

**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  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 2024-133911**

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

15/06/2026

In the matter between:

**PHINDILE CATHERINE VILAKAZI**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

---

**JUDGMENT**

---

**THERON AJ**

*Introduction*

[1] The Plaintiff instituted a claim against the Road Accident Fund for the compensation of damages suffered as a result of a motor vehicle accident that occurred on 17 June 2021 (“the accident”). The matter is before the Court on a default judgment basis due to the Defendant’s failure to enter its notice of intention to defend the matter.

[2] The Plaintiff, an adult female, is 47 years old at the time of the hearing. She was involved in a two vehicle accident when another vehicle collided into the back of the vehicle she travelled in as a passenger. She sustained injuries and received treatment at the provincial hospital.

#### *Rule 38(2) application*

[3] The Plaintiff's representative indicated at the onset of the hearing that the Plaintiff applies in terms of rule 38(2) of the Uniform Rules of Court for evidence to be adduced by way of affidavit. The Plaintiff also applies for the hospital records and Accident Report, as well as the collateral evidence provided to the Plaintiff's expert witnesses to be admitted into evidence in terms of section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988. After consideration of the papers filed, the Court granted the application.

#### *The merits*

[4] The Plaintiff deposed to an affidavit wherein she confirms that "on 17 June 2021 at approximately 14H10 I was a passenger in a motor vehicle with registration number: S[...] travelling from Maboloka to Bapong". In her supplementary affidavit she further confirms that "a motor vehicle with registration number: K[...] at the time driven by MPHOCOLLENS MOROCANE collided with our motor vehicle from behind". There can be no doubt that the accident was caused by the negligence of the driver identified as Mpho Collens Morocane. Therefore, I find that the Defendant is liable for 100% of the proven damages of the Plaintiff.

#### *The quantum evidence*

##### *Hospital records*

[5] The hospital records from Brits District Hospital confirmed that Ms Vilakazi was admitted on 17 June 2021 having suffered a lower back injury due to a motor vehicle accident. A further admission note dated 18 June 2021 seems to indicate a possible L5 wedge fracture. There is no report of any x-rays or scans done at Brits District Hospital.

*Dr Marin (Orthopaedic Surgeon)*

[6] Dr Marin examined Ms Vilakazi on 3 November 2023. Ms Vilakazi indicated to him that she was an Office Administrator at the time of the accident and returned to work two months after the accident. She remains in her pre-accident employment to date of his examination.

[7] According to Dr Marin, special investigations in the form of X-rays were conducted at the hospital on Ms Vilakazi and reported an L5 wedge compression fracture. He later states in his report that on 17 June 2021 she went to Dr George Mukhari Academic Hospital for a computed tomography (CT) scan of the lumbar spine that reported no obvious fractures. She was thus diagnosed with a soft tissue injury and received conservative treatment.

[8] Ms Vilakazi reported to him that she still suffers from lower back pain. She rates the pain in her lower back as 2/10 on the pain scale. She has no complaints regarding her pelvis. On examination of her lower back he records that no abnormalities were detected, no pain elicited on palpation and she has full range of movement of the lower back. Her motor power rates five out of five on her left and right side.

[9] The radiological report for X-rays taken on the day of the examination confirms that there are no significant wedge compression deformities demonstrated. No significant loss of vertebral body height is seen. Dr Marin's final diagnosis is that she suffered a soft tissue injury to the lumbar spine which was treated conservatively and has resulted in intermittent pain and spasms. The injury sustained will have a very mild impact on her life and she will be able to work to the normal retirement age of sixty-five years.

*Hendriëtte Van Rooyen (Occupational Therapist)*

[10] She examined Ms Vilakazi on 3 November 2023. This expert confirms that the initial suggestion of a fracture was refuted and that Ms Vilakazi suffered a soft tissue injury to her lower back. Although this examination occurred on the same day as the examination by Dr Marin, she added the following additional complaints, not reported

to Dr Marin earlier:

- (a) Recurring pain in her “waist” – pelvic pain, during prolonged sitting.
- (b) Recurring headaches – approximately 4 to 5 days per week. Throbbing in the frontal, bilateral area.
- (c) Constant fatigue.
- (d) Decreased short-term memory.
- (e) More irritable than pre-accident.
- (f) Travel anxiety.
- (g) Depressed moods.

