

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

CASE NO. 2022/14857

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 05/01/2026

SIGNATURE:

In the matter between:

SIBEKO SELLO PETRUS

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BHOOLA AJ,

Introduction

[1] The plaintiff, Mr Petrus Sello Sibeko, institutes action against the Road Accident Fund (RAF) seeking damages arising from a motor vehicle collision that allegedly occurred on 6 March 2021 along R553 Road, next to extension 12, Vanderbijlpark, Johannesburg.

[2] The relief sought against the RAF includes:

- 2.1 payment of past hospital expenses in the sum of R1000.00 (one thousand rand) and future medical/ hospital expenses,
- 2.2 an undertaking for future medical/hospital expenses in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 (the Act),
- 2.3 estimated compensation for past loss of earnings in the amount of R 169 495,
- 2.4 estimated future loss of earning capacity in the amount of R895,741.00 and,
- 2.5 general damages in the sum of R600 000,00.

[3] The claim for general damages has been postponed. The only heads of damages to be determined by this Court are the plaintiff's claim for liability and for past and future loss of income.

[4] The summons was served on the defendant on 16 May 2022. The defendant elected to defend the matter by serving and filing a notice of intention to defend on 9 June 2022. However, the defendant failed to file its plea timeously. This led to the defendant being barred on 24 June 2022. Despite being barred, there was no plea was forthcoming from the defendant.

[5] The matter proceeded by way of default judgment in terms of Rule 32(1)(b), read with Rule 38(2) of the Uniform Rules for evidence to be led by affidavits. Since the defendant was barred, the plaintiff was required to prove his claim on both the merits and quantum.

Factual background

[6] 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.

[7] The plaintiff, born on 6 September 1984, was 36 years old at the time of the accident and is currently 39 years old. He reported his highest qualification to be grade ten (10). At the time of the collision, he was employed as a general worker – a construction worker at Martins Concrete Products/ Rogans Concrete products, earning approximately R 5770.84 per month. The experts based their calculations on an approximate earnings of R4000.00 per month. His employment was physically demanding and involved prolonged standing, frequent walking, bending, lifting and carrying of heavy objects.

[8] On the evening in question, Mr Sibeko was crossing the road at approximately 18h00, when the collision occurred. He recalled having been knocked down by a car from behind while walking in a pedestrian lane. The driver of the insured motor vehicle fled the scene. He reported not to have lost consciousness and was subsequently taken to Sebokeng Hospital where he was admitted for approximately one month. He was discharged with a walking frame which was used for approximately three weeks. During the period he was hospitalised, he was remunerated and did not suffer any past loss.

[9] As a result of the motor collision the plaintiff sustained the following injuries: a left tibial segment fracture, multiple abrasions of the left lower limbs, with loss of sensation and movement of toes, poor balance on both lower limbs, lip laceration and general body pains. During his period of hospitalisation, he received treatment from medical experts and underwent an operation in the form of left suprapatellar tibial nail, issued with elbow crutches for mobility. The x- rays indicate an intramedullary pin in the left tibia. Proximally, there is no complication, but slight irregularity in the tibial plateau especially on the medial side. Distally the transverse screws go into syndesmosis between the tibia and fibula, which can cause the ankle joint synovitis and persistent pain. Mr. Sibeko's condition has progressively deteriorated. He struggles to lift and carry heavy objects due to ongoing leg pain on his left knee and ankle. His left knee tends to swell, and he wears a knee brace to assist with the swelling and instability.

[10] 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 in 2021.

[11] Regarding negligence, it is trite the slightest degree of negligence suffices to satisfy the requirements of negligence under section 17(1) of the Act and consequently to hold the RAF accountable and liable. The defendant has not placed any version before this court to challenge the plaintiff's contention that he was a pedestrian who was a victim of a hit- and - run motor collision caused by the insured motor vehicle.

[12] 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 he 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.

[13] The expert reports, which are 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 for damages.

Orthopaedic Surgeon

[14] Dr J. Breytenbach examined Mr Sibeko on 25 May 2023 in relation to the injuries he sustained during the motor collision. His diagnosis included a head injury, a healed double fracture of the left tibia with good alignment, but 1cm shortening of the left leg. The internal fixation causes pressure, pain and surgical scarring. The left knee shows intra-articular cartilage damage with pain and loss of movement.

