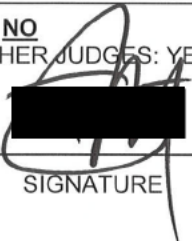


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number:2025/106758

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED: YES / <u>NO</u>
20 March 2026	
DATE	SIGNATURE

In the matter between:

THUBA POLICEMAN TSOTETSI

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

MAKGATE AJ:

INTRODUCTION

- [1] The Plaintiff is a 47-year-old male, previously self-employed as a livestock trader, selling goats to the public and allegedly earning R20 000.00 per month (net).

This is a default judgment application wherein the Plaintiff seeks damages arising from a hit-and-run motor vehicle collision that occurred on 27 February 2023 on the R23 Road, Greylingstad, Mpumalanga, which amount is computed as follows:

- [1.1] R2000.00 for past medical and hospital expenses.
 - [1.2] R50 000.00 for future medical expenses.
 - [1.3] R2 808 555.00 for past and future loss of earnings / earning capacity.
- [2] In this default judgment application, the Plaintiff, proceeded on both aspects of merits and quantum. The issue of general damages was however postponed *sine die*. An order in terms of Rule 38(2) of the Uniform Rules was sought and granted.

MERITS

- [3] The collision occurred on the 27 February 2023 at approximately 18H00 on the R23 Road, Greylingstad, Mpumalanga. Same was reported at Greylingstad Police Staton under case number AR 071/02/2023.
- [4] According to the Plaintiff's section 19(f) affidavit which details how, where and when the collision occurred, he alleges that he was a pedestrian walking along the sidewalk when a white Land Cruiser motor vehicle with unknown registration numbers left the roadway and collided with him. The driver immediately fled the scene without stopping or rendering assistance.

- [5] Section 17(1) of the Road Accident Fund Act 56 of 1996 states that the Road Accident Fund *“shall be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee.”*
- [6] This statutory obligation includes hit-and-run cases and what is required of the claimant to succeed in his or her claim, is that the accident was caused by a motor vehicle, that same was due to a negligent driving of the motor vehicle, and that, as a result of the negligent driving of the motor vehicle, bodily injuries have been sustained.
- [7] That said, liability in a hit-and-run claim is typically governed by the ordinary principles of delict, read together with the Road Accident Fund Act 56 of 1996, particularly section 17 (1)(b).
- [8] It is trite that the onus rests on the Plaintiff to prove the Defendant's negligence which caused the damages suffered on a balance of probabilities. To avoid liability, the Defendant must produce evidence to disprove the inference of negligence on its part, failing which it risks the possibility of being found to be liable for damages suffered by the Plaintiff.
- [9] In the circumstances, for the Defendant's liability to diminish, the Defendant must adduce evidence to prove that the Plaintiff was negligent in causing the collision. The Defendant in this case did not present any evidence to this effect. There is only one version before this Court which version I find very probable. Same is

also corroborated by the accident report and the medical records. As a result, there is no basis to doubt it.

- [10] In the matter of the **Manuel v SA Eagle Insurance Co. Ltd 1982 (4) SA 352 at 357 A – D**, it was held that:

"The principles to be extracted from these cases are as follows. A motorist who sees a pedestrian on the roadway or about to venture thereon, should regulate his driving so as to avoid an accident. Whether the motorist is reasonably entitled to assume or infer, from the conduct of the pedestrian, that his right of way is being recognised and respected, is a question of fact to be decided in each case. When the assumption is not justified, the motorist must regulate his driving to allow for the possibility, or probability, that his vehicle may not enjoy an unobstructed passage."

- [11] Based on the aforesaid and for purposes of determining liability, particularly in this case, corroboration is imperative. As a result, the Courts will place weight on the accident report, medical records and independent witness statements, if any.

- [12] In this matter, although the Plaintiff has opted to deal with his evidence by way of an affidavit, I am satisfied that documents relied on do corroborate with his version in that there is an accident report at Caselines 014-40 detailing how the collision occurred. Also, there are medical records at Caselines 014 -44 confirming the nature of the injuries sustained with a brief description recorded by the medical staff on how those injuries were sustained.

