



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

Case no: 1494/2024

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED YES/NO
<u>01 September 2026</u> DATE	 SIGNATURE

In the matter between:

DICK YHAYHU MGWENA

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

INTRODUCTION

[1] On the 04th of March 2023, the Plaintiff was a passenger in a motor vehicle, travelling on a public road between Mataffin and Mbombela when it lost control after the insured driver tried to avoid livestock wondering on the road.

[2] As a result of the accident, the Plaintiff suffered serious injuries which have been accepted as such by the Defendant (“the Fund”) . I fully address the injuries and the sequelae below when I deal with general damages and loss of income.

[3] The Plaintiff's particulars of claim seek the following relief :

3.1 Future medical expenses ;

3.2 Past loss of income	R4 000 000.00;
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3.3 Future loss of income R4 000 000.00; and

3.4 General damages	R1 000 000.00
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The trial

[4] At the trial, I was informed by the parties that the only outstanding issues for determination is the question of general damages, loss of income and future medical expenses.

[5] I was further informed that the issue in dispute regarding loss of income is contingencies. Therefore, the parties requested that the matter be decided on the papers and with reference to expert reports.

[6] The Plaintiff produced expert reports of various experts which I deal with later hereunder when I deal with the question of loss of income.

[7] The Defendant, despite having obtained expert opinion and reports, did not produce same during the trial thus leaving the Plaintiff's expert evidence uncontroverted.

[8] The Plaintiff's trial oral submissions may be summarised as follows:

- 8.1 The Plaintiff was employed by Take A Lot as a Fleet Controller prior to the Accident.
- 8.2 He was earning R 12 064.34 per month and R144 772.08 per annum. Counsel referred me to the industrial psychologist's ("IP") report, paragraph 7.4.3.6, on case lines, section 40 page 26.
- 8.3 The Plaintiff's salary dropped after the accident. Counsel referred me to the IP's report on case lines, section 40 page 26. According to the report at paragraph 7.4.3.6, the salary dropped to R 9 953.65 per month and R119 443.08 per annum. As corroboration, counsel referred me to the Plaintiff's payslip on case lines, section 10.
- 8.4 Counsel referred me to the actuarial report on case lines, section 41. Counsel noted that the actuary did not apply contingency calculations.
- 8.5 Regarding contingencies, counsel further asked me to apply lower contingencies and submitted that higher contingencies are not reasonable in the circumstances of this matter.
- 8.6 Counsel concluded by highlighting the Plaintiff's injuries and submitted that the sum of R1 5000.000 for general damages would constitute fair compensation. Counsel further asked for costs including costs for reserved experts on the 23rd of February 2026.

[9] The Parties agreed to submit their closing submissions in written form as opposed to oral submissions.

[10] The Plaintiff's written submissions are a summary of the oral submissions, but with emphasis on case law authorities regarding contingencies and general damages. They conclude by asking for a total sum of R 2 357 200 for loss of income and R 1 5000 000 for general damages.

[11]The Defendant's oral submissions may be summarised as follows:

- 11.1 Counsel disputed the Plaintiff's payslips and submitted that they do not reflect a reduction of his salary. She submitted that there was only a reduction of R 1000.00 in April and May 2023 and then an increase in June 2023.
- 11.2 The Plaintiff went back to his old position and was further promoted to team leader. The Plaintiff lost his job for reason unrelated to the injuries.
- 11.3 Regarding contingencies, counsel asked me to apply a 25% differential.
- 11.4 Regarding general damages, she submitted that the injury was moderate and was treated surgically. She suggested a sum of R 700 000.00 for general damages.
- 11.5 In response to the Plaintiff's submission on reserved costs for experts, she submitted that the postponement was by agreement and that Plaintiff's counsel conceded that some of its reports needed adjustments.

[12]The Defendant's written closing submissions focused on contingencies and made reference to case law. No submissions are made regarding general damages. Most of the submissions are a summary of the trial oral submissions.

General damages

[13]It is trite that the determination of general damages falls within the discretion of a Court exercised judiciously (*Minster of Security of Safety v Seymore 2006 (6) SA 320 SCA*) . Furthermore, in the exercise of its discretion a Court is entitled to rely on previous comparable awards.

[14] In considering a just and fair amount for general damages, I have considered the following:

14.1 The Plaintiff suffered a moderate head injury;

14.2 The neurosurgeon and the maxillofacial surgeon both certify that the Plaintiff qualifies under the narrative test under the grounds of permanent serious disfigurement and severe long term mental or behavioural impairments. In addition, the psychiatrist diagnosed the Plaintiff with depressive mood. The clinical psychologist diagnosed the Plaintiff with impaired attention, working memory and concentration. Lastly, the plastic surgeon found that the Plaintiff suffered from irreversible facial and sculp scarring.

