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IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 49797/18

- (1) REPORTABLE: ~~YES~~/NO  
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO  
(3) REVISED.

.....  
**SIGNATURE**

.....  
**DATE**

In the matter between:

**T[...]** **C[...]**

**PLAINTIFF/APPLICANT**

and

**THE ROAD ACCIDENT FUND**

**DEFENDANT/RESPONDENT**

*This judgment was prepared and authored by the Judge whose name is reflected and is electronically circulated to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be **22 May 2026***

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## JUDGMENT

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### MASHAMBA AJ

#### INTRODUCTION

- [1] The plaintiff, **T[...] C[...]** (born 23 May 2002), has instituted proceedings against the Road Accident Fund for damages arising from injuries sustained in a collision that occurred on 28 February 2018 at Bhobhoyi, in the vicinity of Siphamandla Primary School, KwaZulu-Natal. The plaintiff, then a school learner, was walking home when she was knocked down by an unidentified blue Toyota Corolla, the driver of which absconded from the scene. The claim is therefore one contemplated under the hit-and-run provisions of the Road Accident Fund Act 56 of 1996 (“the RAF Act”).
- [2] The plaintiff was 15 years old at the time of the accident and is currently 24 years old. She is employed as a hairdresser.
- [3] On 16 May 2022, the defendant’s defence was struck out pursuant to its persistent failure to participate in the litigation or comply with its procedural obligations.
- [4] The matter proceeded before this court on an unopposed and default basis on 8 April 2026.

## ISSUE BEFORE THIS COURT

[5] The Court is called upon to determine the merits of the matter and the plaintiff's claim for general damages, past and future loss of earnings, as well as an undertaking in terms of section 17(4) of the RAF Act. In her amended particulars of claim, the plaintiff quantified her damages in the estimated amount of **R12 570 000.00**, calculated as follows;

5.1 Emergency medical treatment	R 10 000.00
5.2 Non-emergency medical treatment	R 10 000.00
5.3 Future medical expenses	R 50 000.00
5.4 Past and future Loss of Income	R 11 000 000.00
5.5 General Damages	R 1 500 000.00

[6] The plaintiff brought an application in terms of Rule 38(2) of the Uniform Rules of Court (the rules), seeking leave for the expert evidence to be adduced by way of affidavit. The Court granted the application.

[7] The plaintiff appointed several medical and related experts to prepare reports in support of her claim. The plaintiff relies on the following expert reports;;

- 7.1 Dr Bongobi (Orthopaedic Surgeon)
- 7.2 Tumelo Molefe (Occupational Therapist)
- 7.3 Tlhoriso Sepenyane (Educational Psychologist)
- 7.4 Naledi N Mqhayi (Clinical psychologist)
- 7.5 Moipone Kheswa (Industrial Psychologist)
- 7.6 Munro (Actuaries)

[8] The plaintiff's submissions were advanced with reference to the conclusions contained in the medical experts' reports duly filed before this court. The Court has evaluated the probabilities arising from each expert's opinion as set out in their respective reports. The court considered the case of **Prince v Road Accident Fund**<sup>1</sup>, where the court held at paragraphs 55, 56 and 59 in the evaluation of the probabilities in respect of expert evidence.

*“Sufficient proof is established when an inference can be drawn about the fact in issue, providing that the inference is consistent with all the proven facts. In civil matters, it suffices if the inference is the most probable inference. Further, once prima facie proof or evidence has been provided, that is proof calling for an answer. This becomes conclusive proof on the point in issue usually if no evidence is produced to rebut it.*

*The fact of the matter is, however, that the Court must at the end of the case reviews all the evidence and evaluate this according to the applicable primary criterion. It must be accepted, of course, that where, for example, a Defendant fails to produce evidence, this does not mean necessarily that the opponent's version in the case, falls to be accepted. The acceptance of Plaintiff's case depends on the probative strength of Plaintiff's case, being whether it is sufficient to cast, an evidential burden on the Defendant to present evidence.”*

## **PLAINTIFF'S INJURIES AND EVIDENCE**

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<sup>1</sup> (CA 143/2017) [2018] ZAECHC 20 (20 March 2018).

[9] The medical records from Murchison Hospital reflect that the plaintiff presented

with left ankle swelling and a Glasgow Coma Scale (GCS) score of 15/15. A fracture of the left ankle was suspected. Although an X-ray was reportedly taken, no radiological results appear in the hospital records.

