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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 1745/2022

In the matter between

CARLA VAN WYK

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Neutral citation: *Van Wyk v Road Accident Fund* (1745/2022) [2026] ZAFSHC 409 (31 August 2026)

Coram: MPAMA AJ

Heard: 15 May 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 13:00 on 31 August 2026.

Summary: Motor vehicle collision – claim for future loss of income from the Road Accident Fund – Uniform Rule 38(2) – contingencies – teacher – retirement age.

ORDER

1 The issue of liability was resolved on the basis that the defendant shall pay 100% of the plaintiff's proven or agreed damages.

2 Defendant is liable to pay R1 488 342.90 (One Million Four Hundred Eighty-Eight Thousand Three Hundred Forty-Two Rand and Ninety Cents) to the plaintiff in respect of loss of earnings.

3 The amount is to be paid directly into the Trust Account of the plaintiff's attorney, Pieter Skein Attorneys. The particulars of the account are as follows:

Pieter Skein Attorneys

Bank : ABSA Bank

Branch Code : 632 005

Account Number : 4[...]

Reference No : PL SKEIN/ba/VAN132/0001

4 In the event of the afore amount not being paid on 180 (one hundred and eighty) days from date of this order, the defendant shall be liable for interest on the amount at the prevailing interest rate calculated from the 15th calendar day after the date of this order to date of payment in line with prevailing legislation.

5 The determination of the plaintiff's claims for non-pecuniary (general) damage and past hospital and medical expenses is separated from all the other aspects of plaintiff's claim in terms of rule 33(4) and is postponed to the pre-trial/case management roll of 2 November 2026.

6 The defendant shall furnish the plaintiff with an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, as amended for the costs of future accommodation in a hospital or nursing home or treatment of or rendering of a service to her or supplying of goods to her arising out of the injuries sustained by her in the motor vehicle accident which occurred on or about 4 November 2018, after such costs have been incurred and upon proof thereof.

7 The defendant is liable for payment of the plaintiff's taxed or agreed party and party costs on High Court scale (Scale B) up to and including the 22nd day of April 2026, inclusive of counsel's fees, such costs to further include:

7.1. The reasonable preparation and qualifying fees (if any and subject to the discretion of the taxing master) of obtaining the expert reports of the following expert witnesses:

- 7.1.1. Dr JF Ziervogel (Orthopaedic Surgeon);
- 7.1.2. Dr S Bugwandin (Orthopaedic Surgeon);
- 7.1.3. Dr D Hoffmann (Plastic Surgeon);
- 7.1.4. Letitia Delport (Occupational Therapist);
- 7.1.5. Susan van Jaarsveld (Industrial Psychologist);
- 7.1.6. JJC Sauer (Actuary).

7.2. Costs for drafting of heads of argument and replying heads of argument.

8 If costs are not agreed to, the Parties agree as follows:

- 8.1. The Plaintiff shall serve a Notice of Taxation on the Defendant;
- 8.2. The Plaintiff shall allow the Defendant 180 (one hundred and eighty) calendar days to make payment of the taxed costs;
- 8.3. In the event that the Defendant failed to make payment as referred to in paragraph 5 above, the Defendant shall be liable for payment of interest thereon at the prevailing interest rate per annum, calculated from the date of taxation or *allocatur*.

JUDGMENT

Mpama AJ

[1] On 4 November 2018, the plaintiff was a passenger in a motor vehicle driven by her husband when she was involved in a collision with another vehicle driven by the insured driver between Rosendal and Senekal and sustained bodily injuries. After the accident, the plaintiff was sent to Itemoheng Hospital, Senekal, where she was stabilised. She was then transferred to Hoogland Mediclinic, Bethlehem and detained for one day. She remained at home and returned to work after a week. Having sustained some bodily injuries, the plaintiff instituted action proceedings against the defendant.

