

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

Case No:5734/20

- (1) REPORTABLE: ~~YES~~/ NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED: YES / ~~NO~~

DATE 16 MAY 2025

SIGNATURE

In the matter between:

K[...], C[...] R[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

WINDELL J

INTRODUCTION

[1] The plaintiff, Mr C[...] R[...] K[...], instituted action against the Road Accident Fund (RAF) seeking damages arising from a motor vehicle collision that allegedly occurred on 2 May 2019 along Concord Road in Nancefield, Johannesburg. The relief sought against the RAF includes (a) an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 (the Act), (b) compensation for past and future loss of income in the amount of R5 649 714.00, and (c) general damages in the sum of R3 000 000.00.

[2] The defendant has not admitted liability, and both the merits and the quantum of the plaintiff's claim remain in dispute. However, the claim for general damages was postponed. Accordingly, the only heads of damages to be determined by this Court at this stage are the plaintiff's claims for past and future loss of income.

[3] At trial, the plaintiff testified in support of his claim. The defendant elected not to call any witnesses and did not present an alternative version contesting the plaintiff's factual account. The medico-legal reports prepared by the plaintiff's expert witnesses were admitted into evidence by agreement, in terms of Rule 38 of the Uniform Rules of Court. These reports remained unchallenged and uncontroverted, thereby justifying the determination of the matter without the need for further oral testimony. No expert witnesses were instructed or called on behalf of the defendant.

[4] The plaintiff, born on 23 November 1998, was 21 years old at the time of the accident and is currently 26 years of age. He matriculated in 2016 and was, at the time of the collision, employed as a supervisor at SteenKhan Enterprises, earning a monthly income of R12 000 in cash. As he did not have a personal bank account, he saved his earnings by depositing them into his sister's account.

[5] On the evening in question, Mr K[...] and a friend were visiting the friend's uncle. At approximately 20h00, they departed with the intention of spending the night at the uncle's residence. Mr K[...] was seated in the back seat of the vehicle when the collision occurred. He recalls hearing a loud bang and subsequently regained consciousness only upon arrival at the hospital.

[6] The plaintiff subsequently discovered that another motor vehicle had collided with the vehicle he was travelling in from behind. In his particulars of claim, it is alleged that the driver of the insured vehicle was negligent in, among other respects, failing to keep a proper lookout and failing to apply the brakes properly or at all.

[7] Mr K[...] was admitted to Chris Hani Baragwanath Hospital, where he remained for eight days. He sustained multiple serious injuries, including a traumatic brain injury, fractures, and various soft tissue injuries. Among the most significant of

these were a subarachnoid haemorrhage and a fracture to the C2 vertebra in the cervical spine. He also suffered a broken nose and a degloving injury to the scalp.

[8] During his hospitalisation, Mr K[...] underwent a procedure to alleviate intracranial pressure caused by bleeding in the brain. The surgical intervention involved drilling into the skull to drain accumulated blood. He testified that he also received surgical treatment for radial nerve palsy and damage to the nerve trunk in his left arm. Since the incident, he has suffered from chronic sinusitis and enduring pain in his neck and left upper limb.

[9] As a result of these injuries, Mr K[...] has not returned to work since the accident. His former role as a supervisor was physically demanding and involved heavy lifting, driving, and oversight of operations—all of which are now beyond his physical capability.

[10] Mr K[...]’s condition has progressively deteriorated. On days marked by cold or inclement weather, his symptoms intensify. He previously worked for MyWay Insurance before his appointment at SteenKhan Enterprises, but as a result of his injuries, he is unable to do any work that requires concentration. This is because he is required to take several medications daily to manage his pain, sometimes as many as five tablets in the morning. These medications cause side effects such as dizziness and drowsiness, which further impair his functioning.

[11] Moreover, the plaintiff is left-handed, and as a result of the injuries sustained to his left arm, he has been compelled to teach himself to write and perform daily tasks using his right hand. He also walks with a limp on the left side and experiences difficulty with basic functional activities—for example, he is unable to tie his shoelaces. These limitations not only have had a significant impact on his independence and quality of life, but also limits his ability to find suitable work.

