

SOUTH AFRICA / JUDGMENT

Leeu v Road Accident Fund (38563/2019) [2025] ZAGPPHC 449 (14 April 2025)

[2025] ZAGPPHC 449**COURT**

North Gauteng High Court, Pretoria

BEFORE

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CASE / FILE NUMBER

38563/2019

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****Case****No: 38563/2019****(1) REPORTABLE: YES/NO****(2)****OF INTEREST TO THE JUDGES: YES/NO****(3)****REVISED: YES/NO****DATE:**

14TH APRIL 2025

SIGNATURE:

In

the matter between: PATRICIA
 MANTLAEEA LEEU
 PLAINTIFF
 and
 ROAD
 ACCIDENT FUND
 DEFENDANT

JUDGMENT

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. This judgment was prepared and authored by the Judge whose name is reflected herein and is handed down electronically by circulation to the parties/ their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand- down is deemed to be 14 April 2025.

SUDER, AJ

[1] The matter came before me for default judgment on 16th October 2024. The Plaintiff seeks compensation for bodily injuries sustained by the Plaintiff, allegedly arising from a motor vehicle

accident which occurred on 24th August 2016. The Plaintiff seeks compensation for past and future loss of earnings in the sum of R1,306,254-10 (One Million Three Hundred and Six Thousand, Two Hundred and Fifty-Four Rand and Ten Cents). The general damages aspect is to be postponed sine die as the Plaintiff has not been assessed by the Defendant for serious injury.

[2] The Plaintiff's applied in terms of Rule 38(2) of the Uniform Rules of Court for the expert affidavits to be admitted into evidence. The Rule 38(2) application was served on the Defendant ("the RAF") on 2 October 2024 via email. There was no opposition by the Defendant.

[3] The Rule 38(2) application was granted. It must be noted that where expert evidence is presented for the purpose of requesting default judgement, this court must exercise its discretion and be satisfied that the Plaintiff has a valid claim as opposed to simply granting default judgement for lack of appearance by the Defendant. It must be

further noted that while this court exercised its discretion in admitting the expert affidavits without viva voce evidence, this does not equate to this court being bound to accept the evidence for the purpose of granting default judgment.

- [4] The Plaintiff filed heads of argument. Plaintiff's counsel commenced argument stating that she would be referencing the heads of argument filed on record. Plaintiff's counsel was directed by this court to make reference to the expert reports when addressing this court on the heads of argument. In the Plaintiff's heads of argument the Plaintiff claims R1,156,826-00 (One Million One Hundred and Fifty- Six Thousand, Eight Hundred and Twenty-Six Rand)

in respect of loss of earnings.

- [5] The issues for determination before this court is the that of merits and quantum only in respect of past and future loss of earnings.

Background

to Plaintiff's claim

- [6] The Plaintiff commenced proceedings by issuing and serving summons against the Defendant. The Plaintiff averred in her particulars of claim that she was involved in an accident on 24th August 2016 at N12 Potchefstroom, resulting from a collision caused by the negligent driving of a motor vehicle bearing registration letters and numbers J[...] ("the insured vehicle").
- [7] The Plaintiff avers that the insured driver was negligent in the following respects:
- 7.1 He drove the vehicle at an excessive speed
 - 7.2 He failed to keep a proper lookout
 - 7.3 He failed to keep the insured vehicle under proper control
 - 7.4 He failed to apply the brakes timeously or at all
 - 7.4 He drove the vehicle on the wrong side of the road
- [8] The Plaintiff averred that she was a passenger in the insured vehicle at the time of the accident and that as a result of the collision, caused by the negligent driving of the insured vehicle, she sustained a C2 Spine fracture. The Plaintiff alleges that as a direct cause of the accident and the negligent driving of the insured driver, she was forced to undergo hospital and medical treatment and will in future be forced to undergo hospital and medical treatment.
- [9] The Plaintiff, in her particulars of claim, alleged that she suffered damages resulting from injuries sustained by the collision, estimated at R900,000-00 (Nine Hundred Thousand Rand), comprising estimated past medical expenses, estimated future medical expenses, estimated past and future loss of earnings and general damages. The Plaintiff subsequently amended her claim to R2,450,000- 00 (Two Million Four Hundred and Fifty Thousand Rand) comprising estimated past medical expenses, estimated future medical expenses, estimated past and future loss of earnings and general damages.

- [10] The Plaintiff averred that the amount estimated as general damages was a global figure in respect of pain, suffering and discomfort, emotional shock and trauma, loss of enjoyment of amenities of life, disfigurement and the non-pecuniary aspects of disabilities. The Plaintiff averred that it was not reasonably practicable to apportion the amounts claimed for general damages. The issue of general damages is not before this court.