[10] Dr Bongobi, an orthopaedic surgeon, examined the plaintiff on 4 February 2026. He recorded that the plaintiff had sustained a left distal fibula fracture, which has since healed with residual chronic pain syndrome and stiffness. With reference to the hospital records, the orthopaedic surgeon noted that an X-ray revealed a left distal fibula fracture and that the plaintiff was treated conservatively with a below-knee back-slab POP cast for two weeks, followed by a circular POP cast for a further six weeks. He further observed that the plaintiff was mobilised initially with a walking frame for two months, thereafter with a single crutch for one month. The plaintiff attended only one physiotherapy session<sup>2</sup>.

[11] The plaintiff was clinically examined, and the orthopaedic surgeon concluded that she communicated with a good level of understanding. She walked with a slight gait, and there was moderate tenderness over the site of the previous left distal fibula fracture. The range of motion of the left ankle was mildly restricted in both dorsiflexion and plantar flexion due to pain. The orthopaedic surgeon reviewed the X-rays and noted slight contour deformities with a united left distal fibula, which was in good alignment

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<sup>2</sup> Caseline 5-4

and without further abnormalities. He assessed the plaintiff's whole person impairment (WPI) at **5%**, and concluded that she qualifies for general damages.<sup>3</sup>.

[12] T. Molefe, an occupational therapist, examined the plaintiff on 20 June 2022 and again on 3 February 2026. The occupational therapist recorded that the plaintiff was a Grade 11 learner at the time of the accident. She remained at home recuperating for approximately two months, subsequently failed Grade 11, and only passed the following year, in 2019. The plaintiff reported that she did not qualify for a National Senior Certificate but was permitted to write a supplementary examination. She further reported that she commenced employment at a hair salon in June 2022.

[13] The plaintiff presented with mildly restricted movement of the left ankle during dorsiflexion and plantar flexion. The occupational therapist noted swelling of the left ankle and observed that the plaintiff walked with an abnormal gait and experienced difficulty maintaining dynamic postures such as squatting and kneeling. The plaintiff further reported difficulties with running and participating in sports requiring running, as well as challenges with prolonged standing or walking. The occupational therapist concluded that these physical limitations would restrict the plaintiff from performing work that requires heavy manual tasks.

[14] The occupational therapist concluded that the pain experienced by the

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<sup>3</sup> Caseline 5-5

plaintiff, if not adequately managed, will negatively affect her efficiency and productivity in the open labour market, rendering her a vulnerable job-seeker whose employability would depend on a sympathetic employer. The occupational therapist concurred with the orthopaedic surgeon that the plaintiff is best suited to sedentary-type work that does not require heavy lifting, prolonged standing, or extended periods of walking.

[15] Dr Mqhayi, a clinical psychologist, examined the plaintiff on 3 February 2026. He noted the injuries and their sequelae as recorded in the orthopaedic and occupational therapy reports. The clinical psychologist further recorded that the plaintiff failed Grade 11 in the year of the accident and only passed the following year, in 2019. The plaintiff reported that she was thereafter promoted to Grade 12, which she undertook in 2020. She further reported that she failed Grade 12 and was unable to repeat the year in 2021 due to her mother's serious illness.

[16] The plaintiff reported that she has become easily irritated and short-tempered, reflecting ongoing emotional and behavioural difficulties. She further indicated that she has become socially withdrawn, prefers to be alone, no longer tolerates crowded environments, and no longer participates in traditional Zulu dance. The clinical psychologist concluded that the available information indicates that the accident has had consequences across the plaintiff's physical, emotional, cognitive, social, and developmental domains, with these areas interacting in a manner that has altered her previous pattern of functioning.

- [17] In conclusion, the clinical psychologist opined that the accident has had significant implications for the plaintiff's educational and occupational life trajectory. Although her later non-return to school was also influenced by the need to care for her ill mother, the available information indicates that the accident initiated a disruption in her educational progression at a critical developmental stage. This is particularly important, as schooling during adolescence is not merely an academic process but also a foundation for identity formation, self-efficacy, future planning, and social development. The clinical psychologist recommended that the plaintiff would benefit from 20 to 25 individual psychotherapy sessions.
- [18] T.A. Sepenyane, an educational psychologist, assessed the plaintiff on 5 February 2026. He noted that the plaintiff progressed through Grades 10 to 12 without repetition, demonstrating adequate scholastic aptitude, functional literacy, and the ability to cope within a mainstream academic curriculum. The educational psychologist further opined that, based on the plaintiff's academic trajectory up to the point of disruption in Grade 11, she would, under non-disrupted circumstances, have been expected to complete Grade 12 and obtain an NQF Level 5 certificate within the normal time frame.
- [19] The educational psychologist further recorded that, at the time of the accident in 2018, the plaintiff was in Grade 11 and her final results reflected a year average of 44%, with particularly low marks in Mathematical Literacy (15%) and Geography (19%). He noted that the school records indicate that the

plaintiff was ultimately promoted after adjustments and concessions, rather than on the basis of meeting the standard academic requirements for promotion.

