REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case no: 30134/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: NO

DATE: 20 January 2026

SIGNATURE:

In the matter between:

C H DE BEER	**PLAINTIFF**
and	
THE ROAD ACCIDENT FUND	**DEFENDANT**

JUDGMENT

K STRYDOM, AJ

Introduction

1. The Plaintiff was injured in a motor vehicle collision on the 29th of October 2020. The incontrovertible medical and expert evidence indicates that he sustained significant

orthopaedic injuries that have had a devastating impact on his general enjoyment of life and more specifically to the issue *in casu*, his ability to earn an income.

2. Summons was served on the Defendant on the 2nd of June 2022. The Defendant did not defend the matter and as such default judgment was applied for on the 19th of January 2023. It was only after the notice of set down for the default judgment date of the 12th of April 2024 was served on the Defendant, that it on the 9th of April 2024 filed a notice of intention to defend.

3. As it had not delivered a plea and was in any event under bar from pleading due to a notice of bar that had previously been served on them, the Court, on the 12th of April 2024, proceeded to hear the default judgment application and found that the Defendant is 100% liable for the damages suffered by the Plaintiff. It also ordered that the Defendant provide the Plaintiff with a Section 17(4)(a) undertaking for his future medical expenses as well as a R2 million interim payment for past and future loss of income ("the 2024 order").

4. The application for the present default judgment was served on the Defendant on the 11th of July 2024.

5. More than a year later, on the 27th of August 2025, the Defendant served an application to stay a writ of execution (presumably based on the April 2024 order) on the Plaintiff. The basis for the application to stay the writ was a purported rescission application of the April 2024 order to be brought. The Plaintiff opposed the stay application and filed its answering affidavit timeously. From the documentation that was before this court, it does not appear if that stay application was further pursued by the Defendant.

6. When the application was called on the trial default judgment roll of the 25th of November 2025, I was informed that the Defendant sought a postponement of the matter.

7. The State Attorney appearing on behalf of the Defendant indicated that no substantive application for postponement had been prepared. I was informed from the bar that the postponement was sought pending the application for the stay of the writ and the stay of the writ of execution. As the writ itself related to an order previously granted, clarification was sought from the Defendant's legal representative. From his oral submissions, it became evident that the pending rescission application alluded to in that application to stay the writ was the actual basis for seeking a postponement. From the submissions made it would appear that at some stage after the court in April 2024 found the Defendant to be 100% liable for the Plaintiff's damages, the Defendant conducted an internal investigation into the so called merits and came to the conclusion that the Plaintiff should be held to be at least 50% responsible for the occurrence of the accident. The findings of this investigation would then seemingoly form the basis of a rescission application. Notably, however, was the fact that no such rescission application had been issued at the time when this matter was heard.

8. The lack of any detail or proper substantiation as to reasons why a postponement should be granted under the circumstances, resulted in the request for postponement being dismissed on the day.

9. As indicated supra, the Defendant was barred from pleading. However, mindful of the judgments[1] of this division in relation to the right of a defendant to participate in proceedings under circumstances where it does not have a plea, the State Attorney was afforded an opportunity (on the 2nd day of hearing) to direct questions to the witnesses led by the Plaintiff. He, however, indicated that no questions would be put as the Defendant remained of the view that it would apply for rescission of the 'merits order' (the 2024 Order).

[1] See for instance: *Stevens and Another v RAF* (26017/2016) [2022] ZAGPJHC 864 (31 October 2022); *T P Ralele obo P M Makhudubela* Case number 9117/2019, High Court Gauteng, Pretoria, 18 April 2024

10. The present determination of loss of earnings was therefore made in the absence of any address of argument from the Defendant, despite the Defendant's representatives being present at the hearing hereof and having been afforded the opportunity to do so.

11. For purposes of the present hearing, only the loss of income suffered by the Plaintiff stands for determination. The question of general damages stands to be postponed in view of the fact that the Defendant has as yet failed to make any determination as to whether it accepts the seriousness of the injuries for purposes of vesting this court with the jurisdiction to make a determination.

