

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 47703/18

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 13/02/2026

In the matter between:

MAKOTA TUMELO RAYMOND

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

FISHER J

Introduction

[1] This is a claim for personal injuries allegedly sustained in a motor vehicle accident (MVA). All the issues are in dispute.

[2] The matter was brought in terms of an application for default judgment.

The plaintiff's case on the merits

[3] The plaintiff alleges in his pleadings that on 27 December 2017 involved in the

subject MVA which took place at approximately 10h15 at Doreen Ave. in Soshanguve. The plaintiff was at the time conducting deliveries in the course of his employment with an ice making company ICE 2000 cc.

- [4] A collision occurred between the plaintiff and a taxi-driver who is the insured driver of motor vehicle having registration details F[...].
- [5] The plaintiff testified that the accident occurred as a result of the fact that the driver of the insured vehicle pulled out in front of him, whereupon he immediately stopped. The plaintiff says he could not stop in time and that he thus hit the back right hand side of the taxi from behind on the right-hand side.
- [6] Fortuitously there was a police vehicle passing at the time and it stopped and one of the occupants took the statement of the plaintiff and that of the insured driver.
- [7] The version given to for the accident report by the plaintiff was that he was travelling in a northerly direction; stopped at a stop street then continued driving straight whereupon he collided with the taxi from behind. The taxi driver alleged to the policeman taking the report that he was stationary when the plaintiff bumped him from behind.
- [8] The injuries recorded in a report made for the purposes of obtaining compensation under the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) by the plaintiff are "Injuries on knee and lower left leg". The plaintiff received a payout under the COIDA of approximately R 15 000.
- [9] The plaintiff's particulars of claim allege he was injured as follows – "lower back injury and left knee injury".
- [10] It is further pleaded that he was hospitalized and received medical treatment. The damages claimed for loss of earnings in the pleadings comprised R100 000 for past loss of earnings and R500 000 for future loss of earnings. R 500 000 was claimed for general damages.
- [11] Amended pages were filed three days before the hearing of the default judgment application raising loss for past loss of earnings to R1 000 000: future loss of

earnings to R1 500 000 and general damages to R800 000. The total claim taking into account medical costs which were not pursued totalled in excess of R3.3 million.

[12] The RAF initially defended the action and filed a plea. The defence was later struck out and the RAF failed to make any further appearances.

[13] An application was brought before me on 02 May 2025 for judgment on the merits and quantum by default.

[14] The plaintiff was the only witness called. He testified on his own behalf. His testimony as to the aftermath of the accident is relevant in that it feeds into the diagnoses at the time of the accident and the treatment provided to him.

[15] The plaintiff testified via video-link as follows. After the accident and the report made to the police at the scene, he telephoned his boss to explain what had happened. He then returned to his place of work. At that stage he was feeling no pain. It seems as though the truck he was driving was towed after the accident. The other driver was able to leave in his vehicle.

[16] The plaintiff, after the accident, ended up at his place of work. He was at work for a time and then was released to go home. He was in no pain and walked to the place where he could get a taxi – which was less than 100m from his work.

[17] On his arrival home he relaxed and watched some television. Whilst he was doing this, he suddenly began feeling pain in his feet and his leg swelled. He repeatedly referred to the fact that his feet were in pain. It was argued on his behalf however that he was in fact referring to his left knee and not his feet or foot. I will accept that he sought to reference his knee.

[18] The pain and the swelling on his knee were of concern to him he says. This he says led him to the view that he should attend at the casualty at the hospital. He had no transport, so he called his friend who collected him at approximately 21h00 to 22h00 that night. His friend helped him to his vehicle as he was limping.

[19] The hospital records are minimal. I discuss them as follows. The first is a document that records the payment of a deposit at the Akasia Clinic so as to

enable him to undergo medical treatment. The amount deposited is stated to be R 580 for consultation. The document was signed on 28 December 2017 whereas the accident took place on 27 December. The plaintiff explained the incongruity with the dates on the basis that he had arrived late at night to the clinic whereupon he had waited until the next morning for treatment. He said that his boss came the next day to pay for the treatment. He confirmed that he was never admitted but said that he had spent the night in a waiting room. Thus, the pleadings which state that he was admitted to hospital for three days do not accord with the evidence.

