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**IN THE HIGH COURT OF SOUTH AFRICA**

**FREE STATE DIVISION, BLOEMFONTEIN**

**Not reportable**

Case no: 3861/2024

In the matter between:

**RABELE NGOBANI** **PLAINTIFF**

and

**ROAD ACCIDENT FUND** **DEFENDANT**

**Neutral citation:** *Ngobeni v Road Accident Fund* (3861/2024) [2026] ZAFSHC 298 (18 May 2026)

**Coram:** DEANE AJ

**Heard:** 24 March 2026

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The time and date for hand-down is deemed to be 10h00 on 18 May 2026.

**Summary:** Road Accident Fund – quantum – past loss of earnings – future loss of earning capacity – patrimonial loss – evidentiary burden – unopposed proceedings – s 17(4)*(a)* undertaking – factual foundation requirement to establish each head of damages – separation of issues.

**ORDER**

1 The defendant is liable for 100% of the plaintiff's proven or agreed damages arising from the motor vehicle collision which occurred on 25 January 2023.

2 The plaintiff's claim for future loss of earnings and/or loss of earning capacity is dismissed.

3 The plaintiff's claim for past loss of earnings is upheld.

4 The defendant shall pay to the plaintiff the amount of R12 355.00 in respect of past loss of earnings.

5 The defendant shall furnish the plaintiff with a 100% undertaking in terms of s 17(4)*(a)* of the Road Accident Fund Act 56 of 1996 for the costs of future accommodation in a hospital or nursing home, treatment of or rendering of a service or supplying of goods to the plaintiff, arising from the injuries sustained by the plaintiff in the motor vehicle collision on 25 January 2023, after such costs have been incurred and upon proof thereof.

6 The undertaking referred to in paragraph 5 shall be delivered to the plaintiff's attorneys within 30 days of the date of this order.

7 The plaintiff's claim for general damages stands over for later determination.

8 Interest on the amount referred to in paragraph 4 shall accrue at the prescribed rate in terms of the Prescribed Rate of Interest Act 55 of 1975, calculated from 14 calendar days after the date of this order to date of final payment.

9 The defendant shall pay the plaintiff's taxed or agreed party-and-party costs reasonably incurred in relation to the issues on which the plaintiff was successful, namely liability, past loss of earnings and the s 17(4)*(a)* undertaking.

10 The costs referred to in paragraph 9 shall include counsel's fees on scale B, to the extent allowed on taxation or agreement, and the reasonable qualifying, preparation and report costs of expert witnesses insofar as the Taxing Master is satisfied that such costs were reasonably necessary for the issues on which the plaintiff was successful.

11 The defendant shall not be liable for costs incurred solely in pursuit of the dismissed claim for future loss of earnings and/or loss of earning capacity.

12 Costs relating exclusively to the claim for general damages are reserved for determination by the court hearing that issue.

## JUDGMENT

**Deane AJ**

### Introduction and background

[1] This is an action instituted against the Road Accident Fund arising from a motor vehicle collision that occurred on 25 January 2023 at Phahameng,

Bloemfontein. The plaintiff, who was born on 1[…] J[…] 1992, was a pedestrian at the time of the collision. The plaintiff's uncontested evidence is that he was walking on the pavement along Mophete Street when he was struck by a motor vehicle bearing registration number HSZ[…], driven by one H N Jacobs. The plaintiff sustained bodily injuries as a result of the collision. The plaintiff seeks compensation for loss of earnings, future medical expenses, and general damages.

[2] General damages are not presently before this Court. The defendant has not accepted liability for general damages and the jurisdictional requirements for adjudicating that head of damages have not been satisfied. That issue must therefore stand over for later determination. The defendant initially raised two special pleas. The first was based on alleged non-compliance with s 24 of the Road Accident Fund Act 56 of 1996 (Road Accident Fund Act). The second was that summons had been issued prematurely. Both special pleas were dismissed. Thereafter, the defendant's legal representative withdrew from the proceedings due to lack of further instructions.