[15] Dr Breytenbach concluded that Mr Sibeko's residual physical ability falls within the "unable to perform even sedentary work" category. He does not meet the physical requirements of his job, which fall in the heavy physical demand level. His injuries have reduced his capacity to engage in manual occupations with the same

¹ 1984 (1) SA 98 (A)

ease and productivity as he could before the accident, as well as his overall daily functioning, given his chronic pain.

Occupational Therapist

[16] Ms. C. Sivhabu evaluated Mr Sibeko on 18 April 2024. The assessment included structured interviews, direct observation, clinical judgment and standardised functional tests. The plaintiff was unable to perform even sedentary-level work due to severe pain in the left lower limb and moderate to severe functional deviations which resulted in functional limitations.

[17] Ms Sivhabu reported that Mr Sibeko exhibited severe pain of the left lower limb and moderate to severe deviations. He has suffered a decline in physical function and loss of workability. His overall level of work falls within an “unable to perform even sedentary level of work range”. The report concluded that with rehabilitation and psychosocial intervention, he may be able to experience minimisation of his pain and deviations with partial restoration of function. However, he will never be able to return to the open labour market to assume a job within his area of experience.

Industrial Psychologist

[18] Mr. Sebastian Clifton, an industrial psychologist, assessed Mr. Sibeko’s pre- and post-accident earning capacity, considering his 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 4 000.00 per month.

[19] Based on the collateral information, and the occupational and psychological assessments, Mr. Clifton opined that Mr. Sibeko would likely have progressed in his career, gaining enough exposure and experience to move from his pre- accident earnings towards the median to higher end of the relevant market-related salary range for an unskilled worker.

[20] Post-accident, his participation in the open labour market has been restricted. His working and earning capabilities have been diminished, and he has remained unemployed since the accident. His physical and cognitive impairments have severely compromised his employability. He will struggle to secure work and could be expected to earn towards the lower end of the relevant market related salary range for unskilled workers.

[21] He is now considered uncompetitive in the open labour market, even in positions requiring minimal skill or physical effort. His chronic pain, emotional instability, cognitive deficits, and reduced physical ability significantly limit his ability to obtain or maintain employment. He may find it difficult to maintain work and generate meaningful earnings on a consistent basis.

[22] The actuarial assessment from Tsebo actuaries, which was done: by Karidza and Miya, was based on the opinions of the other experts. They quantified the plaintiff's total past and future loss of earnings at R1,065,236.00 (One million, sixty-five thousand, two hundred and thirty-six rand) before judicial adjustment of contingencies.

Evaluation

[23] The merits of the matter have been fully established, with liability determined at 100% in favour of the plaintiff. 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 occurrence of the collision, and the hospital records substantiates the injuries sustained, supporting the plaintiff's version.

[24] The Court notes that while the plaintiff alleges the collision occurred on 6 March 2021 and that he was conveyed by ambulance to hospital immediately thereafter, the hospital records reflect an admission date of 7 March 2021. I am satisfied that this discrepancy is not material, as hospital records often reflect the formal administrative admission date rather than the precise time of arrival. There has been substantial compliance with the medical records which confirm injuries

consistent with the plaintiff's account. This aligns with the approach adopted in *Road Accident Fund v Kerridge*² and *Ntandoyenkosi v RAF*³, where minor inconsistencies of this nature do not undermine the credibility of the plaintiff's version where the core facts are corroborated.

[25] 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.

[26] Having considered the plaintiff's account of the accident, the Court is satisfied that the insured driver was negligent. The evidence establishes negligence on the part of the insured driver who was undeniably at least 1% negligent regarding the accident.⁴ I am satisfied that the defendant is 100% liable for damages suffered by the plaintiff as a result of the motor vehicle accident.

[27] When evaluating the damages, the plaintiff's injuries were not disputed, and the opinions expressed by the various expert witnesses are admitted uncontested. I am satisfied that, but for the accident, Mr Sibeko would have continued working as a construction worker at Martins Concrete Products or obtained similar employment elsewhere. As a result of the accident, however, he has been left with physical, cognitive, and emotional impairments that have materially compromised his functional abilities. These deficiencies have significantly reduced his employment prospects and diminished his earning capacity as he is no longer able to compete equally with his peers in the open labour market.

