



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case No: **16634/2020**

In the matter between:

SAKEENA NORDIEN

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Neutral citation: *Nordien v Road Accident Fund* Case No 16634/2020 [2026]
ZAWCHC (21-05-2026)

Coram : **MAPOMA, AJ**

Heard : 28 August 2025, 05 November 2025 and 5 March 2026

Judgment : 21 May 2026

Summary : *Delict - action for damages – personal injuries – plaintiff claiming for injuries sustained as a result of a motor vehicle accident –merits and general damages settled - quantum to be determined – parameters to be used in calculating loss of earnings - contingency deduction to be applied determined*

ORDER

1. The Defendant is liable to pay the Plaintiff the total sum of R5 745 890 (*Five Million Seven Hundred and Forty-Five Thousand Eight Hundred and Ninety Rand*) for past and future loss of income, plus costs in terms of the amended order marked “X” attached hereto.
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JUDGMENT

MAPOMA, AJ

[1] The plaintiff sued the defendant, the Road Accident Fund (RAF), in terms of the Road Accident Fund Act 56 of 1996 as amended (the Act), for damages arising from bodily and psychological injuries she sustained, emanating from a motor vehicle collision that occurred on 3 May 2019.

[2] On the fateful day, at about 19h50, at or near Old Paarl Road, Kraaifontein, Western Cape, a collision occurred when the motor vehicle driven by the insured driver collided with the motor vehicle in which the plaintiff was

conveyed as a passenger, which in turn collided with another motor vehicle. Following the accident, the plaintiff was taken to and admitted at Melomed Hospital in Bellville, where she was assessed and her injuries were treated.

[3] As a direct consequence of the accident, which the plaintiff attributes to the negligent driving of the insured driver of the insured motor vehicle, the plaintiff suffered bodily injuries. These injuries were followed by a diagnosis of post-accident psychological consequences. These injuries include severe facial lacerations and fractures of the facial bones, head injuries, soft tissue injuries to the neck and injury to the thoraco-lumber spine. Soon after the accident, the plaintiff suffered a miscarriage after 8 weeks of pregnancy.

[4] The defendant conceded merits and accepted liability at 100% for the plaintiff's proven or agreed damages. The defendant further accepted the plaintiff's entitlement to receive statutory undertakings in terms of section 17(4)(a) of the Act in respect of her future hospital and medical expenses. The parties also settled the claim for general damages. Thus, the only issue for determination by the Court is *quantum* as it relates to past and future loss of earnings.

[5] At the commencement of the trial, the Court, upon unopposed application by the plaintiff, granted an order in terms of Rule 38(2) of the Uniform Rules of Court, allowing for the evidence of some of the plaintiff's medical experts and actuary to be admitted by way of affidavits. Consequently, the evidence of Dr R Jaffe, the orthopaedic Surgeon; Kingsbury Radiologists, the radiologists; Professor T Zabow, the psychiatrist; Dr M Ostrofsky, the maxilla-facial and oral surgeon; Marlene Joubert, the occupational therapist, and Munro Forensic Actuaries, the actuary was admitted into evidence by way of affidavits.

[6] The evidence of the industrial psychologists for both parties was led orally, pursuant to their respective medico-legal reports. In this regard, the plaintiff called the earnings specialist Mr Jean Beeldes (Mr Beeldes), and the defendant called Ms Sandra Moses (Ms Moses), both of whom testified. The evidence of these witnesses was foreshadowed by their joint minute that they concluded on 3 April 2023. The plaintiff herself testified, while there were no other witnesses for the defendant other than Ms Moses.

[7] It is not in dispute that, as a result of the collision, the plaintiff suffered the following injuries: i) the head injury with no loss of consciousness; ii) severe facial injuries with lacerations as well as fractures of the facial nasal and orbital bones; iii) permanent facial disfigurement; iv) a soft tissue injury to the cervical and thoraco-lumbar spine, with damage to the intervertebral discs; and v) psychological injuries consisting of depression, anxiety, and post-traumatic stress disorder (PTSD).

[8] The central issue was whether the plaintiff was so severely impacted upon by the injuries sustained as a result of the accident that she suffered loss of earnings. The defendant contended that the plaintiff's job loss was not caused by the injuries sustained as a result of the accident, and that, in any event, she was employable. The defendant further submitted that the plaintiff did not suffer any loss of income, and consequently, her claim for loss of earnings should be dismissed.

