THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Not Reportable

Case No: 14076/22

In the matter between:

METHOD SHOKO **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

Neutral citation: *Shoko v The Road Accident Fund* (Case no 14076-22) [2026] ZAWCHC …. (12 August 2026)

Coram: **YAKE AJ**

Heard: **13 May 2026**

Delivered: **Electronically on 12 August 2026**

Summary: Delict – Liability –Personal injury claim –plaintiff claiming for injuries sustained as a result of a motor vehicle accident- merits and quantum in dispute - the defendant is 100% liable for plaintiff's damages – past hospital and

medical expenses claim dismissed - no supporting vouchers submitted- section 17(4) (a) of the Road Accident Fund Act 56 of 1996 undertaking granted for future medical and related expenses

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ORDER

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1. The defendant is declared 100% liable for the plaintiff's damages.

2. The defendant shall pay to the plaintiff the sum of R1 525 580 (one million, five hundred and twenty-five thousand, five hundred and eighty rand) in respect of past and future loss of earnings as well as general damages.

3. Past hospital and medical expenses claim dismissed.

4. The defendant shall provide the plaintiff with an undertaking In terms of section 17(4) *(a)* of the Road Accident Fund Act 56 of 1996, to compensate the plaintiff for 100% of costs relating to the future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the plaintiff, after the costs have been incurred and on proof thereof and arising from the collision which occurred on 8 April 2020.

5. The defendant is ordered to pay the plaintiff's taxed or agreed costs on the High Court scale as between party and party including the costs set out hereunder:

    5.1 Any costs attendant upon the obtaining of payment of the amount referred to in paragraph 2 above.

    5.2 Regarding the plaintiff's expert witnesses listed

hereinbelow, taxed or agreed fees, qualifying expenses and reservation fees (including such travel expenses actually incurred), and the costs attached to the procurement of medico-legal reports, any addendum reports, joints minutes, as well as x-rays and scans and other related costs. The latter costs shall include the costs of attending all plaintiff's and defendant's medico-legal examination, the amount of which will be taxed at the discretion of the Taxing Master:

(a) Dr. P.A. Olivier, orthopaedic surgeon
(b) Ms. L. Kruger, occupational therapist
(c) Mr. L. Blaauw, biokinetics
(d) Dr. R. Bredekamp, counselling psychologist
(e) Ms. N. Colley, industrial psychologist
(f) Munro Forensic Actuaries

5.3 The taxed or agreed fees and costs of the plaintiff's legal representatives in consulting with the experts and other witnesses in preparation for the trial.

5.4 The taxed or agreed fees of the plaintiff's counsel in respect of the preparation and trial, including the furnishing of advice on evidence and drafting of heads of argument, on Scale C.

6.The capital amount referred to in paragraph 2 is payable within 180 days from service of this Court Order into the trust account of the plaintiff's attorneys of record with the following details:

Account Holder Name:	De Vries Shields Chiat Inc.
Bank:	FNB Business
Branch:	Portside
Branch Code:	210651

7. Payment of the taxed or agreed costs reflected above shall be made within 14 calendar days of taxation/settlement.

8. The interest in respect of both capital and costs will follow in terms of section 17(3) of the Road Accident Fund Act (the capital interest is due within 14 days following the date of taxation/settlement of the costs).

JUDGMENT

YAKE, AJ:

Introduction

[1] The matter serves before this Court by way of action proceedings. The plaintiff, a 41-year-old male junior technician, born on 15 January 1985 and a Zimbabwean national, has instituted action against the Road Accident Fund ('the defendant') in terms of the Road Accident Fund Act[1] ('the Act'). The relief sought arises from bodily injuries sustained in a motor vehicle accident ('the accident') which occurred on 8 April 2020 along Klawer Road near Vredendal in the Western Cape.

[2] At the time of the accident, the plaintiff, then aged 35, alleges that he was conveyed as a passenger in the insured motor vehicle, which was under the control of and driven by the insured driver.

[3] The plaintiff avers that the accident was occasioned solely by the negligence of the insured driver of the motor vehicle. Consequently, thereof, the plaintiff sustained bodily injuries comprising multiple rib fractures; abrasive

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[1] Road Accident Fund Act 56 of 1996 as amended.

injuries over the abdomen, lower back and pelvis; fractures of the left distal radius and ulna; a segmental fracture of the right fibula; and a fracture of the right distal tibia, which necessitated his hospitalisation.

[4] In the result, the relief sought by the plaintiff against the defendant is framed as follows:

(a) Payment of 100% of all proven damages in favour of the plaintiff;

(b) Payment of past hospital and medical expenses in the sum of R200 000;

(c) Payment of future medical and related expenses in the sum of R250 000;

(d) Payment of past and future loss of earnings in the sum of R2 000 000; and

(e) Payment of general damages in the sum of R500 000.

Issues to be determined

[5] Both the merits and the quantum of the plaintiff's claim are placed in dispute. Accordingly, the Court is enjoined to determine, first, the merits of the plaintiff's claim. Should the claim be upheld, secondly, the quantum of damages recoverable.

Factual Matrix

[6] The plaintiff testified that on 8 April 2020, he was conveyed as a passenger in a company motor vehicle driven by the insured driver, his colleague, Moses. They were travelling along Klawer Road en route to Vredendal. He was seated at the rear of the bakkie, securely restrained by a seat belt, and occupied himself with his mobile phone. Suddenly, he experienced a violent impact, whereupon the vehicle overturned. When he regained awareness, he found himself lying on the ground. Following the accident, he was initially conveyed to Vredendal Hospital and was thereafter transferred to Christiaan Barnard Hospital for further medical treatment.

[7] At the time of the accident, the plaintiff was employed by DEA Technologies in Brackenfell as a technician, earning a monthly income of R4 500. His duties entailed, inter alia, the performance of manual and physical activities such as lifting and carrying heavy loads, the loading and offloading of cooling units, climbing step ladders and stairs, frequent walking, standing and bending, undertaking cleaning duties, and assisting fellow technicians by handing them various tools, parts or materials during technical work on site. In addition, the plaintiff was engaged on a part-time basis as a painter, from which he earned between R500 and R600 per day.