Plaintiff's evidence on merits and quantum

- [11] The Plaintiff testified that at around 5am on 24th August 2016 she was a passenger in the insured vehicle which was transporting her to work from Sterfontein to Potchefstroom. She was seated at the back of the insured vehicle, a two-seater Corsa bakkie with a canopy. She was seated under the canopy.
- [12] She testified that the insured vehicle entered the N12, a tarred road, when the driver of the insured vehicle, travelling at normal speed, tried to overtake a lorry. The lorry bumped the insured vehicle on the side, causing the insured vehicle to roll five times. The Plaintiff did not see anything further. It was dark when the accident occurred. She was thirty years old at the time of the collision.
- [13] The Plaintiff testified that she was taken by ambulance to the hospital as she sustained an injury to her neck.
- [14] This was the extent of the Plaintiff's testimony and evidence on the merits of the claim. Plaintiff's counsel submitted that based on the evidence before this court, the merits must be conceded 100% in favour of the Plaintiff.
- [15] Regarding the claim on quantum, the Plaintiff testified that at the time of the accident she was employed as a casual worker (not permanent) at Chubby Chicks earning R140 a day as a packer. She subsequently testified to being employed as a cutter, cutting chickens at Chubby Chicks.
- [16] The Plaintiff testified that she did not return to work after the accident and continued to plait hair. She testified that she is currently living on a grant as she does not have a place where she can work to plait hair. This was the extent of the Plaintiff's testimony on her employment and earnings.

Expert Assessments and Reports

- [17] The Plaintiff appointed several experts to assess and evaluate the nature of her injuries and the sequelae of the injuries sustained. The Plaintiff relied on the expert evidence to support her claim for past and future loss of earnings.
- [18] The Plaintiff presented the reports of the following medical experts as evidence of injuries sustained by the Plaintiff during the accident, the treatment received and the impact of the injuries on the Plaintiff's capacity for future employability and future earnings:

18.1 Dr Peter T Kumbirai (Specialist Orthopaedic Surgeon)

18.2 Dr Nkhabele & Indunah (Diagnostic Radiology)

18.3 Dr Makgato (Occupational Therapist)

18.4 Dr Kgalamadi Ramusi (Industrial Psychologist)

18.5 Dr Robert Koch (Actuarial Scientist)

Report: Dr Peter T Kumbirai (Specialist Orthopedic Surgeon)

[19] The Plaintiff was examined by Dr Kumbirai on 10th April

2019. Dr Kumbirai provided a report dated 10th April 2019. Dr Kumbirai's affidavit confirming the report is dated 27th June 2023. It is apposite to mention that the report relied upon was prepared 5 (five) years prior to this hearing and an updated report was not before this court when the matter was heard.

[20] Dr Kumbirai's report notes that the Plaintiff reported she was a passenger in a motor vehicle that lost control and rolled. The Plaintiff was employed part-time cutting chicken pieces at Chubby Chick, her highest level of education being Grade 10. Dr Kumbirai reported that according to the Plaintiff, the hospital notes and the RAF1 form, the Plaintiff sustained a fracture of the spinous process C2 and a fracture of the C1 vertebrae as a consequence of the accident. The Plaintiff did not return to work after the accident due to the neck pain, which was exacerbated by frequent neck movements.

[21] According to Dr Kumbirai, the systemic examination conducted indicated loss of normal cervical lordosis and degenerative disc disease at C5/C6 which would require future surgery for surgical decompression and fusion. Dr Kumbirai's assessment was based on the report prepared by diagnostic radiologist Drs Mkhabela and Indunah. Dr Kumbirai premised his prognosis and opinion of future morbidity on the radiologist report, opining that when assessed the Plaintiff was 32 years old and there was a 10% chance that she would develop cervical spondylosis, whose symptomology might worsen to warrant cervical decompression and fusion in the next 10-15 years. Dr Kumbirai bases his opinion for future surgery on the radiologist report.

[22] In terms of occupation and future employability, Dr Kumbirai noted that the Plaintiff's choice of occupation will be limited due to the pain in her neck as occupations requiring frequent neck movements will aggravate her symptoms.

[23] Dr Kumbirai reported that the Plaintiff will not be able to compete fairly in the open labour market. He deferred further opinion to the Occupational Therapist and Industrial Psychologist. The Plaintiff will have problems engaging in activities requiring frequent neck movement. Should the Plaintiff wish to apply for life/health insurance in the future, disclosure of the injuries will adversely affect the outcome of such an application. The Plaintiff may be subjected to exclusion clauses, weighted premiums and even refusals.

