REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 37874/2019

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
DATE
SIGNATURE

In the matter between:

MASHADI MARTHA MALATSI Plaintiff

and

THE ROAD ACCIDENT FUND Defendant

Summary: Industrial psychologists, when expressing an opinion on the Plaintiff's uninjured career path, are duty-bound to meaningfully and purposefully consider the likely uninjured retirement age of the Plaintiff, and accepting the retirement age of 60 or 65 uncritically is untenable. The court considers personal circumstances, not statistics, when making an award. Factors to consider the uninjured retirement age include: (a) Uninjured physical and mental abilities. (b) Pre-accident work accommodations, availability of assistive devices, or assistance. (c) The sector in which the Plaintiff operated. (d) The physical requirements of the uninjured work. (e) Retirement planning and financial position of the Plaintiff. (f) Applicable labour legislation, contractual terms and bargaining council agreements. (g) The Plaintiff's

uninjured career plans. (h) Life expectancy of the Plaintiff. (i) Modern tendency and general practice. Retirement age of 77½ accepted.

JUDGMENT

KEHRHAHN AJ

Introduction

[1] The Plaintiff, Ms. Mashadi Matha Malatsi, was injured in a motor vehicle collision on 28 July 2017. The Plaintiff was born on 19 May 1946. She was about 71 years of age at the time of the accident and about 79 years of age when the matter proceeded before me.

[2] On 30 September 2025, when I was seized with the matter, only the quantum remained in dispute. Justice Lubbe AJ, on 11 April 2024, ordered the Defendant to pay 100% of the Plaintiff's proven or agreed damages. The Defendant had not yet decided on the seriousness of the Plaintiff's injuries, and as a result, I postponed the general damages for later determination. The loss of income and past medical expenses remained to be adjudicated. I granted the rule 38(2) application and admitted the evidence of the Plaintiff's witnesses, including the Plaintiff's expert witnesses, by affidavit.

[3] After having regard to the evidence presented by the Plaintiff, I ordered the Defendant to pay the Plaintiff an amount of R 115 514.40 (one hundred and fifteen thousand, five hundred and fourteen Rand and forty cents). I directed that the reasons would follow.

[4] I raised the issue of the retirement age with counsel for the Plaintiff. To this end, Dr. Pretorius, the Plaintiff's industrial psychologist, opined that, but for the accident, the Plaintiff would have retired at age 77½. Given my concern with the retirement age, the Plaintiff opted to present the evidence of Dr. Pretorius, who is well-known to this court and a respected industrial psychologist, *viva voce*.

The Plaintiff's evidence

[5] The Plaintiff provided evidence from numerous of her clients, who mostly confirmed that the Plaintiff took care of their minor children in her capacity as an informal daycare owner and could not continue to do so as a direct result of the accident. This includes evidence from Morongwa Annah Serepa, Sekhumbulane Leah Ledwaba, Renolda Busisiwe Letwaba, Bertha Mpuku Morulane, Dimakatso Margaret Mothiba and Khutjo Fubke Maleka. They all confirmed that they have paid the Plaintiff R400/m to take care of their children.

[6] The undisputed evidence is that the Plaintiff was earning an income at the time of the accident, at a time when she was already 71 years old.

[7] The industrial psychologist, Dr. Pretorius, testified that the Plaintiff had been forced to work, owing to her dismal socio-economic circumstances. She has an indigent background and thus relied on the Social Security Agency's old-age grants to survive, but the Plaintiff was compelled to supplement her SASSA pension to make ends meet. She had an adult daughter and two grandchildren, all of whom were financially dependent on the Plaintiff. The Plaintiff was financially motivated to work as long as she could, owing to financial hardships. Dr. Pretorius also opined that, given the current economic climate, many individuals, especially those with a low level of education, including the Plaintiff, are compelled to work as long as possible.

[8] According to Dr. Pretorius (industrial psychologist), "*retirement is becoming a heated discussion within the labor (sic) market. The reality (while not always acknowledged) is that the majority of the South African labor (sic) market are not sufficiently prepared for retirement*". Dr. Pretorius also alludes to the fact that "*the growth in technology, and knowledge in health science results in people living healthier and longer than before*".

