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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable

Case no: 6210/2020

In the matter between

DAVIN GROENEWALD

PLAINTIFF

And

ROAD ACCIDENT FUND

RESPONDENT

Neutral citation: *Groenewald v Road Accident Fund* (6210/2020) [2026] ZAFSHC 18 (22 January 2026)

Coram: MHLAMBI J

Heard: 26, 27 and 29 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 09h30 on Thursday, 22 January 2026.

Summary: Default judgment – loss of earning capacity – apportionment of damages – draft order.

ORDER

- 1 The defendant shall pay 90% of the plaintiff's proven or agreed damages.
2. The defendant shall pay to the plaintiff the net (after apportionment) capital amount of R4 353 273.00 (four million three hundred and fifty-three thousand two hundred and seventy-three rand) within 180 (one hundred and eighty) days hereof, in respect of the Plaintiffs claim against the Defendant for the following heads of damages and calculated as follows:

2.1 Past Hospital and medical expenses R126 215.00 (net)

2.1.1 R140 238.89 less (R14 023.89)

2.2 Future loss of earnings/earning capacity R 4 227 058.00 (net)

2.2.1 After contingencies, apportionment and capping

2.3 Total R4 353 273.00 (four million three hundred and fifty-three thousand two hundred and seventy-three rand) (net).

3 In the event of the aforesaid amount not being paid on 180 days from date of this order, the defendant shall be liable for interest on the amount at the prevailing interest rate, calculated from the 15th calendar day after the date of this order to date of payment in line with prevailing legislation.

4 The defendant shall furnish the plaintiff with an undertaking in terms of s 17(4)(a) of Act 56 of 1996 for payment of 90% of the costs of future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the plaintiff resulting from a motor vehicle accident on 25 October 2020, to compensate the plaintiff in respect of the said costs after the costs have been incurred and upon proof thereof.

5 The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale in respect of liability and quantum, up to and including 5 September 2025, and notwithstanding, and over and above the costs referred to in paragraph 5.2 below, subject thereto that:

5.1 In the event that the costs are not agreed:

5.1.1 The plaintiff shall serve a notice of taxation on the defendant's attorney of record;

5.1.2 The plaintiff shall allow the defendant 180 (one hundred and eighty) days from date of allocatur to make payment of the taxed costs; and

5.1.3 Should payment not be effected on 180 (one hundred and eighty) days from date of allocatur, the plaintiff will be entitled to recover interest at the prevailing interest rate on the taxed or agreed costs from 15 (fifteen) days from date of allocatur to date of final payment.

5.2 Such costs shall include, as allowed by the Taxing Master:

5.2.1 The costs incurred in obtaining payment of the amounts mentioned in paras 2 and 5 above;

5.2.2 The full costs of and consequent to the appointment of counsel, on Scale A, in respect of the preparation and reasonable attendance fee for attending the Case Management Meeting held on 29 January 2024;

5.2.3 The full costs of and consequent to the appointment of counsel, on Scale C, in respect of but not limited to the following:

5.2.3.1 Attending trial on 26 August 2025, 27 August 2025, 29 August 2025, and 5 September 2025, inclusive of preparation for trial and day fees;

5.2.3.2 The drafting of heads of argument, prepared by the direction of the court.

5.2.4 The costs of all medico-legal, radiological, MR, sonar, pathologist, actuarial and addendum reports and/ or forms obtained, as well as such reports and/ or forms furnished to the defendant and/or its attorneys, as well as all reports and/or forms in their possession and all reports and/or forms contained in the plaintiff's bundles, including, but not limited to the following:

