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

**CASE NO: 2055/2025**

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

**DATE 24 August 2026**

**SIGNATURE**

In the matter between:

**SANELE NOMALI SIMELANE**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

**LINK NUMBERS: 4186245 & 4214795**

*Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be ## August 2026 at ##h00.*

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**JUDGMENT**

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## **Leso AJ**

### **Introduction**

[1] The plaintiff instituted an action for damages against the Road Accident Fund in the amount of R7 694 029.20. The plaintiff was involved in two motor vehicle accidents, and she claims that the insured driver was solely responsible for the damages and/or injuries she sustained on both occasions.

[2] The actions were consolidated, and the Fund defended both actions and denied liability for the first accident accidents.

### **Background**

[3] The first accident occurred on 17 August 2015; the plaintiff was a driver in a motor vehicle with the registration numbers and letters F[...] O[...] M[...], travelling from Delmas to Olgies in Mpumalanga. As a result of the accident, the plaintiff sustained the following injuries as indicated in the hospital records and medico-legal reports:

- 3.1 Left acetabulum fracture.
- 3.2 Multiple pelvic fractures.
- 3.3 Left head of femur fracture.
- 3.4 Left and right ankle fractures (bimalleolar fractures).

[4] The second accident occurred on 6 August 2016; the plaintiff was a passenger in a motor vehicle driven by Phindile Simelane bearing the registration numbers and letters H[...] 8[...] M[...]. The accident occurred in KwaZulu-Natal near Warden and Vrede. In the second accident the plaintiff suffered soft tissue injuries and the right ankle fracture was exacerbated.

[5] The plaintiff was admitted for six months at the Steve Biko Hospital and was then transferred to Tshwane Rehabilitation Centre, where she stayed for five months for injuries sustained in the first accident.

[6] Following the second accident, the plaintiff was admitted at Phumelela District Hospital; she was then transferred to Steve Biko Hospital for three weeks and later transferred to Tshwane Rehabilitation Centre, where she stayed for a month.

[7] At the time of the accident, the plaintiff had completed Grade 12, obtained a Diploma in Catering Management, completed theoretical and practical training in an Articulated Dump Truck and obtained a competency certificate. She also obtained a certificate in operating a TLB. Currently, the plaintiff is still unemployed and is financially dependent on the government disability grant.

[8] The plaintiff appointed the following experts:

- 8.1 Dr M Bongobi: Orthopaedic Surgeon.
- 8.2 Ms KE Mokgale: Clinical Psychologist.
- 8.3 Ms PD Ndlhalane: Occupational Therapist.
- 8.4 Ms C Badalani: Industrial Psychologist.
- 8.5 Actuary.

[9] The plaintiff's counsel made an application in terms of Rule 38(2) of the Uniform Rules of Court that the expert evidence be led on affidavit and the report be admitted as evidence. The defence did not raise any objection to the application. Counsel for the defence relied on the plaintiff's reports.

[10] The defendant did not oppose the application to lead the expert evidence on affidavit and to admit the report as evidence. The defendant further relied on the plaintiff's expert reports, and no witnesses were called by the defendant to support its case of negligence on the part of the plaintiff. The main challenge raised by the defendant related to the accident of 17 August 2015.

### **Issues for determination**

[11] Both the merits and quantum are in dispute, and the court is called upon to determine the liability of the insured driver in respect of the second accident, which occurred on 6 August 2016, and the first accident, which occurred on 17 August 2015, when the plaintiff was the driver.

[12] The court was also called to determine whether the plaintiff is entitled to the amount of R7 694 029.20 for loss of earnings and general damages as claimed by the plaintiff.

### **Summary of evidence**

[13] During oral evidence given by the plaintiff on 26 February 2026, the plaintiff testified in respect of the merits of the motor vehicle accidents that occurred on 17 August 2015 and 6 August 2016, respectively.

[14] Regarding the accident of 17 August 2015, she testified that she was the driver of a motor vehicle travelling from Olgies to Delmas, and that the road she was travelling on was a single carriageway. She further testified that although she couldn't remember the speed she was travelling, she was driving at an acceptable speed. In describing how the accident occurred, the plaintiff testified that she saw a truck approaching her path of travel and flashed her lights to try and alert the truck driver; however, the other driver continued driving in her lane.

