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**IN THE HIGH COURT OF SOUTH AFRICA,  
FREE STATE DIVISION, BLOEMFONTEIN**

**Not reportable**

Case no: 1446/2024

In the matter between

**MOTHOBI MOKOENA**

**PLAINTIFF**

And

**THE ROAD ACCIDENT FUND**

**DEFENDANT**

**Neutral citation:** *Mokoena v RAF* (1446/2024) [2026] ZAFSHC 318 (04 June 2026)

**Coram:** VAN ASWEGEN AJ

**Heard:** 25 and 26 November 2025, 28 November 2025 and 24 March 2026

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 04 June 2026.

**Summary:** Claim for damages arising from serious injuries sustained in a motor vehicle collision – past medical expenses – future loss of income – diminished earning capacity.

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**ORDER**

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1 The defendant, having accepted its liability to pay 100% of the plaintiff's proven or agreed damages arising out of a motor vehicle accident which occurred on 21 November 2020, is ordered to pay the plaintiff:

1.1 the amount of R3 274 350 in respect of future loss of income into the following bank account:

1.2 the amount of R312 932.68 in respect of the plaintiff's past medical expenses.

2 Payment of the aforesaid amounts must be made into the bank account of the plaintiff's attorney with the following details:

**HONEY ATTORNEYS - TRUST ACCOUNT**  
**NEDBANK - MAITLAND STREET BRANCH, BLOEMFONTEIN**  
**BRANCH CODE: 11023400**  
**ACCOUNT NO: 1[...]**  
**REFERENCE: Y JV RENSBURG/bv/J04257**

3 Interest shall accrue on the capital amounts awarded to the plaintiff in respect of his claims for future loss of income and past medical expenses calculated from 15 (fifteen) days from the date of this order until the date of payment.

4 Interest shall accrue on the plaintiff's taxed costs calculated from 15 (fifteen) days from date of taxation to the date of payment.

5 The defendant is ordered to furnish an undertaking to the plaintiff in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, for 100% of the costs of the future accommodation of the plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to him arising out of injuries sustained by him in the motor vehicle accident of 21 November 2020 in terms of which undertaking the defendant will be obliged to compensate him in respect of the said costs after the costs have been incurred and on proof.

6 The defendant shall pay the plaintiff's taxed or agreed legal costs, which shall include the trial dates of 25 November 2025, 26 November 2025, 28 November 2025

and 24 March 2026, including the costs of counsel on Scale C where applicable, and the reasonable qualifying and reservation fees of the following experts:

- 6.1 Dr A van Aswegen (neurosurgeon);
- 6.2 Mr L Roper (neuro and clinical psychologist);
- 6.3 Dr J Preddy (orthopaedic surgeon);
- 6.4 Dr KJP Lubunya (ophthalmologist);
- 6.5 Drs Spies and Partners (radiologists);
- 6.6 Mrs L van Zyl (occupational therapist);
- 6.7 Dr EJ Jacobs (industrial psychologist);
- 6.8 Munro Forensic Actuaries.

7 The plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the defendant.

8 The scale of the plaintiff's costs in the matter shall be on a party and party scale, save that the costs of the trial date of 25 November 2025 shall be paid on an attorney and client scale.

9 The plaintiff is declared a necessary witness.

## **JUDGMENT**

### **Van Aswegen AJ**

#### **Introduction**

[1] This matter concerns the plaintiff's claim for compensation under the Road Accident Fund Act 56 of 1996 (the RAF Act) arising from injuries sustained in a motor vehicle collision on 21 November 2020. The matter does not come before me as a trial on all issues. The defendant conceded the merits and accepted 100% liability for the

plaintiff's proven or agreed damages. It also accepted that the plaintiff had sustained serious injuries. The plaintiff's claim for general damages was settled prior to the commencement of the trial on 24 March 2026. What remained for determination were the plaintiff's claims for past medical expenses, a claim for an undertaking in terms of s 17(4)(a) of the RAF Act for his reasonable future hospital, medical and related expenses and his claim for future loss of income.

### **The procedural background**

[2] The matter was initially enrolled for trial on 25, 26 and 28 November 2025. On the first day of trial, the defendant sought an amendment to introduce a special plea of prescription. The amendment was not opposed. The plaintiff thereafter delivered a replication to the special plea. The plaintiff also filed heads of argument dealing with the special plea. The prescription plea was thereafter abandoned.