[9] The Plaintiff's evidence is that she had no limitations to perform the work of an informal caregiver. If such problems were to develop later, owing to her advanced age, she would have the assistance of her adult daughter and two grandchildren, who could help her with the work of an informal caregiver. Dr. Pretorius relied on the

academic literature of Michelle Reyers, published in the Journal of Financial Counseling and Planning. This scholar notes that "*potentially two-thirds of all South Africans may not have a funded pension benefit at retirement and will need to rely on social grants after retirement*".[1]

[10] Dr. Pretorius, drawing from the *Retirement Reality Report (RRR),*[2] suggests that only 6% of South Africans can afford to retire comfortably. About two-thirds of South Africans are not saving for retirement, as many simply cannot afford to do so because they have no money left at the end of the month. Dr. Pretorius also notes that, in recent times, the share of the RRR survey respondents who cannot afford to retire has increased from 65% to 70%.

[11] Dr. Pretorius also alluded to the fact that in the past, the post-retirement lifespan of an individual who retired at age 65 may have been about 20 years, where such a person may live up to age 85 (for healthy individuals). The post-retirement lifespan of an individual retiring at age 65 has recently increased to 35-40 years. Living longer and having a longer retirement expectancy require people to work longer and maintain some employment post-retirement.

Assessment

[12] During the week of 29 September to 3 October 2025, I dealt with numerous default judgment applications against the Road Accident Fund, up to seventeen matters a day. In almost all of these actions, in which the Plaintiffs claimed loss of income and/or loss of earning capacity, the Plaintiffs presented expert opinion evidence, including evidence from industrial psychologists. In almost none of these cases did the industrial psychologists conduct an in-depth assessment of the Plaintiffs' likely pre-accident retirement age. For the most part, the industrial psychologists uncritically accepted without more that the '*normal retirement age*' was between 60 and 65 years. This is an untenable situation, given that when quantifying a personal injury claim, one must have regard to the Plaintiff's personal

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[1] Reyers "Perceptions of retirement adequacy: Evidence from South Africa" (2018) 29(2) *Journal of Financial Counseling and Planning Education* 343 at 344.

[2] The 10X Retirement Reality Report had been published annually since 2018 and is based on a comprehensive survey by Brand Atlas, aimed at providing insight into the financial knowledge and behaviour of the RSA consumers.

circumstances and not to statistics or averages.[3] The Appellate Division in *Griffiths v Mutual & Federal Insurance*, held that the earnings of other members of the Cape Bar, or their average or mean earnings, are not helpful in determining the probable potential earnings of the Plaintiff in that case, as skills, fees and earnings vary from one individual to another.[4]

[13] In *LD v Road Accident Fund*,[5] the court, this time in the context of remarriage contingencies, was mindful of outdated marriage statistics being used in deducting contingencies, which was to the detriment of the litigants, and accepted that the court should obviate such injustices.[6] The same can be said about the generic, one-size-fits-all, outdated use of the fixed retirement ages of 60-65 years. An industrial psychologist would be remiss in their duty to the court[7] if they omit to conduct an individual, fact-specific assessment of the Plaintiff's likely pre-accident retirement age.

[14] By its very nature, owing to the "once-and-for-all" and "lumpsum" rules,[8] claims for loss of income are speculative, and one aspect that must be determined, as best a court possibly can, is the pre-morbid retirement age of the Plaintiff. In *Southern Insurance Association Ltd v Bailey N.O,*[9] the court held that an enquiry into loss of earning capacity "*involves a prediction as to the future, without the benefits of crystal balls, soothsayers, augers or oracles.*"[10] Some cases will be easier to adjudicate than others, but where the Plaintiff presents the best evidence available, the Plaintiff may not be non-suited, and the court is duty-bound to do the best it can with the evidence at hand.[11]

