IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 22409/2021

(1) REPORTABLE:~~YES~~/NO
(2) OF INTERST TO OTHER JUDGES :~~YES~~/NO
(3) REVISED:NO

DATE 23/03/2026 SIGNATURE

In the matter between:-

XIKOMBISO MATHEBULA **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGEMENT

MATIKA AJ:

Introduction

1. This is an application for default judgment against the Defendant, the Road Accident Fund ("Hereinafter to be referred to as RAF'').The application

emanated from the action which the Plaintiff instituted against RAF for compensation arising from the negligent driving of the insured driver in terms of section 17 of the Road Accident Fund Act[1].

Facts

2. The plaintiff was involved in a motor vehicle collision on 3 December 2016. At the time of the collision, the plaintiff was a passenger in the motor vehicle.

3. The combined summons served on the defendant on 11 May 2021, defendant defended the matter on 8 April 2024 and filed a plea.

4. On 30 October 2024, Strydom AJ handed down an Order to strike the Defendant's defence for their failure to comply with compelling Order dated 26 August 2024 handed down by Honourable Justice Mokose J.

5. Application for default Judgement was served on the defendant on 04 March 2025 and notice of set-down served on 05 December 2025.

6. The defendant settled merits 100% in favour of the plaintiff, future medical treatment in terms of section 17(4) (a) of the Road Accident Fund Act and general damages in the amount of R 650 000.00 on the 13 November 2025 and the plaintiff accepted the offer.

The issues

7. The only issue for determination is loss of earnings. The Plaintiff is claiming an amount of R 7 500 000.00 in respect of loss of earnings, in her amended particulars of claim dated 29 May 2025.

Rule 38(2) application

---

1. Act 56 of 1996

8. Application to present evidence of the Plaintiff and her expert witnesses, and any other relevant witness by way of affidavit in terms of Rule 38(2) of the Uniform Rules was sought and granted.

Plaintiff's education and employment

9. Plaintiff's training and education history consists of the following:

2009-Completed Grade 12;

2009 and 2014- Completed an Electrical engineering (N6) qualification

2017- She completed Electrical Electrician Trade Test

2011- She completed a Computer literacy at Science Centre Giyani.

10. The plaintiff was 25 years at the time of the accident and was an intern employed at Gautrain and earning R2 300.00 per month. The plaintiff is currently 34 years of age.

Expert's reports

11. The plaintiff appointed: Dr MI Malaza (Orthopaedic Surgeon), Engela swart (Occupational Therapist), Ms Monique Engelbrecht (Industrial Psychologist) and WIM Loots Actuarial Consulting (Actuary).The plaintiff's reports served in terms of rule 36(9) (a) and 36(9) (b) of the uniform Rules of Court. The defendant did not appoint any expert.

Plaintiff's injuries

12. According to Hospital records and RAF 4 Form completed by Dr Mthobisi Malaza on 2 September 2024, plaintiff was diagnosed with Right chronic lisfranc joint injury with post-traumatic osteoarthritis and According to RAF 1 form X-rays were part of the treatment plan for: Cervical spine, thoracic and lumbar spine, Pelvis and right tibial fibula.

Medical Findings (Dr Malaza – Orthopaedic Surgeon)

13. Dr M I Malaza assessed the Plaintiff and concluded that: *"outcome diagnosis and Prognosis: Right lower limb, Right chronic Lisfranc joint injury with post-traumatic osteoarthritis. The prognosis for this injury is poor .The chronic injury to the Lisfranc joint renders the foot unstable and posttraumatic osteoarthritis that has resulted, will progress .Even with successful treatment , a full recovery is not expected .The pain in the right lower leg is secondary pain referred from the lisfranc joint of the right foot. Control views of the left foot and left leg reveal normal joints and a normal midfoot with no soft tissue swelling and no previous fractures, Ms Mathebula sustained injuries to her right foot. She suffered acute pain for about 3 weeks following injuries that she sustained in this accident .She continues to suffer from pain in the right foot, Ms Mathebula is likely to have difficulties in engaging normally in activities which require extensive mobility demands and heavy load handling. Loss of Income and Future Employability: At present she is employed, The Claimant is considered a disadvantaged job seeker in the open labour market, Her current prognosis is poor , future deterioration is anticipated , which would further impact her functional/ work abilities thus making her vulnerable to early retirement of 45 years especially considering the manual labour nature of her job . She would therefore excluded to any and all forms of a manual labour in the future*.