5.2.4.1 Dr Hoffmann (plastic surgeon)

5.2.4.2 Dr Barlin (Orthopaedic surgeon)

5.2.4.3 Drs Van Dyk and Partners (radiologists)

5.2.4.4 Dr Bounvou-Poati (neurosurgeon)

5.2.4.5 Ms Rughoo (neuropsychologist)

5.2.4.6 Dr Naicker (educational psychologist)

5.2.4.7 Ms Hassim (occupational therapist)

5.2.4.8 Mr Rosen (industrial psychologist)

5.2.4.9 Mr Kambaran (actuary)

5.2.5 The reasonable and taxable preparation, qualifying, reservation, and travelling fees, if any, for trial in such amounts as allowed by the Taxing Master, of the below

experts:

5.2.5.1 Dr Barlin (orthopaedic surgeon)

5.2.5.2 Dr Bounge-Poati (neurosurgeon)

5.2.5.3 Ms Rughoo (neuropsychologist)

5.2.5.4 Dr Naicker (educational psychologist)

5.2.5.5 Ms Hassim (occupational therapist)

5.2.5.6 Mr Rosen (industrial psychologist)

5.2.5.7 Mr Kambaran (actuary)

5.2.6 The reasonable costs incurred by and on behalf of the plaintiff in attending the medico-legal examinations of his experts;

5.2.7 The costs of and consequent to the plaintiff's trial bundles and witness bundles, including the costs of 5 (five) copies thereof;

5.2.8 The costs of renting a projector and white screen for use during trial on 26 August 2025;

5.2.9 The costs of the interpreter, Mr Mnweba, engaged by the plaintiff for trial on 26, 27 and 29 August 2025

6 The amounts referred to in paras 2 and 5 will be paid to the plaintiff's attorneys, A Wolmarans Incorporated, by direct transfer into their trust account, details of which are the following:

NAME OF ACCOUNT HOLDER: A WOLMARANS INC

NAME OF BANK & BRANCH: ABSA BANK, NORTHCLIFF

ACCOUNT NUMBER: 4[...]

BRANCH CODE: 632 005

TYPE OF ACCOUNT: CHEQUE (TRUST)

REFERENCE: MR COETZEE/ MAT14052

JUDGMENT

Mhlambi J

[1] The plaintiff sued the defendant for damages arising from a motorcycle collision on 25 October 2020. The merits were settled on a 90%/10% apportionment in favor of the plaintiff. The plaintiff applied and was granted an order under rule 38(2) to present witnesses' and experts' evidence by affidavit. The plaintiff claims net amounts (after apportionment) of R6 348 349.00 for loss of earnings or earning capacity and R126 215.00 for past hospital and medical expenses. Having perused the documents and listened to the oral submissions, I am satisfied that the plaintiff proved the claim for past hospital and medical expenses in the amount of R126 215.00.

[2] In addition to the expert reports and affidavits, the plaintiff led oral evidence from Mr JP Bester, a sports administrator at the Central University of Technology (CUT); the actuary, Mr Nilen Kambarran; and the plaintiff in their claim for future loss of earnings and interference with earning capacity. Mr Bester confirmed his affidavit that stated that:

'2. Davin Groenewald was offered a rugby sports bursary in 2021 as he showed talent that made him a good prospect to complement and represent the CUT team for the foreseeable future.

The accident he had unfortunately obscured and ultimately ended those prospects.

Due to the fact that he would be out of action for a very long time, he also lost the prospect of a bursary.

Devin would certainly have been part of our Varsity Cup team and plans if he had not suffered the injury during the accident.'

[3] He testified that he was not the only coach of the plaintiff in 2021 but was part of the coaching staff. He coached for a short period, as events were overtaken by the COVID-19 pandemic that year. The plaintiff played for the Young Guns team. The team's competition was canceled, and it could not secure a place to compete in Turkey; only the senior teams were able to compete. The plaintiff spent only the first semester at CUT and then left. Even though CUT was willing to continue the process, the plaintiff experienced pain and had problems with what he was supposed to do.

[4] The plaintiff confirmed the injuries he sustained in the collision and the bursary contract he obtained from CUT for 2020/2021. Due to severe hand pain, he was unable to pass the rugby ball during matches and decided to quit rugby. He completed only the first semester at CUT in 2021, resumed his engineering studies at Northwest University in 2022, and never played rugby again.

