

- [2] The plaintiff was the driver of a truck travelling along the N2 Highway towards Piet Retief in the Mpumalanga Province when he lost control and his vehicle overturned, causing him bodily injuries.
- [3] The defendant initially repudiated the claim on 18 January 2019, alleging that the plaintiff was the sole cause of the accident. The defendant subsequently filed a notice of intention to defend but failed to file a plea timeously. On 26 October 2022, Matojane J ordered that the matter be referred to the registrar for allocation of a default judgment trial date.
- [4] On 18 March 2026, the matter came before this court as an unopposed default judgment hearing. The plaintiff seeks an order that the defendant be held 100% liable for agreed or proven damages in respect of the accident that occurred on 19 February 2018, an order for a section 17(4) undertaking by the defendant, and compensation for past and future loss of earnings.
- [5] The plaintiff initially claimed an amount in excess of R5 000 000.00. However, having regard to the expert reports, actuarial calculations, and the principles of fairness and reasonableness, this court is required to arrive at a just and equitable award. The defendant did not actively participate in the proceedings as it was barred, and the matter proceeded by way of default judgment application.
- [6] However, Mr Mdlovu from the defendant was present at the hearing of this matter on 18 March 2026 and made some submissions from the bar pertaining to the alleged incorrect date of accident. He argued that there was a discrepancy as to the correct date of accident and it is uncertain as to whether it is 18 February 2018 or 19 February 2018. Having considered the documents before this court, I am of the view that the correct date of accident is 19 February 2018.

Background

- [7] At the time of the accident, the plaintiff was 40 years of age. He held a Grade 12 qualification and a certificate in electrical engineering. He was employed as a truck driver earning approximately R13 869.86 per month (approximately R166 438.00 per annum). The industrial psychologist, Mr Talent Maturure, opined that had the accident not occurred, the plaintiff would likely have remained in similar employment, reaching the

upper quartile of Paterson level B1 (approximately R294 000 per annum) by age 45, with inflationary increases thereafter until retirement at age 65.

- [8] Post-accident, the plaintiff suffered multiple severe injuries including a moderate to severe traumatic brain injury, lumbar transverse process fractures (L1-L5), pelvic fracture (symphysis pubis), sacral alae fracture, and soft tissue injuries. He was hospitalized for approximately three months. He returned to work on light duty but was dismissed in January 2019 due to ill-health incapacity. He currently performs piece jobs as an electrical handyman earning between R3 500.00 and R8 000.00 per month (average approximately R69 000.00 per annum).
- [9] The occupational therapist, Mr Lawrence Makananisa, concluded that the plaintiff's physical capacity does not meet the requirements for heavy to medium type work, and that he will struggle to compete fairly in the open labour market. The clinical psychologist, Ms Lufuno Modipa, found that the plaintiff suffers from a depressive disorder and neurocognitive deficits, including impaired memory, concentration, and executive functioning.

Merits and liability

- [10] The evidence filed before this demonstrates that the plaintiff was the driver of a truck when an unknown motor vehicle tried to overtake him. When he attempted to avoid a collision, he lost control of his truck, and the truck capsized. The plaintiff sustained serious injuries including a moderate to severe traumatic brain injury, pelvic fracture, lumbar spine fractures (L1-L5 transverse process fractures), sacrum fracture, and multiple soft tissue injuries.
- [11] The defendant's plea denied the plaintiff's version and pleaded that the collision was caused by the sole negligence of the plaintiff. However, the defendant failed to pursue its defence and did not file any expert reports or appear at trial.
- [12] It is trite that where a defendant fails to dispute the plaintiff's version on oath and presents no contrary evidence, the plaintiff's uncontroverted evidence should be accepted. I am

satisfied that the plaintiff has established, on a balance of probabilities, that the collision was caused solely by the negligence of the insured driver.

[13] I have considered the documents filed by the plaintiff and I am of the view that the defendant is 100% liable for the agreed or proven damages as a result of the accident that occurred on 19 February 2018 and which accident is the subject of these proceedings. The sole remaining issue for determination is the quantum of past and future loss of earnings, together with ancillary relief including an undertaking in terms of section 17(4) of the Road Accident Fund Act 56 of 1996 and costs.