[3] On 26 November 2025, the defendant conceded the merits and accepted liability for 100% of the plaintiff's proven or agreed damages. It did not oppose the plaintiff's application in terms of Uniform Rule 38(2) read with s 3(1)(c) of the Law of Evidence Amendment Act 45 of 1998 to admit into evidence:

- i. the medico-legal reports, together with the confirmatory affidavits, of Dr A van Aswegen, neurosurgeon; Dr J Preddy, orthopaedic surgeon; Mr L Roper, clinical psychologist and neuropsychologist; Dr K J P Lubuya, ophthalmologist; Mrs L van Zyl, occupational therapist; and Dr E J Jacobs, industrial psychologist; together with the actuarial report of Munro Forensic Actuaries;
- ii. the affidavits of the plaintiff and the factual witnesses dealing with the circumstances of the collision, as well as the plaintiff's pre- and post-morbid functioning, work history, income and the impact of the injuries; and
- iii. the hospital records, medical schedules and quantum affidavits identified in the expert and factual affidavits.

[4] In light of the fact that the defendant did not oppose the application, and having considered the nature and purpose of the evidence to be presented and in the interest of saving time and costs, the application was granted. The plaintiff nevertheless testified himself and called the following expert witnesses to give oral evidence: Mrs L van Zyl, occupational therapist; Dr E J Jacobs, industrial psychologist; Mr L Roper, clinical psychologist and neuropsychologist; and Dr A van Aswegen, neurosurgeon. The defendant, however, filed no expert reports and did not seek to cross-examine any of the plaintiff's witnesses.

### **The plaintiff's background and work history**

[5] The plaintiff was born on 28 April 2002. Although he attended school up to Grade 12, he did not obtain matric. He thereafter enrolled at FET College, where he studied Electrical Engineering from N1 to N4 and later Diesel Mechanics from N1 to N2.

[6] He testified that he found hands-on work easier than purely academic studies and, for that reason, he pursued a practical and technical career path. After completing his N4 in electrical engineering, he obtained employment as a driver at Ford and thereafter moved progressively into mechanical work. At the time of trial, he was employed by AFGRI as an artisan engaged in the repair of tractors and described himself as a diesel mechanic by trade. He confirmed that his basic salary, excluding overtime, was approximately R22 000.00 per month, and that with overtime it could increase to about R30 000.00 per month.

### **The injuries and their *sequelae***

[7] The plaintiff testified to ongoing symptoms and functional limitations that impact his work as a diesel mechanic. He described marked irritability, significant memory difficulties and severe sleep disturbance since the accident. His sleep is chronically disrupted by pain and discomfort, to the extent that he has been unable to sleep properly despite changing his mattress several times.

[8] He also testified to persistent left-shoulder and upper-limb difficulties. He experiences pain in his shoulder, cannot lift heavy objects with his left arm nor work for prolonged periods with the arm elevated, and has reduced grip strength in his left hand. These difficulties limit his ability to perform tasks requiring sustained force, lifting or repetitive upper-limb use. Of particular relevance to his daily work, he testified to constant pelvic and lower-back pain during the workday and explained that the pain intensifies around midday, after which he requires frequent breaks; typically he works for about an hour and then needs rests for approximately 30 minutes. His evidence was that this pattern recurs throughout the day.

[9] Dr Preddy records that the plaintiff sustained severe polytrauma in the collision. For orthopaedic purposes, the injuries of enduring significance were a Grade II subluxation of the left acromio-clavicular joint with instability; lumbar spine injury, including fractures of the left transverse processes of L1 and L2; and a major pelvic ring injury comprising diastasis of the pubic symphysis, diastasis of both sacro-iliac joints, and a vertical fracture through the central sacrum, for which surgical fixation was required. He also recorded multiple left rib fractures and a comminuted left scapular fracture.

[10] Dr Preddy's evidence is that the plaintiff's long-term orthopaedic prognosis is poor. He identifies a high likelihood of increasing pain and mechanical dysfunction in the sacro-iliac joints and spine, with a risk of post-traumatic osteoarthritis and progressive degenerative change. Even with future surgery, there remains a substantial risk of persistent pain, reduced mobility and further deterioration.

