




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

CASE NO: 3954/2024

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED YES/NO
 25/06/2026	 
_____ DATE	_____ SIGNATURE

In the matter between:

TINTSHWALO PINKIE NGOMANE

PLAINTIFF

and

THE 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 25 June 2026.

JUDGMENT

Moleleki AJ

Introduction

[1] The plaintiff instituted an action against the defendant for damages because of injuries sustained in a motor vehicle accident that occurred on 4 August 2022 along the R37 Road (Sabie/Lydenburg), Riverside, Mbombela, Mpumalanga Province.

[2] Issues of liability and loss of earnings have been settled between the parties.

[3] The plaintiff rejected the defendant's offer in respect of general damages. Therefore, the only dispute between the parties that still requires determination is the quantum of general damages to be awarded to the plaintiff.

[4] The plaintiff testified and called the Orthopaedic Surgeon as an expert witness.

[5] The report of the Orthopaedic Surgeon was marked Exhibit "A". Although the Occupational Therapist did not testify, reference was made to her report, and it was admitted in evidence as Exhibit "B"

[6] The plaintiff testified that on 4 August 2022, she was a passenger in a bus (the insured motor vehicle) when the insured motor vehicle was involved in the accident. She was employed at the time of the accident, and she was on her way to work. Following the accident, she was taken to Kiaat Hospital, which is a private hospital, for treatment. She was not admitted but treated and discharged the same day. Upon her follow-up visit to the hospital, it was established that the ligament on the left knee had been torn.

[7] Arrangements were made for the plaintiff to undergo surgery and be hospitalised for a week following the procedure. When she went back to the hospital for a check-up after the surgery, she could not bend her knee. The plaintiff was sedated, and a non-surgical medical procedure manipulating the knee for it to be able to bend was performed, after which she spent three days in the hospital. As a follow-up, a third procedure, which was intended to address the non-bending knee, was supposed to have been performed, but could not be due to the funds having been depleted.

[8] The plaintiff stated that since the accident, she has been experiencing pain. There was medication prescribed for her, but she could not afford it. She therefore resorted to purchasing over-the-counter self-medication to manage the pain. Her previous work required her to stand for prolonged periods; however, since the accident, she is unable to sit, walk or stand for prolonged periods.

[9] In 2024, two years after the accident, the plaintiff returned to her previous employment, where she was offered light-duty work. She works from 07h30 to 16h30. Her duties include cleaning the canteen and warming food for other employees.

[10] During cross-examination, the plaintiff stated that this was not her first accident. She was involved in two other accidents prior to this accident, which occurred in 2010 and 2016, respectively. According to the plaintiff, in both such accidents, she did not sustain lower limb injuries.

[11] Counsel for the defendant enquired from the plaintiff whether she had taken any steps by approaching any public hospital to follow through on the third procedure, which she had been advised to undergo. In response, the plaintiff stated that she approached Rob Ferreira Hospital in 2024, where she was informed that the hospital staff would contact her telephonically as soon as there was an opening available for her to undergo the procedure. She, however, never heard from the hospital, nor did she follow up.

[12] The Orthopaedic Surgeon, Dr PR Engelbrecht, testified that he executed a medical assessment on the plaintiff on 27 March 2024. She was treated at Kiaat Hospital, Nelspruit and was discharged with pain control and referred to an Orthopaedic Surgeon in August 2022, who confirmed medial collateral ligament injury of the left knee. Surgical procedure followed on 9 September 2022 for medial collateral ligament reconstruction of the left knee. Thereafter, she was attended to by a physiotherapist for left knee rehabilitation. Rehabilitation on the left knee did not progress. On 2 December 2022, a day procedure was booked for the manipulation of the left knee under anaesthesia so as to improve its function. This was followed by physiotherapy.

[13] At the time, the plaintiff consulted with Dr Engelbrecht; it had been one month since she had seen an Orthopaedic Surgeon. At that stage, the plaintiff was still using analgesics obtained over the counter.

[14] The plaintiff expressed the following complaints to Dr Engelbrecht: Pain in the left knee; walks with a limp; swollen left knee; during periods of cold and or rainy weather, symptoms of the left knee worsen. Her walking ability is approximately 50 metres. X-rays had been performed, and there was early osteoarthritis noted on both knees.

[15] The report of Ms L Taylor, an Occupational Therapist, was admitted as Exhibit "B". The findings and postulations by the Occupational Therapist were that the plaintiff has a reduced range of motion and muscle strength in the knee. Limited mobility was noted. The plaintiff was unable to crouch fully and climb the stairs reciprocally. Her walking pace was slow, with a noticeable limp on her left leg. She suffers pain, which is aggravated by prolonged periods of heavier work and tasks. The plaintiff could previously perform work in the medium work category; however, she is currently restricted to sedentary light work. She has become a vulnerable employee and is reliant on a sympathetic employer.