[15] The Plaintiff's counsel, both in his oral and written submissions contended for an amount of R1 500 000.00 and relied on comparable case law i.e. *Claassens v Road Accident Fund [2019] ZAGPPHC 471* and *Nsele v Road Accident Fund [2021] ZAGPPHC 455*. And *Roupe v RAF QOD 84-52 EPE*.

[16] The Defendant's counsel did not dispute the submissions made by the Plaintiff's counsel with reference to any comparable case law on the question of damages in his written submissions. He focussed on loss of income.

[17] I have compared the injuries of the Plaintiff with previous cases that the Plaintiff's counsel referred me to. I found that the injuries in those cases were a bit more severe, not that I am downplaying the injuries of the Plaintiff which include permanent and visible scarring and the other impairments as stated by the various experts.

[18] Having considered all the above factors, I find that a fair and adequate compensation for general damages is the sum of R 1 000 000 as claimed in the Plaintiff's particulars of claim. I would have awarded the Plaintiff a slightly higher

amount had the R 1 500 000 which the Plaintiff's counsel belatedly contended for in its oral and written submissions. Sadly, I am constrained by the pleadings.

Loss of earnings

[19] The parties informed me that the question on loss of earnings only relates to future loss of income.

[20] Once again the question of contingencies rests with the Court's discretion and the discretion must obviously be exercised judiciously and must be based on the best available evidence. These principles can be found in the SCA decision of the *RAF v Kerridge 2019 (2) SA 233 SCA* at paragraphs 42 and 44 as correctly stated in the Defendant's written closing submissions.

[21] Having considered the expert reports and the evidence, I find that the differential of 25% as suggested by the Defendant is appropriate for the following reasons:

- 21.1 Firstly, both the industrial psychologist and the occupational therapist agreed that the Plaintiff's loss of employment is not related to the accident and the injuries.
- 21.2 Secondly, according to the occupational therapist, the Plaintiff still meets the physical demands of his job
- 21.3 Thirdly, the impairment in relation to the Plaintiff's cognitive and vocational capabilities does not constitute an inability to perform his functions. I accept that that has an impact in terms of competition with other unaffected persons.
- 21.4 Fourthly, the occupational therapist also found that the Plaintiff, with reasonable accommodation, would still maintain meaningful earning capacity despite the impairments.

21.5 Lastly, I have also considered the fact that the cognitive and psychological impairments have reduced the Plaintiff's ability to learn new skills as per the occupational therapist's report.

[22] In the premises, I align myself with the calculations of the Defendant as illustrated in the calculation table, which I reproduce hereunder:

Capital value of future earnings:

	Uninjured	Injured	Loss of Earning
Future	R2 434 900	R2 434 900	
Minus 15%40%	R 365 235	R 973 960	
	R2 069665	R1 460 940	R 608 714

Future medical expenses

[23] Both parties agreed that the Plaintiff is entitled to an undertaking in terms of section 17(4)(a) of the Act in respect of future psychiatric and psychological treatment, medication and hospitalisation.

[24] In the circumstances, I make the following order:

1. The Defendant shall pay the Plaintiff the sum of R1 000 000 (One Million Rands) with 10.5% interest *tempore morae* for general damages;
2. The Defendant shall pay the Plaintiff the sum of R 608 714 (Six Hundred and Eight Thousand, Seven Hundred and Fourteen Rands) with 10.5% interest *tempore morae* for loss of income;
3. The Defendant shall furnish the Plaintiff with an undertaking in terms of section 17(4)(a) of the Act for future treatment, hospitalisation or accommodation in a nursing home and for the rendering of any service arising from the Plaintiff's injuries.

4. The Defendant shall pay the Plaintiff's taxed agreed party and party costs, on High Court scale B including counsel's fees and reasonable qualifying fees of experts;
5. The reserved costs of the 23rd of February 2026, including the reserved experts' costs shall be costs in the course.



TS Ngwenya
Acting Judge of the High Court
Mbombela (Main Seat)

Appearances:

Counsel for the Plaintiff: Adv K Mokoena
Instructed by: NM Mabunda Attorneys, Nelspruit

Counsel for the Defendant: Adv IM Khosa
Instructed by: State Attorney, Nelspruit

Date of hearing: 23 and 26 February 2026

Date of Judgment: 01 September 2026