IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER: 67498/2018

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: NO

DATE 05 MAY 2026 [redacted]

In the matter between: -

RAMAKGABANE DANIEL PHETOE **PLAINTIFF**

And

THE ROAD ACCIDENT FUND **DEFENDANT**

JUDGEMENT

MATIKA AJ:

Introduction

1. The plaintiff has instituted an action against the defendant for damages suffered as a result of personal injuries sustained in a motor vehicle accident that occurred on 28 October 2017 whilst he was a pedestrian at the time of accident.

2. The defendant's defence was struck out by virtue of the court order dated 23 July 2025.

3. The merits of the matter have been settled between the parties 80% in favour of the plaintiff, the future medical expenses in terms of section 17 (4) (a) of the Road Accident Fund Act (undertaking), also settled, limited to 80%, and the issue of general damages is hereby postponed sine die due to no election made by the Defendant regarding the seriousness of the plaintiff's injuries and the only issue for the adjudication before me is the plaintiff's claim for loss of income.

Facts

4. The Plaintiff instituted an action against the Defendant (RAF) for compensation arising from the negligent driving of the insured driver in terms of section 17 of the Road Accident Fund Act[1].

5. The plaintiff is an adult male person with a full legal capacity and the Defendant is the Road Accident Fund, a juristic person established by virtue of Section 2(1) of the Road Accident Fund Act No 56 of 1996, as amended (hereinafter referred to as the "Act ").

6. The plaintiff's claim was lodged with the defendant on 18 March 2018.

7. The plaintiff issued a summons on 13 September 2018, and the summons was served on the defendant on 17 September 2018.

8. The defendant defended the matter on 20 September 20218 and filed a plea on 26 September 2018.

[1] Act 56 of 1996

9. The defendant defence was struck out on the 23 July 2025 for failing to comply with compelling Order dated 14 November 2023 and the plaintiff was authorised to apply for default judgement.

10. Plaintiff's notice of set-down for default judgement was served on the defendant on 08 January 2026.

Issues

11. The only issue before me is the plaintiff's claim for loss of earnings.

12. The plaintiff is claiming an amount of R 3 200 000.00 (Three Million Two Hundred Thousand Rands) in his amended particulars of claim dated 15 August 2025.

Rule 38(2) application

13. Application to present evidence of the Plaintiff and his expert witnesses, and any other relevant witness by way of affidavit in terms of Rule 38(2) of the Uniform Rules was sought unopposed and granted.

Injuries

14. According to the hospital notes in file no. 40317/17 kept at Sebokeng Hospital, as well as information on the RAF1 form filled in by Dr. M. Manganyi, the plaintiff sustained the following injuries: fracture of the left ankle and Fracture of the proximal left fibula

Treatment received

15. After the accident, the plaintiff was evacuated to Sebokeng Hospital, where he received the following definitive treatment: Clinical and radiological examination, Open reduction and internal fixation of the left ankle with 2 screws,

Pain management, Anti-sepsis management, Physiotherapy, rehabilitation, and crutches. He was admitted for 10 days in hospital.

Sequalae

16. The plaintiff as a result of the accident has the following sequelae: Painful left ankle/leg - this is exacerbated by prolonged standing, walking, lifting of heavy weights and in cold weather, he has the following scars:1 cm scar on the anterior left ankle and 1 cm scar on the lateral left ankle, He experiences pain on the left lower limb, He is no longer able to run, He struggles to handle heavy loads, Pain is persistent in the left ankle, Pain seems to be aggravated in inclement weather, capacity to perform tasks has been altered, He no longer has the capacity to endure prolonged/repetitive walking and Limps while walking

Expert's reports

17. The plaintiff appointed the following experts and the reports have been duly served in terms Rule 36 (9) (a) & (b) of the Uniform Rules of Court: Dr P.T Kumbirai (Orthopaedic Surgeon), Mr Lefatane makgatho (Occupational Therapist), Mr Oscar Sechudi (Industrial Psychologist) and Johan Saurer (Actuary).

