



IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)

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

CASE NO. 6495/2024



..... 16/01/2026
SIGNATURE. DATE

In the matter between

MFANALO SKHOSANA

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time of hand-down is deemed to be 16 January 2026 at 14:00

JUDGMENT – LEAVE TO APPEAL

BAM AJ

[1] The plaintiff has applied for leave to appeal against my judgement and order handed down on 18 September 2025 in which I dismissed his claim for loss of earnings with no order for costs. The grounds for appeal are extensively stated in the application and span 20 paragraphs. I do not intend to address these grounds *ad seriatim* since they boil down to only a few contentions, namely that:

1.1 I erred in dismissing the claim on the basis of absence of documentary collateral evidence of earnings whereas the plaintiff's employer had provided information to this effect to the industrial psychologist.

1.2 I erred in discounting expert and actuarial evidence to the effect that the plaintiff's earning capacity had been reduced by the injuries; and also by focusing on the inconsistencies in the evidence presented.

1.3 I erred in not appreciating that self-employed persons within the informal sector often do not have documented proof of income. I should not have required "strict proof of actual earnings". I should have applied higher contingencies to the computed loss instead of dismissing the claim.

1.4 I erred in denying the plaintiff his costs despite having ruled in his favour in respect of the merits and future medical expenses.

[2] It is the plaintiff's submission that there are prospects of success in the appeal. There are also compelling reasons why the appeal should be heard as clarity is needed as to the sufficiency or otherwise of information needed to prove earnings or income.

[3] Counsel for the plaintiff, Advocate Nkabinde referred the court to the case of *Dippenaar v Shield Insurance Co Ltd 1979(2) SA 904 (A)* where the claim for loss of earnings was expressed thus:

"In our law, under the Lex Aquilia, the defendant must make good the difference between the value of the plaintiff's estate after the commission of the delict and the value it would have had if the delict had not been committed. The capacity to earn money is considered to be part of a person's estate and the loss or impairment of that capacity constitutes a loss; if such loss diminishes the estate"

- [4] In his heads of argument, he also referred to two cases in which the courts awarded damages for (future) loss of earning capacity to minor children. To him, this constitutes proof that even in the absence of actual and tangible collateral information, courts should award such damages. Counsel stated that lack of proof does not mean there is no loss of earnings. I will not venture into a debate in this regard because different principles apply in cases involving minor children. Here we have an adult male who alleges that he used to work and earn a certain amount of money per month, without presenting proof thereof.
- [5] Counsel for the defendant, Ms A Nefolovhodwe argued that there are no prospects of success in the appeal as the plaintiff has failed to raise any issue pertaining to an error of law made by the court. The grounds attack factual findings, which in any event are correct.
- [6] Counsel submitted that the court was correct in dismissing the claim for loss of earnings in the absence of collateral information needed to establish the loss. She pointed out that the Industrial Psychologist had failed to obtain any proof in writing. She referred to the case of *Advocate Cawood NO obo Charles Walter Nell v Road Accident Fund [2023] ZAG PPHC 68 (10 February 2023)* wherein Makhoba J dismissed a claim for loss of earnings. The plaintiff in that case was a self-employed gardener, painter, and repairman but could not produce any proof of income or of vocational training, or tax documents and / or invoices. In paragraph 11 of the judgement, the court concluded thus:
- “In my view the plaintiff failed in his duty to satisfy the court that he has lost any earnings or stands or to lose any earnings as a consequence of the motor vehicle accident in question”.
- [7] It is noteworthy that the plaintiff in the above case was awarded R1 500 000.00 in general damages, which were proven through expert reports.
- [8] Counsel countered the argument by Mr Nkabinde that the court should have addressed the issue of lack of collateral evidence by way of higher contingencies. She argued that contingencies do not address lack of proof. In *Phekami and Another v Minister of Police and Others [2022] ZAGPJHC 1023 (28 December 2022)* for instance, the plaintiff was awarded R500 000.00 for loss of earnings after failing to prove R9 513 714.00 claimed under this head of

damages as recommended by the actuary. The court had noted that he provided inconsistent information regarding his income to the various experts (paragraph 47 of the judgement). In paragraph 56, the court stated the following:

“The plaintiff’s counsel urged me to accept the actuarial calculation, despite the assumptions relied on by the actuaries being unsound, and the plaintiff’s pre-accident earnings not being accurate, and to apply higher than usual contingency deductions to cater for the various uncertainties that plague the calculation of the plaintiff’s pre-incident earnings..... The assumption relied on by the actuaries, namely that the plaintiff has been rendered unemployable as a result of the shooting incident, is not supported by the evidence and remains unsound”.

