



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

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

30 JULY 2026
DATE


H.F. FOURIE
SIGNATURE

In the action between:

CASE NUMBER: 2026-049390

THULI PATIENCE MOLEFE

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

FOURIE AJ

INTRODUCTION:

- [1] The Plaintiff has instituted action against the Road Accident Fund, the Defendant, for damages sustained by the Plaintiff resulting from a motor vehicle collision that occurred on the 10th of September 2022, when the Plaintiff was conveyed as a passenger in a motor vehicle at the time.
- [2] The Defendant has conceded the merits of the matter in favour of the Plaintiff, and all that remains to be adjudicated is the quantification of the Plaintiff's claim.
- [3] Unfortunately, when the matter was heard, an election in respect of the seriousness of the Plaintiff's injuries had not yet been made, and as such general damages will stand over for later adjudication.

EVIDENCE ON QUANTUM:

- [4] In advancing the Plaintiff's case on quantum, the Plaintiff testified and the evidence of the experts, as adduced in terms of Rule 38(2) of the Uniform Rules of Court, was relied upon by the Plaintiff. The Defendant led no evidence of their own and merely argued on the basis of the irregularities that the Defendant pointed out in the Plaintiff's expert reports and case.
- [5] Having regard to the nature of the matter and the fact that the Defendant agreed that the Plaintiff's expert evidence may be led via affidavit, the Court found this matter to be one where it would be appropriate if the evidence of the Plaintiff's experts were accepted under the auspices of Rule 38(2) of the Uniform Rules of Court.

- [6] Accordingly, the following evidence was admitted by way of affidavit:
- [6.1] Neurologist – Dr Mudau
 - [6.2] Neurosurgeon – Dr A Mazwi
 - [6.3] Occupational Therapist – SG Mashaba
 - [6.4] Industrial psychologist – Mrs Moipone Kheswa
 - [6.5] Tsebo Actuaries – ITAI Brian Karidza
- [7] The Plaintiff's testimony in respect of her injuries correlates with the expert reports in that the Plaintiff, a 51-year-old female, who was 47 at the time of the accident, sustained a head and foot injury during the collision.
- [8] Resultant from such injuries, the Plaintiff alleges that she currently experiences epileptic seizures, and she is becoming increasingly forgetful. In essence, the dispute between the Plaintiff and the Defendant is whether the Plaintiff's earning capacity has been diminished or only reduced.
- [9] The Plaintiff alleges that her earning capacity has been diminished totally and the Defendant alleges that the Plaintiff's capacity has only been reduced.
- [10] The expert reports by the Plaintiff, specifically that of the Industrial Psychologist, suggest that at the time of the accident the Plaintiff was employed earning a salary of R 3 655.57 per month. When confronted with her payslips and bank statements under cross-examination, it became evident, however, that although the Plaintiff was previously employed with the

employer so mentioned by the Industrial Psychologist at the time of the accident, she was not employed and that the income received during the period of her accident was payments received in respect of UIF.

- [11] It became evident that the nature of the Plaintiff's employment was periodic and rather to be seen as from time to time than for a fixed period or permanent.

APPLICABLE LEGAL PRINCIPLES:

- [12] The object of the Road Accident Fund, shall at all times be repayment or compensation in accordance with the Act for loss or damage wrongfully caused by the driving of a motor vehicle.[1]
- [13] The Plaintiff needs to be compensated sufficiently fully, as she will not have an opportunity at a later stage to amend her claim once the claim has been finalised.[2]
- [14] 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 depend upon uncertain future events, which is generally the case in claims for loss of earning capacity, the Plaintiff does not have to prove their case on a balance of probabilities and is entitled to rely on the Court's assessment of how she should be compensated for her loss. [3]
- [15] The trial Judge shall not be tied down by inexorable actuarial calculations. He has a large discretion to award what he considers right. One of the elements

in exercising this discretion, is the making of a discount for contingencies, or differently put, the uncertainties of life. [4]

[16] Monetary damage having been suffered, it is necessary for the Court to assess the amount and make the best use it can of the evidence before it. There are cases where the assessment by the Court is little more than an estimate, but even so, if it is certain that pecuniary damages have been suffered, the Court is bound to award damages.[5]

[17] In an instance where loss of earning capacity is involved, firstly, there must be proof of a loss of earning capacity before there can be any future loss of earnings. The actual loss of earnings is then a manifestation of a person's inability to earn the same income as before because of the damage-causing event. Secondly, once it has been established that there is, in fact, a definite loss of earning capacity, an amount must be attached to the incapacity. Effectively, earning capacity is a diminution of a claimant's ability to generate income.[6]

[18] It is by now trite that there are two methods that a Court may employ to calculate the amount to be attached to an incapacity. However, before the Court reaches there, there must be evidence that there was indeed loss of earning capacity. In the absence of any evidence to the contrary, this Court accepts that the accident injuries did in fact affect the earning capacity of the plaintiff. The key question is what value is to be attached to such a loss. The value of a particular plaintiff's capacity to earn is equivalent to the value of earnings she or he would have received over time had the delict not been

committed. In *Arthur Robinson (Grafton) Pty Ltd v Carter (Carter)*[7]

Barwick CJ expressed himself in the following terms:

“The respondent is not to be compensated for loss of earnings but for loss of earning capacity. However much the valuation of the loss of earning capacity involves the consideration of what moneys could have been produced by the exercise of the respondent’s former earning capacity, **it is the loss of capacity, and not the failure to receive wages for the future**, which is to be the subject of fair compensation...”

