

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 3633/2021

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

DATE

SIGNATURE

In the matter between: -

DALMIRA ALBINO MACANZE

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 9 September 2026 at 11h30

JUDGMENT

MONENE AJ

Introduction

- [1] The plaintiff, a pedestrian at the time of a motor vehicle accident which occurred on 17 May 2019 instituted these action proceedings, the Road Accident Fund in terms of the Road Accident Fund Act 56 of 1996.
- [2] At issue before this court are general damages, loss of earnings and future medical expenses. This in the backdrop of liability having already been settled at 80/20 percent in the plaintiff's favour.
- [3] With defendant, as it is now custom, having filed no expert reports, the parties agreed that 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] From submissions made before this court and heads of argument subsequently filed, the margin of difference as to what the parties

contend ought to be awarded as damages in total is a narrow amount of R494 321,48. The plaintiff prays for the actuary computed total loss of R1 627 901.85 less 20 percent apportionment amounting to R1 302 321.48, whilst the defendant prays for a post apportionment amount of R808 000.00 comprising R300 000.00 general damages and R 508 000.00 loss of earnings.

The evidence relied upon for determination of the issues and in particular loss of earnings

[5] The following expert witnesses' reports formed the basis of the parties' divergent takes on the damages to be quantified in the plaintiff's favour:

- 5.1. Dr. L Oelofse, an Orthopaedic Surgeon.
- 5.2. Dr. G Irsigler, a plastic and reconstruction Surgeon
- 5.3. Ms. L Taylor, an Occupational Therapist.
- 5.4. Ms. M Rautenbach, an Industrial Psychologist.
- 5.5. Mr. J Potgieter, an Actuarial Scientist.

[6] In sum the evidence germane to the dispute as gleaned from the experts' reports is the following:

6.1. The Orthopaedic Surgeon diagnosed a left femur fracture with unsightly scarring which post internal screw fixation led to mild loss of range of motion on the left knee of the, at the time of the accident, 22-year-old plaintiff. It was further determined by this expert that the plaintiff suffers from discomfort and residual pain and would need future medical treatment inclusive of the removal of the internal fixation. This expert who qualified the plaintiff's injury as serious computed the plaintiff's Whole Person Impairment at 11%.

6.2. The nub of the Plastic and Reconstruction Surgeon's evidence was that the unsightly scarring of the plaintiff would need surgical reconstruction which, however, could improve them to no more than 30 percent.

6.3. The Occupational Therapist's evidence was to the effect that because of the accident the plaintiff was only capable of doing light work and could no longer perform the heavy and medium category work she did pre accident as she battled to crouch and walk and stand properly.

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- 6.4. The Industrial Psychologist opined that the accident had left the plaintiff with manifestly reduced work capacity, impaired enjoyment of amenities of life and made him a disadvantaged worker in the open labour market.
- 6.5. Noting that the plaintiff had, as an unskilled, semi-educated person, earned about R2000.00 per month as a packer at a store, the Industrial Psychologist opined that but for the accident the very young plaintiff would have continued to grow in her line of work with intermittent periods of unemployment up to reaching a ceiling income of about R71 900.00 in around 2019 maintainable until retirement at age 65. Given the accident and its sequelae, this expert's postulation was that the plaintiff would now only reach an annual earnings ceiling of R40 300.00 at age 50. Referencing the obvious possible pitfalls in someone severely incapacitated and growing older while unskilled, the expert recommended a higher post morbid contingency in the computation of loss of earnings.
- 6.6. In the backdrop of all the above reports the actuary computed a pre-contingencies total loss of income of R1 022 461.00.

[7] Proposing 5% contingencies to be applied to the past pre-accident income, 20% to the premorbid future income and 30% deduction to the post morbid future income, plaintiff's counsel prayed for a past loss of income of R257 095,85 and a future loss of income of R670 806,00 all totaling R927 901,85.

[8] The defendant's counsel made a counter-submission that loss of earnings be computed at R508 203.20 arriving thereat by a net past loss of R 216 454 and a net future loss of R418 800,10 having already factored in the 20 percent apportionment.

[9] This court remains persuaded 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."

- [10] Without the benefit of counsel from prophets 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, this courts again emphasizes, 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 counter that of the plaintiff.

[11] I find the defendant's loss of earnings submissions to be unsupported by any expert evidence before me and thus unmeritorious. In my view, it is unavailable for the defendant, a social security agent, to miserly thumb suck loss of earning amounts when it had failed to place any evidence before the court not just on quantum but on merits too. Absent any defects in the expert evidence placed before me by the plaintiff, I have no reason not to defer thereto.

