

REPUBLIC OF SOUTH AFRICA



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

CASE NO:2023-000605 and 2023-123475

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED: NO

DATE :07 SEPTEMBER 2026

SIGNATURE

In the matter between:

WILLEM HENDRIK JONES

Plaintiff

and

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 **07 September 2026**.

JUDGMENT

MBOWENI AJ

INTRODUCTION

[1] The Plaintiff instituted claims against the Road Accident Fund arising from two motor vehicle collisions which occurred on 21 December 2020 and 22 June 2022 respectively. The claims were consolidated and came before me for determination on 17 August 2026.

[2] The Plaintiff relied upon various medico-legal and expert reports dealing with the nature and sequelae of his injuries, his residual functional and psychological capacity, his ability to continue working as a truck driver, his future employability and the actuarial quantification of his alleged loss of earnings.

[3] At the hearing I granted prayers 1 and 2 of the Plaintiff's application in terms of Uniform Rule 38(2). I also determined that the Defendant is liable for 100% of the Plaintiff's proven damages arising from the two collisions. The draft order placed before Court accordingly recorded the Defendant's liability for 100% of the Plaintiff's proven damages.

[4] The principal issue which required further consideration concerned the Plaintiff's claim for future loss of earnings or earning capacity. The difficulty arose from the fact that, notwithstanding the injuries and sequelae relied upon, the Plaintiff remained employed as a truck driver at the time of the hearing and continued to earn an income.

[5] The Court was therefore required to determine not merely whether the Plaintiff's earning capacity had been impaired, but whether such impairment would probably result in future patrimonial loss and, if so, how that loss should appropriately be quantified while recognising his continued employment.

[6] It was for this reason that I requested supplementary heads of argument from counsel for the Plaintiff. The supplementary heads record that the issue requiring

determination was the amount of future loss where uncertainty existed as to precisely when the Plaintiff would cease working.

[7] The supplementary heads were delivered on 18 August 2026. Having considered them together with the evidence admitted under Rule 38(2), the industrial psychologist's postulations and the actuarial calculations, I am satisfied that the matter can be determined on the evidence before Court.

LEGAL PRINCIPLES

[8] A claim for loss of earning capacity is patrimonial in nature. An injury which renders a person less capable of performing work does not, without more, establish a compensable patrimonial loss.

[9] In **Rudman v Road Accident Fund**¹, the Supreme Court of Appeal emphasised that physical disability which impacts upon earning capacity does not necessarily reduce the estate or patrimony of the injured person. There must be proof that the diminution in earning capacity results, or will probably result, in pecuniary loss.

[10] The distinction is important in the present matter. The Court is not concerned simply with whether the Plaintiff is less capable occupationally than he was before the accidents. The enquiry is whether the proven impairment has diminished, or will probably diminish, the monetary value of his ability to earn.

[11] The principle was reaffirmed by the Supreme Court of Appeal in **Road Accident Fund v C K²**, also referred to in subsequent judgments as **Road Accident Fund v Kerridge**. The Court held that loss of income or income-earning capacity must be proved. Where the fact of loss has been established but its precise amount is difficult to quantify, the Court must make the best use of the available evidence in determining quantum.

[12] It follows that there are conceptually two stages to the enquiry. The first is whether the Plaintiff has established that his impaired earning capacity will probably

¹ (370/01) [2002] ZASCA 129; 2003 (2) SA 234 (SCA).

² (1024/2017) [2018] ZASCA 151; 2019 (2) SA 233 (SCA).

cause patrimonial loss. The second, once that threshold has been crossed, is the quantification of that loss.

[13] The second enquiry is inevitably prospective. It requires the Court to consider what probably would have occurred but for the accidents and to compare that position with what will probably occur having regard to the injuries and their sequelae.

[14] In ***Southern Insurance Association Ltd v Bailey NO³***, the Appellate Division recognised the inherently speculative nature of an assessment of future loss of earning capacity. Actuarial calculations provide a useful means of quantification where they proceed from assumptions resting upon the evidence, but the validity of the calculation necessarily depends upon the soundness of those assumptions.

[15] An actuarial calculation therefore does not itself prove the factual premises upon which it is based. The actuary mathematically quantifies a scenario placed before him or her. It remains for the Court to determine whether that scenario is established by the evidence and sufficiently probable to constitute an appropriate basis for an award.

[16] The fact that a claimant remains employed at the date of trial does not necessarily defeat a claim for future loss. In ***Mokoena v Road Accident Fund⁴***, the Court recognised that continued employment and continued earnings do not necessarily establish that the claimant's earning capacity remains unimpaired. The Court must have regard to the sustainability and security of that employment and the claimant's vulnerability in the open labour market.