[8] Pursuant to the accident, the plaintiff was off duty from the date thereof and only resumed employment in October 2020. Upon his return, he was unable to perform the duties he had discharged prior to the accident. His employer, however, accommodated him by assigning lighter tasks, which he continued to perform for a period of approximately five years. During this time, his remuneration increased to R5 500 per month.

[9] In November 2024, the plaintiff's employment came to an end owing to difficulties with his work permit. Thereafter, he continued to engage in part-time employment as a painter. At the time of giving evidence, he stated that his work permit had not yet been regularised. The evidence of the plaintiff was not corroborated by any other witness.

[10] Following the testimony of the plaintiff, his counsel, Mr du Toit, brought an application in terms of Rule 38(2) of the Uniform Rules of Court, seeking leave to adduce the evidence of his expert witnesses by way of affidavit. No submissions were forthcoming from the defendant in opposition thereto.

[11] Having considered the application, this Court was satisfied that it was appropriate and suitable in the circumstances to permit a deviation from the norm of hearing oral evidence in action proceedings. The medico-legal and actuarial

reports prepared by the plaintiff's expert witnesses were accordingly admitted into evidence in terms of Rule 38(2). Regard being had to the saving of time, costs, and judicial resources attendant upon such a course, this Court concluded that, in all the circumstances, it was fair and served the interests of justice to allow the expert evidence to be adduced by way of affidavit. The application was accordingly granted.

Applicable legal principles on merits/liability

[12] The plaintiff's claim herein is based on of section 17 (1) of the Road Accident Fund Act[2] which provides as follows:

'The fund or an agent shall ... be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself . . . caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or the owner of the vehicle.'

[13] It is well-established that the onus rests upon the plaintiff to prove, on a balance of probabilities, that the damages sustained were the result of the negligent driving or other wrongful act of the insured driver.[3] The principle is rooted in the general rule articulated in *Kruger v Coetzee,*[4] where the Appellate Division held that negligence arises where a reasonable person in the position of the defendant would foresee the reasonable possibility of harm and would take steps to guard against such occurrence, yet fails to do so.

[14] In the context of claims under section 17(1) of the Act, it suffices that the plaintiff establishes even the slightest degree of negligence on the part of the insured driver. Proof of 1% negligence is sufficient, for in such circumstances the defendant is statutorily liable to compensate the plaintiff for 100% of his proven

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[2] Section 17(1) of the Road Accident Fund Act 56 of 1996 as amended
[3] See *Goodenough NO v RAF* [2003] ZASCA 81; 2003] JOL 11554 (SCA).
[4] See *Kruger v Coetzee* 1966 (2) SA 428 (A); [1966] 2 All SA 490 (A).

damages. This principle was affirmed in *Prins v Road Accident Fund,*[5] where the court held:

> *'it is common cause that a passenger needs only to prove the proverbial 1% negligence on the part of an insured driver in order to get 100% of damages that he/she is entitled to recover from the Fund.'* (My emphasis)

[15] Notwithstanding that there is no corresponding onus upon the defendant to prove the absence of negligence, once the plaintiff has adduced evidence of an occurrence giving rise to a prima facie inference of negligence on the part of the insured driver, the defendant bears the evidential burden of furnishing an explanation sufficient to dispel such inference. In the absence of such an explanation, the defendant runs the risk of judgment being entered against it.[6]

[16] In *Bomela v Road Accident Fund*[7] the court stated:

> *'It was incumbent on the defendant to displace the* prima facie *inference by means of an explanation. No such evidence has been adduced in these proceedings.* A finding of *res ipsa loquitur* means that the collision impels an inference of negligence on the part of the insured driver, in the absence of an explanation. As the defendant has failed to lead any exculpatory evidence, this Court ineluctably finds the insured driver negligent and solely liable towards the plaintiff.' (My emphasis)

[17] The principle articulated in *Bomela* underscores the evidential burden resting upon the defendant once a prima facie inference of negligence has been established. In the absence of any exculpatory evidence, the inference crystallises into a finding of negligence, thereby rendering the insured driver solely liable.

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[5] *Prins v Road Accident Fund* [2013] ZAGPJHC 106 para 4; See also *Groenewald C v Road Accident Fund* [2017] ZAGPPHC 879 at para 3.
[6] *Ntsala and Others v Mutual & Federal Insurance Co Ltd* 1996 (2) SA 184 (T).
[7] *Bomela v Road Accident Fund* (1345/22) [2024] ZANCHC 35 para 54.

Discussion

[18] Against this backdrop, it is common cause that the uncontroverted evidence presented by the plaintiff is that he sustained bodily injuries necessitating hospitalisation whilst being conveyed in the insured motor vehicle. The defendant has presented no evidence to contradict the plaintiff's version.

[19] Mr du Toit correctly submitted that the plaintiff's evidence as to the manner in which the accident occurred remains unchallenged. On this basis, counsel contends that the defendant bears full liability and that no apportionment of damages arises, there being no defence before this Court. Counsel further emphasized that the uncontested evidence demonstrates that the insured driver lost control of the vehicle, which subsequently overturned, causing the plaintiff to sustain injuries. No evidence has been adduced to establish what precautionary steps, if any, the insured driver undertook to avert the imminent emergency in which he found himself. Counsel submits, the insured driver, as the party duty-bound to explain the measures taken to avoid the collision, has regrettably placed no such account before the Court.

[20] Conversely, Ms Thomas, for the defendant, contended that an apportionment of damages ought to be effected on the basis that there is no evidence establishing that the plaintiff was wearing a safety belt at the time of the collision. This omission, so it was argued, amounts to contributory negligence on the part of the plaintiff.

