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

Case Number: 39867/2022

1. Reportable: **NO**

2. Of interest to other Judges: **NO**

3. Revised

Date: **09/12/2025**

Signature:

In the matter between:

KARABO MMABATHO RAMOSHABA **Plaintiff**

And

ROAD ACCIDENT FUND **Defendant**

Delivered: 09 December 2025- This judgment was handed down electronically.

JUDGMENT

Ncongwane AJ:

Introduction

[1] This matter came before me on the 31st of July 2025 when I sat in the trial default judgments' roll. I directed plaintiff's counsel to file heads of argument, and rolled the matter over to the 1st of August 2025. Counsel filed his heads of argument

and the record confirms that counsel addressed the court on the application for default judgment on both merits and quantum, and I reserved judgment.

[2] It is highly regrettable that the matter fell through the cracks and I only became aware that judgment is still outstanding when I received a letter from the Registrar on the 28th of November 2025 enquiring whether judgment was handed down in the matter. I undertook to hand down the judgment not later than the second week of December 2025. I completely forgot about the reserved judgment and I apologise to the parties for this inordinate delay.

[3] The plaintiff is a major unemployed female, born on the 01st March 2000.

[4] The plaintiff was involved in a motor vehicle collision as a passenger, on the 18th June 2021 wherein she sustained multiple injuries. As a consequence of the injuries sustained, she had to undergo medical treatment, will in future have to undergo medical treatment, and suffered loss of income earning capacity.

[5] Before me is an application for default judgment against the defendant for having failed to enter a notice to defend. The issues are both on liability and the quantum of the plaintiff's claim.

[6] Counsel for the plaintiff applied for the reports of the experts, more specifically the facts, assumptions and opinions, be admitted into evidence during the hearing and that evidence be presented by way of affidavits as provided for in terms of the Uniform Rules 38 (2). I granted the application.

[7] With regards the plaintiff's claim , for general damages , I was informed that the RAF has failed to exercise an election on whether or not to accept the plaintiff's RAF4 form in terms of Regulation 3. Counsel however, persisted in his oral submission and in the heads of argument that the court should deal with plaintiff's general damages and make a fair and reasonable awards.

[8] The full bench of the Division of this High Court, handed down a judgment on the 2nd November 2022, in **Knoetze obo Malinga and Another v Road Accident**

Fund (77573/2018 & 54977/2020[2020], where this court, as per the full bench, declared that it was bound, by the decision in **Marine and Trade Insurance CEO Ltd v Katz NO¹**, even though that decision predates the Constitution after referencing that decision, the court concluded in paragraph 16 as follows:

"It is clear from the above-quoted judgment that a court has no jurisdiction to direct the Fund to furnish an undertaking where the Fund did not make such an election. The corollary is that, if a court cannot grant such relief, neither can a plaintiff claim it. Where the Fund has not made an election to furnish an undertaking either by choice or by default, the consequence is that it will only be competent for a court to award payment of an amount calculated to cover future medical expenses, once proven, taking into account the contingencies referred to above."

[9] In so far as it relates to the plaintiff's claim for general damages and for the non-compliance of the methods prescribed in s. 17 (1A) of the RAF Act which follow the Regulation 3 assessment of the serious injuries, the court made it clear that until the Fund has made an election whether it will accept the Regulation 3 assessment or not, the court has no jurisdiction to deal with this aspect of the plaintiff's claim. This is evident in paragraph 65 of the judgment which states:

"The Fund's failure to accept or reject serious injury assessment reports or even after being compelled to do so, does not detract from the Supreme Court of Appeal's interpretation that regulation 3 renders a court without jurisdiction to entertain a claim for general damages where the Fund has not accepted a plaintiff's serious assessment report. In view of the above, it is evident that a deviation from the procedure pertinently prescribed by regulation 3 cannot be justified ..."