18. It is common cause that the defendant did not appoint any expert and the plaintiff's expert's reports remained unchallenged.

19. According to Dr. Kumbirai (Orthopaedic Surgeon), Report dated 14 February 2022, it is concluded that:

"Occupation and future employability

The pain in the left ankle/leg will limit his choice of occupation, as occupations that require prolonged standing, walking, and lifting heavy weights will aggravate his symptoms. He will not be able to compete fairly for a job on the open labour market. Future surgery Removal of Implants Left Ankle: The implants in the left ankle need to be removed to prevent them from acting as a focus for sepsis should the claimant become immune-compromised. A period of 4 weeks post-surgery for recuperation is considered appropriate. Seriousness of Injury Although I have calculated his WPI at 2% WPI, it is my considered opinion, considering the factors mentioned above, that the injuries resulted in: Serious long-term impairment of body function."

20. According to Dr L. Makgato (Occupational Therapist), report dated: 22 March 202 it is concluded that:

"Work Capacity

The Functional Capacity Evaluation results indicate that the client has retained the residual handling capacity for medium physical strength occupations where constant mobility and prolonged standing is not a requirement. The writer notes that the client's pre-accident job had medium physical demands with ambulatory requirements. The accident has left the client compromised as he struggles to cope with prolonged standing and frequent short distance walking, prolonged squatting and crouching, post-accident. Considering the current physical limitations, the writer opines that the client is a partial match in his pre-trauma occupation. Although he can cope with load handling capacity, Mr Phethoe will struggle to cope with the day-to-day mobility and postural tolerance in his pre-trauma occupation. He would be considered vulnerable in the *workplace and may experience decreased productivity particularly when he becomes significantly symptomatic, and the job duties have triggered pain and fatique on the left leg. The writer notes that the client meet most of the physical demands of his current job that is classified to have lesser (light) physical demands. However, of concern remains the pain in the left ankle joint that might affect him if when doing frequent walks i.e. when patrolling e requires a sympathetic employer to understand his limitations and allows for reasonable accommodation including time off for future medical treatment related to the MVA. As a person with impairments, he will be disadvantaged at work in terms of efficiency, effectiveness in comparison to a normal healthy person the same age for a similar job. He writer notes that the client is at risk of developing osteoarthritis of the left ankle, a degenerative condition of the joint. Repetitive strain on the left ankle joint is likely to predispose the client to Osteoarthritis. It is probable that his physical capacity will diminish further, and he will eventually only perform light duty or semi-sedentary work with reasonable accommodation considering the expected mobility restrictions. Mr. Phethoe's need for further treatment for the physical sequelae of the accident (i.e. removal of implants) will result in periods of work absence and loss of productivity. This would affect him in any type of employment or self-employment. For as long as musculoskeletal problems persist the writer opines that the client's work prospects will be limited and he will be prejudiced and limited on choice of employer, type of work and work environment and these will lead to restrictions of job freedom ".*

Loss of earnings

21. Plaintiff has a Grade 12 level of education with a Security Certificate (Grade C). Additionally, he accumulated work experience at Wire Products Poultry cc after securing his first position on the 18 August 2004. At the time of the accident, he was working as a Schlatter Machine Operator/Setter. As such, he was mainly responsible for setting-up the Schlatter Machine.

