IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable
Case no: 1749/2019

In the matter between

GEORGE SEUN BOOYSEN **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

Link: 4535651

Claim: 560/12743939/1063/0

Neutral citation: *Booysen v Road Accident Fund* (1749/2019) [2026] ZAFSHC 252 (21 April 2026)

Coram: OPPERMAN J

Heard: The matter was set down for trial on 17 March 2026. By agreement between the parties, it was determined that the final adjudication of the matter would be decided on the basis of the final written heads of argument submitted on 27 March 2026.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 21 April 2026.

Summary: Loss of income – proof of patrimonial loss – difference between physical impairment and financial loss – principles restated.

ORDER

1 This order is in addition to the order dated the 17th of March 2026 under the above case number.

2 The defendant is ordered to pay the plaintiff the amount of **R167 973.75 (ONE HUNDRED AND SIXTY SEVEN THOUSAND NINE HUNDRED AND SEVENTY THREE RAND AND SEVENTY FIVE CENTS)** in respect of the plaintiff's claim for past and future loss of earnings and earnings capacity resulting from injuries sustained by the plaintiff in a motor vehicle accident which occurred on the 8th of June 2018, which amount is payable by the defendant to the plaintiff within 14 (fourteen) calendar days from date of service of this order by depositing same into the plaintiff's attorneys of record's trust account, the details of which are as follows:

ACCOUNT HOLDER:	**AS BOSMAN ATTORNEYS**
BANK:	**FIRST NATIONAL BANK**
TYPE OF ACCOUNT:	**TRUST ACCOUNT**
ACCOUNT NUMBER:	**6[…]**
BRANCH:	**BROOKLYN**
BRANCH CODE:	**251345**
REFERENCE:	**AB/JN/R086**

3 Should the defendant fail to make payment of the capital amount within 14 (fourteen) calendar days from date of service of this order, the defendant will be liable for interest on the amount due to the plaintiff at the prescribed statutory rate per annum as from the date of this order to date of final payment.

4 The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on the High Court scale, which costs will be subject to the discretion of the Taxing Master and will include but not be limited to, the following:

4.1 The reasonable qualifying fees of the following experts:

4.1.1 Dr K Sikhauli (Orthopaedic Surgeon).
4.1.2 Ms S Botha (Occupational Therapist).
4.1.3 Dr J Erasmus (Industrial Psychologist).
4.1.4 Mr N Waisberg (Actuary).

4.2 The costs of the plaintiff's counsel (Adv PJ Vermeulen SC), including counsel's day fee for 17th of March 2026, on Scale C.

5 Plaintiff is ordered to serve the notice of taxation of the plaintiff's party and party bill of costs on the defendant.

6 The defendant is ordered to pay the plaintiff's taxed and/or agreed party and party costs within 14 (fourteen) calendar days from the date upon which the accounts are taxed by the Taxing Master and/or agreed between the parties.

7 Should the defendant fail to make payment of the taxed and/or agreed party and party costs amount within 14 (fourteen) calendar days from date of this taxation and/or settlement, the defendant will be liable for interest on the amount due to the plaintiff at the prescribed statutory rate per annum as from the date of this taxation and/or settlement to date of final payment.

JUDGMENT

Opperman J

Introduction

[1] This matter concerns the determination of the plaintiff's claim for loss of earnings and/or earning capacity arising from injuries sustained in a motor vehicle collision on 8 June 2018.

[2] The merits of the claim have been conceded 100% in favour of the plaintiff. General damages have been rejected and stand to be referred to the Health Professions Counsel of South Africa. On 17 March 2026 the following order was made by agreement between the parties:

‘1. The Plaintiff’s application in terms of Rule 38(2) is granted with costs.

2. The Plaintiff’s claim for General Damages is separated in terms of Rule 33(4) and for later adjudication.

3. The Defendant is ordered to deliver to the Plaintiff, within 14 (fourteen) calendar days from date of service of this order an undertaking in terms of Section 17(4)(*a*) of the Road Accident Fund Act, Act 56 of 1996, wherein the Defendant undertakes to pay the Plaintiff 100% of the costs of future accommodation, in hospital or a nursing home or treatment of, or rendering of a service or supplying of goods to the Plaintiff pursuant to the injuries Plaintiff sustained in the motor vehicle accident on 3 July 2016,[1] after the costs have been incurred and on proof thereof.

