



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: 13465/2023

In the matter between:

CHARLES WILLIAM TURNER

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

Coram: BARTHUS, AJ

Heard: 9 June 2026

Delivered electronically: 15 September 2026

Summary: Delict – Road Accident Fund – Quantum – Loss of earnings – Plaintiff sustaining severe traumatic brain injury resulting in permanent cognitive and behavioural impairment – Expert evidence admitted on affidavit and left entirely unchallenged – Defendant filing no expert reports, failing to object to admissibility, failing to cross-examine, and failing to inspect discovered documents – Uncontroverted expert and actuarial evidence accepted – Plaintiff not required to testify where factual foundation established through objective records and expert affidavits – Collateral source rule applied; medical scheme payments do not reduce RAF liability – Complete and permanent loss of earning capacity proven – Damages awarded.

JUDGMENT

Barthus AJ:

[1] This matter concerns the quantification of damages arising from a motor vehicle collision that occurred on 30 November 2021. The plaintiff sustained a severe traumatic brain injury with permanent cognitive, behavioural and emotional sequelae. Liability was conceded by the Road Accident Fund, general damages were settled in the amount of R1 200 000, and an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act was furnished.

[2] The remaining issues are the plaintiff's past and future loss of income and his past medical expenses. The plaintiff's medical experts testified by affidavit under Rule 38(2). The only oral evidence was that of Dr Hunter and Mr Edwards. The defendant filed no expert reports and called no witnesses.

[3] The defendant's heads of argument challenge the admissibility, reliability and factual foundation of the plaintiff's expert evidence. The plaintiff filed detailed submissions in reply. The issues raised require the Court to consider the evidential foundation of the plaintiff's claim, the admissibility and weight of the expert evidence, the effect of the defendant's failure to place contrary evidence before the Court, the actuarial quantification of the claim, and the claim for past medical expenses.

[4] The neurosurgeon, Dr Domingo, confirmed that the plaintiff sustained a significant traumatic brain injury consisting of mild diffuse brain injury, focal frontal contusions, and diffuse axonal injury with multiple micro-haemorrhages involving the frontal, temporal and parietal lobes and the deep grey matter.

[5] The plaintiff's post-accident symptoms included severe cognitive impairment, behavioural dysregulation, irritability, impulsivity, emotional lability, headaches, vertigo, tinnitus, balance impairment, sleep disturbance, anxiety and symptoms consistent with a mood disorder and post-traumatic stress disorder.

[6] Dr Domingo expressed the view that the plaintiff's cognitive and behavioural deficits are permanent and consistent with the structural brain damage seen on CT and MRI. He stated that the plaintiff is no longer able to run his business efficiently and will have difficulty obtaining and retaining employment in the future.

[7] The neuropsychologist, Ms Burke, conducted a comprehensive neuropsychological assessment and found marked deficits in attention, concentration, visual memory, executive functioning, planning, mental flexibility and behavioural regulation. She described his distractibility and inability to sustain focus as glaringly apparent. She concluded that he is unemployable in the open labour market.

[8] Collateral evidence from the plaintiff's partner confirmed profound personality change, cognitive decline, emotional instability, social withdrawal and inability to manage daily tasks or business responsibilities.

[9] The plaintiff's pre-morbid functioning was exemplary. He matriculated with leadership roles, obtained a National Diploma in Marketing, and embarked on a successful career in sales and marketing. He later freelanced in wine marketing, worked as a trainer for the Namibian Defence Force, co-owned a pool business, and founded Impact Foods t/a Chef's Choice. He also operated a food truck business concurrently.

[10] The plaintiff's work history reflects adaptability, entrepreneurial initiative and consistent productivity. His businesses were viable and generated income. He had clear career intentions and expressed a desire to continue running both businesses.

[11] Dr Hunter testified that, but for the accident, the plaintiff would probably have continued running both businesses until approximately age 70. This conclusion is consistent with the plaintiff's work history and the typical retirement age of self-employed persons.

[12] After the accident, the plaintiff attempted to resume both businesses but was unable to cope. He could work only an hour at a time, lost clients due to cognitive

decline and irritability, sold his food truck, lost his largest supplier and ultimately closed Impact Foods in early 2023.