Medical findings (Ms Swart-Occupational Therapists)

14. Ms .Swart: Occupational Therapists, assessed the plaintiff concluded as follows in her report: Ms Mathebula's physical capacity has been compromised by the accident related injury to her right foot and with the assessment findings in mind ,she currently retains the weight-handling capacity to perform sedentary or seated light physical work .based on the performance of individual tasks, Ms. Mathebula is currently limited in tasks requiring frequent sustained standing, dynamics postural demands, mobility , skills such as crouching and kneeling are also limited by the noted balance difficulties and reports of pain.

15. The assessment findings confirm that a job match no longer exists between Ms Mathebula's residual capacity and overall demands of her pre-accident Electrical Engineering internship position .The position interference is therefore considered accident related.

16. Given her present work position as an Operator , although a job match exists between her residual capacity and most of the demands of her position, it is considered that the accident Sequalae still interferences given the reported difficulties that she experiences whilst at work. Compliance with the prescribed treatment is therefore recommended.

17. Noting the Orthopaedic surgeon's outcome diagnosis of the "Right chronic Lisfranc joint injury with post-traumatic osteoarthritis" (P.12): the assessment findings and Ms Mathebula's reported pain is therefore considered accident –related and justified. The assessor concurs and notes that even after undergoing the recommended treatment, with the use of assistive devices, Ms Mathebula will be better suited to sedentary work with limited mobility demands.

18. Noting that Ms Mathebula has recently had to rely on her physical capacity to generate an income, one has to consider that the loss of physical functioning –which is expected to worsen over time, will have a restrictive effect on her occupational performance and job options. Therefore, Ms Mathebula's competitiveness in the open labour market is considered compromised due to the accident related Sequalae, especially when compared her uninjured counterparts.

19. Ms Mathebula has an Electrical engineer qualification, considering the physical requirement of her aspired position working as an Electrician , the assessor anticipates that the accident Sequalae will continue to adversely affect her physical capacity and impose on-going challenges on her occupational performances and productivity : Her pain symptomology is likely to deteriorate over time, especially in view of the increased physical requirements of such a position, and the work performance issues may eventually result in reduced job security and early retirement vulnerability as indicated by the orthopaedic surgeon.

20. The assessor agrees with Dr Malaza that "The claimant is considered a disadvantage job seeker in the open labour market."

Medical findings (Ms Monique Engelbrecht-Industrial psychologist)

21. Ms Monique Engelbrecht (industrial psychologist) assessed the plaintiff and concluded as follows:

21.1 "Pre-morbid employment potential: The plaintiff would likely have continued, in her field of studies and completed her theoretical and practical studies to qualify for the National Diploma. She would likely have continued completing her Trade as an Electrician in 2017.Therefore for quantification purposes, it is postulated that she would have entered the job market in a temporary capacity for one year, earning in line with a Paterson B2/B3 (R 183,000 – R 209,000 - lower quartile basic salary) before securing permanent employment in the formal labour market in line with a Paterson B4 – lower quartile – guaranteed package), progressing to a Paterson C2 (R 566 000) median quartile – total package). If she secured a supervisory role after gaining skills and experience, the plaintiff could have progressed to a C3 (R 659,000), a median guaranteed position, which could be seen as her career ceiling. She would have reached her career ceiling at 45 – 48 years where after, inflationary-related increases would have applied until retirement age of 65 years ,health permitted , and according to the retirement policy of the employer.

21.2 Post –Morbid employment potential: The plaintiff is currently employed as a Medicine Machine Operator at Adcock Ingram. She is earning a basic salary of R19 394.77. Capacity to work and level of truncation curtailed.