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[3] *Griffiths v Mutual & Federal Insurance Company Ltd* 1994 (1) SA 535 (A) at 546 and *Mathamelo v Road Accident Fund* [2023] ZAGPPHC 1150 at para 75.
[4] *Griffiths* above n 3 at 546.
[5] [2018] ZAGPPHC 181.
[6] Id at paras 34-36.
[7] An expert owes a duty to the court to provide independent assistance by way of objective, unbiased opinion relating to matters within his/her expertise, see *Schneider N.O and Others v AA* 2010 (5) SA 203 (WCC) at 211-212.
[8] *Evins v Shield Insurance Co Ltd* 1980 (2) SA 814 (A) 835 and *Marine & Trade Insurance Co Ltd v Katz N.O* 1979 (4) SA 961 (A) 974.
[9] 1984 (1) SA 98 (A).
[10] Id at 113. Also see *Dyssel N.O v Shield Insurance Co Ltd* 1982 (3) SA 1084 (C) at 1085-1086 and *Goodall v President Insurance Co Ltd* 1978 (1) SA 389 (W) at 392-393.
[11] *Esso Standard SA (Pty) Ltd v Katz* 1981 (1) SA 964 (A) at 969; *Mkwanzi v Van der Merwe* 1970 (1) SA 609 (A) at 632 and *Hersman v Shapiro & Co* 1926 TPD 367 at 379.

[15] It must not be lost out of sight that the Road Accident Fund Act[12] abolishes the delictual common law claim against the guilty driver.[13] The Act replaces the old common law delictual claim against the guilty driver with a statutory claim against the Road Accident Fund, without changing the substantive basis for liability.[14]

[16] As for what this common law and retained "*substantive basis for liability*" entails, the Constitutional Court in *Van der Merwe v Road Accident Fund* held that:[15]

> "*The Act does not define 'damages' or 'damages for patrimonial loss'. Its meaning must be garnered from the common law. The notion of damages is best understood not by its nature but by its purpose. Damages are 'a monetary equivalent' of loss 'awarded to a person with the object of eliminating as fully as possible [her or] his past as well as future damage.*[16] *The primary purpose of awarding damages is to place, to the fullest possible extent, the injured party in the same position she or he would have been in, but for the wrongful conduct.*"

[17] If the Plaintiff is to be placed, to the fullest extent possible, back in the position that she would have been in, but for the accident, it is essential that the uninjured retirement age be meaningfully considered. The uncritical and generic adoption of a "normal age of retirement" would leave the Plaintiff with no claim at all, as she had long passed what industrial psychologists generally accept as the "normal" retirement age of 60-65. The question that I must thus establish is this: What was the Plaintiff's most likely uninjured retirement age, based on her individual circumstances?

[18] Upon a thorough and proper assessment of the uninjured expected retirement age, the court may conclude that the uninjured expected retirement age is higher or even lower than what is generally perceived as the "normal" retirement age, that is, the generically accepted age of 60-65 years.

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[12] Section 21 of Act 56 of 1996.
[13] *Law Society of SA v Minister for Transport* 2011 (1) SA 400 (CC) at para 26.
[14] *Road Accident Fund v Abrahams* 2018 (5) SA 169 (SCA) at para 13.
[15] 2006 (4) SA 230 (CC) at para 37.
[16] Visser *et al Visser en Potgieter's Law of Damages* 2nd ed (Juta & Co Ltd, Lansdowne 2003) at 19.

[19] Although by no means a *numerus clausus*, and listed here in no particular order, I turn next to the objective facts and circumstances that informed my findings on the likely uninjured retirement age of the Plaintiff.

[20] The first factor to consider is the Plaintiff's *pre-accident physical and mental abilities*.[17] It follows that any pre-existing medical, physical, or psychological conditions that may have an adverse effect on the mental and physical capacity of the Plaintiff, would have an adverse impact on the uninjured expected retirement age. The Plaintiff *in casu* had no chronic diseases and pre-accident, she was never in a serious accident or sustained serious injuries. She had no psychological or cognitive problems before the accident.

