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

CASE NO. 017706/2025

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- (1) REPORTABLE: ~~YES~~/NO
- (2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
- (3) REVISED

.....05/01/2026.....

DATE

SIGNATURE

In the matter between:

LIONEL ELIZE NENE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BHOOLA AJ,

Introduction

[1] The plaintiff Mr. Lionel Elize Nene, institutes action against the Road Accident Fund (“the RAF”) seeking damages arising from a motor vehicle collision that allegedly occurred on 11 June 2021 along the N1 Majuba pass, Volksrust, Newcastle.

[2] The relief sought against the RAF includes payment of 100% of all proven damages in favour of the plaintiff, referral of general damages to HPCSA, payment of R2 590 246.00 (two million, five hundred and ninety thousand two hundred and forty six rand) in respect of past and future loss of earnings, and an undertaking in terms of section 17(4). The claim for general damages was postponed. The only heads of damages to be determined by this Court are the plaintiff’s claim for liability, referral of general damages to HPSCA and for past and future loss of income.

[3] The summons was served on the defendant on 13 February 2025. The defendant elected to defend the matter by serving and filing its notice of intention to defend on 27 February 2025 and its plea on 25 March 2025. In doing so it placed both quantum and merits in dispute. On 5 June 2025, the court granted a compelling order for the defendant to file its discovery affidavit and attend a pre-trial conference, which was served on the same day. The defendant failed to comply, and the defence was struck out.

[4] The matter thereafter proceeded by way of default judgment in terms of Rule 32(1)(b) together with Rule 38(2) of the Uniform Rules, for evidence to be led by way of affidavits, which was granted.

Factual background

[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 and without the need for any further oral evidence.

[6] The plaintiff, born on 1 November 1982, was 38 years old at the time of the accident and is currently 41 years old. She reported that she had completed grade twelve (12), with a focus on business studies: Secretarial. Additionally, she obtained a certificate in Business Management and a certificate of competency in Office Computing Proficiency. Proof of all qualifications was admitted into evidence.

[7] Her last recorded employment was in 2009, when she resigned from the position of Administrative Clerk at Junit Farm, where she earned R900 (nine hundred rand) on a fortnightly basis. At the time of the collision she was actively seeking employment. Because of the collision, the plaintiff is unable to resume her pre-accident employment. She recuperated at home and remains unemployed.

[8] On the evening in question, Ms Nene was a passenger in a Mazda CX3 motor vehicle with registration number N[...] when it collided with a VW Polo motor vehicle with registration N[...]. The cause of the accident was the Polo driver moving into the lane of oncoming traffic while overtaking unsafely colliding with the motor vehicle in which the plaintiff was a passenger. This is corroborated by the accident report and the applicant's affidavit in submission of its claim.

[9] The plaintiff was subsequently taken to Madadeni Hospital. According to the hospital records, the plaintiff sustained a right tibia fracture and a painful left wrist. Treatment included clinical and radiological examination, closed reduction of right tibia, application of an above the knee Plaster of Paris (POP) which was later removed and pain management. She suffered severe acute pain for two weeks, subsiding over four weeks and she continues to experience chronic pain from the right leg. The x- rays taken on 12 June 2024 showed a fracture right tibia and there was no bony pathology in the right knee.

[10] Ms Nene's condition has progressively deteriorated. She experiences swelling in her right leg, difficulties standing, walking, sitting for prolonged periods, crouching and performing household chores. She struggles to lift and carry heavy objects. She

continues to experience pain, discomfort and physical functional restrictions and limitations. These impairments are likely to present significant obstacles to securing employment in competitive industries where physical strength endurance or multi-tasking are essential. On the evidence, she appears best suited to light administrative, clerical or support service roles in structured environments that provide appropriate physical accommodation.

[11] The RAF1 form, the accident report, the plaintiff's affidavit in terms of section 19(f) of the Act and hospital records were submitted to the RAF on three different occasions on 31 May 2024, 6 March 2025 and the 4 March 2025. On each of the occasions the RAF objected to the application as there was no compliance with paragraph 24(5) of the Act. The serving of the RAF form on 31 May 2024 interrupted prescription.

[12] Regarding negligence, it is trite the slightest degree of negligence suffices under section 17(1) of the Act to hold the RAF liable. The defendant's version has been struck out, leaving only the plaintiff's version before this court.

[13] The principle governing damages in South African law is *restitutio in integrum* — the injured party must, insofar as money can achieve it, be placed in the position she would have occupied had the wrongful act not occurred. Authorities such as *Southern Insurance Association Ltd v Bailey NO*¹ guide the court in assessing future loss of earnings, emphasising the use of actuarial calculations tempered by judicial discretion.