Dr Malaza indicated that Ms Mathebula's prognosis for the injuries sustained is poor and future deterioration is expected which will impact her functional and work abilities. Dr Malaza has indicated early retirement at the age of 45 years considering the manual labour nature of her work"

21.3 Ms Monique Engelbrecht (industrial psychologist) concluded that the plaintiff's likely earnings are as follows: "Within her current employment, her earnings appear to be in line with her pre-accident scenario. She is however, benefiting from a sympathetic employer and work accommodations .The accident –related Sequalae may adversely affect her ability to secure a promotion opportunity. Without obtaining additional skills, it appear that she will not progress in line with her pre-accident scenario. Within the open labour market, she has been significantly compromised and her post-accident vulnerability and curtailed functioning could negatively influence future earnings post-accident contingency “.

Actuarial calculations

22 An actuarial calculation was obtained from Wim Loots Actuarial consulting, the report dated 31 January 2025, based on the report of the plaintiff’s industrial psychologist report of Ms Monique Engelbrecht, dated 19 December 2024. The basis of the calculation of the loss of income appears in paragraph 3 for the income had the accident not occurred and in paragraph 4 for the income having regard to the accident.

23 The Actuary deducted 5% on the past loss of income, 15% on the future pre-morbid and 35% on the future pre-morbid contingencies.

The actuary calculated four scenarios:

23.1 Scenario 1A: C2 Ceiling (Pre-Accident) and normal retirement age (Post-Accident) which amounts to R 3 43 454 after contingencies. The cap does not apply to scenario

23.2 Scenario 1B: C2 Ceiling (Pre-Accident) and Early retirement Age 45 (Post-Accident) which amounts to R 5 769 670 after contingencies and Capp.

23.3 Scenario 2A: C3 Ceiling (Pre-Accident) and normal retirement age (Post-Accident) which amounts to R 3 818 682 after contingencies. The Capp does not apply to scenario

23.4 Scenario 2B: C3 Ceiling (Pre-Accident) and Early retirement Age 45 (Post-Accident) which amounts to R 6 253 039 after contingencies and Capp.

Legal Principles

24 Section 17(1) of the Act obliges the Fund to compensate for loss or damages caused by the negligent driving of a motor vehicle. In this case, Liability has already been conceded 100% in favour of the plaintiff.

25 The expert medical testimony confirms the causal connection between the accident injuries and the sequelae. The hospital records and uncontested experts reports also substantiate this.

26 The approach to be followed in assessing the extent of the plaintiff's loss of earning capacity was laid down in ***Southern Insurance Association Limited v Bailey NO***[2]**,** where Nicolas JA stated.

> *"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*

2. 1984 (1) SA 98 (A) 99.

approach depends 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. In a case where the Court has before it material on which an actuarial calculation can usefully be made, the first approach does not offer any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an "informed guess", it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial Judge's "gut feeling" as to what is fair and reasonable is nothing more than a blind guess.'[3]*Further, on the weight to be accorded to actuarial computation, the learned judge said: 'Where the method of actuarial computation is adopted in assessing damages for loss of earning capacity, it does not mean that the trial Judge is "tied down by inexorable actuarial calculations". He has "a large discretion to award what he considers right".'*[4]

27. In Van der Merwe v RAF[5] with reference to in Mutual Insurance Association v Maqula[6] held that:

"It is settled law that a trial court has a wide discretion to award what it in the particular circumstances considers to be fair and adequate compensation to the injured party for his bodily injuries and their sequelae."

3. At 113G – 114A-D.
4. Ibid, at 116G.
5. [2020] JOL 49701 (FB) at [20]
6. 1978(1) SA 805 (A) at 806

28. *In **Dippenaar v Shield Insurance Co Ltd** [7], the Court articulated the principle in the following terms at 917B-D:*

*"In our law, under the lex Aquilia, 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. The capacity to earn money is considered to be part of a person's estate and the loss or impairment of that capacity constitutes a loss if such loss diminishes the estate. This was the approach in Union Government (Minister of Railways and Harbours) v Warneke **1911 AD 657** at 665 where the following appears: "In later Roman law property came to mean the universitas of the plaintiff's rights and duties, and the object of the action was to recover the difference between the universitas as it was after the act of damage and as it would have been if the act had not been committed (Greuber at 269). Any element of attachment or affection for the thing damaged was rigorously excluded. And this principle was fully recognised by the law of Holland. See also Union and National Insurance Co Ltd v Coetzee **1970 (1) SA 295** (A) where damages were claimed and allowed by reason of impairment of loss of earning capacity.*