[21] Addressing the question of contributory negligence, the court in *Moloi v RAF*[8] the court held:

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[8] *Moloi v RAF* [2020] ZAGPPHC 216 para 7.

'The defendant called no witnesses to prove such contributory negligence. It follows therefore that the Plaintiff's version on the cause of the accident remained unchallenged and therefore no contributory negligence could be established by the Defendant.'

[22] Similarly in *Kabini v Road Accident Fund*[9] the court held:

'It is trite that a plaintiff only has to prove 1% negligence on the part of an insured driver for a claim to be established. It is then for the defendant to prove contributory negligence on the side of the plaintiff.'

[23] Flowing from the foregoing facts and the authorities cited, I have had due regard to the plaintiff's evidence, which remained unchallenged. The defendant placed no evidence before this Court to dispute the validity of the plaintiff's claim, nor was any testimony adduced to contradict the plaintiff's version. The plaintiff withstood cross-examination and consistently maintained that the insured driver was the sole cause of the accident. I accordingly find that a causal nexus exists between the accident and the injuries sustained by the plaintiff, and that no apportionment of fault arises.

[24] In the premises and applying the principles articulated in the authorities cited above, namely *Kruger v Coetzee*, *Bomela v Road Accident Fund*, *Moloi v Road Accident Fund*, and *Kabini v Road Accident Fund*, it is my considered view that the defendant has failed to discharge the evidential burden resting upon it to establish contributory negligence arising from the alleged failure to wear a seat belt. As such no apportionment of damages arises. The plaintiff's evidence as to the cause of the accident remains unchallenged, and the defendant has adduced no testimony capable of displacing the prima facie inference of negligence on the part of the insured driver. In consequence, the defendant bears full responsibility for the damages flowing from the accident and is accordingly liable for one hundred per cent (100%) of the plaintiff's proven damages.

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[9] *Kabini v Road Accident Fund* [2020] ZAGPPHC 100 para 21.

Quantum

[25] I now turn to the issue of the quantum of the plaintiff's claim. This concerns damages under the following heads: (a) past hospital and medical expenses; (b) future medical expenses; (c) loss of earnings; and (d) general damages. In proving the quantum of damages, the plaintiff filed medico-legal reports compiled by various experts, namely:

(a) Dr Olivier, orthopaedic surgeon;

(b) Ms Kruger, occupational therapist;

(c) Ms Blaauw, biokineticist;

(d) Dr Bredekamp, counselling psychologist;

(e) Ms Colley, industrial psychologist; and

(f) Mr Boshoff, actuary from Munro Forensic Actuaries.

[26] These reports were admitted into evidence in terms of Rule 38(2) of the Uniform Rules of Court and constitute the evidentiary foundation upon which the assessment of damages must now be undertaken.

[27] Dr Olivier, the orthopaedic surgeon, in his report confirmed that the plaintiff sustained fractures to the left radius and ulna. He opined that, notwithstanding fracture stabilisation, there remained signs of ulnar variance and deformity, together with early osteodegenerative changes in the radiocarpal joints. In his opinion, the long-term functionality of the plaintiff's left wrist joint will be permanently compromised, which will materially impact upon the plaintiff's ability to perform manual and physical activities requiring strong grip strength. Dr Olivier concluded further that, although wrist arthrodesis may be

beneficial to the plaintiff overall, significant late complications could be anticipated.

[28] Ms Kruger, the occupational therapist, furnished a detailed report assessing the plaintiff's functional capacity in light of the orthopaedic sequelae described by Dr Olivier. She opined that, due to the injuries sustained, the plaintiff struggled to meet the physical, and strength demands of his pre-accident employment. She attributed this to limited strength and pain in his left wrist, reduced capacity for weight-bearing tasks, and a lack of postural flexibility arising from his lower-limb injuries. On this basis, she concluded that the plaintiff is now primarily suited to work involving the lifting and carrying of loads within the category of light physical demands. She further opined that, should his symptoms worsen in future, his capacity may be restricted to light or semi-sedentary forms of employment only.

[29] Ms Blaauw, the biokineticist, confirmed the findings of Dr Olivier that, post-accident, the plaintiff has sustained an average functional strength impairment of 42%. As a result, she opined that the plaintiff would encounter significant difficulties in performing the duties he was engaged in prior to the accident, particularly those involving heavy physical activities. She is of the opinion that the residual effects of the accident have left the plaintiff with serious functional impairment and long-term functional disability.

[30] Dr Bredekamp, the counselling psychologist, opined that the plaintiff suffers from residual symptoms of post-traumatic stress disorder, somatic disorder, and depressive disorder. She stated that the plaintiff remains anxious about his job security and harbours fears that he may not find alternative employment. His injuries have adversely impacted his self-esteem, leaving him with feelings of hopelessness and worthlessness. In Dr Bredekamp's opinion, the

plaintiff's injuries have serious long-term consequences and will likely continue to impair his emotional and psychological functioning.

[31] Ms Colley, the industrial psychologist, assessed the plaintiff's pre- and post-morbid earning potential. She concluded that the plaintiff will be an unequal competitor in the labour market, owing to his compromised physical condition, his psychological challenges, and the fact that he remains in need of future medical and therapeutic interventions. In her opinion, these factors materially diminish the plaintiff's employability, rendering him vulnerable to periods of unemployment and restricting his capacity to secure and sustain competitive work. She accordingly recommended that higher-than-average contingencies be applied to the projected long-term scenario, in recognition of the plaintiff's diminished employability and vulnerability.

[32] Mr Boshoff, the actuary from Munro Forensic Actuaries, relying on the inputs of Dr Olivier and Ms Colley, prepared an actuarial assessment of the plaintiff's loss of earnings. In respect of past loss of earnings, he applied a contingency deduction of 5% to the plaintiff's projected uninjured earnings and no contingency to the injured scenario. On this basis, he calculated the total past loss of earnings in the sum of R106 990.

