

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 7610/2021

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

DATE 2026/02/10 SIGNATURE.. [REDACTED]

In the matter between:

GOODNESS TLANGELANI MARINGA**Plaintiff**

and

ROAD ACCIDENT FUND**Defendant**

JUDGMENT

BURNETT, AJ

INTRODUCTION

- [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 future medical expenses and loss of earnings. The Plaintiff seeks a postponement on the determination of general damages.
- [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.

APPLICATION IN TERMS OF RULE 38 (2)

- [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. P.T Kumbirai (an Orthopedic Surgeon).

[7.2] Ms. M Mogale (an Occupational Therapist).

[7.4] Dr. L.T. B Jackson (an Industrial Psychologist).

[7.5] Johan Sauer (Actuary).

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

ANALYSIS

- [9] The Plaintiff's injuries are orthopedic in nature, more specifically a fracture to her right ankle. The Plaintiff underwent surgery and remained as an in-patient at the Tzaneen Medi-Clinic for a period of 10 (ten) days, during which time the Plaintiff received sepsis management emanating from the injury and physiotherapy and rehabilitation.
- [10] The Plaintiff's injury is not deemed serious and, save for some pain, she has completely healed therefrom. The Plaintiff only achieved a Whole Person Impairment at 3% (three percent).
- [11] According to Dr. P.T Kumbirai (the Orthopedic Surgeon) the Plaintiff suffers some pain, which is prolonged by standing walking, lifting heavy weights and cold weather. The pain is not permanent and not chronic.
- [12] Ms. M Mogale (the Occupational Therapist) opines that the injury **has mildly** impaired the Plaintiff's standing and walking endurance. Mild means gentle – her walking and standing endurance has only been gently affected by her ankle surgery. The Occupational Therapist further opines that the Plaintiff displays **adequate** functional capacity that would result in the ability to perform light to medium physical type of work. Adequate means *“good enough in quality, for a particular purpose or need.”*¹ This means that the Plaintiff's physical ability is good enough to perform medium physical work. There is nothing before this court to suggest that the injury is a debilitating one.

¹ The Online Oxford English Dictionary accessed 8 February 2026.

- [13] The Plaintiff completed matric whereafter she obtained a N3 certificate in electrical engineering. Dr. L.T. B Jackson (the Industrial Phycologist) opined that the applicant be able to obtain employment in a semi-skilled job level.
- [14] The Plaintiff was 34 (thirty-four) years old at the time of the accident and would probably have continued to work until the age of 65 (sixty-five) years old. The Plaintiff was earning an amount of R 9 000.00 (nine thousand rand) per month at the time of the accident. These earnings would have steadily increased over the years, the degree of which would have depended on further vocational advancement.
- [15] The applicant is still employed in her pre-accident post and continues to work and earn the same income. There is insufficient evidence before this court to suggest that the Plaintiff would not be able to undergo further vocational advancement post-accident.
- [16] The Plaintiff's injury is not serious. The mere fact that a Plaintiff has been injured in an accident does not automatically mean that he/she will suffer a loss of earnings. A Plaintiff has a right to claim loss of earnings but must prove actual damage in this regard. This has not been done in this case and there is insufficient evidence to prove that the injury sustained by the Plaintiff is a debilitating one.
- [17] One can expect some level of pain emanating from an orthopedic injury; however, the pain that was suffered by the Plaintiff, is in this court's view not serious enough to affect her earnings. Her pain is only experienced from time to time, and it is not chronic and/or debilitating. Ms. M Mogale (the occupational therapist) refers to her impairment as mild (meaning gentle). There is insufficient evidence before this

court to prove that the gentle pain that is experienced from time to time is to such an extent that she is vulnerable within the open labour market and will suffer a loss of past and future earnings.

- [18] To the extent that the Plaintiff requires future medical treatment, she is entitled to an order for an undertaking in terms of section 17 (4) (a) of the Road Accident Fund Act 56 of 1996 (as amended). The medical treatment that may be required by the Plaintiff will not exceed the monetary jurisdiction of the Regional Court, and in the unlikely event that general damages is granted, it is also unlikely to exceed the monetary jurisdiction of the Regional Court.

ORDER

- [19] I accordingly make the following order: -

[19.1] The Plaintiff's claim for loss of earnings is dismissed.

[19.2] The Defendant shall provide the Plaintiff with an undertaking in terms of 17 (4) (a) of the Road Accident Fund Act 56 of 1996 (as amended) in respect of future medical expenses.

[19.2] The Plaintiff's claim for general damages is postponed *sine die*.

[19.4] The Defendant shall be liable for the Plaintiff's costs of suit on a party and party Regional Court scale.

BURNETT, E J

ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE APPLICANT: - ADV. ME MAMPA

INSTRUCTED BY: -

DATE OF HEARING: - 12 NOVEMBER 2025

DATE OF JUDGMENT: - 10 FEBRUARY 2026