29. Hartzenbeg J dealt with the legal principles applicable to a quantification of damages for loss of earning capacity in Road Accident Fund v Maasdorp,[8] where he held that:

> "The *question of loss of earnings and loss of earning capacity is a vexed one and is often considered by our courts. Usually, the material*

---

7. 1979 (2) SA 904 (A)
8. (1552/1999) [2003] ZANCHC 49 (21 November 2003).

available to the court is scant, and very often, the contentions are speculative. Nevertheless, if the court is satisfied that there was a loss of earnings and/or earning capacity, the court must formulate an award of damages. What damages the court will award will depend entirely on the material available to the court.”

30. Van der Schyff J (Mabuse J *et* R Matthys AJ concurring) held in Advocate Viljoen N.O v Road Accident Fund [9] that:

> *“[13] When a claimant's loss of earning capacity is assessed, courts essentially use one of two methods. (Southern Insurance Association v Bailey NO **1984 (1) SA 98.)** The first is establishing a reasonable and fair amount based on the proven facts and the prevailing circumstances. This entails the determination of a lump-sum that the court regards to be fair and just in the given circumstances. The second approach is to establish an amount by a mathematical calculation based on the proven facts of the case. Millard (D Millard, ‘Loss of earning capacity: The difference between the sum-formula approach and the ‘somehow-or-other’ approach’, Law, Democracy & Development 2007, vol 11:1.) opines that courts are likely to follow the first approach in circumstances where it is impossible to make a mathematical calculation, for example, where the claimant is a minor who has not yet embarked on a career path.*
>
> *[14] This court must take into consideration the fact that the plaintiff did not testify in person. There was no direct evidence from her. Her*

9. (A76/19) [2021] ZAGPPHC 461 (19 July 2021)

evidence would have been valuable in assessing what the future might hold for her. This, however, does not mean that the court cannot consider the evidence of the expert witnesses. It does, however, impact on the quantification method that will be utilised. It is impossible to accurately determine the patient's post-morbid progression without evidence of how the claimant sees and experiences her future unfolding. In the claimant's absence, insufficient light was shed on the reason for her failing her first year and why she did not consider another study field. Due to the patient's failure to testify, a considerable measure of uncertainty prevails. This disregards the application of a purely mathematical model, even if higher than normal contingencies are applied. It is trite that in these circumstances, the court may decide to fix a lump sum as compensation, although it considers the actuarial calculations as one of the factors in determining the award. [15] Even in determining a lump-sum, the court is guided by the evidence before it."

31. Stratford J, in Hersman v Shapiro and Co, [10] held that:

"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."

10. 1926 TPD 367 at 379

32. Holmes JA, in Anthony and Another v Cape Town Municipality, **[11]** held that:

> "*I therefore turn to the assessment of damages. When it comes to scanning the uncertain future, the Court is virtually pondering the imponderable, but must do the best it can on the material available, even if the result may not inappropriately be described as an informed guess, for no better system has yet been devised for assessing general damages for future loss; see Pitt v Economic Insurance Co. Ltd.,* **<u>1957 (3) SA 284</u>** *(N) at p. 287, and Turkstra Ltd v Richards, 1926 TPD at 282 in fin - 283."*

33. Chetty J, in D'Hooghe v Road Accident Fund,[12] held that:

> "*In a case where the Court has before it material on which an actuarial calculation can usefully be made, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an "informed guess", it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial Judge's "gut feeling" (to use the words of appellant's counsel) as to what is fair and reasonable is nothing more than a blind guess. (Cf Goldie v City Council of Johannesburg* **<u>1948 (2) SA 913</u>** *(W) at 920.)"*

34. It was held in Sigournay v Gillbanks [13] that: "*Where there has been a change in the situation between the date of the delict and the date of the judgement,*

11. 1967(4)SA 445 (A) at 451 B-C
12. 2010 (6J2) QOD 1 (ECP) at J2-8
13. 1960 (2) SA 552 (A) at 557

this change may affect the amount of damages." No changes in the situation applies.