[33] For future earnings, Mr Boshoff applied a contingency deduction of 15% to the projected uninjured earnings and 5% to the projected injured earnings. On this basis, he calculated the plaintiff's total future loss of earnings in the sum of R1 266 710. In his opinion, the plaintiff's total loss of earnings amounts to R1 373 700.

[34] In light of the expert reports referred to herein, what accordingly falls to be determined is the measure of fair, reasonable, and appropriate compensation due to the plaintiff. This determination entails the calculation of the amounts payable in respect of past hospital and medical expenses, the quantification of future

medical expenses, the assessment of special damages in the form of loss of earnings, the application of appropriate contingencies to those calculations, and the award of general damages.

Past hospital medical expenses

[35] In the present matter, the plaintiff's claim in respect of past hospital medical expenses are quantified in the sum of R200 000. It is trite that, in claims arising from motor vehicle accident, the head of damages relating to past hospital and medical expenses are governed by section 17(1) of the RAF Act. In terms of that provision, the defendant is obliged to compensate claimants for all proven medical and hospital costs reasonably incurred as a consequence of injuries sustained in the accident.

[36] Our jurisprudence makes it plain that the plaintiff bears the onus of proving the quantum of past hospital and medical expenses. Ordinarily, this is achieved through the production of vouchers, invoices, or hospital accounts, corroborated by medico-legal evidence establishing the nexus between the treatment and the accident. In the absence of such substantiating documentation, the Court remains enjoined to exercise its discretion in determining whether the plaintiff has discharged the onus of proving past hospital and medical expenses.

[37] It is common cause that the plaintiff was admitted to Christiaan Barnard Hospital following the accident, where he underwent surgery on his right leg and remained hospitalised for approximately nine days. However, in his particulars of claim, the plaintiff merely indicated that substantiating vouchers in support of the amount claimed would be discovered in accordance with the Rules of Court. Regrettably, no such vouchers were produced before this Court. In addition, no confirmatory affidavit was furnished by the experts who rendered the services, nor was any evidence adduced from the service provider as to the actual amount disbursed in respect of the past medical costs.

[38] In the circumstances, and notwithstanding the absence of any opposition by the defendant, this Court cannot simply assume the correctness of the quantum claimed. The plaintiff bears the onus of establishing, on a balance of probabilities, that the past hospital and medical expenses were indeed incurred and that they were reasonable in relation to the injuries sustained.

[39] The failure to produce vouchers, invoices, or confirmatory affidavits from the relevant medical practitioners or service providers by the plaintiff leaves the Court without reliable evidence upon which to assess the precise amount expended. The statutory obligation imposed upon the defendant by section 17(1) of the Act is confined to proven medical and hospital costs. In the absence of such proof, the Court is constrained to decline the claim under this head of damages.

[40] Accordingly, while the Court accepts that the plaintiff was hospitalised and underwent surgery, the evidentiary deficiencies are fatal to the claim for past medical expenses. The plaintiff has not discharged the requisite onus, and this portion of the claim must therefore be disallowed.

Future medical and related expenses

[41] In respect of future medical expenses, the plaintiff's claim is for payment in the sum of R250 000. Dr Olivier is of the opinion that an amount of approximately R187 000 should be allowed for wrist arthrodesis. He based this estimate on the likelihood that significant late complications may arise, rendering such intervention necessary.

[42] Dr Olivier further expressed the opinion that, following wrist arthrodesis, the internal fixation should be removed, as its continued presence may adversely affect the gliding mechanism of both the extensor and flexor tendons. He estimated that an amount of R49 500 should be allowed for the removal of the internal fixation once arthrodesis has been achieved. This figure,

according to him, encompasses the costs of pre-operative investigations, the professional fees of the healthcare practitioners involved, hospitalisation, theatre time and post-operative rehabilitation.

[43] While I note that the plaintiff has claimed future medical expenses in the sum of R250 000, it is significant that the plaintiff's actuary did not calculate such expenses with reference to the orthopaedic surgeon's report. This omission is understandable, given the inherent difficulty in predicting future medical costs with precision, as circumstances may evolve over time.

[44] Nevertheless, the experts; Dr Olivier, Ms Blaauw, and Dr Bredekamp, are *ad idem* that the plaintiff will never fully recover and will require ongoing medical interventions. In my view, an undertaking by the defendant in terms of section 17(4)*(a)* of the Act is warranted. In the result, the plaintiff is granted such an undertaking in respect of his future medical and related expenses arising from the collision, which shall be borne by the defendant. This approach avoids any prejudice that the plaintiff may suffer were the award confined to a stipulated amount.

Past and Future Loss of Earnings / Earning Capacity

[45] I now turn to consider the claim for loss of earnings and impairment of earning capacity advanced by the plaintiff. The plaintiff contends that the aggregate loss suffered, comprising both past and future earnings, amounts to R2 000 000. The quantification of such loss depends heavily upon the unique personal circumstances of the plaintiff, the nature of the injuries sustained, the treatment administered and to be administered in the future, and most significantly, the sequelae of those injuries upon his present and prospective work opportunities and earnings.

[46] It follows that a claimant cannot succeed in such a claim absent proof of actual patrimonial loss, for the loss of past earnings represents the income foregone by the injured person from the date of the accident until the finalisation of the matter. It is therefore incumbent upon the plaintiff to establish, by way of credible evidence, that the injuries sustained prevented him from earning a livelihood in the ordinary course, and further, what his earnings would have been had he not been incapacitated.[10]

[47] The Court, in assessing loss of earnings, proceeds by estimating what the plaintiff would have earned had the accident not occurred, and comparing that figure with his current earning potential. In *Santam Versekeringsmaatskappy Bpk v Byleveldt*[11] it was emphasised that the assessment of damages for loss of earnings necessarily involves an element of uncertainty. This inherent uncertainty arises from the fact that the Court is required to project into the future, weighing probabilities and contingencies, and applying its discretion to arrive at a figure that is fair, reasonable, and just in the circumstances.

