



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

CASE NUMBER: A23/25

(1)	REPORTABLE:NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
	31/08/2026
SIGNATURE	DATE

In the matter between:

CHUMA PRETTY NONTANDO

APPELLANT

and

ROAD ACCIDENT FUND

RESPONDENT

Coram: **RATSHIBVUMO AJP, MANGENA *et* GUMEDE AJJ**

Heard: 05 June 2026

Delivered: This judgment was delivered by uploading to CaseLines on 31 August 2026.

Summary: Delict — motor vehicle accident — appeal against dismissal of claim for future loss of earnings — trial court finding that appellant retained her pre-accident earning capacity not supported by the record, and premised on an erroneous finding that appellant had obtained a diploma in mechanical engineering — matter having proceeded on affidavit evidence admitted under Rule 38(2), appeal court in as good a position as the trial court to determine quantum — appeal upheld — normal contingency deductions of 15% (pre-morbid) and 20% (post-morbid) applied to the undisputed actuarial calculations.

ORDER

1. Condonation is granted for the late delivery of the notice of appeal, and the appeal is reinstated.
2. The appeal is upheld.
3. The order of the court *a quo* is set aside and replaced with the following:
 - (a) The defendant is liable to pay the plaintiff the sum of R3 667 781.70 (three million, six hundred and sixty-seven thousand, seven hundred and eighty-one rand and seventy cents) in respect of her claim for future loss of earnings.
 - (b) The defendant shall pay interest on the aforesaid amount at the applicable prescribed legal rate, calculated from 180 (one hundred and eighty) days from the date of this order to the date of payment.

(c) The defendant shall pay the plaintiff's taxed or agreed party and party costs of suit.

4. The respondent shall pay the appellant's costs of appeal.

On appeal from: Mpumalanga Division of the High Court, Mbombela (Moleleki AJ, sitting as the court of first instance):

JUDGMENT

GUMEDE AJ

1. This is an appeal against the whole of the judgment and order of Moleleki AJ of this Division (the trial court) delivered on 02 August 2024, in terms of which the appellant's claim for future loss of earnings was dismissed. The appeal is with the leave of the trial court.
2. The appellant also seeks condonation for the late delivery of her notice of appeal.

CONDONATION

3. Uniform Rule 49(1)(b) required the appellant to deliver her notice of appeal within 20 court days of the order granting leave to appeal. The notice of appeal was delivered on 1 April 2025, three months out of time. The appellant has applied for condonation thereof.
4. The condonation application is not opposed. The respondent delivered a notice to abide the decision of this Court.
5. It is trite that condonation cannot be had for the mere asking; an applicant must make out a case entitling it to the court's indulgence by giving a full and reasonable explanation for the non-compliance.
6. The relevant factors include the degree of non-compliance, the explanation for it, the importance of the case, the respondent's interest in the finality of the judgment, the convenience of the court, and the avoidance of unnecessary delay in the administration of justice.
7. The delay of some three months is not insignificant but is also not grossly excessive. The appellant alleges that the delay was caused by the late obtainability of the trial transcript. The respondent chose not to oppose the condonation.

8. The appellant has great prospects of success as will be shown hereunder. It is indeed in the interests of justice that condonation for the late delivery of the notice of appeal be granted.

BACKGROUND

9. On 30 June 2017 the appellant who was a grade 11 learner, was a passenger in an insured vehicle when it was involved in a collision on the Kamhlushwa Main Road, in the Nkomazi district, Mpumalanga. She sustained an incomplete left brachial plexus injury to her left shoulder and upper limb.
10. The respondent had conceded 100% liability, general damages, and tendered an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act. The only issue that remained for determination by the trial court was the appellant's claim for future loss of earnings.
11. The trial proceeded on the basis of Rule 38(2) for the admission into evidence, by way of affidavits, incorporating the expert reports of the appellant. The respondent delivered no expert reports of its own but made submissions based on the appellant's.
12. The undisputed expert evidence established that the appellant's left shoulder and upper limb function had been compromised. The limb is described as

useless, and it is said that occupations requiring the lifting of heavy weights would aggravate her symptoms and preclude her from competing fairly for work in the open labour market.

