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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 79378/17

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

15 June 2026

In the matter between:

MAKOBE MAHLATSE MAHLAKO

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

"This judgment was prepared and authored by the Judge whose name is reflected herein, duly signed, and is submitted electronically to the Parties/their legal representatives by email. This judgment is further uploaded to the electronic file of this matter on Case Lines by the Judge or his Secretary. The date of this judgment is deemed to be 15 June 2026."

JUDGMENT

MTEMBU AJ

Introduction

[1] The plaintiff issued summons in this matter for damages she suffered as a result of a motor vehicle accident which occurred on 04 December 2015. At the time of the accident, the plaintiff was a passenger when a motor vehicle accident occurred, causing her to sustain, amongst others, a lumbar spine injury and a mild head injury. The defendant conceded liability for 100% of the plaintiff's proven or agreed-upon damages.

[2] I am therefore called upon to adjudicate the plaintiff's claims for loss of earnings/earning capacity and general damages. I am consequently also called upon to determine the appropriate contingency deductions in respect of the plaintiff's loss of earning capacity, and the terms of the undertaking under Section 17(4) of Act 56 of 1996.

[3] No oral evidence was led by the plaintiff. The plaintiff requested that the medical experts' affidavits be admitted by this Court as evidence in terms of Rule 38(2) of the Rules of Court. This Court made a ruling that the affidavits are accepted in terms of Rule 38(2). This matter came before me as a default judgment.

[4] Unfortunately, the RAF has abdicated its responsibility to defend these matters, leaving the courts to do so instead. More often than not, judges have found themselves in the position of defending RAF cases. In ***Z.P.M v Road Accident Fund*** (29281/22) [2024] ZAGPPHC 421 (6 May 2024), Moshwana J aptly captured this when he stated: "The melancholy that accentuates the conundrum faced by courts in matters of this nature is the perspicuous supineness displayed by the Road Accident Fund (RAF)."

Factual background

Merits

[5] I was informed that the merits have become settled and that the defendant is 100% liable for the plaintiff's proven or agreed damages. A factual account of how the motor collision occurred was not contested.

Quantum

[6] As already stated above, the medico-legal reports prepared by the plaintiff's expert witnesses were admitted into evidence in terms of Rule 38(2) of the Uniform Rules. All the reports remained unchallenged and uncontroverted. This justified the court in hearing the matter by way of affidavits without oral testimony. The defendant had been classified as a delinquent party, as envisaged in paragraph 4.9.1 of the Mediation Protocol under the Revised Mediation Directive dated 09 June 2025.

[7] The plaintiff, born on 3 March 1990, was 25 years old at the time of the accident and is now 36 years old. She has completed Grade 12 and a Diploma in Office Administration. The plaintiff was had been unemployed for two (2) months at the time of the accident.

[8] The expert reports, summarised below, are relevant to assessing the plaintiff's damages. They provide findings on the nature, extent, and long-term implications of the injuries, assisting the court in arriving at a just, equitable and fair quantum.

Orthopaedic Surgeon

[9] Dr SK Mafeelane, an Orthopaedic Surgeon, examined the plaintiff on 17 May 2018 and re-examined her on 28 October 2024. Dr Mafeelane found that, according to the hospital records, the plaintiff sustained injuries to the lumbar spine and head. The X-rays performed on 28 October 2024 were reported as normal. According to Dr Mafeelane, the injuries will not shorten the plaintiff's life expectancy. Nothing was noted regarding the plaintiff's lumbar spine. However, the plaintiff reported waist pain, headache, poor vision, and difficulty bending. The plaintiff's whole-person impairment, as a result of lumbar spine injuries, is 2%.

Specialist Neurosurgeon

[10] Dr ME Thobejane, a Specialist Neurosurgeon, examined the plaintiff on 24 May 2018 and found that the plaintiff did not complain about mental problems, although she experienced headaches 2 -3 times a week. On examination, Dr Thobejane found the plaintiff to be suffering pain when bending at 90 degrees; tenderness to palpation; and no mental impairment, but only mild physical impairment. The head injury was classified as mild. There was no further examination done by Dr Thobejane. Dr Thobejane's findings were made eight (8) years ago.