The Plaintiff's Contention

[16] The plaintiff contends that the defendant is liable to compensate the plaintiff for non-pecuniary loss suffered with reference to the report and evidence of the Orthopaedic Surgeon, Dr Engelbrecht, as well as the report of the Occupational Therapist.

[17] The injuries suffered by the plaintiff have been classified as serious by means of the Narrative Test 5.1 (Long-term impairment or loss of body function). This is due to the injury to the left knee and the medial collateral ligament. This resulted in marked impairment of motion of the left knee with functional impairment and an antalgic left-sided limp.

[18] The plaintiff's submission is that an amount between R700 000 and R800 000 for general damages would be fair and reasonable.

[19] The defendant's contention, on the other hand, is that the plaintiff only established an injury to the medial collateral ligament (MCL), which is partially functional and partially non-functional. However, the plaintiff has failed to place before the court the extent of the current functionality of her left knee in that, at the time of the hearing of the matter, both the reports of the Occupational Therapist and Orthopaedic Surgeon were more than two years old.

[20] According to the submissions by the defendant, there were discrepancies between the plaintiff's evidence and the collateral information which the Occupational Therapist obtained from the plaintiff's employer. The plaintiff informed the court that she had been moved from what she was doing previously as a general worker at a nursery, which included irrigation, suckering of plants and removing stems. The plaintiff's evidence was that she had been moved to the canteen, where she was cleaning and warming food. However, the Occupational Therapist in her report indicated that the plaintiff only helped in the canteen during rainy seasons.

[21] The defendant highlighted the fact that two years after the accident, the plaintiff requested to return to work. By the time she testified in court, it had been two years since she had returned to work. Therefore, according to the defendant, returning to work and working from 07h30 to 16h30, with breaks in between, is an indication that the plaintiff's physical recovery has progressed to a point where she could be said to have resumed a relatively functional lifestyle. Essentially, the plaintiff's left knee has significantly improved.

[22] A further point by the defendant is that, in December 2022, the plaintiff was advised that there had to be another procedure performed on her. Therefore, had the plaintiff followed through with the surgical replacement, she would have had a better prognosis. The plaintiff, so the argument goes, remains with a duty to mitigate her loss,

but has failed or neglected to take reasonable steps to do so by following up on the medical advice given to her.¹

[23] The parties referred to several authorities in their submissions regarding what a reasonable amount in respect of general damages would be.

[24] Counsel for the plaintiff referred the court to previous decisions; amongst the cases he referred the court to, none could be found strictly on torn ligaments, which are comparable to the case before this court.

[25] Cases referred to include *TPN v Road Accident Fund*,² where the court awarded the plaintiff R850 000.00 in general damages in respect of her minor son, who was three and a half years old at the time of the collision. The child sustained severe injuries, including a degloving injury to the left lower limb, Salter-Harris type 2 distal and fibula fractures, abrasions to the right lower limb and left elbow, and exposure of the tibia bone. He underwent extensive treatment, including wound debridement, fracture stabilisation, skin grafts, flap surgery, repeated dressings, and prolonged follow-up for almost two years after the accident. Despite treatment, the child was left with significant sequelae, including severe disfigurement, leg-length discrepancy, lower-limb atrophy, foot and scar contractures requiring corrective surgery, and aversion deformities necessitating the use of a specialised orthosis. He also experienced swelling in his leg and was given compression stockings.

[26] The rest of the cases referred to by counsel for the plaintiff had to do with bone fractures.

[27] Submissions by Counsel for the defendant on issues of comparable cases in respect of general damages which may be awarded to the plaintiff included the following:

¹ *Ndlovu v Road Accident Fund* [2025] ZAGPPHC 1126 para 20.

² *TPN v Road Accident Fund* [2024] ZAKZDHC 37.

[28] In *Mahlangu v RAF*,³ the plaintiff suffered fracture of the left ankle accompanied by torn ligaments and soft tissue injuries. He was unable to perform basic daily activities, required assistance with personal care, had to be accompanied whilst travelling and could not return to work. For an extended period, he was in excruciating pain, and he remained with chronic pain in the left ankle. He had to take painkillers twice a day to alleviate pain. On occasion, the left ankle would lose sensation. He was unable to cook as he struggled to move around or stand for more than five minutes. Therefore, he could not perform any household chores. An amount of R500 000 was awarded in respect of the general damages. The sequelae in that matter were markedly more severe than in the present case, particularly in relation to the plaintiff's loss of independence and inability to function. By contrast, the plaintiff in the matter before court, while significantly impaired, has retained a degree of independence and has returned to work, albeit in a reduced capacity. This distinction justifies a lower award.

