

REPUBLIC OF SOUTH AFRICA

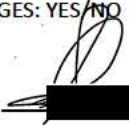


**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

CASE NO: 5250/2024

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

DATE



SIGNATURE

In the matter between: -

MIKE NIKE MAHOLELA

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for the hand-down of the judgment is deemed to be 31st August 2026 at 15h45.

JUDGMENT

MONENE AJ

Introduction

- [1] This is a passenger claim action against the defendant for damages arising from a motor vehicle accident which occurred on 10 August 2023
- [2] At issue are liability and loss of earnings it being so that this court's jurisdiction on general damages has again been ousted by the defendant's failure to make an election regarding whether the injuries sustained by the plaintiff are of a serious nature or not. The parties are *ad idem* that an undertaking for future medical care will follow the fate of the merits.
- [3] With the defendant, as it is now custom, having filed no expert reports, the parties agreed that, but for the industrial psychologist, the plaintiff's expert reports be admitted into evidence under cover of Uniform Rule 38(2). The applicant's application in that regard was thus granted by the court.

[4] In prosecution of his claim the plaintiff testified *viva voce* and led the oral evidence of his industrial psychologist, to wit, Ms. Kgaongalelwe Baloyi.

[5] The defendant did not lead any evidence electing to rather only just take pot-shots at the evidence of the plaintiff and his industrial psychologist.

The viva voce evidence led

[6] The plaintiff, a 47-year-old man, testified that on the day of the accident he was a passenger in a motor vehicle driven by his brother when their motor vehicle rammed into another motor vehicle which had just overtaken theirs. He sustained face, arms and head injuries, he testified.

[7] He testified further that he is, post the accident, experiencing sequelae manifesting as dizziness and poor vision. He further stated that his pre-accident self-employment as a self-taught welder was, post-accident, suffering from manifestly reduced work output and poor production owing primarily to continuous dizzy spells.

[8] It was the plaintiff's further evidence that his income was, pre-accident on average R7 000.00 per order of a welded item with orders per month not being constant.

[9] Cross-examination of the plaintiff elicited, in the main, that the plaintiff's welding orders were intermittent, that the plaintiff's poor or double vision sequelae was not indicated in any of the reports and curiously raised an attempted version that the accident had been caused, not by the negligence of the driver of the other motor vehicle, but by the driver of the motor vehicle in which the plaintiff was a passenger.

[10] In sum the plaintiff's industrial psychologist, Ms Kgaongalelwe Baloyi's evidence was the following:

10.1 She assessed the probable loss of earnings of the plaintiff and compiled a report.

10.2 She had, as a key source document to guide her report, a three-month bank statement of the plaintiff.

10.3 She opined that the plaintiff had, post the accident, become vulnerable as one unfairly competing in the labour market.

10.4 The plaintiff had suffered a diminution in his earning capacity as a result of the motor vehicle accident, she opined.

[11] Cross-examination of this witness amounted to criticism of her failure to indicate that although the plaintiff operated informally as a welder, he had

actually registered a company to carry through his trade; that she had clubbed together all income in the bank statements without indicating which was personal income and which income for the company and that therefore her opinion was not to be relied upon.

Other expert evidence admitted in terms of Uniform Rule 38(2)

- [12] The Orthopaedic Surgeon, Dr Hadebe's expert report, spoke to soft tissue injuries on both upper limbs with residual permanent pain.
- [13] Clinical psychologist Modiba diagnosed post-accident unresolvable post-concussion cognitive difficulties manifesting as mild anxiety and irritability and concluded that these sequelae negatively affected the plaintiff's work capacity.
- [14] Ms Molemi, the occupational therapist opined that post the accident the plaintiff can only perform sedentary to light work and not the pre-accident welding job owing to his reduced capacities to stand and stoop which are at the heart of his pre-accident job.
- [15] Beyond the *viva voce* evidence alluded to above, the industrial psychologist's evidence in her report was that resulting from the accident the plaintiff had plummeted from R 345 799.92 per annum to R 85 200.00 per annum.

