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

Not reportable

Case no: 4845/2024

In the matter between:

SIPHOKAZI MBEKI-MDINGI **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

Neutral citation: *Mbeki-Mdingi v Road Accident Fund* (4845/2024) [2026] ZAFSHC 256 (23 April 2026)

Coram: CHESIWE J

Heard: 9, 10 and 12 September 2025

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 13h00 on 23 April 2026.

Summary: Claim for damages stemming from a motor vehicle collision – defendant conceded to 100% liability for the plaintiff's proven damages – industrial psychologist's report in dispute with evidence led – plaintiff sustained injuries on right and left humerus, fracture and left femur fracture – issues for determination, general damages and the claim for past and future loss of income.

ORDER

The draft order marked "X" with the amended amount for general damages being R700 000.00 (seven hundred thousand rand), dated 23 April 2026 and signed, is therefore made an order of court. (Total amount - R2 485 340 + R700 000= R3 185 340)

JUDGMENT

Chesiwe J

Introduction

[1] The plaintiff has instituted a claim against the defendant for damages she suffered from a motor vehicle collision on 22 February 2023. The plaintiff was a passenger in the motor vehicle with registration number JZM 681 EC which was driven by Siyavuya Mdingi (the insured driver). The collision occurred when the insured driver lost control of the vehicle causing it to overturn. The merits have been settled between the parties, with the defendant conceding to being 100% liable for the plaintiff's proven damages.

[2] Before commencement of trial on 10 September 2025, the parties agreed that the plaintiff's expert reports, namely those compiled by the orthopaedic surgeon, the plastic and reconstructive surgeon, occupational therapists and the actuaries, be admitted into evidence. The industrial psychologist's report was in dispute and he was called to testify.

[3] The plaintiff sustained the following injuries: right and left humerus, fracture and left femur fracture. The plaintiff was admitted to hospital on 22 February 2023 and discharged 7 April 2023. She underwent open reduction and fixation of the fractures including a debridement and skin graft of the left thigh; she was hospitalized for approximately a month and on discharge, she mobilised on crutches. The only issues

left for determination is the general damages and the claim for past and future loss of income.

Plaintiff's oral evidence

[4] The plaintiff testified as follows: At the time of the accident, she was 28 years old and is 31 years old presently. She was in the back seat of the vehicle as a passenger when the accident occurred; her husband (the insured driver), who had passed on immediately after the accident, was the driver. She sustained injuries on her upper arm, left leg and scarring on her left hip. She said she has been trying to find employment even before the accident and managed to find employment as an assistant teacher in 2017. She worked in this position for approximately five months but resigned thereafter. She relocated to Johannesburg to stay with her husband and studied towards plumbing and fitting, and obtain N1, N2 and N3 certificates during this time.

[5] In 2019, she applied to be admitted at the South African Police Service (SAPS) Academy. She failed the psychometric test. She thereafter applied again and was called for the psychometric test again and it was in route to the test when the accident occurred; she thereafter did not apply again. After the accident, she started a small business to sell weaves (wigs), but stopped the business as the clients were not paying, but rather took the product on credit.

[6] The plaintiff further testified that she has difficulty in using her left arm as she cannot sleep on her left side. She further testified that she cannot lift heavy objects, nor stand for long periods due to the pain in her left hip. She wears long sleave clothing to cover the scarring on her upper arms (left and right) and is unable to pursue romantic relationships with other men, as she is still grieving her husband. In addition, she added that, before the accident, she used to play netball at the local netball club but can no longer do so.

[7] Under cross-examination, the plaintiff testified that seeing as her husband was working at a Westonaria mine, she was able to also secure employment and used to work underground. In addition, she used to be responsible for washing mine overalls and cooking in the mine kitchen. She said these jobs were not what she studied for, as she wanted a job in plumbing and fitting, alternatively a job in teaching. She

confirmed that since the accident, she did not find any job due to her injuries and the pain she experiences as the plates and screws are still in her arms and leg.