[21] The second factor is the uninjured *workplace accommodations, the availability of assistive devices and other assistance* that would accommodate an older person in the workplace. If the Plaintiff had been able to work for longer in the uninjured scenario, despite the normal and expected consequences of ageing, owing to being accommodated at work or being able to rely on assistive devices or the help of others to perform the work, then it follows that a higher uninjured retirement age may be justified. In *casu*, the Plaintiff was the owner of an informal daycare and had the assistance of her adult daughter to assist her with the physical requirements of the work.

[22] The third factor that I considered was *the sector in which the Plaintiff functioned* in the uninjured scenario. The question is whether the Plaintiff was functioning in the formal or informal or in the corporate or non-corporate labour markets. Dr. Pretorius (the Plaintiff's industrial psychologist) testified that the Plaintiff *in casu* operated in the non-corporate informal sector. Given the Plaintiff's work history and level of education, her profile limited her to physically demanding work, specifically as a self-employed daycare operator. In Dr. Pretorius's opinion, people in the informal, non-corporate sector are more likely to retire later than those in the corporate or formal labour markets.

[17] See *Mbambo v RAF* [2025] ZAFSHC 178 at para 36.

[23] In *Mahlo v Road Accident Fund (Mahlo)*,[18] Chesiwe J held that it was not unreasonable to accept that the Plaintiff would have worked beyond age 65 and took cognisance of the fact that a self-employed vendor was financially dependent on income generated from the sale of goods.[19] The court went on to find that the retirement age of 70 years was appropriate.[20] The court held that it is a reality that people work into their later years, depending on their health.[21]

[24] The fourth factor was the *physical requirements of the pre-accident work* that the Plaintiff did or was likely to do. It follows logically that as people get older, they become less capable of performing heavy work. *In casu*, the Plaintiff's work was of a physical nature, as she worked with young children. She had to be able to pick up and carry the children and to stand and walk for long periods of the day.

[25] The fifth factor was *whether the Plaintiff could afford retirement pre-accident.*[22] The affordability of retirement may be informed by the actual earnings of the Plaintiff and the actual or prospective retirement savings of the Plaintiff. *In casu*, the Plaintiff earned a profit of R1450/m or R17 400/a. She used this profit to supplement her SASSA income, to make ends meet. She had not contributed to a retirement fund or annuity. If she did not work, she had no other stream of income to rely on. She obviously has no surplus funds to save towards her retirement, which supports the notion that she would have retired later rather than sooner.

[26] The sixth factor is the *dictates of the existing labour legislation, contractual obligations, pension fund rules and collective bargaining agreements*. The age of retirement may be fixed by a contractual agreement, a collective bargaining agreement, pension fund rules or some other binding arrangement.

[27] To this end, it is important to consider the consequences of an employer permitting an employee to work longer than the contractually agreed retirement age.

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[18] [2022] ZAFSHC 194 at para 25.
[19] Id at para 15.
[20] Id at paras 30 & 37.
[21] Id at para 36. Also see *Mogale v Road Accident Fund* [2014] ZAGPJHC 263 at para 47.
[22] See *Mbambo* above n 17.

[28] In terms of the Labour Relations Act 66 of 1995 ("the LRA"), a dismissal of an employee shall be automatically unfair if the reason for the dismissal is based on, *inter alia*, age,[23] however section 187(2)(*b*) of the LRA provides that, notwithstanding this section, when an employee is dismissed based on age, such a dismissal shall be fair if the employee reached the *normal or agreed retirement age*.

[29] In *Rubin Sportswear v SA Clothing and Textile Workers Union,*[24] Zondo JP (as he then was) considered the meaning of "*normal or agreed retirement age*" and held that:[25]

> "*The word is not defined in the Act. It, accordingly, must be given its ordinary meaning. Chambers – Mcmillan's South African Student's Dictionary describes the word "norm" thus:* ***"You say that something is the norm if it is what people normally or traditionally do."*** *It further says:-* ***"Norms are usual or accepted ways of behaving."*** *It describes the adjective "normal" as meaning* ***"usual, typical or expected."*** *The word "normality" is described as* ***"the state or condition in which things are as they usually are."*** *The New Shorter Oxford English Dictionary describes the word* ***"norm"*** *as meaning, among others* ***"a standard, a type; what is expected or regarded as normal; customary behavior, appearance."*** *As to the adjective "****normal",*** *one meaning that the latter dictionary gives is* ***"constituting or conforming to a standard; regular, usual, typical, ordinary, conventional.***" (Emphasis in original.)

