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**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG**

CASE NO: 2025/114889

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

_____	<u>18 /06/2026</u>
SIGNATURE	DATE

In the matter between:

HLUNGWANA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 10:00 on 18 June 2026.

JUDGMENT

Malangeni AJ

Introduction

[1] In these proceedings, no oral evidence was led by the Plaintiff. Evidence was tendered in terms of Rule 38(2) of the Uniform Rules of Court after an application for such was made and later granted by this court. It has been placed on record that merits have been settled in full. Therefore, this Court is called upon to determine only the issue of loss of earnings. There has been no appearance by the defendant, and no evidence has been adduced by the defendant.

Background

[2] The Particulars of Claim state that on or about 10 December 2017, around 14h10 at N4 Road, Belfast, Mpumalanga Province, the Plaintiff was a driver of a motor vehicle bearing registration letters and numbers F[...] when an unknown driver swerved into his lane and collided with his vehicle.

Evidence tendered on behalf of the plaintiff

Orthopaedic Surgeon's Medico-Legal Report by Dr Andy Buatré

[3] According to the orthopaedic report, the Plaintiff was the driver of the motor vehicle involved in the accident. The Plaintiff reportedly regained consciousness approximately six hours later whilst at Middelburg Hospital and had no recollection of being transported to the hospital by emergency medical services.

[4] The injuries sustained by the Plaintiff were diagnosed as a head injury accompanied by loss of consciousness for more than six hours, a fracture of the cervical spine at the C6 level, rib fractures with severe chest injury, and soft tissue injuries to the lumbar spine.

[5] The report records that the Plaintiff was initially resuscitated and admitted to Middelburg Hospital. It is further noted that the Plaintiff's travelling companion succumbed to injuries sustained in the accident after admission to the intensive care unit. On 11 December 2017, the Plaintiff was transferred to Witbank Hospital for the

removal of a foreign body from an open skull fracture. He subsequently returned to Middelburg Hospital on 13 December 2017, where he continued receiving medication, antibiotics and analgesic treatment until discharged.

[6] Dr Buatré further noted that the Plaintiff had no significant prior medical history. The report also notes that prior to the accident, the Plaintiff enjoyed recreational soccer activities.

[7] At the time of assessment, the Plaintiff complained of chronic neck and back pain, frequent headaches, chest pain, forgetfulness and loss of concentration. The Plaintiff was also reported to exhibit behavioural difficulties, including anger and aggression, together with symptoms suggestive of depression and anxiety.

[8] The expert concluded that the sequelae of the head injury should be deferred to a neurosurgeon and neuropsychologist for further evaluation and detailed assessment. He further opined that although the chest injury and the cervical and lumbar spinal injuries had healed, the Plaintiff continued to experience significant chronic cervical and lumbar pain. The report additionally records that should the Plaintiff's cervical spondylosis progress in severity, orthopaedic surgical intervention in the form of spinal fusion may become necessary.

The Occupational Therapist's Medico-Legal Report

[9] The Plaintiff was assessed by the occupational therapist, Mr Solly Mpfela, on 23 August 2020, when the Plaintiff was 38 years old. The report reflects that prior to the accident, the Plaintiff was independent in his activities of daily living and drove his own motor vehicle by virtue of a Code 10 driver's license obtained in 2003. The Plaintiff completed Grade 12 at Shobiana High School in 2003, having repeated Grade 3, and further obtained a Grade A security certificate in 2005.

[10] At the time of the accident, the Plaintiff was employed by Cotton On as a picker, a position he had occupied since 2013. He reportedly earned approximately R5 500.00 per month and worked 10 hours per day, five days per week. His duties

included packing, sorting and wrapping clothing, as well as placing boxes into trolleys.

[11] The report records that on 10 December 2017, the Plaintiff was involved in a motor vehicle accident whilst driving. Following the collision, he was transported by ambulance to Middelburg Hospital, where he was admitted for three days. He was thereafter transferred to Witbank Hospital for a period of two days before being transferred back to Middelburg Hospital for one further day.