Neurosurgeon

[11] Dr Mazwi, a Neurosurgeon, examined the plaintiff on 28 January 2025. According to the clinical records, the plaintiff was discharged from the hospital on the same day. Injuries noted were to the lumbar spine and the head. The plaintiff reported difficulty with concentration, memory disturbance, headache and back pain. No scars were noted. On neurological examination, the plaintiff presented with difficulty with concentration and poor recall.

Clinical Psychologist

[12] Dr Mathews Katjene, a Clinical Psychologist, examined the plaintiff on 30 September 2019 and re-examined her on 16 October 2024. No Glasgow Coma Scale (GCS) was noted in the clinical records. On examination, the plaintiff's overall mental status was within acceptable limits. She was found to have mild neurocognitive impairment. She presented post-concussion symptoms in her post-accident functioning, which can be correlated to the sustained mild head injury. On cognitive functioning, she performed above average scores in tasks that require visual motor speed and manual dexterity. She obtained average scores in tasks that require immediate auditory attention span, visuo-construction, deductive reasoning, sequencing, visuo-spatial attention, visual attention and scanning, figural fluency, complex-double conceptual tracking, language comprehension, concrete thinking, visual complex attention, perceptual tracking, short-term perceptual memory, short-term visual memory, information processing ability, long-term memory, visual motor integration, visual recognition and attention and concentration. From a clinical

neuropsychological formulation, the plaintiff's test core profile revealed some fluctuating neurocognitive challenges.

Occupational Therapist

[13] Melta Siweya, an Occupational Therapist, assessed the plaintiff on 19 September 2019 and reassessed her on 22 April 2024. The plaintiff reported back pains exacerbated by prolonged sitting, standing and bending, recurrent headaches, difficulty with handling heavy items, dizziness and fatigue. Siweya opined that the plaintiff's overall level of performance is equivalent to the work setting of a light to low-range medium demand. The plaintiff demonstrated the ability to tolerate walking, climbing stairs and kneeling on a frequent basis.

[14] Regarding the plaintiff's residual work capacity, Siweya further opined that the plaintiff retains the overall functional capacity to perform work of a sedentary nature and aspects of light physical work with applicable accommodation. The plaintiff's physical capacity was largely limited by lower back pain. Siweya opined that the plaintiff currently meets the physical demands of her post-accident work as a Cashier. The plaintiff's residual work capacity as a Cashier remains generally aligned with her pre-accident functioning, given her educational background and history in unskilled to semi-skilled work.

[15] With appropriate workplace accommodation and ongoing psychotherapeutic support, the plaintiff is expected to be able to continue in her role; however, her ability to function reliably and at full capacity is expected to be reduced, making her a more vulnerable and less competitive employee in the open labour market. However, taking into account her current functioning, the plaintiff would be able to continue working as a Cashier or do a similar type of work on the open labour market. However, without treatment, she must perform sedentary and light work with limited standing and bending. She would be able to work until her expected retirement age, doing Cashier or similar work. Her level of functioning is expected to improve following treatment of the lower back, and it is not anticipated that she would remain with any job losses in the long term.

Industrial Psychologist

[16] Dr Sipiwe Katjene, an Industrial Psychologist, interviewed the plaintiff. Dr Katjene noted that the plaintiff has a Diploma in Office Administration, which she obtained in 2023. At the time of the accident, the plaintiff was unemployed. She worked as an Administration Clerk at Appeal Debt Mediation, earning R4500 per month, but no proof was provided. In pre-morbid scenario, it is postulated that the plaintiff was likely to have entered the open labour market in occupations similar to her pre-accident work or any other job related to her qualifications, with earnings at Paterson B4 lower quartile/basic salary – R244,000 – Koch 2025 and reached earnings at Patterson C1/C2 medium quartile/total package – R526,000/R574,000 per year – Koch 2025 by age of 45.

[17] In the post-morbid period, the plaintiff secured employment as a Shop Assistant at Clicks Retail (Hammanskraal) from 14 February 2018, earning R3 417.54 per month. Dr Katjene records that the plaintiff's branch manager, Mr Keabetswe Mokoena, was contacted. Mr Mokoena confirmed that the plaintiff was employed, but her employment contract was terminated on 09 October 2023 due to repeated absenteeism and injuries sustained in an accident. The plaintiff further secured another position on 30 September 2024 as a Cashier at Chamberlain Trading Pty Ltd, working three (3) days a week. The plaintiff was still employed at the time of assessment, 30 July 2025. No evidence was presented to me indicating that the plaintiff is no longer working. I will therefore assume that the position has not changed.