[48] Similarly in *Southern Insurance Association v Bailey NO*[12] the Appellate Division observed:

> "Any enquiry into damages for loss of earning capacity is of its nature speculative. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss. It has open to it two possible approaches. One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a

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[10] Gauntlett Corbett: *The Quantum of Damages in Bodily and Fatal Injuries* Vol 1 (1995) 39.
[11] *Santam Versekeringsmaatskappy Bpk v Byleveldt* [1973] 2 All SA 173 (A); 1973 (2) SA 146 (A).
[12] *Southern Insurance Association v Bailey NO* 1984 (1) SA 98 (AD) at 113H–114E.

> non possumus attitude and make no award. In a case where the Court has before it material on which an actuarial calculation can usefully be made, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an 'informed guess' it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial Judge's 'gut feeling' (to use the words of appellant's counsel) as to what is fair and reasonable is nothing more than a blind guess."

[49] This dictum underscores the principle that actuarial evidence, while not determinative, provides a rational framework within which judicial discretion is exercised. The Court's ultimate task remains the ascertainment of the actual loss suffered by the plaintiff, tempered by the recognition that the plaintiff cannot be expected to furnish proof beyond what is reasonably possible in the circumstances.

[50] In quantifying claims of this nature, it is customary to rely upon the expertise of an actuary, who prepares actuarial calculations founded upon proven facts and realistic assumptions concerning the future. The actuary's projections are, in turn, dependent upon the reports of industrial psychologists, who themselves rely upon information furnished by the claimant. Ultimately, the award for future loss of earnings or impairment of earning capacity must rest upon sound medical evidence and corroborating facts, thereby ensuring that the quantification is both rational and just.

[51] It must, however, be emphasised that actuarial evidence, while valuable, is not binding upon the Court. Such evidence must be weighed against the broader factual and contextual matrix of each case. The Court accordingly retains the discretion to determine the correctness of the assumptions upon which actuarial calculations are based. Where any assumptions or portions of the calculations are rejected, the Court is obliged to furnish detailed reasons for doing so.

[52] In *De Jongh v Du Pisanie NO*[13], the Supreme Court of Appeal reaffirmed the wide discretion vested in trial courts to determine fair compensation. The SCA noted that the trial court has a wide discretion to award what in the particular circumstances consider right. It is bound by no rule except that it must act judicially.

[53] Likewise, in *Road Accident Fund v Guedes*[14], the court endorsed a 'robust' approach to the assessment of future loss, particularly in cases of evidentiary uncertainty as follows:

> '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.[15] The court necessarily exercises a wide discretion when it assesses the quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right. Courts have adopted the approach that in order to assist in such a calculation, an actuarial computation is a useful basis for establishing the quantum of damages. Even then, the trial court has a wide discretion to award what it believes is just[16] (Van *der Plaats v South African Mutual Fire and General Insurance Co Ltd).*[17]"

[54] This judicial discretion extends also to the application of contingency deductions, which constitute an essential component in the assessment of damages. Contingencies are adjustments made to account for the uncertainties of life, including the risk of unemployment, illness, economic downturns, changes in career path, or premature death. They recognise that a person's working life rarely proceeds without interruption.

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[13] *De Jongh v Du Pisanie NO* [2004] ZASCA 43; [2004] 2 All SA 565 (SCA); 2004 (5J2) QOD 103; 2005 (5) SA 457 (SCA) para 60.
[14] *Road Accident Fund v Guedes* [2006] ZASCA 19; 2006 (5) SA 583 (SCA) para 8 & 10.
[15] Ibid 12
[16] Ibid 12 at 116G-117A.
[17] *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) 114F-115D.

[55] The question for determination by this Court is, firstly, whether, in light of the expert opinions referred to above, the plaintiff has suffered a loss of income as a direct consequence of the accident; and secondly, whether there exists a loss of future earning capacity arising from his incapacity to perform the duties he discharged prior to the accident.

[56] It is common cause that, but for the accident, the plaintiff would have been expected to remain in employment until the age of 65 years, whilst continuing to supplement his income through weekend jobs. The plaintiff's actuary has applied a contingency deduction of 5% to his uninjured earnings, whilst applying no contingency to his injured earnings. On this basis, the total past loss of earnings has been calculated in the sum of R106 990.

[57] The evidence tendered before this Court establishes that, following the accident, the plaintiff was hospitalised for a period of 9 days. Thereafter, he was discharged and recuperated at home, only returning to work in October. This evidence was not disputed by the defendant. In the absence of any evidence to the contrary, there can be no doubt regarding the plaintiff's loss of earnings during this period. The Court is accordingly persuaded to accept the pre-morbid and post-morbid postulations advanced by Mr Boshoff for the purposes of calculating the plaintiff's past loss of earnings. In the result, the Court finds that the plaintiff suffered past loss of earnings in the sum of R106 990.

[58] In determining the plaintiff's future loss of earnings, the central enquiry is whether there exists a diminution of his earning capacity arising from his incapacity to perform the duties he discharged prior to the accident. The assessment of future earnings is undertaken with reference to expert and actuarial reports, subject always to the Court's discretion to account for the uncertainties inherent in life.

[59] Such uncertainties are addressed through the application of contingencies to both historical and projected earnings, thereby ensuring that the calculation reflects a realistic approximation of the plaintiff's future prospects. Compensation for future loss of earnings is accordingly assessed as a percentage of the value of the loss,[18] calibrated to balance fairness to the plaintiff with the prudence required in judicial quantification.

[60] The evidence establishes that the plaintiff is no longer able to perform the duties he discharged pre-morbid, and that he is now restricted to light work. Consequently, he will be compelled to retire prematurely, at approximately the age of 45 years. It must, however, be borne in mind that post-morbid the plaintiff continued to work, albeit in lighter duties, and earned a salary higher than that which he received pre-morbid. Nevertheless, he has been compromised and rendered an unequal competitor in the labour market, being no longer suited to his pre-accident career. On this basis, Ms Colley recommended the application of a contingency deduction significantly higher than the norm, in order to address the risks attendant upon the plaintiff's diminished employability.