12. The Plaintiff had applied for the evidence of his experts to be led by way of affidavit in terms of Rule 38(2). However, given the queries and uncertainties relating to the basis upon which his loss of income was quantified by the industrial psychologist and more crucially the chartered accountant, it was ordered that both the Plaintiff and the chartered accountant should present their evidence orally. The matter was consequently stood down to the 28th of November 2025 for such evidence to be led *viva voce*.

Evidence

13. At the time of the collision the Plaintiff was self-employed working within the construction industry. According to the industrial psychologist's analysis of his pre-morbid bank statements, he had at that time already reached his career ceiling in terms of earnings within his industry. She formed the view that had he not been in the accident he would have been able to work up until the age of 65.

14. Given the extent of the injuries sustained in the accident and the severe sequalae thereof, he initially had to downscale his business which resulted in a significantly lower income. The occupational therapist confirms that he meets some but not all of the physical demands of his pre-accident employment. He was not suited for

work that requires high ambulatory demands, high staying tolerance and repeated of use of lower limbs or lifting or carrying of medium duty objects and heavy duty objects. The industrial psychologist postulated that his post-morbid income should be calculated on the basis that he would have earned 50% of his pre-morbid income up until the 7th of May 2021, thereafter a loss of 75% until April 2024 (the date of the industrial psychologist's report) whereafter he would suffer a complete loss of earnings.

15. Both the industrial psychologist as well as the chartered accountant had limited financial documentation at their disposal:

> 15.1. Bank statements for the Plaintiff's businesses for the period July 2020 to May 2021;
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> 15.2. Bank statements for one of the businesses for the period January 2024 until May 2024.

16. The experts therefore only had sight of bank statements for a period of three months preceding the accident (July, August and October 2021).

17. The chartered accounted calculated the Plaintiff's pre morbid earnings on the following basis:

> 17.1. The expert relied on the actual income per the bank statements for the period of five months (July 2020 to February 2021) of R594 857.73 which he then annualised.
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> 17.2. The annualised income of R1 427 656.15 for 2021 is used as the basis for postulating the future income until age 65. This amount is adjusted year on year to account for inflation. Additionally, to account for growth of the business, a growth factor of 8% per annum to this amount was applied.[2]

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[2] 1.1. During evidence he testified that the 8% growth is based on a variety of statistics and could be considered a 'best case' scenario. According to his recollection at the time, StatSA's statistic put the growth within the construction industry at 4%. He was requested to verify this information and to update his report by applying the relevant StatSA growth factor to his pre morbid calculation. His addendum

18. A different methodology was used to calculate the post morbid income:

18.1. As was (correctly) pointed out by the chartered accountant in evidence, given the nature of the Plaintiff's industry and the usual delay between completion of work done and payment thereof, one cannot strictly delineate between pre-morbid and post-morbid earnings on the basis of the date of the accident alone.

18.2. The expert used the average monthly income per the bank statements for the period July 2020 to October 2020 (which was R80 957.00) multiplied by four to calculate an income R323 830.00 for the 4 months for which no statements were available i.e. March 2020 to June 2020. To this amount he added the actual income per the bank statements of R594 857.00 (June 2020 to February 2021) which equates to an income of R918 687.00 for that year.

18.3. The calculated income of R918 687.00 for the 2021 financial year is reflected as the income for the 2022 financial year whereafter the actual income per the bank statements for financial years 2024 and 2025 annualised are used to determine the average income for the financial year 2023 in the amount of R546 205.00.

18.4. No income was calculated after 2025 as the Plaintiff was rendered unemployable by the accident.

Evaluation

19. The application of different methodologies in calculating the injured vs the uninjured income, is problematic. For instance, in terms of the calculation of the Plaintiff's injured income for the 2021 financial year:

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report, made available on the 21st of January 2026, however seems to indicate the average growth factor per Stats SA is also 8%.

19.1. The rationale for including payments received between November 2020 and February 2021 in calculating his earnings is that payments made during this period could relate to work done prior to the accident date.

