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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Case Number : 5508/2024

Not Reportable

In the matter between

MASHELE BENSON TALENTA

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

Coram: Reddy J

Heard: 19 November 2025 and 5 March 2026

Reserved: 5 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email and uploaded to CaseLines. The date and time for handing down are deemed to be 5 June 2026 at 16h00.

Summary: Road Accident Fund — Quantum — Loss of earnings — Plaintiff, aged 36, employed as Earthmoving Equipment Mechanic at Tharisa Minerals — Income proved by two payslips: pre-accident gross R71 983.19 per month; post-accident gross R76 896.97 per month — Pre-accident future contingency of 15% accepted; post-accident future contingency increased from 25% to 40% —

Plaintiff permanently restricted to sedentary work, dependent on sympathetic employer, not a fair competitor in open labour market, with multiple pending surgeries and progressive degenerative injuries — *Bailey* vicissitudes applied — Wide judicial discretion on contingencies confirmed in *Guedes* — Award of R 6 887 292 — Section 17(4)(a) undertaking granted — Right hand injury not incorporated in serious injury assessment; further specialist assessment required before general damages can be determined — Contingency fee agreement recorded as non-compliant with Act 66 of 1997 — General damages and past medical expenses postponed *sine die* — Costs on Scale C.

JUDGMENT

REDDY J

Introduction

[1] The plaintiff, Mr. Benson Talenta Mashele, (Mr Mashele) instituted action against the Road Accident Fund (“the RAF”) for damages arising from bodily injuries sustained in a motor vehicle collision on 2 December 2021. On 19 November 2025, judgment on the merits was granted, the RAF being held liable for 100% of proven damages.

[2] On 5 March 2026, the quantum hearing came before this Court. On the latter date, an order in terms of Rule 38(2) of the Uniform Rules of Court was granted admitting the expert reports on affidavit, and judgment was reserved. On 5 June 2026, the order extrapolated from this judgment was handed down. Technical difficulties impeded the handing down of the full judgment. What follows is a judgment encompassing the reasons for the findings on the merits and quantum.

Factual Background

[3] At the time of the collision Mr. Mashele was 31 years of age and employed at Tharisa Minerals (Pty) Ltd as an Earthmoving Equipment Mechanic (Mining Engineering). Mr. Mashele holds a Grade 12 certificate, an N3 in Mechanical Engineering and a Code 10 driver's licence. On 2 December 2021 at approximately 06.00 am, returning home from a night shift along the R104 Road, Boschfontein, Rustenburg, he was driving a Volkswagen Polo in his correct lane at approximately 60 km/h on a wet road. The insured driver, one Tshose Mpho Emily, crossed into his lane while executing an overtaking manoeuvre. Mr Mashele flicked his lights and attempted to swerve but the vehicles collided head-on. He was admitted at Life Peglerae Hospital and treated for serious bodily injuries.

Findings on Merits

[4] The evidence established an overwhelming *prima facie* case of negligence. The Accident Report Form recorded that the insured driver was on the wrong side of the road executing an overtaking manoeuvre without adequate visibility. Mr. Mashele's affidavit correlated with the police record in all material respects. The RAF, having filed a plea, did not appear to prosecute its defence.

[5] In *Naude NO v Transvaal Boot and Shoe Manufacturing Co* , it was held that the defendant must tell the remainder of the story or take the risk of judgment

against it.¹ It did neither. The insured driver was negligent in, among other respects, failing to keep a proper lookout, failing to ensure it was safe to overtake, and failing to heed the warning signals given by the plaintiff. The onus of proving causative negligence on a balance of probabilities was discharged. The order on the merits was accordingly granted in favour of the plaintiff.

Injuries

[6] As a direct consequence of the collision Mr. Mashele sustained an open pelvic fracture, an acetabular fracture, and a laceration and fracture to the right hand requiring open reduction and internal fixation of the fifth finger. The pelvic and acetabular injuries are serious, permanent and progressive. Mr. Mashele retains residual right hand pain and poor grip strength.

Expert Evidence

[7] The following expert reports were admitted into evidence on affidavit in terms of the Rule 38(2) order.

