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

CASE NO: 003034/2019

DATE: 12-03-2025

**DELETE WHICHEVER IS NOT APPLICABLE**

**(1) REPORTABLE: NO.**

**(2) OF INTEREST TO OTHER JUDGES: NO.**

**(3) REVISED.**

**DATE**

**SIGNATURE**

In the matter between

MOTLOUNG TSOANELO LERATO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

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**JUDGMENT**

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**WEIDEMAN, AJ:** In respect of this matter there were three applications before this Court. The first of these was a Rule 28 notice of intention to amend the gender of the plaintiff in paragraph 1 of the particulars of claim. This is to correct the reference to the plaintiff as male where it is clear that she is in

The Court enquired whether a representative of the defendant was present to consider the proposed amendment, when nobody rose on behalf of the defendant, the amendment was granted, resulting in paragraph 1 of the particulars of claim now reading as follows: *"the plaintiff is Lerato Motloun, an adult female born on 5 March 2002, who currently resides at 9[...] N[...] A[...], M[...] Khumbeka, who claims in her personal capacity."*

The second application before Court was an application in terms of Rule 33(4) to separate out the claim for general damages and to postpone same *sine die* as the defendant had not yet taken a decision as to the seriousness of the plaintiff's injuries as provided for in the regulations to the Road Accident Fund Act. This application was also granted.

The third application was an application in terms of Rule 38(2) to enable the plaintiff to lead evidence on affidavit, read with section 3(1)(c) of the Law of Evidence Amendment Act. This application was also granted.

The plaintiff's amendment, contained on CaseLines 01b-2, had the effect that the claim for past hospital and medical expenses were omitted. As such, only the plaintiff's claims for future medical expenses and future loss of income were before Court.

In respect of the claim for future medical expenses there was sufficient evidence in the various medico-legal reports that the plaintiff would require future medical treatment and as such the inclusion of an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act would follow as part of the order.

Turning to the aspect of loss of income, the plaintiff sustained a

fracture of the right femur and a sprain ligamentous injury of the left ankle. The plaintiff had a school career which cannot be described as normal and which included failures before the accident. Following the accident, the plaintiff changed schools to re - do Grade 11 which would enable her to sit for Gr 12 for the third time, which she then passed. This suggests that the plaintiff had a desire to improve her academic qualifications, which in turn would have an effect on her employability in the broader labour market.

The projected career paths as contained in the educational and industrial psychologist's reports are not outside the realm of possibility and for the purposes of my findings, I accept the career paths as contained in these reports. This has been quantified by an actuary, whose calculations appear in paragraph 10 of the actuarial report uploaded to CaseLines 03-134.

I am of the view that the proposed contingencies do not address the plaintiff's circumstances adequately. In particular it does not take into consideration whether the income scales used in the calculation would be applicable to the area of KwaZulu-Natal where the plaintiff resides.

Using the calculated figures of R7 550 439 and R4 368 400 as a point of departure, I am of the opinion that the difference between the two calculations adequately provides for such impediments as the injuries sustained in the accused may have had on the plaintiff's future employability. The relevance of this statement is that I intend to apply the same contingency deduction on both the "having regard to" and the "but for" figures.

Considering the period for which the calculation provides, I have exercised my discretion and used 1% per annum. The contingency deduction is therefore 42%.

If 42% is deducted from both the amounts of R7 550 439 and R4 368 400 and the resulting netto amounts deducted from each other, the result is R1 845 583. This is the amount that will be awarded in respect of loss of income and impairment of earning capacity.

My order is therefore as follows:

- 1.The plaintiff's application in terms of Rule 28 is granted;
- 2.The plaintiff's application in terms of Rule 33(4) in respect of the postponement of general damages *sine die* is granted;
- 3.The plaintiff's application in terms of Rule 38(2) is granted;
- 4.The defendant shall be liable for 100% of such damages as the plaintiff may be able to substantiate;
- 5.The defendant shall provide the plaintiff with an unlimited undertaking in terms of section 17(4)(a) of the Road Accident Fund Act for such future hospital, medical and ancillary expenses as the plaintiff may require as a result of injuries sustained in the accident;
- 6.The defendant shall pay the plaintiff the amount of R1 845 583 in respect of loss of earnings and impairment of earning capacity;
- 7.The plaintiff is entitled to her party and party costs as taxed or agreed. Counsel's fees to be on Scale B.

**WEIDEMAN, AJ**  
**JUDGE OF THE HIGH COURT**  
**DATE: .....**