- [9] Ms Nefolovhodwe pointed out that not only was there no collateral evidence of earnings, there were also contradictions in the plaintiff’s own statements regarding his earnings as well as the reasons why he stopped working.
- [10] Mr Nkambule’s response to the above was that counsel for the defendant got the principle of loss of earnings wrong.
- [11] My approach to the determination of loss of earnings in this matter was based on the trite principle that the onus lies on the plaintiff to prove his case on a preponderance of probabilities. To his end, he must produce sufficient evidence of his income to enable the court to assess and quantify his past and future loss of earnings. Due to the intricate nature of this quantification, the task has been largely handed over to the experts. This means that the same proof that would be placed before court ought to be made available to the experts so that their computations and resultant recommendations are founded on credible evidence.
- [12] The Industrial Psychologist accepted and worked with unverified evidence of earnings. The plaintiff’s employer was contacted telephonically and confirmed the details pertaining to the plaintiff’s employment and wages. In the case of *SJ v Road Accident Fund [2025] ZAGPPHC 697 (1 July 2025)* the court made an order of absolution from the instance in respect of loss of earnings due to

insufficient substantiation of that part of the claim. In paragraphs 28 to 30, the court stated the following:

“28. According to the Industrial Psychologist, the plaintiff was self-employed as a carpenter and general construction worker at the time of the accident. He earned an average monthly income of R4000, totaling R48 000 per annum. He had been engaged in physically demanding work, such as erecting shacks, carpentry, and flooring, relying on his physical capabilities to generate an income. This information was obtained from the plaintiff.

29. Collateral information was provided in the form of an assessor's report, which included the affidavits from clients and an assistant. The plaintiff did not call the author of the report or the deponents of the affidavits to testify. Consequently, the expert reports are based on information that has not been proved before this court.

30. In *Nkala v RAF* (16158/2018) [2025] ZAGPJHC (10 March 2025) paragraph 5, it was stated that: ‘The plaintiff is required to prove its case, which includes the claim for loss of earnings. In the absence of factual proof of income, the postulations held no merit relating to a claim for loss of income’.” (Own emphasis)

[13] The amounts used by the Industrial Psychologist to project Mr Skhosana's income were not verified, which renders the claim for loss of earnings unsustainable. By implication, the actuarial calculations suffered the same fate since they were based on information obtained from the industrial psychologist's report. Effectively, there was no reliable evidence of income pre- and post-accident. At least in *SJ v RAF* above the evidence had been gathered, the only issue was that it was not properly placed before the court; having been excluded from the Rule 38(2) application.

[14] While appreciating the lack of record keeping by self-employed people operating in the informal sector, it is still possible for them to produce collateral information through written testimonials and / or an assessor's report or bank statements.

CONCLUSION

- [15] It is clear from my judgment that I made a finding that the plaintiff had suffered reduced capacity due to the injuries. The success of a claim for loss of earnings is premised upon proof of injuries and reduced capacity which translates into loss. The loss must be established through evidentiary support. The court cannot just accept the plaintiff's say-so. This is to avoid opening the floodgates for claims based on unverified, and possibly falsified information.
- [16] Mr Nkabinde's reference to *Dippenaar* and *Rudman* is helpful because therein lies the problem with his argument. Having acknowledged that the injuries have resulted in the reduction of the plaintiff's capacity and by implication, a diminution of his estate, the court ought to have evidence that can assist it to calculate the estimated value of the loss. Since it is not the court that is tasked with the responsibility of computing loss, the relevant experts must be furnished with this factual evidence.
- [17] The plaintiff's Rule 38(2) application pertains to admission of the expert reports as well as the section 19(f) affidavit. The affidavit of earnings, which is filed as paginated page 208 of the court bundle, is not included in this application and the industrial psychologist makes no mention of it in her report. The reason could be because it was only deposed to on the 6th of June 2025 while the assessment and interview took place on 27 February 2025. In the postscript to the report the expert says her report is based on medical information "and the subjective information received from the claimant at the time of assessment." Mr. Mabuza's confirmatory statement obtained on 17 June 2025, three days before the report was finalised, also constitutes hearsay because he was not called to testify, neither was this information given under oath and reduced to writing. Greater diligence is required from those handling these types of claims.
- [18] In light of the above, it is my considered view that there are no prospects of success in the appeal on the issue of loss of earnings and that no other court will come to a different conclusion.

COSTS

[19] In the order I gave I did not award costs to the plaintiff despite him having partially succeeded in his claim. This is an error which could have been rectified without the necessity of launching an application for leave to appeal except that in this case there were other aspects of the judgement being impugned. Under the circumstances, I am satisfied that the costs order can be taken on appeal.

In the premises, the following order is issued:

1. The application for leave to appeal to the full bench succeeds only in respect of paragraph 5 of my order dated 18 September 2025.
2. Costs shall be those in the appeal.



L J N BAM

**ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG**

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