[12] He stated that, cognitively, he has suffered lasting damage. He experiences ongoing issues with memory, attention, and processing speed. He also presents with emotional and behavioural changes: he has become irritable, easily agitated, and displays episodes of aggression, particularly in the home environment. His chronic

pain and headaches frequently disturb his sleep. Children tease him about his altered facial appearance, leaving him feeling humiliated and socially isolated. He describes feeling “cursed” and has expressed sadness and psychological distress.

[13] The RAF1 form and the affidavit in terms of section 19(f) of the Act were duly submitted in 2019. These documents as well as the hospital records from Chris Hani Baragwanath Hospital corroborate the plaintiff’s account, confirming both his admission and the nature of his injuries.

[14] It is trite that the slightest degree of negligence is sufficient to satisfy the requirements of negligence under section 17(1) of the Act and consequently to render the RAF liable. The defendant has not placed any competing version before the court to challenge the plaintiff’s claim that he was a passenger and a victim of a motor vehicle accident.

[15] I am satisfied that the accident occurred in the manner described by the plaintiff. Based upon the plaintiff’s version herein, the insured driver was undeniably at least 1% negligent with regard to the accident.¹ I am thus satisfied that the defendant is 100% liable for damages suffered by the plaintiff as a result of the motor vehicle accident.

DAMAGES

[16] The plaintiff sustained multiple traumatic injuries as a result of the accident. These included a mild traumatic brain injury accompanied by a subarachnoid haemorrhage; a fracture of the C2 vertebra; a fractured femur; and radial nerve damage, resulting in radial nerve palsy. He also suffered a degloving injury of the scalp, facial trauma, and a nasal fracture, which has since led to chronic sinusitis. The cumulative effect of these injuries has left the plaintiff with persistent chronic pain and long-term functional impairments.

¹ See “Van der Walt and Midgley and Cases” Vol 1 par 96, Cooper: Delictual liability in motor law; *Kabini v RAF* (26209/2018)[2020] ZAGPPHC 100 (19 February 2020) at para 21.

[17] He continues to suffer from a constellation of physical, cognitive, and psychological consequences, including chronic headaches, depression, suicidal ideation, and significant neurocognitive deficits.

[18] The expert reports admitted into evidence, which are relevant to the assessment of the plaintiff's damages, are summarised below. These reports provide detailed findings on the nature, extent, and long-term implications of the injuries sustained by the plaintiff, and serve as the basis for evaluating the damages claimed.

Orthopedic Surgeon

[19] Dr Dybala examined Mr K[...] on 19 January 2023 in relation to the injuries he sustained during the motor vehicle accident. His primary orthopaedic diagnoses included a fracture of the left femur, which was surgically treated with internal fixation; a fracture of the C2 vertebra in the cervical spine, which was managed conservatively; and radial nerve palsy on the left side, caused by trauma to the left arm, resulting in weakness and functional impairment of the upper limb. He opined that Mr K[...] also suffers from persistent chronic pain in the neck, left upper limb, and lower back, as well as soft tissue injuries affecting various regions, including the head and spine. These injuries continue to cause ongoing discomfort and have significantly reduced his functional capacity.

[20] Dr Dybala concluded that Mr K[...] has sustained serious long-term musculoskeletal impairments, particularly affecting his ability to engage in physically demanding work. The injuries, especially the radial nerve damage, continue to cause pain, weakness, and a significant reduction in the use of his left upper limb.

Neurosurgeon

[21] Dr L.F. Segwapa, a neurosurgeon, assessed Mr K[...] following the motor vehicle accident on 8 October 2019. Mr K[...] reported a loss of consciousness at the scene and hospital admission thereafter. According to Dr Segwapa, Mr K[...] sustained a mild traumatic brain injury. At the hospital, his Glasgow Coma Scale (GCS) score was recorded at 14/15, supporting the diagnosis of mild brain trauma. He also suffered a subarachnoid hemorrhage (where blood bleeds into the

subarachnoid space) as well as multiple facia fractures and lacerations on the scalp and face.

[22] At the time of assessment, Mr K[...] continued to experience persistent post-traumatic symptoms, including headaches, poor memory, impaired concentration, irritability, and mood changes. Dr Segwapa noted that these symptoms reflect ongoing neurocognitive sequelae of the brain injury and have impacted Mr K[...]’s functional ability, emotional state, and capacity to engage in employment or education.

