

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 1266/2023

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

DATE 2026/02/18 SIGNATURE..... 

In the matter between:

BUSISIWE NOMQIBELO NKOSI**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 she sought for her 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 her 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. Imran Amad Khan (an Orthopedic Surgeon).

[7.3] Ms. S Marule (an Occupational Therapist).

[7.4] Mr. T Tsikai (an Industrial Psychologist).

[7.5] Mr. Namis Waisberg (Actuary).

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

INJURIES

- [9] The Plaintiff sustained several lacerations which caused muscle damage. The worst of which was to the top of her right foot, both her knees and legs. The Plaintiff had to use crutches for three months following the accident to assist her in walking.

[10] The Plaintiff cannot walk or stand for long periods of time, and neither can she pick up heaving objects. Ms. S Marule (an Occupational Therapist) notes that the Plaintiff has a limping gait, poor sitting endurance, poor dynamic balance and decreased muscle strength in the right hip, right hand and right leg. The Plaintiff has a decreased lifting and carrying capacity, poor attention, concentration and working memory. The Plaintiff struggles to engage in vigorous tasks that require intense physical force due to pain. Ms. Marule further opines that had it not been for the accident, the Plaintiff would not have suffered from these problems. She further states that the Plaintiff will not be able to return to the open labour market, and more particularly her job as a self-employed hawker.

LOSS OF EARNINGS

[11] The Plaintiff is 45 (forty-five) years old and worked as a self-employed hawker earning approximately R 7 500.00 (seven thousand five hundred rand) per month. She has suffered a complete past loss of earnings, not having been able to work post-accident.

[12] Mr. T Tsikai (an Industrial Psychologist), opines that the Plaintiff would have been able to continue to work as a hawker, and continue doing so until the age of 65 (sixty-five) years old, but for the accident.

[13] According to Mr. T Tsikai, the Plaintiff is an unskilled worker with a work history involving entirely physical work. Hard physical work is part and parcel of being a hawker and accordingly it is not possible for her to continue working in this capacity.

Mr. T Tsikai does not believe that there is any other kind of work that she can do and accordingly she has suffered a complete loss of future earnings.

[14] The actuary calculates the total loss of earnings (after contingency deductions) to be **R 1 974 092.00** (one million nine hundred and seventy-four thousand and ninety-two cents), which is calculated as follows: -

[14.1] Past Loss of earnings amounts to **R 389 872.00.**

[14.2] Future loss of earnings amounts to **R 1 584 220.00.**

[14.3] The total loss of earnings thus amounts to **R 1 974 092.00.**

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

CONTINGENCY DEDUCTIONS

[16] The actuary has included a contingency deduction of 5% (five percent) in respect of pre-morbid loss of earnings and 15% (fifty percent) on the post morbid loss of earnings.

[17] 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

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

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

ORDER

[19] I accordingly make the following order: -

[17.1] The Defendant pays the Plaintiff an amount of **R 1 974 092.00** (one million nine hundred and seventy-four thousand and ninety-two cents), in respect of her loss of earnings in the above matter.

[17.2] 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. N MANYISE

INSTRUCTED BY: -

DATE OF HEARING: - 12 NOVEMBER 2025

DATE OF JUDGMENT: - 17 FEBRUARY 2026