[3] The matter consequently proceeded on an unopposed basis. That does not, however, relieve the plaintiff of the burden of proof. The Court remains required to evaluate the evidence placed before it and to determine whether the plaintiff has proved the patrimonial damages claimed. The principal issue in dispute is whether the plaintiff has proved a compensable loss of earnings. More particularly, the Court must determine whether the plaintiff has proved not only past loss of income, but also future loss of earnings or earning capacity.

**Issues for determination**

[4] The issues requiring determination are the following:

(a) whether the defendant is liable for the plaintiff's proven damages arising from the collision;

(b) whether the plaintiff has proved past loss of earnings;

(c) whether the plaintiff has proved future loss of earnings or earning capacity;

(d) whether the plaintiff is entitled to an undertaking in terms of s 17(4)*(a)* of the Road Accident Fund Act; and

(e) the appropriate costs order.

[5] In relation to future loss of earnings, the Court must consider whether the injuries and sequelae relied upon by the plaintiff have been shown to result, or to be likely to result, in a real diminution of the plaintiff's patrimony.

**Plaintiff's evidence**

[6] The plaintiff testified in support of his claim. He described the circumstances of the collision and the injuries he sustained. He testified that he was struck by a motor vehicle while walking on the pavement. He testified that he was struck from behind; his impression was that the vehicle had reversed into him. He estimated that he was dragged or moved by the vehicle for a short distance. He further testified that the driver later came to the hospital and apologised. The plaintiff testified that he sustained injuries to his knees, shoulder, elbows and hands. He stated that his knees were cut open and that he underwent treatment in theatre. He also testified that the injury to his shoulder later resulted in numbness or pain.

[7] The plaintiff was hospitalised for a period of approximately six weeks. He used crutches after discharge and received physiotherapy to assist with walking. He testified that he used two crutches initially and later one crutch. He continues to take pain medication intermittently. The plaintiff testified that he returned to work after the accident but did not immediately resume full driving duties. He was initially used as an assistant or co-driver and did not drive while still using crutches. The plaintiff testified
that he had worked as a driver at DSV Logistics. His evidence was that he was subsequently retrenched in approximately March 2025, that he was unemployed for about three months, and that he thereafter obtained alternative employment as a driver with another employer in approximately June or July 2025.

[8] The plaintiff testified that in his present employment he earns approximately R8 000 to R9 000 per month, depending on hours worked, at an hourly rate of approximately R55. He stated that although he has a Code 14 licence, he presently drives smaller vehicles, including Code 10 vehicles. He testified that when he drives long distances, he experiences cramps and pain and has to stretch.

[9] No *viva voce* evidence was led on behalf of the defendant, and the plaintiff was not cross-examined. The absence of cross-examination does not mean that every inference advanced on behalf of the plaintiff must be accepted. The Court must still determine whether the evidence proves the claim on a balance of probabilities.

**Expert evidence**

[10] The plaintiff applied for the expert reports to be admitted as evidence in terms of rule 38(2). The application was granted. The admission of the reports in this manner does not mean that the conclusions expressed in them are binding on the Court. The reports remain evidence to be evaluated together with the plaintiff's oral evidence and the objective material before the Court.

[11] Dr Makua, the general practitioner, reported that the plaintiff sustained a tear to the left patella tendon, treated conservatively in a cast for approximately three months. He recorded ongoing knee discomfort with mildly reduced range of movement and multiple abrasions to the upper and lower limbs. He assessed the plaintiff as having difficulty with prolonged standing, walking long distances and lifting heavy objects, and calculated whole person impairment at 11%.

[12] Dr Barlin, the orthopaedic surgeon, reported injuries to the plaintiff's left knee, right knee and left shoulder. He recorded multiple abrasions and wounds, including traumatic bilateral knee arthrotomies, which required surgical debridement. The left knee was immobilised for approximately three months. He recorded a loss of approximately 20% flexibility in the left knee and noted scarring to the shoulder and knees. His opinion that the plaintiff qualifies under the narrative test is relevant to general damages, which are not before this Court.