[20] The educational indicated that the plaintiff repeated grade 11 in 2019 and was progressed to grade 12. Furthermore, in 2020 the plaintiff was doing grade 12, which she did not pass but qualified for supplementary examination. The matric results reflected mixed performance, with stronger marks in language and life orientation, In isizulu 67%, English 53% but extremely poor in mathematic literacy 20%, Business Studies 23%and geography 21 %.

[21] The educational psychologist indicated that, after considering the school records, the results of the cognitive assessment, the emotional-functioning findings, and the opinions of the other experts, the accident in question had a significant impact on the plaintiff's academic progression and psychological functioning.

[22] The educational psychologist opined that, post-accident, the plaintiff's functional ceiling is now restricted to lower-level vocational or skills-based training opportunities. He further indicated that her long-term occupational prospects are likely to remain within the semi-skilled or informal employment sector. Her functional educational ceiling is therefore assessed to fall within the NQF Level 3 vocational training range, depending on the level of support and opportunity available to her.

## **THE PLAINTIFF LOSS OF EARNINGS**

[23] M Kheswa, an Industrial Psychologist (IP), examined the plaintiff on the 04<sup>th</sup> February 2026. I would consider the plaintiff's past and future loss of as postulated by the IP. The IP postulated the loss as follows;

**23.1 Uninjured Earning Postulation-** The IP opine that in 2019 the plaintiff would have probably passed grade 12, and enrolled on the post matric certificate of her choice. Upon completion of her certificate probably in 2020/2021, it could have taken her 12 months to do learnership or intership in which she could have earned at below quartile of Paterson level A1/A2. Then after completing her leadership, it could have taken her 0-12 months to secure employment which is in line with her qualification. In this regard, she is likely to have started earning at lower quartile of Paterson B3. With experience, better employment opportunities and promotional prospects, she is likely to have progress to and reached her earning ceiling at the upper quartile of Paterson level C2, when she reached 45 years with applicable inflationary increases thereafter.

**23.2 Injured Earnings Postulation-** The IP assume that without grade 12 level of education, the plaintiff will opt for any fragment work available in the unskilled category of employment as evident in her current employment as a Hairdresser earning R2500 per month/30 000 per annum on

commission,

and due to her reported challenges, she is likely to experience periods of unemployment. As a result, inflation will only be a determinant of her salary

increases until she reaches retirement, provided she will sustain her employment. Her ability to perform optimally occupationally has been truncated and she is likely to remain disadvantaged in the open labour market.

[24] The plaintiff appointed WIM Loots Actuaries to calculate her past and future loss of income based on the career postulations advanced by the industrial psychologist. In performing their calculations, the actuaries applied contingencies of **5%** to past loss, **15%** to the pre-morbid (uninjured) scenario, and **25%** to the post-morbid (injured) scenario.

	<b>Pre-morbid</b>	<b>post-morbid</b>	
Past income	R 764 415	R 112 700	
Past/future contingencies 5%	R 38 221	R 5 635	
<b>Net</b>	<b>R 726 194</b>	<b>R 107 065</b>	<b>R 619 129</b>
Future income	11 140 236	767 134	
Contingencies 20%/35%	R 2 228 047	R 268 497	
<b>Net</b>	<b>R 8 912 189</b>	<b>R 498 637</b>	<b>R 8 413 552</b>
<b>Total loss of earning</b>			<b>R 9 032 681</b>

## PLAINTIFF'S SUBMISSIONS

[25] Plaintiff's counsel contended that the injuries arising from the accident are substantial, as evidenced by the expert medical reports before the Court. Counsel submitted that the plaintiff is entitled to compensation in respect of past medical expenses, loss of earnings, and general damages.

[26] When confronted with the plaintiff's historically weak academic performance in subjects such as Mathematical Literacy and Geography, plaintiff's counsel submitted that he was bound by the expert opinions filed on behalf of the plaintiff and was therefore not in a position to comment further. He confirmed reliance on his written heads of argument, wherein he contended that the defendant ought to be found 100% liable for the plaintiff's proven damages and that an award of **R9 032 681** should be made for past and future loss of earnings.

