



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

CASE: 1846/2025

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED
 _____ SIGNATURE
28 April 2026 DATE

In the matter between:

THATO PENELOPE MARULE

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 28 April 2026 at 10h00.

JUDGMENT

MANGENA AJ:

[1] Ms Thato Penelope Marule is an adult female person and the plaintiff in this matter. She alleges that she was involved in an accident on 29 October 2021 when the motor vehicle she was travelling in collided with another. She sustained bodily injuries described as a right tibia and fibula fracture and ugly scarring on her right leg.

[2] She lodged a claim with the Road Accident Fund and same was duly accepted. The liability was conceded 100% in her favour. On the date of the hearing, plaintiff's counsel applied to present quantum evidence by way of affidavits as provided for in Rule 38(2) of the Uniform Rules of Court. The defendant's counsel agreed and indicated that she does not have any witness to call, nor does she need to cross-examine any of the plaintiff's expert witnesses. I duly granted the application and the parties agreed to file written submissions in respect of quantum. I am indebted to them.

[3] Plaintiff filed reports by the following experts in support of her claim, an orthopaedic surgeon, clinical psychologist, educational psychologist, occupational therapist, industrial psychologist and an actuary. The defendant did not file any expert report.

[4] The report by the orthopaedic surgeon, Dr Tladi, says that after the accident, plaintiff was admitted at Mapulaneng (Masana) hospital where she was placed in an intensive care unit where an open reduction and internal fixation of the right leg was done. Subsequent to this treatment, she received follow-up treatment at Sunshine hospital.

[5] During consultation she reported that she was still feeling pain on the right leg, though intermittently. The right heel does not touch the floor due to a deformed ankle which will require that she undergoes postero-medial structure lengthening and release. This will result in her not having a normal right lower limb function like pre-accident. The surgeon

opines that she will have difficulties with future jobs that require walking, standing and lifting of objects. She may not be able to compete fairly for a job on the open market

[6] The x-ray reports show that the fracture has united with implants in situ. She will however have difficulty walking, standing and lifting objects as she used to do prior to the accident. She will need to undergo surgery for the removal of the implants and ankle lengthening and release. The surgeon anticipated 12 weeks of post-surgery recuperation.

[7] The clinical psychologist assessed Ms Marule and concluded that based on the reported complaints her cognitive functioning has been impaired. She has developed a significant post-traumatic stress disorder as well as anxiety symptoms. This has impacted on her total quality of life and will require that she receives further treatment from a clinical psychologist to deal with the PTSD.

[8] The occupational therapist reported that Ms Marule has residual physical ability of occupation falling in the category of sedentary to light duty work. She will struggle with tasks which require intense physical force as she experiences pain on her right leg. Based on the report of the orthopaedic surgeon, the occupational therapist opined that Ms Marule will struggle in the open market as her occupational prospects have been negatively affected by the nature of the injuries sustained.

[9] The plastic surgeon noted that Ms Marule is presented with ugly scars which are unsightly and hideous. The scars are reportedly itchy and painful and had resulted in her having a low self-esteem. The scars have also resulted in her having a permanent disfigurement and impairment. She will need to undergo future treatment for the revision of the scars, and the estimated costs are about R100 000.00.

[10] The educational psychologist reports that Ms Marule's cognitive profile reflects strengths in verbal comprehension and perceptual reasoning, with performance falling within the average range. Pre-accident school reports show that she had learning potential with strength in language-based subjects whilst struggling in numerical and conceptually demanding subjects. She returned to school after the accident and completed her matric in 2024 where she obtained a Diploma endorsement. Her academic profile post-accident shows a decline in numerical and conceptually demanding subjects while the language-based subjects remained preserved. However, her performance on working memory and processing speed tasks is below average which can be attributed to the ongoing physical pain, depressive symptoms and the emotional impact of the injuries. She will not be able to cope with heavy reading, writing and sustained concentration. In short, she will not cope with academic pressure.

[11] Based on the reports and the impact of the injuries on the overall life of Ms Marule, Ms Mahlalela, counsel for the plaintiff submitted that a fair and reasonable compensation is R800 000.00 in respect of general damages and R 6 276 623.50 in respect of future loss of earnings.

