REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 4322/2024

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

DATE 2026/02/10 SIGNATURE [redacted]

In the matter between:

WELMA NKOE NGOETJANA **Plaintiff**

and

ROAD ACCIDENT FUND **Defendant**

JUDGMENT

BURNETT, AJ

<u>INTRODUCTION</u>

[1] This is an application for default judgment against the Road Accident Fund in terms of Rule 31 (2) of the Uniform Rules of Court read with the Practice Directives of this division.

[2] The merits have previously been finalised, and the matter was enrolled for determination of quantum only, and more specifically <u>loss of earnings.</u> In respect of merits, it is noted that the court applied an apportionment and found that the Defendant was 80% (eighty percent) liable for the accident.

[3] The necessary original documentation, i.e. a) combined summons; b) return of service; c) application for default judgment; d) notice of set down and e) merits court order, was properly filed with this court. There was proper service of the combined summons, application for default judgment and notice of set down on the Defendant. The court was satisfied that the matter was correctly enrolled and proceeded to hear the matter.

[4] There was no appearance on behalf of Defendant.

<u>APPLICATION IN TERMS OF RULE 38 (2)</u>

[5] At the start of the hearing, the Plaintiff brought a formal application in terms of Rule 38 (2) of the Uniform Rules of Court, in terms of which she sought for her evidence to be led by way of affidavit. Rule 38 (2) reads as follows: -

"The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at

any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit."

[6] The original application was filed before the court. Having regard to the fact that the matter before the court is a default judgment application, and that it would be practical and convenient to hear the evidence of the Plaintiff, and her expert witnesses via affidavit, the court granted the application in terms of Rule 38 (2).

EXPERT EVIDENCE

[7] The Plaintiff appointed five expert witnesses to give evidence in support of her claim, namely: -

[7.1] Dr. F.C Baloyi (an Independent Medical Examiner).

[7.2] Dr. J.T Makwela (an Orthopedic Surgeon).

[7.3] Ms. M A Ramela (an Occupational Therapist).

[7.4] Ms. M Kheswa (an Industrial Psychologist).

[7.5] Quantum Actuaries (Actuary).

[8] The court is satisfied that all five witnesses are in fact expert witnesses, and their evidence is accepted as such.

INJURIES

[9] The Plaintiff's injuries are orthopedic in nature, more specifically a right tibia and fibula fracture. The Plaintiff was issued with a walking frame after the accident, which she used for approximately three months, whereafter she used crutches for three months thereafter.

[10] The Plaintiff's prognosis indicates post-traumatic chronic pain and an impairment of the right lower limb. The Plaintiff is prone to swelling in her right leg and cannot stand for long periods of time. The Plaintiff has a decreased range of motion of the right ankle and muscle wastage on the right calf which suggests a decreased right lower limb use.

[10] The Plaintiff has reached maximum medical improvement.

[12] Ms. M A Ramela (the Occupational Therapist) opines that the Plaintiff will tolerate a significant amount of pain when handling any loads exceeding that of entry-range medium work as well as tasks requiring prolonged dynamic position endurance. The Plaintiff injuries, which affect her mobility, make her an unequal competitor on the open labour market. She is an undesirable candidate compared with other women of her age and with her qualifications. She is further disadvantaged by her lack of employment history.

LOSS OF EARNINGS

[13] The Plaintiff is 32 (thirty-two) years of age and unemployed. The Plaintiff was 28 (twenty-eight) years old at the time of the accident and was unemployed. The

Plaintiff has in fact, never entered the open labour market, and does not have a driver's license.

[14] The Plaintiff completed schooling and obtained her matric certificate, whereafter she completed an N6 in Marketing management in 2018 at Capricorn FET College.

[15] Ms. M Kheswa (the Industrial Psychologist) opines that the Plaintiff probably would have obtained employment pre-accident, on the lower quartile of the Paterson level, and continued to be employed until the age of 65 (sixty-five years old).

[16] The intensity of the pain that she suffers will directly correlate with an impairment on her work capacity. Ms. M Kheswa further opines that her pain, discomfort and restrictions as per Ms. M A Ramela's findings will mean that she will remain an unequal competitor on the open labour market and always be a vulnerable employee.

[17] According to Ms. M Kheswa, the Plaintiff will be restricted in terms of choice of employment and the type of employment that she is able to seek and further that she will suffer extended periods of unemployment.

[18] The actuary calculates the total loss of earnings (before the apportionment and contingencies) to be **R 5 913 778.00** (five million nine hundred and seventy-eight thousand seven hundred and seventy-eight rand), which is calculated as follows: -

[18.1] Past Loss of earnings amounts to **R 184 523.00.**

[18.2] Future loss of earnings amounts to **R 5 729 255.00.**

[18.3] The total loss of earnings thus amounts to **R 5 913 778.00**

CONTINGENY DEDUCTIONS

[15] A contingency deduction allows for the possibility that the Plaintiff may have less than normal expectations of life, and that she may experience periods of unemployment by reason of incapacity due to illness, accident, unrest or unstable economic conditions. The underlying rationale is that contingencies allow for general hazards of life. [1]

[16] Having regard to the Plaintiff's lack of employment history and the fact that as at the time that the accident occurred when she was 28 (twenty-eight) years old, she had no employment history of any kind, a higher contingency than normal should be applied. It would be prudent in this situation to apply a contingency reduction of **30% (thirty percent).**

ORDER

[17] I accordingly make the following order: -

[17.1] The Defendant pays the Plaintiff an amount of **R 3 311 715.48** (three million three hundred and eleven thousand seven hundred and fifteen rand and forty-eight cents) in respect of her loss of earnings in the above matter.

[17.2] The Defendant shall be liable for the Plaintiff's costs of suit on a party and party High Court Scale B.

1 *Van der Plaats v Southern African Mutual Fire and General Insurance Co* 1980 (3) SA 105 (A) page 114 – 115.

[redacted]

BURNETT, E J

ACTING JUDGE OF THE HIGH COURT,

POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE APPLICANT: - **ADV. N MANYISE**

INSTRUCTED BY: -

DATE OF HEARING: - **12 NOVEMBER 2025**

DATE OF JUDGMENT: - **10 FEBRUARY 2026**