[13] His only post-morbid work consisted of informal wine-tasting promotions for Top Vineyards, earning approximately R5 000 per month, working only three hours at a time and only on some weekends. This was a charitable arrangement by a friend and not sustainable. Dr Hunter concluded that the plaintiff is permanently unemployable. Ms Burke reached the same conclusion. Their opinions are mutually reinforcing and entirely consistent with the medical evidence.

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[15] His only post-morbid work consisted of informal wine-tasting promotions for Top Vineyards, earning approximately R5 000 per month, working only three hours at a time and only on some weekends. This was a charitable arrangement by a friend and not sustainable.

[16] Dr Hunter concluded that the plaintiff is permanently unemployable. Ms Burke reached the same conclusion. Their opinions are mutually reinforcing and entirely consistent with the medical evidence.

[17] Munro Forensic Actuaries calculated the plaintiff's past and future loss of earnings by using his pre-morbid dual business income, his post-morbid minimal earnings, a retirement age of 70 and appropriate contingencies. Those calculations were not challenged. The significance of that evidence is that the actuarial model translates the accepted medical, industrial psychological and financial evidence into a monetary assessment of the plaintiff's loss.

[18] The actuarial evidence in this matter was provided by Munro Forensic Actuaries, whose report was admitted on affidavit in terms of Rule 38(2) without objection from the defendant. The actuary's calculations were based on the industrial

psychological opinion of Dr Hunter and the financial reconstruction performed by Mr Edwards. Both foundational expert opinions were accepted into evidence without challenge, and the defendant elected not to file any actuarial report of its own. The actuarial evidence therefore stands entirely uncontroverted.

[19] The actuary approached the quantification of the plaintiff's loss of earnings by first determining the plaintiff's pre-morbid earning capacity. This was done by analysing the reconstructed financial data of the plaintiff's wholesale food business and food truck business, as set out in Annexure 2 of Mr Edwards' report. The actuary accepted Mr Edwards' calculation that the plaintiff's projected annual net profit at the time of the accident was R513 680.00, of which R345 922.00 was generated by the wholesale food business and R167 758.00 by the food truck business. The actuary correctly treated this net profit as the plaintiff's pre-morbid earning capacity, consistent with established actuarial practice in matters involving self-employed individuals.

[20] The actuary then considered the plaintiff's post-morbid earning capacity. The bank statement analysis demonstrated that by April 2023 the plaintiff's wholesale food business had ceased trading and that his only income was R5 000.00 per month from Top Vineyards. This income was irregular, part-time and sympathetic in nature. The actuary therefore treated the plaintiff's post-morbid earning capacity as negligible, consistent with the industrial psychologist's opinion that the plaintiff is permanently unemployable or, at best, marginally employable for short periods in sympathetic employment.

[21] The actuary applied standard contingencies to both the pre-morbid and post-morbid earnings. The pre-morbid contingency accounted for normal risks such as illness, business fluctuations, market conditions and general uncertainties inherent in self-employment. The post-morbid contingency was higher, reflecting the plaintiff's severely compromised cognitive and behavioural functioning, his inability to sustain employment, and the likelihood that any future employment would be sporadic, short-lived and sympathetic.

[22] The defendant argued that higher contingencies should be applied, relying on *Petrus v Road Accident Fund*. That case is distinguishable because it concerned a plaintiff who retained residual earning capacity. Here, the medical, neuropsychological and industrial psychological evidence establishes that the plaintiff's earning capacity has been extinguished, save for marginal sympathetic work that is not sustainable. *Petrus* therefore does not justify increasing the contingencies applied in the actuarial calculation.

[23] The defendant also argued that the plaintiff's pre-morbid income may have been inflated. This argument is speculative and unsupported by evidence. The actuary relied on the objective financial reconstruction performed by Mr Edwards, which was based on bank statements and Yoco receipts. The defendant did not challenge the accuracy of the reconstruction during cross-examination and did not call any expert to contradict it. The actuarial calculations therefore rest on a sound factual foundation.

