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

CASE NO. 2024/057378

DELETE WHICHEVER IS NOT APPLICABLE

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

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

DATE

SIGNATURE

In the matter between:

KAKOTA SHEDREK

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BHoola AJ,

Introduction

[1] The plaintiff, Mr Kakota Shadreck, institutes action against the Road Accident Fund (“RAF”) seeking damages arising from a motor vehicle collision which occurred on 15 August 2022 near Van der Bijl Avenue and Nanyuki Road, Sunninghill, Sandton, Gauteng Province. At the time of the collision, the plaintiff was a passenger in the motor vehicle.

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[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 27 May 2024. The defendant served a notice of intention to defend, via email, on 5 June 2024 but failed to plead timeously. Despite a notice of bar being served on 16 July 2024, the defendant did not plead and is accordingly barred from doing so in terms of Rule 26 of the Uniform Rules.

[4] On 9 December 2024, the merits was settled 100% in favour of plaintiff's proven or agreed damages.

[5] The matter proceeds by way of default judgment in terms of Rule 31(2)(b), read with Rule 38(2) of the Uniform Rules, to proceed by way of affidavits, was served on the defendant on the 16 October 2025, and is accordingly granted.¹

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Factual background

Merits

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)

[5] The merits have become settled and it was ordered that the defendants is 100% liable for the plaintiff's proven or agreed damages. factual account of how the motor collision occurred was not contested.

Quantum

[6] 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.

[7] The plaintiff, born on 2 February 1989, was 33 years old at the time of the accident and, is now 35 years old. He is a Malawian citizen, where eight years of education is compulsory. At the time of the collision he worked as a gardener and a handyman, renovating houses, painting, and tiling. After the collision re never returned to gainful employment.

[8] On the day in question, at approximately 08h10, the plaintiff was riding his bicycle when he was hit by an unknown motor vehicle who was trying to overtake another motor vehicle, at a robot intersection, as the plaintiff was manoeuvring a right turn. off-loading passengers. After the collision, the plaintiff was transported by ambulance to Tembisa Hospital, where he was admitted for surgery which was conducted on 30 August 2022. He was discharged on 19 September 2022.

[9] As a result of collision the plaintiff sustained a Trans scaphoid peri lunate fracture dislocation of the right wrist. This led to wrist instability where the dislocated scaphoid bone pressed on the median nerve.

Quantum

[10] 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:

[11] Professor C.T. Frey examined the plaintiff on 28 February 2024. He opined the injury involved a dislocated lunate bone pressing on the median nerve, leading to wrist instability where the dislocated scaphoid bone caused a break in the proximal row at carpal bones, resulting in dorsal intercalated segment instability.

Occupational Therapist

[12] Mr R Hunter examined the plaintiff on 12 June 2025. He found that he displayed limitations in the right wrist active range motion due to pain and the right forearm muscles were slightly weaker. His right-hand grip strength was reduced, and slight atrophy was noted in the right hand. He displayed adequate precision grasps in the right hand but reported pain with prolonged use.

[13] The main area of dysfunction was dynamic strength and manual dexterity, resulting in right wrist instability and pain. His physical capacity remains best suited to work falling in the light category and he is precluded from medium, heavy and very heavy work. work, rendering her unemployable in such work. Gardening, painting and tiling remained unskilled work and will fall within the medium category work depending on the lifting demands and hours. He remains suited to light or sedentary work and would be limited in his use of his right dominant hand for tasks.

Industrial Psychologist

[14] Dr J de Beer, assessed the plaintiff on 23 September 2025 and recorded his findings in a report. He found pre- accident, the plaintiff's career trajectory from 2008

to 2021, progressed from gardening, building houses, painting, tiling, and drawing house and garden plans part -time, earning an amount of R 91 520 annually. But for the accident, the plaintiff would have continued working as an independent contractor, on a casual basis, engaged in gardening and handyman work, and diversified his work to include semi-skilled, higher- paying work, such as tiling, painting, building maintenance, and renovation jobs. He would have earned R166 000 per annum as his career ceiling, up to retirement age of 65. No confirmation could be obtained in respect of other work or earnings.

[15] Post-accident the plaintiff has not returned to work after the injury. He could not find work as an independent contractor. His post- accident earnings are projected to remain within lower quartile to median range for unskilled workers in the informal sector. His earnings would be R40 400 per annum upon retirement.

Actuaries

[16] Mr N. Waisberg, the actuary, relied on the other expert reports and performed calculations in respect of the plaintiff's loss of earnings to compile his reports dated the 6 October 2025. The only form of proof of earnings was by way of affidavit dated 25 September 2025. Retirement age pre and post-accident is calculated at 65. For the past loss, a contingency of 5% pre and post morbid was recommended and for future loss but for the accident a 15% contingency was recommended and having regard to the accident a contingency of 45% was recommended. Applying those said contingencies, a total loss of earnings in the amount of R2 909, 707 was recommended. (two million nine hundred and nine thousand, seven hundred and seven 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.² 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. This is evident from the plaintiff's admission into hospital for a period of five days and her readmission to hospital, and her prolonged recovery period of five months. The expert medical testimony confirms the causal connection between the accident trauma and the sequelae. The hospital records and the accident report also substantiate this. Authorities such as *Southern Insurance Association Ltd v Bailey NO*³ 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 are not disputed, and the opinions expressed by the various expert witnesses are admitted uncontested. I have considered the actuarial reports. 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*.⁴