[12] The occupational therapist noted that following the accident, the Plaintiff was unable to return immediately to his pre-accident occupation and remained on incapacity leave for approximately one month, during which period his income was adversely affected. Although he subsequently resumed his previous occupational duties, he later resigned in April 2018 due to his inability to cope with the physical demands of the work, particularly as a result of experiencing shortness of breath.

[13] The Plaintiff remained unemployed until July 2019, when he secured alternative employment at DFC as a machine operator earning approximately R1 800.00 per week and working eight hours per day, five days per week.

[14] The occupational therapist recommended that the Plaintiff undergo occupational therapy treatment for approximately 8 to 10 hours, inclusive of visits. Such therapy was aimed at advising the Plaintiff on alternative methods of performing tasks in order to reduce pain and fatigue, recommending ergonomic adjustments within the home environment, assisting with the selection of assistive devices to enhance participation and reduce discomfort, and improving the Plaintiff's occupational performance components.

[15] The occupational therapist opined that the plaintiff's current work rate, work qualification profile as well as physical capacity could not meet the physical requirements for work samples that fall within medium to heavy types of work category as well as those that require whole body range of motion, agility and stamina through the gross body movements due to reported pain on the sternum and back of the shoulder pain when working above head level for prolonged periods. His

right rib pain had a negative effect on his competitive participation in work samples that require frequent working below the knee level in stooping positions. His physical capacity, work rate, and work qualification profile are presently suitable for the sedentary to light work category.

[16] The physical demands of his post-accident occupation as a Machine Operator fall within the light work category; he no longer retains his pre-accident physical demands but copes with the physical demands of his current occupational duties. However, his effectiveness and competitiveness will be affected as long as mechanical pain persists. The occupational therapist recommends that the Plaintiff will benefit from optimal pain management, followed by right ribs and back rehabilitation, coupled with education on methods of task approach and task execution, as well as joint protection techniques. His pain might decrease, and his comfort level increase, and he will likely be able to cope with sedentary to light occupations.

Industrial Psychologist's Medico-Legal Report by Mr Tshepo Kalanko

[17] The Industrial Psychologist assessed the Plaintiff on 20 August 2020, approximately two years and eight months after the accident which occurred on 10 December 2017.

[18] The report reflects that during the assessment, the Plaintiff was articulate in Setswana, appropriately dressed and cooperative. His memory was regarded as fair, and his information processing speed was observed to be good.

[19] The Plaintiff reportedly denied having sustained any significant injuries or having undergone any surgeries prior to the accident. He further denied suffering from pre-existing chronic medical conditions or being on chronic medication. The industrial psychologist, however, noted that no medical records were available to independently verify this information.

[20] In relation to the injuries sustained in the accident, the Plaintiff reported having suffered chest and head injuries. He further indicated that, as a consequence of the accident, he had trouble lifting heavy objects, suffered from forgetfulness, and was unable to participate in physically demanding activities and sports.

[21] The report referred to table 8, which illustrates the suggested earnings assumptions for semi-skilled workers in the non-corporate sector, as contained in Koch (2017).

[22] Table 8: Suggested earnings assumptions for non-corporate workers (Koch, 2017)

Occupation	Lower Quantile	Median	Upper Quantile
Semi-skilled worker	R20 600 per annum	R59 000 per annum	R151 000 per annum

[23] The industrial psychologist further noted that the Plaintiff failed to provide pay slips or contact details of his former employer, as a result of which his earnings could not be independently verified. Having regard to the Plaintiff's educational background, geographical area, general skills and abilities, the industrial psychologist recommended that earnings between the median and upper quantile for semi-skilled workers be utilised for purposes of calculating the Plaintiff's loss of earnings.

[24] Regarding the Plaintiff's post-accident employment history, the report records that the Plaintiff initially returned to his pre-accident employment but subsequently resigned due to accident-related injuries. He thereafter secured alternative employment with DFC (Defraud FOOD Courier) as an operator.

[25] The industrial psychologist stated that the Plaintiff's employer confirmed that he was aware of the Plaintiff's involvement in a motor vehicle accident in 2017 and stated that the Plaintiff's work performance has since been affected by physical pain and discomfort arising from the accident. The employer indicated that the Plaintiff's work often requires supervision and assistance from colleagues.