[8] Mr Peverett, the industrial psychologist, testified as follows: The plaintiff has limited qualifications and it makes it difficult for her to find employment, particularly if one considers that she is 30 years old and a reasonable age to enter the employment market. Further testimony was that the plaintiff had clear intentions to find employment before the accident. Moreover, the plaintiff has shown this by sending out her CV to different employment sectors, including attending SAPS psychometric tests. Additionally, the plaintiff was a candidate for practical work such as teaching, applying to SAPS and studying plumbing and fitting.

[9] Mr Peverrett explained that the income projections were based on a conservative approach and compared it with people who had a grade 12 certificate. He said that, in the alternative, the plaintiff may work in the informal sector in sedentary employment and that the plaintiff's attempts to sell weaves was not viable as the business did not last long. He mentioned that, based on his assessment, the plaintiff presented with a significant disability to pursue any formal employment.

[10] Under-cross examination, Mr Peverrett explained that an opportunity could present itself to the plaintiff to work as a secretary, but it would be unlikely as she does not meet the requirements for secretarial duties due to her injuries. He stated that there was a strong probability that the plaintiff could progress in a straight-line career as she has a grade 12 certificate, as well as the necessary N3 certificate. Further that, the postulation prediction is that people progress in their careers as they gain experience.

[11] The plaintiff closed her case. The defendant also closed its case without calling any witnesses and the matter was postponed to 12 September 2025 for closing arguments. The plaintiff filed written heads of argument on 11 September 2025 and on 12 September 2025, counsel for the defendant made oral submissions.

[12] Adv Zietsman SC on behalf of the plaintiff, submitted that the evidence of the industrial psychologist, Mr Perverrett, stands uncontested. Further, that the plaintiff's lack of motivation to find a job is nothing unusual, as women tend to enter the labour market at a later stage due to family responsibilities and child-rearing. Counsel submitted that the plaintiff was seeking employment before the accident and was

called upon on two occasions to attend the psychometric tests at the SAPS. Moreover, counsel stated that the actuarial calculations on contingency are in the favour of the defendant in that the uninjured scenario is at 5% -15% and injured at 30%.

[13] Me Gouws, on behalf of the defendant, argued that her instructions were that the general damages ought to be R650 000 (six hundred and fifty thousand rand). She submitted that it was difficult to disagree with the calculations of the plaintiff's counsel, as scarring cannot be repaired by surgery. Further argument was that a larger percentage of contingency be applied and handed in a calculation with contingency of 30% resulting in a total loss on earnings of R983 780,00 (nine hundred and eighty-three thousand seven hundred and eighty rand).

[14] The plaintiff's contention is that her evidence has proven on the balance of probabilities that she has established a claim for general damages as well as loss of earnings and that the actuarial calculations, as apportioned, should be relied upon by the court. The defendant contends that the plaintiff did not discharge the onus of proving on a balance of probabilities that she is vulnerable in the labour market.

Plaintiff's Expert Reports

[15] The orthopaedic surgeon, Dr J Preddy, in his report concluded as follows:

'I found that she qualifies for a serious injury as set out in number 5.1 due to polytrauma, bilateral humeral fractures and subtrochanteric fracture of the left femur. This has resulted in restricted range of motion of both shoulders, muscle wasting and extensive skin grafting on the inside of the left leg and the loss of internal rotation of the left hip. She has severe limitations of function and will require further intensive conservative and surgical treatments.'[1]

[16] Dr Eksteen, plastic and reconstructive surgeon, concluded in his report as follows:

'I do not plan or recommend treatment of her scars. Her scars are all permanent and she has a strong tendency to make hypertrophic scars. Any attempt at scar revision by surgery or any procedure such as dermabrasion, C02 laser resurfacing, micro-needling or deep chemical peel will have a significant risk of making the scars even worse.'[2]

[1] Dr J Preddy, Orthopedic Surgeon Medico- Legal Report, at para 13, page 17 of the Expert Notice Bundle.

[2] Dr E Eksteen, Plastic & Reconstructive Surgeon, Medico-Legal Report, para 6 and 7 page 33 of the Expert Bundle.