[28] I am not persuaded, however, that Mr. Sibeko is permanently unemployable. Whilst his ability to engage in work has been adversely affected, he retains a degree

² (1024/2017) [2018] ZASCA 151

³ (2023/116432) [2025] ZAGPJHC 466

⁴ See "Van der Walt and Midgley and Cases" Vol 1 par 96, Cooper: Delictual liability in motor law; *Kabini v RAF* (26209/2018) [2020] ZAGPPHC 100 (19 February 2020) at para 21.

of residual earning potential. His capacity to generate income is limited but not entirely extinguished.

[29] 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 work is often used to determine the contingency deductions, typically 5% for past loss and 15% for future loss. Courts are however not bound by these figures and may adjust them based on the specific facts of the case. Koch "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 this, considering the plaintiff's risk factors and current employability status.

[30] With regard to quantum and loss of earnings, the plaintiff's actuary calculated the present value of total loss of earnings R1 065 236.00 (one million, and two hundred and sixty- five thousand two hundred, sixty-five thousand, two hundred and thirty six rand) using a past contingency of 5% and future contingencies of 10% and 35%. According to Koch's Quantum Yearbook⁶, a pre- morbid contingency of 15% is the baseline contingency guideline for individuals aged 30–45.

[31] 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 due to the fluctuating socio-economic risks inherent in the labour market, particularly for plaintiff without tertiary education and employed in a physically intensive role. Furthermore, the grade ten certificate was never produced to any of the experts. For the post-accident scenario, an even greater deduction is appropriate to reflect the plaintiff's diminished competitiveness, reduced functional capacity, and the uncertainty surrounding his residual earning potential. Although Mr Sibeko is not permanently unemployable, his ability to secure and sustain gainful employment is

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)

⁶ The Quantum Yearbook, by Robert J Koch, 2024, page 125

materially constrained. The higher post-accident contingency appropriately accounts for this reality.

Conclusion

[32] The actuary has applied a 10% contingency to the plaintiff's future uninjured earnings, and a 35% to future injured earnings. I am not persuaded that these contingencies are justified. I am satisfied with the past contingency of 5% as the past is relatively certain. I have considered the plaintiff's serious orthopaedic impairments, limited education of matric, diminished employability at the lower end of unskilled work, as well as no grade ten certificate was produced, or any bank statements and I find that a 20% contingency for pre-accident (uninjured) earnings and 35% post-accident (injured) earnings is just, equitable and fair. Consequently, the plaintiff's past and future loss of income is calculated as follows:

Category	Income (R)	Contingency %	Contingency amount	Adjusted income
Past (uninjured)	178,416.00	5%	8,920.80	169,495.20
Future (uninjured)	1 337,728.00	20%	267,545,60	1,070,182,40
Future injured	474,175.00	35%	165,961,25	308,213.75
Future loss (net difference)				761, 968.65
Total loss (past and future)				931,643.85

Order

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

33.1. The application in terms of Rule 38(2) is granted.

33.2. The defendant is ordered to compensate the plaintiff 100% of his proven damages.

33.3. The defendant is ordered to make the following payment to the plaintiff a capital amount of R 931,643.85 (nine hundred and thirty-one thousand, six hundred and forty-three rand and eighty-five cent) in respect of past and future loss of income.

33.4. The issue relative to the general damages is postponed *sine die*

33.5. 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, treatment of or rendering of a services, or goods to her arising from the injuries sustained in the motor vehicle collision of 6 March 2021, after such costs have been incurred and upon proof thereof.

33.6 The total capital amount referred to in paragraph 33.3 above is payable within 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: Mkwanzazi MI & Associates Attorneys Inc

Bank: FNB

Account Type: Attorneys Trust Account

Account Number: 6[...]

Branch code 210554

REF: Ms. K Nkadimeng /mva / 3616/21

33.7. No interest will be payable in respect of the capital amount referred to in paragraph 2 above 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.

33.8. 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 calculations, and counsel's fees, together with costs of preparation and attendance at court, if any.

33.9. 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 (14) days.

33.10. No interest will be payable on the costs referred to in paragraph seven, 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.

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

33.12. The parties have entered into a 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: 21 October 2025

Date of judgment: 05 January 2026

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For the defendant: No appearance