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**.THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO. 2024/147099

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHERS JUDGES: YES/NO

(3) REVISED

DATE 05/01/2026

SIGNATURE

In the matter between:

THOKAZANI GLADNESS MPOFU

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BHOOLA AJ,

Introduction

[1] The plaintiff, Ms Thokazani Gladness Mpofu, institutes action against the Road Accident Fund ("RAF") seeking damages arising from a motor vehicle collision which occurred on 30 July 2021 near Khuzani Road, Emadanyeni Section C,

Osizweni Township, Newcastle, KwaZulu Natal Province. At the time of the collision, the plaintiff was a passenger in the motor vehicle.

[2] The issue of merits, general damages and future medical expenses has become settled. The only issue for determination is future loss of earnings and past medical expenses.

[3] Summons was served on the defendant on 13 December 2024. The defendant served a notice of intention to defend, on 31 March 2025 but failed to plead timeously. Despite a notice of bar being served on 8 May 2025, the defendant did not plead and is accordingly barred from doing so in terms of Rule 26 of the Uniform Rules.

[4] The matter proceeds by way of default judgment in terms of Rule 31(2)(b), which was served on 9 June 2025 together with Rule 38(2) of the Uniform Rules, to proceed by way of affidavits, which was served on the defendant on the 22 May 2025, and is accordingly granted.¹ The plaintiff is only required to prove her claim on quantum² and past medical expenses.

Factual background

Merits

[5] The plaintiff's factual account of how the motor collision occurred was not contested. The medico-legal reports prepared by the plaintiff's expert witnesses were admitted into evidence in terms of Rule 38(2) of the Uniform Rules. All the reports remained unchallenged and uncontroverted. This justified the court in hearing the matter by way of affidavits without oral testimony.

[6] The plaintiff, born on 1 January 1974, was 47 years old at the time of the accident and, is now 51 years old. She matriculated in 1994, and thereafter registered for a Secretarial Course. In 2009 she obtained a teacher's diploma, followed by an advanced Certificate in Education in 2012. At the time of the accident

¹ 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)

² Road Accident Fund v Abrahams (276/2017) [2018] ZASCA 49

she was employed as an Educator. The plaintiff had previously been involved in another motor vehicle accident.

[7] On the day in question, the plaintiff was a passenger in a Hyundai motor vehicle which was been driven by Mr. B. Sizwe. The driver of the other insured motor vehicle emerged at a high speed and collided with the Hyundai motor vehicle, which was stationed next to the road, with its hazards on, off-loading passengers. After the collision, the plaintiff was transported to the New Castle Hospital, by car.

[8] As a result of collision the plaintiff sustained a head injury with loss of consciousness and amnesia, left temporal haematoma, soft tissue injuries of the C3 fracture, thoracic fracture and dislocation of lumbar joints. The plaintiff was admitted for four days and re-admitted in August 2021 where a lumbar puncture was performed which was reported normal. She was absent from work for five months and was remunerated for this period. She then returned to her pre- accident occupation.

Quantum

[9] The expert reports, summarised below, were admitted into evidence, and are relevant to assessing the plaintiff's damages. They provide findings on the nature, extent, and long-term implications of the injuries, assisting the court in arriving at a just, equitable and fair quantum.

Orthopaedic Surgeon:

[10] Dr E.A. Mjuza examined the plaintiff on 18 June 2024. He opined the plaintiff's neck has restriction and lateral movement. She bends her thoracic and lumbar spine fully without pains or restrictions. There was an abnormal union of the C3 vertebral body upper articular facet, while the lumbar spine has normal alignment, demonstrates facet arthrosis.

Neurosurgeon

[11] Dr A. Mazwi consulted with the plaintiff on 18 June 2024 and again on 7 August 2025. He opined that she sustained loss of consciousness and amnesia,

resulting in a mild brain injury with long - term mental disturbance. The plaintiff suffered acute headache immediately post – accident, with loss of amenities of normal living and impairment of activities of daily life. He noted a 2-3% risk of epilepsy.

Clinical Psychologist

[12] Dr Maisa examined the plaintiff on 9 July 2025. He found the plaintiff presents with long-term physical and mental impairments. According to him the plaintiff suffers from mild head injury, brain contusion, neck fracture, spinal arthritis has resulted in chronic pain, poor memory, difficulty concentrating and severe headaches, emotional mood swings, decreased self-esteem, anxiety, depression and physical limitation. These emotional difficulties may result in decreased focus, motivation, and interaction.

Occupational Therapist

[13] Mr Makananisi examined the plaintiff on 19 June 2024. He found that she struggles with sitting and standing, with elevated work-hands above shoulder level and with step ladders/stairs, pushing/pulling weight, lifting or carrying weights, exercise, physical activity and running. Her physical capacity does not meet the requirements for heavy to medium work, rendering her unemployable in such work. She remains suited to light or sedentary work. Including teaching but not at her pre-accident level of performance.