[12] Ms Shabangu, counsel for the defendant takes issue with the conclusion of the educational psychologist. She says that the report by the educational psychologist reveals that Ms Marule has always been a below average learner whose highest level of education could not be above NQF level 6 qualification. She says that this is consistent with the grades she obtained pre-accident as well as in matric. There is accordingly no basis upon which it can be concluded that there was a loss of income as postulated by the experts.

[13] The approach to the loss of earnings or earning capacity claim has not been without difficulty. Various courts in our country and elsewhere in the world have grappled with it

(both in terminology and how to assess it) as our law reports attest. It has also received commentary from the academic writers. Professor Daleen Millard, writing on the subject in, *Loss of earning capacity: The difference between the sum-formula approach and the somehow -or other approach*; *Law, Democracy and Development*, 2007, vol 11:1 says the following : A claimant should be compensated for the loss that was caused by an unlawful act. Loss of the capacity to earn an income is a loss of capacity and not a loss of income, even though the loss is calculated by using expected income as a measure. Before the claim can succeed, there must be proof of a loss of earning capacity before there can be any future loss of earnings. The actual loss of earnings is a manifestation of the inability of a person to earn the same income as before, because of the damage causing event. Once it has been established that, there is, in fact a definite loss of earning capacity, an amount must be attached to the incapacity. Earning capacity is a diminution of claimant's ability to generate an income. I agree with her.

[14] In *Rudman v Road Accident Fund*, 2003 (2) SA 234 (SCA) the supreme court of appeal said that for a claimant to succeed in a claim for loss of earnings or earning capacity, he or she must prove physical disabilities resulting in loss of earnings. What this tells us is that it is not every physical disability which results in the reduction of the earning capacity and therefore loss of earnings. There must be a connection or link between the injury and the resultant loss. It is therefore not sufficient for the plaintiff to file multiple reports which do not assist in creating a nexus between the injury and the claimed loss as it is often done.

[15] In this case, plaintiff was 15 years old when she got involved in an accident. She sustained injuries described in the preceding paragraphs and returned to school thereafter. Prior to the accident, she was performing well on language-based subjects and had learning problems on numerical and conceptually demanding subjects. According to the educational psychologist, she maintained this trend post the accident. It is therefore unclear to me why

her academic performance in matric should be attributed to the accident. Ms Shabangu is correct to question the assumptions made by both the educational and industrial psychologists that Ms Marule would have obtained a bachelor's degree and proceeded to study for a law degree but for the accident. That conclusion is not founded on an independent and established facts but the say so of Ms Marule who was clearly expressing a career wish. Her wish was unrealistic given her academic performance prior to the accident.

[16] In this regard, we will do well to remember the caution by the higher courts on the role of experts more especially in RAF matters. More often than, parties ask that evidence be tendered by way of affidavit as provided for by Rule 38(2) of the Uniform Rules of Court. The approach is perfectly valid and serves a useful, valid and legitimate purpose. However, the fact that evidence was received by way of affidavit does not absolve the court of its duty to evaluate it. In *Summermania Eleven (Pty) Ltd v Hattingh NO* (316/2022) [2024] ZASCA 42 (5 April 2024) the court said:

"[16] In trial proceedings parties discharge the onus on them by giving oral evidence. The words " shall be orally examined" in Rule 38(2) affirm this as the standard procedure. Reliability and credibility of the evidence given is then assessed and analysed through cross examination. The trial court, however, has a discretion under the rule, to receive evidence given by way of affidavit.

[17]The admission of the evidence nevertheless required the court to consider whether it was sufficiently reliable and credible and whether the evidence given thereby was sufficient, when considered against the rest of the evidence led at the trial, to discharge the onus".

[17] Regarding the role of experts and their duty to the court, Nicholls AJA (as she then was) said:

"[50] The role of experts in matters such as these and the opinions they provide can only be as reliable as the facts on which they rely for this information. Too readily, our courts tend to accept the assumptions and figures provided by expert witnesses in personal injury matters without demure. The facts upon which the experts rely can only be determined by the judicial officer concerned. An expert cannot usurp the function of the judicial officer who is not permitted to abdicate this responsibility. The court should actively evaluate the evidence. Ideally, expert evidence should be independent and should be presented for the benefit of the court. It is not the function of an expert witness to advocate the client's cause and attempt to get the maximum payout, as most seem to believe. The problem is exacerbated by the Road Accident Fund which fails to properly investigate the situation of the claimant and is content to rely on projections and assumptions of experts with no factual basis". RAF v Kerridge, (1024/2017) [2018] ZASCA 151 (01 November 2018)