[11] On Dr Preddy's assessment, the plaintiff is orthopaedically restricted to sedentary to light-duty work, and then only with appropriate accommodation. He regards diesel-mechanic work as heavy work and considers the plaintiff medically unsuitable for that occupation in the long term. He records that the plaintiff may perhaps persist in such work for a limited time, but that it is improbable that he will sustain it medium- to long-term until ordinary retirement age. In that regard, the concern that he

plaintiff may not be able to continue with his current work beyond about age 40 is, in Dr Preddy's view, well-founded.

[12] According to the evidence of Dr Preddy, the plaintiff will require ongoing orthopaedic follow-up in relation to the lumbar spine, sacro-iliac joints and AC joint; continued conservative management by way of analgesics, anti-inflammatory medication, muscle relaxants, physiotherapy, and possibly pain-clinic interventions and may in future require surgery, including AC joint stabilisation, sacro-iliac joint fusion, lumbar decompression and fusion, with possible revision procedures. He also envisages ongoing rehabilitation and ergonomic measures to optimise the plaintiff's functioning within the confines of sedentary to light work.

[13] Dr van Aswegen, the neurosurgeon, testified that the plaintiff sustained a moderate traumatic brain injury as a result of the collision. That conclusion was based on objective clinical features, including a period of loss of consciousness, prolonged post-traumatic amnesia, documented confusion, and radiological evidence of cerebral oedema. He explained that such an injury involves shearing forces within the brain and is associated with lasting neurocognitive and neurobehavioural consequences.

[14] He confirmed that the plaintiff suffers from persistent neurocognitive deficits, including impaired memory, reduced attention and concentration, and slowed processing speed, together with neuropsychiatric *sequelae* such as irritability, mood disturbance and post-traumatic stress symptoms. In his opinion, these deficits are permanent in nature and are unlikely to improve; there is, in fact, a risk of gradual deterioration over time.

[15] Dr van Aswegen further testified that these impairments materially affect the plaintiff's ability to function in a work environment. They reduce his capacity to learn and retain new information, impair his ability to work accurately and efficiently, limit his tolerance for stress and complexity, and negatively affect his interpersonal functioning.

[16] In sum, Dr van Aswegen's evidence was that the plaintiff is effectively excluded from his pre-morbid field of heavy manual work, while his ability to transition to lighter or more cognitively demanding employment is materially compromised by his neurocognitive and psychological deficits particularly as the plaintiff's condition requires long-term multidisciplinary management. This arises from the combined effect of his moderate traumatic brain injury, with permanent neurocognitive and psychosocial *sequelae*, and his significant orthopaedic and physical impairments.

[17] He identified reasonably foreseeable future medical interventions as including ongoing neurosurgical or neurological follow-up to monitor the *sequelae* of the traumatic brain injury; periodic neuropsychological reassessment together with rehabilitative and compensatory cognitive interventions; psychiatric and psychological treatment for depression and post-traumatic stress symptoms, including likely long-term medication and psychotherapy; and continued rehabilitative therapies, including occupational therapy, aimed at functional adaptation and vocational rehabilitation.

[18] Mr Roper, a clinical psychologist and registered neuropsychologist, conducted a neuropsychological assessment of the plaintiff and testified as to its results. He explained that neuropsychological testing must be interpreted in context, with reference not only to the test scores themselves but also to the plaintiff's pre-morbid functioning, subjective complaints and collateral information.

[19] As to pre-morbid functioning, Mr Roper noted that the plaintiff's formal schooling was modest, that he failed Grades 4, 9 and 12, and that he was not naturally inclined towards clerical or office-based work. At the same time, he functioned adequately in practical, hands-on work and ultimately qualified and worked as a diesel mechanic. Mr Roper's evidence was that the plaintiff's vocational strength lay in practical mechanical work rather than in academic or clerical fields.