Report: Drs Mkhabela and Indunah (Diagnostic Radiologist)- prepared by Dr F Ismail

- [24] The Plaintiff underwent cervical spine x-rays on 10th April 2019. Dr F Ismail, of Drs Mkhabela and Indunah prepared the report on 10th April 2019.
- [25] Plaintiff's counsel elected not to take this court through the radiologist report, submitting that the contents of the report were addressed when dealing with Dr Kumbirai's report. Plaintiff's counsel submitted that the contents of the radiologist report were repeated in Dr Kumbirai's report.
- [26] For the purpose of this judgment and for the avoidance of doubt, this court finds it apposite to note the contents of the radiologist report, relied upon by the various medical experts, either directly or by reference.
- [27] The radiologist report indicated loss of normal cervical spine lordosis, suggestive of muscle spasm and features of cervical spondylosis at C5/6 and osteophyte formation. The x-rays reported an old avulsion fracture of an anterior inferior osteophyte at C5. The vertebral bodies were reported to demonstrate normal height and alignment. The facet joints and spino-lamina line and the posterior elements and paravertebral soft tissues were reported as normal.
- [28] The radiologist report concluded that the features are in keeping with cervical spondylosis at C5/6 and osteophyte formation and reported an old avulsion fracture of an anterior inferior osteophyte at C5.

Report: Dr Michael Lefatane Makgato (Occupational Therapist)

- [29] The Plaintiff referred this court to Dr Makgato's report, dated 29th July 2019 to confirm the details of the accident, the Plaintiff's injuries and treatment, the Plaintiff's living conditions and the Plaintiff's employment.
- [30] The Plaintiff was assessed by Dr Makgato on 20th July 2019 to express an expert opinion on the Plaintiff's pre and post injury functional ability and the effect of the sustained injuries on the Plaintiff's daily living, work, leisure and recreational activities. This included making recommendations on the necessity for adaptive equipment and commenting on the Plaintiff's need for work assistance, rehabilitation and other interventions and loss of amenities. Dr Makgato's assessment was conducted almost three years after the accident. Dr Makgato was in receipt of the RAF4 FORM 1, the hospital records and Dr Kumbirai's medico-legal report dated 10 April 2019, when conducting the Plaintiff's assessment.
- [31] The Plaintiff reported to Dr Makgato that she was a passenger in a private car travelling to work when their vehicle collided with a truck from the side and overturned.
- [32] Dr Makgato reported that according to the hospital records the Plaintiff sustained a C2 spinous process fracture (neck injury). He reported that the injuries and sequelae are described in detail in Dr Kumbirai's report. The Plaintiff was treated in hospital with analgesics and a hard neck collar and was referred to an Orthotist and for physiotherapy.

- [33] The Plaintiff reported being employed pre-accident as a packer earning +/-R800- 00 per week at the time of the accident. She was unable to return to work post-accident and was self-employed as a hairstylist. She has a grade 10 and has no formal qualifications.
- [34] The Plaintiff reported no medical history pre-accident, no surgeries and no previous motor vehicle accidents. She experienced good health at the time of the accident. The Plaintiff complained that post accident she is unable to carry heavy loads, she experienced pain in cold weather conditions and she tired easily and was unable to plait lots of people.
- [35] Dr Makgato reported that the Plaintiff reports discomfort handling heavy load and working in confined spaces, i.e. squatting and crouching for long periods of time. He recommended adaptive and assistive equipment to improve the Plaintiff's quality of life. Dr Makgato opined that with optimum treatment, pain management and the provision of appropriate domestic assistive devices the Plaintiff's performance may improve.
- [36] Dr Makgato opined that the Plaintiff had no mental and physical impairment prior to the accident and relied on her physical capacity, intact cognition and psychosocial skills to secure and maintain employment. Findings from the Functional Capacity Evaluation (FCE) indicate that the Plaintiff has retained residual handling capacity to safely engage in sedentary, light and up to medium physical demand strength occupations. The experiencing of neck pains impedes on the Plaintiff's physical capacity. This affects her ability to look up for prolonged periods of time and to do activities requiring frequent neck movements, heavy load handling and working in lowered positions (squatting and crouching) for prolonged periods.
- [37] According to Dr Makgato, the Plaintiff is fairly able to cope with the day-to-day handling, mobility and positional tolerance requirements of her occupation as a hairstylist. The Plaintiff continues to experience neck pains which is a cause for concern. During occupational engagement the Plaintiff will experience discomfort on the neck due to repetitive neck movements and this will affect efficiency and productivity. The Plaintiff's productivity levels have gone down due to the residual physical impairments. The Plaintiff will struggle with efficiency and productivity for as long as the musculoskeletal problems persist.
- [38] Dr Makgato opined that the Plaintiff requires a sympathetic employer who will understand her limitations and allow for reasonable accommodation including time off for future medical treatment related to the accident. The Plaintiff will benefit from the use of assistive devices and task modification to maximize her efficiency and productivity. The Plaintiff will need frequent rest and would need to adhere to correct ergonomic principles for her neck and back pain symptoms.