4. The expert reports of the Plaintiff referred to below, are admitted into evidence, and the factual allegations, assumptions, deductions and opinions expressed therein as contained in the said reports are admitted by the parties and by agreement between the parties entered in evidence before the court without the requirement to lead any further evidence thereon:

Expert Reports:

4.1 Dr K Sikhauli, Orthopaedic Surgeon, report dated 17th July 2024 (as amended to reflect retirement date at 60 years in paragraph 12.2.4 of report) and RAF4 serious injury assessment report dated 13th of June 2024 on pp. 1 to 39 in the Quantum bundle.

4.2 Sandra Botha, Occupational Therapist, medical legal report dated 8th of November 2024 on pp. 40 to 77 in the Quantum bundle.

4.3 J Erasmus, Industrial Psychologist, report dated 28 January 2025 on pp. 78 to 103 in the Quantum bundle.

4.4 Updated Actuarial report by Namir Waisberg dated 17th of March 2026 handed up in Court.

5. The Plaintiff will file his written Heads of Argument before the close of business on Friday the 20th of March 2026 together with his proposed draft order and the Defendant will file its written Heads of Argument before close of business on Friday the 27th of March 2026 together with its proposed draft order.

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[1] The date is incorrect. It is 8 June 2018.

6. The costs of today, the 17th of March 2026, are costs in the course and will form part of the order to be made by the court in adjudicating upon the Plaintiff's claim for both past and future loss of earnings and earnings capacity.'

The Plaintiff

[3] The plaintiff is a self-employed businessman who owns and operates a car wash enterprise. He was 51 years old at the time of the incident and holds a Grade 12 qualification obtained in 1984, as confirmed by the industrial psychologist. The plaintiff's work history, as also recorded by the industrial psychologist and consistent with that of the occupational therapist, reflects that he was employed as a truck driver from 1992 to 1999, earning approximately R26 400.00 per annum. Thereafter, from 1999 to 2004, he worked as a taxi driver, earning approximately R24 000.00 per annum. From 2004 until the date of the accident, the plaintiff was self-employed, operating and managing a car wash business under the name 'Papa G's Carwash and General Trading', from which he derived an approximate annual profit of R360 000.00.

[4] Following the accident, the plaintiff was hospitalised for approximately one week and thereafter recuperated for a further seven weeks. He returned to work in August 2018 and has continued performing his usual occupational duties to date, albeit with reliance on additional employees to undertake the more physically demanding aspects of the work.

[5] According to the plaintiff, his business has since yielded an increased profit of approximately R600 000.00 per annum from August 2018 to the present.

[6] It is common cause that while bank statements were furnished confirming certain payments received, it is apparent that the plaintiff conducts a substantial portion of his business in cash, with the result that such statements provide only a limited reflection of his actual income and expenses, both prior to and subsequent to the accident.

[7] As indicated, following the accident, the plaintiff resumed work and has continued to operate his business on a full-time basis. The uncontested evidence establishes that:

a) The plaintiff continues to perform the core functions of his business.

b) He has adapted his role by delegating heavier physical tasks.

c) The business has demonstrated sustained growth post-accident.

d) On the evidence of the industrial psychologist and the plaintiff, the plaintiff's income increased from approximately R360,000.00 per annum (2018 terms) to approximately R600 000.00 per annum by 2024.

Medical and Functional Evidence

[8] The orthopaedic evidence confirms injuries to the cervical, thoracic and lumbar spine, as well as the shoulders and elbows. While these injuries are likely to result in ongoing symptoms, the prognosis is generally described as fair. Importantly, the orthopaedic surgeon did not conclude that the plaintiff is incapable of working, but rather that residual symptoms *may* impact work performance.

[9] The occupational therapist found that:

a) The plaintiff remains capable of performing light work.

b) He continues to manage his business effectively.

c) He has successfully adapted by delegating physically demanding tasks.

d) He is likely to continue in his current role with appropriate adjustments.

