



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG**

CASE NO: 1444/2024

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED **YES/NO**

SIGNATURE

03/09/2026
DATE

In the matter between:

PHORA MMADILE MARIA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for hand down is deemed to be 03 September 2026.

JUDGMENT

Phahlamohlaka J

[1] The plaintiff, Maria Mmadile, issued summons against the Road Accident Fund (“the Fund”) for damages suffered as a result of the injuries sustained in a motor vehicle accident that occurred on 10 January 2023. The plaintiff was injured while disembarking from a taxi when the insured driver drove off before she had safely alighted, causing her to fall and sustain a left distal radius fracture and facial abrasions.

[2] This Court has to determine both liability and the quantum of damages in respect of loss of earning capacity and future medical expenses. On the issue of general damages, the Fund has rejected the plaintiff’s claim. Therefore, the court will not make a determination of quantum thereon.

Merits

[3] The plaintiff testified under oath and stated that on 10 January 2023 she was alighting from a taxi driven by the insured driver. Only her left foot was on the ground when the taxi pulled off before she could alight fully. She fell underneath the taxi, and its back wheel ran over her left hand.

[4] The defendant adduced no evidence to gainsay the evidence of the plaintiff. Counsel for the defendant relied solely on the cross-examination of the plaintiff but did little to undermine her as a witness.

[5] In *Minister of Safety and Security v Van Duivenboden*,¹ the court stated that:

“[12] Negligence, as it is understood in our law, is not inherently unlawful-it is unlawful, and thus actionable, only if it occurs in circumstances that the law recognizes as making it unlawful. Where the negligence manifests itself in a positive act that causes physical harm it is presumed to be unlawful.”

¹ *Minister of Safety and Security v Van Duivenboden* [2002] ZASCA 79; [2002] 3 All SA 741 (SCA); 2002 (6) SA 431 (SCA).

[6] The evidence therefore establishes that the insured driver failed to ensure that the plaintiff had safely exited the vehicle. This failure by the insured driver constituted negligence.

[7] In my view, there was nothing the plaintiff could have done to avoid the accident. Consequently, I find that the insured driver was 100% negligent in causing the plaintiff's injuries.

Quantum of Damages: Loss of Earnings

[8] In trying to quantify damages, the plaintiff relied on the evidence of the following experts, whose reports were admitted as evidence in terms of Rule 38(2) of the Uniform Rules of Court.

[9] Dr P T Kumbirai (Orthopaedic Surgeon) reported that the plaintiff sustained a fracture of the distal left radius (left-hand dominant) as well as facial abrasions. She was treated by open reduction and internal fixation with plate and screws, physiotherapy, and pain management. Currently, she is experiencing ongoing pain and limited range of motion in the left wrist, especially with heavy lifting and in cold weather. Chronic pain persists. Occupationally, she will be limited to work not requiring heavy lifting and therefore she will be less competitive in the open labour market.

[10] T Sibiya (Occupational Therapist) reported that, pre-accident, the plaintiff was a self-employed vendor, a job which required medium physical strength, such as lifting or carrying heavy goods. Post-accident, she continues as a vendor but with significant limitations. She is experiencing chronic pain, poor grip strength (left hand), reduced productivity and speed. According to the Occupational Therapist, the plaintiff is now only suited for work of light physical strength. She cannot meet her pre-accident job demands.

[11] C Nyahwema (Industrial Psychologist) reported that, pre-accident, the plaintiff was self-employed as a vendor with a gross income of R12 500.00 per month and a net profit of about R3 000.00 per month. The Industrial Psychologist further stated that the plaintiff would likely have continued to be a vendor until age 65. Post-accident, she

returned to work immediately but with reduced capacity and earnings due to pain and functional limitations. Her ongoing symptoms affect her work performance and may lead to early retirement. The industrial psychologist concluded that the plaintiff suffered a decrease in work capacity and earning potential due to accident-related impairments.

[12] Dr G A Whittaker (Actuary) calculated the loss of earning capacity using the net profit of R2 875.00 per month, which equates to R34 965.00 per year, as per the affidavits and expert reports. The Actuary calculated future loss of earnings under various retirement scenarios (ages 55, 57.5, 60), with standard contingencies (10% uninjured, 25% injured), resulting in a net future loss of R255 027.00 before apportionment or further contingencies, calculated up to retirement at age 55.

