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**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 22730/2022**

(1) REPORTABLE: YES / NO  
(2) OF INTEREST TO OTHER JUDGES: YES/NO  
(3) REVISED: NO  
DATE :04 SEPTEMBER 2026  
SIGNATURE

In the matter between:

**LYDIA MAGDALENA ELIZABETH JORDAAN**

Plaintiff

**and**

**THE ROAD ACCIDENT FUND**

Defendant

***Delivered:*** This judgment was prepared and authored by the Judge whose name is reflected and is electronically circulated to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be **04 September 2026**.

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## JUDGMENT

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**MBOWENI AJ**

***Introduction:***

[1] The Plaintiff instituted action against the Road Accident Fund for damages arising from a motor vehicle collision which occurred on 12 July 2021.

[2] Liability for the collision is no longer in issue. During September 2024, the Defendant conceded liability arising from the sole negligence of the insured driver. The dispute before Court concerns quantum, and particularly the Plaintiff's claim for future loss of income, alternatively diminution of earning capacity.

[3] The determination of that claim is complicated by the fact that the collision of 12 July 2021 was not the Plaintiff's first motor vehicle accident. She had previously been involved in a collision on 9 September 2017, in which she sustained injuries involving, inter alia, the cervical and lumbar spine.

[4] A claim arising from the first collision was subsequently settled with the Defendant. The existence of the first accident and the Plaintiff's pre-existing injuries therefore require careful consideration in determining what patrimonial loss, if any, was caused by the second collision.

***The Plaintiff's claim***

[5] The Plaintiff initially claimed R400,000 in respect of future loss of income. That amount was subsequently amended to R600,000.

[6] Following receipt of an addendum actuarial report dated 13 August 2026, the Plaintiff sought a further amendment increasing the amount claimed from R600,000 to R1 million. The actuarial calculation upon which the amendment was based quantified the future loss at R986,839.

[7] That calculation assumed that the Plaintiff's pre-traumatic and post-traumatic earnings and earnings growth would be the same. A contingency deduction of 20% was applied to the pre-traumatic scenario and 30% to the post-traumatic scenario, producing a differential of 10%.

[8] In the later addendum to her abbreviated heads, the Plaintiff adopted a more conservative position and proposed a 7.5% differential, namely 22.5% pre-traumatic and 30% post-traumatic, resulting in an amount of R740,129.85.

[9] The Court is not bound by either calculation. The question remains whether the factual and expert evidence establishes the loss claimed and, in particular, whether the proposed contingency differential fairly represents the consequences attributable to the collision of 12 July 2021.

### ***Legal framework:***

[10] The Plaintiff bears the onus of proving both an impairment of earning capacity and a patrimonial loss caused by that impairment. In ***Rudman v Road Accident Fund***<sup>1</sup>, the Supreme Court of Appeal emphasised that a physical disability which impacts upon earning capacity does not, without more, establish a reduction of the estate; the financial consequences of the impairment must be proved.

[11] In ***Road Accident Fund v Kerridge***<sup>2</sup>, the Supreme Court of Appeal held that a claim for future loss of earning capacity requires a comparison between what the claimant would probably have earned had the accident not occurred and what she is likely to earn thereafter. The enquiry is necessarily speculative, actuarial calculations depend upon the factual assumptions supplied to the actuary, and the selection of contingencies remains a matter for the trial court's wide discretion.

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<sup>1</sup> 2003 (2) SA 234 (SCA) para 11.

<sup>2</sup> (1024/2017) [2018] ZASCA 151; 2019 (2) SA 233 (SCA) paras 40-43.

[12] ***Southern Insurance Association Ltd v Bailey NO***<sup>3</sup> explains the two recognised methods of assessment: the Court may make a general estimate, or it may use an actuarial computation as a useful basis and adjust it in the light of the probabilities. Neither method converts the assessment into an exact calculation. The object remains an award which is fair on the evidence.

[13] The same principles have been applied in recent Road Accident Fund matters. In ***Thekiso v Road Accident Fund***<sup>4</sup>, the Court reiterated that actuarial calculations are an aid and that contingencies account for the ordinary and case-specific risks affecting the hypothetical uninjured and injured career paths. The percentages applied in other cases are not tariffs; they are outcomes on different facts.