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

² Ngubane v South African Transport Services 1991(1) SA 756 (1) SA 756 (A)

³ 1984 (1) SA 98 (A)

⁴ (53505/2016 [2025] ZAGPPHC 1019

⁵ 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)

[21] With regard to the loss of earnings, the plaintiff did not return to his employment. Additionally, the plaintiff is a foreign national from Malawi. It was unclear whether the plaintiff was in possession of a work permit. However, the absence of a work permit does not disqualify the plaintiff from receiving compensation. In such instances compensation should be subjected to higher contingency deduction at the percentages to be determined together with quantum, as was applied in *Rumbidzai v Road Accident Fund*.⁶ Counsel for the plaintiff suggested that in the current matter, the contingency for past loss of earnings shall be subjected to a 25% contingency deduction, 35% in respect of but for the accident future loss of earnings contingencies and 25% in respect of having regard to the accident future loss of earnings. Contingencies must reflect increased uncertainty and risk post-morbid. An injured contingency lower than uninjured is not supported by the evidence.

[22] I am satisfied that whilst the plaintiff's ability to engage in his existing work has been adversely affected, he retains residual earning potential. His capacity to generate income is not extinguished, but limited to light sedentary work, albeit it is in a limited capacity.

[23] Taking into account the plaintiff's age, nature of his pre- accident employment, the absence of formal proof of income, and his restriction post- accident to light sedentary work for which he has no established work history, the contingencies recommended by counsel is fair and reasonable as a higher than normal contingency is applied in such circumstances. According to Counsel, The contingencies to be applied are past loss of earnings is 25%, future loss of earnings (uninjured) is 35% and future loss of earnings (injured) 25%. This accounts for uncertainties such as potential interruptions to employment, fluctuations in

⁶ [2015] ZAGPPHC 1071

promotions, and general vicissitudes.⁷ These contingencies as suggested is not consistent with the evidence before the court.

[24] The future injured earnings reflect the plaintiff's projected earning capacity considering the permanent injuries sustained in the accident cannot be less than the uninjured considering long-term vulnerability, reduced competitiveness in the labour market, and potential long-term unemployment. Considering Counsels suggestions I am satisfied with the past and future injured contingencies but not the future injured contingencies. Therefore, the contingencies to be applied are, past 25%, future uninjured 35% and future injured is 45%.

[25] After applying the respective contingencies, the actuarial value of the plaintiff's loss as submitted by counsel is R 2, 130, 854 (two million, one hundred thirty thousand, eight hundred and fifty- four rand) This represents a fair and justified measure of his loss of earnings.

Category	Income (R)	Contingency %	Contingency Amount	Adjusted income	Loss
Past Earnings (uninjured)	R399,184	25%	R 99, 796	R 299,388	
Past Earnings (injured)	0	0	0	0	
Past Loss					R299,388
Future (uninjured)	R 3, 495,087	35%	R 1, 223,280 1,0485,261	R 2,271,807	
Future (injured)	R 800,620	45%	R 360,279	R 440, 341	R1, 831,466
Future Loss					R2. 130,854

[26] Finally, the requests for costs on scale B is unjustified. This was a default judgment application, not a matter of exceptional complexity. There is no justification for costs on scale B,

Order

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

27.1 Application in terms of Rule 38(2) and section 3(1)(c) of the Law of Evidence Amendment Act is granted.

27.2 In terms of Uniform Rule 33(4), the question of the plaintiff's claim for general damages is separated from all other issues and the determination hereof is postponed *sine die*.

27.3 The defendant is ordered to make the following payment to the plaintiff - a capital amount of R 2, 130, 854 (two million, one hundred thirty thousand, eight hundred and fifty- four rand).

27.4. 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 in a hospital or nursing home or treatment of or rendering of a service, or supplying of goods to him arising from the injuries sustained in the motor vehicle collision of 15 August 2022, after such costs have been incurred and upon proof thereof.

27.5. The capital amount 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:	Leon JJ van Rensburg
Bank:	ABSA Bank
Account Type:	Attorneys Trust Account
Account Number:	2[...]
Branch:	President, Germiston
Branch code:	334 542

27.6. The defendant shall pay the plaintiff's taxed or agreed party- and- party costs on the High Court scale A, 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.

27.7. No interest shall be payable on the capital amount except in the event of default, in which case interest will accrue at the rate of *mora* interest, calculated from the 15th calendar date from the date of service of this Court Order.

27.8. 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 fourteen days (14) calendar days.

27.9. No interest shall be payable on the costs, except in the event of default, in which case interest will accrue at *mora* interest rate, calculated from the 15th calendar day after taxation or agreement.

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

27.11 The plaintiff and his attorneys 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 05 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 05 January 2026.

APPEARANCES

Date of hearing: 24 October 2025

Date of judgment: 05 January 2026

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For the defendant: No appearance