[5] In a nutshell, the actuary, Mr. Kambarran, considered two scenarios proposed by the industrial psychologist, Mr. Rosen: the rugby scenario, in which the plaintiff began his engineering studies in 2021 and played professional rugby from ages 25 to 35, and the engineering scenario, in which the plaintiff began his engineering studies in 2021 and did not play professional rugby.

[6] Mr. Rosen proposed a 70-80% probability for the rugby scenario and applied the standard 20% contingency deduction to the plaintiff's future earnings. He applied a higher-than-normal 40% contingency deduction to the post-morbid scenario. The cap at the date of the accident was R294 300 per annum. The pre-morbid future earnings were set at R28 919 079, while the post-morbid future earnings were at R16 330 013. Using these calculations and applying the 90/10 apportionment, it was argued that the plaintiff was entitled to a net award of R6 348 349 for the rugby scenario.

[7] With pre-morbid future earnings of R18 137 926 and post-morbid future earnings of R16 330 000, and applying the same calculations and principles as above, it was argued that the plaintiff was entitled to a net award of R4 227 058.00 for the engineering scenario.

[8] I am not persuaded, as shown below, that the plaintiff has proven its case for an award under the rugby scenario. The plaintiff testified that he deregistered at CUT because he could not achieve his potential there. He left because of his injuries; his capabilities and skills were not up to par, and his performance was poor. He could not

achieve the top position in rugby because he could not perform at that level, and his fitness was not.

[9] Mr. Rosen stated in his expert report dated 23 May 2023 that the plaintiff attempted to play for CUT in the Varsity Cup Rugby league but struggled with his hands and wrists. In September 2021, he underwent carpal tunnel release surgery. He was forced to deregister because he could not cope with his workload. In 2021, he was unable to complete the year due to hand surgery.

[10] In his medico-legal report dated 31 January 2023, Dr. Colin Barlow stated that the plaintiff participated in several matches in 2021 but experienced persistent, severe pain and swelling in his right hand. He stopped playing rugby and lost his contract. He studied for six months and worked as a bartender and a salesman for six months. In 2022, he enrolled at the University of North-West to study electrical and electronic engineering. From an orthopedic perspective, he should be able to complete his studies and work in his chosen career until retirement, but not in rugby.

[11] Mr. Bester confirmed the rugby contract between the plaintiff and CUT and that the plaintiff played for the Young Guns and was earmarked for the senior team. However, 2021 was a difficult year, and few rugby games were played because of the COVID-19 pandemic. When he stopped playing rugby in 2021, he was replaced by a less skilled fly-half who later played for the Leopards.

[12] Dr Colin Barlow speaks of several matches, whereas Mr Bester refers to a few games, and the plaintiff's team's competitions were cancelled. According to the rugby contract, the plaintiff was to render services as a rugby player for the period from 1 March 2021 to 31 December 2021.

[13] What is strange about the contract is that it was signed only on behalf of the

player on the 17th day of 2021 in Bloemfontein. No month was mentioned. Two witnesses signed but failed to countersign each page as the signatory, which I presume was the player. Neither a witness and no one signed the contract on behalf of the club.

[14] One of the suspensive conditions was that the agreement was subject to the player passing a medical test administered by the club's medical staff in January 2021. If the player failed the medical test, the agreement was terminated immediately and without further notice to the player. The agreement was also subject to the player remaining registered for both semesters. In the event of termination of studies, the student would be responsible for his own study account at CUT.

[15] The sport bursary of R15 000.00 would have been payable in two equal installments of R7 500.00 each at the end of June 2021 and October 2021. The cancellation clause provided that the club may cancel the agreement by giving the player 30 days' written notice. In such event, the player would have been paid only for the portion of services completed to the date of cancellation, to the complete and full satisfaction of the Club.