[29] In *Rabe v Road Accident Fund*,⁴ the plaintiff sustained a left supra-orbital laceration, an abrasion to the left forearm, a fractured left clavicle, and a tibial plateau fracture of the right knee, the latter being the most serious injury. These injuries required surgical intervention. He underwent open reduction and internal fixation of the right tibial plateau with plate fixation and remained in hospital for two weeks, followed by a right knee arthroscopy. Although his shoulder caused only mild discomfort thereafter, he continued to experience daily knee pain, disrupted sleep, and discomfort requiring him to sleep with a pillow between his legs. He relied on pain killers for pain relief and testified that he could no longer run, jog, play rugby, or pursue his goal of completing the Comrades Marathon. The court found that his enjoyment of life had been significantly impaired and noted that he had also lost his employment. Despite ongoing pain and limitations affecting his lifestyle and employment prospects, the adjusted present-day value of the award is approximately R393 000.00.

While the injury in *Rabe* involved a fracture, which is generally regarded as more severe than a ligament injury, the functional limitations suffered by that plaintiff bear

³ *Mahlangu v RAF* [2015] ZAGPJHC 342.

⁴ *Rabe v Road Accident Fund* [2010] ZAGPPHC 584.

some resemblance to those in the present matter. However, the current plaintiff's condition is compounded by persistent restricted movement of the knee and an antalgic gait, features which justify a somewhat higher award than that in *Rabe*, when adjusted for inflation and contemporary trends.

[30] The defendant's submission is that an amount between R300 000 and R350 000 for general damages would be fair and reasonable.

General Damages

[31] In *Sandler v Wholesale Coal Supplies Limited*,⁵ the court stated that:

“... it must be recognised that though the law attempts to repair the wrong done to a sufferer who has received personal injuries in an accident by compensating him in money, yet there are no scales by which pain and suffering can be measured, and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty. The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending upon the judge's view of what is fair in all the circumstances of the case.”

[32] It is an established principle of our law that awards in previous cases can only offer broad and general guidelines in view of the differences that inevitably arise in each case. The process of comparison is not a meticulous examination of awards and should not interfere with the court's general discretion.⁶ There is no doubt that even when the facts are similar, the awards in those cases are not to be slavishly followed, as they are guidelines only. Neither can the court rigidly apply the consumer price indices when comparing earlier awards.

[33] In *Petrus v Road Accident Fund*,⁷ an award of R450 000 was made in respect of general damages where the plaintiff sustained a fracture of the knee joint resulting in limited flexion, chronic pain, and persistent limp. He complained of a painful left

⁵ *Sandler v Wholesale Coal Supplies Limited* 1941 AD 194 at 199.

⁶ *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 535H-536A.

⁷ *Petrus v Road Accident Fund* [2023] ZAFSHC 337.

knee and ankle. The left knee's lateral tibia plateau had a fracture, which could be considered to be a severe injury. The plaintiff in that matter similarly experienced difficulty with mobility and reduced enjoyment of life. The present matter is closely aligned with *Petrus* in that both plaintiffs suffer from functional impairment of knee and ongoing pain. However, it must be noted that the injury in *Petrus* involved a fracture, which is inherently more severe than a ligament injury. Notwithstanding this distinction, the functional consequences in both cases are comparable, thereby making the award in *Petrus* a useful benchmark.

[34] As stated, the plaintiff relied on *TPN v Road Accident Fund*⁸, where R850 000 was awarded. That matter, however, is clearly distinguishable. The injuries sustained by the minor child were catastrophic, involving a degloving injury, multiple surgical interventions, severe disfigurement, and long-term orthopaedic complications. The extent of suffering, disfigurement, and permanent disability in *TPN* far exceeds that of the present case, rendering it of limited assistance for comparative purposes.

[35] When these authorities are considered collectively, a pattern emerges: awards tend to escalate where plaintiffs are rendered wholly or largely incapacitated, suffer fractures with significant complications, or endure severe disfigurement. Conversely, where a plaintiff retains residual functionality and the injury, although serious, does not result in total loss of amenities of life, the awards are more moderate.

[36] The Supreme Court of Appeal has noted the tendency towards increased awards in respect of general damages in recent times. It therefore reaffirmed conservatism as one of the multiple factors to be considered in awarding general damages.⁹

[37] In *Msiza v Road Accident Fund*,¹⁰ the court stated as follows:

⁸ *Supra* note 2.

⁹ *Pietersen v MEC for Health, Province of Gauteng* [2021] ZAGPJHC 807 para 13.

¹⁰ *Msiza v Road Accident Fund* [2014] ZAGPPHC 27 para 26.

