



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

CASE NO:799/2023

- (1) Reportable: No
(2) Of interest to other Judges: No
(3) Revised: No

DATE 21 August 2026

SIGNATURE

In the matter between:

BANELE MKHABELA

APPLICANT

and

ROAD ACCIDENT FUND

RES PONDENT

Delivered: This judgment was handed down electronically by circulation to the parties and their legal representatives: by email transmission, upload to CaseLines, and publication on SAFLII. The date and time for the hand-down of the judgment is deemed to be 21 August 2026 at 14h00.

JUDGMENT

MANGENA AJ

[1] Plaintiff sustained injuries in a motor a vehicle accident which occurred on the 25 June 2022. At the time of the accident, he was a passenger in the motor vehicle with registration letters K[...] 2[...] M[...] driven by D Mhlongo. He instituted a claim against the Road Accident Fund, "the defendant" for payment in respect of various heads of damages including loss of earnings. He alleged that prior to the accident he was a self employed brick maker. The matter was defendant and came for trial on 17 August 2026.

[2] The defendant conceded total liability for proven damages and further made an offer of R 93 175 .30 in respect of past loss of earnings. The plaintiff accepted the offer, and I was informed by the parties that this aspect of head of damages is settled.

[3] The parties further agreed that general damages are postponed sine die pending the decision of the HPCSA. Consequently, the only outstanding dispute related to future medical expenses and future Loss of earnings.

[4] The aspect of future medical expenses presents no difficulty and in this regard the Act makes provision for the defendant to offer an undertaking to pay costs as and when they are incurred. The defendant expressed inability to do so due to some pages of the hospital records being illegible. Clearer and legible copies were provided, and the defendant undertook to obtain instructions in this regard.

[5] By agreement between the parties the matter was rolled over until Thursday 20 August 2026. At the commencement of the hearing, on 20 August 2026, I was advised that an offer of the undertaking has been made and accepted. This issue does no longer arise for adjudication.

[6] This then leaves us with future loss of earnings. The parties have agreed to present evidence through a Rule 38(2) procedure in respect of certain portions of the evidence relating to the income of the plaintiff. The defendant however expressed an intention to cross-examine the plaintiff on certain aspect pertaining his employment. It said the basis for this approach was to probe some "discrepancies" identified in the affidavits filed in support of the loss of income claim. By agreement between the parties the undisputed evidence relating to expert reports was to be admitted into evidence. A formal application was made and granted on an unopposed basis.

[7] Plaintiff took the stand and testified on his level of education, the extent of the physical strength required for his brick making business as well as the rate he charged his customers. He said that post the accident he was unable to continue with his brick making business due to the intensity of the pain he felt on his upper arm. He was making approximately R 900.00 per month as he worked only during the weekends.

[8] He was cross-examined on the affidavits he deposed in 2026 with a view to determine if he was ever self employed as a brick maker. This was so because he failed to state that he was a self-employed brick maker. In the view I take on this matter, nothing turns on this omission. As I understand it, the affidavits sought to confirm that he was still unemployed and has no source of income. Overall, I was impressed with plaintiff's evidence in that he answered questions honestly and candidly. He was a credible witness. The plaintiff closed his case and the defendant also closed its case.

[9] The parties had prior to the hearing filed substantive heads of argument and I had the opportunity to go through them prior to the hearing. The heads of argument dealt pointedly with the issue in dispute and provided the much needed guidance on the issue in dispute, namely whether plaintiff has suffered any reduced loss in his earning capacity.

[10] The undisputed evidence is that plaintiff was 19 years at the time of the accident. He went to school up to grade 11. At the time of the accident, he was self-employed as a brick

maker. This much is accepted by the defendant, hence the offer for past loss of earnings. This is despite the doubts expressed by counsel for the defendant who urged me not to place much weight on the settled portion of the claim. The difficulty is that it is an important factor to ignore. In so far as I am concerned, it is an admitted fact that plaintiff was self-employed as a brick maker. It is this admitted fact that necessitated the partial settlement of the past loss of earnings component of his claim. The defendant should not be allowed to resile from this.

[11] The medical reports filed by the plaintiff are to the effect that plaintiff sustained a metacarpal fracture on his left hand as well as a right humerus fracture. A plaster of paris was applied. He was detained at the hospital for medical treatment until he was discharged on 13 July 2022.

[12] The orthopaedic report states that the fracture of the humerus has healed, though he still complains of pain when performing strenuous activity. He also has a mild restricted mobility. The metacarpal fracture has also healed with mild residual deformity. However, the motion restriction of the left index and middle fingers will not recover to normal though not resulting in substantial disability.

[13] The injuries sustained resulted, according to the occupational therapist, in the plaintiff suffering a residual incapacity to perform his duties as a brick maker. He is suited for light to low level medium weight and will need task adaptations and assistive devices to manage his previous work demands. She concluded that plaintiff does not at present have the physical and functional ability to sustain his pre-accident employment capacity. He is therefore an unequal competitor in the open labour market in his own or similar occupation.

[14] The defendant did not file any counter evidence. The court should nonetheless make an objective assessment of the evidence presented by the plaintiff and make its own independent finding as to its cogency.

[15] In my view, the findings by the experts are consistent with the injuries and I am satisfied that there has not been any exaggeration as to the effect of the injuries on the future employability of the plaintiff. The experts expressed their professional opinions objectively as it is expected of them, something which is very rare to encounter on matters of this nature.

[16] Mr Mabuyakhulu, counsel for the defendant, urged me to find that the expert reports undermine the claim by the plaintiff that he has suffered a meaningful loss. He said so citing certain portions of the reports. I reject this argument. The experts perfectly understood their role to the court and performed it with remarkable honesty. They were alive to the fact that they are not hired guns to accentuate the plaintiff's claim. Our country will be better if all professionals, be they doctors, engineers or legal practitioners were to be faithful to their oath of office and understand the value a court of law places on their opinions.

[17] The actuary prepared a detailed report incorporating the contingencies and the plaintiff is amenable to the application of 35% in respect of future loss of earnings post morbid and 15% pre-morbid. Guided by all the trite principles on matters of this nature, I agree that the postulations by the actuary and the proposed contingencies are reasonable.

[18] In the circumstances I am satisfied that a proper case has been made for compensation in respect of future loss of earnings in the amount of R 548 920.40

[19] With regard to costs, Mr Mabuyakhulu submitted that this was not a complicated matter and the appropriate scale will be A and not B as requested by Mr Bouwer who appeared for the plaintiff. In counter, Mr Bouwer said that if this matter was as simple as it contended for by the defendant, it could have been settled. For the mere fact that it wasn't, it means it was not simple.

[20] Costs are in the discretion of the court, and such a discretion should be exercised judiciously. Mr Mabuyakhulu would have won me over had the defendant appreciated that it had already settled the past loss of earnings and thereby accepting that plaintiff was self-

employed at the time of the accident. I am troubled by the fact that he was put to trial and subjected to cross-examination on a point not with disputing. The defendant as an organ of state should be exemplary in how it litigates against poor members of the society. The defendant should pay the costs on scale B as a mark of displeasure.

[21] The parties have agreed on a draft order incorporating customary and consequential orders in matters of this nature and the draft order attached herewith is made an order of court.

MI MANGENA

ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances

For the Applicant

Counsel: Adv. APJ Boucher
Instructed by: SDJ INC. (Mbombela)

For the Defendant:

Counsel: Adv. T Mabuyakhulu
Instructed by: State Attorney

Heard: 20 August 2026

Delivered: 21 August 2026