[24] The actuary's methodology accords with the principles set out in *Hersman v Shapiro & Co*¹, which held that once loss is proven, the court must make the best use of the evidence available. The actuary made conservative assumptions where necessary, particularly regarding the food truck business, and adopted a cautious approach that favoured the defendant. The actuarial evidence therefore provides a rational, defensible and fair basis for quantifying the plaintiff's loss.

[25] The defendant did not file any actuarial report, did not challenge the actuary's methodology, did not cross-examine the actuary, and did not place any alternative calculations before the Court. In the absence of rebuttal evidence, and there being no apparent defect in the factual foundation or reasoning of the actuarial report, the report provides an acceptable basis for quantification. This approach is consistent with the decisions in *Bheme v Road Accident Fund*, *Manoto v Road Accident Fund*, and *Ad Hoc Central Authority v Koch NO*, which emphasise that uncontroverted expert evidence should be accepted unless there is a compelling reason to reject it.

¹ 1926 TPD 367.

[26] The actuarial evidence demonstrates that the plaintiff has suffered a substantial loss of earning capacity, both past and future. The calculations are grounded in objective financial data, supported by medical and industrial psychological evidence, and consistent with established actuarial practice. There is no basis to depart from the actuary's conclusions.

LEGAL FRAMEWORK AND DISCUSSION

Expert Evidence, Hearsay, and Factual Foundations

[27] The determination of the plaintiff's loss of earnings and the admissibility of the expert evidence must be approached within the established legal framework governing expert testimony, hearsay, cross-examination, burden of proof, and the treatment of unchallenged evidence. The case law cited by both parties provides a coherent and consistent set of principles that guide the Court's evaluation of the evidence.

[28] In *PriceWaterhouseCoopers Inc and Others v National Potato Co-operative Ltd and Another*², the Supreme Court of Appeal held that expert opinion must be based on facts found to exist, and reliance on facts not in evidence diminishes the weight of the opinion. However, the Court also emphasised that where the factual foundation is placed before the court and not challenged, the expert's reasoning stands. In this matter, the factual foundation relied upon by Mr Edwards and Dr Hunter was placed before the Court through bank statements, Yoco records, medical evidence, and collateral evidence. None of these facts were challenged in cross-examination. The defendant's reliance on PWC is therefore misplaced; the case supports the plaintiff's position.

[29] In *AM v MEC for Health, Western Cape*, the Court held that expert inferences must be reasonably capable of being drawn from proven facts. The plaintiff's experts relied on proven medical facts, objective financial records and collateral evidence. Their inferences are reasonable, defensible and uncontested.

² [2015] 2 All SA 403 (SCA),

Failure to Cross-Examine and Acceptance of Unchallenged Evidence

[30] The Constitutional Court in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*³ held that where a party fails to challenge a witness's evidence in cross-examination, the witness is entitled to assume that the unchallenged evidence is accepted as correct. This principle applies with equal force to expert witnesses. The RAF did not cross-examine Mr Edwards or Dr Hunter on any factual foundation of their opinions. Their evidence therefore stands unchallenged and must be accepted.

[31] The plaintiff's expert evidence must therefore be assessed on the basis that its factual premises were before the Court, its material inferences were open on those facts, and no contrary expert evidence was placed before the Court.

Failure to cross-examine and acceptance of unchallenged evidence

[32] The Constitutional Court in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* held that where a party fails to challenge a witness's evidence in cross-examination, the witness is entitled to assume that the unchallenged evidence is accepted as correct. This principle applies with equal force to expert witnesses.

[33] The RAF did not cross-examine Mr Edwards or Dr Hunter on any factual foundation of their opinions. Their evidence therefore stands unchallenged and must be accepted.

[34] In *Esorfranki (Pty) Ltd v Mopani District Municipality*⁴, the Court confirmed that evidence presented by affidavit is admissible where parties agree to its admission and elect not to cross-examine. The defendant agreed to the Rule 38(2) procedure and did not cross-examine the experts. The expert evidence is therefore uncontested.

³ 2000 (1) SA 1 (CC).

⁴ 2022(2) SA 355 (SCA).