[20] The next document discovered by the plaintiff in support of his injuries is a final report of Dr Engelbrecht of the partnership Oosthuysen and Engelbrecht. He records that he studied the x -rays on 28 December 2017 having had a referral from the Akasia Trauma Unit.

[21] The report of Dr Engelbrecht who it was alleged to have prepared the Radiologist's report has the following features. The plaintiff is said to have been an unrestrained driver in an accident that took place a day previously. The report of the accident is to the effect that the plaintiff "tried to swerve to avoid a stationary vehicle in the road when he struck the car with the side of the truck." No loss of consciousness is recorded. The pain reported was as follows: "pain on the back and lower limbs today and the L[Left] knee gives a feeling of giving way." No neurological symptoms were recorded.

[22] The radiological report put forward by the plaintiff records in respect of the left knee a small anechoic effusion. This is the injury relied on for the claim that the plaintiff has bursitis. This alleged condition has persisted since this scan was taken and is still causing pain as at the date of his testimony. There was nothing further to note as at 28 December 2017, being the day after the accident.

[23] The testimony of the plaintiff was that during this time he was given an arthroscope. It is unclear when this procedure took place. The suggestion appeared to be that it was during the scans which were taken the day after the collision. There is no evidence of any such procedure having taken place in respect of this injury. The upshot of the report given after examination within hours of the accident was of a small amount of fluid in the knee – giving the diagnosis "suggestive of bursitis". There was nothing other than soft tissue

compromise to this extent noted on the report.

- [24] The most that could be opined by Dr Engelbrecht in relation to the left knee is that it was normal save that “cartilage or meniscal pathology cannot be excluded”. This was the state of things a day after the accident according to the plaintiff’s case.
- [25] The plaintiff assisted by his attorney then made a claim and ultimately sued the RAF in this action.
- [26] As part of the process and in the course of the litigation leading up to the hearing for default judgment before this court the plaintiff attended an Orthopaedic surgeon Dr DLF Oelofse who qualified the plaintiff for general damages on the narrative test on the basis of chronic pain and possible early post traumatic osteoarthritis on 13 August 2019 – being nearly two years after the accident.
- [27] Dr Oelofse produced a report in relation to that qualification. In terms of the report the plaintiff was recorded as complaining of constant pain “in his knee and lower leg”.
- [28] There was a recordal of lower leg pain on palpitation. The report was conducted on the basis that the following was measured “on the oblique knee measuring impression of some modulation change at the proximal tibia and fibula which may represent a previous well-healed undisplaced fracture previously”.
- [29] In the report of Dr Oelofse, the alleged knee injury sustained in the subject MVA and the previous fracture on the same lower leg was assessed as part of the same subject injury. The expert was told of knee pain and lower leg pain when driving long distances which are described as “a core driver duty”.
- [30] The report of Dr Oelofse records that the plaintiff returned to work for a short period but was “subsequently retrenched as he could no longer drive long distances”.
- [31] Dr Oelofse relates that an arthroscopy procedure was performed on the left knee. There is no evidence of such a procedure being performed. The plaintiff provided no evidence of this alleged procedure in the treatment received.

- [32] This notwithstanding, the alleged injury being orthopaedic in nature – albeit soft tissue and implicating a lower leg injury – those representing the plaintiff obviously decided that this did not suffice to prove injuries consistent with a qualification on the narrative test.
- [33] There was then an attempt on behalf of the plaintiff to obtain a qualification for general damages other than on the orthopaedic injuries.
- [34] For this a report was obtained from Dr Gracie Annandale who describes himself as a plastic and reconstructive surgeon. His medico- legal report seeks to produce evidence which will qualify the plaintiff for general damages on the basis that he has suffered permanent serious disfigurement. This disfigurement allegedly exists in small scars which have arisen from the alleged arthroscopy.
- [35] The photographs of the alleged disfigurement show a very small scar on the plaintiff's knee. It is by my estimation no bigger than the size of a grain of rice. I find the use of this report to qualify the plaintiff for general damages in light of the alleged orthopaedic injuries which are, as I will discuss below, inconclusive, to be outrageous and an abuse of this court's process and the statutes and regulations pertaining to the expert determination by doctors of disfigurement which allows for general damages to be claimed on the narrative test.
- [36] I reject the opinion of Dr Annandale and the counsel for the plaintiff agreed that there was no basis for general damages under this report.
- [37] But the plaintiff's case on quantum for the alleged orthopaedic injuries has more profound difficulties than the report of Dr Annandale.
- [38] The plaintiff gave his evidence on the basis that he was injured, and the bursitis later erupted with swollen and painful knee. He indicated that he had slept at hospital. It seemed to me that the implication was that he had been admitted. Indeed, his pleadings are to the effect that he was admitted for three days. All this was agreed to be false when details were sought by the court. He conceded that he was not admitted. He gave no explanation for the error which led to the allegation that he was admitted.

