is the fact that the plaintiff was rendered an equal competitor and more vulnerable employee in the open labour market as unskilled/semi-skilled worker and that the he may have to be more selective when choosing future jobs in order to protect his affectionate joints. Dr Ziervogel and Dr Fisher both indicate that a knee replacement may be needed within 20 to 30 years.

[8] Counsel argued that the above could be addressed by an appropriate higher post-accident contingency. Counsel argued that 40 percent would be a fair contingency deduction.

[9] Ms Gouws on behalf of the defendant argued that the plaintiff`s income has already been reduced pre-morbid scenario (approximately a 16 percent reduction in income over the span of plaintiff`s remaining working life) and that applying the 40 percent contingency deduction as proposed by plaintiff would not be fair and reasonable, specifically having regard to the submissions which the defendant made regarding the injuries sustained and the findings of the orthopedic surgeons. She contends that an appropriate contingency reduction should be 10%.

[10] I turn to address the loss of earnings in the matter. For sake of brevity, I will summarise all of the plaintiff's expert reports below highlighting the most important sections thereof.

[11] Dr Ziervogel, an orthopedic surgeon, stipulates that plaintiff `s X-rays of the relevant spine, and knee injuries revealed no obvious signs of an injury. The available notes revealed a head injury and laceration of the tongue. After nearly

[2] *Van Ghent v Road Accident* [2017] ZAFSHC 187 para 38.

three years it is unlikely that the headache is a post–concussion headache. The laceration of the tongue healed and need no further attention. The available notes revealed no wrist injury. Clinically the plaintiff has a possible capsular injury. Dr Ziervogel concluded that the plaintiff sustained injuries which were managed conservatively. Further on physical examination during assessment it was concluded that the plaintiff has mechanical neck pain, a possible capsular injury to the wrist and possible missed injury of the right knee. The plaintiff’s normal life expectancy is from an orthopedic point of view, not adversely affected by injuries.

[12] Dr Fisher, an orthopedic surgeon, opined that the plaintiff was diagnosed with a superficial head injury, tongue laceration and had a soft tissue injury on the right knee. It was concluded further on physical examination during this assessment that there is pain in the right knee, the plaintiff showed signs of post-traumatic stress disorder (PTSD), anxiety and had healed laceration of the tongue. Dr Fisher stated that a right wrist injury was not indicated in the notes he obtained. He opined further that plaintiff has a capsular injury to his right wrist. However, no obvious signs of instability or abnormal movement was noted and he recommended only pain medication. Furthermore, he stated that no back injury was mentioned in the available notes. The X-rays revealed no obvious signs of an injury to the right knee. The plaintiff presented with a meniscal injury of the right knee, but X-rays revealed no obvious signs of an injury.

[13] Ms Enid Kruger, an occupational therapist, mentioned that the loss of earning capacity at the time of the accident plaintiff was a secondary learner and obtained his matric certificate in 2020, and has since not been able to secure a job. His abilities meet the demands of light physical effort; however, he needs to preserve his abilities to protect especially the right knee and extend the time until surgery might become necessary. She opines that as a result of the accident plaintiff is rendered a compromised and unequal competitor in the open labour market, resulting in limited work prospects.

Pre accident Physical and cognitive challenges

[14] In respect of cognitive challenges, the plaintiff’s occupational therapist, Enid Kruger reported that the cognitive screening revealed very poor ability and that the

plaintiff may find it difficult to be successful in any training due to the signs of cognitive impairment. Ms Gouws accentuated the fact that plaintiff was not diagnosed with a head injury, there is no report by a Neurosurgeon or a Neurologist.

[15] In respect of physical challenges, Enid Kruger reported psychological screening revealed high stress levels There is also no report by a clinical psychologist nor by a psychiatrist in this regard. The defendant argued that in the absence of any such evidence to the contrary it must be accepted that the psychological challenges are not accident related. It is the defendant`s argument that the following injuries in the absence of any evidence to the contrary be accepted that any challenge which plaintiff experiences relating to his injuries are not accident related. The plaintiff`s orthopedic surgeon Dr Fisher stated that a right wrist injury was not indicated in the notes he obtained but he opined that the plaintiff has a possible capsular injury to his right wrist. However, no obvious instability or abnormal; movement was noted and he recommended pain medication. No back injury was mentioned in the available notes. The X rays revealed no obvious signs of a right knee injury. The plaintiff presented with a meniscal injury of the right knee, but x rays revealed no obvious signs of an injury.