[35] In *Z v S v Road Accident Fund*⁵, the Court held that once expert evidence is accepted on affidavit, the facts conveyed by the plaintiff to the experts are taken as properly proven. The RAF cannot later argue hearsay or credibility without having cross-examined the experts or calling counter-experts. This principle applies squarely here.

RAF's failure to file expert evidence

[36] In *Bheme v Road Accident Fund*⁶, the Court criticised the RAF for failing to file expert reports and held that any challenge to the plaintiff's expert evidence must be treated with caution where the RAF elected not to lead rebutting evidence. The RAF's conduct in this matter mirrors *Bheme*: it filed no expert reports, led no evidence, and now seeks to defeat expert evidence with speculation. This is impermissible.

[37] In *Manoto v Road Accident Fund*⁷, the Court held that the RAF cannot defeat expert evidence with mere speculation from the bar. The RAF's heads of argument consist entirely of speculation and conjecture. Without expert rebuttal, the plaintiff's expert evidence must be accepted.

[38] In *Ad Hoc Central Authority, South Africa and Another v Koch NO and Another*⁸ the Constitutional Court held that uncontroverted expert evidence should not be subjected to the same scrutiny as contested evidence. If the expert's reasoning is sound, defensible, and supported by basic facts and probabilities, the Court should accept it. The plaintiff's experts meet this standard.

[39] In *S v M*⁹ the Court held that a judicial officer does not lightly reject expert evidence on matters within the expert's field. The RAF's criticisms do not provide any basis for rejecting the plaintiff's expert evidence.

⁵ (5489/2019) [2023] ZAFSHC 99.

⁶ (5089/2023) [2025] ZAMPMBHC 43.

⁷ (508/2024) [2026] ZAFSHC 334.

⁸ 2024 (3) SA 249 (CC).

⁹ 1991 SACR 91 (T).

[40] In *Malaza v Road Accident Fund*¹⁰, the Court held that while courts are not rubberstamps, a strong reason must exist to deviate from expert evidence in specialised fields. No such reason exists here.

Plaintiff not testifying

[41] In *Recklies v Road Accident Fund*¹¹ the plaintiff did not testify yet succeeded with his loss of earnings claim. The Court accepted expert evidence and collateral evidence. The RAF's reliance on *Recklies* is misplaced; the case supports the plaintiff's position that testimony is not mandatory where expert evidence establishes the loss.

[42] The cases of *Sikelela v RAF*, *Bosman NO v RAF*, *Liebel NO v RAF*, *Cooper v RAF* and *Makoloi v RAF* collectively demonstrate that courts routinely determine quantum on expert affidavits where the RAF files no expert evidence. The plaintiff's failure to testify is therefore not fatal.

[43] The plaintiff correctly submits that proving the existence of a loss requires proof on a balance of probabilities, but quantifying the amount is a matter of judicial estimation. Once loss is established, the Court must make the best use of the evidence available.

[44] In *Hersman v Shapiro & Co*¹², the Court held that even where estimation is required, the Court must award what is fair. The plaintiff has proven the existence of loss through medical and financial evidence. The actuarial calculation provides a rational basis for estimation.

[45] In *Van Wyk NO v Road Accident Fund*¹³, the Court confirmed that medical scheme payments are *res inter alios acta* and do not extinguish the RAF's liability.

¹⁰ (4780/2022) [2026] ZAMPMBHC 57.

¹¹ 2026 JDR 2603 (WCC).

¹² 1926 TPD 367,

¹³ (20944/2022) [2026] ZAWCHC 210.

The RAF is bound by this authority. The plaintiff's past medical expenses must be awarded.

[46] The plaintiff has accordingly proved, on a balance of probabilities, that the accident caused a complete and permanent loss of earning capacity and that the actuarial evidence provides a reliable basis for quantifying that loss. The claim for past medical expenses is not reduced by medical scheme payments. The plaintiff is therefore entitled to the damages reflected in the order.

[47] In the circumstances, and for the reasons set out above, an order is made in the terms contained in Annexure A.

V BARTHUS
ACTING JUDGE OF THE HIGH COURT

Appearances

For Plaintiff: Adv Wayne Coughlan
Instructed by: Sohn & Wood Attorneys

For Defendant: Adv Monique Davis
Instructed by: The State Attorney