[14] Expert evidence must be evaluated, not merely accepted because it is unopposed. In ***Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another***<sup>5</sup>, the Court held that an expert opinion must rest on logical reasoning and a defensible factual basis. ***Prince v Road Accident Fund***<sup>6</sup> likewise confirms, in the context of uncontested expert evidence, that the Court must assess the evidence and the probabilities before acting upon it.

[15] Where a later accident aggravates a pre-existing condition, the enquiry remains one of causation and the extent of the additional loss caused by the later event. ***Savage v Road Accident Fund***<sup>7</sup> rejected an arbitrary apportionment of damages merely because pre-existing pathology was present. The pre-existing condition forms part of the factual counterfactual; the wrongdoer is liable for the consequences which the later accident materially caused or aggravated.

[16] The application to amend the monetary amount of the existing claim is governed by Rule 28. ***Imperial Bank Ltd v Barnard and Others NNO***<sup>8</sup> confirms that the primary consideration is prejudice which cannot be cured by an appropriate costs order or postponement. Here the amendment introduces no new cause of action, but

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<sup>3</sup> 1984 (1) SA 98 (A) at 113G-114E.

<sup>4</sup> (2019/26721) [2026] ZAGPJHC 615 paras 13-17.

<sup>5</sup> 2001 (3) SA 1188 (SCA) paras 36-37.

<sup>6</sup> CA 143/2017) [2018] ZAECGHC 20 paras 55-59.

<sup>7</sup> (A86/2017) [2018] ZAWCHC 17.

<sup>8</sup> 2013 (5) SA 612 (SCA) para 8.

updates the quantification of the already pleaded claim. It is therefore granted, without determining whether the increased amount has been proved.

[17] The Plaintiff also sought an order under Rule 38(2) that the affidavits and expert reports be received as evidence. Having regard to the nature of the quantum issues, the confirmatory affidavits, the reports filed, and the absence of any demonstrated need to cross-examine a particular expert, sufficient reason exists to receive that evidence on affidavit. Its admission does not relieve the Court of the duty described in *Linksfeld and Prince* to evaluate its foundation and weight.

***The Defendant's belated opposition:***

[18] On the day on which the matter was enrolled for hearing, 19 August 2026, the State Attorney entered the proceedings on behalf of the Defendant and filed a notice of intention to oppose. The substance of the opposition advanced from the Bar was that the Plaintiff had already been compensated for future loss of earnings arising from the collision of 9 September 2017 and that the present claim would, in effect, result in the Plaintiff being compensated again for the same injuries. The State Attorney accordingly requested that the matter be stood down for a few days in order to enable the Defendant to place documentation before the Court in support of that contention.

[19] I declined that request. No affidavit, expert report, actuarial calculation, previous settlement documentation or other evidential material was placed before the Court demonstrating what component of the Plaintiff's previous compensation represented future loss of earnings, the basis upon which that loss had been calculated, or that the loss now claimed arose from injuries or occupational consequences for which the Plaintiff had already been compensated. The proposition that the present claim constituted impermissible double compensation was therefore advanced without an evidential foundation upon which the Court could properly determine it.

[20] Of further significance was the absence of any explanation for the Defendant's belated participation. The Defendant had conceded liability during September 2024, and the matter before Court concerned the determination of quantum. Yet no explanation was furnished as to why the State Attorney only filed the notice of intention to oppose on the very day upon which the matter was due to be heard, or

why the documentation said to be necessary to substantiate the Defendant's opposition had not been obtained and placed before Court beforehand. In those circumstances, a stand-down would effectively have afforded the Defendant an opportunity, after the commencement of the hearing, to assemble an evidential case which it had not placed before Court when the matter was called.

[21] The Court was nevertheless required to guard against double compensation. That consideration does not, however, permit an unsubstantiated assertion to displace the evidence properly before Court. The appropriate course was therefore to determine the matter on the evidence available, while taking full account of the first collision, the Plaintiff's pre-existing cervical and lumbar injuries, and the fact that the claim arising from that collision had previously been settled. The present enquiry remained whether, and to what extent, the second collision caused an additional patrimonial loss. This is the approach adopted below in determining the appropriate contingency differential.

