

Introduction

- [1] This is an application for default judgment against the Road Accident Fund (“the Defendant” emanating from an action instituted against the defendant following a motor vehicle accident that occurred on 26 January 2017.

The parties

- [2] The plaintiff is Kgomotso Comfort Thekiso, a 47-year-old male, instituting this action in his personal capacity.
- [3] The defendant is Road Accident Fund.

Background

- [4] The plaintiff instituted an action for damages by way of service of a combined summons on the defendant.
- [5] The defendant filed a notice of intention to defend on 8 August 2019 but subsequently failed to deliver its plea. A notice of bar was served on the defendant on 1 October 2025. Despite this, the defendant has not filed a plea. The plaintiff now seeks default judgment on the merits and quantum for past and future loss of earnings.

Accident and liability

- [6] On 26 January 2017, at approximately 05h40 on Bron Street, Rustenburg, the accident occurred between the plaintiff who was the driver of a motor vehicle with registration H[...]NW and the insured driver, Mr Motswana Nikla Robert, drove a vehicle with registration R[...]NW. The plaintiff alleges that the insured driver

executed a U-turn at an unsafe time and collided with the plaintiff's vehicle, causing the accident.

[7] The plaintiff's attorney, Mr Clifford Mopedi, deposed to an affidavit confirming that the summons was served on the defendant on 31 July 2019 and that the defendant is in default of filing a plea. The plaintiff has complied with all procedural requirements. There is no contradictory version to negate the plaintiff's version. Accordingly, default judgment is granted against the defendant on the merits, with the defendant being held 100% liable for the plaintiff's proven damages.

Rule 38(2) application

[8] On the hearing of the application for default judgment, the plaintiff brought an application in terms of Rule 38(2) to lead evidence by way of affidavit. That application was unopposed and is granted.

Injuries and sequelae

[9] The expert reports confirmed that because of the accident, the plaintiff sustained the following injuries:

- 9.1. Head injury (with sequelae including personality change, poor short-term memory, poor concentration, and recurrent headaches);
- 9.2. Laceration on the forehead (resulting in a 4cm x 1cm scar);
- 9.3. Fracture of the left patella (which has not united); and
- 9.4. Left knee haemarthrosis.

[10] The orthopaedic surgeon, Dr P.T. Kumbirai, recorded the assessment of a 9% whole person impairment (WPI) but opined that the injuries constitute a serious

long-term impairment or loss of body function. He noted that the plaintiff suffers from chronic left knee pain exacerbated by prolonged standing, walking, and driving. The fracture of the left patella has not united, and the plaintiff would benefit from open reduction and internal fixation surgery.

[11] The occupational therapist, Mr Kgatale Malatse, found that the plaintiff is limited to medium work demands with reasonable accommodation. According to his assessment, the plaintiff struggles with prolonged sitting, standing, walking, and lifting heavy items, and his competitiveness in the open labour market has been compromised.

[12] The industrial psychologist, Ms Faith Chamisa-Maulana, concluded that the plaintiff is a vulnerable employee and an unequal competitor in the open labour market due to his physical limitations, cognitive deficits, and emotional challenges.

Analysis of loss of earnings

[13] It is settled that assessment of damages for loss of earning capacity is not a mechanical exercise, and the court must, based on the evidence and guided by comparable cases, exercise a wide discretion to award what it considers fair and adequate compensation.

[14] In the present case, the actuary, Mr Wim Loots, calculated the plaintiff's loss of earnings as R3 323 065.00 (comprising past loss of R494 544.00 and future loss of R2 828 521.00). This calculation was based on the expert opinions and used no contingency deductions, leaving those deductions to the court's discretion.

[15] Without doubt, contingency deductions are a recognised tool to account for general risks and vicissitudes of life that may affect a person's earning capacity, such as unemployment, illness, injury, economic downturns, or early retirement. However, the court has a wide discretion in determining appropriate contingency

deductions. The Appellate Division (now the Supreme Court of Appeal) in *Southern Insurance Association Ltd v Bailey NO*¹, held that a court must make a realistic assessment of the prospects of the hypothetical uninjured person and the actual injured person, applying percentages that are fair in the circumstances.

[16] The Supreme Court of Appeal in *Road Accident Fund v Kerridge*² opined as follows:

“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 thereafter. The loss is the difference between the monetary value of the earning capacity immediately prior to the injury and immediately thereafter. **This can never be a matter of exact mathematical calculation and is, of its nature, a highly speculative inquiry. All the court can do is make an estimate, which is often a very rough estimate, of the present value of the loss.**”³ (Footnote omitted and emphasis added)

[17] In *Southern Insurance Association Ltd v Bailey NO*, it was held that contingencies are a practical method of accounting for the unknown future and are in the discretion of the trial court. The Court stated:

“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.”