22. According to Oscar Sechudi (Industrial psychologist) report dated 15 July 2022 it is concluded that If plaintiff was not involved in the accident, the following scenario would have applied:

Pre-morbid work potential

22.1 "*Mr. Phethoe was 36 years old when the accident intervened. According to the Super's Theory, he was still in the establishment phase of his career. This is a phase in which an individual focuses on creating stability in their job status while exploring career advancement opportunities (Super, 1990). It is acknowledged that Mr. Phethoe had previously secured promotions while working at Wire Products Poultry cc. Therefore, the writer is of the view that Mr. Phethoe may have continued working in the same capacity as a Schlatter Machine Operator/Setter or similar type of work while further accumulating a positive record. Moreover, he would have pursued opportunities for career advancement to become at least a maintenance foreman before reaching his career ceiling. Thereafter, he would have continued working with every decision in his career aimed at sustaining maintaining a stable source of income until he retires from the labour market and as stipulated in the payslip received, Mr Phethoe was working as am Schlatter Machine Operator/Setter earning a basic salary of R2 701.71 per week. This* *included overtime earnings. His annual income likely amounted to approximately R140 488.92. As such, Mr. Phethoe's earnings were in line with those of an unskilled worker with earnings at Paterson A3 ranging from the Lower Quartile [R125 000] and the Median [R145 000] per year (total package) as indicated on the corporate earnings survey guidelines (Koch, 2017). Through additional gained work experience, the claimant's career could have progressed in a straight-line with his earnings progressing towards the Median [R199 000] per year of Paterson B2 (total package) and reached his career ceiling by the age of 45 years (Koch, 2017). From the age of 46, his earnings would have stabilized, and he would have earned only additional inflationary increases until retirement age. He would have possibly retired at the age of 65 years, depending on the policy of the employer and his health permitting".*

Post-morbid work potential

22.2 *"Mr. Phethoe's employment prospects have been compromised to the extent that he may be deemed an unfavourable candidate in job market. His involvement in the accident has imposed limitations that have narrowed his choice of occupations. This is due to the reduction in his occupational functionality. Now that this accident has intervened, his chances of career advancement are compromised. In future, he may remain an unequal competitor when compared to his abled-bodied counterparts. His capacity to earn an income may have become limited to his current occupation. However, Mr. Phethoe may be unable to continue working at Inyathi Protection Services until retirement age.*

Resultantly, he may not flourish in his career due to the limitations imposed.

In respect of his future earning abilities, Mr. Phethoe may struggle with work demands of most occupations within the open labour market including his current job. When considering his level of education, residual functional capacity, as well as his work experience, Mr. Phethoe may face significant difficulties securing suitable alternative employment. It is also acknowledged that Mr. Phethoe is working while being accommodated by his employer and colleagues. However, the company he works for appears to be experiencing financial difficulties and other challenges that suggest that it may close down at any moment. This would render Mr. Phethoe unemployed for extended periods of time

It is the writer's opinion that the various obstacles faced by the claimant post-accident may render him an unattractive and an unfair competitor. He may have now reached his career ceiling and would not be expected to experience any further career advancement. Furthermore, the claimant may be rendered unemployed for extended periods of time. Should Inyathi Protection Services no longer be able to operate, Mr. Phethoe would be relegated to unemployment for lengthy periods as he struggles to secure other employment opportunities. This may become a trend for the rest of his career. This implies that he will continue to suffer loss of earnings until he reaches normative retirement age. The future loss will emanate from the limitations imposed by the accident which hampers his utility in the open labour market. The appropriate contingencies remain the prerogative of the parties involved".

Analysis

23. According to the Orthopaedic Surgeon (Dr P. T. Kumbirai): b) " *The pain in the left ankle/leg will limit his choice of occupation as occupations which require prolonged standing, walking and lifting of heavy weights will aggravate his symptoms. He will not be able to compete fairly for a job on the open labour market*".

24. According to the Occupational Therapist (Mr M. L. Makgato): "*For as long as musculoskeletal problems persist the writer opines that the client's work prospects will be limited and he will be prejudiced and limited on choice of employer, type of work and work environment and these will lead to restrictions of job freedom. This would not have been so had the accident not happened*".

25. The industrial psychologist concluded that: "*the plaintiff's career has been restricted from advancement in the future. He may be overlooked in terms of job opportunities where he would be expected to exert himself physically. Consequently, he may in all probability be limited to his current job role. Therefore, any attempted in securing a promotion by the claimant may be met by difficulties that compromise his efforts. He would be dependent on reasonable accommodation from employers. He may lose his job prior to reaching retirement age due to the challenges faced by the company*".