[20] The central feature of the plaintiff's test profile, according to Mr Roper, was marked fluctuation in performance across virtually all cognitive domains tested, including attention and concentration, memory, executive functioning, psychomotor speed and language fluency. He explained that the plaintiff was not uniformly poor across all tests, rather, he sometimes performed adequately and at other times below average, even within the same domain. In Mr Roper's opinion, that pattern of intra-individual variability is typical of a moderate traumatic brain injury and signifies that the plaintiff is unable to sustain reliable cognitive performance over time or in varying circumstances. Mr Roper further explained that pain and anxiety both worsen cognitive inefficiency. In his view, the plaintiff's functioning reflects the combined effect of the brain injury, chronic pain and PTSD-related anxiety.

[21] On prognosis, Mr Roper's evidence was that the plaintiff's brain injury is permanent. At best the condition can be managed, but there is no prospect of true recovery of the injured brain tissue; and the deficits in attention, concentration and executive functioning are likely to persist indefinitely.

[22] Mr Roper also drew an important distinction between memory and attention. He testified that, although the plaintiff reported forgetfulness, some formal memory tests were adequate. In his view, the core deficit lies more in sustained attention and concentration than in pure memory storage. When attention lapses, information is not properly encoded, and that is then experienced as forgetfulness.

[23] Finally, Mr Roper accepted that he had not personally observed the plaintiff at work and acknowledged that the plaintiff has remained employed for several years after the accident. He explained, however, that this did not negate the test findings. It suggested rather that the plaintiff had managed, thus far, in a familiar role and supportive environment, while remaining vulnerable to attentional lapses, fluctuations and error, particularly if the work context became less supportive or the demands changed.

[24] Ms van Zyl, the occupational therapist, assessed the plaintiff's functional capacity with reference to his physical, cognitive and psychosocial functioning, and to the demands of both his present occupation and possible alternative work. Her evidence was based on her own clinical and functional-capacity assessment together with the opinions of the other experts she considered. She accepted that the plaintiff had sustained a moderate traumatic brain injury with persistent neurocognitive symptoms, including difficulties with attention and concentration, slowed mental response speed, verbal-memory difficulties, fluctuating constructional ability, executive-functioning vulnerabilities and fluctuating verbal fluency. She also took into account the plaintiff's depressive disorder associated with the traumatic brain injury, reduced self-esteem, and significant post-traumatic stress symptoms. On the orthopaedic side, she proceeded on the basis of a Grade II subluxation of the left acromio-clavicular joint, lumbar-spine injury with a risk of accelerated degeneration, and pelvic injury with sacroiliac joint instability and surgically treated diastasis. She recorded that the ophthalmologist found no structural or functional visual abnormality of relevance to work capacity.

[25] Ms van Zyl classified the plaintiff's work as a diesel mechanic on large agricultural machinery as heavy work. She explained that it requires prolonged standing, stooping, bending, crouching, kneeling, working in confined spaces and above shoulder height, together with the handling of tools and components. She also emphasised that the work has a significant cognitive component, since it involves dismantling and reassembling machinery, keeping track of parts and sequence, and working accurately and safely.

[26] On her objective functional findings, Ms van Zyl considered the plaintiff unsuitable for handling loads beyond the light category. Even within that range, she considered frequent lifting contraindicated. She found that his tolerance for sitting and walking was reduced; that his capacity for stooping, bending, crouching, kneeling and working above shoulder height was notably diminished; and that he did not meet the postural and mobility demands of diesel-mechanic work. She also found that his endurance was reduced and that he required rest breaks when activity was sustained.

[27] Cognitively and psychosocially, she recorded ongoing problems with the plaintiff's concentration and memory, together with irritability, anger and headaches affecting concentration. Her evidence was that these deficits place the plaintiff at a disadvantage in his present trade and would also impair his ability to cope with sedentary or light work where that work is cognitively demanding, deadline-driven or safety-critical. Physically, she considered the plaintiff unsuited to heavy work and therefore unsuited to his present occupation as a diesel mechanic. In her opinion, continued heavy work would likely accelerate degenerative change, increase pain and reduce function over time. Cognitively and psychologically, she considered that his deficits materially compromise his reliability and safety in work requiring sustained concentration, sequencing and safety-critical decisions.