[10] Accordingly, with the Road Accident Fund having made no election in respect of general damages and has not elected to furnish an undertaking to compensate

¹ 1979 (4) SA 961 (A)

plaintiff's claim for damages in terms of s. 17 of the RAF Act, the court has no jurisdiction to deal with these aspects of the claim.

The merits

[11] Plaintiff alleges in the s 19f² affidavit that she was a passenger in a motor vehicle with registration numbers and letters: D[...] driven by a certain Honour Zuma. It was on or about the 18th day of June 2021 at around 20h00 along R71 Phalaborwa road, Limpopo, when the motor vehicle in which the plaintiff was a passenger had a tyre burst and the driver lost control and hit the bridge bank, a tree and overturned. The plaintiff sustained serious personal injuries from the accident.

[12] The officers' accident report ("OAR") indicates that a blue mini cooper motor vehicle was travelling straight when the tyre burst and the driver lost control of the motor vehicle which hit the bridge iron, thereafter, a tree and it overturned resulting to the driver and the passenger sustaining serious injuries

[13] During the hearing, I quizzed counsel to address the court on whether the tyre burst constitute negligence on the part of the driver of the vehicle or was it not in a situation of sudden emergency. Counsel argued that it has not been pleaded and to the extent that it was not pleaded it should not be an issue that is to be raised by the court. In support of his argument Counsel referred me to the unreported judgment of the **JFS v Road Accident Fund** case number 096870/2023 handed down on the 28th of January 2025.

[14] It is trite that for the plaintiff to succeed with the issue of the merits the plaintiff needs only to prove a proverbial 1% negligence on the part of the insured driver to get 100% of damages that she is entitled to recover from the Fund.³

[15] In consideration of the description of the accident above, the proverbial 1% negligence on the part of the insured driver is proven in my view, due to the fact that

² 19f affidavit in terms of the Road Accident Fund, 1996, (Act No 56 of 1996).

³ **Prins v Road Accident Fund (21261/08) [2013] ZAGP JHC 106 (28 March 2014) para 4.**

had the insured driver not have driven the vehicle at the time of the accident, the accident would not have occurred. In this regard, I was referred to the SCA authority on a motor accident occasioned primarily by a tyre burst and it is apposite that a reference is made to the most pertinent issue in the judgment. The SCA in the matter of **RAF v Abrahams (276/2017)[2018] ZASCA49 (29 March 2018)** per Makgoka AJA, as he then was, para 24 and 25, in a single motor vehicle accident for a driver's entitlement to claim against the RAF, the SCA stated the following:

" [24] For present purposes it must be assumed that the respondent would prove his allegations against the insured driver at the trial. It is clear that the insured motor vehicle was driven at the time of the accident. The tyre burst was dependent on this fact. As a result, the causal connection between the injuries suffered by the respondent and the driving is sufficiently real. In the circumstances there is no merit in the appellant's contentions."

"[25] In sum, I conclude that the respondent's claim falls within the ambit of s 17 of the Act. Section 18 of the Act is not applicable in the circumstances of this case. The court a quo was apparently of the erroneous view that for the respondent's claim to be within the ambit of the Act, he had to base his claim on s 18, hence its reasoning that the respondent was a contractor on behalf of the insured owner at the time of the accident. That was not necessary. The liability of the appellant for the injuries sustained by the respondent must be found in the plain wording of s 17, read together with s 21 of the Act."

[16] S. 17 (1) reads:

"The Fund or agent shall

(a)...

(b)...be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful conduct of the driver or of the owner of the motor vehicle or of

his or her employees in the performance of the employees' duties as employee..."

[17] S. 21 (1), on the other hand, abolishes common law claims against the owner. With the plain reading of s 17(1), the defendant is accordingly liable for a 100% of such damages as the plaintiff may be able to substantiate.

