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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 63103/2017

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 20 April 2026

SIGNATURE

In the matter between:

SINDISIWE ANGEL MAGWAZA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PIENAAR M (AJ)

Introduction

1. The plaintiff filed an action against the Road Accident Fund claiming that she sustained injuries when she was a passenger in a motor vehicle with registration numbers and letters N[...] 3[...], which was involved in an accident that occurred on 28 August 2011, at or along R66 Gingindlovu in KwaZulu-Natal.
2. This matter was on the default judgment roll on 22nd January 2026. When the matter was called, there was no appearance for the RAF, despite due notice of the trial date being given to it. The Plaintiff served the notice of set down on 10 September 2024. The matter proceeded on a default basis.
3. On 15th March 2023, before the Honorable Judge Voster AJ, the Respondent's defence was struck out.
4. The merits, which were conceded in full (100%), were settled on 12 March 2019 by way of a court order before the Honourable Judge Rulinga (ADJP). The Defendant also tendered future medical treatment by way of an undertaking of the RAF act 56 of 1996, limited to 100% of her claim.
5. The Fund did not admit the RAF 4 serious injury assessment of the Plaintiff. Therefore, the issue of General Damages is postponed sine die.
6. The only issue for determination before the Court is loss of earnings.
7. The Plaintiff's brought an application in terms of Rule 38(2) of the Uniform rules of court for the expert reports and affidavits to be admitted into evidence. Havenga vs Parker confirmed by the Supreme Court of Appeal in Madibeng local Municipality vs Public Investment Corporation 2018 (6) the ("SCA"), found that it is permissible to place expert evidence before the court by way of affidavit in terms of Rule 38(2) accordingly that application was granted.
8. I reserved this judgment at the conclusion of the trial after listening to oral

submissions by Plaintiff Counsel, Adv Tshavhungwe.

Quantum

9. The Plaintiff served the following medico legal reports on the Defendant:

9.1 Dr Majeed - Neurosurgeon RAF 4 assessment report

9.2 Dr Mqhayi - Clinical Psychologist

9.3 Tumelo Molefe - Occupational Therapist

9.4 Moipone Kheswa - Industrial Psychologist

9.5 Wim Loots - Actuaries

Future loss of earnings/earning capacity

Dr Majeed - Neurosurgeon

10. Dr Majeed assessed the plaintiff on 13 June 2025 and reported that she demonstrated with mild-moderate neuro cognitive deficits that are consistent with a mild brain injury. The persisting symptoms provide an explanatory context for her test performance and daily complaints, highlighting how pain and attentional inefficiency interact to reduce her overall functional capacity.

11. Her prognosis is poor, she has long term mental and mood/behavioural disturbance/disorder. Ms Magwaza never suffered from an epileptic fit. Her chances of developing epilepsy are no different than normal population.

Dr Mqhayi - Clinical Psychologist

12. Ms Magwaza reported that she was in Grade 10 a learner at Mtwana Kamzizwe High School at the time of the accident, despite being 26 years old.
13. After the accident she returned to school and completed Grade 10. However, she dropped out during Grade 11 due to persistent symptoms from the accident, including memory problems and recurring headaches. Emotionally, she is still distressed by the deaths of her cousin and friend.
14. Dr Mqhayi stated that Ms Magwaza demonstrated with mild-moderate neuro cognitive deficits that are consistent with a mild brain injury. Her performance on tasks of complex attention and concentration indicated marked weaknesses. Her deficits in attention, executive functioning, visual memory and processing speed are further magnified by the daily burden of chronic headaches, pain in her legs and left arm and persistent fatigue.

Tumelo Molefe - Occupational Therapist

15. At the time of the accident she was doing Grade 10 and she failed as she couldn't return to school that year due to the injuries sustained. She repeated Grade 11 and failed as she couldn't return to school that year due to the injuries sustained. She dropped out of school because her left leg was swelling and painful. She worked as a cleaner at Schooners restaurant. She found it difficult to climb the stairs thus her employer moved her to the kitchen where she peels and chops vegetables. She is currently employed as such.
16. Ms Magwaza reported that she experiences headaches, pain on the left shoulder, right knee and right ankle, poor concentration and poor memory since the accident occurred. She reported pain on the right knee and right ankle although she had functional movement. When Ms Magwaza's physical challenges are considered, she is physically suited for sedentary, light to medium duties. However, her reported

symptomology of headaches, poor memory, poor concentration and pain on the left shoulder and right knee and right ankle may negatively affect her productivity.