[16] The calculation made by Human Morris is thus as follows:[3]

LOSS OF EARNINGS:	Uninjured	Injured	Net
Earnings had accident not occurred	R3 052 249.00	R2 567 395.00	R 484 854.00
Less contingency deduction (15 percent)	R 457 837.35	R1026958 (40 percent)	R 569 120.65
Net Future Income	R2594 411.65.	R1 540 437.00	R1 053 974.65

[3] Heads of argument plaintiff.

[17] The defendant on the other hand made the following calculations:

<u>‘Loss of Earnings:</u>

<u>Pre morbid Earnings</u> (Had the accident nor occurred)

Future Loss of earnings	R 3 052 249.00		R3 052 249.00
Less contingencies		15 %	R457 837.35
Total pre morbid Earnings			**R 2 594 411.65**

<u>Post morbid Earnings (</u>Having regards to the accident)

Future loss of earnings	R 2 567 395.00		R2 567 395.00
Less contingency		10 percent	R2 567 39.50
Total post morbid Earnings			R2 310 655.50
Total loss of earnings			**R283 756.15**’

Applicable case law regarding contingencies

[18] It is trite that the determination of allowances for contingencies involves, by its very nature, a process of subjective impression or estimation rather than an objective calculation. The question of the contingencies deductions to be applied, as is the issue of the calculation of the quantum of a future amount, such as loss of earning capacity, are often difficult matters. Speculation inevitably abounds. The Court has a wide discretion based upon a consideration of all the relevant facts and circumstances.[4] It is trite that the determination of a suitable contingency deduction falls within the discretion of the court. In *Southern Insurance Association Ltd v Bailey*,[5] the advantage of applying actuarial calculations to assist in this task was emphasised. It was stated that:

‘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, augers 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 a loss. It has open to it, two possible approaches. One is for the Judge to make a round estimate on an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try and make an assessment, by way of mathematical calculations on the basis of

[4] *Engelbrecht v Road Accident Fund* [2024} ZAGPPHC 440 para 38, *De Jong v Du Pisani NO* [2004] ZASCA 43; [2004] 2 All SA 565 (SCA);2005 (5) SA 457 SCA para 47.

[5] *Southern Insurance Association v Bailey NO* 1984 (1) SA 98 (A) (*Bailey NO*) at 113G-114A.

assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a *non-possumus* attitude and make no award.'

[19] Contingencies of whatever nature, generally serve as a control mechanism to adjust the loss to the circumstances of the individual case in order to achieve justice and fairness to the parties.[6] In coming to a contingency calculation there are no fixed rules and direct evidence cannot be given by an actuary. Actuarial evidence only serves as a guide to the Court.[7] Contingency deductions imply that provision is made for the prospective loss at the time of assessment of damages might in any event possibly have occurred independently of the accident in question.[8] This configuration would include a possibility that:

a a plaintiff's working life may have been less than 65 years;

b a possibility of his death before he reaches the age of 65 years;

c the likelihood of him suffering an illness of long duration;

d unemployment;

e inflation and deflation;

f alterations on the cost-of-living allowance;

g an accident whilst participating in sport such as hockey or cricket or golf or at any other time, which he would affect his earning capacity; and

h any other contingency that may affect his earning capacity.[9]

[20] In substantiation of the aforementioned, Dr Koch refers to some guidelines in respect of contingencies:

'<u>"Normal contingencies"</u>: as deductions of 5% for past loss and 15% for future loss.

<u>"A sliding scale"</u>: half % per year to retirement age, i.e. 25% for a child, 20% for a youth and 10% in the middle age and rely on the case law in *Goodall v President Insurance* 1978 (1) SA 389.