[17] The converse is equally important. Continued employment is an objective fact which cannot simply be ignored. A calculation which assumes that a claimant has already ceased earning his existing income when he continues to receive that income requires careful scrutiny.

[18] In ***Ngobeni v Road Accident Fund⁵***, the Court reiterated that even where expert reports are admitted in terms of Rule 38(2), the conclusions expressed in

³ 1984 (1) SA 98 (A).

⁴ (1446/2024) [2026] ZAFSHC 318.

⁵ (3861/2024) [2026] ZAFSHC 298.

them do not become binding upon the Court. They remain evidence which must be evaluated together with the objective facts. The absence of competing evidence from the Defendant likewise does not relieve a plaintiff of the burden of proving patrimonial loss.

[19] These principles are particularly apposite in the present matter. The Court must evaluate the expert opinions, but it must do so against the objective fact that the Plaintiff remains employed.

THE PLAINTIFF'S EMPLOYMENT

[20] The Plaintiff is employed as a truck driver. His employment with Trio Stephens commenced in January 2021 and continued at the time of the hearing.

[21] The evidence accordingly does not establish that the Plaintiff has already lost his employment as a consequence of the accidents.

[22] There is also evidence that he retains a measure of present occupational capacity. Dr Enslin recorded that the Plaintiff continued working as a truck driver and was coping with his present working tasks, although he experienced difficulty tightening the belts over merchandise.

[23] This evidence is material. It would be artificial to determine future patrimonial loss without recognising that the Plaintiff continues to perform the occupation from which he presently earns his income.

[24] The question is, however, not confined to whether he can perform that work today. It is whether the evidence establishes, on a balance of probabilities, that his ability to continue doing so until his normal retirement age has materially deteriorated as a result of the accidents.

THE EXPERT EVIDENCE

[25] The expert evidence must therefore be considered collectively and against the Plaintiff's actual employment position.

[26] The occupational therapists, Ms Wheeler and Ms Kanju-Gxoyiya, considered the physical demands of the Plaintiff's occupation as a truck driver and his residual capacity to meet those demands.

[27] Their opinion is that the Plaintiff is no longer suited to his current occupation as a truck driver and that continued employment in that occupation may result in early retirement. This opinion was also taken into account by the industrial psychologist.

[28] Of particular significance is the psychomotor assessment undertaken by Ms Riana de Villiers.

[29] Ms de Villiers identified difficulties with sustained concentration, coping with an overflow of information, incomplete observations when fatigued, inconsistent estimations of speed and distance, a tendency to underestimate the speed of moving objects and proneness to fatigue.

[30] She further identified the Plaintiff's chronic physical pain and fatigue together with emotional concerns including major depression, post-traumatic stress disorder, irritability and road rage as matters which could further increase the risk associated with his driving.

[31] Ms de Villiers ultimately concluded that the Plaintiff presently constitutes an elevated risk as a driver on a public road.

[32] These findings have particular occupational significance because driving is not incidental to the Plaintiff's employment. It constitutes the essential activity from which his present income is derived.

[33] The Court is therefore confronted with a Plaintiff who remains capable of performing his present work, but in respect of whom there is substantial expert evidence raising legitimate concerns regarding the safety and sustainability of that employment.

THE INDUSTRIAL PSYCHOLOGIST EVIDENCE

[34] Mr Marc Peverett, the industrial psychologist, prepared his report on 18 June 2026. His report contains the career postulations subsequently supplied to the actuary.

[35] For purposes of the uninjured scenario, Mr Peverett relied upon the Plaintiff's May 2026 payslip.

[36] The Plaintiff's income was R28 808.82 per month, while employer contributions amounted to R1 891.24 per month, giving total annual remuneration of approximately R368 400 in 2026 terms.

[37] Mr Peverett postulated that, but for the accidents, the Plaintiff would probably have continued working as a truck driver until retirement at age 65, with inflationary increases applying.

[38] There is no evidence before Court which persuades me that the uninjured career scenario is unreasonable. It is grounded in the Plaintiff's actual occupation and actual earnings.

[39] The more difficult enquiry concerns the injured scenario.

[40] Mr Peverett proposed two scenarios.

[41] Under Scenario 1, he considered the Plaintiff to constitute a danger on the road having regard to the orthopaedic and psychological prognosis and recommended that his truck-driving employment be terminated with immediate effect.