[13] Dr Da Costa assessed the plaintiff's psychological functioning and diagnosed moderate depression, severe anxiety and post-traumatic stress disorder. She recommended future psychotherapy comprising fifteen sessions. She expressed the view that the plaintiff may struggle to secure employment in the open labour market should he become unemployed, particularly in the absence of

accommodation by a sympathetic employer.

[14] Dr Alpine, the aesthetic specialist, described scarring to the plaintiff's left shoulder, upper back, left thigh and both knees. She opined that surgical revision of the scars would not be possible. She expressed the view that scarring can have long-term emotional consequences and may affect employability because of self-consciousness and concern about prospective employers' reactions. She deferred to the occupational therapist and psychologist in relation to retirement age.

[15] Ms Fletcher, the occupational therapist, reported that the plaintiff retains functional range of motion and strength of the neck, trunk and upper limbs, with occasional shoulder pain. She noted reduced strength and pain in the left lower limb, impaired balance when visual input is restricted, reduced grip strength in the left hand and decreased bilateral speed and coordination. She assessed functional limitations in walking endurance, stair climbing, forward bending, squatting, kneeling and prolonged standing. Importantly, she concluded that the plaintiff remains capable of low-range medium, light and sedentary work, including work as a courier driver or assistant truck driver.

[16] Mr Leibowitz, the industrial psychologist, assessed the plaintiff's educational background, employment history, vocational profile and earning potential. The plaintiff holds a Grade 12 qualification and a one-year diploma in basic ambulance skills. Prior to the accident, he had experienced periods of unemployment but had been employed as a driver since September 2021. Mr Leibowitz expressed the opinion that the plaintiff would probably have continued working as a driver until normal retirement age, with income progression through inflationary increases. He also expressed the opinion that the plaintiff is less competitive in the labour market due to his injuries, particularly if he were to lose his current employment, and accepted the opinion that the plaintiff would probably retire five years earlier than normal retirement age.

[17] Mr Loots, the actuary, calculated the plaintiff's past and future loss of earnings based on the assumptions provided to him. The calculation assumed early retirement at age 60 in the post-morbid scenario and applied increased

contingencies to account for alleged future employment risks. Based on those assumptions, the actuary calculated total loss of earnings in the amount of R1 115 120, comprising past and future loss.

**Legal framework**

[18] A claim for past loss of earnings, future loss of earnings or loss of earning capacity is a claim for patrimonial damages. The enquiry is not simply whether the plaintiff sustained bodily injuries, or whether those injuries impaired his physical or functional capacity. The enquiry is whether the injuries have caused, or will probably cause, a diminution in the plaintiff's patrimony.

[19] In *Rudman v Road Accident Fund*,[1] the Supreme Court of Appeal emphasised that a physical disability which impacts upon earning capacity does not necessarily reduce the estate or patrimony of the injured person. There must be proof that the reduction in earning capacity gives rise to pecuniary loss. The same principle was restated in *Road Accident Fund v Kerridge*[2] *(Kerridge),* where the Supreme Court of Appeal held that loss of income and income-earning capacity must be proved. Where loss has been established but its precise amount is difficult to quantify, the Court must make the best use it can of the evidence. But the fact of patrimonial loss must first be established.

[20] The fact that the quantification of future loss is difficult does not mean that the claim must fail where the fact of patrimonial loss has been established. The court must make the best use it can of the evidence. In *Hersman v Shapiro & Co*,[3] a dictum approved in *Kerridge*, the Court held that, where pecuniary damage has been suffered, the court is bound to award damages even if the assessment is little more than an estimate.

[21] The assessment of future loss of earnings is necessarily speculative. In

[1] *Rudman v Road Accident Fund* [2002] ZASCA 129; [2002] 4 All SA 422 (SCA); 2003 (2) SA 234 (SCA) para 11 (*Rudman*).
[2] *Road Accident Fund v Kerridge* [2018] ZASCA 151; [2019] 1 All SA 92 (SCA); 2019 (2) SA 233 (SCA) para 25 (*Kerridge*).
[3] *Hersman v Shapiro & Co* 1926 TPD 367 at 379.