[61] The evidence before this Court establishes that, following the accident, the plaintiff continued in employment until the expiry of his work permit. Although he was unable to resume his pre-accident duties, his employer accommodated him with alternative work. Not only did he resume employment, but his salary increased from R4 500 to R5 900 per month. His employment was terminated solely owing to an unrelated matter, namely the absence of a valid work permit, rather than as a consequence of the accident. In my view, this indicates that, but for the work permit difficulties, the plaintiff would have continued in employment until the age of retirement, or at the very least until the age of 45 years, whilst supplementing his income through weekend jobs.

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[18] RJ Koch *Damages for Lost Income* (1984) at 31.

[62] Notwithstanding that the plaintiff's employment was ultimately lost due to the expiry of his work permit, his post-morbid employment limitations nonetheless justify his claim for loss of earnings, given his diminished work capacity and curtailed career prospects. I accordingly find that the plaintiff is entitled to compensation for the loss of earnings suffered as a direct consequence of the accident.

[63] What remains for determination is the fair and reasonable amount to be awarded, bearing in mind that post-morbid the plaintiff in fact earned a higher income than he did pre-morbid. In quantifying the award, the Court must arrive at a figure that reflects both the plaintiff's diminished earning capacity and the realities of his post-morbid employment history. Of significance is the fact that, after the accident, the plaintiff earned a higher salary than he did pre-morbid, and that his eventual loss of employment was occasioned not by the accident but by the expiry of his work permit.

[64] I note that Mr Boshoff applied a contingency deduction of 15% in the plaintiff's uninjured earning, whilst applying 5% to his injured earnings. On this basis, Mr Boshoff concluded that the plaintiff's future loss of earnings amounts to R1 266 710. Conversely, Ms Thomas, in advancing her submissions, urged the Court should adopt a more stringent approach to contingency deductions. Specifically, she proposed that a deduction of 50% be applied to the plaintiff's future uninjured earnings, whilst a deduction of 10% be imposed upon his injured earnings.

[65] I am not persuaded to adopt the proposal advanced by Ms Thomas, particularly in light of the expert reports placed before this Court and the actuarial calculations prepared. To do so without cogent justification would amount to a speculative "thumb-suck" approach, which would undermine the probative value of the expert evidence tendered to assist the Court. To disregard such evidence in

favour of conjecture would be inimical to the proper discharge of the judicial function.

[66] While I have no difficulty with Mr Boshoff's conclusion, however, based upon the evidence before this Court, it must nevertheless be observed that his report does not appear to take account of the impact upon the probabilities of the fact that the plaintiff ceased working of his own volition, owing to the absence of a valid work permit. Notwithstanding that the plaintiff could not resume his pre-morbid duties, he remained employed in alternative work and, significantly, earned a salary higher than that which he received pre-morbid. I have no reason to doubt that, but for the difficulties occasioned by the absence of a valid work permit, the plaintiff would have perpetuated this trend for the remainder of his working life, until reaching his peak and maintaining that level until retirement.

[67] Considering the aforementioned, the determination of contingencies will entail consideration of factors such as the plaintiff's age, the extent of his injuries, the prospect of securing alternative employment suited to his diminished capacity, and his qualifications or lack thereof. The usual effect of an adjustment based on contingencies is that the quantum of damages is reduced by a percentage which may vary between 10% and 50%.[19] It is trite that the determination of contingencies falls squarely within the discretion of the Court, exercised subjectively yet guided by what is reasonable and fair on the information placed before it. As articulated in *Van Der Merwe v Road Accident Fund*,[20] the determination of loss of earnings and the incorporation of contingencies falls within the ambit of judicial discretion. The Court must accordingly decide upon the approach peculiar to the facts of the present matter.

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[19] See *Van der Plaats v SA Mutual and Fire General Ins* 1980 (3) SA 105 (A) at 114-5.
[20] *Van Der Merwe v Road Accident Fund* [2025] ZAWCHC 158 para 20.

[68] I have considered that the plaintiff is a 41-year-old, falling within the category of a semi-skilled worker. Owing to his injuries, he will be compelled to retire prematurely at the age of 45 years, as postulated by Dr Olivier. The calculations relating to loss of earnings are based upon his pre-morbid earnings. At present, the plaintiff remains unemployed and is rendered an unequal competitor in securing future employment. Even if he were to obtain employment such opportunities would be confined to semi-sedentary duties, commensurate with his diminished capacity. Against this conspectus of facts, it becomes necessary to determine the appropriate percentage to be applied to the figure projected by the plaintiff's actuary. This determination must be informed by comparative jurisprudence, which demonstrates that Courts have consistently applied higher contingency deductions in cases where plaintiffs face structural socio-economic disadvantages.

[69] In *Southern Insurance Association Ltd v Bailey, NO,*[21] the Appellate Division underscored the necessity of tailoring contingencies to the realities of the claimant's situation. The Court held that a realistic assessment must be made of the prospects of the hypothetical uninjured person and the actual injured person, applying percentages that are fair in the circumstances. Similarly, in *Road Accident Fund v Guedes,*[22] the Supreme Court of Appeal affirmed that contingency deductions must be fair, reasonable, and tailored to the specific circumstances of the particular claimant.

[70] In *Road Accident Fund v Kerridge*[23] The Supreme Court of Appeal confirmed that 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 post-accident. The loss is the impact of the accident

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[21] *Southern Insurance Association Ltd v Bailey, NO supra*
[22] *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA)
[23] *Road Accident Fund v Kerridge* 1024/2017 [2018] ZASCA 151

upon the claimant, this being the difference between the monetary value of earning capacity immediately prior to the injury and that which remains immediately thereafter.