[28] In her overall assessment of the plaintiff's employability, Ms van Zyl concluded that the plaintiff is permanently restricted to sedentary or light work, and then only with accommodation for reduced lifting tolerance, postural limitations and the need for breaks. She considered him unlikely to sustain heavy work to normal retirement age and vulnerable to early exit from his trade. She further considered that, if he were to lose his current employment, he would likely be forced into more sheltered, less demanding and lower-paid work, or periods of unemployment. Her evidence was accordingly that the plaintiff is an unequal competitor in the open labour market. Accordingly, ongoing occupational therapy and vocational rehabilitation will be required to assist the plaintiff in transitioning from heavy manual work to more suitable, but lower-paid, sedentary or light occupations.

[29] Dr Jacobs, the industrial psychologist, translated the medical and functional evidence into its labour-market consequences. In doing so, he relied on the orthopaedic, neurosurgical, neuropsychological and occupational therapy evidence, all of which he accepted. He recorded that, pre-morbidly, the plaintiff followed a practical and progressively improving vocational path, culminating in qualification for and employment as a diesel mechanic. In his view, but for the accident, the plaintiff would probably have continued along a typical artisan career trajectory, remaining fully

employable in heavy mechanical work, with prospects of stable employment, overtime earnings and advancement to retirement.

[30] As to the post-morbid position, Dr Jacobs' evidence was that the plaintiff continues to work, but under significant constraint. Physically, he experiences persistent shoulder and lower-back pain, reduced strength, impaired grip, and reduced endurance, requiring a slower pace and frequent rest breaks. Cognitively and psychologically, he suffers from the *sequelae* of a moderate traumatic brain injury, including impaired memory, attention and concentration, together with PTSD and depressive features, all of which affect his reliability and performance at work.

[31] Dr Jacobs emphasised that the plaintiff's continued employment is not an indicator that his earning capacity has remained intact, but rather a reflection of his personal motivation and the fact that he remains in a familiar and relatively supportive environment. Relying on the opinions of medical experts and the occupational therapist, he concluded that the plaintiff is physically unsuited to heavy diesel-mechanic work and should not continue in such employment. At the same time, his neurocognitive and psychological impairments materially limit his ability to compete for and sustain alternative, more cognitively demanding employment.

[32] A central feature of Dr Jacobs' opinion was that the plaintiff's impairment, both physically and mentally, leaves the plaintiff without a viable occupational niche: he cannot safely continue in heavy manual work, and he is not a fair competitor for sedentary or clerical work. The result is that he is not an equal competitor in the open labour market. Accordingly, he concluded that the plaintiff faces a substantially curtailed work-life expectancy, diminished prospects of advancement, and a materially reduced earning capacity. He considered the plaintiff to be at high risk of future job loss and unemployment, and testified that, once he loses the support of his current employer, he will probably struggle to obtain and sustain alternative employment. On that basis, Dr Jacobs expressed the opinion that the plaintiff is, for practical purposes, unemployable in the open labour market.

### **The plaintiff's earning capacity**

[33] When an injury impairs a plaintiff's ability to exploit his labour and skills in the market, the resulting diminution is compensable in money. In *Rudman v Road Accident Fund*<sup>1</sup> (*Rudman*) the Supreme Court of Appeal held that '... where a person's earning capacity has been compromised, "that incapacity constitutes a loss, if such a loss diminishes their estate" and "he is entitled to be compensated to the extent that his patrimony has been diminished."' <sup>2</sup> Whether an incapacity constitutes a loss depends on the facts of the particular case. What must be proved is that the reduction in earning capacity has, in truth, resulted, or will result, in pecuniary loss. In *Rudman* the court made it plain that a physical disability affecting earning capacity does not, without more, translate into a diminution of estate or patrimony. What must be proved is that the reduction in earning capacity has in truth resulted, or will result, in pecuniary loss.<sup>3</sup>

[34] Before the collision, the plaintiff had already embarked upon a skilled and practical career path. The probabilities favour the conclusion that, but for the accident, he would have continued along the career path of a diesel-mechanic, earning at levels commensurate with that trade and remaining capable of heavy manual work until ordinary retirement age, subject to the ordinary contingencies of life and work. The plaintiff's post-morbid position is materially different. Although the plaintiff remains employed as a diesel mechanic, the evidence shows that he does so in circumstances of pain, limitation and accommodation, within a comparatively protected environment. His present employment cannot be treated as a reliable indicator of his earning capacity in the open labour market.