General damages

[12] In nudging this court towards awarding general damages in the amount of R700 000.00, the plaintiff referenced, *inter alia*, the following decisions as comparative pointers:

12.1. ***Solomon and Another v De Waal 1972 (1) SA 575 (A)*** where a 29-year-old with a leg disfigurement and consequential loss of amenities of life and depression was awarded the equivalent of R711 000.00 in this year's terms.

12.2. ***Mashigo v Road Accident Fund (2120/2014) [2018]***

ZAGPPHC (13 June 2018”) where soft tissue knee injuries and arm and breast burn wounds attracted an amount computable as R571 00. 00 in this year’s monetary values.

12.3. ***Mills v RAF 2010 6 QOD F2-1(KZD)*** where a hip fracture and

an arm scarring resulted in amount equivalent to R765 000.00 in current day terms.

12.4. ***Marunga v RAF 2003(5) QOD E3-1(SCA)*** where

R647 000.00 in current terms was awarded as general damages for a left femur fracture.

[13] The defendant referred this court, inter alia, to ***Mullinex v Bendix***

1954 C &B 529(“Mullinex”) where rib and humerus fractured resulted in an award of R3000.00 translating to R380 000 in 2026 terms.

[14] The defendant, in arguing for general damages in the amount of

R300 000.00, further referred this court to ***Damba v AA Mutual Insurance Association Ltd 1967(1EB) QOD 780(E) (“Damba”)*** where general damages of R8000.00 translating to about R800 000.00 in current terms were awarded a dual femur fracture.

[15] I understand the references to the above-mentioned authority to be understood by both counsel to be mere guiding instruments to this court in its determination of a proper award for general damages. They, in no way, restrict or bind me as no case can be a carbon copy of another.

[16] It is to me self-evident that the injuries suffered *in casu* are by no means as serious as the ones referenced by the plaintiff above. Yet the injuries in the authorities relied upon by the plaintiff struggled to reach the R700 000.00 mark proposed by the plaintiff.

[17] Similarly, the injuries in the ***Mullinex*** matter relied upon by the defendant were, in my view, more serious than the injuries *in casu*. Yet the award given therein was eighty thousand above what is proposed by the defendant and about half of the plaintiff's proposition. The ***Damba*** matter, however, puts the amount far more than the defendant's conservative proposition and even above that of the plaintiff.

[18] Accordingly, while I am indeed somewhat guided by the previous awards referenced by both parties, I am not *per se* guided directly in either's favour. I would, therefore, propose a mean between the two propositions by the parties as a more just award in the

circumstances. That mean, in my view, fits in with what I consider to be a fair award regard being had to the injuries testified to by the Orthopaedic surgeon as alluded to above and the stated sequelae thereof. That mean, a median between R700 000.00 and R300 000.00 is R500 000.00.

[19] In all the above premises the plaintiff's total loss of earnings as determined *supra* by this court amounts to R 927 901,85 whilst the general damages amount to R 500 000.00. All these computes to R 1 427 901,85 from which twenty percent apportionment is subtracted to leave a difference of R 1 142 321,48.

Future medical needs

[20] Dr Oelofse's evidence that the plaintiff will need future medical treatment inclusive of the removal of internal fixation has not been gainsaid. The need for an order protecting the plaintiff's future medical needs is thus clear on the facts and the point needs no belaboring.

Costs

[21] On the facts *in casu* and the law, there clearly is no reason why the successfully party, the plaintiff, should not be awarded costs. Equally the plaintiff's prayer for scale B is, in my view, not misplaced.

Order

[22] Resultantly, I order as follows:

22.1. The defendant is to pay 80 percent of the plaintiff's proven damages which is the amount mentioned in 22.2 *infra*.

22.2. The defendant is ordered to pay to the plaintiff an amount of **R1 142 321.48 (One Million One Hundred and Fourty-Two Thousand, Three Hundred and Twenty-One Rands, Fourty-Eight Cents)** comprising both general damages and loss of earnings within 180 days of the date of this order.

22.3. 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 22.2 above until payment is made.

22.4. 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.

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

A black rectangular box redacting a signature. Above the box, there are handwritten initials 'D' and 'I'. Below the box, there is a handwritten flourish.

Malose Monene

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

APPEARANCES

Heard on : 11 May 2026

Judgment delivered on : 09 September 2026

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