19.2. That being so, those earnings could also be used to calculate the average earnings for the four months for which no statements were available i.e. March 2020 to June 2020. If, instead of using the average earnings for July 2020 to October 2020, the actual income of R594 856.73 (noted for purposes of the uninjured), is used, the average monthly income would have been R118 971.02 instead of the calculated R80 957.00.

19.3. Using the same methodology used by the expert (average earnings multiplied by four), the averaged earnings for March 2020 to June 2020 R475 884.08. Added to this the actual earnings of R594 857.00, the total income for the 2021 financial year would be R1 070 741.80 in the injured scenario.

20. Likewise, the methodology applied in calculating the uninjured income for 2021 is problematic:

20.1. The expert calculated the uninjured income to be R1 427 656.15 and the injured income as R918 687.00 for that year. In simple terms, this means that, in the four months between date of accident (29 October 2020) and end of the financial year (February 2021) the Plaintiff would have earned R508 968,15 had he not been injured. This loss of income is however calculated on the basis of earnings for work done prior to the accident and despite the fact that the Plaintiff would not have been able to earn any income during the so-called ‘builder’s holiday’ of approximately three weeks between mid December and mid January in any event.

20.2. Furthermore, if one were to accept that, had he not been injured, the Plaintiff would have earned R1 427 656.15 in 2021, the average monthly earnings for March 2020 to June 2020 would have been R118 971.02, as opposed to R80 957.00 per month calculated in the injured scenario. As the period predates the accident, the difference in averaged earnings would be non-sensical.

20.3. Given the brief timeframe involved and the nature of the building industry, it is perplexing that the expert had to reconstruct the Plaintiff's potential earnings for the period November 2020 to February 2021 at all: The Plaintiff could reasonably have been expected to have been aware of which building projects were scheduled during that period that could not be attended to or which referrals for work he had to decline during that period, as a result of his injuries.

20.4. During his *viva voce* evidence I pertinently enquired from the Plaintiff why he had failed to disclose a proper record of bank statement or financial statements for the years predating the accident, which statements would have constituted a far more informed indication of the state of his business and potential growth therefor. He indicated that initially he provided his attorney with all the statements he had available at the time (presumably when the matter was initially investigated) thereafter it was only after the previous default judgment trial date in April 2024 that bank statements were requested from him again. Presumably the two (2) months of statements relating to 2024 and 2025 respectively were provided as a result of this request. The Plaintiff indicated that the statements that he provided were those that he had available electronically. When queried as to why he did not physically go to his bank to obtain a complete set of statements, he could not provide any particular reason for his failure to do so.

21. The post morbid income calculated by the chartered accounted for the 2021 financial year is only relevant to the relatively short period between the accident and the date upon which the Plaintiff is deemed as unemployable (2025).

22. The uninjured income calculated for the 2021 financial year, however, has a significant effect on the calculation for the entire period until retirement at age 65. As indicated supra, the calculated amount of R1 427 656.15 assumed to be the uninjured earnings for 2021, is used as the basis for postulating the year-on-year earnings until

retirement by applying inflationary increases and a yearly 'growth factor' of 8%. Concomitantly, the effect of any errors or overestimations in the assumed uninjured 2021 earnings are exponentially increased year on year until retirement.

23. It is also important to note the vast variations of the growth rate within the construction industry each year: For instance, in 2020 growth was at -4%, in 2021 it was -7%, in 2022 it was 8%, in 2023 it was 26% whereas in 2024 it went down to 16%. Whilst the years referenced might indicate an average growth rate of 8%, the severe fluctuations only serve to illustrate the relative inconsistency in growth within the construction industry as a whole.