Plaintiff's injuries

[18] In her particulars of claim the plaintiff avers that she suffered the following body injuries from the aforesaid collision, namely, right elbow fracture, left shoulder joint fracture, fracture of the distal right humerus, traumatic brain injury, disfiguring scars on the face and upper limbs. Plaintiff was admitted to receive hospital and medical treatment at the Medi-Clinic Hospital in Tzaneen.

[19] The hospital records confirm plaintiff's admission at the hospital with motor vehicle related injuries. Her injuries were noted as right elbow fracture, left shoulder joint fracture and left humerus fracture.⁴

[20] She was injured on her face, left shoulder and she had right elbow injuries that was operated. She was hospitalised for about a week.

The Experts

[21] Plaintiff instructed experts to evaluate and assess her and to prepare Medico Legal reports. The appointed experts, Professor Mokgokong, a Neurosurgeon, Ms L. Selamolela, a Clinical Psychologist, Ms Z. Gumede, an Educational Psychologist, Professor M. Lukhele, an Orthopaedic Surgeon, Dr SS Selahle, a Plastic and Reconstruction Surgeon, Ms P. Manana, an Occupational Therapist, Ms Zizinzile Nkosi, an Industrial Psychologist and the plaintiff's Actuary Ms Valentini, deposed to damages' affidavits that were accepted as evidence in the hearing.

⁴ Hospital records, caseline 003 to 13.

[22] From the hospital records and the Medico legal reports, the plaintiff suffered the following injuries in the accident. It is indicated in the **Neurosurgeon's** report that she sustained a head injury with bilateral periorbital ecchymosis (clinical base of skull fracture), and a post traumatic amnesia of about five days, a severe traumatic brain injury, and she had severe orthopaedic injury, left shoulder and the right elbow fractures. There were also reportedly serious neuropsychological problems and she had poor academic performance after the accident. She allegedly also had significant personality and emotional disturbance. It was noted that the severe multiple injuries sustained, severe TBI and multiple severe orthopaedic impediments reported, call for general damages to be awarded for the plaintiff.

[23] The **Clinical Psychologist** reports that plaintiff has symptoms associated with head injury or traumatic brain injury. These typically include, impaired judgment, memory difficulties, poor attention capacity and poor abstraction ability. It was further noted that she presents with emotional and behavioural changes. She recommends physiotherapy for all these symptoms. She defers to the opinion of an Industrial Psychologist to determine the effects of the accident on her future career prospects and earnings.

[24] The **Occupational Therapist**, noted that plaintiff who is 22 years and 7 months and holds a Grade 12 level of education does not have any qualification and she has a drivers licence, She was unemployed and still currently unemployed. She is financially dependent on her parents. Plaintiff's current accident related complaints include experiencing left shoulder pain with prolonged sleeping on the left side. She experiences left shoulder pain with stretching the left arm. She experiences pain with carrying heavy items. She has pain in cold weather conditions. She experiences right elbow pain with prolonged writing. She experiences pain with strenuous work.

[25] Based on the findings of the assessment, the Occupational Therapist is of the view that the plaintiff is not competitive for light, medium, heavy and very heavy occupations in the open labour market. Her vocational choices are limited to sedentary occupations. The Occupational Therapist however notes that plaintiff lacks the vocational experience and qualification for sedentary occupations. This further excludes her from for possibility of securing employment in the open marker. And

since sedentary occupation requires prolonged use of both hands, this will aggravate her bilateral upper limb pain and consequently affect her work performance and productivity. It is concluded by the OT that plaintiff has been compromised in her occupational choices as well as competing equally in an open labour market with her uninjured counterparts. Therefore, the accident had a negative effect on her earning capacity.

[26] The **Educational Psychologist** reports that had the accident not occurred, the plaintiff could have managed to further herself and obtained a National N Diploma whenever the need arises. She would have been employable in an open labour market as a skilled person and would have started a year or two years later. Her learning deficits are deemed to be permanent disabilities and they are likely to have been exacerbated by injuries she sustained following the motor vehicle accident. Plaintiff is not able to achieve the same scholastic level at the same rate as she would have, had she not been injured. She is likely to find progression in a job difficult since she cannot learn through observation at a rate comparable with same age peers.