[19] In *Medlin v SGIC (Medlin)* [8], McHugh J stated the following:

“Earning capacity is an intangible asset. Its value depends on what it is capable of producing. Earnings are evidence of the value of earning capacity, but they are not synonymous with its value.”

[20] Courts are frequently confronted with claims in respect of loss of earnings, and it is necessary to evaluate the fact that it is the earning capacity that is an asset in a person’s estate which, if diminished or reduced, is the damage that is ultimately suffered by a person for which they ought to be compensated.

[21] It might be that a person is at a certain stage unemployed, and it is under those circumstances that the Court will be guided by the previous experience and income generated by such a person to evaluate the quantum a person could reasonably have earned if they were to gain employment. Whether they would have ultimately obtained employment is not relevant to the existence of

the Plaintiff's claim. Those ancillary aspects form part of the contingencies the Court ultimately applies, and form part of the possibilities and uncertainties that such income would ordinarily have been generated even if the accident had not occurred.

[22] The Plaintiff's experts all express the same opinion by stating that, given the nature of the Plaintiff's injuries and the effects thereof, no reasonable prospects exist for the Plaintiff to secure any sort of employment in future. The Defendants led no contradictory evidence on this point by their own experts that would lead the Court not to accept this notion.

[23] The Court accordingly finds that the earning capacity of the Plaintiff has been diminished in totality.

[24] The Court, however, evaluated all the surrounding facts pertaining to the Plaintiff's previous employment, the nature thereof and the probabilities associated therewith. The unfortunate reality is that, had the accident not occurred, the Plaintiff would in any event have struggled to obtain and persist with any meaningful employment and the Court is satisfied that contingencies that reflect these facts ought to be applied.

[25] In evaluating the postulations as advanced by the Plaintiff by way of her actuary, the injured income indeed received in respect of past loss needs to be disregarded as no such income was proven.

[26] The Court is satisfied that a past loss contingency of 20% needs to be applied to the Plaintiff's postulations and the Court is satisfied that a past loss of R 130 256.00 has been suffered.

[27] In respect of the diminishment of the Plaintiff's earning capacity in the future, the Court believes that a contingency percentage of 30% is warranted, and as such the future loss sustained by the Plaintiff is calculated at R 524 011.00.

COSTS:

[28] The Plaintiff has been materially successful with her claim, and the Court finds no reason why costs should not follow suit.

ORDER:

[29] For all the reasons as stated before, the following Order is made:

[29.1] The Plaintiff's application in terms of Rule 38(2) is granted, and the Plaintiff's expert evidence is accepted by way of affidavit.

[29.2] The Defendant is, by way of an agreement between the parties, 100% liable to compensate the Plaintiff for the Plaintiff's proven or agreed damages.

[29.3] General damages stand over for later adjudication.

[29.4] The Defendant shall compensate the Plaintiff in respect of the Plaintiff's loss of past earnings in the amount of R 130 256.00.

[29.5] The Defendant shall pay the Plaintiff in respect of the Plaintiff's future loss of earnings in the amount of R 524 011.00.

[29.6] The Defendant shall pay the Plaintiff's costs on a party and party Scale B.


H F FOURIE AJ
ACTING JUDGE OF HIGH COURT, MBOMBELA

Counsel for the Plaintiff:
Instructed by:

MR MNISI
Johan Mnisi & Associates Inc

Counsel for the Defendant:
Instructed by:

MR MGWENYA
State Attorney

Matter heard on:
Judgment delivered on:

28 JULY 2026
30 JULY 2026

[1] Section 3, Road Accident Fund Act, 56 of 1996 As Amended

[2] Jacobs v Cape Town Municipality (1935) CPD 478

- [3] MS v RAF (10133/2018) [2019] ZA GPJHC at 84
- [4] Southern Assurance Association Ltd v Baily N.O. 1984(1) SA 89 (A)
- [5] Hersman v Shapiro (1926) TPD 367 at 379.
- [6] Botha v Road Accident Fund (40232/2017) [2025] ZAGPPHC 458 (29 April 2025)
- [7] Arthur Robinson (Grafton) Pty Ltd v Carter (Carter) (1968) 122 C.L.R 649 at 658, [1968] H.C.A 9
- [8] Medlin v SGIC (Medlin) (1995) 69 ALJR 118 at 126



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MPUMALANGA DIVISION MBOMBELA (MAIN SEAT)**

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BEFORE THE HONOURABLE JUDGE MANGENA AJ

DATE: 30 JULY 2026

In the matter between:

THULI PATIENCE MOLEFE

And

ROAD ACCIDENT FUND



PLAINTIFF

DEFENDANT

COURT ORDER

The Judge heard the matter on 28 July 2026 and electronically circulated the judgment on 30 July 2026 and gave an order in paragraph "29" as follows:

[1] "29. For all the reasons as stated before, the following Order is made:

[29.1] The Plaintiff's application in terms of Rule 38(2) is granted, and the Plaintiff's expert evidence is accepted by way of affidavit.

[29.2] The Defendant is, by way of an agreement between the parties, 100% liable to compensate the Plaintiff for the Plaintiff's proven or agreed damages.

[29.3] General damages stand over for later adjudication.

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