[11] The Court needs to consider these additional complaints against the known facts regarding the extent of the injuries suffered in the accident and the mechanics of the accident. The evidence suggests that the car the Plaintiff was travelling in was rear-ended by another car. Having regard to the findings and prognosis of Dr Marin, these complaints should logically be expected to result from the impact of the accident and the observable injuries suffered. This accident was by no means a serious accident. From an orthopaedic view point Ms Vilakazi merely suffered minor soft tissue injuries. Dr Marin specifically noted that Ms Vilakazi reported that she has no complaints with reference to her pelvic area and confirmed that all discomfort and pain had subsided. Yet on the same day she states the exact opposite when consulting the Occupational Therapist (“Ms Van Rooyen”).

[12] The complaint of recurring headaches – approximately 4 to 5 days per week, was not mentioned to the orthopaedic surgeon. None of the expert witnesses could positively attribute these symptoms to known injuries suffered by Ms Vilakazi. Constant fatigue and decreased short-term memory also fail to link to any physical or mental injury suffered during this accident. Irritability, travel anxiety and a depressed mood may reasonably have been caused by the accident. These symptoms, however, in absence of a proper diagnosis by a Psychiatrist or Clinical Psychologist, should not be regarded as serious or life impacting. The accident was not a specifically harrowing accident, although all accidents are to a certain extent traumatic. We already know from the findings by Dr Marin that her lower back symptoms are not severe and would not influence her ability to work to retirement age.

[13] Ms Vilakazi reportedly worked as a cleaner at a bank and later as a kitchen helper and finally as an office administrator at a church at the time of the accident. This position she held for two years when the accident occurred. Two months after the accident she returned to this employment and is still employed there, now five years later. According to Ms Van Rooyen her job as an office administrator at the church can be classified into the light work category.

[14] During her examination and evaluation of Ms Vilakazi, Ms Van Rooyen commented that she has full range of motion and functional muscle strength in all planes of movement of her body, yet lower back movements against resistance and or at end ranges are reportedly painful. She came to the conclusion that based on available information, she should be able to “tolerate a light level of work for a 40-hour work week, with limited weight handling, and alternating between sitting and standing to maximise work tolerance for an 8-hour day and or 40-hour work week”. During the dynamic strength assessment the results indicate that her dynamic strength capacity matches the overall lifting and carrying requirements of her job.

[15] In my view, the major difficulty lies in the proposition that maintaining any static posture for an extended period of time contributed to increased lower back pain. This affects her ability to sit for long periods of time. Ms Vilakazi therefore needs to apply pain and postural management in order to function optimally. It is, however, not clear from the expert evidence available whether the injuries suffered in the accident caused these difficulties. It is also not clear from the evidence how much of the lower back discomfort and pain is age related and how much is accident related.

[16] Collateral information was obtained from Pastor S. Moela, her employer. He reports that her work performance has declined since the accident. He however confirmed that despite these challenges, her job is not at risk while he is in charge of her employment as he is sympathetic to her situation. Factually she remained in her pre-accident employment for five years now and it is unlikely that she would lose her employment should she choose to remain there.

*Mari-Lize Nel (Industrial Psychologist)*

[17] Ms Vilakazi has a grade 11 qualification. She failed grade 8 once. She further completed an ICT Office Administration Skills Programme in 2022. At the time of the accident she was employed by End Time Revival Ministries International as Usher and Office Administrator since 2019 (two years prior to the accident) and earned R 1,000.00 per month.

[18] Mr Moela (Ms Vilakazi's employer) reported that she struggles at work due to the effect of her injuries but that he does not plan on an incapacity process, in order to employ someone more physically abled, as she requires the income to live off. Thus, Ms Vilakazi's current employment is considered as sympathetic employment.

[19] Ms Nel listed the following complaints by Ms Vilakazi:

- (a) She has difficulty walking for long distances.
- (b) She cannot sit down for extended periods of time.
- (c) She experiences pain in her back on a daily basis.
- (e) She cannot pick up heavy items.
- (f) She has become short-tempered and irritable.
- (g) She feels depressed.
- (h) She experiences headaches daily.
- (i) She has sleeping problems due to pain.

[20] Her career aspiration at the time of the reported accident was to continue working as an Office Administrator. Her current career aspiration is to continue working as an Office Administrator to earn an income. It is assumed that, before the reported accident, she had not reached her career plateau or full earning potential as an Office Administrator and likely would have pursued higher-paying, semi-skilled roles.