Loss of earning capacity

[18] There is no evidence to contradict the basis of the calculation in respect of the plaintiff's loss of earning capacity other than on the basis of Ndumiso Mavimbela's postulations of Manala Actuaries and Consultants. The actuary calculated the value of the plaintiff's past loss to be nil. The actuary further calculated the pre-morbid future earning capacity of the plaintiff to be R6 929 603.00 and her post-morbid future earning capacity to be R1189 677 without application of contingencies. For illustrative purposes, he applied future contingencies of 10% to the pre-morbid scenario and 20% to the post-morbid scenario. The total is R5 197 566.00. This was,

however, for illustrative purposes, and correctly so; contingencies are generally reserved for determination by the court.

[19] The legal principles in respect of contingencies have crystallised over the years. It is trite that a court has a wide discretion in awarding contingencies depending on the court's impression of what is fair and just in the circumstances and on the facts of the matter at hand. Contingencies are described as "*the hazards that normally beset the lives and circumstances of ordinary people*".¹ Contingencies have also been described as "*unforeseen circumstances of life*".² They are usually taken into account over a particular period of time, generally until the plaintiff's retirement age.³ Often, what is described as a "*sliding scale*" is used, under which it is allocated a "1/2% for year to retirement age, i.e 25% for a child, 20% for a youth and 10% in middle age".⁴ But this is a guideline. As a matter of law, there are no fixed rules as regards general contingencies.⁵ The contingencies would include⁶ - '(i) a possibility that plaintiff's working life may have been less than sixty-five years; (ii) a possibility of his death before he reaches the age of sixty-five years; (iii) the likelihood of his suffering an illness of long duration; (iv) unemployment; (v) inflation and deflation; (vi) alterations in the cost-of-living allowances; (vii) an accident whilst participating in sport such as hockey or cricket, or at any other time which would affect his earning capacity; and (viii) any other contingency that might affect his earning capacity'.

[20] Our courts have frequently enunciated that any enquiry into damages for loss of earning capacity is, by its nature, speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that

¹ AA Mutual Insurance Association Ltd v Van Jaarsveld 1974 4 SA 729 (A); Van der Plaats v SA Mutual Fire & General Insurance Co Ltd 1980 3 SA 105 (A); Southern Insurance Association Ltd v Bailey 1984 1 SA 98 (A) 117

² De Jongh v Gunther 1975 (4) SA 78 (W) 80F

³ Goodal v President Insurance Co Ltd 1978 1 SA 389 (W) 393; Rij NO v Employers' Liability Assurance 1964 (4) SA 737 (W); Sigournay v Gillbanks 1960 2 SA 552 (A) 569; Smith v SA Eagle Insurance Co Ltd 1986 2 SA 314 (SE) 319

⁴ Road Accident Fund v Guedes 2006(5) SA 583(A) 588D-C

⁵ Ibid at para 9

⁶ Gillbanks v Sigournay 1959 (2) SA 11 (N) the following was stated at 17E – F

the court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.⁷

[21] Any claim for future loss of earning capacity requires a comparison of what a claimant would have earned had the accident not occurred with what a claimant is likely to earn thereafter. The loss is the difference between the monetary value of the earning capacity immediately prior to the injury and immediately thereafter.⁸ As already stated above, this can never be a matter of exact mathematical calculation and is, of its nature, a highly speculative inquiry.

Submissions and analysis

[22] I was provided with comprehensive heads of argument by the plaintiff's Counsel, Ms Mashaba, for which I am appreciative. Material facts to the dispute were uncontested, as this matter was heard as a default judgment after the defendant had been declared a delinquent party. I do not have to rehash the defendant's submission insofar as the uncontested facts are concerned, as they are already captured in the summary of evidence above.