[9] To buttress its stance mentioned above, the defendant contended that the expert reports support its version that medical interventions would alleviate the plaintiff's symptoms and that the plaintiff did not do enough to mitigate the loss by seeking employment. The defendant further contends that the plaintiff's

career progression would still have been achievable had she attended to the injuries through medical interventions. The defendant also disputes that the plaintiff's loss of employment is causally connected to the accident.

[10] Thus, the Court is called upon to determine the earning parameters and the contingency to be applied to the pre-morbid and post-morbid future loss of income calculation in respect of the plaintiff's claim. In approaching this issue, the Court will determine the amounts to be used for the past and future loss, from which the deductions of contingencies are to be made once the Court determines the appropriate contingency to be applied.

Evidence

[11] During trial, the plaintiff gave evidence where she confirmed the injuries mentioned above. She also testified that she experiences constant pains due to the facial and nasal injuries and is reactive to smells; lives on medication for severe headaches and bodily pains; feels exhausted in the morning due to lack of breath; and suffers backpain that limits her sitting on the computer to between 30 minutes and an hour. She also testified that she was psychologically affected by the accident, including incurring cognitive problems that impact her ability to cope in the labour market.

[12] The plaintiff is now 36 years of age, having been born on 6 July 1989. At the time of the accident, she was 29 years of age and employed by Amazon, a global e-commerce retailer in the business of buying and selling goods through digital platforms. At the time of the accident, the plaintiff was employed as a subject matter expert and a mentor. She was shortlisted for migration to Amazon Web Services (AWS) but could not be interviewed due to her sick

condition at the time. She was retrenched on 17 May 2019 and is now unemployed.

[13] Regarding her career, the plaintiff testified that she has a Grade 12 qualification and enjoyed working prior to the accident with nothing negatively affecting her career path. She started working in customer care in the financial services sector in 2008 until 2013. In 2014, she joined Amazon and assumed various specialised positions that included seller support associate and progressed to subject matter expert. In 2016, she obtained certification as a mentor role model trainer. She testified that but for the accident, she would have been rehired by AWS given her career progression path.

[14] Under cross examination, the defendant challenged the plaintiff's inability to do productive work due to constant pains. It was also put to her that she could have utilised the physiotherapists to alleviate the pain. It was also put to her that she was unemployed because she never actively sought employment. It was also challenged that her unemployment status was a result of the accident but rather because Amazon had to move to AWS, and she failed to apply for employment there. The plaintiff insisted that had she not suffered injuries, there was a 90% chance that she would have been absorbed by AWS as an employee.

[15] In my view, the plaintiff came across as a credible witness. Her evidence in giving account of the accident and the injuries she sustained, as well as her career progression was clear and consistent. She was prepared to make concessions where warranted and did not pontificate or profess to know what she did not know. Furthermore, I did not get an impression that she was exaggerating the impact of the injuries she had suffered. I also take note that her

description of the pains she feels as a result of the injuries is subjective, as it cannot be assailed.

[16] Dr R Jaffe, the Orthopaedic Surgeon (Dr Jaffe) who assessed the plaintiff, reported that persistent pain in the face is attributable to the severe maxillofacial fractures she suffered. He opines that these injuries constitute serious injuries. Dr Jaffe also reported that the plaintiff experiences severe occipital headaches, with stiffness in the cervical spine and numbness in both hands. These, according to Dr Jaffe, are resultant from movement of the cervical spine and lumbar spine which elicit pain as result of soft tissue injury to the cervical spine and damage to the intervertebral disc. Dr Jaffe concludes that the plaintiff will have to undergo a spinal fusion if there is a significant disc prolapse.

[17] Regarding future employability, Dr Jaffe opines that the plaintiff would have difficulty performing the administrative functions due to impairment and limited ability to perform sustained work and, as such, will require an accommodating employer who would allow her to work at her own pace and with afforded rest breaks, which will naturally reduce her productivity.

[18] Dr Onstrosky, the Maxillo-facial and Oral Surgeon (Dr Onstrosky) who also assessed the plaintiff, noted visible scars over the bridge of the plaintiff's nose to the right cheek. Dr Onstrosky diagnosed a decreased sensation in the right infra-orbital nerve with reduced vision in the right eye. According to Dr Onstrosky, the X-rays taken indicate a malunited fracture in the nasal bone and possible fracture on the right orbital fracture.