[21] Ms Nel suggested that her current earnings should be used as a starting point in relation to her pre-accident earning potential, increasing her salary in a straight line to Koch's lower bracket earnings for semi-skilled labourers (2023 terms) of R 3,066.67

per month at age 45. Thereafter her salary would have increased in line with inflation to age 65. Ms Nel further states that her post-accident earning potential has declined. After the reported accident, Ms Vilakazi stayed at home for a period of three months in order to recuperate from her injuries. She did not receive any remuneration for this period. After recuperating from her injuries, Ms Vilakazi returned to work, in the position of Office Administrator. Post-accident her productivity has been reduced, however after successful treatment, she should regain her pre-accident physical capacity. The accident has rendered her less competitive in the open labour market until she receives the recommended treatment.

[22] The post-accident earning postulation provided by Ms Nel on page 12 of her report (Caselines 08-16) suggests that in future she will remain on her salary of R 1,000 per month to retirement at age 65. It is, however, clear that this postulation cannot be used blindly to calculate the estimated future loss of earnings because that would disregard the statement made earlier by the same expert that Ms Vilakazi should regain her pre-accident physical capacity after successful treatment. There may be a possible loss of future earnings due to time she would need to take off from work for treatment.

*Johan Sauer (Actuary)*

[23] Mr Sauer provided the calculation of pre- and post-morbid earnings based on the pre-accident earning postulation mentioned earlier, contrasted with the post-accident assumption that Ms Vilakazi will remain in her current position, earning the same salary with only inflationary increases to age 65. He then applied a pre-morbid past and future contingency deduction of 5% and a post-morbid past earnings contingency deduction of 5% contrasted with a post-morbid future earnings contingency deduction of 25%.

*Discussion*

[24] The Court should not blindly accept the opinion of an expert witness. The opinion and findings should have a factual basis supported by the proven facts of the case. Apart from the expert opinion the Court should also consider the complaints raised by the Plaintiff in order to establish which of the complaints can reasonably be expected to have resulted from the injuries suffered in the accident relevant to the

case. Should an expert suggest the symptoms and complaints raised by the Plaintiff can reasonably be attributed to the injuries suffered in the accident, the Court would not readily reject such an opinion, except if it does not logically make sense having regard to the proven facts.

[25] From the evidence it is clear that the only aspect that has an impact on Ms Vilakazi's earning capacity is her subjective complaints of discomfort and pain with some added psychological symptoms. The origin of these symptoms is unclear as the Orthopaedic Surgeon could not physically diagnose any significant injury to the lower back. The Court cannot accept that the reported high pain levels that results in her not currently coping with the physical demands at her work place, is accident related. The headaches that has been reported as a contributor to her inability to cope with her work station post-accident are not proven to be accident related.

#### *Past loss of earnings*

[26] When considering the possible past loss of earnings of a plaintiff who has returned to her pre-accident employment, the Court needs to firstly consider the actual period the plaintiff was unable to work and the actual loss suffered as a result thereof. In this case Ms Vilakazi reported to Dr Marin and Ms Van Rooyen that she was off work for two months and to Ms Nel she reported a period of three months. This discrepancy was not cleared up by any of the witnesses.

[27] Secondly, the Court needs to consider whether her career path up to date of the trial would have been different was it not for the accident. I am not convinced that Ms Vilakazi would have had a more favourable career path to date of judgment, was it not for the accident. Even if one accepts that she would have been able to secure a better paying administrative position was it not for the accident, I am not convinced that Ms Vilakazi's decision to remain with her current employer since the accident, can be attributed to the injuries sustained in the accident. In the result, I find that Ms Vilakazi only suffered a past loss of earnings in the form of the loss of salary for two and a half months, thus an amount of R 2,500.00.

#### *Future loss of earnings*

[28] I considered the experts' evidence as a whole and assessed it against the proven facts. In doing so, I had regard to:

- (a) whether each opinion was supported by the objective evidence;
- (b) whether the conclusions drawn by the experts were logically consistent with the nature and extent of the proven injuries; and
- (c) whether the assumptions made were reasonable in light of the facts of this case.