[30] With this meaning of "normal or agreed retirement age" in mind, what is then the position if an employee works past the normal or agreed retirement age and is not dismissed by the employer? The law, per the dicta of *Schweitzer v Waco Distributors (A Division of Voltex Pry) Ltd (Waco)*,[26] has always been that termination of employment, after the normal or agreed retirement age, is automatically fair, even if dismissed long after reaching the agreed or normal retirement age.[27]

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[23] Section 187(1)(*f*). Also see sections 9 and 23 of the Constitution of the Republic of South Africa and section 6 of the Employment Equity Act 55 of 1998.
[24] [2004] ZALAC 8.
[25] Id at para 13. Also see *Motor Industry Staff Association v Great South Autobody CC t/a Great South Panelbeaters; Solidarity obo Strydom v State Information Technology Agency SOC Limited* 2025 (3) BCLR 312 (CC) at para 52.
[26] *Schweitzer v Waco Distributors (A Division of Voltex Pry) Ltd* [1999] BLLR 188 (LC).
[27] Id at para 16, followed in *Bos v Eon Consulting (Pty) Ltd* [2016] ZALCJHB 305 at paras 46-47; *Kutuma v Limpopo Legislature* [2014] ZALCJHB 357 at paras 33-38; and *Rubenstein v Price's Daelite (Pty) Ltd* (2002) 5 ILJ (LC) at paras 20-24.

[31] This position is no longer clear. In *Motor Industry Staff Association v Great South Autobody CC t/a Great South Panelbeaters; Solidarity obo Strydom v State Information Technology Agency SOC Limited*,[28] the apex court could not reach a majority decision on the interpretation of section 187(2)(b) of the LRA and handed down the following three judgments:[29]

(a) The first was penned by Justice Zondo CJ (as he then was) with Chaskalson AJ, Mathopo J and Schippers AJ (as he then was) concurring. The first judgment held that *Waco* was wrongly decided and that an employer must terminate the employment of an employee at the date upon which the employee attains the "normal or agreed retirement age". A termination at a later date would be unfair.[30]

(b) The second judgment, penned by Van Zyl AJ, held that the employer has an election to retain or terminate the employment relationship when the employee reaches the normal or agreed retirement age, which election can be exercised later, but must be exercised within a reasonable time.

(c) The third judgment was penned by Justice Rodgers J with Dodson AJ (as he then was), Kollapen J and Tshiqi J concurring. This judgment upheld the position as set out in *Waco*,[31] i.e., the status *quo*.

[32] Each of the various judgments of the apex court raised concerns with the practical implications of the other judgments.[32] How the labour industry responds to this uncertainty in the labour market is best left for the experts, but it is no doubt a factor that ought to be considered by industrial psychologists when expressing an opinion on the appropriate pre-accident retirement age.

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[28] *Motor Industry Staff Association* above n 25.
[29] *Motor Industry Staff Association* above n 25 at paras 2-4.
[30] *Motor Industry Staff Association* above n 25 at para 2.
[31] *Waco* above n 26.
[32] For example, see *Motor Industry Staff Association* above n 25 at paras 52-54, 56, 60, 62, 63, 66-67.

[33] It is also important to consider whether an employment agreement, pension fund rules, or a collective bargaining agreement[33] dictates a retirement age. Formal and corporate employers often opt for fixed retirement ages.