*Southern Insurance Association Ltd v Bailey NO*,[4] the Appellate Division held that any enquiry into damages for loss of earning capacity involves prediction as to the future, and that all the court can do is make an estimate of the present value of the loss. Actuarial calculations may assist the court, but they do not bind it. The court retains a wide discretion to award what it considers just. In *Road Accident Fund v G S O Guedes*,[5] the Supreme Court of Appeal confirmed that the trial court exercises a discretion in assessing future loss and contingencies. There are no fixed rules. Contingencies must be assessed on the facts of the particular matter.

[22] Contingencies are not a mechanism to cure unsupported assumptions, to inflate speculative scenarios, or to compensate for a loss that has not otherwise been proved. They are applied only after the Court is satisfied that the relevant pre-morbid and post-morbid scenarios have a proper evidential foundation. The proper approach is to compare the probable pre-accident earnings or earning capacity with the probable post-accident earnings or residual earning capacity, and then to apply appropriate contingencies to both scenarios. In *Kerridge*,[6] the Supreme Court of Appeal stressed that residual earning capacity must be properly considered. A claimant who remains capable of earning income is not to be treated as having no residual earning capacity unless the evidence justifies that conclusion.

[23] *Kerridge*[7] also emphasised that expert opinions are only as reliable as the facts on which they are based. The facts upon which experts rely must be determined by the judicial officer. Expert witnesses cannot usurp the function of the Court, and the Court may not abdicate its responsibility to evaluate the evidence. It follows that where expert reports proceed from uncertain or unsupported assumptions about a claimant's pre-morbid career path, post-morbid employability, salary progression, retirement age or residual earning capacity, the Court is entitled to reject or adjust those assumptions.

[24] The distinction between occupational impairment and compensable

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[4] *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A); [1984] 1 All SA 360 (A) at 113G and 116G-117D.
[5] *Road Accident Fund v G S O Guedes* [2006] ZASCA 19; [2006] ZASCA 19; 2006 (5) SA 583 (SCA) paras 5 and 8 (*Guedes*).
[6] *Kerridge* paras 54-56.
[7] Ibid para 50.

patrimonial loss is illustrated in *Prinsloo v Road Accident Fund*[8] (*Prinsloo*). In that matter, the claimant, a police inspector, had sustained injuries resulting in permanent disability and impairment in the performance of physically demanding police duties. The trial court awarded general damages but dismissed the claim for future loss of earning capacity. The Full Court upheld that approach. It held that proof of physical injury and occupational impairment did not, without more, establish a diminution in earning capacity or a reduction in income. The evidence may establish that an injury has no appreciable effect on earning capacity, in which event damages under that head are nil.

[25] These principles apply with equal force in unopposed or default RAF matters. The absence of opposition does not relieve the plaintiff of the burden of proof, nor does it relieve the Court of its duty to ensure that any award is supported by admissible and reliable evidence.

[26] In *M M K obo M K v Road Accident Fund*[9] (*M M K)*, the Supreme Court of Appeal confirmed that, even where the RAF is absent, the plaintiff must prove the essential factual basis for the claim, including injury, causation, patrimonial loss and quantum. The Court further warned that, where the RAF does not participate in the adjudication of a matter, courts must bring special care to bear to avoid orders compelling the RAF to pay damages that have not been proved. This Court does not understand *M M K* to mean that an unopposed RAF claim is to be approached with suspicion, nor is this a case in which no evidence was presented. Its relevance lies in the more limited but important proposition that the absence of the RAF does not relieve the plaintiff of the onus to prove the factual foundation of each head of damages claimed.

[27] The evidence must be evaluated against these principles.

