

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

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

Not reportable

Case no: 508/2024

In the matter between

M.J. MANOTO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Manoto v RAF* (508/2024) [2026] ZAFSHC 334 (10 June 2026)

Coram: MATSHELO AJ

Heard: 13 MAY 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 11H30 on 10 June 2026.

Summary: Quantum of loss of earnings and general damages – contingencies deductions prerogative of the court – each matter adjudicated on its own merits.

ORDER

1 The rule 38(2) application was granted on 13 May 2026.

2 The defendant shall pay the total sum of **R3 269 216.00 (Three Million Two hundred and Sixty Nine Thousand Two Hundred and sixteen rands)** to the plaintiff's attorneys, Mathikithela Inc, in delictual damages following a motor vehicle accident which occurred on 1 August 2022, which amount is calculated as follows:

2.1	Past Loss of Income	R280 473.50
2.2	Future Loss of income:	R1 988 742.50
2.3	General damages:	R1000 000.00
	TOTAL:	R3 269 216.00

3 The aforesaid total sum in paragraph 2 and any other amount payable to the plaintiff's attorney, shall be payable by direct transfer into the trust account of Mathikithela Inc Attorneys, the details of which are as follows:

Account holder: MATHIKITHELA INCORPORATED TRUST ACCOUNT
Bank: FIRST NATIONAL BANK
Account number: 6[...]
Branch code: 230-732
Branch: WOODLANDS
Reference: MATHIKITHELA/MANOTO MJ

4 The defendant will be afforded a period of 180 calendar days from the date of the court order to effect payment of the capital amount herein, during which period the plaintiff will not be entitled to execute a writ against the defendant. The plaintiff shall be entitled to recover interest at the prescribed rate per annum on the aforesaid amount calculated from 14 days after the date of serving this order to the defendant to the date of final payment in the event the defendant fails to pay within 180 days.

5 The defendant shall furnish the plaintiff with an undertaking in terms of s 17(4) of the Road Accident Act 56 of 1996 for the payment of 100% of the future accommodation of the plaintiff in hospital or nursing home, or treatment of or rendering

of a service or supply of goods to him, arising from the injuries sustained by her in the motor vehicle collision on 1 February 2022.

6 The defendant shall, over and above any previous cost orders granted in favour of the plaintiff make payment of the plaintiff's taxed or agreed party and party costs of the action on the High Court scale, which costs shall include, but not limited to the following quantum of which is subject to the discretion of the Taxing Master:

6.1 The fees of counsel of the High Court Scale C, inclusive of, but not limited to, his preparation and consultation fees, as well as the costs of preparing the heads of argument and Counsel's full day fees for 12 May, 13 May and 15 May 2026 (matter enrolled for three days), and reasonable travelling expenses included.

6.2 The plaintiff's reasonable and taxable costs of all experts medico-legal reports, and addendum RAF4 Serious Injury Assessment forms which were either furnished to the defendant and/or included in the trial bundle, which includes the following experts:

6.2.1 Dr S.K Mafeelane (Orthopaedic Surgeon)

6.2.2 Dr Chula (Specialist Neurolosurgeon)

6.2.3 G Sibiya (Clinical Psychologist)

6.2.4 S Marule (Occupational Therapist)

6.2.5 B Oosthuizen (Industrial Psychologist)

6.2.6 W Loots (Acturary)

7 Each party to pay their own costs in respect of the costs for the hearing on 28 to 29 October 2025.

8 The reasonable taxable costs associated with preparing the application in terms of Rule 38 and obtaining of the affidavits of the relevant experts and witnesses used in support thereof attached thereto, as well as the experts' charges pertaining to their time and attendances spent in *inter alia* the commissioning thereof.

9 The costs of all consultations between the plaintiff's attorneys, and/or counsel and/or the witnesses, and/or the experts and/or the plaintiff in preparation of the hearing.