13. The occupational therapist found that the appellant's left-hand grip strength and gross motor coordination fell below average, and that, although she is right-hand dominant, she was suited only to work of a sedentary nature. The educational psychologist recorded that the appellant's cognitive functioning, verbal comprehension and working memory indices fell within the below-average range, and that the accident had left her cognitively, physically, academically and psychologically compromised, such that she was unlikely to reach her pre-accident academic and career potential. The industrial psychologist concluded that the appellant would in future require a sympathetic employer able to accommodate her deficiencies, that such employers are difficult to find, and that she had suffered a justifiable and quantifiable loss of future earning capacity which would most probably translate into a loss of earnings.

14. Prior to the accident, the appellant progressed through school without repeating a grade until she failed grade 12 in 2018, which she repeated and passed, with endorsement, in 2019. She thereafter enrolled at a TVET college for an N4 certificate in mechanical engineering.

15. The actuaries calculated no past loss of earnings, the appellant having still been a scholar at the time of the accident, and that, but for the accident her future income would have been R8 331 378.00, and that on the post-accident scenario her future income would be R4 267 362.00 before the application of contingencies.

16. During the trial, the appellant contended for a contingency deduction of 15% on the pre-morbid (uninjured) scenario, and 20% on the post-morbid (injured) scenario. Counsel for the respondent submitted that higher contingencies should apply, on the basis that the appellant was young, had continued to progress through her N4 certificate without difficulty since the accident and could pursue forms of employment other than physical mechanical work.

17. Of importance is that the respondent did not contend that the appellant's claim should be dismissed in its entirety. The respondent accepted that the appellant's injuries would affect her and confined their argument to the appropriate amount and contingencies.

GROUND OF APPEAL

18. The many grounds of appeal set out in the notice of appeal may be grouped under four heads - first, that the trial court erred in finding and/or in reasoning that the appellant had obtained a diploma in Mechanical Engineering, when she

had only obtained N4 certificate; second, that the trial court erred in finding that the appellant “retains her pre-accident work capacity” because she intends to study further, instead of assessing her proven, current functional restriction; third, that the trial court erred in rejecting the reports of the industrial and educational psychologists as unreliable and as not “borne by the facts”, including the finding that the industrial psychologist’s report was premised solely on the educational psychologist’s findings and failed to take into account, among other things, the orthopaedic surgeon’s description of the appellant’s left hand as “useless”; and fourth, that the trial court erred in concluding that no logical evidence had been led to establish any future loss, and in dismissing the appellant’s claim for loss of earnings, loss of earning capacity or employability in its entirety.

THE APPROACH ON APPEAL

19. Where a trial court’s findings of fact depend on its impression of witnesses observed giving oral evidence, an appeal court will be slow to interfere absent demonstrable and material error.

20. This matter was, however, argued in its entirety on documentary expert reports admitted under Rule 38(2), without any oral evidence and without any credibility findings. As such, this appeal court is in as good a position as the trial court to

draw its own inferences and to correct conclusions which it is satisfied are wrong.

21. The trial court correctly identified that the value of an expert's opinion depends upon the soundness of the facts and reasoning underlying it, and that a court may decline to accept an expert opinion which is not logically supported, or which proceeds from incorrect or incomplete facts. The difficulty is not with the principle the trial court sought to apply, but in its application of the principle to the facts of this case.

DISCUSSION

22. As stated above, the undisputed evidence is that the appellant sustained a material injury to her left upper limb, and that her left-hand grip strength and coordination are below average. She is suited only to sedentary work and will require an accommodating or "sympathetic" employer. In my view, the trial court's rejection of this evidence is a misdirection.

23. There is no basis for the trial court's finding that the appellant went ahead to achieve a diploma in mechanical engineering,¹ which is in conflict with the earlier finding that the appellant only completed N3 and not a diploma². This

¹ Judgment, para 23

² Ibid, para 21

was used to criticise the educational psychologist's opinion that the appellant will not reach her pre-accident potential.

24. The trial court concluded that the appellant retains her pre-accident work capacity, more so that she intends to study further.³ This is another misdirection. An intention to study further is not evidence that pre-accident earning capacity has been restored.

25. This misdirection was used to justify the trial court's conclusion⁴, that no logical evidence was led to establish any future loss.

26. Further studies, even if pursued and completed, would not change the fact that the appellant sustained a material injury to her left upper limb and that her left-hand grip strength and coordination are below average. It is undisputed that she is suited only to sedentary work.