[35] The evidence shows that his work is more controlled than the heavier forms of diesel-mechanic work in the broader market; that he experiences substantial difficulty coping with its physical demands; that he requires assistance with heavier tasks; that his working day is affected by pain, fatigue and reduced speed; and that his longer-term

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<sup>1</sup> *Rudman v Road Accident Fund* [2002] ZASCA 129; 2003 (2) SA 234 (SCA).

<sup>2</sup> *Ibid* para 11.

<sup>3</sup> *Ibid*.

suitability for the trade is doubtful. On the uncontested evidence, the plaintiff is no longer suited to heavy diesel-mechanic work as a stable long-term occupation, nor does he have a secure alternative career path. The lighter work notionally open to him is lower-paid, scarce and not guaranteed. Even that work would be undertaken with substantial disadvantage because of his cognitive and psychological limitations.

[36] If his current employment were lost, the probabilities do not favour the conclusion that he would secure and maintain equivalent work elsewhere. On the expert evidence, he would face a labour market for which he is physically and psychologically ill-suited. Accordingly, I am satisfied, on the evidence in this matter, that the plaintiff has discharged the burden of proving that his earning capacity has been materially diminished and that this diminution will probably result in pecuniary loss.

### **The actuarial calculations**

[37] In *Southern Insurance Association Ltd v Bailey NO*,<sup>4</sup> the then Appellate Division explained the difficulty inherent in the assessment of future loss:

‘Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.

It has open to it two possible approaches.

One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown.

The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative.

It is manifest that either approach involves guesswork to a greater or lesser extent.’<sup>5</sup>

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<sup>4</sup> *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A) at 112E-114F.

<sup>5</sup> *Ibid* at 113F-114A.

[38] Actuarial evidence, while of considerable assistance, is not decisive. It must be evaluated in light of the totality of the evidence and the factual context of the case. In the end, the assessment of loss remains a matter for the court.<sup>6</sup>

[39] The Munro actuarial report proceeds on the assumption that the plaintiff's projected gross future earnings are the same in both the uninjured and injured scenarios. It therefore does not model a different post-morbid career path, nor is the plaintiff's retirement age or earnings trajectory reduced. Instead, the report reflects the plaintiff's post-accident disadvantage by the application of differing contingencies to the same projected earnings base. On that approach, the plaintiff's gross future earnings are taken at R6 548 700.00 in both the uninjured and injured scenarios. In the uninjured scenario, a 15% contingency deduction is applied, yielding R5 566 395.00. A 65% contingency deduction was applied in the injured scenario, yielding R2 292 045.00, and thus a future loss of R3 274 350.00. The calculations were done mindful of the effect of the statutory cap on future loss of earnings.

[40] In the light of the uncontested evidence, there is no reason not to accept the actuarial capital figures as a proper foundation for the assessment. The real issue is the contingencies, if any, to be applied in order to arrive at a fair measure of the plaintiff's loss.

[41] The plaintiff contended in argument that a 0% post-morbid contingency should be applied. Properly understood, that submission must be taken to mean that there is, in truth, no reliable post-morbid income stream available, or none sufficiently secure for a meaningful post-morbid calculation. I do not, however, consider it proper to disregard entirely the fact that the plaintiff remains employed and continues, for the present, to earn an income. For that reason, I do not treat his earning capacity as wholly extinguished. But the evidence plainly shows that only a limited portion of the projected post-morbid earnings can realistically be treated as secure.

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<sup>6</sup> *Road Accident Fund v Kerridge* [2018] ZASCA 151; 2019 (2) SA 233 (SCA) para 35.

[42] In all the circumstances, I consider a post-morbid contingency of 65% to be fair. That deduction recognises the plaintiff's continued present earnings, but properly reflects the fragility of his continued employment, the substantial risk of a premature end to his trade, and his marked disadvantage in the open labour market. Applying that contingency on the Munro methodology yields the following result: The uninjured future earnings of R6 548 700.00 less a 15% contingency deduction, amount to R5 566 395.00. The injured future earnings of R6 548 700.00, less a 65% contingency deduction, amount to R2 292 045.00. The resulting future loss of income is accordingly R3 274 350.00.

