IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 79211/2019

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE 13 January 2026

SIGNATURE

In the matter between:

SEMA LESIBANA PETER Plaintiff

v

ROAD ACCIDENT FUND Defendant

VARIATION ORDER IN TERMS OF RULE 42(1)(b)

LUKHAIMANE AJ

1. This is a variation order in terms of Rule 42(1)(b) of the Uniform Rules of the High Court relating to a judgment I handed down on 15 October 2025, electronically by circulation to the parties' legal representatives.

2. On 5 November 2025, the plaintiff's attorney brought to my attention an error in the order relating to the postponement of the issue of general damages whereas it was canvassed during the hearing. Having considered the record

of the proceedings, I find it inevitable to vary the order in terms of Rule 42(1)(b) of the Uniform Rules of this Court.

3. The Rule provides that the court may, in addition to any other powers that it may have, *mero motu,* rescind or vary an order in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission.

4. I remain mindful of an established principle in our law that once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter or supplement it. There are however, few exceptions to that rule. The court may vary the order only to the extent of an error or omission committed in the order. Among other exceptions is that the court may correct a clerical, arithmetical or other error in its judgment or order, so as to give effect to its true intention.

5. I omitted to issue the order with respect to general damages once the matter of liability was finalised.

6. There was nothing contentious about the submissions relating to general damages. The plaintiff sustained a neuropsychological fallout, a right acetabular fracture and a left femur fracture. There were reports and invoices submitted for past medical treatment in the amount of R36 133.29 and reports submitted for recommended future medical treatment.

7. The submissions relating to general damages duly referred to comparative cases and the plaintiff's claim was for an amount of R1 000 000.

8. In terms of loss of earnings, and or earning capacity, the plaintiff submitted the necessary proof that the injuries gave rise to a patrimonial loss, taking into consideration the work he did before the accident or would probably have done if he had not been disabled *(Union and National insurance Co Limited v Coetzee 1970(1) SA 295 (A) AT 300 A ZASCA 2014 182 paragraph 11)*. His work capacity was affected from an orthopaedic perspective, a

neuropsychological perspective and an occupational perspective. Further, the actuarial calculations as per the heads of argument took into consideration the contingencies at an acceptable level.

9. Based on the plaintiff's medical expert reports, higher contingencies were applied for future loss of earnings and the court was duly referred to case law in support of that. In that regard the contingencies were applied as follows:

Uninjured Income
Past loss of earnings is 5%
Future loss of earnings is 20%

Injured Income
Past loss of earnings is 5%
Future loss of earnings is 50%

10. In this regard, the appropriate contingencies applied to the actuarial calculation are:

Past loss	
Value of income uninjured	R1 274 743
Less contingency deduction 5%	R 63 737
	R1 211 006
Value of income injured	R 122 975
Less contingency deduction 5%	R 6 149
	R 116 826
Net Past Loss	**R1 094 180**
Future loss	
Value of income uninjured	R3 288 332
Less contingency deduction 20%	R 657 666
Value of income injured	R1 000 353
Less contingency deduction 50%	R 500 177
	R 500 177

Net future loss	**R2 130 489**
Total loss of earnings	**R3 224 670**

11. In the circumstances, paragraph 24 of the order granted on 15 October 2025 is varied and replaced as follows:

11.1 The medico-legal reports and affidavits as referred to in the Rule 38(2) application are adduced into evidence.

11.2 The defendant is liable to compensate the plaintiff for 80% of the plaintiff's proven or agreed damages resulting from the injuries sustained by the plaintiff in a motor vehicle collision which occurred on 10 December 2016.

11.3 The defendant shall pay to the plaintiff the sum of R4 260 803.29 (four million two hundred and sixty thousand, eight hundred and three rands and twenty nine cents) less 20% R852 160.65 (eight hundred and fifty two thousand, one hundred and sixty rands and sixty five cents) in settlement to the plaintiff's attorneys, Adams & Adams, in settlement of the plaintiff's claim, which amount is calculated as follows:

Past hospital, medical and related expenditure – R28 906.64
Loss or earnings and or earning capacity – R2 579 736
General damages – R800 000

11.4 The aforesaid total sum of R3 408 642.64 (three million four hundred and eight thousand, six hundred and forty two rands and sixty-four cents) shall be payable by direct transfer into the trust account of Adams & Adams attorneys, the details of which are as follows:

Account holder	: Adams & Adams Trust Account
Bank	: Nedbank
Branch	: Pretoria
Branch code	: 1[...]

