



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT
JUDGMENT**

Case No.: 5094/2021

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED YES/NO
<u>20 APRIL 2026</u>	<u>NSIBANDE AJ</u>
DATE	SIGNATURE

In the matter between:

MARTA NYANYEKILE BUDA

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGEMENT

Introduction

[1] The Plaintiff is claiming in her personal capacity for damages as a result of a motor vehicle accident that occurred on the 29th March 2018, the Plaintiff was a passenger. The claim is against the Road Accident Fund (RAF). The Plaintiff is a major female born on the 05th May 1972.

[2] The issue of merits was settled 100% in favour of the Plaintiff. The issue of General Damages has been rejected by the Defendant and has been referred to the Health Profession Council of South Africa (HPCSA). The Plaintiff abandoned her claim in respect of past medical expenses as she was treated at a Provincial Hospital and no expenses were incurred.

[3] The issue that is to be decided by this Court is the issue of loss of earnings, past and future loss of earnings.

[4] The Defendant submitted that the Plaintiff had only sustained a capacity loss, while the Plaintiff seeks to rely on the postulation made by its Industrial Psychologist that the Plaintiff will in fact suffer a total future loss of earnings. The Defendant further submitted that as the Plaintiff was not employed at the time of the accident the Plaintiff suffered no past loss of earnings.

The Plaintiff's case

[5] The Plaintiff testified that she was involved in a motor vehicle accident as a passenger on the 29th March 2018 and she was injured on her hand, back and chest.

[6] She was taken to Lydenburg Hospital by ambulance and she was admitted for three days at the hospital. After being discharged she became an outpatient as she would regularly take pills for high blood pressure and pain.

[7] She further testified that when the weather changes, the pains become severe. She testified that she had never been to any other motor vehicle accident except the one of the 29th March 2018.

[8] She further testified that sometime in 2020 she slipped and fell and injured her leg, and the leg was plastered with cement and she was given pain killers. She does not receive any grant for herself but does receive one for her child.

[9] She further testified that at the time of the accident she was not employed, her last employment was as a domestic worker whereat she was employed by a Mann family from 2008 until 2016 when the family relocated to Johannesburg, and she was never employed after that.

[10] She was earning R2 500.00 (Two Thousand Five Hundred Rands) per month and did not receive a payslip. She stated that at commencement of her employment she used to be paid in cash, but as times went by, she received her salary through the bank. However, as

there were no funds coming into the account since 2016 the account was closed by the bank.

[11] Her highest level of education is Grade 9, and she was never trained for any other employment. At the time of the accident, she was still looking for employment as a domestic worker.

[12] After the accident she continued looking for employment but found none. At the time of the motor vehicle accident she had lost contact with the former employer and she had no contact details of the former employer.

[13] She stated that because of the injuries sustained in the motor vehicle accident as well as the injury to her leg she cannot stand for a long time and her hand cannot work normally.

[14] In proving income, Affidavits of Minah Mtsweni, Makoma Mphuti, Bheki Magagula and Enock Magagula were submitted and admitted as evidence by consent and by agreement between the parties. The Plaintiff also called as her witness Barend Maritz; an Industrial Psychologist who testified as follows.

[15] That he is a registered and practicing Industrial Psychologist since 2015. He knows the Plaintiff as he consulted with her, and the purpose of the consultation was for him to formulate an expert opinion.

[16] He testified that the Plaintiff's first consultation was with Ms. Viljoen, who has since left his practice and went overseas. He testified that the Plaintiff was unable to provide contact details of the former employer, the bank statement or any record of employment due to the lapse of time.

Pre-morbid

[17] He testified that Pre-Morbid the Plaintiff worked as a domestic worker but at the time of accident she was unemployed, and seeking alternative opportunities and she was aged 45 years, that had it not been for the accident, she would have mostly probably found employment within two years and earning the minimum wages for South African Domestic Workers.

[18] He testifies that considering the Plaintiffs level of education, work experience, age, socio economic circumstances and collateral information provided to him, he opined that it was not likely that the Plaintiff had the potential to progress within her career beyond the level of domestic worker, that is, it was unlikely for the Plaintiff to be considered for a more senior position and to enjoy advancement opportunities.

[19] He testified that the Plaintiff would have been able to function in a similar occupation until retirement of the age of 65 years, however, considering the nature of her employment, as well as her socio-economic circumstances, very few people can afford to retire at that age. He testified that following a consecutive approach, the Plaintiff would have most likely continued with the employment until the age of 70 years, depending on health and motivation.

Post Morbid

[20] He testified that the Plaintiff was not employed at the time of accident on the 29th March 2018, and that as a consequence no past loss of income should be calculated in this regard.

[21] In so far as it relates to future loss of earnings the witness testified that the Plaintiff is currently still unemployed and has not been able to retain employment and she is currently 50 years old.

[22] He testified that in consideration of the other experts opinions, it is evident that the accident has had a negative impact on the Plaintiff's physical functioning, and will continue to do so in future. As a result her employability will always be negatively affected and that she is at a high risk of remaining unemployed in future, which is currently the reality.

[23] The Plaintiff filed a Notice of Application in terms of Rule 38(2), which was to be heard on the day of hearing of the main proceedings, however the Court was advised that the Defendant does not oppose the Application and that by agreement between the parties the Application be granted, to the exclusion of the evidence of the Industrial Psychologist Mr. Bernard Maritz, who testified.

[24] The Application was duly granted and the following Affidavits and Medico Legal Reports were admitted as evidence in the proceedings;

- Dr. Piet Engelbrecht, Orthopaedic Surgeon.
- Dr. Pieter Kritzinger, Neurologist.
- Dr. Lesley Taylor, Occupational Therapist.
- Mr. Johan Sauer, Actuary

This then concluded the Plaintiff's evidence. The Plaintiff closed its case.