### **Past medical expenses**

[43] The plaintiff claims an amount of R312 932.68 in respect of past medical expenses. The defendant did not place the amount of the plaintiff's claim for past medical expenses in issue, nor was it suggested that the expenses were unrelated to the injuries that the plaintiff sustained in the collision. The defendant's argument was rather that, because those expenses had already been paid by the plaintiff's medical scheme, the plaintiff had suffered no recoverable patrimonial loss and was therefore not entitled to recover them from the defendant.

[44] I was not referred to any authority in support of the proposition that, for that reason alone, the defendant is not liable. I shall nevertheless deal with the point, because I am mindful of the judgments in *Discovery Health (Pty) Ltd v Road Accident Fund and Another*<sup>7</sup> (*Discovery 1*) and *Discovery Health (Pty) Ltd v Road Accident Fund and Another*<sup>8</sup> (*Discovery 2*).

[45] *Discovery 1* concerned the defendant's directive of 12 August 2022, which instructed its employees to reject claims for past medical expenses where those expenses had already been paid by a claimant's medical scheme. The premise of the directive was that, in those circumstances, the claimant had suffered no loss and that

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<sup>7</sup> *Discovery Health (Pty) Ltd v Road Accident Fund and Another* 2023 (2) SA 212 (GP)

<sup>8</sup> *Discovery Health (Pty) Ltd v Road Accident Fund and Another* [2024] ZAGPPHC 1303; 2025 (3) SA 225 (GP).

the defendant therefore had no duty to reimburse the claimant. Mbongwe J rejected that approach, reviewed and set aside the directive, and interdicted the RAF from implementing it. The RAF's applications for leave to appeal were refused by both the Supreme Court of Appeal and the Constitutional Court.

[46] The defendant thereafter issued two further directives. The second directive required the defendant's employees to determine whether a claim fell within Prescribed Minimum Benefits or Emergency Medical Conditions. The third directive was based on s 19(d)(i) of the RAF Act, on the footing that claimants who had undertaken to reimburse their medical schemes had entered into an agreement of the kind contemplated by that section. These directives gave rise to *Discovery 2*.

[47] The majority in *Discovery 2* held that the second and third directives did not breach Mbongwe J's order because they were, in form, directed at different subject-matter. The minority took the opposite view. It held that the substance of Mbongwe J's order was that the RAF may not reject claims for past medical expenses merely because a medical scheme had paid them, and that the later directives were an impermissible attempt to reach the same result by different means.

[48] The Full Bench in *Road Accident Fund v Van Wyk (Appeal)*<sup>9</sup> (*Van Wyk*) considered both *Discovery* judgments in detail and preferred the approach in the minority judgment in *Discovery 2*. The Full Bench held that even if the second directive were otherwise competent, the defendant could not invoke it in general terms. The defendant had to plead and prove that the particular expenses claimed were Prescribed Minimum Benefits or Emergency Medical Conditions.

[49] Turning to the third directive, the Full Bench further held that s 19(d)(i) of the RAF Act is directed at champertous-type arrangements, not the ordinary arrangement in terms whereof a medical scheme pays in discharge of its contractual obligations to its

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<sup>9</sup> *Road Accident Fund v Van Wyk (Appeal)* [2026] ZAWCHC 39.

member. An obligation to reimburse owed by the claimant to the medical scheme is therefore not the kind of agreement contemplated by s 19(d)(i). The Full Bench also reaffirmed the application of the doctrine of *res inter alios acta*. The defendant is not entitled to appropriate to itself the benefit of the claimant's medical-scheme cover. The relationship between the claimant and the medical scheme is a collateral matter and does not reduce or extinguish the RAF's liability.<sup>10</sup>

[50] In the present matter, the basic difficulty for the defendant is that it did not properly rely on any directive. But even if it had done so, and even if such directive were assumed to be valid, that would not have been enough. I respectfully agree with the reasoning of the full bench in *Van Wyk* that that the defendant would still have had to plead and prove facts showing that the particular expenses claimed fell within the scope of the directive. It did not do so. In my view, the arrangement between the plaintiff and his medical scheme is, in any event, *res inter alios acta* as far as the defendant is concerned. It does not avail the defendant to say that, because the plaintiff happened to enjoy medical-scheme cover, the defendant's liability has been extinguished.