Industrial Psychologist

[14] Mr. Clement Bell, assessed the plaintiff on 19 June 2024 and recorded his findings on 22 July 2025. He found pre- accident, the plaintiff's career trajectory progressed from a sewing machinist, to a secretary, to a Grade R Practitioner, and then to a teacher. She aspired to complete her Master's degree and could have advanced to head of department level, earning an amount of R346,995 to R859,332 by 55 and retirement age would be 60 to 65.

[15] Post-accident she was hospitalised for five days and she was later readmitted. She was off work for a period of about five months. She was remunerated for that period. Due to occupational limitations and the need for work accommodation, her employment prospects are curtailed. She is suited for light sedentary work and can continue teaching, but not at her pre accident level. At the time of her assessment, she remained employed as a teacher.

Actuaries

[16] Mr Namir Waisberg, the actuary, relied on the other expert reports as well as the plaintiff's salary payslips and proof of earnings from employees' tax to compile his reports dated the 25 July 2025 and 26 September 2025. Retirement age pre and post-accident is calculated at 62.5. Counsel for the Plaintiff presented a draft order relying on the report dated 25 July 2025 in the amount of R3 262, 959.00 (three million two hundred and sixty-two thousand nine hundred and fifty rand).

Legal Framework

[17] Section 17(1) of the Act obliges the Fund to compensate for loss or damages caused by the negligent driving of a motor vehicle. In this case, the driver of the insured vehicle was travelling at an excessive speed and collided with a vehicle that was stationed with its hazards on, constituting *prima facie* negligence.³ Liability has already been settled at 100% in favour of the plaintiff.

[18] The court finds that the accident directly caused the injuries sustained by the plaintiff. The hospital records and the accident report substantiates this. Authorities such as *Southern Insurance Association Ltd v Bailey NO*⁴ guide the court in assessing future loss of earnings, emphasising the use of actuarial calculations tempered by judicial discretion.

Evaluation

[19] The plaintiff's injuries were not disputed, and the opinions expressed by the various expert witnesses are admitted uncontested. I have considered the actuarial

³ Ngubane v South African Transport Services 1991(1) SA 756 (1) SA 756 (A)

⁴ 1984 (1) SA 98 (A)

reports, which provides two sets of projections. The Court accepts that actuarial evidence provides a reliable and principled method for quantifying the plaintiff's loss, consistent with the approach endorsed in *Mlotshwa v Road Accident Fund*.⁵

[20] Contingency deductions are applied, to account for the uncertainties and vicissitudes of life that may affect a claimant's future financial position.⁶ Robert Koch's guidelines suggest 5% for past loss and 15% for future loss, but Courts may adjust these figures depending on the facts.

[21] With regard to the past earnings, the plaintiff returned to her pre-accident employment with no reduction in salary. She was remunerated for the five months she was recuperating. The Court therefore finds that no actual financial loss was suffered in respect of past earnings. Furthermore, the past loss of earnings is recorded as nil, which is in accordance with the Court order dated 30 July 2025.

[22] I am satisfied that whilst the plaintiff's ability to engage in her existing work has been adversely affected, she retains residual earning potential. Her capacity to generate income is not extinguished, as she remains employed in her current job, albeit it is in a limited capacity.

[23] The future uninjured earnings, reflect the plaintiff's projected income had the accident not occurred, adjusted for career progression. A contingency of 15% is applied. This accounts for uncertainties such as potential interruptions to employment, fluctuations in promotions, and general vicissitudes.⁷

[24] The future injured earnings reflect the plaintiff's projected earning capacity considering the permanent injuries sustained in the accident. A 25% contingency is applied to recognise long-term vulnerability, reduced competitiveness in the labour market, and potential early retirement.

⁵ (53505/2016 [2025] ZAGPPHC 1019

⁶ *Road Accident Fund v Guedes* (611/04) [2006] ZASCA 19; 2006 (5) SA 583 (SCA) (20 March 2006), *Southern Insurance Association Ltd v Bailey* NO (1984) (1) (SA) 98 (A)

[25] After applying the respective contingencies, the actuarial value of the plaintiff's loss is R 1,631,148 (one million, six hundred and thirty-one thousand, one hundred and forty-eight hundred rand). I do agree that these are calculations as depicted, represents a fair and realistic measure of her loss.

Category	Income (R)	Contingency %	Contingency Amount	Adjusted income	Loss
Past Earnings (uninjured)	R1, 636,005	5%	R 81,800	R1,554,205	
Past Earnings (injured)	R1,554,205	5%	R 76,024	R1,444,452	
Past Loss					0
Future (uninjured)	R 7, 218,259	15%	R 1, 082,739	R 6,135,552	
Future (injured}	R 6,152,167	25%	R 1, 538,042	R 4,614,125	
Future Loss					R1, 521,395

[26] According to the Court order dated 30 July 2025, the claim for past and future medical expenses were postponed *sine die*. The draft order now presented repeats the postponement of past medical expenses but omits future medical expenses, which is procedurally irregular.