[26] Due to the Plaintiff's physical limitations, he is unlikely to qualify for promotion to physically strenuous positions and is expected to remain in his current role. However, the employer stated that the Plaintiff may be considered for a supervisory position, which is not physically demanding, with earnings of approximately R10 000 per month (R120 000 per annum). The industrial psychologist opines that the plaintiff will have to depend on the empathy of his employer in maintaining his employment; thus, he has been rendered a vulnerable employee. This is consistent with the collateral gathered from Mr Khumalo, the Plaintiff's manager in his current employment, who noted that he has to be assisted by his colleagues at times. This places the claimant in a precarious position, as it would depend on how long the employer is willing to accommodate him.

[27] The employer further stated that the company's retirement age is 65 years and that the Plaintiff may continue working until retirement age, provided that he remains capable of performing duties within his physical limitations and receives the necessary assistance.

Actuarial Quantum by David Murerwa

[28] Mr Murerwa briefly stated that, in terms of income assumptions, he relied on the report compiled by the Industrial Psychologist. In terms of the pre-accident income, the claimant was employed as a Picker. For quantum purposes, the Industrial Psychologist recommends that earnings at the time of the accident be at the average of the median and upper quartile of the semi-skilled workers scale (R105 000 per annum, as per Koch 2017). At the age of 45, his earnings would have increased, assumed to be linearly to the upper quartile of the semi-skilled workers' scale (R186 000 per annum, as per Koch 2020). Thereafter, salary inflation continues until the retirement age of 65.

[29] Regarding post-accident income, the claimant was hospitalised for six days and recuperated for one week; during that period, he continued to receive remuneration. He returned to his pre-accident employment but later resigned in 2018 due to accident-related injuries. He secured alternative employment as an Operator in 2019 and remains employed in that capacity, earning R1 800 per week (R93 600

per annum, in 2025 money terms). His earnings would increase due to salary inflation until the retirement age of 65 years. A higher-than-normal post-accident contingency deduction was recommended.

[30] Mr Murerwa compiled his assessment results in the following:

Loss of earnings

	Pre- accident	Post- accident	Loss
Past loss	1 133 572	613 861	519 711
Future loss	3 333 014	1 431 303	1 901 711
Net total loss			2 421 422

The Arguments

[31] The legal representative asked the court to follow the contingencies raised by the actuary.

The Law

[32] The only evidence before this Court is that of the plaintiff. However, it does not mean that it is conclusive. In *McDonald v Young*,¹ the court stated as follows:

“It is settled that uncontradicted evidence is not necessarily acceptable or sufficient to discharge an onus. In *Kentz (Pty) Ltd v Power*, Cloete J undertook a careful review of relevant cases where this principle was endorsed and applied. The learned Judge pointed out that the most succinct statement of the law in this regard is to be found in *Siffman v Kriel*, where Innes CJ said: ‘it does not follow, because evidence is uncontradicted, that therefore it is true ... The story told by the person on whom the onus rests may be so improbable as not to discharge it’.”

¹ *McDonald v Young* [2011] ZASCA 31; 2012 (3) SA 1 (SCA) para 6.

[33] It is the duty of the plaintiff to prove on a balance of probabilities that he or she has lost his or her earning capacity. In *Moller v Road Accident Fund*,² the court stated that:

“To succeed in the claim for loss of income or earning capacity, the plaintiff has to establish on a balance of probabilities that as a result of the accident, he has lost future earning capacity.”

[34] The court in paragraph 47 stated as follows:

“It is trite that in claims for unliquidated damages, the plaintiff is expected to lead evidence to prove their loss. This is the norm irrespective of whether the claim is defended or not.”³

[35] When it comes to loss of earnings, the Plaintiff has referred this court to expert evidence.

[36] The role of expert evidence was described by Nicholas JA in *Southern Insurance Association Ltd v Bailey No*,⁴ in the following:

“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 opened up 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.”

[37] 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 strongly probable to speculative. It is evident that either approach

² *Moller v Road Accident Fund* [2025] ZANHC 57 para 19.

³ *Ibid* para 47.