Orthopaedic Surgery: Dr G Tau (Report dated 1 June 2023)

[8] Dr Tau assessed a whole person impairment of 48%, qualifying under narrative test 5.1 as a serious long-term impairment. Mr. Mashele's gait is permanently compromised, full recovery from the peroneal nerve palsy is unlikely, and post-traumatic osteoarthritis will progress. Four surgical interventions are required, each at 100% probability, a total hip replacement, excision of heterotopic ossification, ankle arthrodesis and removal of internal fixatives, each carrying a recovery period of two to three months.

Occupational Therapy: Ms AT Shibambo (Report dated 8 March 2023)

¹ *Naude NO v Transvaal Boot and Shoe Manufacturing Co* 1938 AD 379 at 399.

[9] Ms Shibambo found Mr Mashele to be permanently restricted to sedentary administrative work, unable to perform the inherent physical demands of his pre-accident occupation. He is not a fair competitor in the open labour market and is wholly reliant on a sympathetic employer. Pain with prolonged sitting will further diminish his productivity, and progressive hip deterioration will further reduce his sedentary capacity over time. Future care requirements, to be accommodated within the section 17(4)(a) undertaking, include occupational therapy, domestic assistance (seven hours per week, rising to 21 hours post total hip replacement) and assistive devices.

Industrial Psychology: Mr RY Ntuli — Ruwa Consulting (Report dated 2023)

[10] Prior to the accident Mr. Mashele earned R71 983.19 gross per month, as confirmed by the November 2021 payslip, and his trajectory was towards Senior Mechanic by age 45. Post-accident, he returned to a sedentary administrative role earning R76 896.97 gross per month as of January 2024, confirmed by the January 2024 payslip. His foreman confirmed that the plaintiff will not cope in the field should he lose his current position, that his promotion prospects are bleak, and that the organisation will likely need to replace him with a qualified mechanic. He has no sedentary work experience and could not compete in the administrative labour market without retraining.

Actuarial Report: Dr DT Mureriwa — One Pangaea (Calculation date: 1 May 2024)

[11] The actuarial report was prepared on the SALT 1984–86 mortality tables at 100%, a discount rate of 8.65%, and salary inflation at CPI plus 1%, yielding a net real discount rate of 2.50%. The gross income figures are pre-accident past R1 743 119; post-accident past R1 498 650; pre-accident future R17 380 889 ;

post-accident future R13 531 184. The actuary noted expressly that the determination of contingencies is the prerogative of the court.

The Plaintiff's Income

[12] Mr. Mashele's income evidence consists of two Tharisa Minerals payslips authenticated by the industrial psychologist's report. The pre-accident payslip records gross earnings of R71 983.19 ; the post-accident payslip records R76 896.97 , the higher figure reflecting annual increases over the intervening period. The loss arises from the diminution of earning capacity and the vulnerability of current employment, not from a reduction in current salary.

[13] A concern arises from the actuarial projection that income would rise to R1 000 000 per annum by age 45, given that the only market advertisement in the bundle for an Earthmoving Mechanic (Mining) advertises up to R60 000 CTC per month, suggesting Mr. Mashele may already have been at or near the ceiling for his current role. This concern is adequately addressed by the 15% pre-accident future contingency accepted below.

Applicable Legal Principles

[14] In *Southern Insurance Association v Bailey NO*, the court postulated that the assessment of loss of earning capacity is inherently speculative and that a court is bound to award damages where it is certain that pecuniary damage has been suffered, making the best use it can of the evidence before it.² A trial court's wide discretion on contingencies was confirmed in *Road Accident Fund v Guedes*

² *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A) at 116F- H. *RAF v Kerridge*[2019] 1 All SA 92 (SCA) par 25.

2006 in that a court may award what it considers just and is not bound by the actuary's proposed contingencies.³ The Koch Quantum Yearbook guidelines suggest a normal pre-accident future contingency of approximately 15–20% for a plaintiff in this age bracket. Recent authority confirms post-accident future contingencies of 40–60% where a plaintiff is reliant on sympathetic employment and is not a fair competitor in the open labour market.