[15] She stated that, in trying to avoid the collision, she swerved her car to the right, and when trying to return to her lane, she lost control of the vehicle, and it overturned. Upon cross-examination, she was asked if the only action that she did was to flash the lights of her car; she then indicated that she also applied the brakes to slow down the motor vehicle.

[16] Upon clarification by the court on what she meant by applying the brakes, since in her evidence-in-chief she had already testified that she was driving slowly, she further testified that by her applying the brakes, she further slowed down, hoping that the driver of the truck was going to return to his/her lane. It was when she realised that the insured driver was continuing to approach and was not slowing down that she initiated a swerve to the right-hand lane. Upon returning to her lane, she lost control of the vehicle, and it overturned.

[17] During cross-examination, the defendant didn't disprove the negligent driving of the driver of the truck (the insured driver) and the fact that the insured driver was driving in the incorrect lane. Furthermore, the plaintiff's version that she swerved the car she was driving to the right lane trying to avoid collision with an oncoming vehicle was not challenged.

### ***Evidence on Section 19(f) Affidavit***

[18] The plaintiff deposed an affidavit and a supplementary affidavit in terms of section 19(f) of the Road Accident Fund Act 56 of 1996 on 18 January 2018 and a supplementary affidavit on 14 May 2022. The first affidavit didn't give a detailed description of how the accident occurred.

[19] During cross-examination, the issue of the supplementary affidavit was raised, though the defendant was trying to suggest that the plaintiff deposed a second affidavit to correct the first one she had deposed. The plaintiff at the time couldn't remember, safe to say, that she had described to her lawyers how the accident occurred. To clarify the confusion during re-examination, the plaintiff was reminded of the time when she had to come to Pretoria in preparation for a trial that was set down for 3 June 2022 and for a medical examination which was around May 2022. It was then that she confirmed having consulted with her lawyers and thereafter signed the documents.

[20] Counsel representing the plaintiff argued that it was necessary for the plaintiff to supplement her affidavit because, according to the Road Accident Fund Act, the section 19(f) Affidavit must clearly describe the accident and how it occurred. The first affidavit was silent on how the accident occurred except to state that the plaintiff was involved in a motor vehicle accident.

[21] With reference to *Rodrigues v SA Mutual and General Insurance Co Ltd*,<sup>1</sup> It was further submitted on behalf of the plaintiff that the plaintiff's action of swerving to the right-hand side the way she did should not be taken to be negligent at the time,

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<sup>1</sup> *Rodrigues v SA Mutual and General Insurance Co Ltd* 1981 (2) SA 274 (A).

but rather an error of judgement, as at the time she found herself confronted by a sudden emergency whereby she had to act fast to avoid collision.

[22] It was argued on behalf of the plaintiff that the insured driver is the sole cause of the accident in that he/she drove on the incorrect lane and despite being warned by the plaintiff through flashing of the lights, he/she failed to return to his/her correct lane and his/her actions led to the plaintiff swerving to the right lane in a manner that led to her losing control of the vehicle and it overturned. The defence argued that the sketch plan and the measurements demonstrate unequivocally that the driver's actions were the sole cause of the collision and the subsequent injuries sustained by the plaintiff.

[23] The defence counsel argued that the skid marks 3 metres in length indicate short braking and that the plaintiff was driving at high speed. According to the defence, the sketch plan demonstrates the delayed action by the plaintiff in applying the brakes. The defence counsel argued that the accident could have been prevented had the plaintiff applied the brakes on time.

[24] The plaintiff confirmed that she was not wearing a seatbelt at the time of the first accident and she was ejected from the vehicle.

### ***Accident that occurred on 6 August 2016***

[25] The plaintiff testified that on 6 August 2016, she was a passenger in a motor vehicle that was driven by Mr Simelane. The plaintiff further testified that it was late at night, that the insured driver didn't see the sign indicating they were approaching a T-Junction, and further that there were no vehicles approaching from either side. According to the plaintiff, the insured driver drove through the stop sign and the car fell into a ditch.