[19] The plaintiff was also assessed by an Occupational Psychologist, Merlene Joubert (Ms Joubert), in relation to the impact of her injuries on her daily living,

leisure, recreation, and work activities. Apart from the physical injuries, which include constant neck and back pains, headaches, and the inability to sleep, the injuries had psychological effects on her self-esteem, including being self-conscious about her disfigured face as a result of the accident.

[20] Ms Joubert further reported that following the accident, the plaintiff's executive functioning was below industry norm for contemporary workers in professional occupations, which has compromised her capacity to perform at the level of Technical Accounts Manager as before the accident. According to Ms Joubert's opinion, her residual capacity is also compromised as she cannot perform sedentary demand work, lacks capacity to perform medium work, and has reduced ability to perform light work. Ms Joubert concludes that, based on her continued symptoms, especially her dysfunctional psychological condition, the plaintiff is currently unemployable.

[21] Professor T Zabow (Professor Zabow), the psychiatrist, also assessed the plaintiff for medico-legal purposes. Professor Zabow noted, *inter alia*, the physical symptoms mentioned above and also reported the plaintiff's sinus problems and difficulty in breathing due to a deviating nasal septum. She opines on the psychiatric symptoms and behavioural changes that include irritability, anxiety, anger, loss of confidence and self-esteem. She also notes that the plaintiff's mind remains preoccupied with the accident and its consequences to her life. She concludes that the plaintiff is suffering from dysthymic mood disorder and chronic post-traumatic stress disorder (PTSD).

[22] Professor Zabow also opines that most of her suffering is from a severe long term mental and behavioural disorder. This, according to Professor Zabow, is attributable to a major loss of amenities of life, loss of work and recreational

activities, and reduced quality of life on the part of the plaintiff. She then suggests that the plaintiff needs counselling and psychotherapy intervention.

[23] Regarding the injuries sustained, the defendant did not submit any expert reports, nor did it call any other experts to testify. Based on the expert evidence contained in the medico-legal reports that have been submitted, I am satisfied that the plaintiff has suffered serious injuries that had serious impact on her physical being and psychological state. I am also satisfied that the serious injuries suffered by the plaintiff resulted in her compromised ability get employment. I am also however to some extent persuaded by the defendant's argument that the plaintiff cannot be said to be totally unemployable notwithstanding the injuries. In my view, this issue should have an effect on the contingencies to be applied.

Loss of Earnings

[24] The plaintiff led evidence of Mr Beeldes, the earnings specialist who assessed her to determine the impact of the accident on her employability and earnings. The defendant also led evidence of Ms Moses, the industrial psychologist. Both experts prepared medico-legal reports that were placed before court, and both testified orally conforming their respective reports., These experts also prepared a joint minute that was submitted.

[25] Ms Moses made a number of profound concessions regarding her postulations on the plaintiff's earnings. She conceded that her postulations in the joint minute that the plaintiff would have peaked but Patterson B5 upper quartile at the age of 45 years was not realistic given that she was already employed at Paterson B5 level at the time of the accident. She then accepted

that Mr Beeldes' pre-morbid postulation that the plaintiff would have been able to progress to a Paterson C-upper level was a reasonable postulation.

[26] The Court also notes that whilst the views of Ms Moses expressed in her medical legal report and joint minute differ from those of Mr Beeldes regarding the plaintiff's loss of earnings, Ms Moses conceded during cross-examination that the pre-morbid and post-morbid postulated by Mr Beeldes were reasonable. The Court is therefore persuaded to accept the pre-morbid and post-morbid postulations of Mr Beeldes for the purposes of calculating the plaintiff's loss of earnings.

Actuarial Report

[27] The postulations of Mr Beeldes were reportedly submitted by the plaintiff to be used by Munro Forensic Actuaries to make calculations and apply the contingencies proposed by the plaintiff. Munro Forensic Actuaries prepared an actuarial report that was introduced by the plaintiff into evidence. The defendant did not submit any actuarial report.