[71] In *Brits v Road Accident Fund,*[24] the court applied a 15% pre-morbid and 35% post-morbid contingency differential. The court per Strijdom J stated:

> "It was submitted by the plaintiff that the court must apply a 30% contingency differential 15/45. *I am of the view that in the circumstances of this case a 35% contingency will be fair. Such a contingency takes into account that the plaintiff is still employed and may remain in that position and also allows for the possibility that he may be rendered unemployable if he should lose his job.* The result would be a 15% pre-morbid contingency and a 35% post-morbid contingency. A differential of 20% contingency." (Emphasis added)

[72] The above authorities illustrate the Court's willingness to calibrate contingency deductions in a manner that reflects both the claimant's continued employment and the real risk of future unemployability, thereby affirming the principle that deductions must be fair and tailored to the claimant's circumstances. In light of the jurisprudence set out above, I have considered that, even though the plaintiff's employability has diminished, rendering him vulnerable to periods of unemployment and restricting his capacity to secure and sustain competitive work, he nonetheless retains the ability to engage in employment, albeit restricted to light or semi-sedentary forms. I agree with the recommendations of Ms Colley that, in the circumstances, higher than average contingencies be applied to the projected long-term scenario, in recognition of the plaintiff's diminished employability and vulnerability.

[73] In my considered view, the contingency deduction applied by Mr Boshoff is unduly optimistic when measured against the plaintiff's prevailing circumstances. A higher contingency deduction of 35% is warranted, being more

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[24] *Brits v Road Accident Fund* (54415/2018) [2025] ZAGPPHC 417 (11 April 2025).

consonant with the evidentiary matrix before Court and reflective of the prevailing socio-economic realities. The risks of future unemployment, early retirement, or reduced work capacity are substantially greater for the plaintiff than for an uninjured peer.

[74] In the premises, I consider a contingency deduction of 35% on the uninjured future loss of earning scenario to be reasonable while retaining the 5% contingency deduction on injured earnings. The resultant figure is a sum of R918 590, which I regard as a fair and reasonable measure of compensation for the plaintiff's loss of earnings.

[75] In the circumstances, it would be fair and reasonable to award the plaintiff compensation for loss of earnings in the sum of R1 025 580, made up as follows:

(a) Past loss of earnings in the sum of R106 990.

(b) Uninjured future loss of earnings in the sum of R1 740 600, less a contingency deduction of 35%, resulting in a total of R1 131 390.

(c) Injured future loss of earnings in the sum of R224 000, less a contingency deduction of 5%, resulting in a total of R212 800.

(d) In the result, the fair and reasonable total loss of earnings is the sum of R918 590.

General damages

[76] I now turn to consider the issue of general damages suffered by the plaintiff. The plaintiff seeks an award in the amount of R500 000. The purpose of such damages is to afford compensation for pain and suffering, loss of amenities of life, disability, and disfigurement occasioned by the wrongful act.[25] In

[25] *T. P. N. v Road Accident Fund* [2024] ZAKZDHC 37 para 17.

determining non-patrimonial damages, the Court is guided by established principles. In *Sandler v Wholesale Coal Suppliers Ltd*[26] it was held that such damages must be based on broad and equitable considerations. The same principle was reaffirmed in *Southern Insurance Association v Bailey NO.*[27]

[77] In *Road Accident Fund v Marunga* (*Marunga*),[28] the Court stated that:

> 'Even though the courts have a wide discretion to determine general damages and even though it cannot be described as an exercise in exactitude, or be arrived at according to known formulae, a trial court should at the very least state the factors and circumstances it considers important in the assessment of damages. It should provide a reasoned basis for arriving at its conclusions.'

[78] In *De Jongh v Du Pisanie*[29] the Supreme Court of Appeal dealt with issues such as fairness and the Court's discretion in the context of previously decided cases of similar facts and cited with approval, the following passage from *Pitt v Economic Insurance Co. Ltd*[30] where the following was stated:

> 'The court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff but must not pour out largesse from the horn of plenty at the defendant's expense.'

[79] In arriving at a fair and reasonable measure of compensation, the Court must have regard to a broad spectrum of facts, including the nature, severity, and permanence of the injuries sustained. Consideration must also be given to the impact of the injuries upon the plaintiff's daily life, his age, personal circumstances, and the guidance afforded by comparable awards in cases involving similar injuries. Upon a holistic evaluation of these factors and

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[26] *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 at 199.
[27] Ibid 12
[28] *Road Accident Fund v Marunga* [2003] ZASCA 19; [2003] 2 All SA 148 (SCA); 2003 (5) SA 164 (SCA) para 33.
[29] *De Jongh v Du Pisanie* [2004] ZASCA 43; [2004] 2 All SA 565 (SCA); 2005 (5) SA 457 (SCA); 2004 (5J2) QOD 103 (SCA) paras 60-64.
[30] *Pitt v Economic Insurance Co. Ltd* 1957 (3) SA 284 (D) at 287E-F.

circumstances, the Court is enjoined to determine what constitutes just compensation for pain and suffering, disfigurement, and loss of amenities of life,[31] bearing in mind that the award must be fair to both parties.

[80] In *Mgudlwa v Road Accident Fund*[32] a sum of R300 000.00 (which has a 2024 value of R617 000.00) was awarded to a 34-year-old plaintiff. That plaintiff suffered from fractures to the femur and tibia, causing the left leg to be 5 cm shorter than the other leg due to deformity of the proximal end of the femur. Surgery in the form of a total knee replacement and realignment of the femur was anticipated. The severity of this plaintiff's injuries is far less than that of the plaintiff in the present matter.