[23] Dr Segwapa concluded that the neurocognitive and behavioural effects are likely to be permanent. In his view, the injury has caused a material decline in Mr K[...]’s cognitive efficiency, with adverse implications for his future occupational potential and psychological wellbeing.

Occupational Therapist

[24] Mrs Eva Tshukudu, an occupational therapist, evaluated Mr K[...] on 11 February 2021. The assessment included clinical observations, interviews, and standardised functional tests. Mr K[...] reported ongoing physical pain, cognitive fatigue, and emotional distress that interfere with his daily activities and functional independence.

[25] Mrs Tshukudu noted that Mr K[...] exhibited limited endurance, reduced range of motion and strength in the left upper limb, and difficulties with fine and gross motor coordination. These physical limitations impacted his ability to perform basic and instrumental activities of daily living, such as lifting, driving, and sustained manual tasks. He also presented with poor concentration and memory lapses, which disrupted task planning and execution.

[26] The report concluded that Mr K[...] is not fit to return to his pre-accident occupation as a supervisor, which involved physical labour, multitasking, and responsibility for operational oversight. His physical and cognitive impairments would place him at risk of injury in such a setting and compromise his productivity and safety.

[27] According to Mrs Tshukudu, Mr K[...] would require ongoing occupational therapy, assistive devices, and a highly accommodating work environment should any form of employment be pursued in future. His long-term functional prognosis is poor, and he is unlikely to meet the demands of competitive open labour market employment without significant support.

Clinical Psychologist

[28] Ms Talita da Costa, a clinical psychologist, conducted a comprehensive psychological assessment of Mr K[...] on 16 February 2021. The evaluation involved clinical interviews, collateral information from Mr K[...]’s sister, and a battery of psychometric tests. At the time of assessment, Mr K[...] presented with symptoms indicative of significant psychological distress, including low mood, emotional lability, social withdrawal, sleep disturbances, and intrusive recollections of the accident.

[29] According to Ms da Costa, Mr K[...] exhibits clear signs of major depressive disorder and post-traumatic stress disorder (PTSD). He also demonstrated evidence of cognitive inefficiency, notably in areas of attention, memory, and executive functioning. These impairments were consistent with the sequelae of a mild traumatic brain injury and were further exacerbated by his psychological state.

[30] The report notes that Mr K[...] has developed maladaptive coping mechanisms, such as emotional outbursts and irritability, and has become socially withdrawn and dependent on family support. His difficulties with emotional regulation have strained interpersonal relationships and undermined his self-esteem. He reported feeling ashamed of his physical appearance, which has made him a target of ridicule among children in his community, further aggravating his social isolation and psychological vulnerability.

[31] Ms da Costa concluded that Mr K[...]’s psychological and cognitive symptoms are chronic in nature and unlikely to resolve without intensive and ongoing psychotherapeutic intervention. His prognosis is guarded, and his mental health challenges are expected to continue impairing his ability to function independently, maintain employment, or pursue further education or training.

Industrial Psychologist

[32] Ms Tryphina Maitin, an industrial psychologist, assessed Mr K[...]’s pre- and post-accident earning capacity, taking into account his educational background, employment history, and the impact of the injuries sustained in the motor vehicle accident. Prior to the accident, Mr K[...] had matriculated in 2016 and was employed as a supervisor at SteenKhan Enterprises, earning approximately R12 000 per month in cash. He was described as hardworking and motivated, with potential for further growth and development within the labour market.

[33] Based on the collateral information, occupational and psychological assessments, Ms Maitin opined that Mr K[...] would likely have progressed in his career, potentially securing more stable and better-paid employment in the formal sector over time. She projected that, had the accident not occurred, Mr K[...] would have continued working in supervisory or semi-skilled roles with earning capacity consistent with national benchmarks for individuals with similar profiles.

[34] Post-accident, Mr K[...]’s functional and cognitive impairments have severely compromised his employability. He is now considered uncompetitive in the open labour market, even in positions requiring minimal skill or physical effort. His chronic pain, emotional instability, cognitive deficits, and reduced physical ability significantly limit his ability to obtain or maintain employment.