- [39] The Plaintiff's work choices have been reduced as a result of the accident. The accident left her compromised and she is unlikely to be considered for occupations where she is required to handle heavy and very heavy load. The Plaintiff would be prejudiced and limited in choice of employer, the type of work and the work environment, which will restrict job freedom for the Plaintiff.
- [40] Dr Makgato noted Dr Kumbirai's report and opinion, more specifically that "...the pain in the neck will limit her choice of occupation as occupations which require frequent neck movements will aggravate her symptoms. She will not be able to compete fairly for a job in the open labour market.". He deferred to the Industrial Psychologist to comment on the Plaintiff's career options and earning potential.

Report: Dr Kgalamadi Ramusi (Industrial Psychologist)

- [41] The Plaintiff was assessed by Dr Ramusi on 17th April 2019 to evaluate the effects of the accident and its sequelae on the Plaintiff's employability and earning capacity. The evaluation considered two aspects, viz. the Plaintiff's prospects absent the accident and injuries and having regard to the accident and injuries. The report was prepared and dated 16th July
2020. At the time of evaluating the Plaintiff Dr Ramusi was in possession of and had regard to the RAF 1 Form, the RAF 4 Form
- completed by Dr Kumbirai, the hospital clinical notes, the report of Dr Kumbirai and the report of Dr Makgato.
- [42] The Plaintiff reported to Dr Ramusi that she was involved in the accident while employed as a packer and part-time hairdresser. Regarding the Plaintiff's employment profile, Dr Ramusi recorded that the Plaintiff reported that she was employed by Chubby Chick as a packer from May 2016 to August 2016 and was a self-employed hairdresser from 2003 to date of assessment. The Plaintiff reported that she did not return to work as a packer but returned to work as a hairdresser in January 2019. She was earning around R800 a week as a Packer and about R1000 a month as a hairdresser. She was working at the time of the evaluation earning about R1500 a month. The earnings were not verified by Dr Ramusi.
- [43] The Plaintiff reported she was a passenger in a vehicle when the accident occurred. She reported having sustained a cervical spine fracture because of the accident and was taken by ambulance to the hospital. Her treatment included x- rays, analgesics, a neck collar and physiotherapy. The Plaintiff was not involved in a previous accident. As a result of the accident, she experiences neck pain when cold, numbness on the left arm and she cannot carry heavy objects.
- [44] Dr Ramusi opined on the Plaintiff's pre- and post-morbid potential for employment and earning capacity.

Pre-Morbid Postulations

[45] Regarding the Plaintiff's pre-morbid potential, the Plaintiff passed Grade 10, has no formal or vocational training and was working as a packer and part-time hairdresser when the accident occurred. The Plaintiff was regarded as unskilled in the open labour market, depending on her physical and cognitive, as well as psychological and emotional well-being to seek work and earn an income. Her employment prospects were in supportive operational jobs which do not have the potential for increased responsibility. The Plaintiff depended on her physical and psychological well-being to maintain her employment. With a grade 10 level of education the Plaintiff would most probably have been earning in the unskilled category. The Plaintiff reported

two earnings at the time of the accident in line with her dual roles. The earnings are not verified but are likely considering her work activities and age which gave her the energy to engage in dual roles. The Plaintiff would have continued to earn as she reported, i.e. R800 x 4.3 weeks= R3440 per month plus R1500, totaling R4940 per month. The earnings were not verified but considered likely. This would have been her earning ceiling considering her age at the time of the accident. She would have earned annual inflation related increases until she retires. She would have been expected to continue being employed until the age of 65 years. Dr Ramusi referred to Koch (2016) who suggested that such employees earn in the range between R7 700-R19 500- R56 000 per annum.

Post-Morbid Postulations

[46] Post morbid, the Plaintiff's education and work details were unchanged. The Plaintiff complained of pain and discomfort post the accident. Dr Ramusi relied on the opinions of the medical experts. He referred to Dr Kumbirai's assessment and findings relating to the injuries the Plaintiff sustained, the requirement for future treatment and the Plaintiff's inability to compete fairly for a job in the open labour market. He referred to the report and evaluation by the occupational therapist, Mr. Makgato who noted the Plaintiff's residual handling capacity to safely engage in sedentary, light and up to medium physical demand strength occupations, her inability to return to her pre-accident occupation which has medium physical demand and ambulatory requirements, her ability to cope with the day to day handling, mobility and positional tolerance of her occupation as a hairstylist, her requirement for a sympathetic employer and her need for assistive devices and task modification to maximize her efficiency and productivity.