[81] In *Mohlaba v Road Accident Fund*,[33] the plaintiff was awarded an amount of R540 000.00 which is R610 000 .00 at present value. The plaintiff suffered serious injuries which had a permanent effect on his life, in particular his future earning capacity. The injuries can be summarized as follows:[34]

> 'The plaintiff sustained a right proximal radius and ulna fracture. A bony ankylosis has formed between the proximal radius and ulna. On clinical examination the plaintiff has no pro-and supination of his forearm and his forearm remains in a fixed position 20 degrees pronation. The loss of the forearm pro- and supination of the plaintiff's dominant hand will prevent him from working as a motorcycle mechanic. He has suffered a significant loss of working capacity. He has suffered an injury to his right ulna nerve resulting in loss of sensation in his small and ring fingers and some loss of his intrinsic hand function'.

[82] In *Ngomane v Road Accident Fund*[35], the claimant had severe fracture of right humerus and right radius and ulna. The claimant was left with a dysfunctional left arm. He had a weak grip on the right side, and he cannot lift

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[31] See *Protea Assurance Company Ltd v Lamb* [1971] 2 All SA 100 (A).
[32] *Mgudlwa v Road Accident Fund* [2010] ZAECMHC 13; 2011 (6E3) QOD 1.
[33] *Mohlaba v Road Accident Fund* [2016] ZAGPPHC 12; 2016 (7D4) QOD 1 (GNP).
[34] Ibid para 6.
[35] *Ngomane v Road Accident Fund* [2017] ZAGPPHC 401.

and carry heavy things and experienced headaches at times. The court awarded R450 000 in general damages, the current value of which is approximately R600 000.

[83] In assessing general damages, the Court considers the plaintiff's age, is 41 years of age, having been 35 years old at the time of the accident. The nature and severity of the injuries, their permanence, and the impact upon his daily life and occupational capacity. The fractures to the left radius and ulna, together with the permanent compromise of the wrist joint, have materially diminished his ability to perform manual labour, restricted him to light or semi-sedentary employment, and left him with chronic pain and emotional vulnerability. During inclement weather he suffers pain in the left arm and discomfort in the right leg, necessitating the intake of medication. The extent of these injuries has not been disputed by the defendant. The plaintiff's fear of travelling in motor vehicles, his sense of uselessness arising from his inability to provide for his family, and the enduring discomfort in his arm and leg, all constitute significant non-patrimonial loss.

[84] Having regard to the plaintiff's circumstances, the permanence of his orthopaedic injuries, the chronic pain, the emotional sequelae, and the diminished quality of life, I am satisfied that an award of R500 000 constitutes fair and reasonable compensation for pain and suffering, disfigurement, and loss of amenities of life.

Costs

[85] What remains for consideration is the question of costs. The general principle is that a party successful in litigation is entitled to recover its costs incurred in the conduct of the proceedings. I find no basis upon which to depart from this principle. The defendant is accordingly ordered to pay the costs of the plaintiff.

The Order

[86] In the results, I make the following order:

(a) The defendant is declared 100% liable for the plaintiff's damages.

(b) The defendant shall pay to the plaintiff the sum of R1 525 580 (one million, five hundred and twenty-five thousand, five hundred and eighty rand) in respect of past and future loss of earnings as well as general damages.

(c) Past hospital and medical expenses claim dismissed.

(d)The defendant shall provide the plaintiff with an undertaking In terms of section 17(4) (a) of the Road Accident Fund Act 56 of 1996, to compensate the plaintiff for 100% of costs relating to the future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the plaintiff, after the costs have been incurred and on proof thereof and arising from the collision which occurred on 8 April 2020.

(e) The defendant is ordered to pay the plaintiff's taxed or agreed costs on the High Court scale as between party and party including the costs set out hereunder:

(i) Any costs attendant upon the obtaining of payment of the amount referred to in paragraph 2 above.

(ii)Regarding the plaintiff's expert witnesses listed hereinbelow, taxed or agreed fees, qualifying expenses and reservation fees (including such travel expenses actually incurred), and the costs attached to the procurement of medico-legal reports, any addendum reports, joints minutes, as well as x-rays and scans and other related costs. The latter costs shall include the costs of attending all plaintiff's and defendant's medico-legal

examination, the amount of which will be taxed at the discretion of the Taxing Master:

1. Dr. P.A. Olivier, orthopaedic surgeon
2. Ms. L. Kruger, occupational therapist
3. Mr. L. Blaauw, biokinetics
4. Dr. R. Bredekamp, counselling psychologist
5. Ms. N. Colley, industrial psychologist
6. Munro Forensic Actuaries

(iii) The taxed or agreed fees and costs of the plaintiff's legal representatives in consulting with the experts and other witnesses in preparation for the trial.

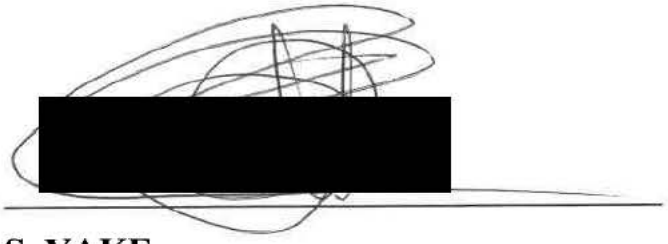
(iv) The taxed or agreed fees of the plaintiff's counsel in respect of the preparation and trial, including the furnishing of advice on evidence and drafting of heads of argument, on Scale C.

(f) The capital amount referred to in paragraph 2 is payable within 180 days from service of this Court Order into the trust account of the plaintiff's attorneys of record with the following details:

Account Holder Name:	De Vries Shields Chiat Inc.
Bank:	FNB Business
Branch:	Portside
Branch Code:	210651

(g) Payment of the taxed or agreed costs reflected above shall be made within 14 calendar days of taxation/settlement.

(h) The interest in respect of both capital and costs will follow in terms of section 17(3) of the Road Accident Fund Act (the capital interest is due within 14 days following the date of taxation/settlement of the costs.



S. YAKE

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff: Adv du Toit

Instructed by: DSC Attorneys

For the Defendant: Ms. Thomas

Instructed by: State Attorneys