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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 26407/2021

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED
DATE: 25/2/26
SIGNATURE

In the matter between:

MABASSO PETRO PAULO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MAUBANE AJ

Introduction

[1] The plaintiff instituted an action against the defendant for damages arising from a motor vehicle accident which occurred on 25 December 2011. The plaintiff, who is currently 53 years of age, was 39 years of age at the time of the accident.

[2] The merits of the case and the claim for general damages have been settled between the parties.

[3] The only issue before this court is the determination of the plaintiff's loss of earning capacity.

Background

[4] The defendant entered an appearance to defend the action. When the matter was called before the court on 19 January 2026, the plaintiff appeared, but there was no appearance for the defendant.

[5] The applications to strike out the defendant's defence and Rule 38(2) were granted in favour of the plaintiff. The matter accordingly proceeded as an unopposed hearing on the issue of quantum

Quantum

[6] The plaintiff was admitted to Rob Ferreira Hospital on 25 December 2011. Although the exact date of discharge is not clear from the records, it is evident that he spent some days there. The RAF1 form states that he suffered a left tibia injury. He was able to mobilize crutches independently, was in good condition, had no pain, and his upper body strength was adequate. A nail was inserted in his tibia to treat the fracture.

[7] The plaintiff consulted with various medico-legal experts who compiled reports and made the following observations and findings:

Dr Hadebe (Orthopaedic surgeon)

- a) The plaintiff is reasonably healthy with no obvious signs of systematic diseases and has no deformities.
- b) has 4cm scar on the anterior aspect of the left knee.
- c) has 2 scars measuring 1cmx1cm on the proximal of the left leg.

- d) has 10cm scar on the anterior aspect of the left leg; and 1cm on the distal left leg.
- e) The plaintiff suffered severe acute pain for about 5 weeks following the injuries sustained and continues to suffer discomfort in the left leg. The orthopaedic surgeon considered that the plaintiff could be managed with pain medication and surgical treatment.
- f) He further sustained a fracture of the left tibia and fibula, which was treated with a tibial intramedullary nail and screws.
- g) It is opined by an expert that the plaintiff may be managed with physiotherapy and pain medication when necessary.
- h) Occupational aspects were deferred to occupational therapists. The plaintiff qualifies for the narrative test.

Dr Rambau (Occupational therapist)

- i) At the time of the assessment the plaintiff reported that he was unemployed.
- j) During consultation, he informed the therapist that he continues to experience a loss of amenities due to residual symptoms. He was unable to participate in certain activities such as gardening and home maintenance as he used to prior to the accident. He reported that he stopped participating in his pre-accident leisure activities and therefore his ability to enjoy previously chosen leisure activities has been comprised by the injuries.

Rinoko Consulting (Industrial Psychologist)

- k) It was opined that the accident curtailed the plaintiff's employment and earnings potential as a plumber.
- l) As a result of the accident and its sequelae, he is rendered a vulnerable individual in the open labour market. While in theory he is suited to sedentary work with some adaptations; however, in practice he will not be able to compete for such work, the bulk of which requires competitive education and relevant skills. He is likely to struggle to regain entry into the

labour market due to the accident and its sequelae, and the chances that he has exited the open labour market is quite high.

Wim Loots (Actuary)

[8] After the application of contingencies to both pre- and post-morbid scenarios, the actuary suggested a compensation amount of R 5465 958. This suggested amount was premised on the findings in the medico-legal reports.

Contingencies

[9] Standard contingency deductions applied by courts are 5% for past loss of earnings and 15% for future loss of earnings. These are, however, not rigid rules.

[10] In ***Van der Plaats v South African Mutual Fire and General Insurance Co Ltd***,¹ the court emphasized that the provision for contingencies is a matter falling within the discretion of the trial Court, and that the amount allowed to contingencies is variable and closely related to the facts and circumstances of each case.

[11] Where actuarial calculations are presented, the court must still exercise its discretion by applying an appropriate contingency deduction to the amount claimed. There are various factors the court should consider in applying contingencies, which include, amongst others:

- a) The possibility of unemployment,
- b) Periods of employment,
- c) Economic fluctuations,
- d) Early retirement, and
- e) Mortality.

[12] In exercising its discretion when applying contingencies, the court must take into consideration the following principles:

¹ 1980 (3) SA 105 (A) at p116 D-G.

- a) Contingencies are a matter of judicial discretion, not objective calculation,
- b) The assessment is necessary, speculative and impressionistic,
- c) The court's discretion must be exercised judicially, having regard to relevant facts,
- d) Expert evidence, including that of actuaries, serves as a guide and does not bind the court, and
- e) Justice and fairness require that contingencies be tailored to the plaintiffs proven circumstances.

[13] In ***Phahlane v Road Accident Fund***,² the court stated that contingencies represent the hazards of life ordinarily faced by people. It was quoted with approval in *Shield Insurance Co Ltd v Booysen*,³ that contingency deductions are a matter of subjective rather than objective precision. Such contingencies may include illness, economic change, accidents or death - events which may affect earning capacity irrespective of the accident.⁴

[14] The advantage of applying actuarial calculations to assist in the task was emphasized in ***Southern Insurance Association Ltd v Bailey NO***,⁵ where the court stated:

"(a) Any enquiry into damages for loss of earning capacity is of its nature speculative,
(b) All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss. It has open to it two possible approaches, one is for the judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on evidence. The validity of this approach depends of

² (48112/2014) [2017] ZAGPPHC 759 (7 November 2017) at para 17.

³ 1979 (3) SA 953 (A) at 965G-H.

⁴ Above n 2 at para 17.