[34] In *Mahlo*, Justice Chesiwe J held that there are "*many instances where employees in the formal employment market are allowed to work until the age of 70 (seventy) years and beyond, such as is the case for professionals, Attorneys and Ministers*".[34]

[35] In *Mbambo,* the court applied an uninjured retirement age of 68 years, finding that the Plaintiff was a deputy sheriff and no fixed retirement age applied to him.[35]

[36] In *Mogale*, the court held that the Plaintiff would have retired at age 70,[36] because the Plaintiff's employer had no fixed-term retirement policy and the employees worked for the company as long as they were able to perform the work to the satisfaction of the employer.[37] The court held that "*persons who retire at 65 in today's economic climate, also do so at considerable financial disadvantage, and that people today are healthier and continue to work after the age of 65.*"[38]

[37] *In casu*, the Plaintiff was self-employed in the informal sector. There is no compulsory retirement age applicable to the Plaintiff.

[38] The seventh factor to consider is Plaintiff's *uninjured retirement plan*. Was it the intention of the Plaintiff to work up to a given age? Obviously, this is a subjective factor and depending on the circumstances and other objective facts that corroborate or support the Plaintiff's uninjured retirement plans, the court will decide what weight may be attached to this consideration. It remains a factor to consider. Given the financial realities for many South Africans, it must be accepted that a great deal of the population plans on working beyond the age of 65. The intention of the litigant is

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[33] *Motor Industry Staff Association* above n 25 at paras 55-56.
[34] *Mahlo* above n 18.
[35] *Mbambo* above n 17 at para 36.
[36] *Mogale* above n 21 at para 47.
[37] *Mogale* above n 21 at para 11.4.
[38] *Mogale* above n 21 at para 47.1.

not something that can be ignored by the court merely because it is a subjective factor. In this case, the Plaintiff's evidence is that she and her family depended on her income*,* and she would have worked for as long as reasonably possible.

[39] Of course, the mere wishes and intentions of an injured victim, although relevant, should not be the only decisive factor, and much will depend on the facts of each case and other objective collateral information regarding the prospects of employment and instead, the question should turn on the probabilities of an injured victim obtaining and sustaining further work to an advanced age.[39]

[40] If an employee works for an employer where a compulsory retirement age applies, the court must consider whether that employee planned on finding an additional source of income after the compulsory retirement age, such as consulting, performing part-time work, or embarking on self-employment, and what were the uninjured prospects of the Plaintiff securing post-retirement work.

[41] The eighth factor, is the *general uninjured life expectancy of the Plaintiff.* The lifespan of an individual who retires at age 65 have gone up as people live longer in modern times. But they do not live forever and for this reason, it is important to consider the life expectancy on a case-to-case basis.

[42] The ninth and final factor to consider is the *modern tendency and general practice.* In *Huxtable v Road Accident Fund*,[40] Ally AJ accepted a retirement age of 67 ½. The court held that:[41]

> "*Now the Policy of the Company, DRA, that he is presently employed by, has a retirement age of 63 years. The Industrial Psychologist submitted an addendum report wherein the retirement age of 67.5 is confirmed. The author of the report refers to research having been conducted in South (sic) wherein it is shown that the age of 65 is no longer regarded as being a retirement age. One of the reasons for this, is that people are unlikely to sustain the same livelihood today if they retired at age 65*

[39] In this context, the court in *Walton v Road Accident Fund* 2016 JDR 0471 (GJ) at para 28, was not satisfied with the evidence presented.
[40] 2023 JDR 1284 (GP).
[41] Id at para 6. Also see *Mogale* above n 21 at para 47.1.

and hence the inclination to work as long as possible taking into consideration the specific circumstances of the individual".

Conclusion

[43] I find that the Plaintiff would have worked to the age of 77½ had the accident not occurred. I accept the opinion of Dr. Pretorius (industrial psychologist) in this regard. I also accept the opinion that the accident had rendered the Plaintiff unemployable.

[44] The past loss of income to age 77½ was calculated by the actuary in the amount of R135 800. Mr. Marais, who appeared for the Plaintiff, conceded that the proposed contingency of 5% was conservative given the uncertainty of the uninjured retirement age. The higher the postulated uninjured retirement age, the higher the contingency should be. I directed that the contingency deduction should be 15%. The amount that I awarded for the past loss of income is R115 430.