- [13] On the other hand, there was nothing presented by the Defendant to persuade me that a different view should be applied. For the above reasons, the insured driver's negligence was the sole cause of the collision.

[14] Based on the aforesaid, I find the Defendant 100% liable for the Plaintiff's proven damages.

Aftermath of the collision

[15] Immediately following the collision, the Plaintiff attended at a clinic, where he received initial assessment and stabilization. He was then transferred by ambulance to Standerton Hospital on 28 February 2023.

[16] Upon admission to Standerton Hospital, the Plaintiff underwent medical evaluation, including radiological examination. The diagnostic findings revealed that he had sustained a lateral malleolar fracture of the right ankle. This injury required orthopaedic intervention, and the Plaintiff's right leg was immobilized in a plaster cast and he was discharged the following day. He then returned for follow-up treatment on 22 March 2023.

MEDICO LEGAL EXPERTS

ORTHOPAEDIC SURGEON – Dr Tshibidi

[17] The orthopaedic assessment confirms that the Plaintiff sustained a right ankle fracture. The report further stated that the injury was treated conservatively with plaster of paris and the fracture has united *albeit* persistent residual symptoms, including pain, reduced range of motion and functional limitations in the right lower limb. It is further stated in the report that the Plaintiff presents with an antalgic gait and requires a crutch for ambulation. He further reported difficulty with prolonged standing, walking long distances, and carrying heavy objects.

According to the orthopaedic surgeon, the Plaintiff has reached maximum medical improvement.

- [18] The orthopaedic's opinion recognises that the Plaintiff's *sequelae* will impact on his employability and amenities of life due to ongoing pain. The orthopaedic surgeon further noted pre-existing conditions relating to a right humerus fracture and head injury as a result of a motor vehicle accident during 2019. The pre-existing conditions are unrelated to the case in casu.

OCCUPATIONAL THERAPY – MS NIEUWOUDT.

- [19] The Occupational Therapist, Ms Nieuwoudt, opines that the Plaintiff's assessment results indicate possible neurological fallouts including pain in the entire right side of his body, tremors in his limbs and body, but more pronounced to the right side, avoiding the use of the right hand, incoordination/ataxia and difficulty planning movement. These limitations render the Plaintiff unfit for manual type of work, including his former work as a farmer. According to the OT, she is of the opinion that if these limitations were present prior to the accident in question, the Plaintiff would not have been capable of functioning independently or to farm.
- [20] She further opines that there is currently no evidence to support the reason the Plaintiff needs to walk with an elbow crutch since the fracture has healed and there are no indications of significant orthopaedic pathology or degenerative changes such as osteoarthritis. From a functional point of view and that's according to the OT, it thus appears more plausible that the need for the elbow crutch can be supported by reasons other than the ankle fracture, such as his current limitations to the right side of his body, tremors, incoordination, etc.

- [21] Importantly, she opined that given the injury he sustained in the accident in question, one would have expected a level of recovery that would have allowed him to walk unaided.

INDUSTRIAL PSYCHOLOGIST – DEL VALLE

- [22] The Industrial Psychologist evaluated the Plaintiff's pre- and post-accident employability and earning capacity. According to the IP, pre-morbidly, the Plaintiff was a self-employed farmer engaged in livestock rearing and sales, with earnings dependent on informal or unverified income streams. Post-accident, the Plaintiff is recorded as unemployed, with the assessment explicitly considering both hypothetical uninjured career progression and the current injured scenario. The IP's report incorporates medical expert findings of the orthopaedic, OT and labour market data, concluding that the accident has had a direct and material impact on his employability.

- [23] The IP has concluded that the Plaintiff's physical limitations significantly reduced his competitiveness in the open labour market, particularly given his limited education (Grade 11), lack of formal skills, and prior reliance on physically intensive work. His inability to perform sustained physical tasks, combined with ongoing pain and mobility restrictions, renders him unemployable or at best restricted to low-demand, sedentary roles, for which he is not suitably qualified. The report therefore supports a substantial diminution, if not a total loss of earning capacity, which aspects forms the primary basis for actuarial quantification.

