

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 1169/2015

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

DATE 2026/02/17 SIGNATURE..... 

In the matter between:

THABANG SEBOPETJA MOGALE**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 (5) (a) 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) the acceptance of merits, 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 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 her claim, namely: -

[7.1] Dr. PWS Williams (an Orthopedic Surgeon).

[7.2] Dr. RJ Phetla (an Educational Psychologist).

[7.3] Dr. B Mosadi (Specialist Neurosurgeon).

[7.4] Mr. D M Samuel (an Occupational Therapist).

[7.5] Dr. LTB Jackson (an Industrial Psychologist).

[7.6] Actuary Consulting (Actuary).

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

INJURIES

[9] The Plaintiff's injuries were mainly orthopedic in nature; however, he also had a mild brain injury. The Plaintiff has complainants of persistent pain, constant headaches and muscle weakness. The Plaintiff cannot walk or stand for long periods of time, and neither can he pick up heaving objects. The Plaintiff also has difficulty balancing and concentrating because of the pain. The Plaintiff suffers from post concussive headaches and memory loss because of the brain injury that he sustained.

[10] Mr. D M Samuel (the Occupational Therapist) opines that the Plaintiff's ability to work has been moderately affected by his injuries.

LOSS OF EARNINGS

[11] The Plaintiff does not have a matric certificate, and since the accident occurred, will not have the potential to acquire such. The Plaintiff would have been able to acquire a NQF 4 qualification had it not been for the accident, however because of the accident his highest level of education can only be a NQF 1 qualification.

[12] Dr. LTB Jackson (the Industrial Psychologist) opines that because of the injuries sustained in the collision; the Plaintiff is likely to now remain an unskilled worker for the remainder of his working life.

[13] The actuary calculates the total loss of earnings (after contingency deductions) to be **R 6 968 639.00** (six million nine hundred and sixty-eight thousand three hundred and thirty-nine rand). Save for the contingency on the future loss of earnings, I am

satisfied that the above actuarial calculations are a true reflection of the Plaintiff's loss of earnings.

CONTINGENCY DEDUCTIONS

[14] The actuary has included a contingency deduction of 5% (five percent) in respect of pre-morbid loss of earnings and 10% (twenty percent) on the post morbid loss of earnings.

[15] 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

[16] I deem a 20% (twenty percent) contingency loss reasonable in the circumstances.

ORDER

[17] I accordingly make the following order: -

[17.1] The Defendant is 100% (one hundred percent) liable for the injuries sustained by the Plaintiff for the collision that occurred on 11 August 2013.

[17.2] The Defendant pays the Plaintiff an amount of R 6 321 512.60 (six million three hundred and twenty-one thousand, five hundred and

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

twelve rand and sixty cents) in respect of loss of earnings within 180 days from the date of this order.

[17.3] 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.

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

[17.5] The payment of the capital amount and legal costs shall be paid into the trust account of the Plaintiff's Attorney of record.


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

APPEARANCES

FOR THE APPLICANT: - ADV. VF BALOYI

INSTRUCTED BY: - ML MONGADI ATTORNEYS

DATE OF HEARING: - 11 NOVEMBER 2025

DATE OF JUDGMENT: - 17 FEBRUARY 2026