Past loss of earnings

26. When the accident intervened, Plaintiff was earning approximately R 2701.71 per week as a Schlatter Machine Operator/Setter his payslips made available to the court. He was working at Wire Products Poultry cc. He was on leave for about 8 weeks while recuperating post-accident. He was remunerated during

his absence. He resumed his occupation in January 2018, he subsequently resigned in February 2018 since he was unable to cope with his duties due to injuries he sustained in the accident in questions. He then remained unemployed From March 2018 until December 2019 without a salary. From January 2020 to date he has been working at Inyathi Protection Services as a Security Officer earning a salary of R4 100.00 per month, which is less than his pre-accident earning. Accordingly, he suffered a past loss on income.

Future loss of income

27. Against the backdrop of the above-mentioned information, Plaintiff's future ability to generate an income for himself has been compromised by his current medical condition as per the uncontested expert's opinion.

Applicable legal principles

28. In respect of a claim for loss of earnings and/or earnings capacity, the following trite legal principles are applicable :

28.1 In the matter of *Southern Insurance Association Ltd v Bailey NO*,[2] His Lordship Appellate Justice Nicholas stated as follows:

" *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. It has open to it two possible approaches:*

[2] 1984 (1) SA 98 AD at 116H

- *One is for the judge to make a random 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 a lesser extent. But the court cannot for this reason adopt a non-possums attitude and make no award."*

28.2 In *Walker v Road Accident Fund,*[3] Durban Division the court not only with approval referred to the aforementioned judgement of Nicholas AJ but also continued as follows:

> *"This principle applies with equal force to the manner in which a judge is called upon to deal with any aspect of the assessment of the loss of earnings – if it is relevant to the assessment, he/she must make the best of the material before the court, notwithstanding that the result may well be open to criticism."*

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[3] Case no. 17955/04 reported on the 28th of October 2009 in the High Court of South Africa Kwazulu Natal

Actuarial calculations

29. An actuarial calculation was obtained from John Sauer Actuarial Consulting, the report dated 03 August 2022, the calculations is based on the uncontested report of the plaintiff's industrial psychologist, Mr Oscar Sechudi.

30. The Actuary deducted a 5% contingency on the past loss of income, a 10% Contingency on the future pre-morbid contingencies, and 40% on the post-morbid for illustration purposes.

31. After application of the above contingencies, the net loss is R 3 237 765.00

Submissions on loss of income

32. During the argument and on the heads of the argument, plaintiff's legal representatives argued that plaintiff is entitled to an amount of R 3 237 765.00 as actuarially calculated.

Contingencies

33. The Supreme Court of Appeal In the case of *Road Accident Fund v Guedes,*[4] the referred with approval to *The Quantum Yearbook*, by R Koch, under the heading 'General contingencies', where it states that when:

> *"[In] assessing damages for loss of earnings or support, it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is the prerogative of the Court."*

The term "*normal contingency*" usually refers to a 5% contingency deduction in respect of past loss of income and 15% in respect of future loss of income.

[4] 2006 (5) SA 583 (SCA) para 9.

34. The application of contingencies is at the discretion of the court. In the case of *Road Accident Fund v Kerridge [2018] ZASCA 151; 2019 (2) SA 233 (SCA), Nicholls AJA* writing for the majority, expressed as follows at para 44:

> " *Some general rules have been established in regard to contingency deductions, one being the age of a claimant. The younger the claimant, the more time he or she has to fall prey to vicissitudes and imponderables of life. These are impossible to enumerate but as regards future loss of earnings they include, inter alia, a downturn in the economy leading to reduction in salary, retrenchment, unemployment, ill health, death and the myriad of events that may occur in one's everyday life. The longer the remaining working life of a claimant, the more likely the possibility of an unforeseen event impacting on the assumed trajectory of his or her remaining career. Bearing this in mind, courts have, in pre-morbid scenario, generally awarded higher contingencies, the younger the claimant.*"

35. The Plaintiff is 45 years old and his retirement age is 65, he has a work life span of 20 years left. Applying the rule of thumb per Koch of 0, 5 per annum the normal contingency applicable to the period would be 10%.

