

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 4869/2022

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

DATE 2026/02/11 SIGNATURE [REDACTED]

In the matter between:

KGATLA PHILLIP MABOROTHO**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's injuries are orthopedic in nature, specifically an injury to his right knee.
- [9] Ms. Matjomane (the Occupational Therapist) opines that the Plaintiff is unable to carry heavy objects due to his chronic pain. He cannot stand or walk for long periods of time. The Plaintiff injuries, which affect his mobility, make him an unequal competitor on the open labour market.

LOSS OF EARNINGS

- [10] The Plaintiff completed matric and holds a B.Ed. through Unisa. He has been working as an educator since 1995. The Plaintiff is considered a skilled worker.

- [11] The Plaintiff was earning R 35 000.00 (thirty-five thousand rand) as the principal of a public school at the time of the accident. Due to his chronic pain, the Plaintiff cannot fulfil his tasks as principal of the school. But for the accident, the Plaintiff would have continued in this capacity until the normal age of retirement, which is 65 (sixty-five) years.
- [12] The actuary calculates the total loss of earnings (after contingency deductions) to be **R 1 789 192.00** (one million seven hundred and eighty-nine thousand one hundred and ninety-two rand). The court accepts these calculations.

CONTINGENCY DEDUCTIONS

- [13] The actuary has included a contingency deduction of 20% (twenty percent) in respect of future loss of earnings.
- [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 the 20% (twenty percent) contingency loss applied by the actuary reasonable on future earnings. Having regard to the evidence before this court, the deceased has led a stable life personally as well as professionally insofar as his employment as a teacher is concerned. But for the accident, the Plaintiff probably would have

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

gone on to live a normal and stable life until the age of retirement. The contingency deductions relates unpredictable scenarios that may appear in the Plaintiff's life.

ORDER

[16] I accordingly make the following order: -

[16.1] The Defendant pays the Plaintiff an amount of **R 1 789 192.00** (one million seven hundred and eighty-nine thousand, one hundred and ninety-two thousand rand) in respect of his 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.



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: - 11 FEBRUARY 2026