⁴ *Southern Insurance Association Ltd v Bailey No* 1984 (1) SA 98 (A) at 113F-H.

involves guesswork to some extent. But the court cannot, for this reason, adopt a *non possumus* attitude and make no award. See *Hersman v Shapiro & Co*,⁵ where the court said the following:

“Monetary damage having been suffered, it is necessary for the Court to assess the amount and make the best use it can of the evidence before it. There are cases where the assessment by the Court is very little more than an estimate, but even so, if it is certain that pecuniary damage has been suffered, the Court is bound to award damages”.

[38] There is no prescribed formula for how the award for compensation for loss of earning capacity should be made. The Court relies on expert witnesses more, especially the actuary. In *MS v Road Accident Fund*,⁶ it was said that

“The evaluation of the amount to be awarded for the loss does not involve proof on a balance of probabilities. It is a matter of estimation. Where a court dealing with damages which are dependent upon uncertain future events – which is generally the case in claims for loss of earning capacity – the plaintiff does not have to provide proof on a balance of probabilities (by contrast with the question of causation) and is entitled to rely on the court’s assessment of how he should be compensated for his loss.”

Analysis

[39] Based on what experts have presented in their reports, the accident did not render the plaintiff unemployable. However, it left him unable to compete with healthier people in the open labour market. If the plaintiff can lose his current job, it will be hard and difficult for him to get a new job due to the physical impairment he sustained during the accident. This would be caused by competition from many unemployed people seeking job opportunities in the open labour market.

[40] The accident affected the physical health of the Plaintiff. Currently, he can only perform light work with limited stooping.

⁵ *Hersman v Shapiro & Co* 1926 TPD 367 at 379.

⁶ *MS v Road Accident Fund* [2019] 3 All SA 626 (GJ) para 36.

[41] It has been recorded that the Plaintiff has a grade 12 certificate and is currently employed. There is no proof to support this view. However, this does not bar this Court from considering a fair and reasonable award. The Industrial Psychologist indicated that he had spoken to the Plaintiff's manager, who confirmed the employment. The expert opined that the Plaintiff will not be able to compete fairly within the recommended work parameters of his level of education and work history. He is suited to be employable within the sedentary to light work category with some reasonable accommodation, considering reported physical complaints.

[42] The Industrial Psychologist recommended a higher contingency in the circumstances of this case. I am fully aware of the fact that expert opinion does not bind the court but helps it make an informed decision. I am alive to the fact that when it comes to contingencies, I must exercise discretion.

[43] it is evident from the Industrial psychologist's report that the plaintiff did not suffer total loss of earnings or capacity to earn. Instead, he suffered a residual capacity as evidenced by the fact that after the accident, he was able to return to his pre-accident employment. Although he claimed to have resigned due to the accident-related injuries. There is no collateral evidence to support his assertion that he resigned due to accident-related injuries, except for his employer who advised the Industrial psychologist that he was aware that the plaintiff was involved in a motor vehicle accident.

[44] I am of the view that pre- and post- morbid scenario be the same. I therefore decided to apply 20% contingency spread on future loss of earning capacity treating pre- and post-morbid as same. The result of my calculation will be an amount of R666 602.8 for future loss of earning capacity. I view this as a fair and reasonable for a candidate who is employable and is currently working. Regarding past loss of earnings, I have decided to apply 10% contingency deduction on both the pre- and post-morbid scenario. Therefore, the amount of past loss of earnings will be R467 738.94. The total amount for past and future loss of earnings amounts to R1 134 341.7.

Order

[44] In the result, I make the following order:

1. The Defendant is to pay the Plaintiff the amount of R1134 341.7.
2. The amount mentioned above shall be payable within 180 (one hundred and eighty) days from the date of this order. In the event the said amount is not paid within the 180 days, the Defendant shall be liable for the payment of interest on such amount, calculated from the date of the default to the date of payment.
3. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs on High Court Scale.

M MALANGENI
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

Appearances

Advocate Madiba for the Plaintiff

Instructed By: Ntshosa Madiba Inc.

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Date of Hearing: 24 November 2025

Date of Delivery: 18 June 2026