REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Reportable: NO
Of interest to other Judges: NO
Revised: NO
Date: 19 June 2026 S.S Tebeile AJ
Signature: _____

Case No: 2021-26549

In the matter between:

W[…] B[…] First Plaintiff
W[…] M[…] S[…] Second Plaintiff

and

ROAD ACCIDENT FUND Defendant

Heard on : 18 March 2026

Decided on : 19 June 2026

JUDGMENT

TEBEILE AJ:

Introduction

[1] This is a default judgment application brought by the plaintiffs following the striking out of the defendant's defence by an order of Nkoenyane AJ on 31 July 2024.

[2] The second plaintiff, M[…] S[…] W[…], a 21-year-old male, was injured in a motor vehicle collision on 16 August 2019 when he was approximately 15 years old.

[3] The defendant's defence was struck out *ipso facto* on 11 August 2024 for non-compliance with the court order of 31 July 2024. The defendant has not taken any steps to re-instate its defence or oppose the present default judgment application.

Background

[4] On 16 August 2019 at approximately 13h40 on Ermelo Road, Casseldale, Springs, a collision occurred between a motor vehicle bearing registration number FW […] GP driven by one Mr Dlangalala ("the insured driver") and a vehicle bearing registration number CP […] GP driven by one E[…] W[…]. The second plaintiff was a passenger in the motor vehicle driven by E[…] W[…].

[5] The collision occurred when the insured driver executed a U-turn suddenly and without warning directly across the path of travel of the vehicle in which the second plaintiff was travelling. The second plaintiff sustained severe bodily injuries as a result of the collision.

[6] The first plaintiff, Ms B[…] W[…], is the second plaintiff's mother and claims in her personal capacity for past hospital and medical expenses incurred on behalf of the second plaintiff.

Merits and liability

[7] The uncontested evidence before this court demonstrates that the collision was caused by the sole negligence of the insured driver. The insured driver failed to keep a proper lookout, drove at excessive speed, failed to maintain proper control of the vehicle, and executed a U-turn without warning directly across the path of travel of the vehicle in which the second plaintiff was travelling.

[8] The first plaintiff was a passenger, and no negligence is attributed to the second plaintiff. The defendant has not filed any opposing papers, and its defence has been struck out. The plaintiffs are therefore entitled to judgment on the merits, with the defendant liable for 100% of the plaintiffs' proven or agreed damages.

Application in terms of Rule 38(2)

[9] The plaintiffs have brought an application in terms of Rule 38(2) of the Uniform Rules of Court, seeking to have the evidence of the plaintiffs and their expert witnesses admitted by way of affidavit.

[10] The defendant's defence having been struck out, there is no opposition to the plaintiffs' claim. The admission of evidence by affidavit is convenient and will save costs. There is no prejudice to any party. I am satisfied that the application should be granted.

Injuries sustained by the second plaintiff

[11] The second plaintiff sustained the following injuries as recorded in the medico-legal reports:

11.1. An axial skeleton soft tissue injury.

11.2. A concussive head injury with a forehead abrasion.

11.3. A chest contusion with possible rib fractures.

11.4. A mild traumatic brain injury (TBI/concussion) with post-concussion syndrome.

[12] According to the neuropsychologist, Ms Hovsha, the second plaintiff suffered severely impaired auditory attention, concentration and tracking; below average executive functioning; memory deficits; severe depression; and post-traumatic stress disorder.

[13] The second plaintiff was transported by ambulance from the scene to Life Springs Parkland Clinic, where he remained for approximately four days. His injuries were managed conservatively, including by way of in-hospital physiotherapy. He continues to experience significant symptoms, including chronic neck and back pain, migraines, poor memory and concentration, anxiety, and depression.

Past hospital and medical expenses

[14] The first plaintiff claims an amount of R21 979.83 in respect of past hospital and medical expenses. The supporting vouchers have been presented before this court, and Dr J.P. Marin (orthopaedic surgeon) has confirmed that the expenses are accident-related and the costs are fair and reasonable . The claim in this regard is granted.

Future hospital and medical expenses

[15] It is evident from the medico-legal reports that the second plaintiff has sustained serious injuries which will require ongoing treatment. The defendant is accordingly ordered to furnish the second plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, covering 100% of the costs of future accommodation, treatment, services and goods relating to the injuries sustained in the collision.

Plaintiffs' submissions for loss of earnings

[16] The industrial psychologist, Ms du Toit, postulates that, but for the accident, the second plaintiff would likely have obtained a Grade 12 (NQF 4) within a supportive academic environment and would have obtained an advanced diploma (NQF 7 level). He would have earned at Paterson level B5 median (basic salary) with gradual progression to Paterson level C5/D1 median (total package) towards age 45 as career ceiling, with retirement at age 65.