[47] Dr Ramusi reported that by not returning to work after the accident the Plaintiff lost earnings as a packer. She was able to return to work in January 2019 as a hairdresser although she would have suffered earnings for the period she had to recover. Regarding the Plaintiff's choice of occupation, Dr Ramusi relied on Dr Kumbirai's and the radiologist report. The Plaintiff has been predisposed to physically demanding jobs due to her low level of education and the injuries she sustained has aggravated her predicament. Dr Ramusi opined that employers prefer able-bodied individuals and may not necessarily offer sympathetic employment to an entrant. He opined that anticipated future surgery has the potential to further deteriorate the Plaintiff's capacity. The Plaintiff will not be expected to

continue to work post-surgery and that may likely result in her permanently not attaining her premorbid career and vocational prospects. Dr Ramusi accepted that the Plaintiff suffered loss of earnings and would suffer further loss of earnings from discontinuing in her premorbid work. Dr Ramusi opined that the envisaged surgery may result in 100% future loss of earnings for the remainder of the Plaintiff's work life. Dr Ramusi reserved the right to amend the report on new information becoming available. He based his opinion on future surgery from the report of the Occupational Therapist, Dr Kumbirai's report and the radiologist report.

Report: Robert J Koch (KOCH Consulting Actuaries cc)

- [48] The Plaintiff led evidence on the certificate of value prepared by Robert K Koch ("Koch"/"the actuary") dated 16th October 2024. The Plaintiff did not present a full report. It is apposite to mention that despite the actuary certificate of value dated 29 July 2020 being discovered and referenced in the Plaintiff's heads of argument, the Plaintiff did not lead evidence on that certificate, but led evidence on the certificate of value dated 16 October 2020.
- [49] The certificate of value prepared by Koch, dated 16 October 2024 postulates loss of earnings with no contingencies. Koch quantified the Plaintiff's earnings pre and post the accident. Pre-accident the income uninjured was quantified on earnings of R53600 at the time of the injury, i.e. R41600 pay as a packer and R12000 pay as a hairdresser. Post accident the income now injured was quantified on nil income as a packer and R18000 pay as a hairdresser. Escalation was calculated in line with inflation until the age of 65 years. The statutory cap of R248710 pay without escalation was not applicable.
- [50] Koch reported past income uninjured at R535,096 and injured at R121,267, with a net value of R413,829. He reported future income uninjured at R1,518,632 and uninjured at R459,870, with a net value of R1,058,762. The total value was computed at R1,472,591 with no adjustments for contingencies.
- [51] The actuarial certificate of value dated 16 October 2024 and the quantified calculations were prepared by Koch on the basis of an earnings audit extracted from Dr Ramusi's report dated 16th July 2020, which preceded the certificate of value by 4 years. The earnings audit was conducted by Dr Ramusi without verifying the Plaintiff's employment, position and income. The certificate of value is based on unverified earnings.

Contingencies

- [52] Plaintiff's counsel proposed the following contingencies based on Dr Koch's (actuary) Certificate of value dated 16th October 2024:

52.1 On pre-morbid earnings (had the accident not occurred) 10% on R535 096,00 past loss of earnings which if applied would compute to R481,586-40

52.2 15% on R1, 518, 632,00 pre-morbid future loss of earnings which if applied would compute to R1,290,837,20

52.3 On post morbid (having regard to the accident) 0% on past loss of earnings

52.4 25% of R459,870,00 post-morbid future loss of earnings which is applied would compute to R344,902,50

[53] On the basis of Koch's certificate of value dated 16 October 2024 and the proposed contingencies, the Plaintiff claims the sum of R1,306,254-10 for past and future loss of earnings.

Analysis

of evidence on the merits and quantum

Merits

[54] The Plaintiff testified as a single witness and did not call any witnesses. The Plaintiff's version of events was uncontested. Section 16 of the Civil Proceedings Evidence Act 25 of 1965, as amended provides that judgment may be given by a court on the evidence of a single and credible witness. This court must therefore

be satisfied that the Plaintiff's evidence is credible, even if the evidence is uncontested. In doing so this court must have regard to all the evidence presented and all documents relied upon by the Plaintiff in support of her claim.

[55] The Plaintiff testified that a lorry bumped the insured vehicle when the insured vehicle tried to overtake the lorry. The evidence led in court differs from the Plaintiff's 19F affidavit. In her affidavit the Plaintiff states that the driver of the motor vehicle in which she was a passenger lost control of the insured vehicle, resulting in the vehicle capsizing. Nowhere in the affidavit does the Plaintiff state that the insured vehicle was hit by a lorry. The Plaintiff's testimony is inconsistent with the version recorded in her affidavit.

[56] The Plaintiff's testimony is inconsistent with the information provided by the Plaintiff on admission and during completion of the hospital registration form. The admission form records that the Plaintiff reported that the insured vehicle was transporting staff to work when it lost control and capsized. The Plaintiff's statement in the admission form is consistent with the Plaintiff's affidavit.