27. The appellant's case was not one of total loss of earning capacity, but of a loss confined to the reduced range of employment realistically open to a person restricted to sedentary work. The respondent did not dispute this and in fact the respondent itself proposed a monetary award, albeit lower than that proposed by the appellant.

³ Ibid, para 22 and 24

⁴ Judgment, para 30

28. It follows that the appeal must succeed, and that the order of the court a quo dismissing the appellant's claim for future loss of earnings falls to be set aside.

QUANTUM

29. The question then arises whether this court should assess damages on the existing record or to remit the matter for redetermination.

30. In my view, remittal of the matter would cause further delay not to mention the unnecessary legal costs. With the matter having proceeded in terms of Rule 38 and the trial transcript at hand, this court is in as good a position as the trial court to determine an appropriate award.

31. The appellant contended for the normal contingency of 15% on the pre-morbid scenario and 20% on the post-morbid scenario, reflecting the appellant's continuing but reduced earning capacity.

32. The respondent made some dangerous submissions, such as

"At the time of the accident the plaintiff was 18 years old and she was still young. And I mean it is proper to assume that a young person is likely to recover where injured at a young age, the bone marrows are still soft they can recover

and be able to work, even though they cannot be a mechanical engineer, they can do something else. -I have done some research of salary of a junior of entry level mechanical engineer from colleges. It ranges at R10 000,00 to R15 000,00 per month. There are lots of other jobs who offer that kind of salary which the plaintiff can do. - the plaintiff wants to go there when she knows that she is injured and she somehow incapacitated and compensated for, why would she now choose the roles that she cannot do" [sic]

33. Not only is Counsel for the respondent not qualified to make such submissions regarding the recovery of the appellant, her further submissions, infringe on the appellant's freedom of trade, occupation and profession, guaranteed in section 22 of the Bill of Rights.

34. Counsel then went on to say:

"the pre-morbid earnings are at nil, and the future loss of earnings are at 8 - R8 331 378,00 less 20 percent of contingency, that gives us R6 665 102,40. And the future loss of earnings R8 331 378,00 less the contingency of 35 percent, and that gives us a total of loss of earnings of 1 - R1 249 706,70" [sic]

35. Even if I was persuaded by the suggested contingency deductions rate, the resultant calculation is erroneous.

36. The respondent did not point out any sound reason which justifies a deviation from the normal contingencies. As such, the normal contingencies shall apply.

37. The undisputed actuarial calculations record a pre-morbid (uninjured) future income of R8 331 378.00, and a post-morbid (injured) future income of R4 267 362.00 before contingencies.

38. The award is calculated as follows - pre-morbid future income is R8 331 378.00, less a contingency deduction of 15% (R1 249 706.70) totals an amount of R7 081 671.30. The post-morbid future income is R4 267 362.00, less a contingency deduction of 20% (R853 472.40) with a total of R3 413 889.60.

39. The appellant's net future loss of earnings is therefore R7 081 671.30 (premorbid after contingency deductions) less R3 413 889.60 (post morbid after contingency deductions) which equals R3 667 781.70

COSTS

40. The appellant has succeeded in establishing that the trial court's dismissal of her claim cannot stand. She is entitled to her costs in the trial court and on appeal.

ORDER

41. For reasons above, I would make the following order:

1. Condonation is granted for the late delivery of the notice of appeal, and the appeal is reinstated.
2. The appeal is upheld.
3. The order of the court *a quo* is set aside and replaced with the following:
 - (a) The defendant is liable to pay the plaintiff the sum of R3 667 781.70 (three million, six hundred and sixty-seven thousand, seven hundred and eighty-one rand and seventy cents) in respect of her claim for future loss of earnings.
 - (b) The defendant shall pay interest on the aforesaid amount at the applicable prescribed legal rate, calculated from 180 (one hundred and eighty) days from the date of this order to the date of payment.
 - (c) The defendant shall pay the plaintiff's taxed or agreed party and party costs of suit.
4. The respondent shall pay the appellant's costs of appeal.


Zodwa Gumede
Acting Judge of the High Court

I agree



MI MANGENA

Acting Judge of the High Court

I agree, and it is so ordered



TV RATSHIBVUMO

Acting Judge President

APPEARANCES

For the Appellant

Adv M Sibuyi

Instructed by Ramarumo LP Attorneys,

Mbombela

For the Respondent

No appearance