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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/ Not Reportable

Case no: 579/2022

ADV HEILA BASSON N.O obo

Plaintiff

NIKLAAS JACOBUS HEYNS

and

THE ROAD ACCIDENT FUND

Defendant

Coram: Williams J

Heard on: 19/08/2025

Delivered on: 17/04/2026

Summary: Loss of earnings

J U D G M E N T

WILLIAMS J

1. The plaintiff, Mr N J Heyns, was injured as a pedestrian in a motor vehicle accident which occurred on 9 December 2018. It is reported that the plaintiff stood next to a wall when the insured driver lost control of the insured vehicle, which pinned the plaintiff against the wall. He sustained a fracture of the right proximal tibia.
2. The merits in this matter were settled 100% in favour of the plaintiff and the only remaining issue to be decided is the plaintiff's loss of earnings as a result of the accident.
3. No *viva voce* evidence was led, the parties having agreed that in terms of rule 38 (2) the evidence be presented by way of affidavit. To this effect, the plaintiff introduced the affidavits of his experts, himself and certain lay-witnesses. The defendant, the Road Accident Fund (RAF), did not lead any evidence.
4. To start out with, it needs to be mentioned that Dr J A Smuts, the plaintiff's neurologist, reported that the plaintiff, in his opinion, sustained a mild concussive head injury. The plaintiff according to the experts, deny having sustained a head injury during the accident *in casu*, but was apparently involved in a motor vehicle accident during 2006, where he did sustain a head injury. Given the uncertainty surrounding any head injury sustained in the present matter, Mr Ernst, who appeared for the plaintiff, informed that the matter be determined solely on the basis of the orthopaedic injury sustained by the plaintiff.

The Plaintiff

5. The plaintiff was 52 years old at the time of the accident. He completed Grade 9 and left school in 1983 during his Grade 10 year.
6. According to the employment history given by him to the industrial psychologist, Dr Dries Schreuder, the plaintiff was employed in various capacities such as sales assistant, soldier, security guard, doing piece work

and as a builder. At the time of the accident he was employed as a self-employed builder from 2004.

7. The plaintiff, in his affidavit states that at the time of the accident he was self-employed and did building work which included bricklaying, tiling, paving and painting. He earned about R2 500,00 to R6 000,00 per month. After the accident he cannot do building work anymore because of the injuries to his right leg and back. He cannot stand, sit or crouch for long periods of time and currently only occasionally does light piece work as a gardener.
8. His aunt, with whom the plaintiff has been residing since after the accident, Ms Sanna Filane, confirms this information in her affidavit.
9. In support of the plaintiff's employment history before and after the accident certificates of employers and affidavits of two of his employers were handed in.
10. Ms A Setlafelo states that she has known the plaintiff since 2018 as he had done some tiling and small building work around her house. After the accident, she states, the plaintiff is unable to do building work and only occasionally cleans her yard when he needs money
11. Mrs B Ntaka also states in her affidavit that she has known the plaintiff since before 2018 and that he has done some tiling and small building work inside and outside of her house on a number of occasions. After 2018, he has been unable to do any building work and she only provides him with yard work occasionally when he needs money.
12. In their employer's certificates Ms Ntaka indicated that she currently pays him R350, 00 per month for one or two days work and Ms Setlofelo, that she pays him R200, 00 per month.

The expert witnesses

13. Dr J Van der Westhuizen, orthopaedic surgeon, first assessed the plaintiff for trial purposes during 2022. At that time the plaintiff complained that his right tibia was still painful especially during cold weather. He also mentioned that he could not stand or sit for long periods of time nor run or walk for long distances. The plaintiff also complained of weakness and numbness in his left arm and leg which resulted in him not being able to pick up heavy objects with his left arm/hand.
14. On examination of the right tibia which was fractured in the accident, Dr van der Westhuizen found that the fracture was well united and should have a good prognosis in the long term. Provision should be made for good conservative treatment, since he still complained of pain and discomfort, to improve his muscle strength and which may relieve his current pain symptoms. In the opinion of Dr Van der Westhuizen, the plaintiff who sustained only a proximal tibial fracture, which has since united, should be able to continue his work in the construction industry.
15. As far as the complaints regarding the plaintiffs left arm and leg were concerned, examination of the plaintiff's cervical spine showed no tenderness and clinically there was no weakness of the left arm and leg. X-rays of the cervical spine did not show any previous fractures although early degenerative changes were present.
16. During his follow-up assessment of the plaintiff on 26 March 2025, Dr Van der Westhuizen noted that the plaintiff now presented with a well united proximal tibia fracture and that he experienced tenderness during examination of the ankle rather than the fracture site. However since he struggles to walk with the right leg he may benefit from physiotherapy to improve muscle strength. It remained Dr Van der Westhuizen's opinion that the plaintiff "*in theory*" should be able to continue his work.
17. Ms Susan Human, occupational therapist, first assessed the plaintiff during 2022. At that stage the plaintiff complained for a numb feeling in his left arm and left leg and that he could not hold things firmly with his left hand anymore