Findings on loss of income

24. The various issues mentioned supra are not intended to constitute a comprehensive exposition of the mathematical or factual problems inherent to the postulation of the Plaintiff's pre and post morbid earnings. The postulation of the career path of a self employed person is always inherently more speculative and uncertain than that of a person in formal employment. To this end the use of experts, such as accountants, to quantify baseline earnings is of great assistance to the Court. However, the value of such an expert's opinion is contingent on the cogency of the factual information upon which it is based. In casu, the expert was provided with bank statements spanning a total of five months from which he was required to postulate what the Plaintiff could have earned for a period spanning 27 years. Whilst one can certainly appreciate that within the South African self-employed market, proof of earnings may not always be readily available, this is usually in instances of self employment within the informal market where cash payments are made. That is not the case in casu. The failure to provide the expert with comprehensive bank statements (at the very least) for the financial years immediately prior to date of accident up until date of trial, is entirely attributable to the Plaintiff's failure to simply request same from his bank.

25. However, the fact that the Plaintiff could and, in fact, should have presented a properly substantiated basis and case for loss of income, does not mean that his claim for loss of income has not been proven per se. In *<u>RAF v CK</u>*[3] the Supreme Court of Appeal explained:

> *"[25] Indeed, a physical disability which impacts on the capacity to an income does not, on its own, reduce the patrimony of an injured person. There must be proof that the reduction in the income earning capacity will result in actual loss of income. However, where loss of income has been established but proof of the quantum thereof cannot be produced in the usual manner, the courts have shunned the non-suiting of a claimant and have preferred to make the best of the evidence tendered to give effect to the finding of proved reduction in loss of income earning capacity. As long as almost a century ago, in Herman v Shapiro the court said the following:*
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> > *'Monetary damage having been suffered, it is necessary for the Court to assess the amount and make the best use it can of the evidence before it. There are cases where the assessment by the Court is very little more than an estimate; but even so, if it is certain that pecuniary damage has been suffered, the Court is bound to award damages.'*
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> *[26] Since then this dictum has been quoted with approval in a number of cases. In Esso Standards SA (Pty) Ltd v Katz the court held that 'where the best available evidence to the plaintiff has been produced, though it is not entirely of a conclusive character and does not permit a mathematical calculation of the damages suffered still, if it is the best evidence available the court must use it and arrive at a conclusion based on it.'."*

26. In determining damages, a Court has a large discretion[4] which it will exercise on the particular set of facts of the case before it. Even though the underlying facts of each case differs, previous determinations under similar circumstances may prove useful in

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[3] Road Accident Fund v C K (1024/2017) [2018] ZASCA 151
[4] AA Mutual Insurance Association Ltd v Maqula 1978 (1) SA 805 (A)

gauging how this discretion should be exercised. In casu, I have for instance had regard to the following cases:

26.1. The matter of *Mullins v The Road Accident Fund*[5] where the Court was presented with a Plaintiff who had only reported earnings. The Court, referring to the well-known passage from the judgment in *Hersman v Shapiro and Co* where it was stated that once monetary damages has been suffered it is necessary for the Court to assess the amount with the best evidence forward, found or placed reliance on the scales used by the industrial psychologist and not necessarily on the reported earnings *per se*. The Court proceeded to apply a 20% pre-morbid contingency deduction stating that:

"I'm not persuaded that the circumstances of this matter required a higher contingency allowance should be made even though the plaintiff did not submit any records to back or support his evidence of how much he earned. Not even copies of agreements he alleged would be signed before police officers...uncertainty has been factored into the consideration of the award to be made. In my view the appropriate deduction to be made for contingency in respect of loss of income should be 20%."[6]

26.2. In *Khumalo v Road Accident Fund*[7] the Court held that:

"In regard to the second question, Mr Pilusa referred me to A A Mutual Insurance Association Ltd v Magula 1978(1) SA 805 (A) at 945, in which a plaintiff who had an unstable work record had his loss of income reduced by a contingency of 50%. The plaintiff's evidence as to her employment as a domestic worker was quite unsatisfactory. In his opening address, Mr Du Plessis informed me that she had left her employer during the period December 1997 until June 1998. The plaintiff gave no such evidence, insisting that she worked for 8 years before the collision for the family concerned. Then she informed Dr Wessels, whose report is before me, that she had worked for the family for 14 years. At one stage she

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[5] (3650/2014) [2016] (ZAECPEHC) 32 (August 2016)

[6] bid, paragraph 36

[7] (A5020/05) [2006] ZAGPHC 26 (24 March 2006) ALSO SEE: Road Accident Fund v Reynolds (Unreported WLD Case No A5023/04 18 February 2005 – Full Court)

testified that she came to the urban areas when she was about 20 years old. If she worked as a domestic for 8 years, that would leave her with about 13 years unaccounted for before the collision. In the light of all this, her record of employment must be regarded as unstable, and the argument for a contingency of 30% must accordingly be acceded to".