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

¹ 1984 (1) SA 98 (A)

Orthopaedic Surgeon

[15] Dr Kumbirai, examined the plaintiff on 12 June 2024, opined that she sustained right tibial fracture and an injury to the left wrist. Treatment included clinical and radiological examination, close reduction of right tibia, above the knee, application of a POP cast which was later removed, and pain management. The plaintiff's major complaints are pain in the right leg/tibia, which is exacerbated by prolonged walking and standing, lifting of heavy weights and cold weather. She has episodes of locking in the right knee. Dr Kumbirai concluded that although he calculated Ms Nene's WPI at 3%, considering the factors mentioned, the injuries have resulted in serious long- term impairment or loss of body function.

Occupational Therapist

[16] Ms. A. Mnisi evaluated Ms Nene on 13 June 2024 and compiled an updated report dated 25 April 2025. The assessment included structured interviews, collateral information, clinical observations, expert opinions, and a variety of assessment modalities. The plaintiff had a limping gait pattern. She observed uncoordinated movements when transitioning between various postures. She experienced pain in the right hip and knee. She possesses an adequate capacity for sedentary to lower ranges of medium physical occupations in the open labour market.

[17] She noted that the applicant's prior work experience consisted of semi- skilled clerical duties, but that she was unemployed at the time of the collision. She opined that the applicant retains the capacity to meet physical demands characteristic of low- range medium work up to 10 kilograms. However, owing to the accident related injuries, she is now considered a vulnerable candidate in the open labour market when compared to her none- injured peers.

[18] Ms Mnisi reported that Ms Nene will experience discomfort in the right hip and knee when executing her duties, rendering her less productive. She concluded that

sustained medium to heavy tasks will cause increased pain. She concluded that the claimant's physical capacity and her competitive participation in the open market have been diminished.

Industrial Psychologist

[19] Mr. S Mahlasela, an industrial psychologist, assessed Ms Nene's pre- and post-accident earning capacity on 13 June 2024 and 30 April 2025, considering her educational background, employment history, and the impact of the injuries sustained in the motor vehicle accident. He based his projections using the plaintiff's earning capacity of approximately R 900.00 per fortnight in 2009.

[20] Based on the collateral information and assessments, Mr. Mahlasela opined that Ms. Nene would likely have progressed in her career, re- entering the open labour market at midpoint between the lower quartile and median earnings assumptions for semi-skilled and progressing towards the median - upper quartile range.

[21] Post-accident, her participation in the open labour market has been restricted. Her working and earning capacity has been diminished, and she has remained unemployed since the accident. Her physical and cognitive impairments have severely compromised her employability as she suffers from travel related anxiety, and emotional instability resulting in isolation. She is unlikely to secure employment in a competitive market until she is eligible for a government pension grant.

Actuary

[22] The actuarial assessment by Mr Tatenda Mureriwa actuaries, was based on the opinions of the other experts and he quantified the plaintiff's total past and future loss of earnings to be in the amount of R2,059,246.00 (two million, fifty- nine thousand, two hundred and forty-six rand) before judicial adjustment for contingencies.

Evaluation

[23] Flowing from the facts, since it is uncontested that the insured driver of the Polo is the sole cause of the accident, being a passenger in a car should be awarded merits 100% in her favour. I accept that causation exists between the incident and the plaintiff's injuries sustained, and no apportionment of fault arises. The defendant therefore bears complete responsibility for the damages flowing from the accident. The accident report corroborates the plaintiff's affidavit lodged in terms of section 19(f) of the RAF Ac²t, regarding the occurrence of the collision. Furthermore, the hospital records substantiate the injuries sustained, supporting the plaintiff's version.

[24] The quantification of loss proceeds based on full liability, with contingencies applied only to reflect general and injury-specific risks, and not to diminish the defendant's accountability. This ensures that the plaintiff is compensated fairly and equitably for both past and future loss of earnings, as well as the broader impact of the injuries sustained.

[25] Before turning to the assessment of damages, it is imperative to address the defence of prescription raised in the defendant's plea. The defendant contended that the plaintiff's claim had prescribed due to alleged non-compliance with section 24(5) of the Act in relation to the lodgement of the RAF1 forms. However, the defendant's plea has been struck out for failure to comply with court orders, and accordingly the defence of prescription is no longer before this Court. However, it is prudent to mention the plaintiff lodged the claim on three separate occasions, before the claims had prescribed, thereby placing RAF in possession of the material facts of the claim. On the evidence, the claim has not prescribed, and the plaintiff's right of action remains valid and enforceable.

[26] When evaluating the damages, the plaintiff's injuries were not disputed, and the opinions expressed by the various expert witnesses are admitted uncontested. I

² Road Accident Fund Act 56 of 1996 as amended

am satisfied that, but for the accident, the plaintiff was unemployed but actively seeking work. As a result of the accident, she has been left with physical, cognitive, and emotional impairments that have materially compromised her functional abilities. These post-accident deficiencies have significantly reduced her employment prospects, making it challenging for her to secure suitable job opportunities.