35. Visser & Potgieter [14] states the following:

> "*... the assessment of all damages (general and special) takes place at the time of the damage – causing event, whereas for purposes of quantification of the damages to be awarded, all facts and other evidence available at the time of quantification are taken into account."*

36. The extent of the reduction of the plaintiff's ability to earn income as a result of injuries sustained in the accident is the issue to which I now turn, with these legal principles in mind.

Analysis of the evidence

37. The plaintiff's injuries and Sequalae are not disputed, and the opinions expressed by the various expert witnesses are admitted by the defendant. The impacts of the plaintiff's injuries and Sequalae on the plaintiff's working potential post-accident are not disputed.

38. In considering the evidence of the experts, the principle enunciated in ***NSS obo AS v MEC for Health, Eastern Cape Province***,[15] is instructive, where the Court said:

> *"In order to evaluate expert evidence, the Court must be appraised of and analyse the process of reasoning which led to the expert's conclusion, including the premises from which that reasoning*

---

14. Visser & Potgieter supra, at [6.7.4 – 6.7.5]
15. 2023(6) SA 408 (SCA) at para 25; *Road Accident Fund v Kerridge* 2019(2) SA 233 (SCA) at para 50.

proceeds. The court must be satisfied that the opinion is based on facts and that the expert has reached a defensible conclusion on the matter. The purported admission by the defendant cannot, and does not, absolve the court from this duty".

39. Dr Malaza -Orthopaedic Surgeon, concluded that post-accident the plaintiff would retire early at the age 45 due to the injuries and Sequalae of the accident in question. Ms Swart-Occupational Therapists and Ms Monique Engelbrecht (industrial psychologist) agreed to early retirement.

40. Having applied my mind to the totality of evidence before me and also taking into account the agreed early retirement by the medical experts appointed in this matter, I came to the conclusion that it is probable that the plaintiff will retire early based on the experts findings that plaintiff is currently benefiting from sympathetic employer and work accommodations.

41. My view is that, once this court accepted the above expert's findings that the plaintiff would retire early as postulated, it follows that pre-morbid earnings and post-morbid earnings can never be the same and therefore Scenario 1A and Scenario 2A finds no application in this matter, as the two scenario are based on the assumptions that uninjured scenario and injured scenario are the same.

42. Ms Monique Engelbrecht concluded that plaintiff appears to be benefiting from sympathetic employer and work accommodations. In my view to cater for that risk a higher post-morbid contingencies need to be applied.

43. In light of the above it is my considered view that the plaintiff suffered loss of earnings as a direct result of the accident in question.

Submissions

44. During argument and on the heads of argument the plaintiff legal representative argued for an amount of R 6 253 039.00 which amount represent scenario 2B (Scenario 2B: C3 Ceiling (Pre-Accident) and early retirement Age 45 (Post-Accident) after contingencies and application of Capp.

45. I have considered all four scenarios and I came to the conclusion that the most probable scenario which is best suited for the plaintiff is Scenario 1B: C2 Ceiling (Pre-Accident) and early retirement age 45 (Post-Accident) which amounts to R 5 769 670 after contingencies and Capp.

46. Scenario 2B would be relevant, if plaintiff secured a supervisory role after gaining skills and experience and in that event the plaintiff's career ceiling would be C3 Ceiling (Pre-Accident), before me there is no enough evidence to prove plaintiff's promotion. I find that scenario 2B asked for by the plaintiff's counsel is not proven.

Contingencies

47. The Actuary deducted 5% on the past loss of income, 15% on the future pre-morbid and 35% on the future post-morbid contingencies.

48. With regards to the plaintiff in this case and her specific capabilities, I am of the view that, a 5% contingency deduction on the past loss of income, 15% on future pre-morbid and 35% on the future post-morbid already applied by the plaintiff's actuary is reasonable.

49. On future loss, a deduction of 0.5% per year is usually made to the remainder of the plaintiff's working lifespan which in this case would be 30 years as the

plaintiff is turning 35 years this year(2026). If the calculation based on retirement age of 65 years is used, a 15% deduction would be a normal deduction in relation to the pre-morbid scenario.

50. In **Brits v Road Accident Fund,**[16] STRIJDOM, J deducted 35% on the post-morbid in the case where, the expert's concluded that provision should therefore be made for 10 years of early retirement.