### ***The two accidents:***

[22] The Plaintiff was involved in the first collision on 9 September 2017. She sustained cervical and lumbar sprain and strain injuries as well as a soft-tissue head injury.

[23] The Plaintiff's own case acknowledges that a precise mathematical allocation of her cervical and lumbar symptoms between the first and second collisions cannot objectively be made on orthopaedic grounds.

[24] This is important. The Court cannot approach the present matter as though the Plaintiff was physically unaffected immediately before the second collision.

[25] The relevant comparison is between the Plaintiff's earning capacity as it existed immediately before the second collision, including the consequences of the first accident, and her earning capacity after the second collision.

[26] The second collision resulted in soft-tissue injuries to the cervical and lumbar spine and a soft-tissue injury to the left forearm and wrist.

[27] The cervical and lumbar complaints therefore substantially overlap with injuries sustained in the first accident. The left forearm and wrist injury constitutes the material additional orthopaedic injury associated with the second collision.

***The left wrist and arm injury:***

[28] Dr Heymans described the wrist injury as a soft-tissue injury. By July 2026, the Plaintiff complained of wrist pain particularly when performing activities involving hyperextension or overloading the wrist.

[29] On examination there was radiocarpal tenderness, but the Plaintiff retained a full range of motion. The radiological investigation of the wrist was normal. An MRI was recommended to investigate possible underlying soft-tissue pathology because of the persistence of the symptoms.

[30] The medical evidence therefore establishes a genuine and persistent wrist impairment. It does not, however, demonstrate a major structural orthopaedic injury or a loss of use of the hand or arm.

***Occupational consequences:***

[31] The occupational evidence demonstrates that the wrist injury is not entirely without vocational consequence.

[32] Ms Venter recorded that the Plaintiff experiences difficulty typing with both hands, particularly because of the painful left wrist. This is relevant because typing constitutes approximately 80% of her working day.

[33] Carrying heavy files weighing approximately 3 to 5 kilograms causes wrist pain. The Plaintiff also experiences pain when operating the controls of her manual motor vehicle and requires rest breaks at work.

[34] Ms Venter consequently concluded that the second collision caused additional compromised functionality in the Plaintiff's left hand and arm and that her functionality was more compromised after the second accident.

[35] This evidence establishes that the second accident has increased the occupational burden under which the Plaintiff performs her work.

[36] It does not follow, however, that every occupational difficulty presently experienced by the Plaintiff can be attributed to the second accident.

[37] The occupational evidence repeatedly refers cumulatively to cervical pain, lumbar pain and wrist pain when assessing productivity and occupational vulnerability. The cervical and lumbar conditions cannot be considered exclusively as consequences of the second collision because those areas were already injured in 2017.

### ***The Plaintiff's actual employment position***

[38] The Plaintiff's actual post-accident employment history is an important objective consideration.

[39] She has remained continuously employed in the legal profession. Her employment history has remained stable since August 2015.

[40] More significantly, the Plaintiff has not demonstrated an actual reduction in her earnings following the second collision.

[41] Her case instead proceeds upon the proposition that, although she remains capable of achieving the same earnings trajectory, she is a more vulnerable competitor in the open labour market.

[42] The Plaintiff has also commenced an LLB degree and has successfully progressed with her studies.

[43] These circumstances do not exclude a claim for diminution of earning capacity. A person may remain employed and nevertheless possess an impaired earning capacity.

[44] They are, however, highly relevant to the extent of the loss and the contingencies which ought fairly to be applied.

***Actuarial evidence:***

[45] The actuarial evidence requires particular attention.

[46] The Plaintiff's projected future income is R9,869,398 in both the pre-traumatic and post-traumatic scenarios.

[47] There is therefore no actuarially projected difference between what the Plaintiff would earn but for the second collision and what she is expected to earn notwithstanding that collision.

[48] The amount of R986,839 is generated entirely through the application of different contingencies. A 20% deduction produces R7,894,718 in the pre-traumatic scenario, while a 30% deduction produces R6,907,879 post-traumatically. The difference is R986,839.

[49] This distinction is fundamental. As Kerridge makes clear, an actuarial calculation quantifies assumptions derived from the evidence; it does not itself prove those assumptions.