[17] Having regard to the accident, Ms du Toit postulates that the second plaintiff will now likely complete NQF higher vocational certificates following a more practical/vocational route at a TVET/FET college. He would complete his N6 level studies and practical training, and pass his trade test to become a qualified electrician. He would peak on Paterson C2 median (total package) with retirement at age 65. Due to the sequelae of the brain injury, he would remain a vulnerable worker with a higher-than-normal post-accident contingency value being appropriate.

[18] The actuary, Mr Loots, calculated the second plaintiff's loss of earnings based on the postulations of the industrial psychologist. His report dated 13 October 2025 indicates a loss of earnings of R4 439 917.00, applying contingency deductions of 5% for past income and 20% for future earnings disregarding the accident, and 35% for earnings having regard to the accident.

Legal principles and contingency deductions

[19] It is trite that the assessment of damages for loss of earning capacity is inherently speculative. The court must make an estimate of the present value of the loss, which is often a very rough estimate. The method of actuarial computation is useful but does not bind the court. The trial judge retains a large discretion to award what he or she considers right.

[20] The assessment of damages for loss of earnings or earning capacity is inherently uncertain. In *Southern Insurance Association Ltd v Bailey NO*[1] it was held:

> "One of the elements in exercising that discretion is the making of a discount for 'contingencies' or the 'vicissitudes of life'. These include such matters as the possibility that the plaintiff may in the result have less than a 'normal' expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case."

[21] Contingency deductions are a flexible, discretionary adjustment made by the court. The standard contingencies are typically 5% to 15% for pre-morbid income and 15% to 35% for post-morbid income, depending on the facts of each case. However, where the plaintiff's prospects are particularly speculative or the post-morbid scenario is fraught with uncertainties, higher contingencies may be applied.

[22] In *Road Accident Fund v Guedes*[2] the Supreme Court of Appeal reiterated that the assessment of future loss is not a mathematical exercise but a matter of judicial estimation, having regard to the evidence and the probabilities.[3] The Court stated:

> "The calculation of the quantum of a future amount, such as loss of earning capacity, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature such an enquiry is speculative and a court can therefore only make an estimate of the present value of the loss which is often a very rough estimate".[4]

[23] The Supreme Court of Appeal in *Road Accident Fund v Guedes* went on and stated:

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[1] 1984 (1) SA 98 (A).
[2] *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA).
[3] Id at para 8.
[4] Id, see also *President Insurance Co Ltd v Mathews* 1992 (1) SA 1 (A) at 5C-E.

> "The court necessarily exercises a wide discretion when it assesses the quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right. Courts have adopted the approach that in order to assist in such a calculation, an actuarial computation is a useful basis for establishing the quantum of damages. Even then, the trial court has a wide discretion to award what it believes is just".[5]

[24] It is also trite that contingency deductions are made to account for the vicissitudes of life[6] or the hazards of life that normally beset the lives and circumstances of ordinary people. These include matters such as the possibility of illness, periods of unemployment, labour unrest, general economic conditions, and the chance of early death. The assessment of the rate of discount is largely arbitrary and must depend upon the trial judge's impression of the case.

[25] In practice, courts often apply differential contingencies, i.e., one percentage for the pre-accident (or pre-morbid) scenario and a different, often higher, percentage for the post-accident (or post-morbid) scenario. This recognises that the plaintiff's future is more uncertain and precarious as a result of the injuries.

Analysis and application

[26] The plaintiffs submitted that the loss of earnings should be calculated based on the actuarial report of Mr Wim Loots, which applied contingency deductions of 5% for past income (both pre- and post-accident), 20% for future earnings (pre-accident), and 35% for future earnings (post-accident).

[27] This Court is called upon to determine whether these contingency deductions are fair and reasonable. I am persuaded that they are not. In my view, the pre-accident contingency deduction of 20% is not justified. The normal contingency for future loss is 15%, and the sliding scale for a youth (the second plaintiff was 15 years old at the time of the accident) would suggest a figure around 20%. However, it is crucial to apply the correct principles. The court must have regard

[5] Id, see also *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) 114F-115D.
[6] See *Southern Insurance Association Ltd v Bailey NO*.

to the specific facts of the case. The evidence indicates that the second plaintiff was a scholar with aspirations to become a doctor or chiropractor.

[28] The experts' reports reveal a young man who, despite a history of bullying, had the academic potential to reach NQF 7 level. Given his young age and the inherent uncertainties of life, a pre-accident contingency of 10% for future loss is appropriate. The standard 5% deduction for past loss is accepted.

[29] The post-accident contingency deduction of 35% is also unsupported. While the second plaintiff is indeed a vulnerable employee, he has shown resilience. He completed Grade 12, achieved his N6 electrician qualification, and secured employment as an electrical apprentice. The evidence of the industrial psychologist, Ms du Toit, suggests that he will likely complete his practical training and pass his trade test, qualifying as an electrician. He will then be able to earn a living, albeit with limitations. A 35% contingency for post-accident future loss is disproportionate in light of these facts. A more appropriate deduction is 5%, reflecting the ordinary vicissitudes of life, such as potential unemployment, illness, or the risk of injury inherent in his chosen profession.