¹ 1984 (1) SA 98 (A).

² 1024/2017 [2018] ZASCA 151 (01 November 2018).

³ Id para 40.

[18] In *Brits v Road Accident Fund*⁴, the court applied a 15% pre-morbid and 35% post-morbid contingency differential. The court per Strijdom J stated:

“It was submitted by the plaintiff that the court must apply a 30% contingency differential 15/45. I am of the view that in the circumstances of this case a 35% contingency will be fair. Such a contingency takes into account that the plaintiff is still employed and may remain in that position and also allows for the possibility that he may be rendered unemployable if he should lose his job. The result would be a 15% pre-morbid contingency and a 35% post-morbid contingency. A differential of 20% contingency.”⁵ (Emphasis added)

[19] In light of the jurisprudence above, I am of the view that appropriate contingency deductions must be applied as follows. A deduction of 30% for pre-accident is appropriate given that the plaintiff had a stable employment history as a driver, but he was in a semi-skilled category. A higher than standard contingency is justified given the potential for fluctuations in the transport industry, health vicissitudes, and the general risk of unemployment. The usual range for such workers is 15%–30%. A 30% deduction at the upper end is fair.

[20] Post-accident deduction of 35% is appropriate. While the plaintiff has retained employment as a driver, he performs his duties with pain and difficulty. He is a compromised and vulnerable employee. The risks of future unemployment, early retirement, or reduced work capacity are substantially higher than for an uninjured peer. A 35% deduction is reasonable.

⁴ (54415/2018) [2025] ZAGPPHC 417 (11 April 2025).

⁵ Id at para 24.

Recalculation of loss of earnings

[21] I now consider recalculation of loss of earnings in light of the adjusted contingencies of 30% on pre-accident and 35% on post-accident.

[22] Applying these contingency deductions to the actuary's base calculations yields the following revised loss of earnings:

Description	Actuary's Base Value	Contingency Deduction	Deducted Value
Pre-Accident Earnings	R2 773 750.00	30%	R1 941 625.00
Post-Accident Earnings	R2 279 206.00	35%	R1 481 484.00
<i>Difference (Past Loss)</i>	R494 544.00		R460 141.00

Description	Actuary's Base Value	Contingency Deduction	Deducted Value
Pre-Accident Earnings	R5 045 294.00	30%	R3 531 706.00
Post-Accident Earnings	R2 216 773.00	35%	R1 440 902.00
<i>Difference (Future Loss)</i>	R2 828 521.00		R2 090 804.00

	Actuary's Base Value (R)	Recalculated Value
Total Past Loss of Earnings	R494 544.00	R460 141.00
Total Future Loss of Earnings	R2 828 521.00	R2 090 804.00
TOTAL LOSS OF EARNINGS	R3 323 065.00	R2 550 945.00

[23] The recalculation results in a total loss of earnings of **R2 550 945.00**. This amount represents fair and just compensation for the plaintiff's past and future loss of earning capacity.

General damages

[24] The plaintiff claims R700 000.00 for pain, suffering, and loss of amenities of life. The orthopaedic surgeon opined that the injuries constitute a "serious long-term impairment".

[25] However, the plaintiff has requested that the claim for general damages be postponed *sine die* to allow for further evidence or assessment. I agree to that request. An order is granted postponing claim for general damages *sine die*.

An undertaking in terms of section 17(4)(a)

[26] The plaintiff claims an undertaking from the defendant in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996. The expert reports confirm that the plaintiff requires future medical treatment, including potential surgery on his left patella, pain management, and occupational therapy. The defendant is ordered to furnish the plaintiff with an undertaking in terms of section 17(4)(a).

Costs and interest

[27] The plaintiff sought costs of suit on party and party scale B. I see no reason not to award the costs in favour of the plaintiff. The defendant shall pay the plaintiff's taxed or agreed party and party costs on scale B, including the costs of 17 March 2026 when the matter was stood down to 18 March 2026 for settlement, the costs of counsel, and the costs of obtaining expert reports, and all reasonable disbursements.


[28] The interest on the capital amount of **R2 550 945.00** 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

[29] 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 26 January 2017.
- (3) The defendant shall pay to the plaintiff a total amount of R2 550 945.00 (Two Million Five Hundred Fifty Thousand Nine Hundred Forty Five Rand) 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 26 January 2017 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 the paragraphs below:
- 6.1. 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.
- 6.2. The costs of all medico-legal reports prepared by the experts.
- (7) 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:

Mr C.S Mopedi instructed by Mopedi CS Attorneys

For the Defendant:

Mr Mdlovu M.E (RAF)