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

CASE NO: 46494/19

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE **27/5/2026**

SIGNATURE

In the matter between:

MHLONGO: MARIO JOHN

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PIENAAR AJ

INTRODUCTION

1. This is a claim for damages arising from a motor vehicle accident that occurred on 26 February 2015. The plaintiff was a driver at the time of the collision.
2. The defendant filed a notice to defend and a Plea. The matter was previously on the

roll of the unopposed motion court before Botes AJ wherein an order had been granted, inter alia, that the respondent (Respondent in the present matter) complies with a Rule 37(4) Notice in terms of the Uniform Rules of Court and to file a reply within 5 (five) days of service of the order. This order was not complied with.

3. On 19 May 2023 on application before Phooko AJ on the unopposed motion roll where an order in the following terms was granted:
 - “1. An order to strike the Respondent/Defendant’s defence;
 2. An order authorising the Applicant/Plaintiff to proceed to trial by default; and directing that the costs of this application should be borne by the Respondent/Defendant”. Unfortunately, this Court Order was never served on the Defendant.
4. Plaintiff served the notice of set down on the defendant on 7 November 2024.
5. The court granted the application for the evidence to be adduced by way of affidavits in terms of Rule 38(2) of the Uniform Rules of Court. Rule 38(2) provides as follows:

“The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness to be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit”
6. This court was called upon to deal with merits and quantum, proceeding on a default judgment basis. After hearing submissions of the Counsel, I reserved judgment.
7. When the matter was heard on 20 February 2026, the Court requested that the Plaintiff obtain the outcome of the police investigation. Thereafter, when the matter was called again on 2 March 2026, Counsel submitted that the SAPS docket and

sketch plan had been uploaded onto CaseLines under section 18 (Trial Bundle), items 12 and 13.

LIABILITY

8. The plaintiff bears the onus to prove that the RAF is liable under the provisions of the Act, to compensate her for damages suffered because of the injuries sustained in the collision. This includes the onus to prove that the driver of the insured vehicle negligently caused the collision.
9. The accident from which this claim arose occurred on the 26 February 2015. According to the particulars of claim “The plaintiff was the driver of motor vehicle bearing registration letters and number F[...] when he was involved in a motor vehicle accident with motor vehicle bearing registration letters and number F[...] (herein referred to as the “insured vehicle”) there and then driven by Casper Willem Barnard (herein after referred to as “the insured driver”).
10. According to the plaintiff’s Section 19(f) affidavit the following occurred: “On 26 February 2015 at about 22:15 he was traveling from Bethal towards Trichardt road towards Trichardt driving a sky-blue (light blue) Toyota Verso with registration number F[...]. He decided to take the fast lane. On the slow lane he noticed trucks that were moving slower. He noticed a motor vehicle overtaking from the side of Trichardt towards Bethel (opposite side of the road). He couldn’t swerve to the slow lane, because there was a truck in the slow lane. He cannot remember whether he applied brakes or not. A head on collision occurred.
11. The next document of relevance is the statement of Samuel Muvuseni Mayisela. He was driving a white Isuzu with registration number M[...]. He was driving from Bethal towards Trichardt plaza. He saw a white motor vehicle traveling from the direction of Richard toward Bethal and this white bakkie made a U-turn on the road (in the middle of the road) and there was a light blue vehicle that was traveling

towards Trichardt and the white bakkie collided head on with the light blue motor vehicle.

12. I have considered the Plaintiff's Heads of Argument; however, Counsel has failed to assist the Court by citing relevant authority on the merits.
13. In the case of *Sedumemanyatela v Road Accident Fund (65678/2012) (2014) ZAGPPHC 445 (30 MAY 2014)* the court held that even when an approaching vehicle is on its incorrect side of the road, a driver on his correct side may assume that the former will return timeously to its correct. But this assumption does not entitle a driver on the correct side of the road to remain passive in the face of threatening danger. As soon as the danger of the collision becomes evident he is under a duty to take reasonable steps to avert one.
14. I therefore cannot find that the plaintiff contributed to the cause of the collision. In my view, the insured driver was negligent in that he executed a U-turn in the middle of the roadway in front of the plaintiff. Accordingly, he was the sole cause of the accident.
15. The negligence of the insured driver was the sole cause of the accident and the defendant is to be 100% liable for the damages which the plaintiff prove he suffered as a result of the accident.

QUANTUM

16. In the particulars of the claim the plaintiff claimed damages in respect of the following:
 - 16.1 Shoulder injury
 - 16.2 Left leg and knee injury

LOSS OF INCOME

17. Although I have thoroughly considered all the evidence presented by the experts, read in conjunction with their respective reports, I do not intend to deal with all their evidence in detail. I will be restricting myself to their main findings.

Dr Dr Barlin- Orthopaedic Surgeon

18. From the said report it is evident that he examined the plaintiff on 14 September 2021 and an addendum report was done on 16 July 2025. In respect of his diagnosis Dr Barlin indicated the following in his report:

- 18.1 Type II dislocation on the right acromio clavicular joint and a contusion of the right knee
- 18.2 Contusion of the right knee
- 18.3 An abdominal contusion

19. Dr Barlin reported that he was employed as an underground machine operator by Sasol Coal in Secunda. He is still employed as an underground machine operator at a coal mine. His shoulder mobility has decreased slightly and raising the right arm above shoulder height is extremely painful. As he is now 61 years old, and his work duties require significant physical strength, he is no longer able to continue working, even if he undergoes the surgery recommended.