[27] The inflated figure of R3,262,959 (three million, forty-six thousand, two hundred and thirty rand), which improperly adds past loss of earnings to future loss, is rejected. The Court order dated 30 July 2025 reflects that the plaintiff suffered no past loss of earnings, so the only compensable loss suffered is the future loss of earnings. The actuarial calculations reflect a 5% past loss recommends and amount of R1,631,148 (one million, six hundred and thirty-one thousand, one hundred and forty-eight hundred rand).

Conclusion

[28] The Court has considered both actuarial reports. The first projected a higher quantum of R3,046,230 (three million, forty-six thousand, two hundred and thirty rand), while the latter projected R1,631,148 (one million, six hundred and thirty-one thousand, one hundred and forty-eight hundred rand). Counsel submitted a draft order for the former amount without justification as to why the court should accept the former calculations as opposed to the latter one. I am not persuaded that I should accept the former projection. Actuarial evidence is not binding but serves as an aid to judicial discretion (*Southern Insurance Association Ltd v Bailey NO*). In the exercise of that discretion, the Court prefers the latter projection, which incorporates more conservative and realistic contingency deductions consistent with the plaintiff's residual earning capacity and ongoing employment. However, applying the court order of 30 July 2025, since no past loss was suffered, the total loss of earnings is R1, 521, 395 (one million, five hundred twenty-one thousand, three hundred and ninety five rand). This figure represents a fair, just, and reasonable award in the circumstances.

[29] Finally, the requests for costs on scale B is unjustified. This was a default judgment application, not a matter of exceptional complexity.

[30] *Obiter*: The Court considers it necessary to record an observation. A draft order was presented that recycled portions of a previous order, repeated relief already granted, omitted relief previously postponed, and failed to address the existence of a second actuarial report in his heads of argument. This silence, coupled with reliance only on the more favourable report, is unbecoming. Officers of the court bear a duty of candour and fairness to assist the court fully, not selectively.

[31] The profession is reminded that draft orders must be scrutinised carefully when exercising judicial oversight, and that legal representative's duty extends beyond the interests of a client to the proper administration of justice. Careless litigation of this nature undermines confidence in the process and places unnecessary burdens on the court.

Order

[32] In the result, I make the following order:

32.1. Application in terms of Rule 38(2) is granted.

32.2. The claim in respect of liability is recorded as settled on 6 August 2024 whereby the “RAF”, is liable to compensate the plaintiff for 100% of her proven damages arising from the motor collision of 30 July 2021.

33.3. The claim for general damages is recorded as settled is in accordance with the order dated 30 July 2025 and is not before this court.

33.4. The claim for past medical and hospital expenses was recorded as being postponed *sine die* in the order dated 30 July 2025 and remains so.

33.5. The claim for past loss of earnings was recorded in order dated 30 July 2025 as “the plaintiff has no past loss of earnings.

33.6. The defendant is liable ordered to make the following payment to the plaintiff - a capital amount of R 1,631,148 (one million, six hundred thirty-one thousand, one hundred and forty-eight rand.)

33.7. The capital amount referred to in paragraph six shall be payable within one hundred and eighty (180) days of service of this Court Order into the trust account of the plaintiff’s attorneys of record with the following details:

Account Holder Name:	Ramakgwakgwa Attorneys
Bank:	Standard Bank
Account Type:	Attorneys Trust Account
Account Number:	0[...]
Branch:	Johannesburg
Branch code:	0[...]

33.8. The defendant shall pay the plaintiff’s taxed or agreed party- and- party costs on the High Court scale, such costs to include reasonable costs of all

expert reports, medico -legal reports, actuarial reports, counsel's fees, preparation and attendance at court, if any, as allowed by the Taxing Master.

33.9. No interest shall be payable on the capital amount referred to in paragraph six except in the event of default, in which case interest will accrue at a rate of 10.50% per annum calculated from the date of service of this Court Order.

33.10. If costs are not agreed, the plaintiff shall serve a notice of taxation on the defendant. Following taxation or settlement of the costs, the defendant shall make payment within thirty days (30) days.

33.11. No interest shall be payable on the costs referred to in paragraph eight, except in the event of default, in which case interest will accrue at the prescribed legal rate of 10.5% per annum, calculated from the date of taxation or agreement.

33.12. No reservation fees shall be paid to experts for the trial as the trial proceeded in terms of Rule 38(2);

33.13. There is no contingency fee agreement.

CB. BHOOLA

Acting Judge of the High Court

Gauteng Division of the High Court, Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 5 January 2026 and is handed down electronically by circulation to the parties/their legal representatives by e mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 5 January 2026.

APPEARANCES

Date of hearing: 21 October 2025

Date of judgment: 5 January 2026

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