[16] The termination clause provided that the club was entitled to terminate the agreement at the end of August, when the first-term academic results had been made available, if the student had not achieved the required 60 credits to play in the Varsity Cup. The club was also entitled to terminate the agreement at any time for loss of form or fitness, ill-discipline, or unbecoming conduct by the player. In the event that the player wants to terminate the agreement before the term expires, or if a player breaches this agreement by representing another rugby team in the same or another competition during the term of this agreement without the club's permission, the player shall forfeit all remuneration received and shall pay a penalty of R20 000 to the club within 14 days.

[17] It now begs the question: why, according to the testimony of Mr. Bester and the expert reports, did the plaintiff attend only the first semester at CUT and then leave? If

that were the case, why does the industrial report state that the plaintiff was still at CUT in September 2021, when he was forced to deregister because he was unable to cope with his workload? Why, in the same report, does the expert refer to the registration at NWU in 2022 and say that 'Davin is now on track and aims to complete his degree at the end of 2026. However, his bursary is likely to be affected, and Davin is emotionally traumatized.' Which bursary is being referred to? Does this imply that the plaintiff continued to play rugby at NWU?

[18] Mr. Bester testified that CUT was still willing to contract with the plaintiff because he was a worthwhile player, even though he had undergone surgery on his left wrist and nose four months earlier. As he put it: 'So, if we continue with this, then we really rate him as a player, and we are willing to take the chance that he may recover longer, but then we wait until he is good enough to play.'

[19] Bearing this in mind, it is critical to establish the source or reason for the plaintiff's early departure from CUT. Did he give notice of his intention to leave CUT at the end of June 2021? If not, did CUT terminate his services for nonperformance? Or did the plaintiff leave without consequences? There is a dearth of evidence on this point. According to Mr. Bester, the plaintiff lost his bursary at some point.

[20] In the circumstances, I cannot say that the plaintiff left CUT because of injuries, an inability to cope with his workload, his state of unfitness, or disgruntlement about not being fielded due to COVID-19. In Annexure 'B', the document containing his health disclosures and declarations, he stated that he still had some pain in his wrist and trouble breathing but would recover soon. Having registered on 31 March 2021 and left in June 2021, it is unclear how many games he participated in or what caused his sudden departure.

[21] I am not persuaded that the plaintiff has made out a proper case for compensation in the rugby scenario. I am satisfied with and accept the actuary's

calculations in the engineering scenario. The plaintiff has made out a proper case for the amount of R4 227 058.00 in that scenario.

Order

[22] Consequently, I make the following order:

1 The defendant shall pay 90% of the plaintiff's proven or agreed damages.

2. The defendant shall pay to the plaintiff the net (after apportionment) capital amount of R4 353 273.00 (four million three hundred and fifty-three thousand two hundred and seventy-three rand) within 180 (one hundred and eighty) days hereof, in respect of the Plaintiffs claim against the Defendant for the following heads of damages and calculated as follows:

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5.2 Such costs shall include, as allowed by the Taxing Master:

5.2.1 The costs incurred in obtaining payment of the amounts mentioned in paras 2 and 5 above;

5.2.2 The full costs of and consequent to the appointment of counsel, on Scale A, in respect of the preparation and reasonable attendance fee for attending the Case Management Meeting held on 29 January 2024;

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5.2.8 The costs of renting a projector and white screen for use during trial on 26

August 2025;

5.2.9 The costs of the interpreter, Mr Mnweba, engaged by the plaintiff for trial on 26, 27 and 29 August 2025

6 The amounts referred to in paras 2 and 5 will be paid to the plaintiff's attorneys, A Wolmarans Incorporated, by direct transfer into their trust account, details of which are the following:

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ACCOUNT NUMBER: 4[...]

BRANCH CODE: 632 005

TYPE OF ACCOUNT: CHEQUE (TRUST)

REFERENCE: MR COETZEE/ MAT14052

J MHLAMBI
JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff

H Cilliers SC

Instructed by:

A. Wolmarans Inc.