

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 9249/2022

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

DATE...2026/02/10 SIGNATURE.....

In the matter between:

MICHEAL MPHO MASHAPA**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.
- [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 several expert witnesses to give evidence in support of his claim. The court is satisfied that all the witnesses are in fact expert witnesses, and their evidence is accepted as such.

INJURIES

- [8] The Plaintiff suffered orthopedic injuries, a right hemothorax (chest injury) and a mild brain injury resulting in easy tiring and fatigue. The Plaintiff has a 7% (seven percent) change of developing epilepsy.
- [9] Mr. Tebong Mabatamela (the Occupational Therapist) opines that the Plaintiff is unable to carry heavy objects due to his chronic pain and that he would only be suitable to handle light work in the open labour market. The Plaintiff injuries, which affect his mobility, make him an unequal competitor on the open labour market. The Plaintiff's injuries further affect his concentration.

LOSS OF EARNINGS

[10] The Plaintiff was 28 (twenty-eight) at the time of the accident. The Plaintiff completed matric and furthered his education by obtaining an N4 qualification in Business Management.

[11] The Plaintiff was a receptionist at the time that the accident occurred, however was also a student advancing his studies. Mrs. Zeheerah (the Industrial Psychologist) opines that, but for the accident, the Plaintiff would have been able to remain in his position as a receptionist or even obtain a higher paying position having regard to the furtherance of his studies. Following the accident, the Plaintiff returned to his post as a receptionist but lost his job due to his injuries and inability to carry out his tasks as a result thereof. Mrs. Zeheerah opined that the pain that the Plaintiff experiences have a detrimental effect on his concentration, which will make him prone to making mistakes in his work, thus making him vulnerable.

[12] The actuary calculates the total loss of earnings (before contingencies) to be **R 2 377 674.00** (two million three hundred and seventy thousand six hundred and seventy-four thousand rand), which is calculated as follows: -

[12.1] Past Loss of earnings amounts to **R 417 688.00**

[12.2] Future loss of earnings amounts to **R 1 959 986.00**

[12.3] The total loss of earnings thus amounts to **R 2 377 674.00.**

[13] The court accepts these calculations, however, must apply the appropriate contingencies.

CONTINGENCY DEDUCTIONS

[14] 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

[15] I deem a 25% (twenty-five percent) contingency loss reasonable on both past and future earnings. The reason that the said contingency is applied is because there is no definitive confirmation from the relevant experts that the Plaintiff will not be able to pursue his studies any further. It may be that the Plaintiff may take longer than expected to do this, however it has not been ruled out by the relevant experts. The Plaintiff may indeed pursue his studies after which it may potentially place him in a higher earning bracket despite his injuries.

ORDER

[16] I accordingly make the following order: -

[16.1] The Defendant pays the Plaintiff an amount of **R 1 783 255.50** (one million seven hundred and eighty-three thousand two hundred and

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

fifty-five rand and fifty cents.) in respect of her loss of earnings in the above matter.

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

[REDACTED]

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

APPEARANCES

FOR THE APPLICANT: - ADV. TSHITAMBA

INSTRUCTED BY: -

DATE OF HEARING: - 11 NOVEMBER 2025

DATE OF JUDGMENT: - 10 FEBRUARY 2026