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**IN THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION MAHIKENG**

CASE NO: 3841/2024

In the matter between:

PATIENT MORATIWA MOTHOB

APPLICANT

And

ROAD ACCIDENT FUND

RESPONDENT

LINK NO: 5359618

Judgment is handed down electronically by distributing to the parties' legal representatives by e-mail. The date that the judgment deemed to be handed down is 26 March 2025 at 16H00.

ORDER

Consequently, the following order made:

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

JUDGMENT

MABUZA AJ

INTRODUCTION

[1] This is an application for leave to appeal against the judgment of this Court delivered on 27 October 2025, wherein the applicant was awarded R900 000 in respect of loss of earning capacity. The applicant seeks leave to appeal to the Full Court alternatively the Supreme Court of Appeal. The application is unopposed.

FACTUAL BACKGROUND

[2] The applicant sustained injuries in a motor vehicle accident which materially affected her earning capacity. This Court accepted the evidence of medical experts, an industrial psychologist and an actuary. Prior to the accident, the applicant's employment history was characterised by intermittent contract work and periods of unemployment.

[3] At the time of the accident, she was unemployed, which introduced uncertainty regarding her future earnings. Her qualifications were limited and her employment prospects depended largely on contract-based opportunities.

[4] Following the accident, she suffered physical and functional impairments including reduced endurance, diminished concentration and reduced competitiveness in the labour market. This Court accepted that she retained residual earning capacity but that such capacity was significantly compromised.

EVALUATION OF CONTINGENCIES

[5] The actuarial calculations reflected uninjured income of R3 849 829 and injured income of R998 122. This Court applied a contingency of 65% to the uninjured scenario. This higher contingency was justified by:

1. The applicant's unemployment at the time of the accident;
2. Her unstable work history;
3. The absence of guaranteed future employment;
4. Labour market uncertainties;

[6] This Court applied contingencies of 55%–60% to the injured scenario. This reflected:

1. Reduced productivity;
2. Increased vulnerabilities in the labour market;
3. Diminished competitiveness.

[7] The calculation produced a range between R898 000 and R948 000. This Court awarded R900 000 as a fair and conservative figure within that range.

APPLICANT'S ARGUMENTS

[8] The applicant contends that the calculation is incorrect and inconsistent with paragraph 30 of the judgment. It is further argued that the contingencies are irreconcilable and that a higher award should have been made.

[9] Reliance was placed on actuarial precision and comparative case law.

ISSUE

[10] Whether there are reasonable prospects that another court would interfere with the award.

LEGAL PRINCIPLES

[11] Section 17(1)(a) of the Superior Courts Act¹ governs leave to appeal. In *S v Smith*,² the Court held that there must be a sound rational basis. In *Mont Chevaux Trust v Tina Goosen*,³ the threshold was confirmed as higher than mere possibility.

[12] In *Southern Insurance Association Ltd v Bailey*, NO⁴ the court confirms that contingency deductions account for the vicissitudes of life and that courts are not bound by actuarial precision. It supports the fact that the damages may be assessed broadly. In *Road Accident Fund v Guedes*,⁵ it was found that actuarial calculations are not binding.

[13] The applicant's case amounts to dissatisfaction with the outcome rather than a valid ground of appeal

¹ Superior Courts Act 10 of 2013.

² *S v Smith* 2012 (1) SACR 567 (SCA).

³ *Mont Chevaux Trust v Tina Goosen* 2014 JDR 2325 (LCC).

⁴ *Southern Insurance Association Ltd v Bailey* 1984 (1) (A).

⁵ In *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA).

ANALYSIS

[14] The applicant's argument is premised on the assertion that the award should follow strict mathematical calculation. This is inconsistent with the principles in *Bailey's* and *Guedes* cases supra. This Court exercised its discretion judicially, considering all relevant evidence.

[15] The contingencies applied were justified by the applicant's employment instability and diminished capacity. The award of R900 000 falls within a rational and defensible range. There is no misdirection in law or fact.

FINDING

[16] There are no reasonable prospects that another court would come to a different conclusion. The application does not meet the statutory threshold.

ORDER

[17] Consequently, the following order is made:

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

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B MABUZA

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION, MAHIKENG**

Heard on: 19 March 2026

Judgment delivered on: 26 March 2026

Appearances

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