[23] Ms Mashaba, on behalf of the plaintiff, submitted that the plaintiff was entitled to the future loss of earnings. The plaintiff relied on the Industrial Psychologist's report, which recorded that the plaintiff's employment was terminated on 09 October 2023 due to repeated absenteeism and injuries sustained in the accident. On this basis, the submission went, she qualified for compensation for the loss of earnings. Ms Mashaba, however, conceded that despite this, the plaintiff managed to secure employment on 30 September 2024 as a Cashier at Chamberlain Trading Pty Ltd. It was submitted that the plaintiff is working three days a week. The plaintiff is facing some challenges related to her work. She has ongoing lower back pain that limits her ability to carry out tasks. I was then addressed on the reasonable and applicable contingencies to be applied in determining the loss of earnings.

⁷ Bailey NO supra at 113G and 116G to 117D; Unreported cases: *Bulane v Road Accident Fund* (2088/2023) [2025] ZAFSHC 83 (6 March 2025) at para 77; *Moloi v Road Accident Fund* (1550/2020) [2025] ZAFSHC 55 (21 February 2025) at para 12; See also *Guedes* supra at para 5

⁸ *Road Accident Fund v C K* [2019] 1 All SA 92 (SCA); 2019 (2) SA 233 (SCA) at para 40

[24] As stated above, the actuary applied contingency deductions of 10% in respect of future loss of earnings in the uninjured scenario, and 20% in respect of the injured scenario. The plaintiff argued that a contingency deduction of 10% in the uninjured and 50% in the injured scenario would be just under the circumstances. In doing so, the plaintiff adopted a different approach from that of the actuary. Ms Mashaba submitted that the calculated pre-morbid future earning capacity of the plaintiff in the amount of R6 929 603.00 should be used as a basis even for computation of the plaintiff's post-morbid future earning capacity. Simply put, the pre- and post-accident scenarios should remain the same (R6 929 603.00). She suggested that the contingency deduction with a 40% differential spread should be applied. According to the plaintiff, a fair and reasonable compensation for loss of earnings is an amount of R2 771 841.50. Meaning the future contingencies of 10% and 50% should be applied to the aforesaid amount of R6 929 603.00, both in the uninjured scenario and in the injured scenario.

[25] The table below illustrates the plaintiff's submission on the reasonable and applicable contingencies.

	Pre-incident	Post-incident	Loss
Past loss	R234 739.00 -	R329 408.00 -	0
Past contingencies: 5% and 5%	(R11 737.00)	(R16 470.00)	
Net past loss	R22 002.00	R312 938.00	0
Future loss	R6 929 603.00 -	R6 929 603.00 -	
Future contingencies: 10% and 50%	(R692 960.00)	(R3 464 801.50)	
Net future loss	R6 236 643.00	R3 464 801.50	R2 771 841.50

[26] It was submitted that the total loss of income should be R2 771 841.50.

[27] I regret to disagree with the plaintiff's Counsel. The submissions, in my view, seem to ignore the Occupational Therapist's findings that the plaintiff currently meets the physical demands of her post-accident work as a Cashier. The plaintiff's residual work capacity as a Cashier remains generally aligned with her pre-accident functioning, given her educational background and history in unskilled to semi-skilled work. The plaintiff is also expected to be able to continue in her role as a Cashier. In my view, this finding dispels any notion of future loss of earnings.

[28] However, I cannot also be selective in my analysis of the experts' evidence. I do accept that her ability to function reliably and at full capacity is expected to be reduced, making her a more vulnerable and less competitive employee in the open labour market. It is further opined that without treatment, she must perform sedentary and light work with limited standing and bending. The plaintiff is further required to undergo medical treatment. A decrease in productivity due to persistent pain can negatively impact her salary and career progression. I therefore accept that there is a potential loss of income. The plaintiff's claim for loss of income is also supported by medical, occupational, and industrial psychology expert reports.

[29] While the plaintiff retains the overall functional capacity to perform work of a sedentary nature and aspects of light physical work with applicable accommodation, it is trite that salaries paid on compassionate grounds, without actual work contribution, are not factored into loss of earnings claims.⁹

[30] However, reliance on the Industrial Psychologist's report, which itself relied on hearsay, is not persuasive regarding the plaintiff's absenteeism from work. According to this report, the plaintiff's employment was terminated on 09 October 2023 due to repeated absenteeism and injuries sustained in the accident. No tangible evidence was presented to me, except a mere say-so by the alleged Mr Mokoena of Clicks Retailer. The plaintiff, too, chose not to testify to elaborate further on this issue.

