IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)

CASE NO. 2026-071599

(1) REPORTABLE: NO/YES

(2) OF INTEREST TO OTHER JUDGES: NO/YES

(3) REVISED

DATE 06/07/2026

SIGNATURE.

In the matter between:

SAMUEL MNGOMEZULU **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

This judgment is made by the Judge whose name is reflected herein and submitted electronically to the parties and/or their legal representatives by e-mail.

This judgment is further uploaded to the electronic file of this matter on Caselines by the Judge and/or his/her secretary. The date of this judgment is deemed to be the 6th day of July 2026

JUDGMENT

BAM, AJ

[1] The plaintiff was a passenger in a motor vehicle in registration numbers D[...] which collided with another motor vehicle F[...] on 28 September 2024. He sustained injuries as a result of the said accident and has lodged a delictual claim against the defendant ("the RAF") in terms of section 17(1) of the Road Accident Fund Act 56 of 1996, ("the Act").

[2] The merits were settled 100% in favour of the plaintiff and on the date of trial on the issue of quantum, I was informed that general damages had also been settled. Only the past and future loss of income remained for adjudication. Counsel for the plaintiff, Mr. RN Ngobeni, moved an application in terms of Rule 38 (2) for the expert reports to be admitted into evidence by way of affidavit. Same was not opposed by the defendant's Counsel Mr Hlongwa, and it was granted after due consideration.

LOSS OF EARNINGS

[3] Mr Ngobeni referred the court to the plaintiff's injuries as noted by the experts and placed emphasis on the occupational therapist's findings about the impact of these on the plaintiff's ability and capacity to perform at work optimally. The injuries sustained by the plaintiff are listed by the orthopaedic surgeon as:

3.1 Cervical Spine C6/ C7 fracture

3.2 Head injury

3.3 Blunt face trauma

[4] The fracture was treated by way of surgery in the form of open reduction and anterior discectomy and fusion. He was given a neck collar to wear and underwent physiotherapy. The plaintiff also alleged that his left eye had become teary and sensitive to light because of the accident.

[5] At the time of the accident, the plaintiff was employed by Emalahleni Local Municipality under its Extended Public Works Program, (EPWP) as a general worker earning R 3000.00 per month. His job is keeping the streets clean and the filling of

potholes on the roads. The tasks involve a lot of walking, standing, bending and carrying weights of around 1 kilogram. He returned to work after two months of recuperation.

[6] Ms. Sekele, the occupational therapist, consulted with the plaintiff on 30 September 2025. Having taken note of the other experts' reports and after conducting her own assessments, she concluded that the plaintiff is "*able to meet the physical demands of characteristics of aspects of work at lower range of medium level*".[1] Even though he managed to execute most of the mobility aspects of the assessment, those were accompanied by neck, lower back, and left shoulder pain. She opined that his residual physical capacity has fallen below that which is required for a general worker in his present job. He cannot handle weights above 14 kg or cope with tasks that demand prolonged forward-bending and elevated work.

[7] The Industrial Psychologist, Dr Selepe, noted that at the time of accident, the plaintiff was 44 years old with grade 10 as his highest qualification and armed with 18 years of working experience. She took note of the reported injuries he sustained in the accident as well as the findings and conclusions of the other experts regarding his prospects of employment in the future. She had also contacted the plaintiff's site supervisor who provided collateral information confirming that the plaintiff was on light duty (using a rake and lifting lighter bags of refuse) and no longer using the stomp machine for compacting mixture into potholes.

[8] The expert painted a pre-accident scenario in which the plaintiff would have continued working as a general worker without limitations. His level of education would confine him to jobs requiring reliance on physical exertion. She concluded that at age 45 and with the identified serious long-term orthopaedic impairments and reduced capacity, the plaintiff will find it difficult to secure and maintain gainful employment in an unskilled or semi-skilled environment. The fact that he only studied up to grade 10 will add to his disadvantage in the open labour market. As it is, he was being accommodated in his current employment. He may thus experience long periods of unemployment should he leave his current job. He will therefore suffer the loss of potential earnings for which he should be compensated.

[1] Caselines 004-120

[9] The Actuaries calculated the projected loss of income effective from 28 March 2026. They relied on the Industrial Psychologist's report in which she postulated that the plaintiff's salary would increase from the amount of R 36 000.00 per annum (2021) to R 228 000.00 per annum by the age of retirement of 57 ½ years in 2037. They noted that after 2 months the plaintiff returned to his pre-accident job which the Industrial Psychologist opined, he would have continued doing until retirement even if he were to work for a different employer.

Argument

[10] Advocate K Hlongwa, counsel for the Defendant, submitted that the plaintiff is not entitled to compensation for future loss of earnings. This is because he has not proven such loss considering that he went back to his pre-accident job and his salary was not reduced even though his tasks were adjusted to light work.