[16] Armed with the Industrial Psychologist's report, Tsebo Actuaries, the plaintiff's actuarial scientists computed the plaintiff's total loss of earnings at R3 464 632.25 having applied 5% contingencies in the premorbid and postmorbid past income and 10% and 35% on the pre- and post-morbid future income respectively.

The parties' submissions on the evidence led and evaluation thereof

[17] Pithily, the question of liability is, on the evidence led, unassailable in the plaintiff's favour. Contributory negligence, in my view, can never arise where in a passenger claim, the alleged contribution is alleged to be of the second of two drivers in an accident. Where a passenger is injured in a motor vehicle collision and has himself not contributed to the causation of the accident, it should matter not, for the purposes of liability regarding the passenger's claim as to whom of the two drivers was negligent and to what extent. In my view both qualify as insured drivers and whatever their negligence levels are do not subtract anything from the merits of the passenger plaintiff's claim. Accordingly, 100% liability of the defendant in this matter is, on the evidence led, incontrovertible.

[18] I am urged further by the defendant to order absolution from the instance or dismiss the plaintiff's claim because, best foot forward, the industrial psychologist's expert opinion is premised on banking account statements

which are less than ideal and are thus “unreliable” and uncorroborated by other collateral information. That reasoning suggests that because the actuarial calculations flow from what the defendant sees as the Industrial Psychologist’s unsteady factual basis, they should be disregarded by this court.

- [19] In making the submission that the industrial psychologist, Ms Baloyi, got “the facts completely wrong” the defendant referenced a typhoon of authorities on the principle that opinion evidence must be rejected if it is premised on an incorrect or unreliable factual foundation. Suffice to refer, in that regard, only to the SCA in **Moloi v RAF (333/2024) [2026] ZASCA (6 February) at para 17(“Moloi”)** referenced by the defendant in its heads of argument where it states as follows:

“To test the opinion of experts, the facts from which they draw their conclusions must be considered. If the facts are incorrect, which is part of the judicial function to determine, then a fortiori the opinion may be flawed, possibly fatally.”

- [20] The plaintiff simply urged me to accept the evidence of the industrial psychologist and by extension that of the actuary lock stock and barrel arguing that that evidence is in no way imperiled as suggested by the defendant.

[21] Having listened attentively to the industrial psychologist testify before me and understood her evidence within the context of an imperfect financial milieu they often apply their expertise in, which she so ably explained, I am in no way moved by the defendant's protestations regard being had to the following considerations:

21.1 The industrial psychologist did not rely on "incorrect" facts of the kind alluded to in **Moloi** as the defendant would like to contend. The source documents relied upon *in casu* were bank statement which were neither incorrect nor attacked from a point of being incorrect by the defendant in its cross-examination. All that the cross-examination elicited was that it is possible, not even probable, that the income in those bank statements could have conflated personal income with company income. In a context where there was most probably no other income that could have accrued to the plaintiff given his informal trade and there being no meaningful need to distinguish between the personal and professional in the context of an informal welder like the plaintiff, the hair-splitting exercise of the defendant is, in my view, of no moment. Thus, the bank statements are not incorrect within the meaning of **Moloi** at all and conclusions based thereon are not, in the least, blemished.

21.2 The third-world context of semi-formal self-employment and employment of the kind the plaintiff was involved in *in casu* is far from perfect. No one

should expect such a context to be fully compliant with first world financial compliance standards with a full complement of collateral documents available and further expect our courts to decide matters from a utopia of perfection perspective-divorced from obtaining material conditions. Only infants and the socio-econo-politically ignorant have a perfect world and in that regard only infants can be excused.