⁹ Santam Versekeringsmaatskapy Bpk v Byleveldt 1973 (2) SA 146 (A)

Sadly, that is the risk that comes with an election not to present oral evidence to amplify the issues.

[31] The next inquiry I must address concerns the appropriate contingencies. As I have already stated, I respectfully disagree with the plaintiff's Counsel on the applicable contingencies. Even though I accept that there is a loss of earning capacity, I am not persuaded that it is a considerable loss. During the trial, I engaged Ms Mashaba as to the appropriate contingencies. It is common cause that the plaintiff falls into the category of the youth. She was 25 years old at the time of the accident. She has a greater chance of being subjected to the vicissitudes of life. I drew Ms Mashaba's attention to the trite law, although not applied with rigidity, that the appropriate pre-morbid contingency deduction for a child is 25%, 20% for a youth, and 10% in middle age. Counsel for the plaintiff correctly conceded and thereafter made an alternative submission that the appropriate contingency deduction should be 20% in the uninjured scenario, but persisted that it should be 50% in the injured scenario. The proposed 20% contingency deduction is congruent with what was said in **Road Accident Fund v C K**,¹⁰ where it was stated, in regard to contingency deductions, that "*one being the age of a claimant, the younger a claimant, the more time he or she has to fall prey to vicissitudes and imponderables of life*". It was further held that the appropriate pre-morbid contingency for a young man of 26 years was 20%, which would decrease on a sliding scale as the claimant got older.¹¹

[32] In my view, the 20% contingency deduction in the uninjured scenario in this matter is appropriate, for the reasons already stated above. I am, however, not persuaded that a 50% contingency deduction would be appropriate in the injured scenario, as the plaintiff suggested. The 30% differential spread is not reasonable. If one carefully studies the expert reports, one would find that the loss is minimal. The 20% differential spread would be just and equitable under the circumstances. Therefore, the future contingencies of 20% and 40% would be appropriate. In my view, the 20% loss of earnings would be an appropriate difference between the monetary value of the earning capacity immediately prior to the injury and

¹⁰ At para 44

¹¹ Ibid

immediately thereafter. Even this 20% differential spread is more generous under the circumstances. In any event, even if I am wrong, as frequently enunciated by our courts, this can never be a matter of exact mathematical calculation and is, of its nature, a highly speculative inquiry. All I can do is make an estimate, which is often very rough. But in doing so, I considered that the plaintiff's expert opined that she would be able to work until her expected retirement age, working as a Cashier or doing similar work. Her level of functioning is expected to improve following treatment of the lower back, and it is not anticipated that she will remain with any losses in the long term.

[33] If the 20% and 40% contingencies are applied, the total amount for loss of earnings/earning capacity would be R1 385 921.00.

General damages

[34] There is an abundance of authorities regarding the assessment of non-patrimonial damages. These damages cannot be done with mathematical precision. The judge awards a discretionary amount which is fair and reasonable, having regard to all the relevant facts of the matter.¹² Past awards in comparable cases provide a useful guide in determining general damages. The process of comparison is not a meticulous examination of awards and should not interfere with the courts' general discretion.¹³ There are no rules laid down in order to approach the issue of general damages. The accepted approach is the flexible one described in **Sandler v Wholesale Coal Suppliers Ltd.**¹⁴ There, the learned judge said the following:-

"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."

¹² Putt v Economic Insurance Co. 1957 (3) SA 284 (D) at 287; Sandler v Wholesale Coal Suppliers 1941 (AD) 194, at 199

¹³ Protea Assurance v Lamb 1971 (1) SA 530 (A) at 535H-536A

¹⁴ 1941 AD 194 at 194

[35] This was confirmed by the same court in ***Southern Insurance Association Ltd v Bailey N.O.***¹⁵ in the following terms:-

“The Appellate Division has never attempted to lay down rules as to the way in which the problem of an award of general damages should be approached. The accepted approach is the flexible one described in Sandler v Wholesale Coal Suppliers Ltd 1941 AD 194 at 199,”