Account number : 1[...]
Reference : NK/MNN/P4768

11.5 The amount in paragraph 11.4 will not bear interest unless the defendant fails to effect payment thereof within 14 (fourteen) calendar days of the date of this Order, in which event the capital amount will bear interest at the applicable interest rate *per annum* calculated from and including the 15th (fifteenth) calendar day after the date of this Order up to and including the date of payment thereof.

11.6 The Defendant shall furnish the Plaintiff with an unlimited undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 1996, in respect of the costs of the 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 , after the costs have been incurred and on submission of proof thereof, resulting from the injuries sustained by the Plaintiff during and as a result of the accident that occurred on 10 December 2016.

11.7 The Defendant must make payment of the Plaintiff's taxed or agreed Party and Party costs on the High Court scale, which costs shall include the following (<u>subject to the Taxing Master's Discretion</u>): -

The fees of Counsel on the High Court Scale B, inclusive of Counsel's full reasonable day fee for 8 September 2025 and the reasonable costs in respect of the preparation of the Heads of Argument;

11.7.1 The reasonable, taxable costs of obtaining all expert, medico legal, addendum and actuarial reports which were furnished to the Defendant and/or included in the trial bundles;

11.7.2 The reasonable, taxable preparation, qualification, travelling and reservation fees, if any, of the following experts of whom notice have been given, being: -

11.7.2.1 Dr VM Close (Orthopaedic surgeon);
11.7.2.2 Pieter Duvenage (Orthotist & Prosthetist);
11.7.2.3 Cornel Schoombee(Industrial Psychologist);
11.7.2.4 Dr Kobus Truter (Clinical psychologist);
11.7.2.5 Trudie Eksteen (Occupational therapist); and
11.7.2.6 Mr Whittaker (Actuary)

11.7.3 The reasonable taxable costs associated with preparing and obtaining the Application in terms of Rule 38, and the affidavits attached thereto, as well as the experts' charges pertaining to their time and attendances spent *inter alia* in commissioning thereof;

11.7.4 The reasonable taxable preparation and qualification, if any, of the Plaintiff's experts whose reports were furnished to the Defendant and/or included in the trial bundles;

11.7.5 The reasonable costs of all consultations between the Plaintiff's attorneys, and/or counsel and/or witnesses, and/or the experts and/or the Plaintiff in preparation for the hearing and to discuss the terms of this order;

11.7.6 The reasonable taxable accommodation and transportation costs incurred by or on behalf of the Plaintiff in attending medico-legal consultations with the Plaintiff's experts, consultations with the Plaintiff's legal representatives and the court proceedings, the quantum of which is subject to the discretion of the Taxing Master;

11.7.7 The above costs will also be paid into the aforementioned trust account.

11.8 The following provisions will apply with regards to the determination of the aforementioned taxed or agreed costs: -

a. The plaintiff shall serve the notice of taxation on the defendant either by hand and/or electronically by email on either the claims handler and/or the State Attorney;

b. The plaintiff shall allow the defendant 7 (SEVEN) court days to make payment of the taxed or agreed costs from date of settlement or taxation thereof, whichever date is the earlier, during which period the plaintiff will not be entitled to execute a writ against the defendant;

c. Should payment not be effected timeously, the plaintiff shall be entitled to recover interest at the rate of *ad tempore morae* on the taxed or agreed costs from date of allocatur to date of final payment.

11.9 It is recorded that there is no applicable contingency fee agreement.

MA LUKHAIMANE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Date of Judgment: 13 January 2026

Appearances:

For the Applicant / Plaintiff:
Advocate Lizelle Haskins (079 512 3754)
Ms Ndlela, Adams & Adams (012 436 6846)

For the Respondent / Defendant:
State Attorney – Mr Ramadimetsa (012 429 5000)