Assessment of Contingencies

Pre-accident future contingency

[15] The actuary applied a pre-accident future contingency of 15%. The trajectory to Senior Mechanic is supported by the industrial psychologist's vocational assessment, confirmed salary survey data and the foreman's evidence of the plaintiff's suitability for promotion. The 15% figure, at the lower end of the normal range, also adequately addresses the market-ceiling concern identified.

Post-accident future contingency

[16] The actuary applied a post-accident future contingency of 25%. I have adopted a different view to that of the actuary. This is exploited to good effect in the following way. First, Mr Mashele is wholly dependent on sympathetic employment with no legal entitlement to his current accommodated position; the industrial psychologist noted that the organisation will likely need to hire an Earthmoving Mechanic to replace him, and the foreman confirmed he will not cope in the field should he lose his job. Second, should he lose his current position, his prospects of securing alternative employment are structurally poor: his qualifications are for physical mechanical work which his injuries permanently prevent him from performing, and his curriculum vitae reflects no

³ *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA) at 587A–B.

sedentary work experience. Third, his post-accident sedentary capacity is itself precarious, as pain with prolonged sitting and the progressive deterioration of his left hip will further diminish his productivity. Fourth, the four pending surgical procedures each carry a recovery period of two to three months, representing a very substantial cumulative period of non-earning over his remaining 30-year working horizon.

[17] Our courts have precisely recognised this confluence of factors as warranting a substantially elevated post-accident contingency.⁴ A post-accident future contingency of 40% is fair, appropriate and supported by the evidence. Although the facts might support a still higher deduction, the court exercises its discretion conservatively given that Mr Mashele remains in employment.

Assessment of Damages: Loss of Earnings

[18] Applying the pre-accident future contingency of 15% and the post-accident future contingency of 40%, the loss of earnings is calculated as follows:

Past loss of earnings:

Pre-accident past income (gross):	R 1 743 119
Pre-accident past contingency (5%):	(R 87 156)
Net pre-accident past income:	R 1 655 963
Post-accident past income (gross):	R 1 498 650
Post-accident past contingency (5%):	(R 74 933)
Net post-accident past income:	R 1 423 717
Past loss of earnings:	R 232 246

Future loss of earnings:

Pre-accident future income (gross):	R 17 380 889
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⁴ *Ubisi v Road Accident Fund (unreported)*, referred to in *Shezi v Road Accident Fund* [2023] ZAGPPHC 432 par 29.

Pre-accident future contingency (15%):	(R 2 607 133)
Net pre-accident future income:	R 14 773 756
Post-accident future income (gross):	R 13 531 184
Post-accident future contingency (40%):	(R 5 412 474)
Net post-accident future income:	R 8 118 710
Future loss of earnings:	R 6 655 046
Total Loss of Earnings:	R 6 887 292

[19] Accordingly an award is made in the sum of R 6 887 292 (Six Million Eight Hundred and Eighty-Seven Thousand Two Hundred and Ninety-Two Rand) in respect of past and future loss of earnings. This award is just, equitable and accurately reflects the realities of Mr. Mashele's vocational circumstances.

Future Medical Expenses

[20] The expert evidence establishes that Mr. Mashele will require ongoing future medical treatment, including the four surgical procedures identified by Dr Tau, ongoing management of post-traumatic osteoarthritis, and the future care items identified by Ms Shibambo. The relief sought in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 is clearly established on the papers and is granted.

General Damages and Past Medical Expenses

[21] The RAF has made no election as to whether it accepts or rejects Mr. Mashele's classification as having suffered a serious injury. The RAF is directed to make that election within 15 days of service of this order, failing which Mr. Mashele may refer the matter to the Health Professions Council. It is recorded

that the current serious injury assessment (whole person impairment of 48%, assessed by Dr Tau) is confined to the pelvic, acetabular and lower limb injuries.

[22] The right hand laceration and fifth finger fracture have not been assessed by any specialist and do not form part of the current whole person impairment rating. Before general damages can be fully determined a further medico-legal assessment in respect of the right hand injury will be required. The claims for general damages and past medical expenses are each postponed *sine die*.