[2] On 22 April 2026, the following order was made by agreement between the parties:

- '1. The issue of liability is resolved on the basis that the defendant shall pay 100% of the plaintiff's proven or agreed damages.
2. The determination of the plaintiff's claim for non-pecuniary(general) damages and past hospital and medical expenses, are separated from all other aspects of plaintiff's claim in terms of Rule 33(4) and postponed to the pre-trial roll.
3. The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4) of the Road Accident Fund Act 56 of 1996 for the costs of future accommodation in a hospital or nursing home or treatment of a rendering of a service to her or supplying of goods to her arising out of injuries sustained by her in the motor vehicle accident which occurred on 4 November 2018.
4. The defendant is liable for payment of the plaintiff's taxed or agreed party and party costs on High Court Scale B up to and including the 22 April 2026 inclusive of counsel's fees and heads of argument and supplementary heads if any, such costs to further include:
 1. The reasonable preparation, qualifying, reservation fees, and expenses (if any) and subject to the discretion of the taxing master, costs of obtaining the expert reports of the following experts:
 - 1.1 Dr JF Ziervogel (orthopaedic surgeon)
 - 1.2 Dr S Bugwandin (orthopaedic surgeon)
 - 1.3 Dr D Hoffmann (plastic surgeon)
 - 1.4 Letitia Delport (occupational therapist)
 - 1.5 Susan van Jaarsveld (industrial psychologist)
 - 1.6 JJC Sauer (actuary)

Resultantly, the only issue that remains in dispute is the plaintiff's claim for future loss of income.'

[3] No oral evidence was led by the plaintiff and defendant. The plaintiff requested that expert witnesses' evidence be given on affidavits in terms of rule 38(2). The application was not opposed by the defendant. The evidence sought to be placed before the court by means of affidavits was also not contested by the defendant. The affidavits were accepted in terms of rule 38(2).

[4] The following experts' reports were admitted: Dr S Bugwandin (an orthopaedic surgeon), Ms Letitia Delport (an occupational therapist), Ms Susan van Jaarsveld (an

industrial psychologist), Dr Danie Hoffman (plastic reconstructive and cosmetic surgeon) and Mr Johan Jacobus Christoffel Saur (an actuary).

[5] The experts' reports can be summarised as follows:

(a) Dr S Bugwandin: He examined the plaintiff on 23 March 2026. From the hospital records in possession of the plaintiff, he noted that the plaintiff had sustained a fracture on the posterior first rib and a laceration on the chin. The plaintiff reported that she suffers from back pain, has difficulty in bending forward and has trouble when lifting her children. She takes pain medication to cope with the pain. On examination, he noted that the plaintiff sustained multiple soft tissue injuries and rib fractures. The plaintiff's orthopaedic injuries were related to the thoracic and lumbar spine. She had clinical evidence of intervertebral disc injuries despite normal disc spaces on the X-ray. There were early degenerative changes noted in the thoracic and lumbar spine in keeping with intervertebral disc injuries which were expected to progress over time and impair her abilities to perform her duties. He concluded that since the plaintiff's duties required her to stand for long periods of time and she complained of pain in her back, it was anticipated that over time, her functional deficits would increase and lead to her being forced to retire prematurely by three to four years and may, over the long term, require surgical management if her condition worsens.

(b) Dr D Hoffman: He noted that the plaintiff sustained a 4.0cm x 1mm laceration on the chin. He concluded that this injury was permanent and not amenable to improvement. However, loss of productivity as a result thereof was minimal and the plaintiff would be able to work until normal retirement age.

(c) Ms Susan van Jaarsveld: She assessed the plaintiff on 17 July 2022. She noted that the plaintiff was in possession of Grade 12 and a Bachelor of Education (foundation phase). After qualifying as a teacher, she worked as a Grade 2 and 3 teacher at Unicorn Primary School from 2013 to 2017. From 2018 onwards, she was employed as a teacher at Ficksburg Primary School, the position she still held at the time of the accident. The plaintiff would remain a teacher until normal retirement age of 60 years. Although the plaintiff returned to work after the accident, she experienced difficulties and could not stand for extended periods, carry heavy objects, or bend forward to pick up objects on the floor. She concluded that the plaintiff could still perform her duties as

a teacher in a limited manner due to pain and discomfort. Her condition would result in a decline in productivity, and this would impact her salary and career growth. There was a great possibility that the plaintiff would not be able to reach the normal retirement age of 60 years and would be required to go on to early retirement due to injuries.

(d) Ms L Delport: She assessed the plaintiff on 18 July 2022 and at the time the plaintiff was 31 years old. At the time of the accident, she was a teacher in a special needs class for Grade 1-7. After the accident, she taught Grade 1 to date. She noted that the plaintiff would in all probability remain a teacher for the entirety of her career. The plaintiff experienced the following complaints from the accident: neck stiffness and discomfort during long periods when marking books and when the neck is kept in a static position. The pain and affected physical level of function impair numerous aspects of her life and are expected to increase with age. The plaintiff would be able to perform light, sedentary to semi-sedentary type of work and is not suited for physically demanding jobs. The workplace must be ergonomically structured, especially during sedentary work; the plaintiff is to be allowed to teach while seated at certain periods and be granted more time to complete her tasks. She concluded that her physical challenges affected her ability to be successfully employed as a Grade 1 teacher up to retirement age and render her an unequal competitor in the open labour market.