[30] The appropriate contingency deductions are therefore:

30.1. Past loss of earnings (pre- and post-accident): 5%

30.2. Future loss of earnings (pre-accident): 10%

30.3. Future loss of earnings (post-accident): 5%

[31] The second plaintiff's loss of earnings is calculated based on the actuarial report and the industrial psychologist's postulations. Using the contingency deductions as determined above (past loss of earnings (pre- and post-accident): 5%; future loss of earnings (pre-accident): 10%; and future loss of earnings (post-accident): 5%, the calculation is as follows:

Item	Past loss	Future loss	Total loss
Earnings had accident not occurred	R239 100	R13 672 524	R13 911 624
Less: pre-accident contingencies(5%/ 10%)	R11 955	R1 367 252	R1 379 207
Net Pre-accident Earnings	R227 145	R12 305 272	R12 532 417
Earnings having regard to accident	R116 949	R10 175 608	R10 292 557
Less: post-accident contingencies (5%/5%)	R5 847	R508 780	R514 627
Net Post-accident Earnings	R111 102	R9 666 828	R9 777 930
Loss of Earnings	R116 043	R2 638 444	R2 754 487
Total Loss of Earnings	R116 043	R2 638 444	R2 754 487

Future hospital and medical expenses

[32] The medico-legal reports establish that the second plaintiff has sustained serious injuries requiring ongoing treatment. Dr Read recommended conservative treatment including analgesics, anti-inflammatories, muscle relaxants, ulcer prophylaxis, and physiotherapy sessions.

[33] Dr Mutyaba expressed the opinion that chronic pain syndrome requires management by a multi-disciplinary team. Ms Hovsha recommended treatment by a psychiatrist and clinical psychologist.

[34] I find that the second plaintiff is entitled to an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 1996, for 100% of his future medical, hospital, and related expenses.

General damages

[35] The second plaintiff has not been qualified for general damages. The orthopaedic experts, Dr Read and Dr Mutyaba, both opined that the second plaintiff does not qualify for general damages as his whole person impairment is less than 30%.

[36] At the hearing of this application the plaintiffs did not press a claim for general damages.

Costs

[37] Costs should follow the result. The plaintiffs have been substantially successful in establishing liability and his entitlement to compensation. The plaintiffs sought costs on scale C. However, in the exercise of my discretion, I award costs on scale B on the party and party scale. This is not a complex matter that warrants a higher scale on costs. There is no justification to award costs on scale C.

Order

[38] Accordingly, I make the following order:

(1) The plaintiffs' application in terms of Rule 38(2) is granted.
(2) The defendant is declared 100% liable for the plaintiffs' proven or agreed damages in respect of motor vehicle accident that occurred on 16 August 2019.
(3) The defendant shall, within 180 days from the date of this order, pay to the plaintiffs the amount of R2 776 466.83 (Two Million Seven Hundred and Seventy-Six Thousand Four Hundred and Sixty-six Rand and Eighty-Three Cents) made up as follows:

3.1. Past hospital and medical expenses: R21 979.83

3.2. Loss of earnings: R2 754 487.00

(4) The amount referred to in paragraph 3 shall be paid into the plaintiffs' attorneys' trust account.

(5) The defendant shall pay interest on the amount referred to in paragraph 3 at the rate of 11.25% per annum, calculated from 14 days after the date of this judgment to the date of final payment.

(6) The defendant shall, within 30 days of service of this order, furnish the second plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, which undertaking shall cover 100% of the costs of future accommodation in a hospital or nursing home, or treatment, or rendering of a service, or supplying of goods to the second plaintiff, after such costs have been incurred and on proof thereof (or directly to the provider), arising from the injuries sustained in the collision of 16 August 2019.

(7) The defendant shall pay the plaintiffs' costs of suit party and party scale B, and such costs to include:

7.1. The reasonable travelling and accommodation costs incurred by the plaintiffs in attending medico-legal appointments.

7.2. The costs of the medico-legal reports and addendum reports, and the reasonable qualifying and/or preparation fees of the experts of whom notice was given in terms of Rule 36 of the Uniform Rules, including the Rule 38(2) affidavits by the plaintiffs' experts.

7.3. Counsel's costs on scale B.

7.4. The costs of obtaining and attending to the application for default judgment, including the costs of standing down the matter from 17 May 2026 to 18 March 2026, both days included.

(8) The defendant is to load the amount awarded in paragraph 2 onto its RNYP list within 30 days of service of this order, for payment to follow.

(9) The first plaintiff has a valid contingency fee agreement with her attorneys of record.

SHADRACK TEBEILE

Acting Judge of the High Court of South Africa

Gauteng Local Division, Johannesburg

For the Plaintiffs: Adv S Mulligan instructed by Levin Tatanis Inc

For the Defendant: No appearance