Contingency Fee Agreement

[23] A contingency fee bundle was placed before the court comprising the fee agreement and supporting affidavits in terms of s 4(1) and 4(2) of the Contingency Fees Act 66 of 1997. The agreement is not compliant. Section 2(2)(a) requires the agreement to specify the normal fee that the attorney would otherwise charge; s 2(2)(b) requires that the success fee not exceed double the normal fee and in no event exceed 25% of the capital amount.

[24] The agreement expresses the normal fee as “R1 500.00 per hour or an amount not exceeding the High Court Tariff by 100%” but does not specify the actual normal fee for this matter, nor demonstrate that the 25% success fee does not exceed the permissible uplift. To my mind, it accordingly does not constitute a valid contingency fee agreement. This is recorded without prejudice to any rights the parties may have *inter se*.

Costs

[25] Mr. Mashele has succeeded in full. The matter involved complex medico-legal and actuarial evidence from four expert witnesses, required the preparation of detailed heads of argument and was before this Court on three occasions.

Having regard to the value of the claim, the complexity of the expert evidence and the importance of this outcome to Mr Mashele, costs on Scale C are appropriate.

Order

[26] In the premises I make the following order:

- 1) The Rule 38(2) application is granted with costs.
- 2) The Defendant shall pay the Plaintiff the sum of R 6 887 292.00 (Six Million Eight Hundred and Eighty-Seven Thousand Two Hundred and Ninety-Two Rand) in respect of past and future loss of earnings.
- 3) The claim for past medical expenses is postponed sine die.
- 4) The claim for general damages is postponed sine die. The Defendant is directed to make an election, within 15 days of service of this order, as to whether it accepts or rejects the Plaintiff's classification as having sustained a serious injury; failing which the Plaintiff may refer the matter to the Health Professions Council for a determination. It is recorded that the current serious injury assessment does not include the right hand injury; a further specialist assessment will be required before general damages can be fully quantified.

- 5) The Defendant will be liable for interest at the prevailing mora interest rate from 15 days after the date of this order as envisaged in section 17(3)(a) of Act 56 of 1996.
- 6) The Defendant shall provide the Plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 in respect of the future costs of accommodation, treatment and services arising from the sequelae of the injuries sustained on 2 December 2021, including but not limited to the surgical procedures identified by Dr Tau, the future care, domestic assistance and assistive devices identified by Ms Shibambo, and any further treatment arising from the right hand injury, upon proof of such costs.
- 7) The above amount shall be paid to the Plaintiff's attorneys, Nobela Attorneys Inc., by direct transfer into their trust account: Bank: Nedbank, Branch code: 190605, Account holder: Nobela Attorneys, Account number: 1[...] Reference: NOB/MVA/432/2022.
- 8) The Defendant shall make payment of the Plaintiff's taxed or agreed party and party costs on the High Court scale, subject to the discretion of the Taxing Master, which costs shall include:
 - 8.1) The costs of Counsel on Scale C, including preparation and drafting of heads of argument and attendance at trial on 19 November 2025, 4 March 2026 and 5 March 2026;
 - 8.2) The reasonable taxable assessment and expert report fees of Dr G Tau (orthopaedic surgeon), Ms AT Shibambo (occupational therapist), Mr RY Ntuli (industrial psychologist) and Dr DT Mureriwa (actuary);

8.3) The reasonable taxable costs of all consultations, accommodation, transportation and other incidental costs incurred in preparation for and attendance at the medico-legal consultations and court proceedings. The above costs are to be paid into the aforementioned trust account.

9) The Plaintiff shall serve the notice of taxation on the Defendant's attorney of record. The Defendant shall be allowed 14 court days to make payment from date of settlement or taxation thereof. Should payment not be effected timeously, the Plaintiff is entitled to recover interest at the prevailing mora rate on the taxed or agreed costs from date of allocatur to date of final payment.

10) It is recorded that the purported contingency fee agreement between the Plaintiff and his attorneys does not comply with the requirements of the Contingency Fees Act 66 of 1997 and accordingly does not constitute a valid contingency fee agreement. This is recorded without prejudice to any rights the parties may have *inter se*.

A REDDY
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances

For Plaintiff: Advocate R Ferguson

Instructed by: Nobela Attorneys

C/O Sehlabo Attorneys Inc

For the Defendant: No Appearance