No cognitive or psychological impairment affecting employability was identified.

Legal Principles

[10] The *locus classicus* regarding contingencies is the case of *Southern Insurance Association v Bailey*[2] (*Southern Insurance Association*). The court decreed that: 'where the method of actuarial calculations is adopted, 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'.

[11] The principles applicable to claims for loss of earnings or earning capacity are trite. A plaintiff must prove, on a balance of probabilities: a diminution in earning capacity; and that such diminution has resulted in patrimonial loss. *It is not sufficient to*

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[2] *Southern Insurance Association v Bailey NO* 1984 (1) SA 98 (A) at 116G-H.

establish a theoretical or speculative impairment. The loss must be real and capable of quantification.

[12] Zulman JA, with reference to various authorities including *Southern Insurance Association*, ruled in *Road Accident Fund v Guedes*[3] that the dictum that evolved is that the calculation of the quantum of the future amount, such as loss of earning capacity, is not a matter of exact mathematical calculation. *By its nature, such an enquiry is speculative, and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate*. Courts have adopted the approach that, the amount to be awarded as compensation and the figure arrived at *depends on the court's view of what is fair.*

Loss of Income

[13] The following position has been observed in our law: 'For while earnings may generally (and even frequently) be a fair indication of earning capacity, . . . there are occasions where they part company, and where, therefore, it is important to clarify the real object of compensation'.[4]

[14] The test is two staged: The questions on which the court must decide, firstly is, whether the plaintiff suffered loss of income because of the collision and, secondly, whether there was any loss of earning capacity because of the *sequalae* due to the injuries. If the answer to the last question was in the affirmative the question of quantification of the loss of earning capacity would arise.

[15] The more accurate (and least problematic) way to calculate loss of earning capacity is to base such calculation on loss of future income in cases where such loss can be predicted with reasonable certainty. Marx, with reference to case law, concluded aptly:

'1 Earning capacity is a *sui generis* right, the object of which is the capacity to earn money. One can agree with Visser and Potgieter that the legal object of the right contains elements of

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[3] *Road Accident Fund v Guedes* (611/04) [2006] ZASCA 19 RSA; 2006 (5) 583 (SCA).

[4] P Boberg (1984) *The Law of Delict* at 539 as quoted by FE Marx, "Earning Capacity: Use It (For Yourself) or Lose It, Rudman v Road Accident Fund 2003 2 SA 234 (SCA)", *Obiter* (2004) 231-241 at 231 (*Marx*); *Maduna v Road Accident Fund* (5668/21) [2025] ZAWCHC 394 (1 September 2025).

patrimony but is also related to a person's bodily integrity (Visser and Potgieter Law of Damages 2003, 407). It has patrimonial as well as non-patrimonial elements and as such it can be classified as personal immaterial property (2001 Neethling, Potgieter and Visser 53 fn 70 – where reference is also made to *Hawker v Life Offices Association of South Africa* 1987 3 SA 777 (C) where the court refers to the non-patrimonial elements as "factors of personality").

2 The right to earning capacity comprises a complex set of abilities which together make up an asset in the estate of a person, and it must be assessed as a whole. The loss of an ability, for instance the ability to hunt, does not necessarily give rise to loss of earning capacity, but can give rise to an award for loss of amenities of life as part of general damages as was indeed awarded by the court a quo in *Rudman v Road Accident Fund* (*supra* 238H-I).

3 Once loss of earning capacity is proven it is the duty of the court, from the evidence at its disposal, to quantify that loss (see par 4 1-4 3 above).

4 Since *Rudman v Road Accident Fund* (*supra*), the loss of earning capacity has become irrelevant if it is not proven that one utilised one's earning capacity for oneself.

"The Dippenaar doctrine may perpetuate the prevailing dualism of proclaiming that the loss is one of earning capacity while in fact awarding damages for loss of future earnings" (Boberg 539).'[5]

[16] In *Southern Insurance Association*[6] the Appellate Division held that where mathematical precision is impossible, the court must make an estimate based on probabilities and 'rough justice'. Similarly, in *Road Accident Fund v Guedes,*[7] the Supreme Court of Appeal confirmed that loss of earning capacity involves a comparison between hypothetical scenarios and cannot be calculated with certainty. The principle that a plaintiff should not be prejudiced by the inherent difficulty of proving patrimonial loss was further affirmed in *Hersman v Shapiro & Co*:[8]

'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.'

