REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 2808/2021

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

DATE 2026/02/10 SIGNATURE [redacted]

In the matter between:

MAGANTSHE ISSAC MAILA **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 default application before this court is in respect of merits and quantum. In respect of general damages, the Plaintiff seeks an order for loss of earnings.

[3] The necessary original documentation, i.e. a) combined summons; b) return of service; c) application for default judgment and d) notice of set down were 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.

MERITS

[5] The Plaintiff was called to give oral testimony on the merits of the matter. The Plaintiff testified as to his age, address and the fact that he was a passenger in a motor vehicle and that there was a collision with another motor vehicle ("the other motor vehicle"). The Plaintiff further testified that the collision occurred by the negligent driving of the other motor vehicle and confirmed the reasons for this accord with those that have been pleaded in the particulars of claim. The Plaintiff, as a passenger, cannot be to blame for the collision and there was no fault on his part.

[6] The Plaintiff testified that he sustained injuries because of the collision.

[7] The Plaintiff was a credible witness and there was no reason before this court to reject his evidence.

APPLICATION IN TERMS OF RULE 38 (2)

[8] After the Plaintiff testified to the merits of the matter, he 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 in respect of quantum 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."

[9] The original application was filed before the court. Having considered the application and 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

[10] The Plaintiff appointed expert witnesses to give evidence in support of his claim. The court is satisfied that these witnesses are in fact expert witnesses, and their evidence is accepted as such. Such experts included a Specialist Orthopedic Surgeon, an Occupational Therapist, an Industrial Psychologist and an Actuary.

INJURIES

[11] The Plaintiff's injuries were mostly orthopedic in nature for which he has reached a maximum medical improvement. The Plaintiff's orthopedic injuries have caused him to suffer chronic pain. He cannot stand and walk for prolonged periods, and neither can he climb stairs. He cannot lift heavy objects or engage in any strenuous activity.

[12] Both the occupational therapist and the industrial psychologist opine that the Plaintiff's work capacity has been affected by his injuries and that he is deemed to be vulnerable in the open labour market.

LOSS OF EARNINGS

[13] The Plaintiff is a construction worker performing heavy physical labour. A construction worker is deemed to be a semi-skilled worker. The occupational therapist opines that his current physical capacity does not meet the demands of his pre-accident duties. He is not suited for work that requires weight handling above 14 kilograms and prolonger elevated work. He is suited for sedentary, light and up to lower range medium category work.

[14] Hard physical work is part and parcel of being a construction worker and accordingly it is not possible for him to continue working in this capacity. Construction workers spend all their time *inter alia* walking, standing, bending, climbing and carrying heavy loads. It is a major physical job. The Plaintiff cannot meet these physical demands post-accident.

[15] The industrial psychologist opines that the Plaintiff would have been able to continue to work as a construction worker until the age of 65 (sixty-five) years old, but for the accident. The Plaintiff is not suitable for sedentary (deskbound) roles because he does not have a matric qualification; his highest level of schooling is only grade 10. The Plaintiff will struggle to find suitable work, and probably not at all.

[16] The actuary calculates the total loss of earnings (after contingency deductions) to be **R 3 627 497** (three million six hundred and twenty-seven thousand four hundred and ninety-seven rand). I am satisfied that the above actuarial calculations are a true reflection of the Plaintiff's loss of earnings.

CONTINGENY DEDUCTIONS

[17] The actuary has included a contingency deduction of 10% (ten percent) in respect of pre-morbid loss of earnings and 15% (fifteen percent) on the post morbid loss of earnings.

[18] 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]

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

ORDER

[20] I accordingly make the following order: -

[20.1] The Defendant is 100% (one hundred percent) liable for the Plaintiff's proven and/or agreed damages.

[20.2] The Defendant pays the Plaintiff an amount of **R 3 627 497** (three million six hundred and twenty-seven thousand four hundred and ninety-seven rand) in respect of loss of earnings.

[20.3] 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.

[20.4] The Plaintiff's claim for general damages be postponed *sine die.*

[20.5] 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. PS HOPANE**
INSTRUCTED BY: -	**LL SENYATSI ATTORNEYS**
DATE OF HEARING: -	**11 NOVEMBER 2025**
DATE OF JUDGMENT: -	**10 FEBRUARY 2026**