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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 14964/2020

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 04 MAY 2026

SIGNATURE:

In the matter between:

ABONGILE SAM

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

LABUSCHAGNE J

[1] This matter served before me on 30 April 2026 in the special default trial court. I reserved judgment due to concerns that the amount claimed might be excessive.

[2] The plaintiff, a 29-year-old man was a passenger in a bakkie on 23 January 2019 at about 04:10 when the driver of the vehicle lost control after a tyre burst. The facts

were sufficient to establish at least 1% negligence on the part of the driver, and I am satisfied that the RAF is liable for the extent of the plaintiff's proven damages.

[3] However, as the RAF has not made a decision in respect of general damages, the claim for general damages falls to be postponed sine die. There were no past medical expenses and all that remains to be determined is the loss of earnings and the issuing of an undertaking for future medical expenses.

[4] The primary injuries sustained by the plaintiff is a fracture of the midshaft of the right clavicle and a mild head injury. The plaintiff was a general worker at the time of the collision.

[5] The medical experts record that the plaintiff complains of pain in his right shoulder. He has difficulty in lifting heavy objects and it is exacerbated through bricklaying.

[6] The plaintiff has a Grade 12 certificate and obtained a certificate in bricklaying in 2023 (i.e. after he sustained his injuries). He also became a part time mentor for the Department of Public Works in a Programme pertaining to Bricklaying. His contract runs to 2027, and he earns R6 000.00 per month. This mentorship was also obtained after his injuries were sustained.

[7] The plaintiff was self-employed prior to the accident and supervised building contracts. There is collateral evidence that he was paid R15 000.00 by a client for certain alterations at her home.

[8] The fracture of the right clavicle has united, but there is a modelling defect which the plaintiff contends is painful.

[9] Industrial Psychologist accepted at face value the say-so of the plaintiff that he was earning an average of R26 850.00 per month before he was injured. This was

equivalent to an entry level in the median of Paterson 2 and the calculation of his premorbid earnings was based on a steady progression to the median of Paterson C2 at the age of 45. Thereafter, inflationary increases would apply to the age of 60.

[10] Having regard to his injuries, the ceiling postulated is at Paterson B5 and Mr Moodie, Industrial Psychologist, suggests the application of an increased post-accident contingency based on the plaintiff's vulnerability in the workplace.

[11] His vulnerability is exacerbated by the plaintiff's low mood and the fall out of a mild brain injury.

[12] Calculations were done by the Actuary. Counsel for the plaintiff suggested the application of a premorbid contingency deduction of 17,5% and a post-accident contingency of 30%, resulting in a 12,5% differentiation in contingencies between the pre-accident earnings and post-accident earnings.

[13] The upshot of the aforesaid was an amount, after application of the contingencies, and after application of the statutory cap of an amount of R8 517 300.00.

[14] What has caused the concern in this matter is the bare acceptance of the plaintiff's say-so as far as his premorbid earnings were concerned. The bank statements made available to the Industrial Psychologist were for the six months in 2019. These did not confirm the amount he says he earned. It confirmed receipt of about R6000 per month from Cemforce.

[15] In the amended particulars of claim, the plaintiff claimed payment of an amount of R12 100 000.00, of which R2 000 000.00 is made up of a claim for general damages and R100 000.00 is for past and future medical and hospital expenses.

[16] General damages and past medical expenses do not serve before me, and future medical expenses will be dealt with through an undertaking.

THE REPORT OF THE INDUSTRIAL PSYCHOLOGIST

[17] Mr Ben Moodie summarised expert reports listing the injuries as head/facial injury, right shoulder injury, right leg injury and mild brain injury. Plaintiff's complaints include headaches, pain in his right arm and shoulder, which is worsened by inclement weather. He contends that the pain disturbs his sleep and it leaves him irritable. He contends that the pain has worsened since the accident and remains even when resting. The plaintiff presents with low mood, and he struggles with motivation, concentration and to manage stress.

[18] These are all considerations relevant to the application to an increased post-accident contingency. The focus of the current enquiries, however, is on pre-morbid earnings.

[19] He stated he reported to Mr Moodie that he earned a monthly profit ranging from R18 700.00 to R35 000.00 (in 2017) as a builder and renovator. However, since the accident his earnings have decreased to a profit of R2 500.00 to R3 500.00 per month, as he is unable to take on large projects and must pay three assistants to assist him. He now only assists with plastering and tiling.

[20] Mr Moodie interviewed clients of the plaintiff, Mr Nompumelelo Meacu and Ms Princess, who both confirmed that the plaintiff did renovations for them. Ms Princess confirmed that the plaintiff built an eight-corner house for her, for which she paid R15 000.00.

