

REPUBLIC OF SOUTH AFRICA



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

Case No: 4283/2020

Reportable: No
Of interest to other Judges: No
Revised: No
Date: 3 December 2025


SIGNATURE

In the matter between:

PHENDUKANI CYPRIAN KHUZWAYO

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGEMENT

MOOKI J

- 1 The plaintiff was involved in a car accident on 31 March 2019. He was a pedestrian when a car drove onto him. He sues the defendant (the Fund) pursuant to section 17(1)(b) of the Road Accident Fund Act, 56 of 1996 (the Act).
- 2 The plaintiff pleaded that he was struck by an unidentified driver whilst he was standing on the side of the road. The plaintiff pleaded the usual standard averments in relation to the conduct said to render the driver negligent, including that the driver travelled at an excessive speed and that the driver failed to keep a proper lookout.
- 3 The plaintiff gave the following evidence. The accident occurred near a busy area, with shops in the vicinity. He was standing on the left side of the road, intending to cross the road to get to the shops. A car appeared suddenly and struck him. He sought to escape but could not do so in time. He was trapped underneath the car. He woke up at the hospital. He did not recall the details of the car, save that the car was white in colour. The court, following an address by counsel, found the Fund liable for 100% of such damages as agreed by the parties or proven by the plaintiff.
- 4 The plaintiff sought leave for the court to consider evidence by his experts on affidavit. This evidence was tendered in support of the claim for loss of earnings. The court granted leave. The plaintiff then introduced evidence by the orthopaedic surgeon, the occupational therapist, the industrial psychologist, and by an actuary.

- 5 The plaintiff gave the following evidence in support of his claim for loss of earnings. He worked as a builder at the time of the accident. He dug trenches, built walls, and erected roofs. He started by working for someone else, which is where he learnt to build. He then went solo. Clients would call him. Clients would ask how much he charged. He answered by telling them that it depended on the size and type of the structure being considered. He would thereafter agree a price with a client.
- 6 He charged R10 000,00 for a small structure. A client would make a partial payment. He would use the money to pay his assistants. He was paid in cash. He would make R15,000.00 on a good month. He had a bank account, but preferred being paid in cash.
- 7 He did not return as a builder following the accident. His right knee was affected. He had surgery on the knee, which kept failing. He could not stand or sit for a long time. He could not climb a ladder. He also experienced pain if he stood for five minutes.
- 8 The orthopaedic surgeon mentioned that the plaintiff suffered a serious knee injury and needed a knee replacement. The occupational therapist mentioned, among other things, that the plaintiff could not climb ladders and that he could not do what he did before the accident. Counsel submitted that there was a problem with the plaintiff having furnished the court with proof of earnings.
- 9 The RAF 1 form records that the plaintiff suffered the following injuries: soft tissue injuries, knee and facial bruises. There were no fractures. Treatment

included analgesics and antibiotics. I accept that the plaintiff was injured in the car accident. He claims the amount of R2 547 014.00 for loss of earning. I am not persuaded that the plaintiff has shown that he suffered a loss of earnings because of the accident.

- 10 Counsel for the plaintiff accepted that there was a problem because the plaintiff did not supply proof of his earnings. The court requested the plaintiff to submit bank statements. This was because the plaintiff had told the court that he had a bank account. The plaintiff submitted bank statements from Capitec, African Bank, and ABSA. The bank statements are for the period after 31 March 2019. The plaintiff submitted an affidavit, stating that he did not have a bank account on January 2018 and that he only opened a bank account on 1 March 2019.
- 11 The plaintiff's claim is riddled with falsehoods. He caused to be reported, in the RAF 1 form, completed on 2 August 2019 (five months after the accident), that he was employed at the time of the accident and that he was required to take time off work. He referenced "payslips" on the section dealing with proof of income. The section on the form on "self-employed" was left blank. This is wholly at odds with the case that he presented, namely that he was self-employed at the time of the accident and that he preferred being paid cash. He said in his evidence that he had a bank account when he worked as a builder, but preferred being paid in cash. He then changed in a later affidavit, stating that he first opened a bank account on 3 March 2019. The accident occurred on 31 March 2019.

