

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 3357/2024

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

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

In the matter between:

MAGAELA KARABO MALATJI**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 loss of earnings. The Plaintiff requests that the aspect of general damages be postponed *sine die*.
- [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 he sought for his 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 his 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 his claim, namely: -

[7.1] Dr. D Chula (a Neurosurgeon).

[7.2] Dr. E Monyela (an Educational Psychologist).

[7.3] Dr. M Sekele (an Occupational Therapist).

[7.4] Dr. B Selepe (an Industrial Psychologist).

[7.5] Dr. N Kambaran (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 suffered *inter alia* a head injury in the collision that gave rise to this action. The head injury has caused *inter alia*, chronic headaches and memory impairment. The Plaintiff also suffers from chronic neck, spine and back pains. The injury has been assessed as serious and has a total whole bodily impairment of 31% (thirty-one percent). Dr. E Monyela (the Educational Phycologist) opines that the Plaintiff is unable to concentrate because of his injuries. He has low self-esteem, is irritable and short-tempered. The injury has affected his pre-accident functioning.

LOSS OF EARNINGS

- [10] The Plaintiff was 26 (twenty-six) years old and a mechanical engineering student at the time of the accident. Dr. Dr. E Monyela (the Educational Phycologist) opines that but for the accident, the Plaintiff would have obtained his NQF Level 7 qualification in mechanical engineering. Having regard to the accident, the Plaintiff would probably struggle to obtain his chosen qualification but could obtain a lesser NQF level 5 qualification.

- [11] Dr. B Selepe (the Industrial Psychologist) opines that, had it not been for the accident: -

- [11.1] The Plaintiff would likely continue studying until he completes his degree around the ages of 24 and 25 years. Considering the availability of scholarships and internships in South Africa, upon completion of his degree, the Plaintiff would have found it easy to

secure an internship as part of obtaining practical experience for his qualification.

[11.2] Taking into consideration the unemployment rate in South Africa, the Plaintiff would have secured formal employment within 1 to 2 years upon completion of his studies. This means that Plaintiff would likely have entered the labour market between the age of 26 and 27 years old.

[11.3] The qualification would enable the Plaintiff to secure a practical internship which would in all probabilities enable him to compete for a job grade at Koch semi-skilled salary scale of R 218 000.00 per annum basic salary in the formal sector. This qualification coupled with practical internship would have in all probabilities enabled the Plaintiff to secure a permanent/long/fixed-term contract employment within the corporate sector, which would have allowed the Plaintiff to earn in line with the Paterson B4/C1 lower scale. The Plaintiff would probably have progressed possibly reaching a career ceiling by the age of 45 at Paterson D1 Median Band.

[11.4] Given the above scenarios, in the absence of serious health impairments and the Plaintiff's willingness to study further, personal work capacity and strength intact, the Plaintiff would have been able to exercise his career of choice, and in the same way as his peers.

[12] Dr. B Selepe (the Industrial Psychologist) further opines that because of the incident, the Plaintiff would only have obtained an NFQ Level 5 qualification and: -

[12.1] Due to his long-term cognitive impairments, the Plaintiff would take longer to secure suitable employment, particularly because he would struggle with psychometric testing and interviews.

[12.2] The qualification, coupled with practical internship, would, in all probabilities, enable the Plaintiff to compete for a job graded at Paterson Grade B3 Band total guarantee package in the corporate sector.

[12.3] Given the Plaintiff's symptoms and prognosis, it appears that the Plaintiff may struggle to perform his duties diligently and optimally due to constant pain and discomfort and may rely on a sympathetic employer.

[13] The actuary calculates the total loss of earnings as follows: -

[13.1] Past Loss of earnings (the difference between pre and post morbid) amounts to **R 6 973 005.00.**

[13.2] **Less** Contingency deductions **R 1 631 627.00**

[13.3] The total loss of earnings thus amounts to **R 5 341 378.00**

[14] I am satisfied that the above actuarial calculations are a true reflection of the Plaintiff's loss of earnings.

CONTINGENCY DEDUCTIONS

[15] The actuary has included a contingency deduction of 15% (fifteen percent) in respect of pre-morbid loss of earnings and 50% (fifty percent) on the post morbid loss of earnings.

[16] A contingency deduction allows for the possibility that the Plaintiff may have less than normal expectations of life, and that he 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

[17] I deem the contingency loss applied by the actuary reasonable in the circumstances.

ORDER

[18] I accordingly make the following order: -

[18.1] The Defendant pays the Plaintiff an amount of **R 5 341 378** (five million three hundred and forty-one thousand, three hundred and seventy-eight rand) in respect of his loss of earnings in the above matter.

[18.2] 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.

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

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

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


BURNETT, E J
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE APPLICANT: - ADV. NTSAKO BALOYI
INSTRUCTED BY: - MH MALEPE ATTORNEYS

DATE OF HEARING: - 12 NOVEMBER 2025
DATE OF JUDGMENT: - 10 FEBRUARY 2026