### **Loss of Earnings**

[26] Ms Mokgale in her report indicated that based on the findings of the neuropsychological assessment, there is an indication of a below average

performance in the domain of verbal comprehension, which suggests that the Plaintiff may experience difficulties with tasks that require verbal comprehension, logical reasoning, crystallized intelligence and long-term memory. Also, the tests further indicated an average performance in working memory concentration. Short-term auditory memory, attention and processing were, according to Mokgale, assessed to be on average and there were difficulties with the memory and learning domain.

27] Mokgale further indicated that the Plaintiff is also susceptible to proactive interference, which suggests that previously learned material may interfere with acquisition of new material, subsequently making learning difficult. Furthermore, the Plaintiff's perceptual organisation was average and she displayed adequate executive functioning as evidenced by adequate planning and organisational skills. Mokgale also indicated that the Plaintiff displayed average abstract reasoning abilities, visual-spatial skills, differentiation skills and spatial reasoning. The Plaintiff also displayed good visual-spatial abilities, visual discrimination, organisation of complex data as well as adequate analysing and synthesising of abstract visual stimuli.

28] During trial, the court sought clarity on the year of the plaintiff's re-entry to the labour market as it was postulated by the Industrial Psychologist that she was going to secure employment in 2016, whereas the second accident occurred on 6 August 2016. The Industrial Psychologist indicated that the plaintiff was unemployed at the time of the first accident and was awaiting certification as a Dump Truck Operator from Stratford Mine, with potential placement or employment at the same mine.

[29] According to the above expert, the plaintiff would have eventually secured employment as a Dump Truck Operator with the same mine, or alternatively secured similar types of employment. However, considering the high unemployment rate, it is opined that it would have taken an unemployment period of between 6-12 months before the plaintiff would have re-entered the labour market. The expert thus postulated that the plaintiff would have secured employment at the approximate age of 26 years old, which would have been in the year 2016 considering that the first accident occurred on 17 August of 2015.

[30] The Clinical Psychologist opined that there is no indication that the plaintiff is suffering from prolonged neuro-cognitive impairments. The plaintiff demonstrates fair cognitive functions with slightly impaired cognitive abilities. She further opined that the performance on the conducted assessments could be attributed to the mild mood disturbances and posttraumatic stress symptoms, which are a result of the accident.

[31] According to Ms Ndlhalane, the Occupational Therapist, the plaintiff's pre-accident duties entailed medium work involving load handling, grip strength, sitting, dynamic postures, and frequent bilateral hand use (66% of the workday), and occasional walking, standing and overhead work (33% of the workday). She opined that the physical demands of the job fell within the parameters of medium duty, and the plaintiff coped adequately with her task demands.

[32] The Occupational Therapist also indicated that the plaintiff has a safe loading capacity for light loads in sitting and is limited to tolerate full-range medium to heavy loads, as limited by lower limb pain. Furthermore, she opined that the plaintiff meets the demands of sedentary work with occasional mobility requirements. That the plaintiff is wheelchair bound, and that this leaves her disabled for all employment in the open labour market, and she is expected to remain unemployable for the foreseeable future for any manual type labour. The expert opined that should the Plaintiff receive a prosthetic leg, she would remain limited in performing manual full-range light to medium work.

### ***Future Medical expenses***

[33] Regarding the first accident, Dr Bongobi, the Orthopaedic Surgeon, in his report indicated that the plaintiff sustained multiple fractures in the left hip, pelvis, left femur and both ankles. He also indicated that the open fractures were debrided, irrigated and fixed with external fixation hardware; and that the wounds around the ankle were covered with a skin graft. She continued to suffer from chronic osteomyelitis in the left ankle. Furthermore, Dr Bongobi indicated that the hip joint is destroyed with consequent severe post-traumatic arthritis (PTOA) that will require a total hip replacement and the right ankle will require arthrodesis.

[34] Following the accident, the plaintiff reported that she is experiencing amongst others, pain in the left hip exacerbated by sitting in one position for a long period, pain from sleeping on the left side of the body, pain from sitting in low set of chairs for a long period, pain in the left leg especially in inclement weather, chronic pain in the left hip and right ankle, and poor concentration and fatigue.