Legal principles

[14] The assessment of damages for loss of earnings involves a comparison between the plaintiff's likely earnings had the accident not occurred (the "but-for" scenario) and his actual or likely earnings post-accident. The court must apply reasonable contingencies to account for the normal vicissitudes of life, including the risk of unemployment, illness, early retirement, and other unforeseen events.

[15] In *Southern Insurance Association Ltd v Bailey NO*¹, the court held that the court must make a fair estimate of the plaintiff's prospective loss, taking into account all relevant facts and applying appropriate contingencies. The court further held that the percentage deduction for contingencies should not be arbitrary but must be informed by the circumstances of each case.

[16] The "spread" method, as approved by the Supreme Court of Appeal in *Guedes*², allows the court to award a lump sum that is not rigidly tied to the actuarial calculation but represents a fair and reasonable estimate of the loss, particularly where there is uncertainty regarding future employment prospects.

Actuarial calculation and contingencies

[17] The actuary, Mr Emmanuel Mutavhatsindi, calculated the plaintiff's loss of earnings as follows:

¹ 1984 (1) SA 98 (A).

² *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA).

Component	Pre-accident	Post-accident	Loss
Past loss (gross)	R1 602 824.00	R505 697.00	R1 097 127.00
Past contingency (5% / 5%)	(R80 141.00)	(R25,285)	(R54 856.00)
Net past loss	R1 522 683.00	R480 412.00	R1 042 271.00
Future loss (gross)	R2 870 785.00	R806 803.00	R2 063 982.00
Future contingency (15% / 30%)	(R430 618.00)	R242 041.00)	(R188 577.00)
Net future loss	R2 440 167.00	R564 762.00	R1 875 405.00
Total net loss			R2 917 676.00

[18] While I commend the thoroughness of the actuarial report, the contingencies applied (5% past pre-accident, 5% past post-accident, 15% future pre-accident, and 30% future post-accident) require adjustment to reflect the realities of this case.

[19] For the pre-accident scenario, the plaintiff was a truck driver, a profession with inherent risks including industry fluctuations, health requirements (including his chronic illness, which he had managed since 2012), and the physical demands of long-distance driving. A higher contingency than 15% for future pre-accident earnings is warranted.

[20] The approach to applying differential contingency deductions is well-established. It is trite that contingency deductions should reflect the specific circumstances of each case, including the plaintiff's age, health, employment prospects, and the inherent risks of the open labour market.

[21] In *Southern Insurance Association Ltd v Bailey NO*, the court held that a court may make a contingency deduction not only for the normal contingencies of life but also for the unusual risks to which the particular claimant is exposed. The court stated:

“Any enquiry into damages for loss of earning capacity is of its nature speculative. 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. It has open to it two possible approaches. One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a non possumus attitude and make no award.”

[22] In the present case, the plaintiff’s injuries have rendered him vulnerable in the labour market, and a higher post-accident contingency is appropriate.

[23] For the post-accident scenario, the plaintiff currently earns modest income. However, given his chronic pain, neurocognitive deficits, and the competitive labour market, there is a significant risk of unemployment or reduced earnings in the future. The occupational therapist concluded that the plaintiff is “unemployable in heavy to medium type of work”.

[24] For past losses, the plaintiff received three months’ salary during his initial absence and returned to work briefly before termination. In my view, the amount proposed by the actuary report must be tempered because of the plaintiff’s reduced life expectancy due to his chronic illness which has been treated since about the year 2012.

[25] I am of considered view that there should be reduction to avoid overcompensation given the plaintiff’s pre-existing condition and the speculative nature of his handyman income. I am also mindful of the fact that the determination to award an appropriate amount that should be fair to both parties is in the courts’ discretion.

[26] The Supreme Court of Appeal in *De Jongh*³ correctly opined that while the plaintiff should be properly compensated, at the same time the plaintiff should not be overly compensated with an exceedingly high award which would burden the defendant.

³ *De Jongh v Du Pisanie N.O.* [2004] All SA 565 (SCA).