10 The reasonable taxable accommodation and transportation costs (including toll

and E-toll charges) incurred by or on behalf of the plaintiff in attending all medico-legal consultations with the parties' experts, all consultations with his legal representatives and the court proceedings, as well as the costs (fees and disbursements) of shuttle services that were utilized, the quantum of which is subject to the discretion of the Taxing Master.

11 The above costs shall also be paid into the aforementioned trust account.

12 The following provisions shall apply with regards to the determination of the abovementioned taxed or agreed costs:

12.1 The plaintiff shall serve the notice of taxation on the defendant either by hand and/or electronically by email on the claim handler and/or state attorney.

12.2 The plaintiff shall allow the defendant 14 calendar days to make payment of the taxed or agreed costs from date of settlement or taxation thereof, whichever date is earlier, during which period the plaintiff will not be entitled to execute a writ against the defendant.

12.3 The plaintiff shall be entitled to recover interest at the prescribed rate per annum on the taxed or agreed costs from date of allocator or settlement, whichever date is the earlier, to date of final payment.

JUDGMENT

Matshelo AJ

[1] The plaintiff instituted an action against the defendant for damages arising from the bodily injuries sustained in a motor vehicle collision which occurred on 1 February 2024. As a result of the accident, he sustained some bodily injuries and instituted a claim under the following heads:

2.1 Loss of earnings, and

2.2 General damages.

[2] According to medical reports, the plaintiff sustained head injury and left distal

humerus fracture. The merits have been settled and the issues which remain unresolved between the parties are that of general damages and loss of earnings. On 14 May 2025, the court ordered the defendant to furnish the plaintiff with an undertaking in _____ terms _____ of s 17(4) of the Road Accident Fund Act 56 of 1996. To date the undertaking has not been furnished.

Expert Reports

[3] Following an application in terms of rule 38(2) of the Uniform Rules of Court, the medico legal reports of Dr S.K Mafeelane (Orthopaedic Surgeon), Dr Chula (Specialist Neurosurgeon), G Sibiyi (Clinical Psychologist), S Marule (Occupational Therapist), B Oosthuizen (Industrial Psychologist), and W Loots (Actuary) were admitted as evidence. Rule 38(2) allows evidence to be placed by way of affidavits where sufficient reason exists. However, the court is still under an obligation to evaluate the said evidence to ensure its admissibility, reliability, relevance and weight.

[4] The expert reports were handed in on behalf of the plaintiff and they form part of evidence before this court. I will now refer to salient features of the expert reports for plaintiff's diagnosis:

a) Dr S.K Mafeelane (orthopaedic surgeon)

The examination revealed that the plaintiff had sustained a left distal humerus fracture and a head injury. He has left elbow fixed flexion deformity. He continues to suffer the discomfort from the injured area. He has great difficulty carrying and lifting heavy objects. This will affect employability.

b) Dr Chula (specialist neurosurgeon)

He examined the plaintiff and established that the plaintiff sustained a mild head injury. The injury has resulted in anxiety, chronic headaches, memory impairment, scarring and post-traumatic stress.

c) G Sibiyi (clinical psychologist)

He examined plaintiff and established that overall performance on the assessment revealed difficulty in neurocognitive functioning. It is evident that the plaintiff's psycho-emotional/social functioning has been compromised and the accident has rendered him psychologically vulnerable.

d) S Marule (occupational therapist)

She examined the plaintiff and established that he was in good health pre-accident and would have been able to engage in light, medium and heavy duties with no difficulties. She further opines that plaintiff would have been able to work until his designated retirement age with no difficulties. However, post-accident, she opines that, plaintiff has residual physical ability of occupation falling in the category of sedentary to light duty work. He will struggle to engage in vigorous tasks that require intense physical force due to pain.

e) B Oosthuizen (industrial psychologist)

He examined the plaintiff and established that the injuries will impact his employability. The plaintiff has Grade 9 and failed Grade 10 twice. He opines that pre-morbid the plaintiff would have been able to obtain employment in the open market in a position relevant to his experience and level of education. Due to the accident, he is no longer suited to work as a general worker or to compete for employment in the open labour market. His choices are now limited.

f) W Loots (actuary)

The actuarial calculations for loss of earnings took into account, *inter alia*, mortality, taxation, and inflation. But traditionally, further adjustments may be required for unforeseen factors. He further stressed that allowance should consider the specifics of the case – they are of a subjective nature and therefore not actuarially determined.