Moipone Kheswa - Industrial Psychologist

Pre morbid scenario

17. Ms Magwaza was 26 years of age at the time of the accident and is currently 41 years old. In considering the pre-morbid position, Ms Kheswa, an industrial psychologist, proposed three possible scenarios:

Scenario 1 - Grade 11 scholar, assumed to leave school with Grade 11 level education. She could have started earning between the lower and the medium quartile of unskilled non-corporate workers. Then with experience and better employment opportunities, her salary could have escalated to the upper quartile band when she reached 45 years, with applicable inflationary increases until she retired.

Scenario 2 - With a Grade 12 level of education obtained in 2012/2013, it could have taken her about 1-2 years to secure employment. For the next 3-5 years she could have opted for any fragmented work available earning on a Paterson level A1/A2. After this period, she could have qualified for an income on Paterson level A3 with gradual progression to Paterson level B4 upper quartile (total package) as a career ceiling when she reached 45 years, with applicable inflationary increases until she retired.

Scenario 3 - Post matric Certificate (NQF 5). After completing her matric, probably in 2012/2013, she could have enrolled for a post matric certificate of her choice. In this regard, she is likely to have started earning at the lower quartile of Paterson level B3. With experience, better employment opportunities and promotional prospects, she is likely to have progressed and reached her ceiling at the upper quartile of Paterson

level C2 (total package) when she reached 45 years with applicable inflationary increase thereafter.

18. Counsel for the Plaintiff submitted that Scenario 1 is fair and reasonable and ought to be adopted as the appropriate postulation. The Court concurred, holding that Scenario 1 represents the correct approach, having regard to the Plaintiff's uninjured background.

Post morbid scenario

19. She never returned to school for the remainder of the 2011 academic year (the year of the accident. However, in 2012, she reportedly attempted to return to school and enrolled at a different school. She was forced to drop out after at least 2 weeks due to the challenges she was facing from the injuries she incurred in this accident. Her memory was not as good as it used to be and she struggled with retaining as well as recalling new information. She experienced pain in her right leg as weak as discomfort of the right leg which were exacerbated by prolonged sitting and standing.
20. Ms Magwaza is currently employed as a Helper Cook on a permanent basis. Ms Kheswa Moipone obtained collateral information from the Manager at Schooners Restaurant, who reported that the Plaintiff is employed on a permanent basis and has been in such employment for over a decade. She is described as a hard-working employee who maintains a good relationship with her colleagues, and her attendance record is satisfactory. She performs her duties well; however, she experiences difficulties in remembering to amend or alter initial orders, which has, on occasion, resulted in customer frustration due to delays.
21. According to the experts converge on a similar conclusion that the accident has rendered her an unequal competitor for gainful employment as well as a much more

vulnerable employee having to compete with well-bodied individuals for employment. The existence of her cognitive, psychological and physical challenges will always render her an unequal and unattractive employee within the open labour market. As a result, she is unlikely to reach her pre accident earning potential. Her employment is compromised, and this simply implies that she is prone to a job loss, and any increase to her current earnings will not occur except through inflation.

22. Counsel for the Plaintiff submitted that the plaintiff is totally unemployable. The Court does not agree with this submission, having considered the expert reports and collateral information, which demonstrate that she remains employed. The Court is accordingly of the view that a higher contingency deduction ought to be applied in respect of the post-morbid scenario.

Wim Loots Actuaries

23. The actuarial calculations of Mr Wim Loots are based on the report of the industrial psychologist. On the basis of Scenario 1, applying a 15% contingency to the uninjured scenario and a 40% contingency to the injured scenario, the calculation is as follows:

Pre morbid scenario	Past	Future
	$639\,596 - 5\% = 607\,616$	$1\,945\,600 - 15\% = 1\,653\,760$
Post morbid scenario	$557\,807 - 5\% = 529\,917$	$1\,183\,738 - 40\% = 710\,242,80$
Sub total	77 699,00	933 517,20
Total	<u>R1 011 216,20</u>	

In the result the following order is made:

1. Judgment is granted in favour of the plaintiff for the payment of **R1 011 216,20** in respect of loss of earnings.
2. The issue of General damages is *postponed sine die*
3. Draft order "X" as amended is made an order of court.

PIENAAR (AJ)
ACTING JUDGE OF THE HIGH COURT
OF GAUTENG DIVISION, PRETORIA

Hearing date : 22 January 2026

Judgment delivered : 20 April 2026

This judgment was handed down electronically by circulation to the parties representatives by email, by being uploaded to Case Lines. The date and time for hand-down is deemed to be 20 April 2026.

APPEARANCES:

Plaintiff Counsel : Adv Tshavhungwe P

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Ref: DDK/K867/17/NLS/GM

Respondent legal representatives : Road Accident Fund

No appearance

Link no: 3268633
