IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Not Reportable

CASE NUMBER:3884/24

In the matter between:

THABISO TLATSANA **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

Coram: WESSELS AJ

Date of hearing **:3 February 2026**

Date of judgment **:11 February 2026**

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for the hand-down of the judgment is deemed to be 14h00 on 11 February 2026.

Summary: Delict — Action for damages — Loss of earning capacity — Motor vehicle accident — Assessment of contingencies — Principles in *Southern Insurance Association Ltd v Bailey NO* applied — Court rejecting 35% post-morbid contingency in favour of 20% deduction in absence of unique risk factors — Practice — Evidence by way of affidavit — Rule 38(2).

ORDER

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i The defendant is ordered to pay the plaintiff the amount of R133,473 as damages in the form of past and future loss of income.

ii The defendant is ordered to pay interest on the judgment debt (mentioned in paragraph 1 of this order), which shall accrue at the interest rate of 11.75% per annum from 14 days after the date of this order to the date of final payment.

iii The defendant is ordered to pay the plaintiff's costs of suit as between party and party on Scale A.

JUDGMENT

Wessels AJ

Introduction

[1] This is a default judgment emanating from a claim instituted by the plaintiff against the defendant for damages suffered as a result of a motor vehicle accident.

Facts

[2] On 1 July 2023, an unknown motor vehicle ran over the plaintiff, who was at the time a pedestrian. As a result of this accident, the plaintiff was admitted to the Mahikeng Provincial Hospital, where it was established that the plaintiff had sustained a segmental fracture of the left tibia and fibula. Following the accident, surgical procedures were performed on the plaintiff. An intramedullary nail (a metal rod inserted into the marrow canal of long bones such as the femur or tibia to stabilise fractures) and locking screws were inserted into his left tibia. According to the evidence of the plaintiff's orthopaedic surgeon, the plaintiff suffered severe acute pain for about two weeks, which subsided after a period of four weeks. Still, he continues to suffer discomfort in the form of chronic pain in his left leg.

[3] The plaintiff was 30 years old at the time of the accident. Before the accident, he was a self-employed street vendor earning R3200 per month and had no pre-existing medical conditions or injuries. His highest educational

qualification is matric. After the accident, the plaintiff found employment as a temporary driver earning R1500 per month.

[4] The heads of damages set out in the plaintiff's particulars of claim are general damages, as well as past and future loss of earning capacity. The merits of the claim had been conceded, and general damages were settled. Only the adjudication of the plaintiff's past and future loss of earning capacity is to be determined.

[5] The plaintiff served a notice of bar on the defendant's attorneys on 27 February 2025, which the defendant ignored. Against this backdrop, the application for default judgment was enrolled for a hearing. The plaintiff brought an application in terms of Rule 38(2), seeking leave from this Court to adduce the evidence of his medical experts by way of affidavit, which was granted.

Application of legal principles

[6] The plaintiff succeeded in establishing that he has a serious long-term impairment and loss of bodily function that would impair his ability to maintain prolonged standing, walking, and lifting heavy items, all directly associated with the physical requirements of street vending.

[7] Although the plaintiff's occupational therapist recommended future therapy and assistive devices, a case had not been made out for such a claim in the papers before me. Plaintiff's only remaining relief was damages in the form of past and future loss of earning capacity.

[8] The plaintiff's actuary arrived at a median figure for semi-skilled labour of R86,142 per annum, with a retirement age of 65 years. The past loss of income was calculated at R59,911. The expert evidence adequately supports this figure.

[9] In calculating the future loss of earning capacity, plaintiff's actuary applied a 15% pre-morbid contingency deduction mounting to a net value of income but for the accident of R1,250,551. In calculating the future loss of income, considering the accident, the plaintiff's actuary applied a 35% post-morbid contingency deduction amounting to a net value of income having regard to the accident of R956,304. In calculating the net future loss of income, the plaintiff's actuary arrived at a future loss of income of R294,247.

[10] Essentially, a contingency is a flexible, discretionary adjustment to actuarial damages that accounts for uncertainties and risks related to human life or specific to the plaintiff. These factors may have affected a plaintiff's income, but cannot be precisely measured.

[11] In *Southern Insurance Association v Bailey*[1] the Supreme Court of Appeal defined contingencies as follows:

'One of the elements in exercising that discretion is the making of a discount for "contingencies" or the "vicissitudes of life". These include such matters as the possibility that the plaintiff may in the result have less than a "normal" expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case.'

[1] Southern Insurance Association v Bailey NO 1984 (1) SA 98 (A) 116 G-H

[12] Factors such as the severity of the injury, labour market vulnerability, the need for early retirement, risks of future medical complications, and loss of job security are considered.

[13] The plaintiff's counsel could not identify any unique factors that would justify applying a higher-than-normal contingency to the plaintiff's claim for loss of future earning capacity. As a result, no basis exists to depart from standard contingency scales based on the severity of the injury, labour market vulnerability, or the risk of future medical complications and loss of job security to the plaintiff's future income capacity.

[14] The plaintiff's actuary calculated the pre-morbid net value of the plaintiff's future loss of income as R1,250,551, to which a 15% contingency deduction had been applied. Having considered the opinions of the plaintiff's expert witnesses, I could not find any justification for applying a contingency on the plaintiff's post-morbid loss of income of greater than 20%, even taking into account the plaintiff's age. This results in the following calculation:

Gross post-morbid value	R1,471,237
20% Contingency deduction	R294,247
Total	R1,176,990

[15] To calculate the future loss of the plaintiff, the post-morbid loss of income is deducted from the premorbid loss of income.

[16] In the final analysis, having applied the principles as set out above, the plaintiff is entitled to R133,472 as damages in the form of his past and future loss of income.

Order

[17] Resultantly, the following order is made:

i. The defendant is ordered to pay the plaintiff the amount of R133,473 as damages in the form of past and future loss of income.

ii The defendant is ordered to pay interest on the judgment debt (mentioned in paragraph 1 of this order), which shall accrue at the interest rate of 11.75% per annum from 14 days after the date of this order to the date of final payment.

iii The defendant is ordered to pay the plaintiff's costs of suit as between party and party on Scale A.

[redacted]

M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

Counsel for plaintiff	**:Adv KG Moiloa**
Instructed by	**:Mokhetle Attorneys**
	:Mahikeng