[5] The expert evidence should not be adopted by the court automatically. The court must ensure that the opinions of experts are properly reasoned and are based on sufficient established facts. The plaintiff's expert reports are coherent and factually grounded.

[6] The Supreme Court of Appeal (SCA) in *Road Accident Fund v Kerridge*¹ (*Kerridge*) held that the court remains the ultimate decision-maker on both merits and quantum. The court opines that the expert opinions are reliable since they are based on hospital and medical records, surgical history, orthopaedic examination, functional capacity evaluation, observed pain behaviour, employment history, collateral employment information, the plaintiff's affidavits and actuarial assumptions derived from the industrial-psychological evidence.

¹ *Road Accident Fund v Kerridge* [2018] ZASCA 151.

[7] The defendant did not file any expert reports. Therefore, the plaintiff's expert opinions remain unchallenged by any expert evidence. The defendant cannot defeat the plaintiff's expert report with mere speculation from the bar.

[8] Both parties reached an agreement to submit heads of arguments instead of *viva voce* evidence. They both agreed that plaintiff suffered past and future loss of income, but disagree over contingency deductions to be applied.

Loss of Earning Capacity

[9] The plaintiff claims R280 473.50 for past loss of income. The figure is supported by his pre-accident history, the analysis of experts and the actuarial calculations. The court should accept this figure as proposed by plaintiff's counsel. The plaintiff claims a further R1 988 742.50 for future loss of earnings. His pre-morbid scenario is realistic, and his post-morbid scenario is materially compromised. The court should award this amount as proposed by the plaintiff's counsel.

[10] In determining future loss of income, the court must compare what the plaintiff would have earned before the accident with what he would earn after the accident. The court in *Southern Insurance Association Ltd v Bailey NO²* held that, '[a]ny enquiry into damages for loss of earning capacity is to its nature speculative, because it involves a prediction as to the future without the benefit of crystal balls, soothsayers, augers 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 a loss.'³ The plaintiff must prove his loss and damages on a balance of probabilities. He must adduce evidence that will enable the court to determine his loss of past and future earnings. He must also adduce evidence on the amount of income he will reasonably lose in the future as a result of the injury. In this case, the plaintiff has managed to do exactly that.

General Damages

[11] Plaintiff claims general damages of R1000 000.00. These are damages suffered by a person arising from, amongst others, physical integrity, pain and suffering,

² *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 A.

³ *Ibid* at 113F.

emotional shock, disfigurement, a reduced life expectancy, and loss of amenities.⁴ In this case the court will follow the approach by Holmes J that, in general damages ‘. . . the award should be fair to both sides, it must give just compensation to the plaintiff, but not pour largesse from the horn of plenty at the defendants’ expense.’⁵

[12] The court exercises its discretion, but considers case law which can assist the court to arrive at its decision. The SCA in *De Jongh v Du Pisanie NO*⁶ emphasized that general damages must be fair to both sides, they must not be too extravagant, but they must also not be so low that they fail to provide the needed compensation. Therefore, this Court accepts the award proposed by plaintiff’s counsel as reasonable and consonant with the evidence.

Contingencies

[13] Contingencies are legal mechanisms used for dealing with uncertainties of future life and employment. They are described as part of ‘the art or science of foretelling the future’.⁷ The following general principles apply in respect of contingencies. The plaintiff’s counsel referred the court to *Southern Insurance*. The court held that: ‘It is a mistake to suppose that it necessarily involves a “scaling down”. What it involves depends on considering what the future might have held for the particular concerned.’⁸ He might have fallen sick from time to time, been away from work and unpaid. He might have become unemployed and unable to get work. He might have been injured in circumstances in which he would receive no compensation from any source. He might have met an untimely death. Allowance must be made for these contingencies or vicissitudes of life as they are glibly called. But his ought not to be done by ignoring the individual case and making some arbitrary subtraction. Moreover, ‘the generalization that there must be a “scaling down” for contingencies seems mistaken. All contingencies are not adverse; all vicissitudes are not harmful. A particular plaintiff might have had prospects or chances of advancement and increasingly remunerative employment. Why count the possible buffets, and ignore the rewards of fortune. Each case on its own facts.’⁹