or lift heavier objects with his left arm. He informed her that his left foot dragged when walking and that he could not walk properly with his left leg anymore. The right leg pained in colder weather, other than that the right leg did not feel comfortable, but did not experience pain. Ms Human recommended biokinetics or physiotherapy for pain management and muscle strength in the plaintiff's lower right leg. Should treatment be successful the plaintiff should be able to continue his work in the building sector.

18. On reassessment during 2025 Ms Human came to the same conclusion.
19. Dr Dries Schreuder, industrial psychologist, first interviewed the plaintiff during 2022. He also considered the other expert reports which were available at the time. Dr Schreuder was of the opinion that since the plaintiff was a self-employed builder at the time of the accident, he probably would have continued in this capacity until normal retirement age of 65 years. As there was no proof of income available, and according to the plaintiff he had earned between R2 500, 00 to R6 000, 00 per month before the accident, he suggested that the national minimum wage be used as a guideline to calculate the plaintiff's pre-morbid income, adjusted for inflation, and that a higher pre-morbid contingency deduction is indicated to make provision for periods of unemployment. The plaintiff had indicated to him that he had worked for about eight months per year.
20. As far as post-morbid income is concerned, Dr Schreuder was of the view that once the plaintiff had undergone rehabilitation for about 6 months he would be able to resume his work again, but that his emotional problems may harm his motivation and drive to secure employment as well as productivity at work. He has accordingly become a more vulnerable employee in the open market. Dr Schreuder opined at the time that a higher post-morbid contingency deduction is indicated.
21. On follow-up assessment during 2025, Dr Schreuder remained firm in his opinion as to the plaintiff's pre-morbid income. As far as his post-morbid income is concerned however, Dr Schreuder experienced difficulty

understanding the plaintiff during the second interview and it appeared that his cognitive functioning had deteriorated since 2022. The long and short of it however, is that given the plaintiff's age, pre-existing medical history and other unrelated contributing factors, even with the suggested biokinetic or physical therapy for his accident related orthopaedic injury, the likelihood of the plaintiff securing employment in the open labour market or as a builder is very slim. Dr Schreuder is of the opinion that the plaintiff will probably remain unemployed and provision should be made for a total loss of income post-morbidly.

22. Munroe forensic actuaries were tasked with calculating the loss of earnings suffered by the plaintiff. They based their calculation on the information obtained from Dr Schreuder's latest report, *inter alia* that the minimum wage of R5 610, 00 per month be applied and that the plaintiff would not be employable in future. They have not taken the accident of 2006 into account due to a lack of knowledge thereof and have not applied any contingencies. Their calculation of the plaintiff's past loss of earnings amount to R366 700, 00 and the future loss of earnings to R366 900, 00, bringing the total loss of earnings (without considering contingencies) to R733 600, 00.

Discussion

23. On the evidence before me it is not an easy task to determine what would constitute a reasonable award as to the plaintiff's loss of earnings. As far as his pre-accident earnings are concerned there is no documentary proof thereof. Mr Ernst has informed that the plaintiff has and had no bank account from which one would be able, to some extent, to make a determination of his pre-accident income. Nevertheless, the situation is not as dire as that of the plaintiff in *Mphunyetsane v RAF* [2019] JOL 46051 (FB). In that matter the plaintiff was a street vendor who claimed to have earned R15 000, 00 per month pre-accident. Although he had a bank account into which his earnings were deposited he failed to provide the court with any bank statements. The court refused to accept his word as conclusive proof of his income pre-

accident, where bank statements could have been produced to shed light on his pre-accident income.