26.3. In the case of *Nonzinyana v Road Accident Fund*[8] the Plaintiff reported that she earned R7 000-00 to R13 000-00 per month from sewing and it supported her entire family through this. However, given the lack of proof of income, the Industrial Psychologist used the comparative income of semi-skilled workers in the non-corporate/informal sector as a guideline for the basis of earnings. The Court applied a 30% contingency deduction to the pre-morbid earnings.

27. In casu, given the relative uncertainties prevalent, I am of the view that a deduction of 30% to the earnings calculated (both past and future earnings) calculated would be appropriate.

28. I had requested that the actuary provide various calculations illustrating the application of various different contingency deductions. different deductions.

29. In view of my finding above, the relevant calculation is as follows:

30% pre-morbid contingency deduction

	Pre-morbid	**Post-morbid**	**Loss (Difference)**
Past loss			1 482 453 - 444 736
Minus contingency deduction (30%)			

[8] Nonzinyana v Road Accident Fund (59682/13) [2015] ZAGPPHC 345 (15 May 2015)

Past loss of earnings		0	**1 037 717**
Future loss of earnings	7 995 555	0	
Minus contingency deduction (30% / 0%)	- 2 398 667		
Future loss of earnings	**5 596 888**	**0**	**5 596 888**
Total loss of earnings			**6 634 605**
Minus effect of RAF cap (given the above contingency values apply)			**- 234 633**
Total loss of earnings after RAF cap			**6 399 972**

30. From the calculated loss of income of R6 399 972.00, the interim payment of R2 million for loss of earnings stands to be deducted.

31. The total award for loss of earnings is therefore R4 399 972.00.

ORDER

32. As a result, the following order is made:

1. The evidence of the following experts are accepted by way of affidavit in terms of Rule 38(2):

    1.1 Dr Enslin;

    1.2 I Kleynhans;

    1.3 Dr Irsigaer;

1.4 Dr Havenga;

1.5 M Beytell;

1.6 J Sauer.

2. The Defendant’s oral application for postponement is refused:

3. The Defendant is ordered to pay the Plaintiff the sum of R4 399 972.00 in respect of his loss of income, which amount shall be paid to the Plaintiff’s attorneys Slabbert & Slabbert Attorneys within fourteen (14) days.

4. In the event that the Defendant fails to make payment as to paragraph 2, the Plaintiff will be entitled to recover interest at the rate of 10.5% per annum on the capital amount when payment is due to date of final payment.

5. The remainder of the quantum, being general damages and past medical expenses, is postponed *sine die*.

6. The Defendant shall pay the Plaintiff’s taxed or agreed party and party costs on the High Court scale with counsel fees determined at Scale C including appearances for both 25 November and 28 November 2025 as well as the furnishing of the further report by the chartered accountant as well as the actuarial calculation pursuant thereto, as well as the costs of drafting and settlement of the heads of argument by counsel.

7. All amounts payable in terms of this order shall be made to the Plaintiff's attorneys, Slabbert & Slabbert Attorneys, by direct transfer into their trust account, the details of which are as follows:

Account holder : SLABBERT ATTORNEYS INC

Bank : FNB

Branch Code : 250655

Account no : 6[...]

Ref : TPC/0459

K STRYDOM

ACTING JUDGE OF THE HIGH COURT,

GAUTENG DIVISION PRETORIA

Judgment reserved: 21 January 2026

Date of judgment: 20 April 2026

Appearances:

<u>On behalf of the Plaintiff:</u>

Adv. P. Van Der Schyf, instructed by Slabbert & Slabbert Attorneys

<u>On behalf of the Defendant:</u>

State Attorney, Pretoria