[57] The Plaintiff's testimony is also inconsistent with what the Plaintiff reported to Dr Kumbirai at the time of the assessment, viz. that the Plaintiff was a passenger in a motor vehicle that lost control and rolled. This is consistent with the version recorded in the Plaintiff's affidavit.

[58] The probability of the version that the insured vehicle lost control and rolled is further supported by the details captured in the accident report and in the RAF 1 Form completed by the Plaintiff. The accident report indicates that one vehicle was involved in the accident. This is supported by the statement of the driver of the insured vehicle in the accident report which confirms that he lost control of the vehicle and the vehicle overturned. This is

consistent with the information captured by the Plaintiff in the RAF 1 Form where she stated “not applicable” at the section requiring details of any other vehicle involved in the accident. The Plaintiff also stated in the RAF 1 Form that it was not a hit and run.

- [59] The Plaintiff testified that she was sitting under the canopy at the back of the insured vehicle. The accident report records that several passengers were injured in the accident. The Plaintiff did not call any witnesses despite many other passengers, apparently co-workers, being involved in the accident.
- [60] Given the Plaintiff’s contradictory versions of how the accident happened, it would have been prudent for the Plaintiff to lead witness evidence. The only inference which can be drawn from the Plaintiff’s testimony as a single witness is that she is not truthful in her version of what transpired, as is evident from the contradictory versions before this court.
- [61] The Plaintiff’s affidavit further records: “As a result of the accident my child sustained injuries and to be hospitalized”. This is inconsistent with the pleadings and with the Plaintiff’s version at the hearing.
- [62] This court has to consider whether the Plaintiff’s evidence is probable to the extent of the Plaintiff having discharged the onus placed on her, i.e. to prove that she sustained injuries as a result of a collision caused by the negligent driving of the insured vehicle. In the matter of *Minister of Justice v Seametso*[1] the Appellate Division, regarding the approach to be adopted to the evidence of the single witness which stands uncontradicted, the court stated the following:

"Counsel for the appellant contended that the fact that Daniel's evidence stands uncontradicted does not relieve the plaintiff from the obligation to discharge the onus resting upon him. If thereby is meant that Daniel's evidence should not have been accepted merely because it stands uncontradicted then the contention is sound, for as was said by Innes CJ in *Sittman v Kriel*, 1909 T.S 538 at p 543:

"It does not follow, because evidence is uncontradicted, that therefore it is true. Otherwise, the Court, in cases where the defendant is in default would be bound to accept any evidence the plaintiff might tender. The story told by the person on whom the onus rests may be so improbable as not to discharge it."

- [63] In the matter of *Louis v RAF*[2], on the evidence of the single witness, the Court held that "the brief, cursory and insubstantial nature of the plaintiff's evidence resulted in a paucity of facts being established that may be used in support of the plaintiff's duty to discharge the onus that rests upon him regarding the negligence of the driver of the unidentified vehicle. A plaintiff is not relieved of this obligation even if he is a single witness and his evidence stands uncontradicted".
- [64] The contradictions in versions cast doubt on what is the correct version of how the accident happened. Even if it is to be accepted by this court that there was no other vehicle involved, the Plaintiff has not provided evidence to prove negligence on the part of the insured driver

which resulted in him losing control of the vehicle, causing the vehicle to overturn. As an example, the Plaintiff pleaded that the collision was caused by various acts of negligence by the insured driver, viz, driving at an excessive speed, not keeping a proper lookout, driving on the wrong side of the road and failing to apply the brakes timeously or at all. Regarding the speed at which the insured vehicle was driven, the Plaintiff's viva voce evidence, in contradiction to the pleadings, was that the insured vehicle was driven at a normal speed. The Plaintiff did not lead any evidence on the remaining allegations of negligence on the part of the insured vehicle, which allegedly caused the collision.

- [65] The Plaintiff's evidence on the merits does not satisfy this court sufficiently to be able to make a determination on the merits. At the same time, this court is not inclined to non-suit the Plaintiff from proving her claim of negligence in a full trial. Accordingly, this Court refuses to exercise its discretion in favour of granting default judgment on the merits.
- [66] Having refused to grant default judgement on the merits, this court is not obliged to address the issue of quantum. However. This court finds it necessary to comment on the probity of the Plaintiff's and the expert evidence relating to loss of earnings and the quantification of the Plaintiff's claim.