## COURT'S DISCUSSION AND THE FINDINGS

[27] The Court is required to determine the merits before considering the issue of quantum. On the evidence, I accept that the plaintiff was returning from school at approximately 14h30 when she was struck by an unidentified motor vehicle while walking on the side of the road. The insured vehicle failed to stop after the collision. In the circumstances, the Court finds that the defendant is **100% liable** to compensate the plaintiff for her proven damages.

[28] This leads me to the issues of the order for the past and future loss of earning

capacity and contingencies to be applied. In this regard I am also guided by **Mngomezulu v RAF**<sup>4</sup>, Kgomo J argued that:

*"[84] For the Plaintiff to succeed in a claim for loss of earnings, he is required to provide*

*a factual basis for an actuarial calculation. This is a process designed to assess actuarial / mathematical calculations on the basis of the evidence as well as over-all assumptions vesting or depending on such evidence. This approach is known as the actuarial approach.*

*[85] The actuarial approach seeks to determine the loss of earnings as realistically as possible to what may be the Plaintiff's actual losses. The approach comprises*

*of (a) providing a factual basis upon which the loss of earning is to be calculated*

*and only then (b) by applying appropriate contingency deductions."*

[29] When deciding issues of past and future loss of earnings, this court has considered a decision in **Southern Insurance Association Ltd v Bailey** **NO**<sup>5</sup> Nicholas JA stated as follows:

*"Where the method of actuarial computation is adopted, it does not mean that the trial Judge is "tied down by inexorable actuarial calculations". He has "a large discretion to award what he considers right" ..... One of the elements in exercising that discretion is the making of a discount for "contingencies" or the*

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<sup>4</sup> (Case No. 04643/2010) [2011] ZAGPJHC 107 (8 September 2011)

<sup>5</sup> [1984 \(1\) SA 98](#), par 116-117

*"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."*

[30] The Court notes that the educational psychologist did not assess the plaintiff's pre-accident academic performance and merely recorded that she had not failed a grade prior to the accident. Given that the accident occurred in February 2018, it was necessary for the educational psychologist to consider the plaintiff's 2017 academic results in order to establish an accurate pre-morbid baseline. Had the educational psychologist undertaken such an assessment, he may well have reached a different conclusion regarding her scholastic potential.

[31] The plaintiff's Grade 10 final examination results for 2017, being the year immediately preceding the accident, were as follows: Business Studies 34%, English 40%, Geography 24%, History 29%, IsiZulu 56%, Life Orientation 47%, and Mathematical Literacy 18%.

[32] A comparison of the plaintiff's 2017 Grade 10 results with her 2020 Grade 12 performance reveals no substantial improvement or deterioration. The Court is mindful that the 2020 academic year was severely disrupted by the COVID-19 pandemic. The plaintiff further explained that her academic functioning during this period was adversely affected by her mother's illness and subsequent passing in April 2021. Although she qualified to sit for the Grade 12 supplementary examinations, she did not do so due to the

emotional impact of her bereavement.

[33] At the hearing on 8 April 2026, the Court directed that the plaintiff file her final school reports for 2018 and 2019. These were not forthcoming. Instead, on 13 April 2026, the plaintiff's attorneys filed a letter from the assistant principal of Nobamba High School, addressed generically "To Whom It May Concern", purporting to set out the plaintiff's results for 2017, 2018, and 2019. Upon scrutiny, the Court observed that the 2017 results contained in the letter differ from those reflected in the official 2017 final report. The letter appears to present the plaintiff as having performed well pre-accident and poorly thereafter, which undermines its reliability.

[34] The Court accepts that the plaintiff's academic functioning may have been adversely affected for a limited period following the accident, particularly during her initial recovery, and that this likely influenced her 2018 performance. However, in the absence of the 2018 and 2019 Grade 11 final reports, the Court is constrained to rely on the available records, which reflect that the plaintiff's academic performance remained largely consistent with her pre-accident trajectory. There is no evidence of a significant deterioration attributable to the accident.

[35] The Court finds that the industrial psychologist understated the plaintiff's post-accident potential, and that his opinion was evidently influenced by the conclusions of the educational psychologist. While the plaintiff has experienced academic difficulties, the evidence demonstrates that these challenges were pre-existing. It must further be recognised that higher grades, particularly Grade 12, are inherently more demanding than the lower grades in which the plaintiff previously performed poorly.

