

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, PRETORIA**

**Case No: 7984/2020**

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

DATE: 23/4/2026

SIGNATURE:

In the matter between:

**DAVID OTLIA BALATE**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

---

**JUDGMENT**

---

**MATJELE AJ**

[1] This matter came before the Court by way of an application for special default judgment arising from a motor vehicle collision that occurred on 29 June 2019 at approximately 14h00 along Andrew Mapheto Drive, Tembisa, Gauteng. The plaintiff was a pedestrian when he was struck by a motor vehicle with unknown registration particulars driven by an unidentified driver. The claim is brought against the Road Accident Fund in terms of section 17 of the Road Accident Fund Act 56 of 1996.

[2] The papers show that the plaintiff's claim is duly lodged and that liability stands to be dealt with on the basis reflected in the draft order, namely that the defendant is liable for 100% of the plaintiff's proven or agreed damages. The application in terms of Uniform Rule 38(2), permitting the matter to proceed on affidavit, is likewise sought in the draft order and is supported by the expert notices and reports filed of record.

[3] The issues remaining for determination are the plaintiff's claim for past and future loss of earnings and his claim for general damages. In addition, the plaintiff seeks an undertaking in terms of section 17(4)(a) of the Act together with costs.

[4] As regards general damages, the plaintiff's heads of argument record that the Fund accepted, by letter dated 20 October 2021, that the plaintiff had sustained a serious injury and that the RAF 4 report completed by Dr P R Engelbrecht was accepted in terms of regulation 3(3)(c) and (d) of the Road Accident Fund Amendment Act 19 of 2005. The heads further record that the narrative test was satisfied on the basis of a serious long-term impairment. Serious injury is therefore not an issue in dispute.

[5] The actuarial report prepared by A C Strydom of SNG Argen Actuarial Solutions was compiled for purposes of quantifying the plaintiff's loss of income as at 17 April 2026, being the trial date used in the report. The actuary worked from the addendum industrial psychologist report of Ms R van Zyl dated 14 April 2026 and quantified the loss with reference to both the pre-morbid and post-morbid career scenarios.

[6] On the pre-morbid scenario, the plaintiff was employed as a general employee at Oakmore Panel Beaters at the time of the collision and earned R250 per week, equating to R12 999 per annum. The actuarial report records that, on instruction and with reference to the industrial psychologist's view, his likely career progression would have moved to a Paterson A1 basic wage at the 10<sup>th</sup> percentile, namely R82 547 per annum in April 2026 terms, with annual increases and retirement at age 65.

[7] On the post-morbid scenario, the plaintiff reportedly did not return to his pre-accident employment. He remained unemployed until July 2023, when he commenced casual sympathetic piecework as a general employee at PIM Panel Beaters and Motor Spares. The report records that the plaintiff worked approximately three days per month and earned between R400 and R600 per day, averaging about R1 500 per month or R18 000 per annum. The industrial psychologist considered him probably functionally unemployable, and the actuary was instructed to assume that the sympathetic employment would cease on 17 April 2026.

[8] The actuarial assumptions are standard and clearly articulated. The report used actual CPI increases before the calculation date, assumed inflation of 5% per annum thereafter, and assumed that income during employment would escalate at inflation plus 1%. A net discount rate of 2.5% per annum was applied in respect of future income. The report also considered the statutory RAF cap and expressly states that annual losses were limited to the cap where applicable, in accordance with the methodology recognised in the Sweatman judgment.

[9] Importantly, the main actuarial report left contingencies to be determined by the Court. Having considered the plaintiff's post-accident vocational vulnerability, the extended period of unemployment, the sympathetic and precarious nature of the post-morbid work, and the ordinary vicissitudes of life, I am satisfied that a contingency deduction of 25% is appropriate in respect of the future loss of earnings calculation. Appendix A to the actuarial report reflects the instructed contingency deductions and, on that basis, the actuarial result is a past loss of earnings of R79 998 and a future loss of earnings of R895 816, producing a total loss of earnings of R975 814. If 25% is deducted it leaves us with R731 861.

[10] In assessing this claim, the Court is guided by settled South African authority. In *Southern Insurance Association Ltd v Bailey NO*,<sup>1</sup> the Appellate Division held that, where there is material upon which an actuarial calculation can usefully be made, such

---

<sup>1</sup> 1984 (1) SA 98 (A).

calculation provides a logical basis for assessing damages, while recognising that the result remains an informed estimate rather than a matter of exact mathematical certainty. In *Road Accident Fund v Guedes*<sup>2</sup> the Supreme Court of Appeal reaffirmed that contingency deductions fall within the Court's discretion and must accommodate the vicissitudes of life.

[11] The same approach applies to general damages. In *Pitt v Economic Insurance Co Ltd*,<sup>3</sup> Holmes J cautioned that an award must be fair to both sides and that a court should guard against pouring largesse from the horn of plenty at the defendant's expense. Comparable South African awards remain no more than useful guides. In *Mgudlwa v Road Accident Fund*<sup>4</sup> and *Ndaba v Road Accident Fund*,<sup>5</sup> the courts awarded general damages in matters involving serious orthopaedic injuries. Those awards, together with the accepted serious injury assessment in this case, provide an appropriate framework for evaluating the plaintiff's claim.

[12] I am satisfied that the plaintiff has produced sufficient admissible evidence for the relief sought. The Rule 38(2) application was granted. The loss of earnings calculation is supported by the industrial psychologist's and the actuarial reports, both of which are properly before the Court. In the circumstances of this case, and specifically in relation to the uncertainty affecting the plaintiff's future work capacity and earnings trajectory, and the fact that he has been working somewhat after his injury, a contingency deduction of 30% in respect of future loss of earnings is fair, reasonable and properly aligned to the evidence.