Contingencies

[28] The plaintiff introduced the actuarial report authored by Munro Forensic Actuarial dated 10 July 2025, which made calculations based on the pre-morbid and post-morbid scenarios that were postulated in Mr Beeldes' report. In the actuarial report, the plaintiff proposed contingency deductions of 5% and 10% on the plaintiff's past and future uninjured income respectively. The report also proposed that a higher-than-normal contingency deduction of 55% be applied on plaintiff's future injured income.

[29] Applying the contingencies mentioned above, the calculations in the actual report suggested that the plaintiff has suffered a net past loss of income of R1 548 300.00 and will suffer another future loss of income of R7 294 900.00, which amounts to a total net loss of income of R8 843 200.00.

[30] Regrettably, the defendant did not propose any contingencies to be applied to the calculations. Instead, the defendant referred the court to decision of *Southern Assurance Association Ltd v Bailey NO*,¹ where the court held that the inquiry into the damages for loss of earning capacity is, by its very nature, speculative, and that the court has two options, namely, making a round estimate of an amount which it deems to be fair and reasonable, which is entirely a guess work, or to make an assessment by way of mathematical calculations. The defendant argued for the guess work approach.

[31] The Court is disinclined to follow the approach proposed by the defendant in light of the expert evidence of the respective industrial psychologists and earning experts that have been placed before Court, and mathematical calculations by actuarial experts. In my view, where there is such evidence which has been introduced by the respective parties with a view to opining on the loss of earnings, it would not be justified for the court to adopt a thumb suck approach, for that would undermine the value of experts who have been called to assist the Court.

[32] In *Road Accident Fund v Kerridge*,² the Supreme Court of Appeal (SCA) confirmed that any claim for future loss of earning capacity requires a comparison of what a claimant would have earned had the accident not occurred, with what a claimant is likely to earn now that the claimant has

¹ 1984 (1) SA 98 (A) 112E-114F.

² 2019 (2) SA 233 (SCA) para 40-44.

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injuries post-accident. The loss is the impact of the accident on the claimant, this being the difference between the monetary values of earning capacity immediately prior to the injury and immediately thereafter.

[33] The Court is inclined to make assessment of loss of earnings using the assumptions made by the expert opinions. However, the Court will not blindly follow without questioning and performing a balancing act that ensures calculations are reasonably in line with what is reasonable. In *Terblanche v Road Accident Fund*,³ the court held that even though factually based calculations should be preferred over the court's blind guess, the court still has at its disposal contingencies as a levelling instrument to ensure that the calculations are reasonably in line with the probabilities of the plaintiff's special circumstances.

[34] The court made reference to contingencies as matters which cannot otherwise be provided for or cannot be calculated exactly, but which may impact upon the damages claimed. They include any possible relevant future event which might cause damage or which may otherwise influence the extent of the plaintiff's damage.

[35] The above notwithstanding, the Court is mindful that contingencies are arbitrary and also highly subjective. This view was postulated in the often-quoted passage in *Goodall v President Insurance Co Ltd*,⁴ where the court said:

‘In the assessment of a proper allowance for contingencies, arbitrary considerations must inevitably play a part, for the art or science of foretelling the future, so confidently practiced by ancient prophets and soothsayers, and by authors of a certain type of almanack, is not numbered among the qualifications for judicial office.’

³ (9271/2018) [2024] ZAGPPHC 1156 (7 November 2024) para 35.

⁴ 1978 (1) SA 389 (W) at 392H-393A.

[36] Noting the above, the court will exercise its discretion judiciously and decide as to what is fair and reasonable in the circumstances of a particular case. In doing so, the Court will have to make a fair determination of the appropriate contingencies to be applied based on the particular facts in this case., It is also trite that the Court can deviate from normal contingencies in circumstances where they are not appropriate. In this regard, the court has a wide discretion and may deviate from the normal contingencies to arrive at the most appropriate ones to be applied, based on the relevant factors and uncertainties to be provided for.

[37] In the determination of the appropriate contingency deduction to the past uninjured scenario in this case, there is serious disagreement between the earnings specialist called by the plaintiff and the industrial psychologist called by the defendant. Whilst the Court appreciates the concessions made by Ms Moses in favour of Mr Beeldes in this regard, the uncertainty remains wide and this cannot be downplayed. My view is fortified by the fact that the actuarial calculations of the plaintiff's past earnings are based purely on Mr Beeldes alone. It cannot be sustainable to rely on the calculations as absolute, more so when juxtaposed with those of Ms Moses.