[45] There is no claim for future loss of income. This claim was rightfully abandoned.

[46] The Plaintiff's claim for past medical expenses amounts to R84.40. Dr. Engelbrecht confirmed that these vouchers are accident-related and fair and reasonable.

ORDER

[47] The total award is R115 514.40 as set out in the order that I made on 30 September 2025. I repeat the order that I made:

1. The defendant is ordered to pay to the plaintiff by way of delictual damages within 180 calendar days, calculated from 30 September 2025, the amount of R115 514,40 (One Hundred and Fifteen Thousand Five Hundred and Fourteen Rand and Forty Cents) in satisfaction of the plaintiff's claim for payment of loss of earnings and past medical expenses.

2. If the defendant does not pay the judgment amount or any portion thereof within the time period as set out in 1 supra, interest shall be paid on the capital amount a tempore morae, after 14 days of the judgment date to the date of final payment.

3. The defendant is ordered to within 4 months from date of this order furnish the claimant with an unlimited undertaking in terms of the provisions of Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996 for 100% (one hundred percent) of the costs stipulated in terms of the said Section arising out of the injuries sustained by the plaintiff in the motor vehicle collision that is the subject of the claim instituted under the abovementioned case number. It is ordered that any expenses as envisaged in Section 17(4(a) that are incurred after this order is made will resort and, be claimable under the undertaking.

4. 4 The defendant is ordered to pay the plaintiff s and plaintiffs reasonable taxed or agreed party and party costs of suit on the High Court-scale which costs are to be taxed in the discretion of the taxing master and will include, but not necessarily be limited to the following:

   4.1. The fees of plaintiff's counsel to include counsel's day fees in respect of trial (30 September 2025) and counsel's fee incurred in preparing heads of argument and draft order for trial - High Court Scale - B.
   4.2. The costs and fees incurred in the drafting of all affidavits for the Plaintiff and the Plaintiff’s experts and the costs and fees in procuring the affidavits from them for purpose of trial.
   4.3. The costs of the plaintiffs Rule 38(2) application.
   4.4. In respect of the plaintiff's experts the following reasonable taxable costs, fees, disbursements and expenses: (a) the reasonable taxable preparation and reservation and day fees of A. Dr Willie Pretorius for trial; (b) the costs of and incurred by the plaintiff to procure all expert reports and assessments, including any follow up and addendum reports and assessments; (c) the costs of obtaining all actuarial calculations and reports thereon (d) The costs and fees incurred in the drafting of all affidavits for the plaintiff's experts.

4.5. The costs and fees incurred in the drafting the affidavit(s) of Dr Engelbrecht including his fee for considering the past medical and hospital expense vouchers at hand and the costs incurred in preparing an affidavit for him dealing with said issue.

4.6. The plaintiff's attorney is not entitled to recover under the cost order fees for any Filing Notices containing indexes and screenshots evidencing that these notices were uploaded to caselines.

5. It is recorded that evidence was led by affidavit.

6. All payments of the plaintiff's capital and legal costs are to be made by paying the amount(s) and taxed or agreed costs to the credit of the Trust account of Salomé Le Roux Attorneys, the details of which are as follows:

SALOME LE ROUX ATTORNEYS

BANK:	THE STANDARD BANK OF SOUTH AFRICA
BRANCH CODE:	0[...]
ACCOUNT NUMBER:	0[...]
ACCOUNT HOLDER:	SALOMÉ LE ROUX TRUST ACCOUNT TYPE OF
ACCOUNT:	TRUST CHEQUE ACCOUNT
REF:	M1418 VENDOR NR: 5[...]

7. 7 It is noted and recorded that the plaintiff's claims are not subject to a contingency fee agreement.

8. The issue of general damages are separated in terms of 33 (4) and postponed *sine die*.

FHH KEHRHAHN
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 30 September 2025
Judgment delivered: 11 June 2026

Appearances:	
Counsel for the plaintiff:	Adv H Marais
Instructed by:	Salome le Roux Attorneys
Counsel for the defendant:	No appearance