[21] The plaintiff submits a bank statement of 28 June 2019, indicating a salary of R6 053.84. These were his earnings at the time of the accident. He was absent from work for a month while employed at Cemforce. He was remunerated during his absence and did not suffer past loss of earnings. However, upon returning, the plaintiff experienced pain which was aggravated with lifting heavy objects. He continued working until

October 2020 when he resigned as he obtained alternative work at the Department of Public Works as a bricklayer learner. He earned payment of R3 000.00 per month and obtained a bricklayer certificate after 3 years. He was then appointed as an assistant mentor with a contract running until 2027. The assistant mentorship is part-time employment.

[22] At the time of the accident the plaintiff was self-employed as a builder and renovator and also worked as a general worker at Cemforce.

[23] There is no evidence corroborating the plaintiff's say-so as to the extent of his premorbid earnings. Such collateral evidence as has been identified by Mr Moodie does not support the extent of earnings advanced. The experts confirm that the information has not been corroborated.

[24] I consequently need to apply a higher contingency to the calculations as presented as I have concerns about the extent of earnings as claimed.

[25] In a revised Actuarial calculation, excluding the RAF cap, the total loss of earnings was calculated at R8 712 798.00. This amount is arrived at by applying a 10% contingency to uninjured earnings (up to date of the report) of R2 621 600.00 (minus injured earnings of R605 500.00). Applying a 10% contingency to the aforesaid the uninjured past loss of earnings is R1 814 490.00

[26] Future loss (uninjured) is based on future uninjured earnings of R12 295 500.00 (to which a 17,5% contingency is applied). From this amount is deducted future injured earnings of R4 635 400.00 (to which a 30% contingency is applied). This results in a balance of R6 898 308.00 comprised of R10 143 788.00 minus R3 245 489.00.

[27] The total of the aforesaid amounts of R1 814 490.00 and R6 898 308.00 is a total of R8 712 798.00 which, after application of a cap, is an amount of R8 517 300.00.

[28] Due to my concerns pertaining to his premorbid earnings, I intend applying a further 30% contingency deduction to the uncapped amount, leaving a final order granted in the amount of R6 098 958.60 in respect of future loss of earnings.

[29] In the premises I make the following order based on a draft provided on CaseLines

[30] It is ordered:

1. The defendant is liable to compensate the plaintiff for 100% of his proven damages.

2. The plaintiff's Section 19(f) affidavit and the medico-legal reports and affidavits in support thereof are admitted as evidence in terms of Rule 38(2) of the Uniform Rules of Court.

3.

3.1 The defendant shall pay the plaintiff the amount of R6 098 958.60 in respect of loss of earnings.

3.2 Interest shall be charged on the amount at the prescribed rate of interest, calculated from a date 14 days after date of judgment.

3.3 The aforesaid amount shall be paid into the attorneys' trust account as follows:

Name of Bank:	Standard Bank
Account holder:	Godi & Zangwa Attorneys Inc
Account number:	0[...]
Branch number:	010545

Type of account: Trust account
Branch name: Silverton
Reference number: S0808/MVA/MVA/PA

3.4 The defendant must furnish the plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act in respect of all costs of future accommodation of the plaintiff in a hospital or nursing home or treatment of, or rendering of a service, or supplying of goods to him, after the costs have been incurred and on proof thereof, resulting from the accident that occurred on 23 January 2019.

3.5 The actual costs for obtaining medico-legal reports, which include travelling, accommodation and subsistence fees as well as reservation (qualifying and court attendance fees for 10 February 2025 and 30 April 2026), if any, for all of the experts that the plaintiff lists below:

- 3.5.1 Dr LF Oelofse – Orthopaedic Surgeon;
- 3.5.2 Dr BA Okoli – Neurosurgeon;
- 3.5.3 Dr JFL Mureriwa – Clinical Phycologist;
- 3.5.4 Amanda Peter – Physiotherapist;
- 3.5.5 Combined RAF4 Form – Dr Oelofse (Orthopaedic Surgeon);
- 3.5.6 Ncumisa Ndzungu – Occupational Therapist;
- 3.5.7 Ben Moodie – Industrial Psychologist;
- 3.5.8 Munro Forensic Actuaries.

3.6 Costs of the employment of counsel on Scale B, including attending Court on 10 February 2025.

3.7 Costs of the employment of counsel on Scale C, including attending Court on 30 April 2026.

3.8 The plaintiff's reasonable travel and accommodation costs for attending expert appointments.

3.9 The plaintiff shall, in the event of the costs are not agreed, serve the notice of taxation on the defendant's attorney of record, and shall allow the defendant 14 court days to make payment of the taxed costs, upon service of the taxed bill of costs. In the event of late payment, interest on costs shall run from the date of the signature of the allocator of the plaintiff's bill of costs at the prescribed *mora* rate to date of final payment.

4. The issue of general damages is postponed *sine die*.

5. There is no contingency fee agreement between the plaintiff and his attorney.

LABUSCHAGNE J
JUDGE OF THE HIGH COURT

Appearances: Adv PM Leopeng
(For the plaintiff)
Godi & Zangwa Attorneys Inc
(Attorneys for the plaintiff)

For the RAF: No appearance