[36] It is generally difficult to find a matter that is on all fours with the previous comparable awards. These must be used as a useful guide in order to achieve an award that is fair and just to both parties. The courts have repeatedly cautioned that the plaintiff must be compensated justly but “not pour out of largesse from the horn of plenty at the defendant’s expense”.¹⁶

[37] In this matter, it is common cause that the plaintiff suffered a lumbar spine injury and a mild head injury as a result of the accident. This is noted as such by medical experts appointed by the plaintiff. The plaintiff was discharged from the hospital on the same day. The X-rays performed on 28 October 2024 were reported as normal, as noted by the Orthopaedic Surgeon. According to the Orthopaedic Surgeon, the plaintiff’s whole-person impairment, as a result of lumbar spine injuries, is 2%. Dr Mazwi, a Neurosurgeon, opined that on neurological examination, the plaintiff had difficulty with concentration and poor recall. The plaintiff reported back pains exacerbated by prolonged sitting, standing and bending, recurrent headaches, difficulty with handling heavy items, dizziness and fatigue. No Glasgow Coma Scale (GCS) was noted in the clinical records.

Comparable cases

[38] In the heads of argument, the plaintiff claimed that the sum of R900 000.00 would be just and fair in the circumstances of the injuries sustained. In order to substantiate the claim of R900 000.00, the plaintiff referred me to decided cases. However, during the hearing of this default judgment, Ms Mashaba, for the plaintiff, submitted that the amount of R700 000.00 would be fair and reasonable. I was

¹⁵ 1984 (1) SA 98 (AD) at 99 H

¹⁶ See Pitt v Economic Insurance Co Ltd 1975 (3) SA 264 (N) at 267

referred to a number of comparable cases. It is these comparable awards that I turn to in order to make the award that is just and fair to the parties.

[39] I was referred to a case of **Kruger v Road Accident Fund** (27383/2009) [2022] ZAGPPHC (14 February 2022). In this case, the plaintiff suffered a skull fracture, which resulted in a moderate to severe traumatic brain injury, resulting in deficits in his neuropsychiatric, neuro-behavioural, and neuro-psychological functions. He became aggressive and anti-social. The Court awarded him 1 400 000.00 for general damages, which is equivalent to R1,629 761.00.

[40] In **April v Road Accident Fund** (2338/2018) [2021] ZAFSHC 206 (15 September 2021), the Plaintiff was 36 years old. She suffered a C6 spinal fracture and a mild traumatic brain injury. The Plaintiff presented at Pelonomi Hospital immediately after the accident, with a Glasgow-coma scale reading of 11/15, which indicated an initial loss of consciousness immediately after the accident. The cognitive fall-out resulting from the accident reached a stage where she simply could not remember things, having to make notes to remind herself of her duties and daily tasks, and so forth. The Court awarded her R750,000.00 for general damages, which is equivalent to R934 550,00.

[41] In **Donough v Road Accident Fund** (8962/06) [2010] ZAGPJHC 100 (5 November 2010), the plaintiff suffered what was initially a mild primary diffuse concussive brain injury, which got complicated by certain respiratory difficulties and other physical injuries. The brain injury, though initially moderate, became progressively a severe head/brain injury. The plaintiff complained of pain in the right knee, which was aggravated by cold and inclement weather. The plaintiff also had injuries to the right hip, left eye and knee. The Court awarded the plaintiff R325 000.00 for the general damages, which is equivalent to R695 136.00. In **Tlou v Road Accident Fund** (17225/2011) [2016] ZAGPPHC 31 (25 January 2016), Ms Tlou sustained a mild head injury. However, the clinical psychologist was of the view that, based on the sequelae, Ms Tlou sustained a moderate to severe head injury. The Court awarded an amount of R600 000.00 for general damages suffered by the plaintiff, which is equivalent to R924, 054.00.

[42] None of the above authorities is comparable to the present case before me. The injuries were severe in these cases that I was referred to. However, I am of the view that, having regard to the injuries suffered by the plaintiff and considering what is fair in the circumstances of the present matter, an adequate award for the general damages will be the amount of R700,000.00 as submitted by the plaintiff's Counsel.