⁴ *Legodi v Road Accident Fund* (50948/17) [2012] ZAGPPHC 566 (2 September 2021) para 50.

⁵ *Pitt v Economic Insurance Co. Ltd* 1957 (3) SA 284 at 287E.

⁶ *De Jongh v Du Pisanie NO* [2004] (2) All SA 565 (SCA).

⁷ *Goodall v President Insurance Co Ltd* 1978 (1) SA 389 (W) at 392H-393A.

⁸ Op cit fn 2 at 117B-D.

⁹ Ibid.

[14] In *Kerridge*, the SCA held that, once a diminution in earning capacity causing patrimonial loss is proved, the court must use the available evidence to determine quantum, even though the calculation cannot be mathematically exact. The available evidence to determine quantum is the one provided by actuarial calculations and other witnesses. It must also be noted that the trial court has a wide discretion when it comes to determining contingencies. The court has considered expert evidence, and exercised its discretion.

[15] The plaintiff's patrimony is clearly diminished. According to expert evidence he is now vulnerable in the open labour market, and he can no longer perform his pre-accident duties. Therefore, the court must award the actuarially calculated loss of earnings, subject to the contingencies already built into the calculation by the plaintiff's counsel. The contingencies applied by the plaintiff's actuary are fair. The courts have a wide discretion to award what it considers to be fair and reasonable compensation. It is not bound by actuarial calculations.

[17] The plaintiff proposes a 10% contingency deduction to be applied to past loss of earnings, and 15% to be applied to future loss of earnings. On the other hand, the defendant proposes the following calculation:

Pre-morbid: Past loss of earnings:	15%
Pre-morbid: Future loss of earnings:	30%
Post-morbid: Past loss of earnings:	30%
Post-morbid: Future loss of earnings	50%

[18] Alternatively, the defendant proposes the following calculation:

Pre-morbid: Past loss of earnings:	15%
Pre-morbid: Future loss of earnings:	15%
Pre-morbid: Future loss of earnings:	25%
Post-morbid: Past loss of earnings:	30%
Post-morbid: Future loss of earnings:	50%.

[19] The actuarial calculations assist the court but are not binding on it. The court must still exercise its discretion in relation to contingencies. The court will adopt the

calculations by the plaintiff's counsel. It is the court's that view these calculations are fair and reasonable.

Costs

[20] It is trite that costs should follow the result. The plaintiff's counsel referred the court to *Bouwer v Bouwer and Another*,¹⁰ which held that, '[i]n awarding costs to a successful litigant will strive to indemnify insofar as possible that litigant for the expense he has been put in being compelled to initiate or defend litigation.'¹¹

Order

[26] After having considered the evidence of record and having heard evidence and considered written arguments of the parties I make the following order:

1 The rule 38(2) application was granted on 13 May 2026.

2 The defendant shall pay the total sum of **R3 269 216.00 (Three Million Two hundred and Sixty Nine Thousand Two Hundred and sixteen rands)** to the plaintiff's attorneys, Mathikithela Inc, in delictual damages following a motor vehicle accident which occurred on 1 August 2022, which amount is calculated as follows:

2.1	Past Loss of Income	R280 473.50
2.2	Future Loss of income:	R1 988 742.50
2.3	General damages:	R1000 000.00
	TOTAL:	R3 269 216.00

3 The aforesaid total sum in paragraph 2 and any other amount payable to the plaintiff's attorney, shall be payable by direct transfer into the trust account of Mathikithela Inc Attorneys, the details of which are as follows:

Account holder: MATHIKITHELA INCORPORATED TRUST ACCOUNT
Bank: FIRST NATIONAL BANK
Account number: 6[...]
Branch code: 230-732
Branch: WOODLANDS
Reference: MATHIKITHELA/MANOTO MJ

¹⁰ *Bouwer v Bouwer and Another* (361/04) [2008] ZAECHC 2008 (17 April 2008).