[39] Most importantly he gave no evidence of any prior injuries. Neither was he led on such injuries. When it was later brought to the attention of his counsel that there was evidence in his own expert reports and specifically the report of Dr M Deacon, specialist orthopaedic surgeon that he had suffered a right lower leg fracture to the limb involved in 2009. The plaintiff's counsel said she had no knowledge of this prior injury to the leg in issue.

[40] When the plaintiff was asked how he injured his leg in 2009 he spontaneously stated, "it was not a RAF claim". He explained that the accident had occurred when he was loading a truck "and fell over".

[41] This prior injury on the same leg as that in respect of which the claim is made is relevant. There was no explanation as to why this evidence was not placed before this court.

[42] The plaintiff's counsel sought latterly to separate the merits from the quantum. This was after she had indicated that the matter was ready to proceed. There was no substantive application in terms of rule 33(4) for such separation and it seemed to me to be inconvenient to separate the merits from the quantum at a stage where the entire case of the plaintiff had been launched. The application for separation was thus refused.

[43] The plaintiff's counsel asked that the expert's reports founding the plaintiff's claim be received in terms of rule 38(2).

[44] I indicated that I would consider the expert reports as part of the evidence. I however specifically stated to counsel that I was concerned that the previous injuries on the same limb as those relied on had not been dealt with as to their probable effects on the knee. I was, I explained concerned, that this prior injury had not been testified to by the plaintiff in chief as led by counsel for the plaintiff.

[45] There was no addressing of this problem save to ask that I postpone the matter so that the effect of the previous leg injury could be assessed.

[46] This application was refused. It was not made by way of substantive application. Furthermore, it was made on the basis that relevant information which was at all material times known to the plaintiff was not dealt with in his evidence in chief. It

seemed that it was deliberately withheld from this court.

[47] This is important in that the evidence in the report sought to be relied on by the expert Industrial Psychologist (IP) was contaminated by this failure to explain that there had been a prior injury to the leg in question.

[48] The Industrial Psychologist is a pivotal expert in the assessment of the damages alleged to have been suffered.

[49] In this instance, the expert IP, Tania Vermaak made her assessment on the basis that the plaintiff was admitted to hospital for three days. This was, on the evidence of the plaintiff, not correct. My impression of the evidence of the plaintiff was that he attempted to suggest an admission in circumstances where he ultimately had to concede that he was not admitted to hospital.

[50] The IP is a pivotal expert in any matter where future earning potential is the issue at hand.

[51] If orthopaedic injuries are those relied on for the inability to work properly in the future this expert is key to the determination.

[52] It is not disputed that the prior injury to the leg and the effect thereof on the injury in question was not addressed by the orthopaedic expert. In fact, it was not disclosed to the court.

[53] The failure to disclose the fact of a prior injury to the limb in issue to the court is an important part of the consideration as to quantum that I am called on to undertake.

[54] I have advised counsel for the plaintiff that, in the circumstances, I would require more evidence as to causation and the determination of the quantum. Without this evidence this case cannot be determined. I was informed that such evidence was not available.

[55] In the circumstances the plaintiff has not adduced evidence sufficient to make out a case.

Order

[56] The following order is made:

1. Absolution from the instance is granted with costs to be paid by the plaintiff on scale C.

**FISHER J
JUDGE OF THE HIGH COURT
PRETORIA**

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 13 February 2026.

Heard: 02 May 2025

Delivered: 13 February 2026

APPEARANCES:

Plaintiff's counsel: Adv A Frosch

Plaintiff's Attorneys: Corné Nell Inc

Defendant's Counsel: Mr K Makgoka

Defendant's Attorneys: State Attorney