[11] Counsel argued that physical limitation alone does not lead to loss of income. He referred to *Rudman v Road Accident Fund* (370/01) [2002] ZASCA 129 wherein the court had dismissed the plaintiff's claim for future loss of earnings. The court a quo had dismissed the claim on the basis that any loss that occurred was a loss to the company that employed the plaintiff and not a diminution of his patrimony. The SCA had clarified that in assessing loss of earning capacity, objectivity requires that a plaintiff must prove their loss with actual evidence than mere speculation. It agreed with the court a quo that the loss or reduction in his capacity to work due to the injuries and disablement did not translate into Mr Rudman's personal loss.

[12] It was Counsel's further submission that the expert reports do not align with the evidence though he did not elaborate on this point any further. He referred to the case of *Moloi v Road Accident Fund [2026] ZASCA 13*. The appellant, who was a student when the accident occurred on 7 August 2016, had gone on to complete her degree in accounting – and was proceeding with Honors. She was employed as an articled clerk in an accounting firm at the time the matter was heard. The claim for loss of earnings was premised on the appellant's emotional state (psychological vulnerability) which was said would affect her employment without any input having been sought from her current employer in this regard or calling the appellant to give oral testimony. The full court had upheld the trial court's dismissal of the claim and

the SCA dismissed the special leave to appeal having found no existence of prospects of success in the appeal.

[13] Mr Ngobeni countered the defendant's argument by referring the court to the occupational therapist's report where the expert addresses future employability and the physical exertion that is part and parcel of unskilled or semi-skilled occupations. In his heads of argument, he noted that the neurosurgeon had also diagnosed the plaintiff with memory impairment, post-traumatic stress disorder, poor concentration, as well as behavioral change. The orthopaedic surgeon rated his injuries at 6% WPI and yet qualified them under the narrative test as having resulted in serious long-term impairment and or loss of a body function.

[14] Regarding contingencies, counsel referred to the sliding scale endorsed in *Road Accident Fund v Guedes* [2026] ZASCA, namely half a percent for each year remaining until retirement. He argued that the courts recognise that sympathetic employment is as good as unemployment because sympathy can disappear at any time. I could not, however, find any such sentiment expressed in the two cases proffered in support thereof.[2]

[15] It is not disputed that the plaintiff sustained orthopaedic injuries as well as neuropsychological sequelae from the accident. He returned to work where he soldiers on despite the neck pain and discomfort as he has no other means of earning an income. The employment will soon be over because EPWP contracts are of limited duration – 24 months at the most. It is also not disputed that on his return to work, he was accommodated and no longer does the heavy work of filling potholes. He is considered more vulnerable than before the accident, both physically and psychologically. Should he stop working in the EPWP, which is a certainty, the experts opine that he will be overlooked in favour of his unaffected counterparts in the open labour market. His disadvantage in this regard is exacerbated by lack of sufficient educational qualifications and of any vocational training.

[16] The injuries have resulted in significant sequelae if one ignores the 3% WPI rating. His emotional vulnerability was corroborated by the clinical psychologist Dr. V Mashiloane. Overall, the experts agree that the plaintiff's well-being has been negatively affected by the injuries, and he is no longer able to compete on an equal

[2] Makuapane v Road Accident Fund and Saunders NO v Road Accident Fund.

footing in the open labor market. It is worth noting that the left eye issues identified by the ophthalmologist have not been attributed to the accident and according to the expert could be stemming from suspected glaucoma. Dr Nhlapo therefore accorded a WIP of 0% insofar as that “injury” is concerned.

[17] In light of aforegoing, it is my considered view that there is sufficient evidence to conclude that the plaintiff has suffered reduced capacity which will translate into patrimonial loss as he will struggle to find employment. He is therefore entitled to compensation for future loss of earnings. The authorities relied on by Mr Hlongwa to dispute his entitlement to compensation are distinguishable. In this matter, we are concerned with an individual who relies solely on his physical strength to make a living. Post-accident, even though with treatment the symptoms can be expected to subside, complete healing is not foreseeable.

[18] I must, however, raise my concern about a statement in a crucial report. The industrial psychologist has stated that the applicant was still in a career building stage when he got injured and would have advanced his skills and thus improved his earnings to the level of semi-skilled work between the ages of 55 and 60 years. It is said further that he would receive inflationary increases to his salary after age 60 up to 65 years or beyond.[3] She also appears to suggest that the plaintiff had intentions to study further, and this would have improved his chances of landing higher paying jobs.[4] Although this was obviously not the basis upon which actuarial calculations were done, it highlights the necessity for legal practitioners to read through the reports and have them corrected before they are presented to court. Some errors can jeopardise a client’s claim, even if they appear to have been the so-called cut-and-paste mistakes. The plaintiff in this case did not even pass grade 10,[5] and there is no mention anywhere of his desire to further his education.