[38] The fact that the defendant did not make submissions on the contingency deductions is lamentable. Mindful of the uncertainties mentioned above, counsel for the plaintiff conceded, wisely in my view, that it would be reasonable to increase the contingency deduction from the proposed 5% to 20% on the uninjured past scenario. In my view, a contingency deduction of 30% is reasonable in this regard.

[39] Regarding future loss of income, in their evidence both experts conclude that the plaintiff is not unemployable, for they agree that medical interventions may improve her condition to be able to be employed, provided that this would be at a lower level than where she was, and this would require a sympathetic employer. Based on this evidence the plaintiff's chances of re-employment are high if the medical interventions are implemented, a more aggressive contingency deduction than the proposed is warranted. Thus, I consider a 35% contingency deduction on the future uninjured scenario reasonable.

[40] Regarding the future injured scenario, the plaintiff proposed a higher-than-normal deduction of 55%. I am not persuaded that a higher contingency in the magnitude of 55% is justified in the circumstances of this case. In my view, a contingency deduction of 20% on the future injured scenario is reasonable.

[41] In summary, the Court takes a view that the reasonable contingency deduction to be applied on the past uninjured income is 30%. The contingency deduction to be applied on the future uninjured income is 35%, and 20% for the future injured state.

[42] Applying the amounts determined as appropriate loss of earnings parameters and the contingencies, the Court has arrived at the loss of earnings as follows:

	<i>Uninjured</i>	<i>Injured</i>	<i>Net Loss</i>
	<i>Earnings</i>	<i>Earnings</i>	
<i>Past Earnings</i>	1 703 700	18 700	
<i>Less contingency deduction</i>	<u>30%</u>	<u>0%</u>	
<i>Net Value of Post Income</i>	1 192 590	18 700	1 173 890

<i>Value of future income</i>	8 937 600	1 546 800	
<i>Less Contingency deduction</i>	<u>35%</u>	<u>20%</u>	
<i>Net Value of Future Income</i>	5 809 440	1 237 440	<u>4 572 000</u>
<i>TOTAL LOSS OF EARNINGS</i>			<u>5 745 890</u>

[43] The Court has also considered that the cap stipulated in the Road Accident Fund Amendment Act 19 of 2005 (the RAF Amendment Act cap) does not apply in this case. Thus, applying the abovementioned contingency deductions, the net past loss of income awarded results in the amount of R1 173 890.00. The net future loss of income is R4 572 000.00. This amounts to a total net loss of income of R5 745 890.00.

Costs

[44] Regarding costs, it is an established principle that costs follow the results. I find no reason to deviate from this principle in this case. The plaintiff has succeeded in her claim and is therefore entitled to an award of costs on a party and party scale.

[45] In terms of Rule 67A of the Uniform Rules of Court, counsels' fees in the context of a party and party costs in the High Court are awarded on the Scales A, B, and C as the case may be, depending on a number of factors set out in Rule 67A (3). Such factors include the complexity of the matter, value of the claim, importance of the relief sought and any other relevant factors.

[46] It was argued on behalf of the defendant that this matter is not complex, and accordingly, costs at scale C were not warranted. It was thus submitted that costs should be awarded at scale B. I have considered the defendant's submission in this regard, and having done so, I am not persuaded by the

argument. I do not share the view that the matter is not complex, and the amount in dispute, amongst other things, is self-explanatory.

[47] It is the Court's view that Scale C is warranted in this case, based on the factual and legal complexity of the matter, necessitated by the absence of settlement on the matter which was fiercely defended. Inevitably, incidental skills are required to be applied by a legal professional senior enough to assist in resolving the matter. The value of the claim is substantial. The Court is satisfied that an award of counsel's fees on the High Court Scale C is justified in the circumstances.

Order

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

1. The Defendant is liable to pay the Plaintiff the total sum of R5 745 890 (*Five Million Seven Hundred and Forty-Five Thousand Eight Hundred and Ninety Rand*) for past and future loss of income, plus costs in terms of the amended order marked "X" attached hereto.

ZL MAPOMA
ACTING JUDGE OF THE HIGH COURT

Appearances

Counsel for the Plaintiff : Adv W Coughlan
Instructed by : DSC Attorneys, Cape Town

Counsel for the Respondents : Ms C Thomas
Instructed by : State Attorney, Cape Town