[50] The Court must therefore independently determine whether the consequences attributable to the second collision justify the contingency differential proposed.

***Increase from R600,000 to R1 million:***

[51] The Court has particular difficulty with the Plaintiff's reliance upon the addendum actuarial report as justification for increasing the pleaded claim from R600,000 to R1 million.

[52] The evidence does not establish that between the amendment to R600,000 and the subsequent proposed amendment to R1 million there was a corresponding deterioration in the Plaintiff's physical condition or earning capacity.

[53] Rather, the papers state that the proposed increase followed receipt of the addendum actuarial report, which calculated R986,839 by applying a 10% contingency differential.

[54] That explains the mathematical origin of the increased amount. It does not establish its factual or causal foundation.

[55] An actuarial calculation is an important aid to the Court in quantifying damages, as Bailey and Kerridge recognise. It cannot substitute for evidence establishing the loss which is to be quantified.

[56] Accordingly, the fact that the actuarial calculation produces a figure approaching R1 million does not mean that the Plaintiff has proved that the second collision caused a loss of that magnitude.

***Pre-existing injuries and previous compensation:***

[57] The Court must furthermore guard against attributing to the second collision occupational vulnerability that already existed as a consequence of the first accident.

[58] The Plaintiff herself accepts that the pre-existing cervical and lumbar pathology creates uncertainty and submits that this should be accommodated through contingencies.

[59] I agree that mathematical apportionment of the medical symptoms would be artificial where the expert evidence does not permit it. Savage cautions against converting pre-existing pathology into an arbitrary percentage reduction; the Court must instead identify the additional consequences causally attributable to the second collision.

[60] That does not mean, however, that the existence of the first accident becomes irrelevant.

[61] The Plaintiff's residual earning capacity immediately before the second collision constitutes the appropriate starting point. The Defendant is liable only for the additional patrimonial consequences caused by the second collision.

[62] The Court must therefore avoid an award which effectively compensates the Plaintiff in the present proceedings for the combined occupational consequences of both accidents.

***Appropriate contingencies:***

[63] The Plaintiff initially proposed a 10% differential. She subsequently moderated this to 7.5%.

[64] I am not persuaded that either differential has been established on the evidence.

[65] The factors favouring an increased post-traumatic contingency include the persistent wrist symptoms, difficulties with prolonged typing and handling files, the need for rest breaks, the additional functional impairment of the left hand and arm, and the possibility that these difficulties may become more significant over a lengthy remaining working life.

[66] Against these considerations must be weighed the nature of the new injury, the full range of wrist motion, normal wrist radiology, the absence of demonstrated neurological impairment, the Plaintiff's continued employment, her occupational progression, her continued tertiary studies, the absence of an actual reduction in earnings and the fact that substantial components of her cervical and lumbar symptomatology pre-date the second collision.

[67] The Plaintiff's own industrial psychological case accepts that she remains employable and may continue along her anticipated career trajectory. The claimed loss therefore principally represents an increased risk rather than a probable identifiable reduction in future salary.

[68] In my view, a 5% differential appropriately recognises that additional risk without attributing to the second collision consequences that have not been shown to have been caused by it.

[69] Applying a 5% differential to the agreed actuarial future earnings value of R9,869,398 produces a future loss of earning capacity of R493,469.90.

[70] This amount should not be understood as a precise mathematical valuation of the wrist injury. Contingencies are necessarily an exercise of judicial estimation. Consistently with Bailey and Kerridge, the figure reflects the Court's assessment of the additional occupational risk established by the evidence.

***Conclusion:***

[71] The Plaintiff has established that the second collision caused additional physical and occupational impairment.

[72] I am therefore unable to accept the proposition that no further loss of earning capacity has been established merely because the Plaintiff had previously sustained injuries and received compensation arising from the first collision.

[73] Equally, the evidence does not justify treating the Plaintiff's present cumulative symptomatology as though it resulted entirely from the second collision.

[74] The additional left forearm and wrist impairment is real but comparatively limited. The Plaintiff remains employed, continues to progress academically and is expected to remain capable of pursuing her anticipated career trajectory.

[75] The Plaintiff has consequently established an increased vulnerability in the labour market, but not to the extent reflected by either a 10% or 7.5% contingency differential.