Defendant's Case

[25] The Defendant submitted that it has no witness to call and had no expert medico-legal reports filed and will rely on the Plaintiff's reports as a consequence there is no opposition to the evidence led by the Plaintiff and no further evidence to be examined, as no version has been placed before the Court by the Defendant.

Analysis

[26] It is important to state that the cross-examination of a witness does not equate to a version, it may only point to inconsistency here and there as a result a court faced with such a situation cannot be said to have before it a version based on the cross of examination of a witness.

[27] There court therefore accept the medico-legal reports of the experts witness of the Plaintiff as the version that is before court uncontested.

[28] The court accept and acknowledge that even though the version of the Plaintiff is uncontested, it must still be credible and probable in all matters and aspects considered.

[29] The court finds that the evidence of the Plaintiff and the evidence of Mr Barend Maritz, the Industrial Psychologist was credible and probable as such accepted by the court.

Valuation of the Evidence

[30] As indicated above, the Defendant has provided no version to contradict that of the Plaintiff. The parties are in agreement with almost all the facts raised by the Plaintiff and her expert witnesses.

[31] The only matter in dispute, which the court is called upon to make a determination is the amount to be considered fair and reasonable for compensation for loss of earnings.

[32] The court agrees with the Industrial Psychologist that as the Plaintiff was not employed at the time of the accident up to the date of the hearing of this matter, there can not be a claim of past loss earnings.

[33] The issue therefore that this court must make a decision on is the claim for future loss of earnings as a result of the motor vehicle accident.

The plaintiff argued for compensation for a total future loss of earning capacity as a result of the motor vehicle accident, as she was rendered totally unemployable, while on the other hand the Defendant argued for a partial loss of future earnings as a result of the motor vehicle accident, taking into considerations the other proven medical deficiencies that pre dates the accident and post date the accident.

[34] It is indeed correct, as submitted by the Defendant that the Plaintiff contradicted her evidence in so far as to the period of employment before the accident, whether the employment period was between 2008 -

2016 as per her evidence in chief or between 2009- 2025 as indicated in the medico legal report of the neurologist.

[35] In this regard, the court finds that this contradiction is not a material contradiction which should discredit the evidence that the Plaintiff was once employed and had the earning capacity.

[36] The Defendant also took issue with the absence of proof of earnings, as well as confirmation from the former employer of the employment or remuneration of the Plaintiff.

[37] It is an unfortunate situation and a reality of a majority of South African men and women that they find themselves being employed in informal employment, where there are no payslips provided by the employer to prove their earnings and payment is made in cash by handing of an envelope. Or where, because of the scarcity of employment as well as the lack of certainty and stability in the workplace, and in some instances, the hostility of the employer, the employee will leave the employment and have no further contact with the employer.

[38] In such circumstances, there exist a possibility that such a person will never be able to provide any proof of earnings and might for all intents and purposes have no contact of the former employer. Should the Court simply dismiss their claim of being employed at that particular point, the Court think not where the interest of justice dictate that the Court

must come to the assistance of the vulnerable groups of our society, this Court will not hesitate to do so.

[39] The plaintiff has submitted Affidavits of people who confirmed her employment and her remuneration at the time when she was employed. The Court accepts these affidavits as confirmation of the earnings of the Plaintiff.

[40] The Orthopaedic Surgeon, Dr P Engelbrecht, reports that the Plaintiff was assessed by him on the 11th May 2022 and again on the 21st August 2024. The expert confirms the presence of age related degeneration in the cervical as well as the lumbar spine as well as the acromioclavicular joint osteoarthritic changes, possible impingement of the supraspinatus tendon.

[41] The expert further opined that, from an orthopaedic perspective, in calculating the Plaintiff's loss of work capacity, the contribution of the accident should be seen as 10-15%. The aforementioned takes into account age degeneration of the left AC joint, degeneration of the neck as well as the lumbar spine. He further opined that the injuries need to be 50% apportioned to make provision for the indications of age -related degeneration in the left AC joint.

[42] The court has taken the above opinion into consideration as well the other expert opinions in coming to a determination in this matter.

Legal Principles

[43] In coming to a determination in this matter the court is also guided by the law and legal principles applicable. The assessment of loss of earnings or earning capacity were set out by the Appellate Division in the matter of :

Southern Insurance Association Ltd v Bailey 1984 (1) SA 98 (A), where it was held;

“Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. 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 the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative.

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.”

[44] The Court is also mindful that when determining suitable contingencies deduction in loss of income claims, exercises a wide discretion which need less to say is to be exercised judicially.

[45] In the matter of Pitt v Economic Insurance Co Ltd 1957 (3) SA 284 (D), though dealing with the awarding of general damages, the principle is applicable to loss of future income or earning capacity, the Court held as follows;

“The Court must take care to see that its award is fair to both sides- it must give just compensation to the Plaintiff, but it must not pour out largesse from the horn of plenty at the defendant’s expense”

[46] As a result the Court will follow a conservative approach in applying contingency deduction in respect of the future loss of earnings from the actuarial calculations.

[47] As already indicated above, there shall be no past loss of earnings as per the reasons provided above.

Order

[48] After carefully examining the evidence before me, and applying the conservative 50% contingency deduction, the Court makes the following order

1. The Defendant is liable to pay the Plaintiff's Future Loss of Earnings in the amount of R330 020.00
2. Claim for past loss of income is dismissed.
3. The Defendant to pay the agreed or taxed party and party costs on scale B.



NSIBANDE AJ

ACTING JUDGE OF THE HIGH COURT,

MPUMALANGA DIVISION

Date of hearing: 14 October 2025

Date of judgment: 20 April 2026

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