**Evaluation**

[28] The plaintiff's evidence as to the occurrence of the collision is uncontested. He was a pedestrian walking on the pavement when he was struck by the insured

[8] *Prinsloo v Road Accident Fund* [2010] ZAECGHC 9 para 8 (*Prinsloo*).
[9] *M M K obo M K v Road Accident Fund* [2025] ZASCA 136 paras 26-30.

motor vehicle. There is no evidence suggesting contributory negligence on his part. I am satisfied that the plaintiff has proved that the collision was caused by the negligent driving of the insured driver and that the defendant is liable for 100% of the plaintiff's proven damages arising from the collision.

[29] This Court accepts that the plaintiff was injured in the collision. The medical reports record a left knee injury, bilateral knee wounds, abrasions, scarring and a period of immobilisation of the left knee. I also accept that the plaintiff experienced a period of temporary incapacity and discomfort, and that he has some residual symptoms, particularly in relation to his left knee. The plaintiff's injuries are not insignificant. However, the existence of injury and residual symptoms does not resolve the patrimonial enquiry. The question remains whether those injuries have caused, or will probably cause, loss of income or a diminution of earning capacity resulting in pecuniary loss.

***Past loss of earnings***

[30] The plaintiff's claim for past loss of earnings stands on a different footing from the claim for future loss. It relates to a defined period following the accident and is capable of objective assessment. The actuarial calculation places the plaintiff's past loss of earnings at R12 355. The calculation is based on the period during which the plaintiff was unable to work after the accident. I am satisfied that this loss has been proved on a balance of probabilities. The plaintiff is therefore entitled to an award of R12 355 in respect of past loss of earnings.

[31] The plaintiff's oral evidence concerning his retrenchment in approximately March 2025, the subsequent period of unemployment, and his lower current earnings does not justify any additional award for past loss. That evidence was not the subject of a revised actuarial calculation and was not quantified as a separate accident-related past loss. More importantly, the evidence does not establish that the retrenchment, the period of unemployment, or the lower current income were caused by the accident injuries. No additional past loss beyond the actuarially calculated amount of R12 355 has therefore been proved.

***Future loss of earnings or earning capacity***

[32] The more difficult question is whether the plaintiff has proved future loss of earnings or earning capacity. The plaintiff's future-loss claim rests substantially on the opinions that he is less competitive in the labour market, that he is confined to lighter work, that he will struggle to obtain employment should he lose his present employment, and that he will probably retire five years earlier than he otherwise would have done. The actuarial calculation gives effect to those assumptions by applying a higher post-accident contingency and by calculating the plaintiff's post-accident working life on the basis of retirement at age 60.

[33] I am not persuaded that the evidential foundation for those assumptions has been established. At the time of the industrial psychologist's assessment, the plaintiff had returned to work and was recorded as continuing in courier-related duties. The later oral evidence, however, was that the plaintiff was retrenched in approximately March 2025, remained unemployed for about three months, and thereafter obtained alternative employment as a driver in approximately June or July 2025. That later evidence was not incorporated into a revised industrial psychological or actuarial assessment.

[34] I do not hold that employer evidence is required as a rule. A plaintiff may prove employment-related facts by any admissible and reliable evidence. The difficulty in the present matter is that the future-loss case rests on employment-related assumptions: that the plaintiff is no longer able to perform the material duties of his pre-accident work; that he requires permanent accommodation; that his earning progression or overtime will probably be curtailed; that his present or future lower earnings are causally attributable to the accident injuries; and that he will probably retire five years earlier than normal retirement age. Those assumptions required proof. They are not established merely because the plaintiff sustained injuries or because experts accepted his account for purposes of their reports.

[35] The evidence that the plaintiff obtained alternative employment within approximately three months of retrenchment is relevant to residual earning capacity in the open labour market. His present earnings may be lower than his previous earnings, but the evidence does not establish that the retrenchment, the intervening period of unemployment, or the lower current earnings are causally attributable to

the accident injuries rather than to retrenchment, change of employer, available hours, overtime arrangements, or ordinary labour-market conditions.

