

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 4294/2021

DATE: 2025-02-28

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 28/2/2025

SIGNATURE [Redacted Signature]

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In the matter between

MALOTHE SIBONGISE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

20 **WEIDEMAN, AJ:**

This matter was number 39 on the Default Judgment roll of 20 February 2025. After presentation of the matter by counsel for the plaintiff, it was agreed that the matter would stand down for further calculations to be done as per the court's request and suggestion.

The revised calculations having now become available, the matter was recalled as matter number 41 on the present roll.

On the previous occasion of its enrolment a Rule 38(2) application was moved and granted allowing the plaintiff to present evidence on affidavit. An application to separate the aspect of general damages from the remainder of the issues was also heard, but I have since been advised that
10 this head of damage has become settled.

I was further advised that the aspect of liability had also previously been settled on the basis that the defendant accepts 100% liability for the plaintiff's damages.

The injuries on which this claim is based are listed as follows in paragraph 7 of the plaintiff's Particulars of Claim which appear at CaseLines 02-38:

1. A severe head injury;
- 20 2. A fracture of the left femur;
3. Soft tissue injury to the left knee.

The claim as formulated in the Particulars of Claim is of historical significance only, the only relevant figure being the claim for future loss of earnings and in respect of which

the amended claim is to be found on CaseLines 03-13.

Looking at the expert reports filed of record, the first that is of relevance is that of the neurosurgeon, Dr Ntimbane who diagnosed a moderate traumatic brain injury. The reports of Ms K Trollip, educational psychologist and the Industrial Psychologist are of relevance, both in respect of confirmation that the plaintiff was a special needs candidate before the accident.

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There is a difference in the reporting between the two experts as to how many grades and which grades the patient had failed before the accident, the one stating that it was grades 4 and 5 and the other, grades 1, 3 and 5.

The actuarial report which appears on CaseLines at 08-294 and which was prepared subsequent to the matter standing down last week reflects a scenario where the plaintiff would have secured a modest grade 12 qualification, had the
20 accident not occurred. That being the case, the projected future income is in accordance with what could reasonably be expected for somebody in his position.

The actuarial report reflects actuarially calculated figures for three periods in the plaintiff's projected future career.

The larger figure represents the projected uninjured income until the age of 55 and amounts to R3 507 482.00 prior to the deduction of contingencies. The period of this calculation spans 34 years and, on that basis, the contingency deduction is 34%, which yields a net amount of R2 314 938.00.

The second part of the calculation reflects the plaintiff's projected future income between the ages of 55 and 60 and
10 in respect of which a 39% contingency deduction is applied, reducing the amount from R382 015.00 to R233 029.00.

The last segment is the income from 60 to 65 and in respect of which the contingency deduction is 40.25%. The gross amount of R302 770.00 in respect of this period is therefore reduced to R180 905.00. The total of the three net amounts represents the defendant's liability to the plaintiff in respect of future loss of income and impairment of earning capacity in the sum of R2 728 872.00.

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My order is therefore as follows:

1. The plaintiff's application in terms of rule 38(2) is granted;
2. The defendant is liable to the plaintiff in respect of future loss of income and impairment of earning

capacity in the sum of R2 728 872.00;

3. The defendant is liable to the plaintiff in respect of the plaintiff's party and party costs as taxed or agreed, counsel's fees to be on scale B and the cost order to include the cost of the *curator ad litem*.
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WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 28/2/2025