51. The contingencies allow for general hazards of life such as periods of general unemployment, possible loss of earnings due to illness, the risk of future retrenchment etc.

52. In terms of **Road Accident Fund v Sweatman**[17] **and in SIL and Others v RAF**[18]**,** the SCA held that contingencies must first be applied and then the statutory cap. The cap does apply to this case in scenario 1B.

53. In **Nel v RAF**[19] the court held that the court is to first deduct the merits apportionment and the apply the cap. However, in the present case, the Capp makes difference.

Legal principles on contingencies

54. The legal principles applicable to the assessment of contingencies have been set out on numerous occasions in the past in various case law. It is by now accepted that in the assessment of these kinds of damages, which cannot be assessed with any amount of mathematical accuracy the court has a wide discretion. See for example, *A A Mutual Insurance Association Ltd v Maqula* **1978 (1) SA 805** (A). It was more convenient to deal first more specifically with the plaintiff's claim for loss of earnings and earning capacity as

16. (54415/2018) [2025] ZAGPPHC 417 (11 April 2025)
17. 2015 (6) SA 186 (SCA)
18. 2013 (3) SA 402 (GSJ)
19. 2016 (2) SA 517 (GP) para 13

well as the legal principles applicable thereto. The latter were also set out succinctly in *Southern Insurance Association Ltd v Bailey NO* **1984 (1) SA 98** (A) at 114. At 114C-D, Nicholas JA said:

> *" In a case where the Court has before it material on which an actuarial calculation can usefully be made, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an "informed guess", it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial Judge's "gut feeling" (to use the words of appellant's counsel) as to what is fair and reasonable is nothing more than a blind guess. (cf Goldie v City Council of Johannesburg **1948 (2) SA 913** (W) at 920.)".*

55. In **Gwaxula v Road Accident Fund (09/41896) [2013] ZAGPJHC240**, the following was stated:

> " *It is a now well-settled that contingencies, whether negative or positive, are an important control mechanism to adjust the loss suffered to the circumstances of the individual case in order to achieve equity and fairness to the parties. There is no hard and fast rule regarding contingency allowance*."

56. **Koch, in *The Quantum Yearbook 2022* at 121 said**:

> " *General contingencies cover a wide range of considerations which may vary from case to case and may include: taxation, early death, saved travel costs, loss of employment, promotion prospects, divorce, etc. There are no fixed rules as regard general contingencies. The following guidelines can be helpful:"*

57. **Sliding scale**: ½ % per year to retire age, i.e., 25% for a child, 20% for a youth and 10% in middle age (*see Goodall v President Insurance 1978 1 SA 389 (W)*; for child claims see *Bailey v Southern Insurance 1984 1 SA 98 (A*)).

58. **Normal contingencies**: The RAF usually agrees to deductions of 5% for past loss and 15% for future loss, the so-called "*normal contingencies*".

59. There are also unforeseen contingencies based on factors such as errors in the estimation in future earnings and life expectancy, loss of earnings due to unemployment and sickness, retirement at an earlier age and hazards of life, the list can never be exhaustive.

Conclusions

60. Having regard to the plaintiff's injuries and Sequalae, the actuarial methodology employed by the plaintiff's actuary.

61. The plaintiff should therefore be awarded the amount of R 5 769 670.00 as compensation for the past and the future loss of earnings, which represents a fair and balanced award, properly reflecting both the evidential record and the risks faced by the plaintiff due to accident inquestion.

62. The amount above is computed as follows:

Uninjured **Injured**

Past loss R 1 908 784 **R 1 148 497**

Less 5% Contingency (95 439) Less 5% contingency (57 425)

=R 1 813 345 R 1 091 072

Total Past Loss R 722 273

Future loss R 9 040 602 **R 3 943 330**

-15% Contingency (1 356 090) -35% Contingency (1 380 166)

=R7 684 512 =R 2 563 164

Total future loss of earnings R 5 121 348 + Total Past loss of earnings R 722 273

Total loss R 5 843 621

Loss of earnings (Capped) R 5 769 670.00

Costs

63. The general principle that the costs follow the results applies.

Order

64. In the premises draft order marked x is made an order of court.

F MATIKA
Acting Judge of the
High Court of South Africa
Gauteng Division, Pretoria

For the plaintiff
Mr R Madou

Instructed by:
Malange Madou Attorneys

012 321 0984
Info@malangemadou.co.za

For the Defendant: No Appearances

Date of hearing: 28 January 2026

Date of Judgement: 23 March 2026

"X"

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 22409/2021

BEFORE THE HONOURABLE JUSTICE MATIKA AJ HELD ON WEDNESDAY THE 28TH DAY OF JANUARY 2026, HEARD VIA TEAMS. THIS MATTER IS NUMBER 24 ON THE TRIAL DEFAULT JUDGMENT ROLL OF 28TH JANUARY 2026.