[29] On that basis, I approached the issue of future loss of earnings by distinguishing between proven accident-related limitations and the complaints that were not sufficiently linked to the accident. Taking into account the evidence by Dr Marin as to the extent of the physical injuries suffered, the Plaintiff only sustained a mild soft tissue injury, which should not result in any substantial loss of earning capacity. The later reported symptoms appear to have been overstated to some extent, and the Court therefore treats Ms Vilakazi's account of those symptoms with caution, disregarding irrelevant and contradicting symptoms. The reported symptoms increased dramatically from one expert to another and the pelvis pain was denied to one expert but confirmed to the other.

[30] With specific reference to the reports by Ms Van Rooyen and Ms Nel it appears that Ms Vilakazi's back symptoms limits her ability to sit for extended periods of time and causes discomfort and pain when carrying heavy objects. I will accept that these accident related symptoms may cause a minor loss of productivity and competitiveness, resulting in a minor loss of earning capacity. It is however suggested by Ms Nel that this will be eliminated with successful treatment.

[31] The loss of earning capacity suffered by the Plaintiff does not reasonably translate into a difference in pre- and post-morbid career paths. In order to justify a calculated loss the Court needs to employ a fair and justifiable method. In this regard I am convinced that the best method of calculating the Plaintiff's loss of earning capacity is to regard her pre- and post-morbid earnings as the same, with a slightly higher future post-morbid contingency deduction. The Plaintiff's future loss of earnings will then be the difference between the two calculations. I will accept to the credit of the

Plaintiff that her future earnings would have been as postulated by the Industrial Psychologist.

[32] I agree with Plaintiff's counsel's argument that a 10% contingency deduction should be applied to the pre-morbid future earnings calculation. The net amount with a 10% contingency deduction is R 526,337. The contingency to be applied to the post-morbid future earnings calculation should be 10% higher and thus 20%. The nett post-morbid future earnings will then amount to R 467,855.00. The loss is the difference between the two amounts and calculates to an amount of R 58,482.00.

### *Costs*

[33] It is clear from the report by Dr Marin that the Plaintiff only suffered a minor back (soft tissue) injury. It should have been clear to the Plaintiff's representatives that the quantum of this claim would not exceed the jurisdiction of the Magistrate's Court. At best it could have fallen within the jurisdiction of the Regional Court.

[34] Although the Plaintiff is within her rights to issue summons out of the High Court, the costs of a High Court trial are not justified under these circumstances. The facts of this case are not complex and the quantum is very small. It is also not necessary to employ senior counsel under these circumstances. It will be unjust towards the Defendant to allow costs of senior counsel.

## **ORDER**

The court therefore orders as follows:

1. The Defendant is liable for 100% of the Plaintiff's proven damages.
2. The Plaintiff's Rule 38(2) application is granted, with costs on the Magistrate's Court scale D.
3. The Defendant is ordered to provide the Plaintiff with an undertaking in terms of Section 17(4) (a) of the Road Accident Fund Act, 56 of 1996 for the reasonable

costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment or rendering of a service or supplying of goods to her resulting from the motor vehicle accident related injuries sustained by the Plaintiff, as a result of the motor vehicle accident which occurred on 17 June 2021 after such costs have been incurred and upon proof thereof.

4. The Defendant is ordered to pay the Plaintiff an amount of **R 60,982.00** (sixty thousand nine hundred and eighty-two rand) consisting of the following:
  - (a) Past loss of earnings R 2,500.00
  - (b) Future loss of earnings R 58,482.00
  
5. Payment of the judgment amount as well as taxed or agreed costs shall be made into the trust account of Plaintiff's Attorney, Wehmeyers Attorneys, by direct transfer, within 14 days of judgment, details of which are the following:

**Bank :** First National Bank  
**Branch code :** 2[...]  
**Account holder :** Wehmeyers Attorneys  
**Account number :** 6[...]  
**Reference :** J WEH/WV.0196
  
6. In the event that the aforesaid amount is not paid timeously, the Defendant shall be liable for interest on the amount at a rate of 10.50% per annum, calculated from 14 days after date of this order to the date of payment.
  
7. The Defendant shall pay the Plaintiff's costs on the Magistrate's Court party and party scale D, including counsel fees as allowed for in the Magistrates Court.

---

**H W THERON**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for the reasons is deemed to be 15 June 2026.

Appearances:

For the Plaintiff: F Grobler SC instructed by Wehmeyers Attorneys

For the Defendant: Unrepresented

Date heard: 7 May 2026

Date of judgment: 15 June 2026