[6] The court is called upon to determine whether the plaintiff has, on the evidence, suffered any loss of income. Should such loss be established, the court must then determine the appropriate contingency percentage to be applied in the calculation of the damages.

[7] It remains the duty of the plaintiff to prove her case on a balance of probabilities.¹ It is trite that the courts assess loss of earnings by estimating what the plaintiff would have earned had the accident not occurred compared to her current earning potential. The court must determine what level of earnings the plaintiff would have reached if the accident had not occurred.

[8] In *Mvundle v RAF*,² an unreported North Gauteng High Court judgment the

¹ See *National Employers' General Insurance Co Ltd v Jagers* 1984 (4) SA 437; [1984] 4 All SA 622 at 440D-I.

² *Mvundle v Road Accident Fund* 63500/2009) [2012] ZAGPPHC 57 (17 April 2012).

court per Kubushi AJ, as she then was held:

'It is trite that the damages for loss of income can be granted where a person has in fact suffered or will suffer a true patrimonial loss in that his or her employment situation has manifestly changed. The plaintiff's performance can also influence his or her current job and /or be limited in a number and quality of his or her choices should he or she decides to find other employment.'³

[9] In making the assessment, the courts rely on either a broad estimation or mathematical calculations based on evidence, acknowledging that both involve an element of speculation. The court in *Southern Insurance Association v Bailey* NO⁴ (*Southern Insurance*) held:

'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, augurs 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 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 of course 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, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of an actuarial computation maybe 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" (to use the words of the appellant's counsel) as to what is fair and reasonable is nothing more than a blind guesswork.'⁵

[10] The court is not bound by actuarial calculations. It has a wide discretion to award what it considers right. Contingency deductions play a critical role in calculating damages, especially for future loss of earnings. On contingencies, the court in *Southern Insurance* expressed as follows:

'Where the method in actuarial computation is adopted, it does not mean that the trial Judge is

³ Ibid para 42.

⁴ *Southern Insurance Association Ltd v Bailey* NO 1984 (1) SA 98 (A) (*Southern Insurance*).

⁵ Ibid at 113F-114D.

“tied down by inexorable actuarial calculations”. He has “a large discretion to award what he considers right” . . . One of the elements in exercising that discretion is the making of a discount for “contingencies” or the “vicissitudes of life”. These include such matters as the possibility that the plaintiff may in the result have less than a “normal” expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case.’⁶

[11] This Division in *Ralph v Road Accident Fund*,⁷ as per Molitsoane J dealt with contingencies comprehensively as follows:

[20] The court in *Oosthuizen v Road Accident Fund* gave a useful summary of case law on contingencies and I refer extensively as follows:

“Matters which cannot otherwise be provided for or cannot be calculated exactly, but which may impact upon the damages claimed, are considered to be contingencies, and are usually provided for by deducting a stated percentage of the amount or specific claim. (*De Jongh v Gunter* 1975 (4) SA 78 (W) 80F).

Contingencies include any possible relevant future event which might cause damage or part thereof or which may otherwise influence the extent of the plaintiff’s damage. (*Erdmann v Santam Insurance Co Ltd* 1985 3SA 402 (C) 404-405; *Burns v National Employers General Insurance Co Ltd* 1988 3 SA 355 (C) 365).

In a wide sense contingencies are described as the “hazards that normally beset the lives and circumstances of ordinary people”. (*AA Mutual Insurance Association Ltd v Van Jaarsveld* 1974 4 SA 729 (A); *Van der Plaats v SA Mutual Fire & General Insurance Co Ltd* 1980 3 SA 105 (A) 812; *Southern Insurance Association Ltd v Bailey* 1984 1 SA 98 (A) 117). Contingencies have also been described as ‘unforeseen circumstances of life’. (*De Jongh v Gunther* 1975 (4) SA 78 (W) 80F).

