

**REPUBLIC OF SOUTH AFRICA**



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

**DELETE WHICHEVER IS NOT APPLICABLE:**

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

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

(3) REVISED:

DATE: 11/06/2025 SIGNATURE: [REDACTED]

**CASE NR: 22026/2021**

In the matter between:

**TSHEPO PATRICK MOKOENA**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

*Delivered: This judgment was prepared and authored by the Acting 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 of the judgment is deemed to be 11 June 2025.*

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## JUDGMENT

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### MARUMOAGAE AJ

1. This is a delictual claim for damages, in which the plaintiff seeks to hold the defendant liable for the injuries he sustained in a motor vehicle collision that occurred on September 7, 2019, in which he was a passenger.
2. The defendant conceded that the collision resulted from the sole negligence of its insured driver. It offered to settle the issue of negligence concerning the motor vehicle collision, as the insured driver was solely negligent in causing the motor vehicle accident.
3. The defendant proceeded to make an offer for the payment of general damages to the plaintiff in the amount of R1 500 000.00, which the plaintiff accepted. The issue the court is called to determine is the amount of past and future loss of earnings, as well as future medical and related expenses that the defendant should pay to the plaintiff.
4. The plaintiff claims an amount of R 2,581,178.45 for past and future loss of earnings, and that the defendant be ordered to make an undertaking to cover the plaintiff's future medical and hospital expenses.
5. The plaintiff quantified his claim through the assistance of six experts: an orthopaedic surgeon, a neurosurgeon, a clinical psychologist, an occupational therapist, an industrial psychologist, and an actuary. The defendant did not object to the expertise and findings of any of these experts. The reports of these experts were admitted into evidence.
6. The plaintiff's case is that:

- 6.1. He was born on December 20, 1993. On 7 September 2019, he was a passenger in a motor vehicle driven by an insured driver. The insured driver lost control of the motor vehicle, causing it to overturn.
  - 6.2. Due to this accident, the plaintiff was hospitalised and received medical treatment. He suffered severe bodily injuries consisting of left parietal contusion haemorrhage, maxilla and nasal bone fracture, T1 transverse process fracture. The plaintiff contends that he was disabled and disfigured, and suffered pain and loss of amenities of life.
7. The orthopaedic surgeon's report indicated that due to the accident, the plaintiff:
- 7.1. sustained the following injuries: head lacerations; upper lip lacerations; teeth missing; back fracture; and both hands abrasions;
  - 7.2. experiences intermittent back pain, which is exacerbated by prolonged sitting and lifting objects;
  - 7.3. pain started after the accident and is associated with his left lower limb pins and needles sensation;
  - 7.4. experiences recurring headaches and fits;
  - 7.5. enjoyed playing soccer before the accident but stopped doing so afterward;
  - 7.6. is currently taking pain medication that he collects from the clinic.
8. The orthopaedic surgeon noted further that the plaintiff:
- 8.1. did not show any sign of systemic disease;
  - 8.2. had multiple small scars on his scalp;

- 8.3. had no difficulty sitting and that there was no deformity, but recorded paraspinal muscle tenderness with no sign of stenosis;
- 8.4. suffered pain following injuries he sustained in the accident and continues to suffer the discomfort of chronic pain in his back;
- 8.5. radiculopathy is affecting his sensation;
- 8.6. has signs of nerve roots compression, which is causing his limb to have reduced sensation.
- 8.7. pain can be managed with analgesia and physiotherapy, however, the radiculopathy may progress to warrant decompression after MRI scan and nerve conduction studies;
- 8.8. may later develop post-traumatic spondylosis of the back that may result in decompression and fusion after MRI scan, leading to his pain becoming chronic;
- 8.9. will not have normal back function like he did before the accident.

9. According to the orthopaedic surgeon, the plaintiff:

- 9.1. will experience difficulties with employment that requires walking, standing, and lifting objects;
- 9.2. will also have difficulties engaging in activities that require walking, standing, and lifting objects as he did before the accident;
- 9.3. orthopaedic injuries sustained in the accident are not likely to influence the plaintiff's natural survival;
- 9.4. will need to consult various medical practitioners intermittently, and will need to purchase prescription analgesics and steroidal anti-inflammatory drugs periodically to manage his pain.

10. The neurosurgeon's report indicated that the plaintiff was healthy before the accident, and due to the accident he:

10.1. has difficulty with concentration and memory disturbances with headaches;

10.2. has epileptic seizures;

10.3. experienced head trauma, loss of awareness, and amnesia;

10.4. sustained severe head injury and teeth fracture;

10.5. has difficulty performing the tasks he performed before the accident;

10.6. will need future medical treatment which will include costs associated with analgesia, physiotherapy, psychotherapy, general practitioner, epilepsy treatment, MRI scan, and thoracic fusion revision,

11. The clinical psychologist's report indicated that before the accident, the plaintiff was physically and psychologically healthy, with no history of psychiatric or psychological disorders and no previous head trauma, loss of consciousness, epilepsy, or neurocognitive deficits. After the accident, he sustained headaches, seizures, and back pain.