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[5] Ibid at 241.
[6] Footnote 6. *Hersman v Shapiro & Co* 1926 TPD 367 at 379.
[7] *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA) para 9.
[8] Footnote 10 at 379. Also see *Road Accident Fund v Kerridge* [2018] ZASCA 151; 2019 (2) SA 233 (SCA) (*Kerridge*) para 25.

The Court is thus entitled to rely on circumstantial evidence and expert opinion, and to exercise its discretion to arrive at a fair and equitable assessment, rather than insisting upon unattainable precision.

Evaluation

Whether a loss has been established

[17] The central difficulty with the plaintiff's case lies in the absence of demonstrable financial loss. The evidence reveals that:

a) The plaintiff returned to full-time work shortly after the accident.

b) He continues to operate his business successfully; and

c) his income has increased substantially since the accident.

The Plaintiff's income is primarily derived from ownership, management, and business expansion, rather than direct physical labour.

[18] The evidence further demonstrates that the growth of the business is closely linked to capital investment received prior to the accident and subsequent expansion of operations. On a proper conspectus of the evidence, the plaintiff's post-accident financial trajectory does not support a finding that he is worse off. The alleged loss is therefore not borne out by the facts, but rests largely on hypothetical projections of what might have occurred in the absence of the accident.

Causation

[19] Even if some degree of physical limitation is accepted, the plaintiff has failed to establish a causal nexus between the accident and any alleged financial loss. The evidence indicates that the business would likely have expanded irrespective of the accident. The plaintiff's role would, in any event, have evolved toward management and supervision; and income growth is attributable to capital investment and business acumen. In these circumstances, any alleged shortfall cannot, on a balance of probabilities, be attributed to the accident.

Contingencies and Actuarial Calculations

[20] The actuarial calculations presented are premised on uncertain and inconsistent pre-morbid income figures. There are material discrepancies in the plaintiff's reported income, with no reliable documentary corroboration.

[21] This Court must therefore approach the pre-morbid scenario with caution and apply appropriate contingencies. When realistic contingencies are applied, the calculations demonstrate that no loss arises. Only in a narrowly constructed scenario, involving relatively favourable assumptions to the plaintiff, does a residual loss of R167 973.75 emerge as was correctly depicted by counsel for the defendant in her heads of argument.

[22] While the defendant contends that no loss has been proven, this Court is mindful that the plaintiff has sustained injuries which may, to a limited extent, affect efficiency and future resilience in the labour market. In such circumstances, courts have recognised that a modest award may be justified to account for a reduced earning capacity, even where actual loss is difficult to quantify with precision.

Conclusion and Order

[23] The plaintiff has not established a clear, quantifiable loss of earnings on a balance of probabilities. However, doing the best it can on the available evidence, and adopting a cautious approach, this Court is satisfied that a limited award is appropriate to reflect a marginal diminution in earning capacity. The amount of R167 973.75 represents a fair and reasonable assessment in the circumstances.

[24] I accordingly make the following order:

1 This order is in addition to the order dated the 17th of March 2026 under the above case number.

2 The defendant is ordered to pay the plaintiff the amount of **R167 973.75 (ONE HUNDRED AND SIXTY SEVEN THOUSAND NINE HUNDRED AND SEVENTY THREE RAND AND SEVENTY FIVE CENTS)** in respect of the plaintiff's claim for past and future loss of earnings and earnings capacity resulting from injuries sustained by the plaintiff in a motor vehicle accident which occurred on the 8th of June 2018, which

amount is payable by the defendant to the plaintiff within 14 (fourteen) calendar days from date of service of this order by depositing same into the plaintiff's attorneys of record's trust account, the details of which are as follows:

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M L OPPERMAN
JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:	P Vermeulen SC
Instructed by:	Bosman Attorneys
	Pretoria
	c/o Webbers Attorneys
	Bloemfontein
For the defendant:	J Gouws
	Office of the State Attorney
	Bloemfontein