[27] I am not persuaded, however, that the plaintiff is permanently unemployable. Whilst her ability to engage in work has been adversely affected, I accept that she retains a degree of residual earning potential. Her capacity to generate income is limited but not entirely extinguished.

[28] Contingency deductions are applied, to account for the uncertainties and vicissitudes of life that may affect a claimant's future financial position.³ Robert Koch's work is often used to determine the contingency deductions, typically 5% for past loss and 15% for future loss. Courts are not bound by these figures and may adjust them based on case-specific facts. Koch's "sliding scale," deducts a percentage based on age and remaining working life. For example, a common rule of thumb is a 0.5% deduction per year to retirement, resulting in a 15% deduction for a person between 30 – 45 years. I intend to deviate from that considering all the risk factors and the plaintiff's current employability status.

[29] With regard to quantum and loss of earnings, the plaintiff's actuary calculated the present value of total loss of earnings R2 059, 246.00 (one million, and fifty-nine thousand, two hundred and forty-six rand) after contingencies and using a past contingency of 5% and future contingency of 15% as an illustration. According to Koch's Quantum Yearbook⁴, a pre-morbid contingency of 15% is the baseline contingency guideline for individuals aged 30–45.

³ 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)

⁴ The Quantum Yearbook, by Robert J Koch, 2024, page 125

[30] In the circumstances, the plaintiff's projected income figures for the pre- and post-accident scenarios remain the same. However, a higher than usual contingency deduction is justified. For the pre accident scenario, an elevated contingency is warranted since there was no collateral proof of the plaintiff's income earned such as salary advices, or bank statements. For the post-accident scenario income, an even greater deduction is appropriate to reflect the plaintiff's diminished competitiveness, reduced functional capacity, and uncertainty surrounding residual earning potential. Although the plaintiff is not permanently unemployable, her ability to secure and sustain gainful employment is materially constrained. Regarding future injured earnings, I have considered the plaintiff's diminished employability, the socio-economic risks inherent in the labour market, prolonged unemployment, and expert opinions confirming serious orthopaedic injuries with lasting functional impairments. She cannot resume her pre -accident occupation and t she is likely to remain unemployed until she is legible for government grant.

[31] The actuary applied a past contingency of 5% and a future contingency of 15%, suggesting a total loss of earnings of R2059,246.00. 00 (one million, and fifty-nine thousand, two hundred and forty-six rand).

[32] However, Counsel for the plaintiff submitted that a past contingency of 15% and a future contingency of 45% should be applied, yielding a total loss of earnings of R1 195 837.00 (one million one hundred and ninety-five thousand eight hundred and thirty-seven rand). I am not persuaded that these contingencies are justified considering the plaintiff's prolonged periods of unemployment. I am satisfied that a past contingency of 20% is appropriate, given the absence of proof of employment and earnings. I have also considered the plaintiff's serious orthopaedic impairments, diminished employability, and the prevailing economic conditions. I am of the view that the contingencies should be calculated as follows past loss of earnings 20% contingency for future 50% is just, equitable and fair. Consequently, the plaintiff's past and future loss of income is calculated as follows:

Category	Pre- accident	Post-accident	Contingency Amount	Loss
Past income	210 840.00	0	(20%): 42,168.00	168 672.00
Future Income	1 848 406.00	0	(50%): 924 203.00	924 203.00
Total loss				R 1 092 875

Order

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

33.1. The defendant is ordered to compensate the plaintiff 100% of her proven damages.

33.2. The issue relative to the general damages is postponed *sine die* and referred to the Health Professions Council of South Africa (HPSCA).

33.3. The defendant is ordered to make the following payment to the plaintiff a capital amount of R 1,092, 857.00 (one million, ninety two thousand, eight hundred and fifty seven rand) in respect of past and future loss of earnings.

33.4. The defendant shall furnish the plaintiff with an undertaking as envisaged in Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, for 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 to or supplying of

goods to her arising out of the injuries sustained in the motor vehicle collision which occurred on the 11 June 2021, after such costs have been incurred and upon proof thereof.

33.5. The capital amount referred to in paragraph three is payable within one hundred and eighty (180) days from service of this Court Order into the trust account of the plaintiff's attorneys of record with the following details:

Account Holder Name:	Mukovhanama Tshilidzi Attorneys
Bank:	First National Bank
Branch name:	Woodbridge Kempton Park
Code:	205609

33.6. No interest will be payable in respect of the capital amount referred to in paragraph three except in the event of default, in which case interest will accrue at a rate of 10,5% per annum from the date of service of this Court Order.

33.7. 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 expert reports, medico -legal reports, actuarial calculations, and counsel's fees, together with costs of preparation and attendance at court, on 24th October 2025.

33.8. If costs are not agreed, the plaintiff shall serve a notice of taxation on the defendant, and following taxation or settlement of the costs, the defendant shall make payment within one hundred and eight (180) days.

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

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

33.11. The parties have entered into a valid 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: 05 January 2026

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For the defendant: No appearance