12. The clinical psychologist opined that the plaintiff:

12.1. is likely suffering from post-traumatic stress disorder with major depression and severe feelings of anxiety due to the accident;

12.2. has been negatively impacted by the accident and will need psychological assistance to address his difficulties;

12.3. cognitive deficits are likely to impact his future academic and occupational productivity;

- 12.4. mental challenges are expected to have a negative impact on his occupational and interpersonal functioning as well as his enjoyment of life.
13. The clinical psychologist noted that at the time of the accident, the plaintiff was working as a general worker at a construction company. The plaintiff's highest level of education is standard 4. The occupational therapist's report indicated that at the time of the accident, the plaintiff earned approximately R 4,500.00.
14. The occupational therapist noted that the plaintiff's work required prolonged periods of standing, walking, and dynamic use of both lower and upper limbs, as well as bilateral handling of heavy loads. Further, it was justified based on his injuries that the plaintiff never resumed his employment post the accident.
15. According to the occupational therapist, the plaintiff:
- 15.1. after the accident, could not lift or carry heavy items and he struggled to stand or walk for prolonged periods, and cannot chew or bite hard food, and consume too cold or too hot beverages;
  - 15.2. no longer has the physical and functional capacity to execute his pre-accident occupational duties effectively;
  - 15.3. currently presents with a residual physical work capacity to engage in sedentary to light to low level medium physical strength occupations carried unilaterally with the use of only the left arm;
  - 15.4. will have reduced efficacy levels in the performance of occupations that require high levels of cognitive and executive functioning due to the sequelae of the head injury;
  - 15.5. presence of epilepsy precludes him from executing duties that require working at elevated heights, working around open fires, working with dangerous chemicals or weapons, and executing duties that entail professional driving;

- 15.6. is suitable for unskilled to trainable in semi-skilled occupations, operating in sheltered to empathetic employment settings, where reasonable accommodation can be provided for his deficits;
- 15.7. will never be able to return to his pre-accident level of functioning due to physical, psychological, and cognitive deficits that resulted from the injuries sustained in the accident; and
- 15.8. injuries sustained in the accident left him with an occupational dysfunction and significantly curtailed his career choices, thus making it hard for him to re-enter the employment market.
16. The industrial psychologist assessed the plaintiff's career path and earnings potential. She opined that the plaintiff would have continued in the same employment had it not been for the accident and would have continued working until he reached retirement age. She is of the further view that the plaintiff will be unable to compete fairly with able-bodied persons in the workplace. Furthermore, the plaintiff should be compensated for the loss of amenities, pain and suffering resulting from the accident, as well as future loss of amenities and pain and suffering related to the treatment resulting from the accident.
17. Finally, the court was also provided with the actuary's report. In this report, the plaintiff's past and future losses were calculated without applying any contingency deductions. The report stated that the court or the plaintiff may decide to make an allowance for unforeseen contingencies. The net past loss of income was calculated to be R 203, 672,00 and net future loss to be R 3, 210, 743 ,00.
18. It was argued on behalf of the plaintiff that the court should accept the actuarial calculation of the plaintiff, but apply a 15% contingency deduction on the actuary's proposed past loss of earnings amount and a 25% contingency deduction on the proposed future loss of earnings. In other words, it was proposed that an amount of R 30,550.80 be deducted from R 203 672,00 and R 802 685 75 be deducted from R 3,210,743,00. If these deductions are to be made, the plaintiff would be paid amounts of R 173,121,20 and R 2,408,057.00 for past and future loss of earnings, respectively. The total payable amount would be R 2, 581,178,45.

19. In *N.P.S obo Z.S v Road Accident Fund*, it was held that:

*'[i]t is trite that in determining a fair and reasonable compensation for loss of income or earning capacity, a court has a wide discretion. That discretion needs to be exercised judicially. In determining future loss of income or earnings capacity one has to compare what the claimant would have earned but for the incident with what he would likely to have earned after the incident. The future loss represents the difference between the pre-morbid and post-morbid earnings after the application of the appropriate contingencies'.<sup>1</sup>*

20. The *locus classicus* dealing with the determination of damages for loss of earning capacity is the then Appellate Division's case of *Southern Insurance Association Ltd V Bailey No*, where it was held that:

*'[a]ny enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss'.<sup>2</sup>*

21. The court further held that there are two possible approaches that the court that is undertaking such an inquiry can consider:

*'[o]ne is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative'.<sup>3</sup>*

22. Mr Kutama, on behalf of the plaintiff, referred the court to the Supreme Court of Appeal case of *Road Accident Fund v Kerridge*, where it was held that:

*'[a]ny claim for future loss of earning capacity requires a comparison of what a claimant would have earned had the accident not occurred with what a claimant is likely to earn*

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<sup>1</sup> (3614/2021) [2024] ZAECKHC 87 (13 August 2024) para 14

<sup>2</sup> [1984] 1 All SA 360 (A) 368.

<sup>3</sup> Ibid.