Order

[43] Consequently, I make the following orders:

1. An application in terms of rule 38(2) is granted.
2. Merits have been previously settled through an offer and acceptance.
3. The defendant is liable to pay 100% of the plaintiff's proven or agreed damages.
4. The defendant is to pay the plaintiff's attorneys the sum of **R2 085 921 (Two Million Eighty-five Thousand Nine Hundred and Twenty-one Rand)** in full and final settlement of the plaintiff's claim, calculated as follows:
 - 4.1 General damages: **R700 000.00** (Seven Hundred Thousand Rand).
 - 4.2 Loss of earnings: **R1 385 921.00.** (One Million Three Hundred and Eighty-five Thousand Nine Hundred and Twenty-one Rand).
5. The defendant shall furnish the plaintiff with an undertaking as envisaged in Section 174(a) of the Road Accident Fund Act, 56 of 1996 for 100% of the costs of the future accommodation in a hospital or nursing home or treatment of or rendering of a service, or supplying of goods to her arising from the injuries sustained in the motor vehicle collision of 04 December 2015, after such costs have been incurred and upon proof thereof.

6. The capital amount shall be payable within one hundred and eighty (180) days of service of this Court Order into the trust account of the plaintiff's attorneys of record with the following details:

ACCOUNT HOLDER: MPHELA & ASSOCIATES TRUST ACCOUNT

BRANCH: STANDARD BANK

BRANCH CODE: 0[...]

TYPE OF ACCOUNT: ATTORNEYS TRUST ACCOUNT

ACCOUNT NUMBER: 2[...]

REFERENCE: MMM/G1586/PS

7. The defendant to pay the plaintiff's taxed or agreed party and party costs subject to the discretion of the Taxing Master, for the trial dates up to and including the date when this order is made an order of court, for the instructing attorney and correspondent attorneys, which costs shall include, but not be limited to, the following:

7.1 the fees of Counsel, including but not limited to preparation for trial, preparation, consideration and drafting of heads of argument accompanying this order, and the day fee of Counsel in respect of the trial date, **per scale B**;

7.2 The reasonable taxed fees for consultation with the experts mentioned below, preparation for trial, including the costs (fees and disbursement) of all consultations (this inclusive of telephone consultations) with Counsel and/or the plaintiff's attorney and the costs (fees and disbursements) of all consultations between the plaintiff's and defendant's experts, as well as costs of the reports, addendum reports, joint minutes and addendum joint minutes (if any) of the following experts:

- 7.2.1 Dr S K Mafeelane (Orthopaedic Surgeon);
- 7.2.2 Dr Mazwi (Neurosurgeon);
- 7.2.3 Dr M E Thobejane (Neurosurgeon);
- 7.2.4 Dr M Katjene (Clinical Psychologist);
- 7.2.5 Siweya Melta (Occupational Therapist);
- 7.2.6 S Katjene (Industrial Psychologist);
- 7.2.7 Manala Actuaries (Actuary).

- 8. The reasonable costs in respect of the preparation, drafting, and copying of all the bundles of documents, including trial bundles and bundles for the experts, containing expert reports, pleadings and notices, and other documents and indexes thereto. The travelling time, travelling costs and time spent to deliver the bundles.
- 9. The above costs will be paid into the aforementioned attorneys trust account.
- 10. Payment of the above costs by the Defendant is subject to the following conditions:
 - 10.1 The plaintiff is ordered to serve the notice of Taxation of the Plaintiff's party and party bill of costs on the defendant's attorneys of record;
 - 10.2 The defendant is ordered to pay the plaintiff's taxed and/or agreed party and party cost within 14 (fourteen) days from the date upon which the accounts are taxed by the Taxing Master and/or agreed between the parties;
 - 10.3 Should payment not be effected timeously, the plaintiff will be entitled to recover interest at the prescribed rate of 7.00% on the taxed or agreed costs from the date of the allocatur to the date of final payment.
- 11. No reservation fees shall be paid to experts for the trial as the trial proceeded in terms of Rule 38(2).

12. There is a valid contingency fee agreement between the parties.

A.M. MTEMBU AJ

Acting Judge of the High Court of South Africa

Gauteng Division, Pretoria

Date of hearing: 21 April 2026

Date of judgment: 15 June 2026

Counsel for the Plaintiff: Adv K S Mashaba

Instructed by: Mphela & Associates, Pretoria

Email: manisha@mphela.co.za

Counsel for the Defendant: No Appearance