IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA

CASE: 323/2022

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

23 February 2026 [redacted]

DATE SIGNATURE

In the matter between:

LAWRANCE XOLANI BULUNGA **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 23 February 2026 at 12h00.

JUDGMENT

MANGENA AJ:

[1] The plaintiff, Mr Xolani Bulunga was involved in a motor vehicle accident which occurred on 03 August 2019. He sustained severe injuries described as a wedge fracture and a rib fracture.

[2] He lodged a claim with the Road Accident Fund for compensation and in due course merits were settled and an offer was made in respect of general damages. The offer was accepted.

[3] The Fund disputed liability for payment in respect of both the past and future loss of earnings. It based its decision on the fact that plaintiff returned to work shortly after the accident and continued to perform his duties without demonstrable difficulty if any.

[4] When the matter came for trial, plaintiff brought an application to present expert evidence by way of affidavits as envisaged in Rule 38(2) of the Uniform Rules of Court. The defendant objected and indicated that it needs to cross-examine the plaintiff as well as his two expert witnesses, namely, the occupational therapist and the industrial psychologist. I duly granted the order and, the matter was allocated a trial date for hearing later in the week to afford plaintiff an opportunity to arrange for the availability of his witnesses.

[5] On the hearing date, plaintiff testified on his own behalf and stated that at the time of the accident he worked as a traditional healer. He qualified for this job in 2010 and since then he has not done any other kind of job other than this one. His job requires him to wake up early in the morning and walk sizeable distances to pick up herbs. It also requires him to pick up objects and bend most of the time. Since the accident it has not been easy for him to carry out his duties and he mostly relies on other people, the initiates, to assist him. He attributes this difficulty to the pain he feels on his spine. Prior to the accident he used to make around R 9 000.00 per month as income generated from his work. He used this money to support his 13 children. As a result of the accident, he is no longer able to provide for all his children and some of them have been taken away from him. On the question by the court regarding his level of education, he testified that he went to school until grade 11. He did not pass matric. The 13 children he testified about are not all his children as others

belong to his brothers. He was asked to take care of them and when he was no longer able to provide for them, they left.

[6] In cross -examination, he said he does not have any record of income he used to generate as he used the money for building a house. Every time he received payment, he would take the money to Cashbuild for payment of the material of the house he was building. Curiously, he did not have receipts of payment as proof of what he was testifying on. It was put to him that the defendant will submit in argument that there is no mutual connection between his injuries and the loss of earnings he is claiming. His answer was that there is. There was no re-examination.

[7] The second witness to testify was Ms Fikile Nkabinde, a registered occupational therapist who assessed Mr Bulunga and prepared a report on his ability to work. Her qualifications were not in dispute. She testified that based on the information provided to her Mr Bulunga has a reduced work ability as he is not able to bend and walk long distances. This will be more pronounced as he grows old. She puts the reduced work capacity at 45% and nothing higher than that as she put it.

[8] She was cross- examined on various aspects of his work and the fact that he returned to work after the accident. She answered that he could still walk and do light duties like fetching herbs and maintain different posture but in the long run, he will not be able to do so due to the injuries he sustained.

[9] The third and last witness to testify was Ms Bathobile Nkambule, a registered industrial psychologist. She testified that she consulted with Mr Bulunga who informed her that he is a traditional healer and earns around R12 000.00 from this job. He has been a traditional healer since 2008. Mr Bulunga sustained injuries in a motor vehicle accident and has

returned to work with physical difficulty. Since the accident he has not been fully functional though he pushes himself to a point where he is still able to make his pre-accident earnings. She said that the pain will worsen in future and his earnings will go down to almost 50%. She further said that Mr Bulunga will be able to work until retirement.

[10] In cross-examination, she testified that the information contained in her report is based on what was communicated to her. She maintained that she is able to work because he is pushing himself. Regarding documentary proof on his earnings, she said that no documents were provided to her as Mr Bulunga informed her that his payment was made in hard cash. Her report is based on what she was told. In re-examination, she said that he is still capable of making the same amount of money. This concluded his evidence.

[11] Upon conclusion of oral evidence, counsel for the parties requested to submit written arguments and I am indebted to them.

[12] Relying on the evidence of the experts, Mr Moukangwe submitted that plaintiff has satisfied the onus resting on him to prove a reduced earning capacity as a result of the accident. He further submitted that notwithstanding the failure to provide collateral evidence, it can be accepted that plaintiff presented the best evidence available. For this submission, he called in aid the case of De Klerk v Absa Bank Limited, 2003 (4) SA 315 (SCA).

[13] I disagree. I do not think that plaintiff led the best evidence available to him. I take note of the document purportedly issued by the traditional healers' organisation as well as the affidavit by one Ms Fakude submitted together with the heads of argument. The simple fact is that the documents were not agreed to by the defendant and in the absence of evidence

as to their authenticity and introduction into the record as evidence, they carry no value. It is also unclear to me why the two were not called to testify.

[14] Regarding reliance in the evidence of the experts, it will be helpful to recall what Meyer AJ (as he then was) said in Mathebula v Road Accident Fund, [2006] ZAGPHC 261 on the role of experts when giving evidence. He said:

> *" An expert is not entitled, any more than any other witness, to give hearsay evidence as to any fact, and all facts on which the expert witness relies must ordinarily be established during trial, except those facts which the expert draws as a conclusion by reason of his or her expertise from other facts which have been admitted by the other party or established by admissible evidence"* para 13.

[15] The defendant had at the very outset indicated that he does not accept the opinions of the experts in so far as their conclusions on the earning capacity of the plaintiff is concerned. It was incumbent upon the plaintiff or his attorneys to procure sufficient information and place it before the court to support his case that he has suffered a reduced earning capacity as a result of the accident. The two experts who testified did not satisfy themselves as to the occupation of the plaintiff prior to the accident and relied on his say so. They failed to obtain collateral information from the plaintiff to support their findings with regard to his ability to work but also on his earnings both prior and post the accident.

[16] I am therefore unable to agree that plaintiff has satisfied the requisite threshold on the standard of proof required in civil proceedings. I say so because in Rudman v RAF, 2003 (2) SA 234 (SCA) the court formulated the approach to a dispute on earning capacity as follows: A physical disability which impacts on the capacity to an income does not, on its own, reduce the patrimony of an injured person. There must be proof that the reduction in the income earning capacity will result in actual loss of income. On the evidence presented

before me plaintiff was able to return to work and perform his duties. He continued to make his pre-accident earnings. There was accordingly no diminution of his patrimony attributable to his physical disability and no compensation should be made to him as he failed to proof the loss.

[17] On costs, I take note that the defendant did not timeously raise its defence on the issue of earning capacity up until the matter was set down for trial. This kind of litigation should be discouraged. The plaintiff should not pay the costs.

[18] The following order is made:

18.1 Plaintiff's claim for past and future loss of earnings is dismissed.

18.2 No order as to costs.

[redacted]

M I MANGENA

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

APPEARANCES:

Attorney for the Plaintiff: XOLILE NGWENYA ATTORNEYS

PLAINTIFF'S ATTORNEY

32 BELL STREET

SUIT G-16

MBOMBELA

TELL. 013 162 3325

CELL. 081 309 8132

EMAIL: xolilengwenyaattorneys@gmail.com;

Attorney for the Defendant: GUGU MOKOENA

3RD FLOOR ADMIN BLOCK WEST WING

104 SAMORA MACHEL DRIVE

MBOMBELA, 1200

TELL: 013 101 3722

EMAIL: gugu1@raf.co.za

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