


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Reportable: NO  
Of interest to other Judges: NO  
Revised: NO  
Date: 01 June 2026 S.S Tebeile AJ  
Signature: 

Case No: 2025-053081

In the matter between:

KOTZE BEYERS DELAREY

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Heard on : 18 March 2026

Decided on : 01 June 2026

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JUDGMENT

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TEBEILE AJ:

**Introduction**

[1] This is an application for default judgment by the plaintiff. The plaintiff, a 24-year-old who was riding on his motorcycle, sustained injuries in a collision on 3 November 2023 when the insured driver of a Nissan NP 300 failed to yield at a

green traffic light and turned into the plaintiff's path. The plaintiff sustained a fractured right patella and a fractured left ankle, requiring open reduction and internal fixation surgeries. He was hospitalised for six days, and he avers that since then he suffers from a chronic pain, functional limitations, and reduced earning capacity.

- [2] The defendant was served with the combined summons on 16 April 2025 but failed to enter an appearance to defend. The plaintiff now seeks default judgment against the defendant, supported by expert reports from an orthopaedic surgeon, occupational therapist, industrial psychologist, and actuary.

### **Merits and liability**

- [3] The plaintiff's version of the accident is set out in his affidavit and the particulars of claim. On 3 November 2023, he rode his motorbike south on Draysdale Avenue when the insured driver's car was travelling north turned right into Douglas Road without yielding, colliding with him. It appears that the insured driver failed to keep a proper lookout, failed to yield at the green traffic light, and turned into the plaintiff's path. No contrary evidence has been placed before the court.
- [4] I find that the sole cause of the accident was the negligence of the insured driver. The defendant is accordingly liable for 100% of the plaintiff's proven or agreed damages in relation to an accident that occurred on 03 November 2023.

### **General damages**

- [5] The plaintiff initially claimed an amount of R1 000 000.00 for general damages. However, at the hearing of the matter, the plaintiff did not persist with the claim for general damages. The plaintiff accepted that the case for general damages is not ripe for adjudication, as the defendant has not yet assessed the seriousness of the injuries under the narrative test, and the matter has not yet been referred to the

Health Professions Council of South Africa (“HPCSA”). For this reason, the issue of general damages is referred to the HPCSA for determination.

### **Loss of earnings**

- [6] The plaintiff’s claim for loss of earnings is supported by four expert reports. Dr Hadebe, an orthopaedic surgeon, confirmed fractures of the right patella and left ankle, with a non-union of the right patella and residual pain and with the whole person impairment (WPI) of 18%. Dr Hadebe is of the view that the plaintiff qualifies under the narrative test for serious long-term impairment or loss of body function.
- [7] Mr Nematikanga, an occupational therapist, assessed the plaintiff’s physical capacity as falling within the light to medium strength demand category. He is of the view that the plaintiff will need to alternate sitting and standing, and his competitiveness in the open labour market is negatively affected.
- [8] Ms Christina Badalani, an industrial psychologist, concluded that before the accident the plaintiff (who held multiple diplomas and was a project controller earning R144 000.00 per annum) would likely have progressed to the upper quartile of Paterson C3 by age 45. After the accident he is unable to perform his pre-accident duties and now works as a receptionist with difficulty. She is of the opinion that his career ceiling is reduced to the median of Paterson C3, with a corresponding loss of earnings.
- [9] An actuary report by Mr Namir Waisberg calculated the capitalized present value of past and future loss of earnings under two contingency scenarios: 5% / 15% and 5% / 10% (past / future). In scenario 1.1 (5% / 15% future contingency on the uninjured scenario and 5% / 20% on the injured scenario) the total loss of earnings was R2 052 455.00. In scenario 1.2 (5% / 15% uninjured and 5% / 25% injured) the loss was R2 550 453.00.