[42] Under Scenario 2, he postulated that if the Plaintiff's employment circumstances remained unaltered in the short term, the Plaintiff would probably take early retirement at age 55, when his pension capital became accessible. In support of this scenario he referred to the occupational therapists' opinion that early retirement would be anticipated should the Plaintiff continue working in his present capacity.

[43] Mr Peverett further concluded that upon the occurrence of either Scenario 1 or Scenario 2 the Plaintiff would probably not secure alternative formal employment in the open labour market.

[44] Importantly, however, he did not regard the Plaintiff as having no residual earning capacity whatsoever. He considered that the Plaintiff could engage in informal ad hoc trading or odd jobs for friends and family.

[45] He estimated that such residual earning capacity would probably not exceed R24 400 per annum in 2026 terms, based upon lower-quartile earnings for informal traders, until age 65.

[46] I regard that distinction as significant. The Plaintiff's case is therefore not that the accidents have rendered him completely incapable of earning an income. The case is that the sustainability of his present, substantially higher-paying occupation has been materially compromised and that, once that employment ends, his residual earning capacity will be significantly lower.

THE ACTUARIAL EVIDENCE

[47] Mr Peverett's postulations were provided to Mr G Whittaker of Algorithm Consultants and Actuaries CC, who prepared actuarial calculations dated 21 June 2026. The results are recorded at CL 08.2-291 to 292.

[48] The calculations quantify alternative outcomes depending principally upon the point at which the Plaintiff is assumed to cease earning his current truck-driver income.

[49] Basis IB corresponds with the immediate cessation scenario. It produces a future loss of earnings of R2 917 127.00.

[50] The Plaintiff's supplementary heads expressly identify the amount of R2 917 127.00 under Basis IB as future loss of earnings.

[51] Basis IIB, by contrast, corresponds with the scenario in which the Plaintiff continues earning his current truck-driving income until age 55 and thereafter earns at the reduced residual level contemplated by the industrial psychologist.

[52] Basis IIB produces a future loss of earnings of R1 917 660.00.

[53] Counsel did not ultimately ask the Court simply to award the amount under Basis IB. Instead, it was submitted that the Court should take the arithmetic average between Basis IB and Basis IIB.

[54] That calculation produces R2 417 393.50.

[55] The Plaintiff's heads expressly state that the figure of R2 417 393.50 represents the average of Basis IB and Basis IIB and that counsel considered such average fair and reasonable to both parties.

[56] The supplementary heads similarly submit that although the Plaintiff had made out a strong case for Basis IB, the average between the two scenarios should be adopted as a conservative approach.

[57] I pause to address an apparent inconsistency in the Plaintiff's earlier heads. Although the body of those heads identifies R2 417 393.50 as future loss of earnings, paragraph 7.3 subsequently describes the same amount as "past loss of earnings".

[58] Read in context, that description is plainly inconsistent with the basis upon which the amount was calculated and with the supplementary heads. The actuarial issue referred to this Court concerns future loss. I therefore do not treat R2 417 393.50, or any component of the Basis IB/IIB calculation under consideration, as an amount claimed for past loss of earnings.

BASIS IB

[59] The first question is whether Basis IB provides the appropriate foundation for the award, in my view it does not.

[60] The difficulty is not with the actuarial arithmetic. The actuary correctly quantified the scenario provided to him. The difficulty lies in the factual premise underlying that scenario.

[61] Basis IB assumes the cessation of the Plaintiff's present truck-driving income in 2026.

[62] At the time the matter was heard on 17 August 2026, that had not occurred. The Plaintiff remained employed as a truck driver and continued to earn an income.

[63] The expert evidence concerning the risks associated with his continued driving is substantial and cannot be ignored. But an opinion that employment ought to terminate is not the same thing as evidence that it has terminated.

[64] Nor does the evidence establish with sufficient certainty that termination will occur immediately following the judgment.

[65] To award damages on the Basis IB assumption would therefore treat the Plaintiff's current income stream as having already ceased when the objective evidence demonstrates otherwise.

[66] That would create a real risk of compensating the Plaintiff for income which he continues to earn.

[67] I accordingly decline to adopt Basis IB.

THE PROPOSED AVERAGING OF BASIS IB AND BASIS IIB

[68] The next question is whether the uncertainty between the two scenarios should be addressed by accepting counsel's proposed average of R2 417 393.50.

[69] I am not persuaded that this is the appropriate approach.

[70] The amount of R2 417 393.50 does not correspond with a separate employment scenario formulated by Mr Peverett.

[71] Nor does it represent an independent actuarial scenario formulated by Mr Whittaker.

[72] It is the mathematical midpoint between two different factual hypotheses.