[35] Ms Maitin concluded that Mr K[...]’s earning potential has been permanently diminished. In her view, he has been rendered occupationally incapacitated, and is unlikely to return to any form of gainful employment without extraordinary accommodations, which are not typical in most work environments.

Actuary

[36] Based on the inputs from other experts, the actuary calculated the plaintiff’s total past and future loss of income to be R5,050,106.50.

EVALUATION

[37] The plaintiff's injuries were not disputed, and the opinions expressed by the various expert witnesses stand uncontested. I am satisfied that, but for the accident, Mr K[...] would have continued working at SteenKhan Enterprises or obtained similar employment elsewhere in a comparable capacity. As a result of the accident, however, he has been left with physical, cognitive, and psychological impairments that have materially compromised his functional abilities. These post-accident deficiencies have significantly reduced his employment prospects and diminished his earning capacity. He is no longer able to compete equally with his peers in the open labour market.

[38] I am not persuaded, however, that Mr K[...] is permanently unemployable. While his ability to engage in work has been adversely affected, I accept that he retains a degree of residual earning potential. His capacity to generate income is limited but not entirely extinguished.

[39] Robert Koch's work is often used to determine the contingency deductions in assessing damages. Courts are however not bound by it and can adjust the percentage based on the specific facts of the case. Koch uses a "sliding scale," where a percentage is deducted based on the person's age and remaining working life. For example, a younger person might have a higher deduction than an older person, as they have a longer potential working life and more factors to consider. A common rule of thumb is a 0.5% deduction per year to retirement age, which can result in a 25% deduction for a child, 20% for a youth, and 10% for a middle-aged person.

[40] The plaintiff's actuary applied a 25% contingency deduction to the pre-accident scenario. In my view, that figure is unduly low when assessed against the socio-economic realities of the South African context. It is well established that contingency deductions must take into account not only actuarial guidelines, such as those proposed by Koch, but also the lived circumstances of the claimant. South Africa faces a range of systemic challenges that increase the risk of interrupted or unstable employment, including high unemployment rates, limited access to stable long-term work in the informal and semi-skilled sectors, and socio-economic inequality. In this context, a higher pre-accident contingency is warranted to reflect

the real-world risks that the plaintiff, as a relatively young worker without tertiary qualifications and employed in a physically demanding role, would have faced in maintaining consistent earnings over the course of his working life.

[41] In the circumstances, the plaintiff's projected income figures for the pre- and post-accident scenarios remain the same. However, a higher-than-usual contingency deduction is justified in both instances. In respect of the **pre-accident income**, an elevated contingency is warranted due to the socio-economic risks inherent in the South African labour market, particularly for a young worker without tertiary education and employed in a physically intensive role. In relation to the **post-accident income**, an even greater deduction is appropriate to reflect the plaintiff's diminished competitiveness, reduced functional capacity, and the uncertainty surrounding his residual earning potential. Although Mr K[...] is not permanently unemployable, his ability to secure and sustain gainful employment is materially constrained, and the higher post-accident contingency appropriately accounts for this reality.

[42] Applying 35% pre-accident and 70% post accident the plaintiff's past and future loss of income is as follows:

	PRE ACCIDENT	POST ACCIDENT	LOSS
Past Income	604 153	22000	
Contingencies: 5%	30 208	1100	
Nett Past Income:	573 945	20 900	553 045
 Future Income	 5 996 082	 5 996 082	
Contingencies:	35%	70%	
Nett Future Income	3 897 453	1 798 825	2 098 628

[43] In the result, the following order is made:

1. The defendant is ordered to compensate the plaintiff 100% of his proven damages.
2. The defendant is ordered to make the following payment:
 - 2.1 An amount of R2 651 673 in respect of past and future loss of income.
3. The draft order is marked X and made an order of court .

L. WINDELL

JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 16 May 2025.

APPEARANCES

Counsel for the plaintiff:	Mr V. Malema
Instructed by:	Mhingeni Masinga Attorneys
Counsel for the defendant:	Ms N. Moyo
Instructed by:	Office of the State Attorney, Johannesburg
Date of hearing:	17 April 2025
Date of judgment:	16 May 2025