CONTINGENCIES

[19] The actuarial computations presented to court have not been adjusted with contingencies. As indicated by the expert, the plaintiff suffered past loss of earnings as he was not paid his salary for one month out of the two he spent at home

[3] Caselines 004-51 at (d)
[4] Caselines oo4-51 at (c)
[5] Clinical Psychologist’s report at paragraph 3: Caselines 004-20

recuperating. The Actuary has calculated his future loss of earnings based on the findings of the industrial psychologist.

[20] In the case of *Bheme v Road Accident Fund [2025] ZAMPMBHC 43 (29 May 2025),* the full court, per Fourie AJ held:

> "[24] the evaluation of the amount to be awarded for the loss does not involve proof on a balance of probabilities. It is a matter of estimation. Where a court is dealing with damages which are depending upon uncertain further events, which is generally the case with claims for loss of earning capacity, the plaintiff does not have to proof on a balance of probabilities and is entitled to rely on the court's assessment of how they should be compensated for their loss."

[21] The court further reiterated the trite principle that a court will not be tied down by actuaries' calculations when determining compensation which it believes to be fair and justified. The discretion of the court in this regard is well ventilated in *Southern Insurance Association LTD v Bailey NO. 1984 (1) SA 98* and recently in *Road Accident Fund v Guides [2006] ZASCA 19*. In paragraph 8 of *Guedes*, the SCA, per Zulman JA held that:

> "It is trite that a person is entitled to be compensated to the extent that the person's patrimony has been diminished in consequence of another's negligence. Such damages include loss of future earning capacity. 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…………… an actuarial computation is a useful basis for establishing the quantum of damages."

[22] The courts are enjoined to ensure that compensation reflects proven residual impairment as opposed to hypothetical worst-case outcomes. In *Bailey* supra, the Appellant Division held that the assessment of damages for loss of earning capacity must be approached on a realistic and balanced basis by taking into account all the relevant contingencies inherent in future career projection.

[23] The plaintiff was injured at the age of 44 and 3 months, he is now 46 years old which means he has got 19 years of working life before the generally accepted retirement age of 65. At the time of the accident, he was at an age normally indicated as the peak of one's career. With the injuries sustained, his capacity to perform optimally has been compromised and he is therefore entitled to compensation as already indicated.

[24] Regarding future loss of earnings, it is the Industrial Psychologist's opinion that he is likely to experience longer periods of unemployment should he leave his current job. Furthermore, permanent employment is not guaranteed, especially in view of his reduced capacity and the need for accommodation. His age, lack of vocational training and chronic symptoms must be considered when determining the contingencies applicable to his future loss earnings.

[25] It is noted that the actuary has adopted the age of retirement projected by the neurosurgeon who opined that in the event of possible onset of post-traumatic epilepsy, the plaintiff's longevity would be shortened by 3 to 5 years. The industrial psychologist did not commit to a specific post-accident retirement age.[6] The neurosurgeon, Dr M P Seroto, who consulted with the plaintiff on 30 September 2025, had detected no ratable neurosurgical injury.[7] He had also discounted an increased risk of post-traumatic epilepsy and as such his pronouncement regarding the curtailment of longevity lacks foundation. It is thus safe to assume that the injuries have not affected the plaintiff's working life.

[26] I take cognisance of the fact that the plaintiff is currently accommodated in contractual work of a very limited duration and may rely on sympathetic intermittent employment in future. In light of the above, it is my considered view that higher than normal contingency deduction of 50% should apply to the post-morbid future earnings proposed by the actuary. The calculations will then be as follows:

Description	**Pre- morbid**	**Post- morbid**	**Total**
Past Earnings	R 62 193.00	R 52 724	
Contingencies 0%	R 0.00	R 0.00	
LOSS	**R 62 193.00**	**R 52 724**	**R 9 469.00**

[6] Caselines 004-58 at paragraph 9
[7] Caselines 004-74

Description	Pre- morbid	Post- morbid	Total
Future Earnings	R 1 930 865.00	R 534 988	
Contingencies 15% & 50%	(R 289 629.75)	(R 267 494)	
LOSS	**R 1 641 235.25**	**R 267 494**	**R 1 383 210.25**

TOTAL LOSS: R9 469.00 + R 1 383 210.25 = R1 392 679.25

[27] The plaintiff is therefore entitled to compensation for loss of earning capacity in the amount of **R 1 392 679.25**. The plaintiff's attorneys have submitted a draft order which will be amended accordingly and endorsed as an order of court as if specifically incorporated herein.

[28] Consequently, the following is made:

1. The Defendant is ordered to pay 100% of the plaintiff's proven or agreed damages.
2. The defendant shall pay damages for loss of earnings/earning capacity to the plaintiff in the amount of R 1 392 679.25 (One million, three hundred and ninety-two thousand, six hundred and seventy-nine rand and 25 cents).
3. The draft order attached hereto and marked "Annexure X" is hereby made an order of court.

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L J N BAM

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MIDDELBURG

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