24. *In casu* there is some external proof that the plaintiff had before the accident been self-employed by doing light building work in the affidavits of Ms A Setlafelo, Ms Ntlaka and his aunt, Ms Filane. The employment certificate by Ms Ntaka also mentions that he does not do any tiling work anymore, but only does some light jobs, such as cleaning after 2018. Although Ms Setlafelo and Ms Ntaka do not make mention of what the plaintiff's earning would have been per month pre-accident, and his aunt's knowledge of his pre-accident income as being between R2 500, 00 and R6 000,00 is somewhat questionable – there being no basis laid for such, there is at least evidence that he did light building work before the accident and that he had earned an income.
25. Dr Schreuder's suggestion that one proceeds from the applicable minimum wage as a starting point to determine the plaintiff's pre-accident income, with a higher contingency deduction to provide for uncertainties and the fact that the plaintiff informed that he only worked for 8 months of the year, appears to be accepted by both Mr Ernst and Ms Mahlanga for the RAF, they only differ in regard to the contingency applicable. Mr Ernst argued for a contingency deduction of at most 15% whereas Ms Mahlanga contended for 50%.
26. Whilst I agree that the most sensible starting point in determining the plaintiff's pre-accident income would be the applicable minimum wage, I cannot lose sight of the fact that the plaintiff has not produced documentary proof of income, that he performed the light building work in the township of Pabellelo at the time of the accident, which is an area defined by significant socio-economic challenges and that there would have been and were significant periods of unemployment. A reasonable contingency deduction, in my view, would be that of 30%.
27. As far as future loss of income is concerned, it is significant that, from an orthopaedic point of view, the only injury shown to have resulted from the

accident, the proximal tibia fracture of the right leg, has completely united. With either biokinetics or physiotherapy for 6 months, there appears to be nothing clinically, which would prevent the plaintiff from commencing employment in the light building industry. The cognitive issues as well as the numbness and weakness experienced by the plaintiff to the left part of his body, which appear to have contributed greatly to his unemployability in the building industry, are not related to the accident *in casu*. The RAF should not be prejudiced by taking unrelated health issues into account in determining its liability for the plaintiffs future loss of earnings. The complaints which the plaintiff have which are relevant to this matter are that post-accident he experiences pain in his right leg during cold weather and that his emotional well-being has suffered, which makes him psychologically vulnerable. The plaintiff is however still able to do light general work even though the income derived therefrom is minimal. In my view a contingency deduction of 40% would be reasonable with regard to post-accident loss of earnings.

28. In the result the plaintiff is granted past loss of earnings in the amount of R366 700, 00 less 30%. Future loss of earnings is calculated at R366 900, 00 less 40%. Total loss of earnings is thus an amount of R256, 690, 00 plus R220, 140, 00, which equals R476 830, 00.
29. The defendant has given an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996 for the future medical expenses of the plaintiff.

Curator ad litem

30. Ms Heila Basson, a practising advocate and member of the Pretoria Society of Advocates was appointed as *curator ad litem* to the plaintiff. She was appointed to assist in the litigation and to investigate whether the plaintiff could manage his own affairs and to report to the court in this regard. Ms Basson has filed two comprehensive reports in this respect, which is appreciated. She has also found, like Dr Schreuder that the plaintiff has regressed both physically and cognitively. She recommends that a *curator bonis* be appointed to manage the financial affairs of the plaintiff. Having

regard to all the reports before me, I consider the appointment of a *curator bonis* to be in the best interest of the plaintiff.

The following order is made:

- 1. The defendant is liable to compensate the plaintiff for 100% of the damages suffered as a result of the injuries sustained during the collision in which he was involved in on 9 December 2018, by agreement between the parties.**
- 2. The Defendant must furnish NIKLAAS JACOBUS HEYNS with identity number: 6[...] with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996, as amended, within 30 days from date of this order and to compensate the plaintiff for 100% of the costs of the future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods, treatment or medication, including the costs associated with the appointment of a care giver, if needed, to the plaintiff and which is incurred as a result of the collision in which the plaintiff was involved on 9 December 2018.**
- 3. The defendant must pay to the plaintiff an amount of R476, 830, 00 FOUR HUNDRED AND SEVENTY SIX THOUSAND AND EIGHT HUNDRED AND THIRTY RAND, in respect of loss of earnings.**
- 4. Payment of the capital amount referred to above is to be made to Andre du Plessis Inc, payable within 180 calendar days of date hereof by direct transfer into their trust account, which details will be provided to the defendant.**
- 5. Interest shall accrue on the amount as referred to in paragraph 4 above at the rate of 10.75% per annum calculated from 15 (FIFTEEN) calendar days after date of this order to date of payment.**