- [10] In his heads of argument, the plaintiff sought R2 550 453.00 for loss of earnings. However, during oral argument, counsel for the plaintiff conceded that the court has a discretion to apply contingency deductions different from that of the actuary where the evidence shows increased vulnerabilities.
- [11] I have carefully considered the expert evidence. The orthopaedic surgeon confirms a non-union of the patella – a permanent, painful condition. The occupational therapist placed the plaintiff in the light strength demand category, a significant reduction from the medium to heavy demands required for project management. The industrial psychologist notes that the plaintiff is now “an unequal competitor in the open labour market” and will require an accommodating employer.
- [12] I am mindful that in *Road Accident Fund v Guedes*<sup>1</sup>, the Supreme Court of Appeal confirmed that contingency deductions are a matter for the court’s discretion, based on the facts of each case. Where the plaintiff’s residual earning capacity is fragile because of chronic pain, reduced physical function, and the need for ongoing medical treatment, a higher contingency against the “having regard to the accident” scenario is justified. The court in *Southern Insurance Association Ltd v Bailey NO*<sup>2</sup> held:

“One of the elements in exercising that discretion is the making of a discount for ‘contingencies’ or the ‘vicissitudes of life’. These include such matters as the possibility that the plaintiff may in the result have less than a ‘normal’ expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case.” (Emphasis added)

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<sup>1</sup> 2006 (5) SA 583 (SCA).

<sup>2</sup> 1984 (1) SA 98 (A).

[13] Here, the plaintiff's post-accident career is precarious. He works as a receptionist (a sedentary role) but already struggles with prolonged standing, walking, and cold weather. His manager said he is "limited in movement". Orthopaedic surgeon notes that the non-united patella may cause ongoing pain and functional limitation. There is a real risk of future unemployment, under-employment, or early exit from the labour market. A standard 20% or 25% contingency for the injured scenario does not adequately reflect these risks. I am therefore of the view that an appropriate contingency spread should be applied.

[14] In the circumstances, the application of a 15% contingency deduction on both the uninjured and injured future earnings is reasonable and fair. This is a more conservative approach than the 20% / 25% often applied in serious injury cases, but it appropriately recognizes both the plaintiff's youth and the significant residual disabilities resulted by the accident.

[15] Using the actuary's scenario 1.1, which I accept as the correct base calculation, and which applies 5% contingency on uninjured and 5% on injured for past loss, and 15% on uninjured and 20% on injured for future loss, I am of the view that the appropriate contingency deduction is a 15% contingency on uninjured future earnings and 15% on injured future earnings.

[16] The actuary's gross accruals (before contingency) in scenario 1.1 are:

Uninjured future earnings: R11 712 205.00

Injured future earnings: R9 959 956.00

[17] Applying 15% contingency to both:

Uninjured after 15% contingency:  $R11\,712\,205.00 \times 85\% = R9\,955\,374.25$

Injured after 15% contingency:  $R9\,959\,956.00 \times 85\% = R8\,465\,962.60$

[18] Future loss after 15% / 15% contingency: R9 955 374.25 – R8 465 962.60 = R1 489 411.65.

[19] Past loss (no change, as 5% contingency on both already applied in scenario 1.1): R65 046.00. Total loss of earnings: R65 046.00 + R1 489 411.65 = R1 554 457.65.

[20] The plaintiff argued that an amount of R2 550 453.00 be awarded to him based on scenario 1.2. However, the court is not bound by the plaintiff's submissions where the evidence supports a different calculation. It cannot be gainsaid that although the plaintiff is entitled to claim a specified amount, the court must award damages based on the evidence. The recalculation above is more conservative and appropriately reflects the application of 15% contingencies on both sides.

[21] In the circumstances, I award the amount of R1 554 457.65 to the plaintiff. This amount is within the range of a proper exercise of discretion given the contingencies that I have found to be justified.

### **Future medical expenses**

[22] The plaintiff seeks an order for an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for 100% of the costs of future accommodation in a hospital or nursing home, or treatment, or the rendering of a service, or the supplying of goods to the plaintiff arising from the injuries sustained in the accident, after such costs have been incurred and upon proof thereof.

[23] Dr Hadebe estimates the cost of future medical consultations and pain medication at R5 000 per annum for life. I see no reason not to grant this order in light of the finding I made in respect of the liability of the defendant.