Quantum

- [67] The Plaintiff testified on her employment history pre and post the collision which resulted in her injuries. The Plaintiff furthermore presented expert evidence regarding the injuries allegedly suffered by the Plaintiff as a result of the collision.
- [68] The Plaintiff testified that she was thirty years old at the time of the accident and was employed part-time as a packer at Chubby Chick, earning R140-00 a day. This was consistent with what was reported by the Plaintiff during expert assessments. At the hearing the Plaintiff testified initially that she was a packer and thereafter testifies that she was a cutter, cutting chickens. The Plaintiff only reported to Dr Kumbirai that she was employed as a cutter cutting chickens. This presents inconsistencies in the Plaintiff's versions regarding her employment.
- [69] The plaintiff testified that she did not return to work after the accident and continued to braid hair while living on a grant. The Plaintiff presented no evidence on the grant she was allegedly. The Plaintiff did not lead evidence confirming her employment history, which was unverified even during the expert assessments. The Plaintiff did not present proof of her employment, position and income at Chubby Chicks or as a hairstylist. This was unverified at the time of the assessments and no proof was presented to this Court.
- [70] The Plaintiff's claim is based on the recommendations made by the various medical experts. Dr Kumbirai's assessment was based primarily on the report prepared by diagnostic radiologist Drs Mkhabela and Indunah. Dr Kumbirai premised his prognosis and opinion of future morbidity on the radiologist report, opining that when assessed the Plaintiff was 32 years old and there was a 10% chance that she would develop cervical spondylosis, whose

symptomology might worsen to warrant cervical decompression and fusion in the next 10-15 years.

- [71] Dr Kumbirai reported a C2 spinous process and C1 vertebrae injury. This appears to be extracted from the hospital records. There is no indication in Kumbirai's report that he conducted his own assessment. Dr Kumbirai placed reliance on the radiologist report, although the radiologist report made no reference to a C2 spinous process or C1 vertebrae injury. The radiologist report concluded that the features are in keeping with cervical spondylosis at C5/6 and osteophyte formation and reported an old avulsion fracture of an anterior inferior osteophyte at C5. Dr Kumbirai's report does not address the condition reported in the radiologist report and is therefore of no assistance.
- [72] The radiologist report did not report the x-ray findings to be a consequence of the accident. When prompted by this Court, Plaintiff's counsel could not demonstrate where in the radiologist report it was stated that the diagnosis was premised as a consequence of the accident. In fact, Plaintiff's counsel conceded that the report does not specifically state that the plaintiff's reported condition is due to the accident.
- [73] It is apposite to mention that the Plaintiff did not admit into evidence the affidavit of the radiologist, as required in terms of Rule 36(9)(b) of the Uniform Rules of Court. In the circumstances, the radiologist report is considered from the perspective of collateral information presented in the various expert reports.
- [74] Dr Kumbirai's assessment that the Plaintiff's choice of occupation will be limited due to the pain in her neck, as occupations requiring frequent neck movements will aggravate her symptoms, is unsubstantiated and is concluded from the Plaintiff's reporting of her symptoms. Dr Kumbirai's report that the Plaintiff will not be able to compete fairly in the open labour market was also unsubstantiated. The Plaintiff did not report to Dr Kumbirai and did not lead evidence to support that her attempts to secure employment were rejected.
- [75] Dr Kumbirai's report had a domino effect on the rest of the medical experts, who conducted evaluations and prepared reports with reference to Dr Kumbirai's assessment. Dr Kumbirai's report placed heavy reliance on the radiologist report.
- [76] Dr Makgato's findings were based on the Plaintiff's reporting, the hospital records and Dr Kumbirai's report. He stated that Plaintiff reported discomfort handling heavy load and working in confined spaces, i.e. squatting and crouching for long periods of time. His recommendation for adaptive and assistive equipment to improve the Plaintiff's quality of life was based on the Plaintiff's reporting.
- [77] According to Dr Makgato, the Findings from the Functional Capacity Evaluation (FCE) indicate that the Plaintiff has retained residual handling capacity to safely engage in sedentary, light and up to medium physical demand strength occupations. He opined that the neck pains impede on the Plaintiff's physical capacity. This affects her ability to look up for prolonged periods of time and to do activities requiring frequent neck movements,

heavy load handling and working in lowered positions (squatting and crouching) for prolonged periods. This assessment was based on the Plaintiff's reporting.

- [78] Dr Makgato reported that the Plaintiff is fairly able to cope with the day-to-day handling, mobility and positional tolerance requirements of her occupation as a hairstylist. In contradiction Dr Makgato states that during occupational engagement the Plaintiff will experience discomfort on the neck due to repetitive neck movements which will affect efficiency and productivity and that Plaintiff's productivity levels have gone down due to the residual physical impairments.
- [79] Dr Makgato states that the Plaintiff's work choices have been reduced as a result of the accident, with no supporting evidence save for reliance on Dr Kumbirai's report. Dr Makgato opined that the accident left the Plaintiff compromised where she is unlikely to be considered for occupations requiring the handling of heavy and very heavy load. This opinion is not supported by any evidence, especially since the Plaintiff provided no evidence of her employment being of the nature that requires the handling of heavy and very heavy load. Dr Makgato's report does not provide any assistance to this court.