- 12 He gave evidence that he worked for some person where he learned the trade as a builder before he “went solo” in 2017. I do not credit this evidence. He did not tell any of his experts that he was employed as a builder before becoming self-employed.
- 13 The plaintiff had no vocational training. He never explained where he learned to build houses, be a roofer, and be an electrician. He was, according to what he told the industrial psychologist, employed as a general worker at Cart Sack from 2008 to 2010. This was a year after finishing Grade 11. He then worked as a petrol attendant from 2010 to 2016, also for Cart Sack. He was retrenched in 2017. He was thereafter self-employed, working as a builder. He told the occupational therapist that he worked with six assistants.
- 14 The plaintiff did not put up any evidence to support his claim that he was self-employed as a builder from 2016 to 2019. He told the orthopaedic surgeon that he had 15 years’ experience as a construction builder. That was false. There is equally no evidence that he earned in the region of R10,000.00 to R15,000.00 per month as a builder. He says that he lost the contact details of his clients. This was when questioned about the absence of proof of earnings. I do not accept this. He would surely know where to find his former clients if he did build houses for them. It bears pointing out that there was no support that he worked with six assistants.
- 15 The industrial psychologist says Cart Sack retrenched the plaintiff in 2017, and that the plaintiff then became self-employed as a builder from 2017, until the accident in 2019. Cart Sack was, on the evidence, the plaintiff’s sole

employer since the plaintiff left school in 2009. He started working at Cart Sack as a general worker in 2010, earning R95/day. Cart Sack, in 2012, employed him as a petrol attendant, with the plaintiff earning R700/week. Cart Sack retrenched the plaintiff in 2017.

16 The evidence supports the plaintiff, contrary to his evidence, being unemployed at the time of the accident. His claim that he was self-employed as a builder is untenable. There is no support that he worked for some person in the building industry before striking out on his own. He was only ever employed by Cart Sack, until his retrenchment in 2017. He was a petrol attendant just before his retrenchment. He had no vocational training. He does not have a driver's licence. This puts into question how he conducted a business building houses earning income in the region of R10,000.00 to R15,000.00 per month. He told the occupational therapist that he was helped by six assistants in his business as a builder. There was no evidence in support of this claim.

17 The industrial psychologist postulated that the plaintiff's loss be computed with reference to the plaintiff having income in the region of R10,000.00 to R15,000.00 per month. The industrial psychologist accepted that the plaintiff did not furnish proof of earnings. It is puzzling that the industrial psychologist would contend for a loss based on the self-reported earnings. The industrial psychologist assessed the plaintiff on 22 September 2022. She however prepared her report on 1 June 2023, which is almost a year since the assessment of the plaintiff. The plaintiff's purported earnings are mentioned in an affidavit dated 31 May 2023. This was a date long after the

industrial psychologist first assessed the plaintiff. It is curious that the industrial psychologist does not say anything about what the plaintiff said about his earnings when the industrial psychologist first assessed the plaintiff on 22 September 2022.

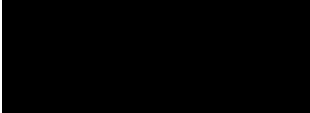
18 The plaintiff would clearly have mentioned his claimed earnings when he was assessed on 22 September 2022. The industrial psychologist could not have assessed the plaintiff on 22 September 2022 and not enquire into the plaintiff's employment history. I therefore expected the industrial psychologist to say how the plaintiff's affidavit of 31 May 2023 about his earnings compared with what the plaintiff must have told the industrial psychologist on 22 September 2022. This failure by the industrial psychologist puts the integrity of her report into question.

19 There are other odd aspects to the evidence on behalf of the plaintiff. Those include the orthopaedic surgeon concluding that the plaintiff walked with a gait on the right leg. The occupational therapist, on the other hand, found that the plaintiff walked with a normal gait. These two specialists assessed the plaintiff on the same day, 22 September 2022. There is no explanation why they differed on such a basic observation.

20 Cart Sack employed the plaintiff after the plaintiff finished grade 11 in 2009. Cart Sack retrenched the plaintiff in 2017. Cart Sack was the plaintiff's only employer. I do not accept that the plaintiff was self-employed on 31 March 2019. I conclude that the plaintiff failed to show that he suffered a loss of earnings because of the accident.

21 I make the following order:

- (1) The plaintiff's claim for loss of earnings is dismissed.
- (2) The defendant is ordered to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, for treatment or rendering of services in connection with injuries sustained by the plaintiff in the collision on 31 March 2019.
- (3) The defendant is ordered to pay the reasonable and taxable costs in respect of the following expert witnesses:
 - (3.1) Dr R S Ngobeni (orthopaedic surgeon).
 - (3.2) T Sibiya (occupational therapist)
 - (3.3) C Nyahwema (industrial psychologist)
 - (3.4) N Waisberg (actuary)
- (4) The cost for engaging counsel, including the day fee on 21 and 22 August 2025, on scale B.
- (5) The claim for general damages is postponed *sine die*.



O MOOKI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the plaintiff:

J G van der Berg

Instructed by:

T Tshabalala Inc. Attorneys

No appearance for the defendant

Date heard:

22 August 2025

Date of judgement:

3 December 2025