[17] At para 7, in respect of the loss of income, Dr Eksteen states as follows in his report: 'Visible scars have a profound impediment on her future employability. I will defer the loss of future earning capacity to an industrial psychologist.'

[18] Ms H Meyer, the occupational therapist, indicates in her report that, 'as per the assessment results, the plaintiff meets the physical requirements of the sedentary to light demand work, with load handling limited to a maximum of 7.5kg.' Further, she adds that the plaintiff 'presented with limitations in tolerance for stair climbing, forward bend standing and crouching - restricted to occasional performance (6% - 33% of the work day). The grip strength of her right and left hands were below the norm.'[3]

[19] Mr Peverrett's oral evidence was in line with his report.[4] In the report, while having considered the expert opinions at hand, the plaintiff's future formal employment prospects render her as significantly vulnerable. Further, that

'. . . entry level employment prior to progression at the semi-skilled level of functioning is significantly physical in orientation requiring frequent lifting, carrying, packing, standing and walking. Unless she is able to secure work from a sympathetic employer or employment that is only sedentary involving low level administration work, which is deemed unlikely. Ms Mbeki-Mdingi's future earnings capacity will probably be confined to the informal sector. Self-employment is an informal trader operating from home represents the most probable scenario in this regard.'

[20] The plaintiff appointed Munro Forensic Actuaries. In its report, the following was stated: 'The claimant has remained unemployed to date. Is not expected to reach the suggested pre-accident career potential. She might suffer losses that are not directly quantifiable and should be address via contingencies. Past loss calculated as R51 965.00 future loss R2 433 375 totalling R 2 485 340.'[5]

[21] Defendant did not file any expert reports nor were there any joint minutes. The reports of the plaintiff therefore stand uncontested.

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[3] Ms Meyer Occupational Therapists, Medico-legal Report, para 7.4, page 68 of the Expert Bundle.
[4] Mr Perverett, Industrial Psychologist, Medico-Legal report, para 6.2.5 of the report, page 68, annexure:"A" of the Expert Notices
[5] Munro Forensic Actuaries Report, executive summary, page 115.

General Damages

[22] The basic principle underlying an award for general damages in such actions is that the compensation must be assessed in such a manner as to place the plaintiff as far as possible in the position she would have been had the wrongful act causing her injuries not been committed. The assessment of compensation is done by comparing the plaintiffs 'properties', meaning a *universitas* or complex of general relations, including the plaintiff's rights and duties, as it is after the commission of the wrongful act with its projected state, had the wrongful act not been committed.[6]

[23] It is correct that notwithstanding the best available medical treatment, the plaintiff has received and will still receive medical care in future. The plaintiff's current condition will never revert to its former position. The difficulties she now has following the motor vehicle accident, her upper arms with the plates and screws still in place, will make things difficult for her as far as even ordinary house chores are concerned. The severe scarring on her left thigh and upper arms have led her to her wearing long sleaved clothing in order to hide the scars. A plastic and reconstructive surgeon has dissuaded further reconstructive surgery as it may worsen the scars, ultimately resulting in hypertrophic scars.

[24] Dr Preddy is of the opinion that the plaintiff will continue to suffer and experience pain due to the internal fixation with locking nails and screws. This would likely mean that her physical tasks and activities, including household chores, would be unbearably painful in the long run.

[25] In *Protea Insurance Company v Lamb*[7] and *Road Accident Fund v Marunga*,[8] it was stated that, a claim for general damages comprises of pain and suffering, disfigurement, permanent disability and loss of amenities of life. In *Southern Insurance Association Limited v Bailey N.O.*[9] (*Bailey*) the following was stated:

'The Appellate Division has never attempted to lay down rules as to the way in which the problem of an award of general damages should be approached. The amount to be awarded as compensation can only be determined by the broadest general consideration and the figure