- [80] Regarding the Plaintiff's choice of occupation, Dr Ramusi relied on Dr Kumbirai's report, which placed heavy reliance on the radiologist report. Dr Ramusi also relied on Dr Makgato's report. Dr Ramusi reported that Plaintiff has been predisposed to physically demanding jobs due to her low level of education and the injuries she sustained has aggravated her predicament. There is no basis for this reporting. The Plaintiff passed Grade 10. Dr Ramusi's view seems to be that a Grade 10 graduate will only be able to secure jobs which are physically demanding. This is unsubstantiated and makes no sense given that there are opportunities for secretarial and administrative roles for high school graduates. Dr Ramusi has not

substantiated his opinion. Dr Ramusi opined that employers prefer able-bodied individuals and may not necessarily offer sympathetic

employment to an entrant. The Plaintiff has not been proven to be disabled to support Dr Ramusi's opinion that she will not be able to secure employment.

- [81] Dr Ramusi opined that anticipated future surgery, which is based on Dr Kumbirai's report, has the potential to further deteriorate the Plaintiff's capacity, however he provides no evidential basis for such a prognosis, either medical or otherwise. Dr Ramusi opined that the envisaged surgery may result in 100% future loss of earnings for the remainder of the Plaintiff's work life. This is not convincing as the Plaintiff was not reported to be suffering from a disability which would be further aggravated by future surgery. He based his opinion on future surgery primarily from Dr Kumbirai's report, and from the report of the Occupational Therapist and radiologist.

- [82] The Plaintiff reported two earnings to Dr Ramusi which were not verified but which Dr Ramusi considered likely considering the Plaintiff's work activities and age. Dr Ramusi's earning audit was based solely on information provided by the Plaintiff. It is glaring that there are no source documents confirming the Plaintiff's employment and income. Dr Ramusi's report does not demonstrate any attempt by him to request proof of earnings from the Plaintiff or any attempt to contact the Plaintiff's employer to confirm her employment and earnings.
- [83] This court is of the view that an earnings audit cannot be conducted on what "seems likely", without verification. The Plaintiff did not lead evidence on dual earnings. Plaintiff's counsel conceded that she was not aware of dual earnings as the Plaintiff did not testify in respect of dual earnings. Dr Ramusi's evaluation was three years after the reported accident and the report was presented a year after the evaluation. The Plaintiff did not present an updated report at the hearing. Dr Ramusi's report is not convincing to this court.
- [84] Koch's certificate of value was premised on the unverified earnings audit conducted by Dr Ramusi and Dr Ramusi's situational analysis as at July 2020. The earnings audit was conducted by Dr Ramusi without verifying the Plaintiff's employment, position and income. The certificate of value computing loss of earnings is based on unverified earnings. The unverified earnings cannot be accepted as a basis for computing loss of earnings.
- [85] The Plaintiff led evidence on the contents of the certificate of value dated 16 October 2024. The Plaintiff did not admit into evidence an affidavit by Koch confirming the certificate of value dated 16 October 2024. The certificate of value was uploaded on 16 October 2024 and served on the Defendant the same day. Plaintiff's counsel did not bring this to the attention of the court.
- [86] It is apposite to mention at this juncture that the actuary affidavit admitted into evidence is dated 25 August 2023 and confirms a certificate of value prepared by Koch dated 29 July 2020. The Plaintiff has not presented an affidavit in compliance with Rule 36(9)(b) of the Uniform Rules confirming the certificate of value dated 16 October 2024. Consequently, there is no affidavit before this court confirming the Certificate of value dated 16th October 2024 and upon which evidence was led and reliance placed for the Plaintiff's claim for loss of earnings.
- [87] In the absence of verified earnings and an actuary affidavit in compliance with Rule 36(9)(b) this court is not satisfied with the evidence to enable it to, in its discretion, grant judgment by default. Accordingly, this Court refuses to exercise its discretion in favour of granting default judgment on loss of earnings.
- [88] The expert reports are of no assistance to this court.

[89] The granting of a default judgment involves this court exercise its discretion after hearing evidence presented by the Plaintiff. Given the several contradictions and inconsistencies present in the Plaintiff's evidence, this court is not satisfied that the interests of justice will be served by granting default judgement.

Order

[90] In the result, the following order is granted:

90.1 The application for default judgment is refused.

90.2 The determination of general damages is postponed sine die

90.3 There is no order as to costs.

F SUDER

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For the Plaintiff: Ms Z C Madjoe

Instructed by: AP Phefadu Incorporated, Pretoria

For Defendant: No appearance

Date of Hearing: 16 October 2024

Date of Judgment: 14 April 2025

[1] 1963 (3) SA 530 (A) at 534 G-H and 535 A

[2] (23724/2018) [2022] ZAGPJHC 12 (10 January 2022) at paragraph [16]

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