

REPUBLIC OF SOUTH AFRICA



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

Case No: 2021/30859

DELETE WHICHEVER IS NOT APPLICABLE	
REPORTABLE: NO	
OF INTEREST TO OTHER JUDGES: NO	
REVISED: YES	
<u>22/1/2026</u>	
DATE	SIGNATURE

IN THE MATTER BETWEEN:

MASHELE, HORISANI DON

PLAINTIFF

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

MOSTERT AJ

1. In this matter I handed down a Judgment on the 13th of October 2025 dismissing the Plaintiff's claim for loss of earnings and earnings potential.
2. The Plaintiff filed an application for leave to appeal. The most important points of the application for leave to appeal were the following:
 - 2.1 No costs were awarded in favour of the Plaintiff for appearance in the RAF Default Court for the week of 2 September 2025.
 - 2.2 The Court granted an application in terms of Rule 38(2) therefore admitting into evidence affidavits deposed to by the Plaintiff's experts in the matter, meaning that the court was bound to accept the opinions of the experts.
 - 2.3 The Court failed to understand the roll of the actuary.
 - 2.4 The Court ignored the admitted evidence of the Plaintiff's experts and did not understand the argument made in respect of the contingency deductions.
 - 2.5. There is a reasonable prospect that a different Court will come to a different conclusion.
3. For a number of reasons I do not agree that the Plaintiff's submissions are sound.
4. The fact that an application in terms of Rule 38(2) was granted does not mean that a Court is duty bound to accept the evidence of a particular

witness. All that such application being granted means is that it is not necessary for a particular litigant to call such witness to give evidence viva voce, the witness's evidence is evaluated purely on affidavit. It is still for the court to decide whether to accept the opinion expressed by the witness or not.

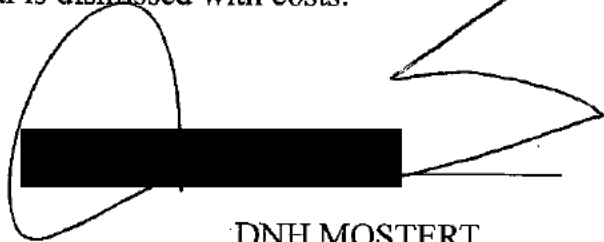
5. The function of the actuary in motor vehicle collision matters is to place contingencies before a court as to what reduction or increase needs to be applied to losses that the victim of a motor vehicle collision personal injury has suffered. He deals with complicated mathematical calculations. Invariably the actuary bases his calculation on the opinion or factual conclusions of other experts. The court is not bound by the calculations that the actuary provides. See Visser & Potgieter Law of Damages First Edition p 367. See also Legal Ins v Botes 1963 (1) SA 608 A. The Court is entitled and in fact duty-bound to evaluate the conclusions of the actuary.
6. In the instant case the Plaintiff has failed to prove causation, namely failed to prove that the accident in which he suffered injury to his two wrists caused the amount that he claimed for future loss of income. At the time of the accident the Plaintiff had a successful career at the bank. The evidence of Talmud does not establish that in his farming business the Plaintiff suffered financial damages. The "but for" test that is frequently applied in delictual matters was not satisfied.
7. As far as costs are concerned the Plaintiff is not without recourse. The only cost that was not allowed was the Plaintiff's costs for appearances in the RAF Default Court for the week 2 September 2025. All the other expenses

incurred by the Plaintiff are still alive insofar as he incurred such costs to pursue his claim for general damages.

8. The test for whether leave to appeal should be granted is set out in Section 17(1)(a)(i) of the Superior Courts Act, 10 of 2013 namely whether there is a prospect of another court coming to a different conclusion, ie whether there exist a reasonable prospect of success. I am not convinced that there is a reasonable prospect that a different court will come to a different conclusion.

ORDER

9. The application for leave to appeal is dismissed with costs.

A handwritten signature in black ink, consisting of a large loop on the left and a sharp, angular stroke on the right, positioned over a black rectangular redaction box.

DNH MOSTERT
ACTING JUDGE OF THE
HIGH COURT
JOHANNESBURG

This Judgment is handed down electronically by circulation to the Plaintiff's Legal Representative and the Defendant by email, publication on Case Lines. The date for the handing down is deemed 22 January 2026 .

Date of appearance: 27 November 2025

Date Judgment delivered: 22 January 2026

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Appearances

For the Plaintiff: Adv N Makopo

Instructed by: Levin Tatanis Inc

For the Defendant: Ms Booyens (RAF State Attorney)