

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 920/2021
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
DATE 18 June 2026
SIGNATURE

In the matter between:

NOLIZWI DIYA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

This judgment is prepared and authored by the Judge whose name is reflected as such 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 handing down is deemed to be__ June 2026.

JUDGMENT

MAKHOPA, J

[1] The Plaintiff instituted an action against the Defendant for damages suffered as the result of injuries sustained in a motor vehicle accident that occurred on 10 November 2019.

[2] The merits were not settled however the Plaintiff managed to prove the merits 100% in his favour. The Defendant was not represented in court on 10 June 2026 when the matter was set down for trial. Counsel for the Plaintiff asked the court to grant default judgment in favour of the Plaintiff. Counsel for Plaintiff addressed the court and referred to his heads of argument.

[3] The issue of damages is postponed sine die.

[4] The only issue remaining is whether this court after hearing counsel and reading the papers should grant the amount as requested on behalf of the Plaintiff in respect of loss of earnings. During the proceedings I did ask counsel to address me on all issues to the best of his ability because I am going to reserve judgment.

[5] The evaluation of the amount to be awarded for loss of income does not involve proof on a balance of probabilities. It is a matter of estimation. The general approach is to posit the Plaintiff, as he is proven to have been in his uninjured state and then to apply assumptions to his state with the proven injuries and their sequela.

[6] I am called upon to perform a delicate judicial duty in that I must decide what is the reasonable amount the Plaintiff would have earned but for the injuries and the consequent disability. Furthermore, I must determine the Plaintiff's future income, if any, having regard to the disability.

[7] The Plaintiff was admitted to casualty, received emergency treatment and nursing care and medication was prescribed. X-rays were done and the radiologist noted "there is no bony injury or pathology" (Caselines 005-15). The Plaintiff was discharged on the same day.

[8] The Plaintiff was employed as a general worker and has only standard eight. She is still employed.

[9] The Neurosurgeon remarks as follows "The claimant has reached maximal medical improvement" (Caselines 005-47). "It is trite that the onus rests on the Plaintiff to prove her case on the balance of probabilities see Pillay v Krishna 1946 SA 946.

Therefore the duty is on the Plaintiff to produce evidence that, because of the injury, she has suffered loss of income.

[10] I am of the view that the Plaintiff failed to show on preponderance of probabilities that the injuries she sustained resulted in any loss of earnings.

[11] Furthermore the injuries she sustained are not of such magnitude that she will be unable to earn an income or promotion in the future. She also failed to prove any past loss of income since she was discharged from hospital the same day.

[12] It is further my view that the Plaintiff failed in her duty to satisfy the court that she lost any earnings or stands to lose any earnings as a consequence of the motor vehicle accident in question.

[13] I make the following order:-

- 13.1. the Defendant is liable for 100% of the Plaintiff's proven or agreed damages.
- 13.2. the Plaintiff's claim for loss of earnings is dismissed
- 13.3. the issue of general damages is postponed sine die
- 13.4. the application in terms of rule 38(2) is granted.
- 14.5. the Defendant shall pay the costs on Scale B.

D MAKHOBA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of Hearing: :10 June 2026

Date of Judgment: :____June 2026

Appearances:

For the Plaintiff : Adv K. Mhlanga

Instructed by : Sotshintshi Attorney

For the Defendant : State Attorney

Instructed by :