### ***General Damages***

[35] The plaintiff's counsel cited comparable cases to assist the court in arriving at an award. Counsel representing the plaintiff submitted that an amount of R1 500 000 is fair and reasonable in respect of the first accident and for the second accident. I submit that an amount of R1 000 000 is fair and reasonable when one takes into account the severity of the injuries sustained by the plaintiff, the sequelae and the prognosis thereof.

36] Regarding the 1<sup>st</sup> Accident, Dr Bongobi in his report indicated that the Plaintiff sustained multiple fractures in the left hip, pelvic, left femur and both ankles. He also indicated that the open fractures were debrided, irrigated and fixed external fixation hardware; and the wounds around the ankle were covered with skin graft that failed to take and she continued to suffer from chronic osteomyelitis in the left ankle.

37] Bongobi opined that there is severe post-traumatic osteoarthritis(PTOA) left hip (destruction of the acetabulum); mal-united right bimalleolar fractures; mal-united left bimalleolar fractures with chronic osteomyelitis and post-injury and surgical scars.

38] Regarding the 2nd Accident, Bongobi indicated that because the plaintiff was wheelchair bound and already with chronic osteomyelitis in the left ankle. she was diagnosed as having sustained soft tissue injuries. According to Bongobi, X-rays of both ankles revealed that the plaintiff had re-fractured both her ankles (closed bilateral bimalleolar fractures) and an open reduction and internal fixation of the right medial and lateral malleoli. Bongobi further indicated that it was found that because

of the extent of the fractures and underlying chronic osteomyelitis, amputation of the below knee amputation was the best treatment.

## **Analysis**

### ***On the Merits***

[39] Although the defence took issue with the supplementary section 19(f) affidavit, I cannot find any material discrepancy in the two affidavits filed by the plaintiff. The purpose of the supplementary affidavit was to fully describe how the accident occurred. There is nothing irregular about the said affidavit, and there is nothing in the Road Accident Fund Act or the Regulations or any law of general application that restricts the plaintiff from filing a supplementary affidavit.

[40] In the first accident, the plaintiff did not present a good case on how she lost control of the vehicle and overturned when she was trying to return to her lane of travel, if she was driving at a speed of less than 60km/hr. The injuries sustained by the plaintiff in that accident do not accord with the evidence given by the plaintiff in court.

[41] The plaintiff was evasive in her answer regarding the speed she was driving when she tried to avoid the accident. According to the plaintiff, she tried to reduce the speed after she had already swerved from the road. From the totality of the evidence presented, the only plausible explanation of the plaintiff's behaviour in court is that she lost control of the vehicle because she was driving at a high speed.

[45] I do not accept the narrative that the skid marks indicate that the plaintiff was speeding as presented by the defence, mainly because the defence has no expertise to analyse the accident scene. I, however, find on the evidence presented by the plaintiff that the plaintiff's actions contributed to the accident on 17 August 2015.

[46] The fact that the plaintiff was not wearing a seatbelt on the day of the accident also contributed to the extent of the injuries. The plaintiff failed to act like a reasonable person on the day of the collision. The law imposes a duty on drivers to

wear a seatbelt to mitigate injury in the event of a collision. Consequently, the award must be reduced to reflect the respective degrees of fault as established by the evidence.

[47] As to the second accident, I cannot find any unreasonable conduct on the part of the plaintiff on the day of the collision. The plaintiff was a passenger, and she is only required to prove 1% negligence on the part of the insured driver.

[48] For prolixity, I will not repeat the evidence of the plaintiff save to state that the evidence tendered was that the insured driver failed to keep a proper lookout and failed to observe the road signs, thus causing the vehicle he was driving to fall into a ditch. The evidence is sufficient to hold the insured driver solely responsible for the damages suffered by the plaintiff in the second accident. There was no evidence tendered by the defence to the contrary.

### **Future medical expenses**

[49] Regarding future medical care, the injuries sustained by the plaintiff are recorded, and all experts have indicated that the plaintiff will need future medical care. It is only just and fair that the defendant undertakes to pay for the portion of the medical expenses for the injuries sustained in the first accident and the full expenses in the injuries sustained in the second accident.