36. The plaintiff's industrial psychologist concluded that plaintiff was still in the establishment phase of his career at the time of accident and this is a phase in which an individual focuses on creating stability in their job status while exploring career advancement opportunities. In view hereof, a premorbid deduction of 15%, in my view, would be reasonable to account for these additional risks

37. In my view, therefore, in the present matter, the plaintiff is, however, no longer the person he was before the accident and therefore, I am of the view that a 5% contingency on the past loss of income and 15% on the future pre-morbid and 40%

on the future post-morbid as applied by the plaintiff's own actuary is fair and reasonable.

38. The result of the above finding is the following in respect of the plaintiff's past and future loss of income, with reliance on the calculations performed by the plaintiff's actuary:

	Uninjured	Injured
Past loss:	R755 670	R165 488
	Less 5% contingencies	Less 5% contingencies
	=R 717 886	=R 154 364

Total Past loss of income: R 563 522.00

Future loss:	R 3 568 540.00	R 895 738
	Less 15% Contingencies	Less 40% Contingencies
	=R 3 033 259	R 537 443

Total Future loss earnings R 2 495 816 + Total Past loss of earnings R 537 443.00 = R 3 033 259.00

Total loss of income is R 3 033 259.00, less 20% merits appointment =R 2 426 607, 2

Conclusion

39. The plaintiff therefore succeeds in his claim for loss of income in a total amount of R 2 426 607, 2.

40. I find no reason to deviate from the customary rule that costs follow the event.

Order

41. In the circumstances, the following order is made:

1. The Defendant is declared to be liable for 80% of the Plaintiff's proven damages.
2. The Defendant is ordered to pay the Plaintiff an amount of R 2 426 607, 2 (Two Million Four Hundred and Twenty Six Thousand, Six hundred and Seven Rands, Two cents) in respect of the Plaintiff's claim for loss of income, payable into the Plaintiff's attorneys of record's trust account.
3. The issue of the plaintiff's claim for general damages is hereby postponed sine die.
4. The Defendant shall be liable for interest on the aforementioned amount from the 15^{th} day after the date of this order, at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended.

5. The Defendant is ordered to furnish the Plaintiff with an undertaking in terms of Section 17 (4) (a) of the Road Accident Fund Act 56 of 1996, for the payment of 80% of the costs of future accommodation in a hospital or a nursing home or treatment of or rendering of a service or supplying of goods to the injured after such costs have been incurred and on proof thereof, relating to the injuries sustained by the Plaintiff on 28 October 2017.

6. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, in accordance with Rule 70 of the High Court, subject to the discretion of the taxing master.

7. The costs of counsel/attorney, briefed and appearing for trial, shall be taxed on scale B in accordance with Rule 69 and Rule 70 of the High Court.

8. The above costs shall be payable within 14 days from the date upon which the costs are taxed by the taxing master and/or agreed between the parties.

9. In the event that the Defendant fails to pay said costs timeously, it shall be liable for interest on the taxed and/or agreed party and party costs at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended.

10. It is noted that there is no contingency fee agreement between the plaintiff and his attorneys.

[redacted]

F MATIKA

Acting Judge of the High Court

Gauteng Division, Pretoria

Date of Hearing: 13 February 2026

Judgment delivered: 05 May 2026

APPEARANCES:

For the Plaintiff:	Mr S Gwabeni
Attorney for the Plaintiff:	Gwabeni Attorneys, Pretoria.
For the Defendant:	No Appearances