21.3 *The SCA in **RAF v Kerridge (1024/2017) [2018] SCA 151(01 November 2018)** (“**Kerridge**”) has approved the notion that even if the plaintiff adduces inconclusive evidence, if that evidence be the best evidence available then the court must use it to arrive at a determination. In this matter the bank statement evidence is not even inconclusive. At worst it is only uncorroborated by collateral sources but it certainly is not incorrect.*

21.4 *Thus the defendant’s invitation to this court to shun awarding damages on account of some insufficiency or minor hiccup in the bank-statements cannot be accepted by this court regard being had not only to Ms. Baloyi’s credible evidence that where the income source documents are less than ideal they expertly make use of that which is available, but due regard being had also to the counsel of Dambuza JA in **Kerridge** at para 25 where the law was stated follows:*

*“Indeed, a physical disability which impacts on the capacity to earn income, does not, on its own, reduce the patrimony of an injured person. There must be proof that the reduction in the income earning capacity will result in actual loss of income. **However, where loss of income has been established but proof of the quantum thereof cannot be produced in the usual manner, the courts have shunned the non-suiting of a claimant and preferred to make the best of the evidence tendered to give effect to the finding of proved reduction in loss of income earning capacity.**(My emphasis) As long as almost a century ago, in *Herman v Shapiro* the court said the following:*

‘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 very little more than an estimate; but even so, if it is certain that pecuniary damage has been suffered, the court is bound to award damages.’ ”

- [22] In the final analysis this court can only restate that the proper approach to assessment of loss of earnings can be put no better than it was stated in ***Southern Insurance Association v Bailie* v NO 1984(1) SA 98(A) at 112E-114F** where the following was said:

“Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augururs or oracles. 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 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 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, the first approach does not offer 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” as to what is fair and reasonable is nothing more than a blind guess.”

[23] *Without the benefit of counsel from seers, crystal balls and oracles, this court will, being lay in matters on which industrial psychologists and actuaries are experts, always prefer an informed guess of experts over a blind guess, that is, unless the informed guess is misinformed. That reliance is even more apt where the informed expert determinations stand, as in casu, uncontested by evidence of a similar standing, it being so that the defendant did not lead any expert evidence to countervail that of the plaintiff.*

[24] *I am not persuaded that the defendant's pot shots thrown at the expert evidence of the plaintiff's industrial psychologist's reliance on what was available, the three-month bank statements, have dislodged the probative value of that expert's evidence at all.*

[25] *Similarly, I find the uncontroverted computations made by the plaintiff's actuary as well as the contingencies factored therein to be fair and just regard being had to the uncontested facts on which the reasoning is based. I will not belabor those.*

[26] Having no reason to fault the uncontroverted expert evidence tendered before me, I am inclined to award the plaintiff loss of earnings in accordance therewith. I am however constrained from going to the loss of earnings computed at R3 464 632. 25 by the actuary, by the particulars of claim which put the loss of earnings at R2 000 000.00. I am not aware

of any amendment of the pleadings which was done to put the pleadings at par with the actuarial calculations nor was I addressed on that by either party. As I understand the law the plaintiff, being bound by his pleadings, cannot be awarded an amount more than the quantum he pleaded.

[27] There having been no issue between the parties regarding cover for future medical expenses in circumstances where the plaintiff's continued permanent suffering from pain and discomfort is patent, I am persuaded to order a future medical care directive.

[28] Furthermore, as is conventional, the successful party is entitled to costs.

Order

[29] In the result, I order as follows:

29.1. The merits are ordered 100 percent in favour of the plaintiff's proven damages.

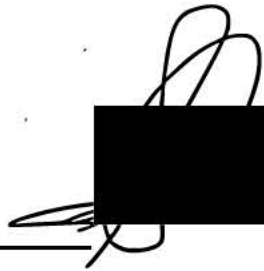
29.2 The defendant is ordered to pay to the plaintiff an amount of **R2 000 000.00 (Two Million Rands Only)** as of loss of earnings computed within 180 days of the date of this order.

29.3 Payment of interest on the above capital amount shall begin to run at the prescribed rate from the date of expiry of the period in order 28.2 above until payment is made.

29.4 The defendant is ordered to, within 14 days of becoming aware of this order, furnish the plaintiff with an undertaking certificate in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 pursuant to ameliorating all future medical expenses to be encountered by the plaintiff in respect of this matter.

29.5 General damages are postponed sine die.

29.6 The defendant shall pay the plaintiff's costs inclusive the costs of counsel on scale B.




Malose Monene
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA
(MAIN SEAT)

APPEARANCES

Heard on : 14 May 2026

Judgment delivered on : 31ST August 2026

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