ACTUARIAL REPORT – VALENTINI

[24] The actuarial report quantifies the Plaintiff's loss of earnings based on the industrial psychologist's postulations and standard actuarial assumptions. The calculation is based on a projected uninjured earning trajectory aligned with semi-skilled upper earnings (R233 000.00 per annum), adjusted for inflation and contingencies.

[25] The actuarial outcome reflects a total loss of earnings of R2,808,555, comprising:

Past loss: R549,765

Future loss: R2,258,790.

[26] In his calculations, the actuary has applied contingencies of 5% for past and 15% for future regarding the uninjured scenario, with no earnings assumed post-accident. The report therefore adopts a total loss of earnings premised on complete unemployability.

ANALYSIS

[27] On the evidence presented, the Plaintiff's case on quantum is vulnerable on the extent of functional incapacity, proof of pre-morbid earnings, and the assumption of total unemployability. The OT has opined that there is a healed ankle fracture despite the Plaintiff's contention that he has suffered total loss of earnings. On the contrary, the medico legal reports reveal discrepancies and important concessions which place the Plaintiff's case in doubt.

[28] The Plaintiff reported to the experts that because of the ankle fracture that has since healed and united, he has suffered and continues to suffer a range of permanent disabilities that have fundamentally altered his quality of life and

economic prospects. In the immediate post-accident period, extending for approximately three months, the Plaintiff reported that he was unable to attend to basic personal hygiene and self-care functions without assistance. This included activities such as bathing, dressing and other activities of daily living that able-bodied individuals take for granted.

[29] According to the Plaintiff's version as reported to the experts, he continues to experience chronic pain at the site of the fracture. This pain is particularly exacerbated during periods of inclement weather. The pain is also aggravated during physical activity, effectively limiting the Plaintiff's ability to engage in any occupation or recreational activity that requires sustained ambulation, standing, or physical exertion.

[30] It is recorded that his functional limitations extend to difficulty walking even moderate distances. It is further recorded that the Plaintiff could previously walk for extended periods as required by his livestock trading occupation, however, he now experiences significant discomfort and fatigue after minimal ambulation.

[31] Furthermore, as reported to the experts, it was submitted by the Plaintiff's counsel that the Plaintiff is totally unable to return to his pre-accident occupation as a livestock trader since this occupation inherently requires substantial physical capability, including the ability to handle animals, walk long distances across farm terrain, load and offload animals from transport vehicles, and maintain balance on uneven surfaces. All these activities are now impossible or extremely difficult for the Plaintiff given his ankle injury.

[32] Consequently, he is confined to seeking light duty employment only, meaning sedentary or minimal physical exertion roles that would represent a substantial diminution in his earning capacity even if such employment could be secured.

[33] Amongst other heads of damages that the Plaintiff claim is past and future loss of earnings or earning capacity. That said, the principle relating to this head of damages is that loss of earnings or earning capacity is assessed on the basis that the Defendant must make good the difference between the value of the Plaintiff's estate after the commission of the delict and the value it would have had if the delict had not been committed. See Santam Versekeningsbemaatskappy beperk v Beyleveld¹ and Dippenaar v Shield Insurance Co Ltd.²

[34] As a result, there must be a proof that the disability gives rise to a patrimonial loss, this in turn will depend on the occupation or nature of the work which the Plaintiff did before the accident or would probably have done if he or she had not been disabled.

[35] Having regard to the aforesaid, the enquiry is not whether the Plaintiff was injured, but whether the accident caused a patrimonial diminution of earning capacity. What therefore needs to be determined is whether the Plaintiff has suffered loss of earnings, either actual or probable. In the circumstances, the evidence presented must demonstrate that the Plaintiff is worse off in the labour market than he would probably have been but for the accident.

[36] The Plaintiff claims R2 808 555.00 for past and future loss of earnings arising from a right ankle fracture that is now united. The Plaintiff has established, at best, a healed orthopaedic injury with residual symptoms. He has not proved that the accident caused the broader disabling now relied upon to justify total economic loss.