*thereafter. The loss is the difference between the monetary value of the earning capacity immediately prior to the injury and immediately thereafter. This can never be a matter of exact mathematical calculation and is, of its nature, a highly speculative inquiry. All the court can do is make an estimate, which is often a very rough estimate, of the present value of the loss'.<sup>4</sup>*

23. The actuary's assessment of what the plaintiff earned before the accident and what he would have earned had the accident not occurred is an important tool that enables the court to carefully consider the injured person's earning capacity before and after the accident.
24. The facts presented to the court by the plaintiff play a crucial role in determining the contingencies that should be applied before and after the accident. The evidence before the court demonstrates that the plaintiff's quality of life has been severely impacted by the accident. Most significantly, the plaintiff has not worked since the accident, and his chances of finding employment have been significantly reduced.
25. While the actuary did not apply any contingencies, there is no need to deviate from his assessment of the plaintiff's past and future loss of earnings. The contingencies proposed by the plaintiff also appear to lead to fair and reasonable compensation, and there is no need to depart from them, despite this court's discretion. There is also no reason why the defendant should not be ordered to make an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996.
26. In the premises, the following order is made:
27. The Defendant is ordered to pay an amount of R 2,581,178.00 [ Two Million Five Hundred Eighty-One Thousand One Hundred and Seventy-Eight Rand] to the

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<sup>4</sup> [2019] 1 All SA 92 (SCA) para 40. The further further held that '[c]ourts have used actuarial calculations in an attempt to estimate the monetary value of the loss. These calculations are obviously dependent on the accuracy of the factual information provided by the various witnesses. In order to address life's unknown future hazards, an actuary will usually suggest that a court should determine the appropriate contingency deduction. Often a claimant, as a result of the injury, has to engage in less lucrative employment. The nature of the risks associated with the two career paths may differ widely. It is therefore appropriate to make different contingency deductions in respect of the pre-morbid and the post-morbid scenarios. The future loss will therefore be the shortfall between the two, once the appropriate contingencies have been applied' [para 41].

plaintiff's attorneys by way of a lump sum payment via an electronic transfer into their trust account within 180 (one hundred and eighty) calendar days of service of the order, by way of electronic transfer to the trust account, details of which are set out hereunder ("the capital payment") which is calculated as follows:

27.1 Past loss of earnings: R 173,121,20

27.2 Future loss of earnings: R 2, 408, 057

28. The Defendant is ordered to furnish the Plaintiff with an undertaking within 30 days from the date hereof, free from caveats and qualifications, in terms of section 17(4)(a) of the Road Accident Fund Act, for 100% (one hundred percent) 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 Plaintiff's injuries sustained in the motor vehicle collision which gave rise to the action, after such costs have been incurred and upon proof thereof. This includes the costs of the appointment of the case manager to activate and case manage the undertaking.

29. The Defendant shall pay the Plaintiff's taxed or agreed High Court Scale party and party costs, subject to the discretion of the Taxing Master, inclusive of the costs related to any motions and applications and including for the sake of clarity, but not limited, to the costs of the Plaintiff's instructing attorneys, and the correspondent attorneys in Pretoria (if any where appointed) as well as the other costs set out hereunder;

29.1. All proven and taxed costs incurred by the plaintiff's attorneys and advocate in this matter, including travel costs, preparation of brief and relevant case bundles, client and counsel consultation fees, and courier services.

29.2. Costs relating to all the expert witnesses procured by the plaintiff's attorneys in this matter, inclusive of their reports, consultations, and confirmatory affidavits.

30. In the event that the costs are not agreed:

30.1. The plaintiff shall serve a notice of taxation on the defendant;

30.2. The plaintiff shall allow the defendant 14 (fourteen) days from date of allocation to make payment of the taxed costs;

30.3. In the event of the defendant not making this payment timeously, the defendant shall pay interest at the prescribed by the Minister in terms of the Prescribed Rate of Interest Act 55 of 1975 (as amended) per annum on the amount then outstanding as provided for in section 17(3)(a) of the Road Accident Act 56 of 1996.

30.4. Such costs, subject to the discretion of the Taxing Master, shall include:

30.4.1. The reasonable costs incurred by the plaintiff in attending to the inspection in loco, which shall include, but not limited to, necessary travelling costs, time spent, meals and accommodation;

30.4.2. The reasonable costs incurred by the Assessor in attending to the Inspection in loco, which shall include but not limited to, necessary travelling costs, inspection time spent, telephone costs, costs of compiling report;

31. It is recorded that the Plaintiff entered into a contingency fee agreement with his attorney and that same complies with the Act.



**C MARUMOAGAE**

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION**

**PRETORIA**

COUNSEL FOR THE PLAINTIFF : Adv M Kutama

INSTRUCTED BY : M.G Mali Attorneys Inc

COUNSEL FOR THE DEFENDANT : No appearance

INSTRUCTED BY : No appearance

DATE OF CONSIDERATION : 4 June 2025

DATE OF JUDGMENT : 11 June 2025