[73] The difficulty with simply averaging them is that the two scenarios are not merely different numerical outcomes. They are founded upon materially different assumptions concerning the Plaintiff's future working life.

[74] Basis IB assumes cessation of his present employment in 2026. Basis IIB assumes continued employment until age 55.

[75] Averaging the monetary results does not determine the probability of either underlying factual event. Nor does it identify a third probable date upon which the Plaintiff will cease working.

[76] Bailey does not require a Court confronted with uncertainty to split the difference between competing actuarial scenarios. It requires the Court to assess future loss upon assumptions grounded as far as reasonably possible in the evidence.

[77] Where one of the available scenarios more closely reflects the proven facts and probabilities, it is preferable to adopt that scenario rather than create an arithmetic compromise which has no independent evidential foundation.

BASIS IIB

[78] In my view Basis IIB is the scenario which most appropriately reconciles the Plaintiff's present employment with the evidence concerning his future occupational vulnerability.

[79] It begins with the objective fact that the Plaintiff remains employed as a truck driver.

[80] It therefore does not compensate him on the assumption that an income stream which presently exists has already disappeared.

[81] At the same time, it does not assume that his present employment will continue unaffected until the ordinary retirement age of 65.

[82] There is substantial evidence supporting the probability of premature curtailment of his truck-driving career.

[83] The occupational therapists consider him no longer suited to his present occupation and anticipate early retirement if he continues in that capacity.

[84] Ms de Villiers' psychomotor assessment identifies deficits which bear directly upon the safe performance of professional driving and concludes that he presently constitutes an elevated driving risk.

[85] Mr Peverett integrates those findings with the Plaintiff's transferable skills, labour-market factors and workplace circumstances and concludes that his future formal employment prospects are materially compromised.

[86] The age-55 assumption under Scenario 2 is also not an invention of the actuary. It originates in the industrial psychologist's postulation and is expressly linked to the age at which the Plaintiff's pension capital becomes accessible. It is supported by the occupational therapists' anticipation of early retirement.

[87] Basis IIB furthermore recognises that the Plaintiff will retain some residual earning capacity after leaving truck driving. It therefore does not proceed upon an assumption of complete future unemployability.

[88] In this respect it reflects the principle in Rudman: the Court compensates patrimonial loss, not impairment in the abstract.

[89] It is also consistent with Kerridge, which requires the fact of loss to be established before the Court makes the best use of the available evidence to quantify it.

[90] The fact that the Plaintiff remains employed is not inconsistent with this conclusion. Mokoena illustrates that continued earnings may coexist with a diminished future earning capacity where the evidence establishes that the claimant's employment is vulnerable and that his future position in the labour market has materially deteriorated.

[91] Equally, the caution expressed in Ngobeni remains important. Expert conclusions and actuarial calculations cannot substitute for proof of the factual foundation of the loss.

[92] In the present matter there is, however, a factual and expert foundation for concluding that the Plaintiff will probably not sustain his current truck-driving career until age 65.

[93] The evidence goes beyond a generalised assertion that an injured employee is disadvantaged in the labour market. The identified impairments relate directly to the functions inherent in professional driving.

[94] The precise date upon which the Plaintiff will cease working cannot be known. That is an inevitable feature of the assessment of future damages.

[95] The Court is nevertheless required to determine the matter upon the probabilities rather than insist upon certainty which the nature of the enquiry cannot provide.

[96] Of the actuarial scenarios placed before Court, Basis IIB most closely accords with those probabilities.

[97] I accordingly find that the Plaintiff has established that his impaired earning capacity will probably result in future patrimonial loss and that the appropriate quantification of that loss is R1 917 660.00.

CONCLUSION

[98] The fact that the Plaintiff remained employed at the date of the hearing does not preclude an award for future loss of earnings or earning capacity.

[99] It does, however, constitute an important fact which the Court must incorporate into the assessment.

[100] The evidence establishes that the Plaintiff retains present earning capacity and continues to derive an income from truck driving. It equally establishes that his ability safely and sustainably to continue in that occupation until normal retirement has been materially compromised.

[101] Basis IB does not adequately accommodate the first of those considerations because it assumes cessation of the present income stream in 2026.

[102] The proposed average of Basis IB and Basis IIB is not supported by an independently identified factual scenario and does not resolve the underlying question of probability.

[103] Basis IIB accommodates both considerations. It recognises the Plaintiff's continued present employment while providing for the probable premature termination of his truck-driving career at age 55 and his reduced residual earning capacity thereafter.

[104] I am accordingly satisfied that R1 917 660.00 constitutes fair and reasonable compensation for the Plaintiff's proven future loss of earnings and/or earning capacity.