¹ 1973 (2) SA 146 (A) 150 B - D

² 1979 (2) SA 904 (A) 917 B - D

[37] On the evidence presented, the OT expressly states that the Plaintiff's broader limitations relate to tremors, incoordination, amongst others, and that the use of a crutch do not appear to be related to the accident and is possibly neurological in origin. As a result, there is no evidence justifying the continued use of a crutch given the ankle injury sustained. In the circumstances, these additional limitations far outweigh the ankle injury and are the main reason for his unemployability.

[38] Also, the Plaintiff's inability to resume farming is partly attributable to theft of livestock which is a non-accident cause entirely outside the RAF's liability.

[39] Further, the Industrial Psychologist's opinion of effective unemployability rests on a compromised foundation in that his pre-accident earnings were cash-based and unverifiable, yet the IP adopted an upper-quartile semi-skilled benchmark of R228 000.00 per annum as a convenience rather than proven fact. The IP's own report concedes that the OT's clinical concern in that the functional limitations are disproportionate to the orthopaedic injury and remains unresolved.

[40] Having regard to the Plaintiff's case as presented, I could not find any evidence that tends to exclude his prior injury as a contributing or dominant cause. As a result, the Court cannot safely attribute these deficits to a subsequent ankle fracture in the absence of a specialist neurological opinion.

[41] Further, the actuarial calculations assumes that the Plaintiff has not earned a living since the accident and due to the *sequelae* of the injuries, he will not be able to earn in the future. This assumption is driven entirely by the IP's unemployability opinion which is not in agreement with the Orthopaedic Surgeon who opines that the Plaintiff is suited to sedentary work until age 65, thereby attributing unemployability to non-accident causes.

[42] Also, there is no documentary evidence of the Plaintiff's pre-accident income, no bank statements, livestock registers, or invoices. The IP herself acknowledged that self-employment income of this kind is inherently variable. Despite this, she has selected an upper-quartile semi-skilled benchmark with no proof of income.

[43] Based on the above, my considered view is that the Plaintiff has not discharged the onus of proving loss of earnings at this stage. The Plaintiff has proved a healed ankle fracture with residual symptoms. He has not proved that the accident caused the broader disabling picture now relied upon, nor that it has destroyed all earning capacity to retirement. The current quantum claim is speculative and overstated.

[44] Accordingly, whilst the Plaintiff has placed before this Court experts' opinions, the actuarial figure of R2 808 555.00 is not a proven loss. This matter accordingly requires referral to trial, where the Plaintiff must be put to the proof of the material assumption underlying his quantum case, where the causal nexus between the ankle fracture and the alleged total unemployability must be established properly.

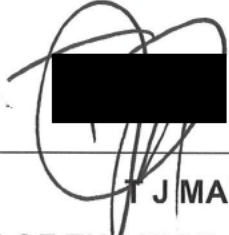
[45] Considering the above, this Court is not willing to exercise its discretion and grant default judgment against the Defendant in respect of the Plaintiff's claim for loss of earnings. In the circumstances, this Court, in the interest of justice, is also not prepared to dismiss the claim for loss of earnings.

[46] It may well be so that the Plaintiff has a potential claim for loss of earnings, however, on the available evidence, this Court has its own doubts. As a result, the aspect of loss of earnings requires a trial. In that way, the interest of justice would be better served.

[47] In the result, the following order is made:

Order

- 1 The Defendant is liable for 100% of such loss as agreed or as proven by the Plaintiff.
- 2 The Defendant is ordered to furnish the Plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996.
- 3 The application for default judgment in respect of the Plaintiff's claim for loss of earnings is refused.
- 4 The Defendant is ordered to pay the Plaintiff's costs on High Court Scale B.



T J MAKGATE
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Plaintiff: Adv P Uys instructed by Austin & Allan Attorneys.

Date of Hearing: 25 February 2026.

Date of Judgment: 20 March 2026.