[36] On the probabilities, the Court is satisfied that the plaintiff would likely have passed matric had she written the supplementary examinations for which she

qualified, and that she would have proceeded to enrol for an NQF Level 5 certificate of her choice. The Court is also of the view that, with appropriate financial support, the plaintiff remains capable of attaining the same level of qualification she would probably have achieved prior to the accident.

[37] The Court notes that although the plaintiff's left distal fracture has healed and no structural abnormalities are presently observed, she continues to experience chronic intermittent pain. This residual pain is likely to affect her future employability, as it may limit her choice of work and diminish her ability to compete on equal terms with her peers. Given that her highest completed level of education is Grade 11, the plaintiff is likely to rely predominantly on her physical capacity to earn a living, and any physical limitation therefore has a direct and adverse impact on her earning potential.

[38] The Court accordingly finds that the plaintiff's earning capacity has been materially reduced by the accident. In determining appropriate compensation, the Court considers it just and equitable to apply **equal pre- and post-morbid contingencies**, with a **contingency spread of 15%**. In doing so, the Court has taken into account the academic disruption the plaintiff experienced in 2018 during her recuperation period, when she was absent from school for a time following the accident.

	<b>PRE-ACCIDENT</b>	<b>POST-ACCIDENT</b>	<b>LOSS</b>
POSTULATED INCOME	R 11 904 651	R 11 904 651	
SPREAD OF 15%	15%	30%	
	R 1 785 697.00	R 3 571 395.00	
	R 10 118 954	R 8 333 256	

<b>TOTAL</b>			<b>R 1 785 698</b>
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[39] Having regard to the evidence and the contingencies applied, the Court determines that a fair and equitable award for the plaintiff's loss of earning capacity is **R1 785 698.00**.

[40] This court has no jurisdiction to determine the issue of general damages, as the defendant has not made a determination in terms of Regulation 3 of the Road Accident Fund Regulations as to whether the plaintiff's injuries qualify as "serious". In the absence of such a determination, the court is precluded from adjudicating the claim for general damages. The issue of general damages is accordingly postponed sine die.

### **COSTS**

[41] Exercising its discretion judicially, the court finds no justification to depart from the principle that costs follow the result. The defendant is accordingly liable for the plaintiff's costs of suit.

### **ORDER**

[42] In the circumstances, the court makes the following order;

1. The defendant is held liable to compensate the plaintiff **100%** for her proven damages arising from the motor vehicle collision that occurred on **28 February 2018**.

2. The defendant shall pay to the plaintiff the sum of **R1 785 698.00** (One Million Seven Hundred and Eighty-Five Thousand Six Hundred and Ninety-Eight Rand) in respect of her loss of earning capacity.
3. The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, in terms of which the defendant undertakes to pay 100% of the costs of the plaintiff's future medical and related expenses arising from the motor vehicle collision of 28 February 2018, such costs to be incurred after the date of this order. The defendant shall furnish the said undertaking within 30 days of receipt of this court order.
4. The amount in paragraph 2 and 3 above shall be paid into the plaintiff's trust bank account.
5. The defendant shall be liable to pay interest on the aforesaid amounts *tempore morae* at the rate of 10.25% per annum from 14 days after the date of this order to date of the payment.
6. The defendant shall pay the plaintiff 's taxed or agreed party and party costs until the date of this order including costs of a counsel scale B.
7. The costs consequently in the preparation of and obtaining the medico legal and actuary reports that were served on or provided to the defendant.
8. The reasonable taxable preparation, qualifying and reservation fees, if any of the plaintiff's experts for trial of whom notice was given to the defendant.
9. The reasonable taxable costs of necessary consultations with the said experts and the reasonable taxable traveling, subsistence and

accommodation costs of the plaintiff for attending the medico legal examination, subject to the discretion of the taxing master.

10. The reasonable taxable costs of traveling, subsistence, accommodation costs of the plaintiff for attending court.

11. The defendant shall be liable to pay interest on the amount of the plaintiff's

costs of suit, as taxed or agreed, at 10.25 % per annum from 14 (fourteen days) of the allocatur of the taxing master or the date of the agreement, whichever applies, to date of payment.

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

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**E MASHAMBA**  
**ACTING JUDGE OF THE HIGH COURT,**  
**PRETORIA; GAUTENG DIVISION**

**APPEARANCES**

**FOR THE PLAINTIFF : ADV P TSHAVHUNGWE**

**INSTRUCTED BY : KOTLOLO ATTORNEYS**

**FOR THE DEFENDANT : NO APPEARANCE**

**DATE OF HEARING : 08<sup>th</sup> April 2026**

**DATE OF JUDGEMENT : 22<sup>nd</sup> May 2026**