




**IN THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)**

CASE NUMBER: 6573/24

	DELETE WHICHEVER IS NOT APPLICABLE
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED YES/NO
(4)	
	
	12/06/2026
signature	DATE

In the matter between:

NKOSI NKULULEKO GIFT

PLAINTIFF

AND

ROAD ACCIDENT FUND

DEFENDANT

Delivered: this judgment was handed down electronically by circulation to the parties' legal representatives by email. The date of hand down is deemed to be 12 June 2026

JUDGMENT

Phahlamohlaka J

Introduction and factual background

[1] The plaintiff, Nkululeko Gift Nkosi, claims damages against the Road Accident Fund arising from a motor vehicle accident that occurred on 10 September 2022 on the N12 near Witbank.

[2] The plaintiff alleges that an unidentified vehicle swerved into his lane, causing him to take evasive action and collide with a stationary truck.

[3] The plaintiff also claims for past and future loss of earning capacity as well as future medical expenses.

[4] The defendant, Road Accident Fund, disputes liability and quantum. Liability.

[5] On liability, the plaintiff testified under oath, and he called no witnesses to testify on his behalf. The defendant closed its case at the close of the plaintiff's case without calling any witnesses.

[6] On quantum, the plaintiff at the outset brought an application for the evidence of the expert witnesses to be dealt with by way of affidavits in terms of Rule 38(2) of the Uniform Rules of Court. The application was not opposed by the defendant, and I accordingly granted the application.

[7] The plaintiff testified as follows regarding the accident:

7.1 On 10 September 2022 at about 23:00 he was the driver of a motor vehicle on the N12 highway. Another vehicle immediately swerved into his lane. The plaintiff then swerved to the left and drove into a truck that

was stationery and bumped that truck at the back. As a result of the accident, he sustained injuries to his forehead, left hip and right toe.

7.2 The plaintiff further testified that at the time of the accident he was working as a Bolt driver, earning about R 8 000.00 per month. After the accident he could not resume his pre-accident job, not because of the injuries but because he did not have a vehicle. However, Post-accident he secured employment at Secunda as a general worker. Later he got a better offer of employment at IPSCOR as a Machine Operator. He is still working at IPSCOR earning R 20 000.00.

[8] As alluded to earlier, the defendant called no witnesses because according to the plaintiff no witnesses could be identifiable.

The injuries and sequelae

[9] The plaintiff presented the evidence of the following experts in an endeavour to prove damages suffered as a result of the injuries sustained in the accident:

1. Dr. NC Hadebe (Orthopaedic Surgeon) opined that the Plaintiff sustained a fracture of the left acetabulum (hip), right big toe metatarsophalangeal joint dislocation, and a head laceration. Treated with surgery and physiotherapy.

The plaintiff complains of ongoing pain in the left hip and right foot, especially with standing, walking, and cold weather. He also suffers occasional headaches.

On prognosis Dr Hadebe concluded that Injuries are permanent but manageable with pain medication and possible future surgery (right foot). The

pain limits the plaintiff's ability to perform jobs requiring prolonged standing or walking.

The expert further opined that the Plaintiff's ability to compete in the open labour market is affected, but life expectancy is not reduced.

2. Miyelani Molemi (Occupational Therapist) reported that pre-accident the Plaintiff worked as a Bolt driver, which is a light to medium work. post-accident the plaintiff did not return to Bolt driving because the vehicle written off. , not due to incapacity). He later found a job and worked as a general worker and then as a roofbolter operator which falls under medium to heavy work.

The Occupational Therapist recorded that the plaintiff could perform work of early medium strength demand (up to 12.5kg) but with pain.

3. PG Baloyi (Industrial Psychologist) recorded that pre-accident earnings the plaintiff was earning R380 per week as a Bolt driver (based on 40% share of fares). This is below the typical salary for unskilled workers.

Post-Accident Employment: After a period of unemployment, plaintiff worked as a general worker (R9,019/month), then as a roofbolter operator (R6,065/week, or R315,386/year), which is within the semi-skilled range.

On Career Trajectory the industrial psychologist opined that despite physical limitations, plaintiff's earnings and vocational standing have improved post-

accident. However, his physical capacity is reduced, and his employment is less secure.

If he loses current employment, he may struggle to find suitable work due to physical limitations. Therefore, higher-than-normal contingency deductions for future loss of earnings due to increased risk were recommended.

4. Wim Loots Actuarial Consulting (Actuary) calculated loss of earnings based on industrial psychologist's figures (R380/week pre-accident, actual payslips post-accident).

Results:

-Past loss: R10,429 (after contingencies)

-Future loss: R2,028,253 (after contingencies)

-Total: R2,038,682

The Actuary used higher post-accident contingencies (45%) to reflect medical experts confirm permanent impairment and pain, but not total incapacity.

[10] Defendant challenges the reliability of pre-accident earnings, causation (vehicle loss vs. incapacity), and the factual basis for future loss.

Liability

[11] The plaintiff bears the onus to prove, on a balance of probabilities, that the collision was caused by the negligence of an unidentified driver and that such negligence resulted in his injuries. The plaintiff's evidence regarding the mechanism of the accident was inconsistent across affidavits and oral testimony, with material contradictions as to whether he was struck from behind or swerved to avoid an encroaching vehicle.

[12] No independent witnesses were called to corroborate the presence or actions of the unidentified vehicle, despite the availability of such witnesses. The stationary truck was described as large and fitted with reflectors, and the plaintiff conceded under cross-examination that he failed to apply his brakes or take alternative evasive action.

[13] The plaintiff contradicted himself on material aspects relating to how the collision occurred. As a single witness, his evidence must be reliable and consistent in order for the court to accept it.

[14] In *S v Mafaladiso e n Andere*¹ The court stated that where there were material differences between the witnesses evidence and prior statement, the final task of the trial judge was to weigh up the previous statement against viva voce evidence to consider all the evidence and to decide whether it was reliable or not and whether the truth was told, despite any shortcomings.

[15] The plaintiff stated in the accident report that his vehicle was hit at the back by a truck that was following him. He could not explain why that version changed materially when he testified in court. This is not just a minor discrepancy that can be ignored.

[16] Counsel for the plaintiff referred me to several judgments to try and persuade me to find that the insured driver was negligent. All the authorities confirm that the test is objective.²

¹ 2003(1) SACR 583(SCA) at 584

² *Van Eeden v Minister of Safety and Security (Women's Legal Centre Trust as amicus curiae)* [2002] 4 ALLSA 346 (SCA)

[17] In *Kruger v Coetzee*³ the court stated that:

“In an action for damages alleged to have been caused by the defendant's negligence, for the purposes of liability *culpa* only arises if a diligence *pater familias* in the position of the defendant not only would have foreseen the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss, but would also have taken reasonable steps to have guarded against such occurrence; and the defendant failed to take such steps.”

[18] The court finds that the plaintiff failed to maintain a proper lookout and exercise reasonable. On the evidence, the plaintiff has not discharged the burden of proving that the unidentified driver was the cause of the collision. The more probable cause is the plaintiff's own inattention or negligence.

[19] Accordingly, the plaintiff 's claim stands to fail on the basis that he failed to prove that the insured driver was negligent. I therefore find that the defendant is not liable.

Order

[15] In the result I make the following order:

1. The plaintiff's claim is dismissed.
2. No order as to costs.



K F Phahlamohlaka
Judge of the High Court

³ 1966 (2) SA 428 (A)

Appearances

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Date judgment reserved: 16 February 2026