### **General Damages**

[50] In dealing with these heads of damages, regard should be had to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the court in arriving at an award which is not

substantially out of general accord with previous awards in broadly similar cases. This was the principle applied in *Protea Assurance Co Ltd v Lamb*.<sup>2</sup>

43] In the first accident, the Plaintiff sustained multiple fractures in the left hip, pelvic, left femur and both ankles. Bongobi indicated that the hip joint is destroyed with consequent severe post-traumatic arthritis (PTOA) that will require a total hip replacement and the right ankle will require arthrodesis.

44] In the second accident, Plaintiff was wheelchair bound and already had underlying chronic osteomyelitis in the left ankle, left ankle re-fracture. She was diagnosed as having sustained soft tissue injuries.

[43] In *Msiza v Road Accident Fund*,<sup>3</sup> the plaintiff sustained a fracture of the right humerus; a left femur fracture and later on the plaintiff's leg had to be amputated above the knee; laceration on the scalp; and there was an impression of secondary degenerative changes in the hip and knee joint which was probably not age related. The Plaintiff was unable to walk because of the amputated limb, and was awarded R700 000. The value today is equal to an amount of R1 480 911.80.

[44] General damages are non-patrimonial damages that flow from the accident. There is no formula to determine these damages; the second accident exacerbated the existing injuries

45] In the first accident, the reasonable award for general damages is the amount of R1 550 000 and in the second accident the reasonable award is the amount of R 400 000.

## **Conclusion**

[45] On the first accident, Ms Simelane's contributory negligence is apparent from the evaluation of the evidence. Although there is no formula to calculate the

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<sup>2</sup> *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 536.

<sup>3</sup> *Msiza v Road Accident Fund* [2014] ZAGPPHC 27.

contributory negligence, I am of the view that 40% negligence should be attributed to the plaintiff.

[46] In the second accident, the plaintiff has discharged the onus to prove negligence on the part of the insured driver. The insured driver is the sole cause of the accident, and the defendant is held 100% liable for the plaintiff's proven damages.

#### Loss of earnings/capacity

4.1 The calculation of the loss is as follows: R6 194 029.20, less 40%

**Total Loss= 3 716 417.52**

#### General damages

4.2 The calculation of general damages is based on an award for damages in the amount of R1 550 000, less 40%, in respect of the first accident;

4.2.1 Second accident: R 300 000.

**Total Loss= R930 000.00**

#### **Order**

[47] Wherefore the order is made as follows:

1. The defendant is ordered to pay the plaintiff an amount of **R4 946 417.52** in full and final settlement of the plaintiff's claim, payable within 180 days from the date of this order and to be paid into the trust account of Mokoene Attorneys.
2. The aforesaid capital amount will not bear interest unless the defendant fails to effect payment thereof within the date payable, in which event the capital amount

will bear interest at the rate of 10.50% per annum calculated from the date payable and including the date of payment thereof.

3. The defendant is ordered to provide the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for the costs (70%) of the plaintiff's future accommodation in a hospital or nursing home or treatment of or rendering services or supplying of goods to the plaintiff arising out of the injuries sustained by the plaintiff in motor vehicle collisions that occurred on 17 August 2015 and 6 August 2016 after the costs have been incurred and upon proof thereof.

4. The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on a High Court Scale subject to the discretion of the Taxing Master, which costs shall include, but not be limited to, the following expert reports and addendum:

- 4.1. Dr M Bongobi (Orthopaedic Surgeon);
- 4.2. Ms KE Mokgale (Clinical Psychologist);
- 4.3. Ms PD Ndlhalane (Occupational Therapist);
- 4.4. Ms C Badalani (Industrial Psychologist);
- 4.5. One Pangaea Expertise & Solutions (Actuaries); and
- 4.6. Drs. Mkhabele & Indunah (Diagnostic Radiologists).

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**JT LESO**

ACTING JUDGE OF THE HIGH COURT  
MPUMALANGA DIVISION, MIDDELBURG

## APPEARANCE

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Heard:

4 March 2026

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20 August 2026