⁵ 1984 (1) SA 98 (A) at p99A-E.

course upon the soundness of the assumptions, and these may vary from the strongly probable speculation. It is manifest that either approach involves guesswork to a greater or lesser extent, but the Court cannot for this reason adopt a non possumus attitude and make no award,

(c) In a case where the Court has before it material on which an actuarial calculation can usefully be made, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an "informed guess" it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial Judge's gut feeling(to use words of the appellant's counsel) as to what is fair and reasonable is nothing more than a blind guess.
"

[15] It is noted by this court that the plaintiff consulted with all the experts aforementioned more than four-and-a-half years ago, and the experts' affidavits used in support of the plaintiff's claim were sworn more than four years ago. Consequently, the court does not have evidence regarding the plaintiff's present health status. It is worth noting that the court is not aware of the plaintiff's present health status or the current sequelae resulting from the accident.

[16] The plaintiff filed a bank statement showing several deposits, the source of which are not stated. The court was informed that the plaintiff's level of education is grade 7. It is stated in the expert reports that the plaintiff is categorized as an unskilled individual, who was previously employed as a plumber at Harolf Construction at the time of the accident. He ceased working after the accident and has been unemployed to date. Regarding the presentation of sufficient information to the court proving past and future loss of earnings suffered by the plaintiff, it was held in ***Mfanalo Skhosana v Road Accident Fund***,⁶ that the—

“... approach to the determination of loss of earnings in this matter was based on the trite principle that the onus lies on the plaintiff to prove his case on preponderance of probabilities. To this end, he must produce sufficient

⁶ 2026 JDR 0428 (ML) at para 11.

evidence of his income to enable the court to assess and quantify his past and future loss of earnings. Due to the intricate nature of this quantification, the task has been largely handed over to the experts. This means that the same proof that would be placed before court ought to be available to the experts so that their computations and resultant recommendations are founded on credible evidence. "

[17] In the present matter, the plaintiffs evidence insofar as his past employment is not supported by any evidence, either by way of affidavit(s), and/or viva voce evidence and/or salary advice(s). He only filed bank statements in which the intermittent deposits do not specify the source and/or the nature of such deposits

[18] According to the information provided to the experts, the reason the plaintiff did not return to his previous employment was due to the expiry of his contract.

[19] For all the above stated reasons, I am of the view that for past loss of earnings, the plaintiff failed to discharge onus of proof on a balance of probabilities, and for the future loss of earnings, I consider 40% contingency deduction and earning capacity of R 2 790 955.50 to be a fair and reasonable estimate of the plaintiff's loss.

[20] WHEREFORE, the judgment the following judgment is granted:

Order:

1. Merits were previously settled 100% in favour of the Plaintiff.
2. General damages have been previously settled for R400 000.00 between the parties.
3. Undertaking for future medical expenses have been previously settled between the parties.
4. Application in terms of Rule 38(2) is granted.
 - 4.1 The Defendant shall pay the Plaintiff an amount **of two million seven hundred and ninety thousand nine hundred and fifty-five**

rand and fifty cents(R 2 790 955.50) in respect of loss of earning capacity.

4.2 such amount shall be payable within 180 days from the date of judgment by direct transfer into the trust account of **MABASA SK ATTORNEYS INC**, details of which are as follows:

Account holder	Mabasa SK Attorneys Inc
Bank	ABSA
Branch	Kempton Park
Account number	4[...]
Account Type	: Trust (Cheque Account)

5. Should payment of the afore-mentioned amount not be effected timeously, the Plaintiff will be entitled to recover interest, at the prescribed rate, as per legislation.

6. The Defendant shall make payment of the Plaintiff's taxed or agreed Party and Party costs of the action on the High Court scale, which costs shall include but not be limited to the following:

6.1 The fees of counsel on the high court scale, inclusive of but not limited to counsel's reasonable day fee for perusal of brief, including his fee for the preparations of heads of arguments.

6.2 The reasonable, taxable costs of obtaining all experts medico-legal, which were furnished to the Defendant and/or included in the trial bundles and/or uploaded onto Caselines;

6.3 The reasonable taxable costs associated with obtaining experts affidavits for the afore-mentioned experts in terms of Rule 38, as well as the experts' charges pertaining to their time and attendances spent inter alia in commissioning thereof.

6.4 The reasonable costs of all consultations between Attorney and/or the witnesses, and/or the experts and/or the Plaintiff in preparation for the hearing (if any); and

6.5 The reasonable, taxable accommodation and transportation costs incurred by or on behalf of the Plaintiff in attending all medico-legal consultations with the parties' experts and/or, all consultations with his legal representatives, the quantum of which is subject to the discretion of the Taxing Master.

7. The following provisions shall apply with regards to the determination of the afore-mentioned taxed or agreed costs:

7.1 The Plaintiff shall serve the notice of taxation on the Defendant.

7.2 The Plaintiff shall allow the Defendant 180 (ONE HUNDRED AND EIGHTY) calendar days to make payment of the taxed costs from date of settlement or taxation thereof; and

7.3 Should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the applicable interest rate on the taxed or agreed costs from date of allocatur to date of payment

8. The above costs are in the discretion of the Taxing Master and shall also be paid into the trust account.

9. There is a Contingency Fee Agreement in accordance with the Contingency Fee Agreement Act 66 of 1997.

**MAUBANE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

DATE HEARD: 19 JANUARY 2026

DATE OF JUDGMENT: 25 FEBRUARY 2026

APPEARANCES:

COUNSEL FOR THE PLAINTIFF:
INSTRUCTED BY:

ADVOCATE U B MAKUYA
MABASA S K ATTORNEYS INC