[27] In *Bay Passenger Transport Ltd*⁴ the Court summarized the proper approach to be followed as follows:

“Comparable cases, when available, should rather be used to afford some guidance in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous and broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. All the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and the sequelae may have been either more serious or less than those in the case under consideration.”

[28] Having considered the nature, extent, and permanence of the injuries, the severe and lifelong impact on the plaintiff's amenities of life, his dignity, and his mental health, I am of the view that an award of R3 468 009.00, as suggested by the plaintiff, is excessive in light of the fact that post-accident scenario, the plaintiff currently earns modest income, his chronic illness since about 2012, the competitive labour market, and a significant risk of unemployment or reduced earnings in the future..

[29] In view of the decision of the Supreme Court of Appeal in *De Jongh*, I am of the view that an award must be fair and reasonable, compensating the plaintiff adequately without being overly generous. I am of the view that a fair and reasonable lump sum for past and future loss of earnings is R1 800,000.00.

Interest on capital amount

[30] The plaintiff is entitled to interest on the capital amount at the prescribed rate of 10.5% per annum, calculated from 14 days after the date of this judgment to the date of payment, as provided for in terms of the Prescribed Rate of Interest Act, 1975.

⁴ *Bay Passenger Transport Ltd v Franzen* 1975 (1) SA 269 (A).

General damages

[31] The issue of general damages has been postponed *sine die* pending the finalization of the RAF 4 serious injury assessment process. The plaintiff's orthopaedic surgeon (Dr Hadebe) assessed a total Whole Person Impairment of 21%, and the neurosurgeon (Dr Mkhonza) assessed 30%. The urologist (Dr Qubu) assessed 8%. Combined, this exceeds the 30% threshold.

[32] However, proper compliance with Regulation 3 of the RAF Act is required. Accordingly, the postponement of general damages is appropriate.

Section 17(4) undertaking

[33] The defendant is directed to furnish the plaintiff with a section 17(4)(a) undertaking limited to 100% for future medical expenses arising from the accident. The plaintiff sustained severe injuries requiring ongoing orthopaedic, urological, and psychological treatment, as detailed in the expert reports.

Costs

[34] The plaintiff is entitled to party and party costs on the High Court scale, including the reasonable fees of counsel, all medico-legal reports, the actuarial report, and qualifying fees of experts.

[35] The contingency fee agreement is declared invalid, and the plaintiff's attorneys may not charge more than 25% of the amount awarded, as per the draft order.

Order

[36] Accordingly, I make the following order:

- (1) The defendant is held liable for 100% of the plaintiff's agreed or proven damages in relation to an accident that occurred on 19 February 2018.
- (2) The defendant shall pay the plaintiff an amount of R1 800 000.00 (One Million Eight Hundred Thousand Rand) in full and final settlement of claim in one instalment within 180 and days after granting of this order, and with

interest on the amount at the rate of 10.5% per annum calculated from the 21st of April 2024 to the date of payment.

- (3) The defendant is directed to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, limited to 100%, for the costs of the plaintiff's future medical treatment, accommodation, and related services arising from the injuries sustained in the motor vehicle accident of 19 February 2018.
- (4) The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale B, subject to the discretion of the Taxing Master, including but not limited to:
 - 4.1. The reasonable fees of counsel on Scale B including, amongst others, reservation, drafting of any pleading, settlement and/or professional/day fee, preparation for trial, consultation with experts and client.
 - 4.2. The costs of all medico-legal reports, addendum reports, and actuarial calculations.
 - 4.3. The qualifying and reservation fees of the plaintiff's experts.
 - 4.4. The costs of preparing trial bundles.
 - 4.5. The costs of 19 and 23 October 2023.
 - 4.6. The costs of 17 March 2026.
- (5) The claim for general damages is postponed *sine die*.



SHADRACK TEBEILE

Acting Judge of the High Court of South Africa

Gauteng Local Division, Johannesburg

For the Plaintiff:

Adv R Manzini instructed by T Mahashe Attorneys

For the Defendant:

Mr M.E Mdlovu from the Road Accident Fund