Dr J H Kruger - Neurosurgeon

20. Dr Kruger reported that he sustained a mild traumatic brain injury. Dr Kruger further reported that he sustained a head injury in the accident, the current complaints of cognitive mental problems and mental problems he is of the view that if a lump sum

of money is awarded to the plaintiff, the money must be protected in a trust.

Trevor Reynolds - Clinical and Neuropsychologist

21. According to Dr Reynolds he sustained a traumatic brain injury of sufficient severity to result in persisting neuropsychological sequelae.

Jeanne Morland - Occupational Therapist

22. Jeanne Morland reported that his right knee tires and becomes painful from standing a lot at work. He experiences headaches at times. He reported that his memory is poor. He is forgetful. The plaintiff reported that his concentration is decreased. His wife reported that he become "like a child" sine 2021 and that he is slowly becoming worse.

Lorette Theron - Industrial Psychologist

23. Ms Theron reported pre accident, that he wanted to be a Miner but could not do this without a Grade 12 school qualification. Ms Theron is of the view that he would have remained in his position at the time of the accident, i.e. Shuttle Car Operator. This position would have not have changed, as he could not have had to be accommodated. He was already 50 years old at the time of the accident, and he would therefore have retired in his position. Prior to the accident, the plaintiff was in good health. It is therefore probable that he would have been able to work until the retirement age of 65 years.

24. But fourth accident, the plaintiff would probably have remained in his position as Shuttle Car Operator at Sasol until his retirement at 65 years. Now as a result of the accident, he may have suffered a direct past loss of earnings. This relates to the period after the accident, during which he did not receive his usual overtime pay. However, the plaintiff was unable to provide any proof of this i the form of pay slips at

the time of the accident.

25. Although he is technically still employed as a Continuous Miner Machine Operator, he is regarded as extremely vulnerable in this role. Ms Theron is of the view that he should be considered totally unemployable in the open labour market.

Algorithm consultants & actuaries

26. The actuary proposed two bases of calculation, informed by the industrial psychologist's report. Counsel submitted that the average of the two scenarios should be adopted, which submission the court upheld.

Basis 1 - total net loss = R702 778,00

Basis 2 - total net loss = R415 059,00

Sub total = R1 117 837,00 divided by two

Total = R558 918,50

Funds must be protected

27. Dr Kruger reported that the plaintiff has executive functioning problems, accompanied by a change in personality. He also has cognitive impairments, including loss of short-term memory and lack of concentration. Dr Kruger is of the view that, if a lump sum of money is awarded to the plaintiff, the money should be protected in a trust. In this case, such protection is both reasonable and necessary, based on the expert's recommendation.

Order

28. Having regard to all the documents and reports filed and having heard counsel herein, I make the following order:

1. The defendant is liable to pay 100% of the plaintiff's proven damages.
2. The defendant shall pay the plaintiff the sum of **R558 918,50** (Five hundred and fifty eight thousand nine hundred and eighteen rand and fifty cents) in respect of loss of earnings.
3. The defendant shall pay the aforesaid amount into the Trust account of the plaintiff's attorneys, Erasmus De Klerk, the details which the plaintiff's attorneys will provide to the defendant.
4. The plaintiff shall established a trust within 60 days from the date of this court order. The defendant shall be liable for the costs of the administration of the trust and establishment thereof. The trustees are authorized to recover from the Defendant, for the benefit of the trust all costs incurred by them which are payable including the costs of the creation of the trust and the costs of furnishing security.
5. The defendant shall furnish the plaintiff with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996 in respect of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods of a medical and non-medical nature to the plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on 26 February 2015.

6. The issue of General damages is *postponed sine die*

7. The defendant is to pay the plaintiff's taxed or agreed party and party costs of the action, which costs shall include, but not be limited to the following:
 - 7.1 Dr Barlin (Orthopaedic Surgeon) and addendum report

 - 7.2 Dr Visser (Psychiatrist)

 - 7.3 Dr Kruger (Neurosurgeon)
 - 7.4 Trevor Reynolds (Clinical Neuropsychologist)

 - 7.5 Involved Practitioners (Occupational Therapist)

 - 7.6 Lorette Theron (Industrial Psychologist)

 - 7.7 Algorithm Actuaries

 - 7.8 Costs of Counsel - Adv Danie Combrink - Scale B

9. The following provisions will apply with regards to the determination of the aforementioned taxed or agreed costs:
 - 9.1 The plaintiff shall serve the notice off taxation on the defendant

 - 9.2 The taxed or agreed costs will:
 - 9.3 be payable within 14 days from date of taxation; and

9.4 bear interest at then prevailing interest rate, calculated and including the 15th calendar day after the date of taxation to and including the date of payment thereof.

10. There is a valid contingency fee agreement.

M PIENAAR
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was handed down electronically by circulation to the parties representatives by email, by being uploaded to the Caselines system and by release to SAFLII. The date and time for hand down is deemed to be 27 May 2026

Heard on : 19 February 2026

Hearing : 6 March 2026

Date of Judgment : 27 May 2026

APPEARANCES:

For the Plaintiff : Adv Danie Combrink
Instructed by : Erasmus De Klerk Inc Attorneys
email: Zania@edk.co.za

For the Defendant : Road Accident Fund
No appearance

Link no: 4091417

Claim no: 560/12268256/325/6