



**THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

CASE NO. 1846/2025

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

31 July 2026
DATE


SIGNATURE

In the matter between:

THATO PENELOPE MARULE

APPLICANT

And

THE ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT

Delivery: This matter was heard on 10 July 2026, and judgment was reserved.
This judgment was delivered by uploaded to *CaseLines* on 31 July 2026.

Mangena AJ:

[1] Ms Thato Marule brought an application for leave to appeal the order dismissing her claim for loss of earnings. She says the court misdirected itself in the following respects:

- (a) It applied an incorrect test for loss of earning capacity;
- (b) It failed to apply a correct approach to claims involving minor children;
- (c) It placed too much weight on academic performance and thereby treated academic progression as determinative of the earning capacity;
- (d) It failed to properly evaluate the expert opinion and incorrectly rejected the evidence placed before it.
- (e) It failed to exercise proper judicial discretion.

[2] Expanding on the grounds mentioned above, counsel for Ms Marule submitted that the court misdirected itself by holding that there must be proof of a connection between the injury and the resultant loss before compensation may be awarded. In doing so, the court misapplied the principles laid in *Rudman*. It was contended that the proper enquiry "was whether the injuries sustained had rendered the applicant less competitive, less resilient and more vulnerable in the open labour market than she would probably have been but for the collision".

[3] It was argued that the report by the occupational therapist and the orthopaedic surgeon demonstrated that the claimant would be restricted to sedentary and light -duty occupations and would struggle in the open labour market. These findings, so it was argued, establish a diminution in earning capacity irrespective of whether the applicant ultimately qualified as a legal practitioner, teacher, administrator or any other professional. The court's failure to appreciate this distinction constitutes a material error of law and constitutes a compelling basis upon which another court would likely interfere. This was the high watermark case for the applicant.

[4] The respondent opposes the application and effectively supports the court's factual and legal conclusion. It is submitted on her behalf that "there has been no established proof that the claimant's ability to generate income and compete effectively in the labour market has been adversely affected as she has not even entered the labour market." It is further contended by the respondent that there is no nexus between the applicant being less competitive in the labour market

and the actual loss of earning capacity emanating from the injuries sustained during the collision.

- [5] Against the above submissions, it should be understood that Ms Marule based her claim for loss of earnings on the fact that the accident had reduced her capacity to earn an income as a professional, in particular a legal practitioner. To succeed in this head of damages, it was incumbent upon her, assisted by her experts to prove the connection between her injury and the loss of earnings as claimed in the summons. This she failed to do. What her experts did was to take her wish and elevate it to a fact. I rejected the assumptions made by the educational psychologist and the industrial psychologist that Ms Marule would have obtained a bachelor's degree and qualified to study law if it was not for the accident.
- [6] The finding above was made in answer to the case she presented, namely that the injuries had reduced her capacity to become a professional, namely a legal practitioner. The evidence on record supported by school reports demonstrated that even before the accident, she was not a strong candidate academically. To accept this factual finding is not to place too much emphasis on academic performance as argued by counsel. On the contrary, it is to accept a fact borne out by the evidence.
- [7] Having read the judgment and considering it against the submissions made as well as the grounds upon which the applicant relies, I am not persuaded that there was a misdirection committed. The findings made were consonant with the facts presented. It was never Ms Marule's case that she suffered a general diminution of earning capacity whether as a professional or not. Her case had always been that the accident reduced her capacity to become a legal practitioner. She aimed for the sky and now that she missed, she wants to fall amongst the stars. This should not be permitted, more especially because there was no alternative case pleaded. It should by now be trite that the purpose of pleadings is to define issues for the other party and the court. A party has a duty to allege in its pleadings the material facts upon which it relies. See *Minister of Safety and Security v Slabbert*, [2009] ZASCA 163 (30 November 2009) at para 11.
- [8] I found that there is no connection between the injury and her claimed loss of earnings as a professional. The evidence on record do not support the case she presented. As stated above, it is not acceptable to present one case at trial and seek to argue another on appeal.
- [9] Consequently, the following order is made:

1. Application for leave to appeal is dismissed.
2. There is no order as to costs.



IM MANGENA
ACTING JUDGE OF THE HIGH COURT

FOR THE APPLICANT:

ADV MAHLALELA

INSTRUCTED BY:

EM MABASO ATTORNEYS

AND

FOR THE RESPONDENT:

MS NP SHABANGU

INSTRUCTED BY:

STATE ATTORNEY (MBOMBELA)

DATE HEARD:

10 JULY 2026

DATE OF JUDGMENT:

31 JULY 2026