[36] The plaintiff’s evidence that he holds a Code 14 licence but presently drives smaller vehicles, including Code 10 vehicles, and that he experiences pain or cramps when driving long distances, does not, on its own, establish the quantified future-loss claim. The evidence does not establish with sufficient precision that the plaintiff’s pre-accident earning trajectory depended on Code 14 long-distance driving, that comparable work was available to him but lost because of the accident injuries, or that the actuarial pre-accident scenario was founded upon such work.

[37] The occupational therapist’s report supports a finding that the plaintiff has functional restrictions. He may have difficulty with prolonged walking, stair climbing, forward bending, squatting, crouching and kneeling, and he should avoid heavier physical demands. However, the same report records that the plaintiff remains capable of low-range medium, light and sedentary work and specifically refers to courier-driver and assistant-truck-driver work. The plaintiff has therefore not been shown to be unemployable.

[38] I have also considered the clinical psychologist’s report. The diagnosis of depression, anxiety and post-traumatic stress symptoms may be relevant to the plaintiff’s general condition and future treatment. However, the report does not establish that those symptoms have resulted, or will probably result, in a measurable reduction in the plaintiff’s income. The recommendation of psychotherapy does not, without more, prove future patrimonial loss.

[39] The aesthetic specialist’s evidence must also be approached with care under this head of damages. The plaintiff’s scarring may be relevant to general damages or treatment. General damages are not before me. The question presently is whether the scarring has been shown to impair the plaintiff’s earning capacity in a manner that will probably cause pecuniary loss. There is no persuasive vocational evidence that the plaintiff’s scars, as opposed to the physical restrictions in his knee, will probably reduce his earnings as a courier driver or similar worker. To the extent that the aesthetic specialist expresses views on employability and productivity, those

conclusions are not supported by a sufficient factual employment foundation.

[40] The industrial psychologist's conclusion that the plaintiff will be disadvantaged should he lose his employment is not, in itself, enough. A possibility of disadvantage in the open labour market is not the same as proof of probable patrimonial loss. The evidence must show that the risk is real and sufficiently probable to warrant compensation. On the evidence before me, that bridge has not been crossed.

[41] The early-retirement assumption is particularly problematic. No evidence has been placed before the Court, whether from an employer, a retirement policy, a medical prognosis, or any other reliable source, establishing that the plaintiff will probably be unable to continue working to normal retirement age. There is no evidence of progressive deterioration and no persuasive medical basis for the conclusion that the plaintiff will probably retire at age 60. The occupational therapist does not place the plaintiff outside all suitable work. The industrial psychologist's adoption of early retirement at age 60 accordingly rests on an assumption that has not been proved.

[42] The actuarial report does not cure this difficulty. An actuarial calculation is dependent on the assumptions provided to the actuary. The actuary does not determine whether those assumptions are legally or factually proved. Once the assumptions of early retirement and a substantially higher post-accident contingency are not accepted, the actuarial calculation cannot itself prove future loss.

[43] This is not a case in which the Court is faced with proved accident-related patrimonial loss but uncertainty about exact quantification. Were that the position, the Court would be obliged to make the best estimate it could on the available evidence. This is instead a case in which the fact of an accident-related future patrimonial loss has not been proved. Contingencies cannot be used to compensate for a loss that has not first been established.

[44] The plaintiff's oral evidence did not supply the missing factual foundation.

He did not identify any failed attempt to obtain comparable employment attributable to the accident injuries, any warning or indication from an employer that his continued employment was at risk because of his injuries, any actual loss of overtime causally connected to the injuries, or any factual basis for the proposition that he will probably retire before normal retirement age. Although he testified that his present earnings are lower than his previous earnings, he did not establish that the difference is caused by the accident injuries.

[45] The present case is analogous in principle to *Prinsloo*. The plaintiff has proved injury and some residual functional limitation. What has not been proved is that those limitations will probably cause a measurable diminution of his patrimony. I accordingly find that the plaintiff has not proved, on a balance of probabilities, a future loss of earnings or earning capacity. That claim must be dismissed.