The percentage of the contingency deduction depends upon a number of factors and ranges between 5% and 50% depending upon the facts of the case. (*AA Mutual Association Ltd v Maqula* 1978(1) SA 805 (a) 812; *De Jongh v Gunther* 1975 (4) SA 78W) 81, 83, 84D; *Goodall v President* 1978(1) SA 389 (W) 393; *Van der Plaats v SA Mutual Fire & General Insurance Co Ltd* 1980 3 SA 105 (A) 114-114A-D).

Contingencies are usually taken into account over a particular period of time, generally until the retirement age of the plaintiff (*Goodall v President* 1978(1) SA 389 (W) 393; *Rij NO v Employers’ Liability Assurance* 1964 (4) SA 737(W); *Sigourmay v Gillbanks* 1960(2) SA 552 (A)

⁶ Ibid at 116G-H.

⁷ *Ralph v Road Accident Fund* (3069/2018) [2023] ZAFSHC 102 (3 February 2023).

[12] The plaintiff has been a teacher since her qualification in 2013. The orthopaedic surgeon, upon examination of her post-accident physical condition, has concluded that the injuries sustained materially impair her ability to discharge her duties as a teacher. This conclusion is corroborated by the occupational therapist who opined that the plaintiff has been adversely affected and rendered an unequal competitor in the open labour market. Furthermore, both the orthopaedic surgeon and the industrial psychologist agree that, notwithstanding her capacity to continue working in the teaching profession, the plaintiff will not attain the ordinary retirement age of 60 years. Her working life expectancy has been curtailed as a direct consequence of the accident.

[13] Whilst the defendant contended that the plaintiff has suffered no loss, the expert evidence adduced on behalf of the plaintiff demonstrated that her injuries materially impair her capacity to work. This evidence has not been challenged or rebutted by the defendant. This division in *Moloi v Road Accident Fund*⁹ expressed as follows:

‘[5] The plaintiff submitted that it is evident that these attacks on the plaintiff’s case are in respect of factual allegations in the reports of the experts which forms part and parcel of the evidence presented by the plaintiff to the court. My attention was invited to the judgment of VanZyl, J in *Z.V.S. v Road Accident Fund* where the court concluded that no dispute of fact arises where evidence in rebuttal of factual allegations is not presented. The court held in para [26]: “Insofar as the defendant is attempting to discredit the expert witness with regard to the respective opinions based on the aforesaid facts and their own respective evaluations, that cannot be done now either, without having cross-examined the said experts in order to have given them the opportunity to defend their respective opinions and without having called countering expert witnesses of its own.”

I align myself with the views expressed by Van Zyl J, and likewise conclude that in *casu* the plaintiff’s evidence through its expert witnesses, stands uncontested.’

[14] I also find no reason to depart from or disregard the expert testimony set out above in the absence of a rebuttal and when it has not proven to be incorrect. It is my view that the plaintiff was negatively impacted by the accident and suffered loss.

⁸ Ibid para 20.

⁹ *Moloi v Road Accident Fund* (1550/2020) [2025] ZAFSHC 55 (21 February 2025).

[15] The plaintiff and defendant agree that the actuary's base calculations are correct. The sole divergence arises in respect of contingency deductions to be applied. The plaintiff's proposed contingency percentage is premised upon and supported by the prognosis contained in the expert evidence adduced. By contrast, the defendant has advanced no cogent basis for the contingency percentage contended for. I consider the contingencies as presented by the plaintiff fair and reasonable, being firmly grounded in the expert testimony before me. It is my view that an award in the amount of R1 488 342.90 constitutes fair and reasonable compensation for the plaintiff's loss of income. This amount appropriately reflects the plaintiff's curtailed loss of income.

[16] I accordingly make the following order:

1 The issue of liability was resolved on the basis that the defendant shall pay 100% of the plaintiff's proven or agreed damages.

2 Defendant is liable to pay R1 488 342.90 (One Million Four Hundred Eighty-Eight Thousand Three Hundred Forty-Two Rand and Ninety Cents) to the plaintiff in respect of loss of earnings.

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accommodation in a hospital or nursing home or treatment of or rendering of a service to her or supplying of goods to her arising out of the injuries sustained by her in the motor vehicle accident which occurred on or about 4 November 2018, after such costs have been incurred and upon proof thereof.

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L MPAMA
ACTING JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:

P.C. Ploos Van Amstel
Counsel for the plaintiff

Instructed by:

Pieter Skein Attorneys

For the defendant:

P. Banda
Counsel for the defendant

Instructed by:

State Attorney