[27] The **Industrial Psychologist** notes that plaintiff's employment options have been reduced. She is now limited in the kind of employment that she can accept and safely perform without aggravating her ongoing pain symptoms. Her compromised academic capabilities following the accident, which has left her unlikely to cope with the demands of the current studies, plaintiff will likely always require workplace accommodation in any employment she may secure. With her educational preclusion to compete in sedentary work duties compared to her uninjured peers, as well as her physical limitations in light, medium, heavy to very heavy work demands, plaintiff's employment option will therefore remain reduced. She is rendered an unequal competitor in the labour market and the Industrial Psychologist is of the view that plaintiff's capabilities have been significantly impaired by the accident which is likely to continue until her retirement age and in fact for the rest of her life.

[28] It is evident that plaintiff will need future medical treatment involving specialist's consultations and treatment for aches and pains and other subsequent but related complaints. She will need to attend psychotherapy to assist her accepting

and coping with her post morbid condition and inter alia will also need treatment for the intermittent pains she is experiencing.

Loss of future earnings

[29] In order to assess the plaintiff's future loss of earnings, a comparison of her pre-morbid earnings and what she is likely to earn post-morbidly should be made.

[30] Experts opinions are frequently used to assist the courts, but courts are not bound by the opinions of the experts. It is the duty of the experts to furnish the court with the necessary scientific criteria for testing the accuracy of the experts' conclusions so as to enable it to form an independent judgment for the application of this criteria to the facts.

[31] Indisputably, the determination of contingencies is a process of subjective impression or estimation. The application of contingencies is largely arbitrary and depends on the court's impression of the case. The future is uncertain and it is difficult to judge how a person's career prospects may change over a considerable period of time what other factors may influence the career, either positively or negatively. The facts and all relevant circumstances must be considered as best as possible in order to adjudicate the matter.

[32] As a consequence of the accident, the plaintiff is a different individual. She suffered from depression, anxiety and physical pain. She now has a reduced employment prospects, she is more vulnerable and an unequal competitor in the open labour market. She is at a high risk of future unemployment. But for the accident, the plaintiff would have progressed in her career path. She is disadvantaged by the accident which is likely to impact her employability and earning potential, thereby, suffering loss of earnings. All these factors and all the other risks affecting her income should be taken into account.

[33] I am therefore satisfied with the assumptions and the contingencies applied by the Actuarial to provide for future uncertainties. I find that the amount claimed is fair and reasonable compensation for the plaintiff in respect of loss of earnings.

Order

In the result, I make the following order:

1. The defendant is liable for 100% of the plaintiff's proven or agreed damages.
2. The defendant to pay the plaintiff an of R 3 548 120.00 (Three million five hundred and fourty eight thousand one hundred and twenty rand) in respect of past and future loss of earnings together with interest a *tempora morae* calculated in accordance with the prescribed rate from the date of this judgment.
3. The issue of the furnishing to plaintiff by the defendant of an undertaking in terms of Section 17 (4)(a) in respect of future medical treatment is postponed *sine die*.
4. The issue of General Damages is postponed *sine die*.
5. The defendant is to pay the plaintiff's agreed or taxed high court costs as between party and party, on scale B, such costs to include the costs of counsel, the costs of the preparation and qualifying fees of experts, the plaintiff's reasonable travel and accommodation costs to attend experts and counsel.
6. There is a valid contingency fee agreement between the plaintiff and her attorney.

Ncongwane AJ
Acting Judge of the High Court
Gauteng Division, Pretoria

APPEARANCES:

For the Plaintiff: Adv A.K. Maluleka.

For the Defendant: No appearance.

Date of judgment: 09 December 2025.

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email and by upload to Caselines. The date and time for the hand down is deemed to be 10h00 on the 09 December 2025.