[13] The experts acknowledge a lack of reliable proof of income and recommend that the court apply appropriate contingencies. However, all experts agree that the plaintiff sustained a significant injury, resulting in chronic pain, reduced function, and diminished earning capacity. The plaintiff is now only suited for lighter work and is less competitive in the labour market.

[14] Damages for loss of earnings must be compensatory, not speculative. In *Southern Insurance Association Ltd v Bailey NO*,² a *locus classicus* concerning assessment and quantification of damages for loss of earning capacity, the court held as follows:

“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 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.”

² *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A) at 99A-B.

[15] The court therefore has wide discretion to award what is just, using actuarial calculations as a guide without being bound by them.

[16] Contingency deductions are within the discretion of the court and are applied to account for the vicissitudes of life, business fluctuations, and uncertainties, especially where income is not reliably proven.³

[17] The plaintiff was self-employed as a street vendor, reporting gross monthly turnover of R12 500.00 with expenses of R9 500.00, resulting in a net profit of approximately R3 000 per month.

[18] The plaintiff returned to work after the accident but with reduced capacity and earnings due to ongoing pain and functional limitations, as confirmed by expert reports.

[19] The actuarial report calculated future loss of earnings based on a net annual income of R34 965.00, with retirement assumed between ages 55 and 60.

[20] The defendant challenged the reliability of the plaintiff's income evidence, noting inconsistencies and a lack of objective proof, and argued for robust contingencies. It is true that the plaintiff failed to prove her income. Where the plaintiff fails to prove income with reliable documentary evidence, higher contingencies are justified.⁴

Contingencies on loss of earning capacity

[21] Counsel for the plaintiff submitted that I should apply a 10% contingency on the amount of loss of earnings.

³ See *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A).

⁴ See *Rudman v Road Accident Fund* 2003 (2) SA 234 (SCA).

[22] On behalf of the defendant it was submitted that the plaintiff failed to place sufficient reliable evidence before the court to justify the quantum claimed. This submission by the defendant is without merit and is not supported by any facts.

[23] In my view, given the informal nature of the plaintiff's business, lack of accounting records, and fluctuating income, a higher contingency is warranted.

[24] Standard contingencies are 10% for uninjured earnings and 25% for injured earnings. However, considering the plaintiff's failure to prove income, contingencies of 20% (uninjured) and 35% (injured) are appropriate in this case.

[25] The actuarial calculation (Basis I: retirement at age 55) yields a net future loss of R255 027 before apportionment. The court is not bound by actuarial calculations and must apply its discretion, especially where proof is lacking.

[26] Differential contingencies are commonly applied. In *Dlamini v Road Accident Fund*,⁵ the court stated that:

“[30] Koch refers to the following as some of the guidelines as regards contingencies:

- ‘Normal contingencies’ as deductions of 5% for past loss and 15% for future loss.
- Sliding scale: ½% per year to retirement age, i.e. 25% for a child, 20% for a youth and 10% in the middle age and relies on **Goodall v President Insurance. 1978 (1) SA 389**.
- Differential contingencies are commonly applied, that is to say one percentage applied to earnings but for the accident, and a different percentage to earnings having regard to the accident.”

[27] In view of the fact that the plaintiff has failed to substantively prove her earnings, I will apply a higher-than-normal contingency deduction on the basis of a retirement age of 55 years. The result is an amount of R212 522.00 (Two hundred and twelve thousand five hundred and twenty-two rand).

⁵ *Dlamini v Road Accident Fund* [2015] ZAGPPHC 646 at paras 30-31.

Order

[28] In the result, I make the following order:

- 1 The defendant is liable for 100% of the plaintiff's proven damages.
- 2 The defendant is ordered to pay the plaintiff an amount of R 255 027.00 (two hundred and fifty-five thousand and twenty seven rand) for loss of earnings.
- 3 The defendant is ordered to provide an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 in respect of future medical expenses.
- 4 The defendant is ordered to pay the costs on scale B.



K F PHAHLAMOHLAKA

JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MIDDELBURG

Appearances

For the plaintiff: Adv Magagula
Instructed by: Mashishi Attorneys

Defendant: Adv Mashabane
Instructed by: State Attorney

Date judgment reserved: 18 May 2026