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the parties/their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her secretary. The date of this Order is deemed to be 28TH DAY OF JANUARY 2026.

In the matter between:

XIKOMBISO MATHEBULA	**PLAINTIFF**
Identity Number: 9[...]	
and	
ROAD ACCIDENT FUND	**DEFENDANT**
(Link Number: 4099449	

ORDER

HAVING read the documents filed of record and having heard the submissions by the Counsel for the Plaintiff, Mr R. Madou,

IT IS HEREBY ORDERED THAT

1. The Application in terms of rule 38(2) is granted.

2. The issue relating to Merits and Generals were previously finalized between the parties, wherein the Respondent/Defendant tendered an offer of 100% in favour of the plaintiff on the 13th of November 2025.

3. The Defendant shall pay an amount of **R 5 769 670.00 (Five Million, Seven Hundred and Sixty Nine Thousand Rand, Six Hundred and Seventy Rand)** within 180 days from the date of this court order in full and final settlement of the plaintiff's claim in respect of loss of income .

4. The Defendant is ordered to pay the Plaintiff's party and part costs on the High Court scale, scale B, subject to Taxing Master's discretion, which costs shall include, but not be limited to:

4.1 The cost of the application in terms of rule 38(2),

4.2 The costs of Mr Madou (attorney with right of appearance), including his day fees; preparations; and consultation with the attorney,

4.3 The reasonable costs for the preparation of application for default judgment trial,

4.4 The reasonable costs of attendance at court for trial of the attorney

4.5 The reasonable taxable and qualifying, reservation and preparation fee of the plaintiff's experts witness, as well as the cost of all reports and or addendum reports of whom notice was given, or whose reports are in the position of the Defendant including the cost of obtaining the reports of expert's witnesses served on the Defendant, including any special investigations, traveling fees incurred by and or on behalf of the Plaintiff to obtain the reports concerned.

5. Should the Defendant fail to pay the capital sum referred in paragraph 3 above and the Plaintiff's party & party costs as taxed or agreed within 180 days from the date of this court order on capital sum and 180 days from date of taxation, alternatively date of settlement of such costs, the Defendant shall be liable to pay

interest at an applicable interest rate as prescribed per annum, such costs as from and including the date of taxation, alternatively the date of settlement of such costs up to and including the date of final payment thereof.

6. The Plaintiff shall, in the event that the parties are not in agreement as to the costs referred to in paragraph 6 and 7 above, serve the notice of taxation on the Defendant and on its attorneys and shall allow the Defendant 180 days to make payment of the taxed costs.

7. The Trust Banking Details in which the capital and costs amounts mentioned in the paragraphs above shall be paid within 180 days as follows, to;

NAME OF BANK:	**NEDBANK**
ACCOUNT NUMBER:	**1[...]**
ACCOUNT TYPE:	**TRUST CHEQUE ACCOUNT**
ACCOUNT HOLDER:	**MALANGEMADOUATTORNEYS**
BRANCH CODE:	**198765**
REFERENCE:	**Malange/RM00214/20/RAF**

8. No contingency fee agreement entered by and between the Attorney and Plaintiff.

BY ORDER OF COURT

THE REGISTRAR

REPRESENTATIVE FOR THE PLAINTIFF: MR RENDANI MADOU [Duly admitted in terms of section 4(2) of Act 62 of 1995]
madourendani@gmail.com
081 769 0934

INSTRUCTED BY:	MALANGE MADOU ATTORNEYS. 012 321 0984 info@malangemadou.co.za
REPRESENTATIVE FOR THE DEFENDANT:	(NO APPEARANCE)