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[6] *Union Government (Minister and Harbours) v Warneke* 1911 AD 657 at 665.
[7] *Company v Lamb* 1970 (1) SA 530 (A) at 534H.
[8] *Road Accident Fund v Marunga* 2003 (5) SA 164 (SCA) para 23.
[9] *Southern Insurance Association Limited v Bailey N.O.* 1984 (1) SA 98 (A) (*Bailey*).

arrived at must necessarily be uncertain depending upon the Judges' view of what is fair in all the circumstances of the case.'[10]

[26] The plaintiff came forth as a truthful and honest witness. She told the court she has not been employed for a long period and that employment opportunities are very scarce. She submitted her CV with various employers before the accident, and this cannot be disputed. Even if she did not submit any proof in respect of the psychometric tests, she testified that she had to attend at the SAPS, to write the psychometric test, but could not due to the accident, and she indeed had a short employment period as an assistant teacher. However, she studied further to complete the N1, N2 and N3 streams. Unfortunately, the weave business was unsuccessful, but it is clear that she attempted to, at least, generate an income for herself. It is a known fact that unemployment in South Africa has increased at an alarming rate. In this regard, she cannot be faulted for not having found employment before the accident.

[27] The opinion of the various experts who examined the plaintiff indicates that the injuries sustained will indeed affect any employment in which she will find herself in. She has restricted movement of the right and left arm which still has internal fixation, although the fractures have united. The court takes cognisance of the fact that she has qualifications for plumbing and fitting. By virtue of these professions, it would naturally be difficult for her to perform any heavy-duty work.

[28] In *Pitt v Economic Insurance Co. Ltd*[11] (*Pitt*) it was stated that 'the Court must take care to see that its award is fair to both sides – it must give just compensation to the plaintiff but must not pour out largesse from the horn of plenty at the defendant's expense.'[12] Counsel on behalf of the defendant emphasised that the court should use its discretion to award a fair, just and reasonable amount. Having regard to case law with the same injuries, included the cited cases in the plaintiff's written heads of argument, I am of the view that a reasonable and fair award towards general damages would be R700 000.00 (seven hundred thousand rand).

[10] Ibid at 99H.
[11] *Pitt v Economic Insurance Co. Ltd* 1957 (3) SA 284 (N).
[12] Ibid at 287E.

Loss of income

[29] In *Bailey*, Nicholas JA said the following: '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.'[13] An enquiry into damages for earning capacity is of its nature speculative, because it involves a prediction of the future. 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.[14] Based on the above, as well as the views expressed by the experts which were largely common cause, the pertinent question is what award would be fair and adequate compensation for the plaintiff in respect of future loss of earnings or capacity to earn?

[30] In *Sandler v Wholesale Coal Suppliers Ltd,*[15] it was stated that it is no doubt exceedingly difficult to value damage in terms of money, but that does not relieve the court of the duty of doing so upon evidence placed before it. This is a principle which has been acted on in several cases in South African Courts. In *Rudman v Road Accident Fund,*[16] the court held that '[t]here must be proof that the reduction in earning capacity indeed gives rise to pecuniary loss.' It is now accepted that in the assessment of these kinds of damages, which cannot be assessed with any amount of mathematical accuracy, courts have a wide discretion.[17]

[31] In *Bailey*, Nicolas JA said:

'In a case where the Court has before it, material on which an actual calculation can usefully be made, I do not think that the first approach often any advantages 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 "gut feeling" as to what is fair and reasonable is nothing than a blind guess.'[18]

[32] In the present matter, the plaintiff's loss of income was calculated by Munro Forensic Actuaries. It submitted the loss of earning capacity with contingencies at 5% and 15%, respectively. Past loss of earning is calculated at R51 965.00 (fifty-one

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[13] *Bailey* fn 13 at 99A.
[14] Ibid.
[15] *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194.
[16] *Rudman v Road Accident Fund* 2003 (2) SA 234 (SCA) para 11.
[17] See in this regards *AA Mutual Insurance Association Ltd v Maqula* 1978 (1) SA 805 (A).
[18] *Bailey* fn 13 at 114C-D.

thousand nine hundred and sixty-five rand) and future loss of earning at R2 433 375.00 (two million four hundred and thirty-three thousand three hundred and seventy-five rand), with contingencies applied at 30%. Contingency, however, falls under the court's discretion.