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- 6. The defendant is ordered to pay the plaintiff's taxed or agreed costs on the High Court party and party scale, such costs shall include (but are not limited to) subject to the discretion of the Taxing Master:**
- 6.1 The costs of counsel, Adv JRF Ernst, on Scale B, which costs shall include, general preparation, consultations, perusal, drafting of heads of argument, and travelling expenses, preparation for trial and his full day fees for 18 and 19 August 2025.**
- 6.2 The reasonable costs of obtaining expert reports and/or addendums to earlier reports, including RAF4 forms where applicable, and affidavits of inter alia:**
- 6.1.1 Dr JA Smuts (Neurologist);**
- 6.1.2 Dr J van Der Westhuizen, Orthopaedic Surgeon;**
- 6.1.3 ZAH Radiology Trust, (Dr) Radiologists;**
- 6.1.4 A Cramer, Clinical and Neuro-Psychologist;**
- 6.1.5 Ms S Human (Occupational Therapist);**
- 6.1.6 Dr D Schreuder (Industrial Psychologist);**
- 6.1.7 Mr W Boshoff / Ms J Valentini – Munro Forensic Actuaries (Actuary).**
- 6.3 The reasonable preparation, qualifying, reservation and day fees of the plaintiff's experts, and any subsequent day they were in attendance at court, and including the reasonable taxable costs of necessary consultations with all the experts for the plaintiff, the traveling costs and expenses of the experts for attending court, where so incurred, and the costs of all the reports and joint minutes and the costs of all the plaintiff's actuarial calculations/reports as well as expert and other affidavits, where incurred and upon proof thereof provided to the taxing master.**
- 6.4 The costs incurred in connection with the preparation, drafting and copying of all the bundles of documents, pleadings, notices and indexes.**

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- 6.5 The reasonable taxable travelling, subsistence and accommodation costs of the plaintiff, plaintiff's legal representatives, and witnesses, for trial, where incurred and upon proof thereof provided to the taxing master.**
- 6.6 Any costs incurred in obtaining judgment as set out above, as well as all other costs not referred to above, including any reserved costs, where incurred by Plaintiff in preparation for the trial.**
- 6.7 The reasonable costs of preparation for and attendance of all pre-trial conferences and case flow management, where attended.**
- 6.8 The costs of the appointment of the Curator ad Litem as well as her costs incurred in consulting with the plaintiff, experts, and witnesses as well as her reports and which shall include but not be limited to two consultations with the attorney and counsel as well as any costs incurred in attending court in respect of both merits and/or quantum and on appointment of a Curator Bonis and Personam, if any.**
- 7. Until such time as a Curator Bonis is appointed or the court grants an order in respect of the protection of the funds, the proceeds of this claim must be deposited in an interest-bearing account in terms of the Legal Practice Act by the plaintiff's attorney of record after having paid the attorney and client disbursements, fees, and expenses.**
- 8. The defendant shall pay the plaintiff's taxed or agreed party and party costs subject to the following conditions:**
- 8.1 The plaintiff shall, in the event that costs are not agreed upon, serve a Notice of Taxation on the defendant via email; and**
- 8.2 The plaintiff shall allow the defendant 14 calendar days after the allocator has been made available to the defendant to make payment of the taxed or agreed party and party costs; interest shall however accrue**

on the taxed or agreed costs at the rate of 10.75% per annum calculated from 14 calendar days after date of the stamped allocator to date of payment.

9. It is noted that the plaintiff entered into a contingency fee agreement with the attorney that is valid and binding.

**C C WILLIAMS
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION**

Appearances

For the Plaintiff:

Instructed by:

Adv JRF Ernst

Andre Du Plessis Incorporated

c/o

Kimberley

For the Defendant:

Instructed by:

Ms J Mhlanga

State Attorney

Kimberley