[13] The remaining question is the proper award for general damages. Counsel for the plaintiff contends for an award of R600 000. Based on case law presented by the plaintiff's counsel on their addendum to heads of argument, specifically dealing with general damages, most of which involve several injuries additional to the plaintiff's

---

<sup>2</sup> 2006 (5) SA 583 (SCA).

<sup>3</sup> 1957 (3) SA 284 (N) at 287E–F.

<sup>4</sup> (818/2002) [2010] ZAECHMC 13.

<sup>5</sup> (EL 321/08) [2011] ZAECELLC 6.

injury, are below this amount, factoring their present values. I am satisfied that an award of R450 000 is fair and reasonable.

[14] It follows that the plaintiff is entitled to payment of R731 861 in respect of past and future loss of earnings, after the application of the contingency deductions referred to above, and R450 000 in respect of general damages, giving a total award of R1 181 861. The final order should follow the draft order, including the section 17(4)(a) undertaking and the costs provisions.

## **Order**

1. The plaintiff's application in terms of Rule 38(2) is granted and the matter may proceed on affidavits.
2. The plaintiff's claim is deemed to be duly lodged in terms of the Road Accident Fund Act 56 of 1996 and the defendant is liable for 100% of the plaintiff's proven or agreed damages.
3. The defendant is ordered to pay to the plaintiff the amount of R1 181 861,00 (One Million One Hundred and Eighty-One Thousand Eight Hundred and Sixty-One Rand) calculated as follows:
  - 3.1. Past and future loss of earnings: R731 861,00
  - 3.2. General damages: R450 000.00
  - 3.3. Total: R1 181 861,00
4. The aforesaid amount shall be paid to the plaintiff within 14 (fourteen) days of the date of this order, failing which the defendant shall be liable for interest thereon at the prescribed rate of interest per annum, calculated from 14 (fourteen) days after the date of this order to date of payment, as contemplated in section 17(3)(a) of the Road Accident Fund Act 56 of 1996.
5. The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of Act 56 of 1996 for payment of the future accommodation of the plaintiff in a hospital or nursing home, or treatment of, or rendering of a service or supplying of goods to him, resulting from the injuries sustained in the motor vehicle accident that

occurred on 29 June 2019, to compensate the plaintiff in respect of such costs after they have been incurred and upon proof thereof.

6. The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale, subject to the Taxing Master's discretion.

6.1. In the event that the costs are not agreed:

6.1.1. The plaintiff shall serve a notice of taxation on the defendant's attorney of record;

6.1.2. The plaintiff shall allow the defendant 14 (fourteen) court days from date of allocatur within which to make payment of the taxed costs;

6.1.3. Should payment not be effected timeously, the plaintiff shall be entitled to recover interest at the prescribed rate of 10.25% per annum on the taxed or agreed costs from date of allocatur to date of final payment.

6.2. Such costs shall include, but not be limited to:

6.2.1. The costs incurred in obtaining payment of the amounts mentioned above;

6.2.2. The costs of and consequent upon the employment of counsel, including counsel's full day fee, preparation, drafting of heads of argument, and related costs, the scale in terms of Rule 69 being scale B;

6.2.3. The costs to date of this order, including the costs of the attorney, attorney preparation for hearing and travelling for attendance at court;

6.2.4. The reasonable and taxable costs of all medico-legal, radiological, actuarial and addendum reports, and expert affidavits obtained by the plaintiff, as well as such reports furnished to the defendant and/or its attorneys, including but not limited to the following experts:

6.2.4.1. Dr P Engelbrecht, Orthopaedic Surgeon;

6.2.4.2. A Adroos, Occupational Therapist;

6.2.4.3. Dr A Pauw Verdie, Clinical Psychologist;

6.2.4.4. R van Zyl, Industrial Psychologist;

6.2.4.5. Dr M du Plooy, Orthotist/Prosthetist;

6.2.4.6. A C Strydom / Argen Actuarial Solutions, Actuary;

6.2.5. The reasonable and taxable costs incurred by and on behalf of the plaintiff in attending medico-legal examinations, including travelling costs, travelling time, interpreter costs, and the plaintiff's travelling costs from residence to office for purposes of such examinations;

6.2.6. The reasonable and taxable costs incurred in obtaining the accident report, medical records and completed RAF 1 form, including travelling time and travelling costs;

6.2.7. The reasonable and taxable costs consequent upon the preparation of the plaintiff's trial bundles and the keeping of notes thereof;

6.2.8. The reasonable accommodation costs, travelling costs and travelling time of the plaintiff, who is declared a necessary witness and present at the hearing;

6.2.9. The costs of the inspection in loco that was held;

6.2.10. The costs of the interpreter present at the hearing.

7. The amounts referred to above shall be paid to the plaintiff's attorneys, Spruyt Incorporated, by direct transfer into their trust account:

Bank: Standard Bank

Account number: 0[...]

Branch code: Hatfield (011545)

Ref: SD4086

8. There is no contingency fee agreement between the plaintiff and Spruyt Incorporated Attorneys.

---

**MATJELE AJ**  
**ACTING-JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

Counsel for the Plaintiff: Adv ACJ VAN DYK

Attorneys for the Plaintiff: Spruyt Inc. Attorneys  
Tel: 012 430 7871  
legal29@spruyt.co.za

Counsel for the Defendant: NO APPEARANCE

Attorneys for the Defendant: State Attorney,  
Tel: 012 429 5000  
E-Mail:

Date of the Hearing: 17<sup>th</sup> April 2026

Date of Judgment: 23<sup>rd</sup> April 2026