[33] For purposes of easy mathematical calculations on the different expert reports as well as information received from the plaintiff, if actuarial calculations are impossible, the court nevertheless determines the plaintiff's loss of earning capacity arithmetically, through estimation, but not proved earnings.

[34] In this instance, the court has no expert calculations from the defendant's, side, except for the one page submitted by Ms Gouws that contingency on future loss should be calculated at 53%. In my view 53% is extreme and the plaintiff ought not to be punished for an accident that she did not cause.

[35] The court takes cognisance of the fact that the plaintiff is put in a position in which otherwise she would not have been, had it not been for the accident. Indeed, the removal of the steel plate would ease the pain in the arms and leg. Notwithstanding the seriousness of her injuries from a physical point of view, and the fact that she has steel plates in her left and right arms, she continues to take care of her children and do her household chores. From the expert reports, it is not stated unequivocally that plaintiff would not be capable to do any work in the future, but she will be able to do sedentary work, possibly with a sympathetic employer.

[36] It is understood by this Court, as per Ms. Meyer, that when working in a sedentary capacity, the plaintiff will require reasonable accommodation, allowance to change posture as needed when experiencing discomfort, carry and lift reasonably weighted objects with both hands, and a workplace that must be ergonomically designed and structured for sedentary work or a workstation allowing for such. The duties of a receptionist or secretary do not require heavy lifting of equipment. Both involve significant durations of sitting, standing and walking about, thereby meeting the requirements of sedentary to light demand work.

[37] In my view therefore, taking into consideration the various expert reports, there is a possibility that the plaintiff may, post-morbid and after removal of the steel plate, be able to find or do some sedentary work.

[38] It is 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 both parties. There is no hard and fast rule regarding contingency allowances. For purposes of easy mathematical calculations, the actuary based the calculations on the different expert reports as well as information as received from the plaintiff. Munro Actuaries applied 5% and 15% contingencies respectively. Indeed, it is so that the court has to make a calculation that is fair and just for both parties.[19]

[39] In aligning myself with a finding of the court in the unreported matter of *Road Accident Fund v Reynolds*,[20] the court held: 'Thus, allowing for contingencies is one of the elements in exercising the discretion to award damages'.[21] It was said in *Masemola v Road Accident Fund*[22] that:

'It is now well-settled that contingencies, whether negative or positive, are an important control mechanisms 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 allowances.'[23]

[40] Thus, the calculations according to the actuary are fair and just, further that a contingency of 30% be applied to the future loss of income, with the total loss of earnings being R2 485 340.00 (two million four hundred and eighty-five thousand three hundred and forty rand). Moreover, the actuary report of the plaintiff stands uncontested as the defendant did not file any actuarial report to dispute the calculations.

[41] The plaintiff filed a draft of order with the calculations according to the actuary. The amount for general damages has been amended on the draft order to reflect an amount of R700 000.00 (seven hundred thousand rand).

Order

[42] Accordingly, it is ordered as follows:

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[19] *Pitt* fn 15.
[20] *Road Accident Fund v Reynolds* [2005] ZAGPHC 19 (18 February 2005).
[21] Ibid para 5.
[22] *Masemola v Road Accident Fund* [2023] ZAGPPHC 2263 (2 July 2023).
[23] Ibid para 41.

The draft order marked 'X' with the amended amount for general damages being R700 000.00 (seven hundred thousand rand), dated 23 April 2026 and signed, is therefore made an order of court. (Total amount - R2 485 340 + R700 000= R3 185 340)

[redacted]

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JUDGE OF THE HIGH COURT

Appearances

On behalf of Plaintiff:	PJJ Zietsman SC
Instructed by:	Honey Attorneys
	Bloemfontein
On behalf of the Defendant:	J Gouws
Instructed by:	State Attorney c/o Road Accident Fund
	Bloemfontein