***Future medical expenses***

[46] The plaintiff also seeks relief in respect of future medical expenses. No capital amount for past or future medical expenses has been quantified or proved. The evidence does, however, establish that the plaintiff sustained injuries in the collision and that future treatment or services may reasonably be required as a result thereof. The clinical psychologist recommends psychotherapy, and the medical evidence supports the possibility of future treatment or services related to the accident injuries.

[47] In the circumstances, the appropriate relief is an undertaking in terms of s 17(4)*(a)* of the Road Accident Fund Act, limited to costs arising from the injuries sustained in the collision, after such costs have been incurred and upon proof thereof.

***General Damages***

[48] General damages are not adjudicated in this judgment. The defendant has not accepted that the plaintiff qualifies for general damages and the jurisdictional requirements for determination of that issue are not presently satisfied. The plaintiff's claim for general damages must therefore stand over for later determination.

**Costs**

[49] The plaintiff has succeeded in establishing liability, past loss of earnings and entitlement to a statutory undertaking. He has not succeeded in proving future loss of earnings or earning capacity, which was the principal monetary component of the claim advanced at trial.

[50] The costs order must reflect that mixed result. The defendant should pay the costs reasonably incurred in relation to the issues on which the plaintiff succeeded, including liability, past loss of earnings and the s 17(4)*(a)* undertaking. The defendant should not be liable for costs incurred solely in pursuit of the dismissed claim for future loss of earnings or earning capacity.

[51] Although the capital amount awarded is limited, the matter involved dismissed special pleas, expert evidence admitted under rule 38(2), and the determination of liability, past loss and a statutory undertaking. In those circumstances, counsel's fees on scale B are justified, but only insofar as such fees relate to the issues on which the plaintiff succeeded and are allowed on taxation or agreement.

[52] Costs relating exclusively to the claim for general damages should stand over for determination by the court that ultimately hears that issue.

**Order**

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

1 The defendant is liable for 100% of the plaintiff's proven or agreed damages arising from the motor vehicle collision which occurred on 25 January 2023.

2 The plaintiff's claim for future loss of earnings and/or loss of earning capacity is dismissed.

3 The plaintiff's claim for past loss of earnings is upheld.

4 The defendant shall pay to the plaintiff the amount of R12 355.00 in respect of past loss of earnings.

5 The defendant shall furnish the plaintiff with a 100% undertaking in terms of

s 17(4)*(a)* of the Road Accident Fund Act 56 of 1996 for the costs of future accommodation in a hospital or nursing home, treatment of or rendering of a service or supplying of goods to the plaintiff, arising from the injuries sustained by the plaintiff in the motor vehicle collision on 25 January 2023, after such costs have been incurred and upon proof thereof.

6 The undertaking referred to in paragraph 5 shall be delivered to the plaintiff's attorneys within 30 days of the date of this order.

7 The plaintiff's claim for general damages stands over for later determination.

8 Interest on the amount referred to in paragraph 4 shall accrue at the prescribed rate in terms of the Prescribed Rate of Interest Act 55 of 1975, calculated from 14 calendar days after the date of this order to date of final payment.

9 The defendant shall pay the plaintiff's taxed or agreed party-and-party costs reasonably incurred in relation to the issues on which the plaintiff was successful, namely liability, past loss of earnings and the s 17(4)(a) undertaking.

10 The costs referred to in paragraph 9 shall include counsel's fees on Scale B, to the extent allowed on taxation or agreement, and the reasonable qualifying, preparation and report costs of expert witnesses insofar as the Taxing Master is satisfied that such costs were reasonably necessary for the issues on which the plaintiff was successful.

11 The defendant shall not be liable for costs incurred solely in pursuit of the dismissed claim for future loss of earnings and/or loss of earning capacity.

12 Costs relating exclusively to the claim for general damages are reserved for determination by the Court hearing that issue.

**T DEANE**

**ACTING JUDGE OF THE HIGH COURT**

**Appearances**

| | |
|---|---|
| For the plaintiff: | A P Berry |
| Instructed by: | Med Attorneys,<br>Bloemfontein |
| For the defendant: | No appearance. |