“In the exercise of its discretion with regard to the appropriate amount that is to be awarded as general damages the court has to be fair and reasonable to both parties. Whilst the plaintiff must be sufficiently and properly compensated for the injuries he/she has suffered in the accident; the defendant should not be unnecessarily burdened with an inordinately high award despite the recent tendency by the courts to pitch the awards higher than in the past. *De Jongh v Du Pisanie NO* [2004] All SA 565 (SCA).”

[38] A court is entitled to be alive to the improvement in medical services, equipment, medicine, and care, and to recognise that the non-monetary value of treatment and the management of impairments is reflected in improvement and the enjoyment of a plaintiff’s amenities of life. This may, in turn and in appropriate circumstances, have the effect of reducing the amount of previous awards, since the loss of amenities might not be as great as it had been previously.¹¹

[39] As stated, at the time of the plaintiff’s assessment by Dr Engelbrecht in March 2024, 18 months had passed since the accident, and the plaintiff had not been able to return to work. The plaintiff’s flexion of the knee at the time was 50 degrees, whereas the right knee flexion was 130 degrees, which was the plaintiff’s normal range. According to Dr Engelbrecht, 65 degrees of flexion is considered acceptable, as it indicates that the knee is reasonably functional. That being so, anything below 65 degrees means that one would be unable to do basic movements and makes it dangerous for one to even drive. Therefore, at 50 degrees, the plaintiff was 15 degrees below the acceptable range, thus giving a non-functional outcome.

[40] However, the plaintiff was assessed by the Occupational Therapist in July 2024, just over three months after the plaintiff was assessed by Dr Engelbrecht. The Occupational Therapist recorded the plaintiff’s left knee flexion to be 60 degrees. Dr Engelbrecht conceded that this was a sign of some improvement.

[41] During cross-examination, Dr Engelbrecht stated that he was not privy to the information that the plaintiff had to undergo a further procedure after the procedure of 2 December 2022, which she failed to undergo due to the fact that funds had been

¹¹ *Petrus* footnote 8 above para 38.

depleted as she was being treated at a private hospital. From the plaintiff's own evidence, the next time she approached a public institution for intervention recommended by the medical staff in December 2022, was in 2024. Even then, she did not follow up when she did not hear anything from the hospital.

[42] Dr Engelbrecht conceded further that delaying intervention for a torn knee ligament increases the likelihood of making the procedure and the recovery significantly more complex.

[43] Had the plaintiff obtained surgical reconstruction at an early stage, soon after she was given the advice, it would have assisted in her recovery and reduced the loss of amenities of life, thus, in all likelihood, having a positive progress in her occupational prospects. By so doing, it would have gone a long way in satisfying the plaintiff's general obligation of mitigating her damages. The plaintiff was aware that she could seek relief from public institutions but chose not to. As was stated in *Ndlovu v Road Accident Fund*,¹² once the plaintiff has the benefit of a statutory certificate contemplated in section 17(4)(a) of the Road Accident Fund Act 56 of 1996, the defendant is obliged to compensate the plaintiff for the costs of future accommodation, treatment, services, or goods arising from the injuries sustained.

[44] In the present matter, the plaintiff has suffered a ligament injury requiring surgical intervention, persistent pain and restricted mobility. However, she has regained partial function, has returned to employment, and remains capable of performing light duties. Importantly, her condition may have been ameliorated had she timeously followed through with further recommended medical intervention. This failure to mitigate her damages is a material factor that distinguishes her case from those involving more severe and irreversible outcomes.

[45] In the circumstances and bearing in mind the need for consistency coupled with judicial discretion, the award of R450 000.00 accords with the general trend of awards

¹² *Ndlovu v Road Accident Fund* [2025] ZAGPPHC 1126.

in comparable cases and reflects a fair and reasonable balance between under- and over- compensation.

Costs

[46] In considering the issue of costs, the plaintiff is substantially successful. There is therefore no reason to deviate from the general principle that costs follow the cause.

[47] It was submitted by Counsel for the plaintiff that costs be granted on a party and party scale C. However, this case does not exhibit exceptional complexity; it does not involve a substantial financial claim, nor is it of immense importance.

Order

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

- 1 The defendant shall pay to the plaintiff the total amount of R450 000 in respect of the general damages.
- 2 The defendant shall pay the plaintiff's party and party costs on scale B, which costs shall include the costs of Counsel.



M R MOLELEKI
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances

Counsel for the Plaintiff: Mr K Shai
Instructed by: Phillip Meyer Attorneys Inc.
White River

Counsel for the Defendant: Mr T O Mgwenya
Instructed by: State Attorney

Date of hearing: 09 June 2026
Date of judgment: 25 June 2026