

SOUTH AFRICA / JUDGMENT

Mangali v Road Accident Fund (RAF238/2023) [2025] ZANWHC 142 (4 June 2025)

[2025] ZANWHC 142

COURT

North West High Court, Mafikeng

BEFORE

Maodi

CASE / FILE NUMBER

RAF238/2023

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IN THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION -
MAHIKENG

Case No: RAF 238/2023

Reportable: YES / NO

Circulate to Judges: YES
/ NO

Circulate to Magistrates:

YES / NO

Circulate to Regional

Magistrates: YES / NO

In the matter between:

SIBONGILE ANGELINA

MANGALI

PLAINTIFF

and

ROAD ACCIDENT

FUND

DEFENDANT

CORAM: MAODI AJ

Date

judgment reserved: 22 April 2025

The judgment was handed
down electronically by circulation to the parties'
representatives via email. The date and time for
hand-down is deemed
to be 04 June 2025 at 10H00am.

ORDER

1. The

defendant shall be liable for 100% of the plaintiff's proven damages.

2. The

defendant is ordered to pay the plaintiff an amount of R 2 747 870, 00 (Two Million Seven Hundred and Forty-Seven Thousand Eight Hundred and Seventy Rands only).

3. This

amount shall be paid into the plaintiff's attorneys' trust bank account on or before the expiry of 180 days from the date of this order.

3.1

The defendant will not be liable for interest on the above-mentioned amount

provided that it is paid on or before the expiry of 180 days, after date of this order, failing which interest at a rate of 15% per annum will be payable calculated from the 15th day from the date of this order.

3.2

The plaintiff's attorney to provide the defendant with proof of such bank account before payment is effected.

4. The

defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996 for the reasonable costs of future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service to

her or supplying of goods to her resulting from the injuries sustained by the plaintiff and of administering and enforcement of

this undertaking, as a result of the motor vehicle collision which occurred on the 31 May 2021, after such costs have been incurred and

upon proof thereof.

5. The

defendant shall pay the plaintiff's taxed or agreed party and party costs on a high court scale.

In the event that the costs are

not agreed, it is ordered
that:

5.1

The plaintiff shall serve the notice of taxation on the defendant or
defendant's
attorneys of record.

5.2

The plaintiff shall allow the defendant fourteen (14) court days to
make the
said payment of the taxed costs; and

5.3

Should payment not be effected timeously, the plaintiff will be
entitled to
recover interest a tempore morae on the taxed or agreed
costs from the date of allocatur to the date of final payment.

JUDGMENT

MAODI AJ

Introduction

- [1] This matter came before me on the 22 April 2025. The parties had agreed that the merits were conceded 100% by the defendant in favour of the plaintiff. The injuries by the plaintiff were accepted as serious by the defendant for purposes of serious injury assessment in line with regulation 3 of the regulations promulgated in terms of section 26 of the Road Accident Fund Act, 56 of 1996. There is no past medical expenses. The defendant agreed to provide the plaintiff with an undertaking in respect of future medical expenses.
- [2] The only outstanding issues were therefore the amount for general damages and the loss of earnings (past and future loss of earnings). An application in terms of rule 38(2) was made by the plaintiff which was not opposed by the defendant. The rule 38(2) application was granted and therefore the matter proceeded on papers filed.
- [3] Mr Gama for the plaintiff submitted that a reasonable amount for general damages is the sum of R 1 400 000, 00. Further that loss of earnings should be allowed as postulated by the actuary. This was in line with heads of argument handed into record.
- [4] Mr Setati for the defendant did not hand into record any heads of argument but proceeded from the bar. Mr Setati submitted that a reasonable amount for general damages is R 850 000, 00. On the issue of loss of earnings or earning capacity a contingency of 5% should be applied to the past loss of earnings whereas a contingency of 25% should be applied to the future loss of earnings. Mr Setati further submitted that paragraph 7.2.7 at page 16 of the industrial psychologist report states that the retirement age is 60 years whereas the actuary says it is 65 years.
- [5] Mr Gama replied that the industrial psychologist stated that the age of 60 years is for income replacement as per Old Mutual policy and not for income but for the accident.

The evidence

- [6] The RAF 4 form completed by Dr Tsietsi Bogatsu states that the plaintiff sustained mechanical backache, healed femur fracture and healed pelvic fracture with sciatic nerve palsy and chronic mechanical pains with physical impairment. The conclusion of the physical examination is, previous surgical scars noted with wasting of thigh muscles and tenderness elicited. Severe limited range of movements noted on the hip/ knee. There is left lower limb sciatic nerve palsy with dropfoot and the plaintiff is ambulating with crutches. The plaintiff has reached maximum medical improvement and the whole person impairment is 36%. This has resulted in serious long-term impairment or loss of a body function.
- [7] A report by Dr T. S. Bogatsu (an Orthopaedic Surgeon) makes the same findings, diagnosis and physical examination as stated in the RAF 4 form referred to supra. At the time of accident the plaintiff was 35 years old and her highest level of education was matric. She was employed as a Development Facilitator and also performed normal household duties, enjoyed jogging, socialising with friends and outdoor activities. She never returned to work post-accident. She walks with a dropfoot gait and is confined to crutches. She also has lumbar spondylosis. She is restricted from all social amenities. The restrictions are expected to persist. She has long-term impairment and this is likely to persist for the rest of her life. The sequelae of her orthopaedic injuries have resulted in significant losses of earning capacity, employment capacity, amenities, independence and enjoyment of life.
- [8] The Plastic/Aesthetic, Reconstructive and Burns surgeon Dr Kennedy Segwapa states that the plaintiff sustained fractured left pelvis and left femur. Open wound left buttock. The left hip, proximal thigh and buttock have a 12cm x 3cm oblique hyperpigmented scar with a contour deformity (depression) and stitch marks. There are also satellite hypopigmented scars medial to the main scar. Proposed intervention is excision and direct closure with lipofilling/dermal flaps to resurface the depressed area. The left knee lateral aspect has a 2cm x 2cm hypopigmented scars with stitch mark. Proposed intervention is excision as one unit and direct closure. These scars are itching and painful.
- [9] The Occupational Therapist Sereko Watson states that the plaintiff reported that her highest qualification is grade 12 which she completed in 2004. She was employed as a Development Facilitator at the time of the accident. Post-accident she is still employed as a Development Facilitator even though she has not returned to work since the accident. She uses a walking stick to help with walking. She is afraid that she might lose her job as she has not been able to return to work post-accident. Her pre- and post-accident job has been a Development Facilitator at the Small Enterprise Foundation, which job has light to medium type of duties or category.