### **Costs**

[51] The plaintiff seeks a punitive costs order on the scale as between attorney and client. The basis advanced for such an order, in overarching terms, is that the defendant failed timeously and properly to investigate and consider the claim; raised, on the first day of the trial, a special plea of prescription which was thereafter withdrawn; failed properly to instruct its legal representatives for trial; did not participate meaningfully in the hearing on the issues it had itself placed in dispute; and, by its conduct, occasioned unnecessary expense, including the attendance of the plaintiff's expert witnesses.

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<sup>10</sup> The full court in *Discovery 2* granted Discovery Health leave to appeal against the majority judgment. See in this regard *Discovery Health (Pty) Ltd v Road Accident Fund and Another (Leave to Appeal)* (2023-117206) [2025] ZAGPPHC 363 (9 April 2025). As noted in *Van Wyk NO v Road Accident Fund* (20944/2022) [2026] ZAWCHC 210 (7 May 2026) para 27, the appeal is still pending.

[52] There is force in much of that criticism. The manner in which the defendant conducted the litigation was decidedly less than what is expected of a responsible litigant. I am not persuaded, however, that the defendant's conduct warrants an attorney-and-client costs order in respect of the trial as a whole.

[53] That said, in my view a more confined punitive costs order is justified as a mark of this Court's displeasure at the manner in which the special plea of prescription was raised and then abandoned. The special plea was introduced at the eleventh hour. Although the amendment was not opposed, the plaintiff was required to meet it by delivering a replication and preparing argument to demonstrate why the plea was bad in law and unsustainable on the facts. Only after those steps had been taken was the plea abandoned, by which stage valuable court time had already been wasted.

### **Order**

[78] In the result, the following order is made:

1 The defendant, having accepted its liability to pay 100% of the plaintiff's proven or agreed damages arising out of a motor vehicle accident which occurred on 21 November 2020, is ordered to pay the plaintiff:

1.3 the amount of R3 274 350 in respect of future loss of income into the following bank account:

1.4 the amount of R312 932.68 in respect of the plaintiff's past medical expenses.

2 Payment of the aforesaid amounts must be made into the bank account of the plaintiff's attorney with the following details:

**HONEY ATTORNEYS - TRUST ACCOUNT**

**NEDBANK - MAITLAND STREET BRANCH, BLOEMFONTEIN**

**BRANCH CODE: 11023400**

**ACCOUNT NO: 1[...]**

**REFERENCE: Y JV RENSBURG/bv/J04257**

3 Interest shall accrue on the capital amounts awarded to the plaintiff in respect of his claims for future loss of income and past medical expenses calculated from 15 (fifteen) days from the date of this order until the date of payment.

4 Interest shall accrue on the plaintiff's taxed costs calculated from 15 (fifteen) days from date of taxation to the date of payment.

5 The defendant is ordered to furnish an undertaking to the plaintiff in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, for 100% of the costs of the future accommodation of the plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to him arising out of injuries sustained by him in the motor vehicle accident of 21 November 2020 in terms of which undertaking the defendant will be obliged to compensate him in respect of the said costs after the costs have been incurred and on proof.

6 The defendant shall pay the plaintiff's taxed or agreed legal costs, which shall include the trial dates of 25 November 2025, 26 November 2025, 28 November 2025 and 24 March 2026, including the costs of counsel on Scale C where applicable, and the reasonable qualifying and reservation fees of the following experts:

6.3 Dr A van Aswegen (neurosurgeon);

6.4 Mr L Roper (neuro and clinical psychologist);

6.3 Dr J Preddy (orthopaedic surgeon);

6.4 Dr KJP Lubunya (ophthalmologist);

6.5 Drs Spies and Partners (radiologists);

6.6 Mrs L van Zyl (occupational therapist);

6.7 Dr EJ Jacobs (industrial psychologist);

6.8 Munro Forensic Actuaries.

7 The plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the defendant.

8 The scale of the plaintiff's costs in the matter shall be on a party and party scale, save that the costs of the trial date of 25 November 2025 shall be paid on an attorney and client scale.

9 The plaintiff is declared a necessary witness.

**W A VAN ASWEGEN**

**ACTING JUDGE OF THE HIGH COURT**

**Appearances**

For the Plaintiff:

D Marx

Instructed by:

Honey Attorneys

Bloemfontein

For the defendant:

M Lepoto

Instructed by:

State Attorney

Bloemfontein