ORDER

In the result, the following order is made:

1. Prayers 1 and 2 of the Plaintiff's application in terms of Uniform Rule 38(2) are granted.
2. The Defendant is liable to pay 100% of the Plaintiff's proven damages in respect of the two motor vehicle collisions which occurred on 21 December 2020 and 22 June 2022.
3. The Defendant is ordered to pay the capital amount of R1 917 660.00 (One Million Nine Hundred and Seventeen Thousand Six Hundred and Sixty Rand) in respect of future loss of earnings and/or earning capacity arising from both accidents mentioned in paragraph 2 above, to the Plaintiff's attorneys of record, Erasmus de Klerk Inc., by direct transfer into their trust account, the details of which are as follows:
Account holder: Erasmus de Klerk Inc.
Bank: ABSA Bank
Branch Number: 6[...]
Account Number: 4[...]
Type of account: Trust account
Reference No.: M Labuschagne-J2090//J388
4. The capital amount referred to in paragraph 3 above:

- 4.1 Shall be payable within 180 days from the date of this order; and
 - 4.2 Shall bear interest at the prescribed rate of 10.25% per annum, calculated from and including the 181st calendar day after the date of this order to and including the date of payment thereof.
- 5. The Defendant is ordered to provide the Plaintiff with a written undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 within 180 days from the date of this order, for 100% of the costs of the future accommodation of the Plaintiff in a hospital or nursing home, or treatment of or rendering of a service to the Plaintiff, or supplying of goods to the Plaintiff, arising out of the injuries sustained by the Plaintiff in the motor vehicle collisions of 21 December 2020 and 22 June 2022, as set out in the medico-legal reports obtained on behalf of the Plaintiff, after such costs have been incurred and upon proof thereof.
- 6. Subject to the discretion of the Taxing Master, the Defendant shall pay the Plaintiff's taxed or agreed party-and-party costs on the High Court scale, which costs shall include, but are not limited to:
 - 6.1 The costs consequent upon obtaining all the medico-legal and expert reports, addendum medico-legal reports and actuarial reports, the qualifying and reservation fees, if any, of such experts, as well as the Plaintiff's accommodation and travelling expenses incurred in attending upon the Plaintiff's experts, namely:
 - 6.1.1 Dr T Enslin (Serious Injury Assessor);
 - 6.1.2 Dr HB Enslin (Orthopaedic Surgeon);
 - 6.1.3 Alison Crosbie (Occupational Therapist);
 - 6.1.4 Dr M Mazabow (Neuropsychologist);
 - 6.1.5 Dr J Watts (Clinical Psychologist);
 - 6.1.6 CPRD (Motor Vehicle Assessment);
 - 6.1.7 Dr L Berkowitz (Plastic and Reconstructive Surgeon);
 - 6.1.8 Marc Peverett (Industrial Psychologist); and
 - 6.1.9 Algorithm Consultants and Actuaries CC (Actuary);

- 6.2 The costs of counsel and the attorney on Scale C, including preparation,
drafting of heads of argument and supplementary heads of argument,
perusal, and counsel's day fee for 17 August 2026;
- 6.3 The costs of the Plaintiff's accommodation and transportation to attend Court; and
- 6.4 The costs of the application in terms of Uniform Rule 38(2) and the costs
associated with obtaining default judgment.
- 6.5 The above costs shall be paid into the trust account referred to in paragraph 3 above.
7. The following provisions shall apply to the determination and payment of the taxed or agreed costs referred to in paragraph 6 above:
- 7.1 The Plaintiff shall serve the notice of taxation on the Defendant; and
- 7.2 The taxed or agreed costs shall be payable within 180 days from the date of taxation and shall bear interest at the prescribed rate of 10.25% per annum, calculated from and including the 181st calendar day after the date of taxation to and including the date of payment thereof.
8. The issue of general damages is separated in terms of Uniform Rule 33(4) and
postponed sine die.
9. The Defendant is ordered, within 10 (ten) days from the date of this order, to notify the Plaintiff in writing whether it accepts that the Plaintiff is entitled to an award of general damages. Should the Defendant fail to notify the Plaintiff as ordered, the Plaintiff shall be entitled to refer the issue to the HPCSA Appeals Tribunal for determination.
10. It is noted that there exists a contingency fee agreement between the Plaintiff and his attorney of record, Erasmus de Klerk Inc.

MBOWENI AJ

**ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA**

Date of Hearing : 17 August 2026

Date of Judgment : 07 September 2026

Appearances:

Counsel for the Plaintiff : Adv MJ Fourie

Instructed by Erasmus De Klerk Attorneys