[76] I consider a 5% differential to be fair and reasonable.

[77] The Plaintiff's future loss of earning capacity is accordingly quantified at R493,469.90.

***Order:***

In the circumstances, I make the following order:

1. Leave is granted to the Plaintiff in terms of Uniform Rule 28(10) to amend the

amended particulars of claim in accordance with the notice of intention to amend in terms of Rule 28(1), dated 13 August 2026, insofar as the amount claimed in respect of future loss of income is amended from R600 000.00 to R1 000 000.00.

2. The expert reports, with the inclusion of and reference to the collateral and documentary evidence set out in the respective reports, and the affidavits filed on behalf of the Plaintiff are admitted into evidence in terms of Rule 38(2) of the Uniform Rules of Court, read with section 3 of the Law of Evidence Amendment Act 45 of 1988 and section 34(1)(ii) of the Civil Proceedings Evidence Act 25 of 1965.
3. The Defendant is liable to pay 100% of the Plaintiff's agreed or proven damages.
4. The Defendant shall pay the Plaintiff R493 469.90 in respect of future loss of income.
5. The capital shall be paid within 180 days of the date of this order by electronic transfer into the trust account of the Plaintiff's correspondent attorneys of record trust account, the details of which are set out in paragraph 9 *infra*.
6. Should the capital not be paid within the period stipulated in paragraph 5 above, the Defendant shall pay interest thereon at the prescribed statutory rate from the due date to the date of final payment.
7. The Defendant shall provide the Plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for the costs of future accommodation in a hospital or nursing home, treatment, services or goods arising from the injuries sustained in the collision of 12 July 2021, after the costs have been incurred and upon proof thereof.
8. The Plaintiff's claim for general damages is separated in terms of Uniform

Rule 33(4) and postponed sine die pending finalisation of the serious-injury dispute process by the Health Professions Council of South Africa.

9. The trust account details of the Plaintiff's correspondent attorneys are:

Bank: Nedbank

Account holder: Du Plessis Myburg Verbeek Inc.

Branch code: 1[...]

Account number: 1[...]

Reference: AMW 076

10. The Defendant shall pay the Plaintiff's taxed or agreed party-and-party costs on the High Court scale, subject to the discretion of the Taxing Master, including:

- 10.1 the reasonable costs of the Plaintiff's instructing attorneys, former correspondent attorneys and current correspondent attorneys of record;
- 10.2 the reasonable costs of the Plaintiff's counsel up to the date of this order on Scale B;
- 10.3 the reasonable costs of the Plaintiff's RAF 4 serious-injury assessment report and expert reports delivered in terms of Rule 36(9), including the reasonable qualifying fees, if any, allowed by the Taxing Master; as follows:
- a) Orthopaedic Surgeon ,Dr.van Castricum;
  - b) Orthopaedic Surgeon. , Dr. Heymans;
  - c) Clinical and Educational Psychologist ,LW Meiring;
  - d) Occupational Therapist ,Ms. Venter;
  - e) Industrial Psychologist,Dr.W Coetzer;
  - f) Actuary, Arch Actuarial Consultants.

- 10.4 the costs of the applications under Rules 28(10) and 38(2).

11. The taxed or agreed costs shall be paid within 30 days of taxation or settlement of the Plaintiff's bill of costs by electronic transfer into the trust account set out in paragraph 9 above.

12. Should the taxed or agreed costs not be paid within the period stipulated in paragraph 11 above, the Defendant shall pay interest thereon at the prescribed statutory rate from the due date to the date of final payment.
13. It is recorded that the Plaintiff and the Plaintiff's attorneys of record have not entered into a contingency fee agreement in terms of the Contingency Fees Act 66 of 1997.

COURT,

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**LJ MBOWENI AJ**  
**ACTING JUDGE OF THE HIGH**  
**GAUTENG DIVISION, PRETORIA**

**Heard on:** 19 August 2026

**Delivered:** 04 September 2026

**Appearances:**

**Counsel for the Plaintiff:** Adv Pieter du Pisanie

Instructed by AM Wentzel Attorneys

**Counsel for the Defendant:** Mr. Terrence Mokasi  
State Attorney-Pretoria