### **Contingency fee agreement**

[24] The contingency fee agreement entered into between the plaintiff and his attorney is declared valid. This is consistent with the Contingency Fees Act 66 of 1997.

### **Rule 38(2) application**

[25] The plaintiff filed an application in terms of Rule 38(2) to admit the expert reports on affidavits. Given that the defendant failed to defend, it is reasonable and cost effective to admit the evidence as contained in the affidavits. The order in this regard was granted on 18 March 2026 and is confirmed.

### **Costs and interest**

[26] The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale B, including the wasted costs of 17 March 2026. The interest on the capital amount of R1 554 457.65 shall accrue at 10.5% per annum if the amount is not paid within 180 days, calculated from the expiry of 14 days after the due date to the date of payment. Interest on costs shall accrue at 10.5% per annum from the date of the *allocator* to the date of payment.

### **Order**


[27] Accordingly, I make the following order:

- (1) An application in terms of Rule 38(2) is granted.
- (2) The defendant shall be liable 100% of agreed or proven damages of the plaintiff related to the accident that occurred on 03 November 2023.
- (3) The defendant shall pay to the plaintiff a total amount of R1 554 457.65 (One Million Five Hundred and Fifty Four Thousand Four

Hundred and Fifty Seven Rand and Sixty-Five Cents) in respect of loss of earnings within 180 days from the date of this order.

- (4) In the event the aforesaid amount in paragraph 3 above is not paid timeously, the defendant shall be liable for interest on the amount at the rate of 10.5% per annum calculated from the expiry of 14 days to the date of payment.
- (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 to pay 100% for the costs of the plaintiff's future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him arising out of the injuries sustained by the plaintiff and the sequelae thereof in the motor accident which occurred on 3 November 2023 after such costs have been incurred and upon proof thereof.
- (6) The defendant shall pay the plaintiff's taxed or agreed party and party costs on scale B, including the costs of 17 March 2026, and for the costs referred to in paragraphs below and subject thereto that, in the event the costs are not agreed:
  - 6.1. The plaintiff shall serve the notice of taxation on the defendant's attorney of record.
  - 6.2. The plaintiff shall allow the defendant 30 (thirty) court days to make payment of the taxed costs.
    - 6.2.1. Should payment not be effected timeously, the plaintiff will be entitled to recover interest at the rate of 10.5% per annum on the taxed or agreed costs from the date of the *allocator* to the date of payment.
  - 6.3. Such costs shall include, as allowed by the taxing master:
    - 6.3.1. The costs of and consequent to the appointment of counsel, as well as the reasonable preparation fees for default judgment trial, drafting of heads of argument and attendance for default judgment trial on 17 March 2026, on scale B.

- 6.3.2. The costs of all medico-legal reports of the following experts:
- 6.3.2.1. Dr HC Hadebe (Orthopaedic surgeon).
  - 6.3.2.2. N M Nematikanga (Occupational Therapist)
  - 6.3.2.3. Dr S Divaris INC (Radiologist)
  - 6.3.2.4. Christina Badalani (Industrial Psychologist)
  - 6.3.2.5. Namir Waisberg (Consulting actuary)
- 6.3.3. The reasonable taxable preparation, qualifying and reservation fees, if any, in such amount as allowed by the taxing master of the above experts.
- 6.3.4. The reasonable costs incurred by and on behalf of the plaintiff in attending the medico-legal examinations of both parties' experts which shall include the reasonable accommodation and transportation of the plaintiff when attending such medical assessments, if any.
- (7) The claim for general damages is referred to the Health Professions Council of South Africa for determination.
- (8) The contingency fee agreement entered into between the plaintiff and the attorney is declared valid.

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**SHADRACK TEBEILE**  
**Acting Judge of the High Court of South Africa**  
**Gauteng Local Division, Johannesburg**

For the Plaintiff:

Adv L.L Mathebula instructed by

GA Mabasa Incorporated Attorneys

For the Defendant:

No appearance