Deferential contingencies are commonly applied that is to say 1% apply to earnings but for

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[6] *Hall v Road Accident Fund* [2013] ZAGPJHC 129; [2013] JOL 30456 (GSJ); 2013 JDR 1299 (GSJ) para 52. See also *Road Accident Fund v Guedes* [2006] ZASCA 19; 2006 (5) SA 583 (SCA) at para 8.
[7] *Shield Insurance Co & D V Hall* 1976 (4) SA at 431D.
[8] *Bailey NO* at 116G-117A.
[9] *Gillbanks v Sigournay* 1959 (2) SA 11 (N) at 17.

the accident different percentage earnings having regard to the accident.[10]

Conclusion

[21] The plaintiff submits that when the Court exercises its discretion and when considering the relevant case law with regards to the contingencies to be applied in respect of loss of earnings the appropriate determination by this Court would be the applicable contingencies as per the plaintiff's actuarial calculation done by Human Morris actuaries. Having regard to the supplementary heads of argument from the defendant it is clear that the court must take into account all the surrounding circumstances. I need to emphasize the need to adjust contingency percentages in line with the claimant's personal circumstances, employment history and his health.

[22] In view of the opinions raised by the relevant experts as aforesaid and when the Court exercises its discretion and considers the relevant case law with regards to the contingencies to be applied in respect of loss of earnings, the appropriate determination by the Court, that would be reasonable and just in the circumstances, would be to apply the contingency, as it was suggested by the defendant.

[23] It is apparent taking into account the relevant expert reports filed that the plaintiff has been rendered vulnerable and less competitive as a result of the accident and its sequelae but to a minor extent The plaintiff abilities currently meet the demands of light physical effort. As per the experts reports above, the plaintiff may meet the physical strength demands for particular occupations, he will not be suited for manual work.

[24] In the result, it seems to be fair to award the following amount:

1 The defendant shall pay 100 percent of the plaintiff's proven or agreed damages.

2 The defendant shall pay to the plaintiff the sum of R 283 756 (two hundred and eighty-three thousand seven hundred and fifty-six rands), in respect of the plaintiff's claim against the defendant for future loss of earnings/earning capacity.

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[10] R Koch *The quantum year book 2017* Kock Consulting Actuaries; *Dlamini v Road Accident* [2015] ZAGPPHC 646 paras 29-30.

3 The aforesaid amount is to be paid into the following bank account:

Name of Account Holder: Symington De Kok Attorneys

Name of Bank:	First National Bank
Account number:	6[...]
Branch Code:	250 655
Type of Account:	Trust Account
Reference:	TR0706fXT2374

4 The defendant shall be afforded a period of 180 calendar days from the date of this order to be effect payment herein, during which period the plaintiff will not be entitled to issue writ against the defendant.

5 The defendant is ordered to furnish the plaintiff within 180 days from date of this order an undertaking in terms of s 17(4) of the Road Accident Fund Act 56 of 1996, for payment of 100 percent of the costs of the future accommodation of the plaintiff in a hospital or nursing home, or treatment of or rendering of a service or supply of goods to him arising out of the injuries that he sustained in the motor vehicle collision that occurred on the 12 October 2019 and the sequelae thereof, after such costs have been incurred and upon proof thereof.

6 The defendant shall pay the plaintiffs taxed party and party costs on a High Court scale to date of this order, including all the travelling costs for the plaintiff to attend all medico -legal examinations arranged by the plaintiff legal representatives and attendance to trial, accommodation for the plaintiff and AV Theron and Swanepoel Attorneys, together with counsel fees (on scale B), and the fees for the following experts:

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e Human Morris Actuaries (Actuary)

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b The taxed or agreed costs, calculated from 14 (fourteen) days from date of taxation, alternatively date of settlement of such costs to date final payment in the event that payment is not affected within the 180 days from date of taxation, alternatively date of settlement of such costs.

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ACTING JUDGE OF THE HIGH COURT

Appearances

For the appellants:	J van der Merwe
Instructed by:	Symington De Kok Attorneys,
	Bloemfontein
For the first to fourth respondents:	J Gouws
Instructed by:	The State Attorney,
	Bloemfontein.