[18] I align myself with the above views and having analysed and evaluated the various reports submitted as evidence in support of the loss of earnings claim, I am unable to accept the assumptions made by both the educational psychologist as well as the industrial psychologist that Ms Marule would have obtained a bachelor's degree and qualified to study law if it was not for the accident. Her academic performance both prior to the accident and post the accident is consistent and I do not accept that the accident had a bearing on her academic performance. The postulations by the actuary are based on a wrong and illogical assumption and cannot be supported. I am fortified in my views by what Satchwell J said in *Bvuma v RAF*, (17220/2010) [2012] ZAGPJHC 258 (14 December 2012) that "The opinion of an expert witness is only receivable in evidence and only to be relied upon where there

are issues before the court requiring specialised skill and knowledge and where the opinion is based upon facts which have been proved by admissible evidence". see also *Mokoena obo Minor RAF*, (87131) [2026] ZAGPPHC 56 (19 January 2026)

[19] On the facts of this case I am not persuaded that plaintiff has succeeded to prove her case for loss of earnings. It follows that the claim for loss of earnings or earning capacity should fail.

[20] The general damages claim does not present a difficulty. Plaintiff will still have to undergo an operation and suffer pain and discomfort. Having analysed the reports and the applicable case law, a fair and reasonable award for the injuries sustained is R800 000.00.

[21] What remains is costs. The general rule is that costs follow the results. Plaintiff was successful in proving a portion of her claim the defendant was not keen to settle. She incurred substantial costs on experts and should be allowed to recover them in full, notwithstanding that some were not helpful in so far as her claim for loss of earnings is concerned.

[22] In the result, the following order is made:

1. The defendant is ordered to pay plaintiff an amount of R800 000.00 in respect of general damages.
2. The claim for loss of earnings or earning capacity is dismissed.
3. The defendant is liable for the payment of the plaintiff's costs including the costs of obtaining all expert reports filed and referred to in paragraph 3 of this judgment.



M I MANGENA

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

APPEARANCES:

Attorney for the Plaintiff: Ms EM Mabaso Mabaso EM Attorneys
 Pegasus Building 1 210 Amarand Avenue
 018
 Menlyn Maine
 Pretoria 0181
 Tel: 012 003 2869/ 072 098 3611
 Email: info@mabasoeattorneys.co.za
 C/O NP MADONSELA ATTORNEYS
 38 Mostert Street
 Cherietta Building second floor
 Mbombela
 Tel: 0676939360

Counsel for the Plaintiff: Adv. Mahlalela

Attorney For the Defendant: - Caswell Mkansi
 State Attorney - Mbombela
 3rd Floor, Admin Block, West Wing

Samora Machel Drive

MBOMBELA

Link number: 5340218

Counsel for the Defendant: Adv. Shabangu

Date of Hearing: 26 January 2026

Date of delivery: 28 April 2026



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION MBOMBELA (MAIN SEAT)**

CASE NUMBER: 1846/2025

BEFORE THE HONOURABLE JUDGE MANGENA AJ

DATE: 28 APRIL 2026

In the matter between:

THATO PENELOPE MARULE

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

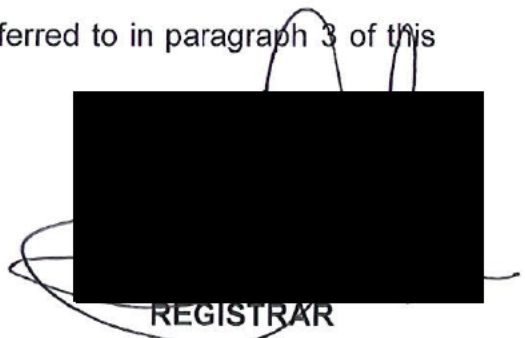


COURT ORDER

The Judge heard the matter on 26 January 2026 and electronically circulated the judgment on 28 April 2026 and gave an order in paragraph "22" as follows:

[22] "In the result, the following order is made:

1. The defendant is ordered to pay plaintiff an amount of R800 000.00 in respect of general damages;
2. The claim for loss of earnings or earning capacity is dismissed;
3. The defendant is liable for the payment of the plaintiff's costs including the costs of obtaining all expert reports filed and referred to in paragraph 3 of this judgment".


REGISTRAR