¹¹ *Ibid* para 7.

4 The defendant will be afforded a period of 180 calendar days from the date of the court order to effect payment of the capital amount herein, during which period the plaintiff will not be entitled to execute a writ against the defendant. The plaintiff shall be entitled to recover interest at the prescribed rate per annum on the aforesaid amount calculated from 14 days after the date of serving this order to the defendant to the date of final payment in the event the defendant fails to pay within 180 days.

5 The defendant shall furnish the plaintiff with an undertaking in terms of s 17(4) of the Road Accident Act 56 of 1996 for the payment of 100% of the future accommodation of the plaintiff in hospital or nursing home, or treatment of or rendering of a service or supply of goods to him, arising from the injuries sustained by her in the motor vehicle collision on 1 February 2022.

6 The defendant shall, over and above any previous cost orders granted in favour of the plaintiff make payment of the plaintiff's taxed or agreed party and party costs of the action on the High Court scale, which costs shall include, but not limited to the following quantum of which is subject to the discretion of the Taxing Master:

6.1 The fees of counsel of the High Court Scale C, inclusive of, but not limited to, his preparation and consultation fees, as well as the costs of preparing the heads of argument and Counsel's full day fees for 12 May, 13 May and 15 May 2026 (matter enrolled for three days), and reasonable travelling expenses included.

6.2 The plaintiff's reasonable and taxable costs of all experts medico-legal reports, and addendum RAF4 Serious Injury Assessment forms which were either furnished to the defendant and/or included in the trial bundle, which includes the following experts:

6.2.1 Dr S.K Mafeelane (Orthopaedic Surgeon)

6.2.2 Dr Chula (Specialist Neurolosurgeon)

6.2.3 G Sibiya (Clinical Psychologist)

6.2.4 S Marule (Occupational Therapist)

6.2.5 B Oosthuizen (Industrial Psychologist)

6.2.6 W Loots (Acturary)

7 Each party to pay their own costs in respect of the costs for the hearing on 28 to 29 October 2025.

8 The reasonable taxable costs associated with preparing the application in terms of Rule 38 and obtaining of the affidavits of the relevant experts and witnesses used in support thereof attached thereto, as well as the experts' charges pertaining to their time and attendances spent in *inter alia* the commissioning thereof.

9 The costs of all consultations between the plaintiff's attorneys, and/or counsel and/or the witnesses, and/or the experts and/or the plaintiff in preparation of the hearing.

10 The reasonable taxable accommodation and transportation costs (including toll and E-toll charges) incurred by or on behalf of the plaintiff in attending all medico-legal consultations with the parties' experts, all consultations with his legal representatives and the court proceedings, as well as the costs (fees and disbursements) of shuttle services that were utilized, the quantum of which is subject to the discretion of the Taxing Master.

11 The above costs shall also be paid into the aforementioned trust account.

12 The following provisions shall apply with regards to the determination of the abovementioned taxed or agreed costs:

12.1 The plaintiff shall serve the notice of taxation on the defendant either by hand and/or electronically by email on the claim handler and/or state attorney.

12.2 The plaintiff shall allow the defendant 14 calendar days to make payment of the taxed or agreed costs from date of settlement or taxation thereof, whichever date is earlier, during which period the plaintiff will not be entitled to execute a writ against the defendant.

12.3 The plaintiff shall be entitled to recover interest at the prescribed rate per annum on the taxed or agreed costs from date of allocation or settlement, whichever date is the earlier, to date of final payment.

P MATSHELO

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Appellant: Adv CR Van Onsellen

Instructed by: Mathikithela Inc

For the Respondent: Ms J Gouws

Instructed by: State Attorney