- [10] During assessment it was noted that her current rate of work as well as physical capacity could not meet the physical requirements for occupations that fall within light, medium, heavy to very heavy types of work category as well as those requiring lifting heavy objects, crouching, bending, prolonged standing, frequent walking and climbing. Her physical capacity presently meets the requirements of sedentary type of work category. She is therefore unable to meet some demands of her previous occupational duties.
- [11] The Industrial Psychologist Nomali Sibeko states that the plaintiff was 35 years old at the time of accident and had attained a National Senior Certificate as her highest qualification with a code eight driver's license. She has seven years' work experience in the non-corporate and small business sector. Her work experience includes dealing with customers facing delivery, administration and training initiatives. She has carved her career path through staff development, tapping on new opportunities and applying for posts as advertised. She had a gross salary of R 10 492, 00 per month as a Development Facilitator at the time of accident with benefits that include provident fund, medical aid and bonus.
- [12] Pre-accident, considering her age, education, social background and work history, she would, in all likelihood, have continued to work semi-skilled occupations. She would also have an option of exploring career opportunities in the corporate sector as she had National Senior Certificate as her highest qualification. She has, over the years empowered herself through further educational and development opportunities.
- [13] It is predicted that her earnings would have progressed in a straight line and peaked at age 45 on the upper quartile of the suggested earnings for semi-skilled workers. Thereafter, she will earn inflationary increases until she reaches retirement at age 65, depending on her health, personal circumstances and company policy.
- [14] Post-accident, she has been unable to return to work. She was on paid sick leave for three months and is currently on incapacity leave. She earns an income replacement amount of R 8 803, 23 per month. The arrangement is reviewed at intervals based on medical reports provided.
- [15] The accident and its sequelae had negative impact on her employment prospects and earning potential. From the employment perspective, she has been rendered less competitive and at risk of being faced with limited occupational scope as a result of the accident. Occupational reintegration may pose a challenge as the residual effect of the injury on the pelvic, comorbid pain and physical challenges may undermine her capability and performance. She will be restricted in the scope of work she is able to undertake and her career prospects will be confined.
- [16] It is foreseen that in the instance she is assessed as able to return to work, she will be assigned a semi-skilled sedentary occupational role. Her earnings will continue to be on the median quartile of semi-skilled employees and she will continue to earn inflationary increases until she reaches retirement at age 60. She will therefore not be able to reach pre-accident postulation as envisaged due to the accident and its sequelae. It is considered that

she should be declared disabled, unfit to work and continue to earn income replacement, the sum effect of the loss of earnings will be within the same range.

- [17] The Actuary R Immermann states that for past loss of earnings pre-morbid the plaintiff has been allowed an amount of R 459 893, 00 less 5% contingency (R 22 995, 00) which comes to R 436 898,
00. For past loss of earnings post-morbid the plaintiff has been allowed an amount of R 330 138, 00 less 5% contingency (R 16 507, 00) which comes to R 313 631, 00. Therefore the past loss of earnings is R 123 267, 00.
- [18] For future loss of earnings pre-morbid the plaintiff has been allowed an amount of R 3 612 047, 00 less 15% contingency (R 541 807,
- 00) which comes to R 3 070 240, 00. For future loss of earnings post-morbid the plaintiff has been allowed an amount of R 1 936 043, 00 less 15% contingency (R 290 406, 00) which comes to R 1 645 637, 00. Therefore the future loss of earnings is R 1 424 603, 00.

Analysis and reasons for judgment:

- [19] I have already stated that a rule 38 (2) application was granted in this matter. Experts are there to assist the court and not as a weapon for the party who has managed to secure them and ultimately utilise their evidence at the hearing of the matter. I therefore find that the plaintiff has sustained mechanical backache, healed femur fracture and healed pelvic fracture with sciatic nerve palsy and chronic mechanical pains with physical impairment. She walks with a dropfoot gait and is confined to crutches. Further to these is some unsightly scars which are permanent. Her prognosis is poor as these sequelae is going to last for the rest of her life
- [20] It is clear that the plaintiff was an active person pre-accident and enjoyed a variety of physical activities both during work and on a social level. She enjoyed household duties, enjoyed jogging, socialising with friends and outdoor activities.
- [21] As much as the plaintiff sustained multiple injuries, damages cannot be awarded in piecemeal, that is, one cannot award damages for scarring and another figure for other injuries. It is a globular figure taking into account all injuries as a whole. When awarding damages, a court has a wide discretion to award what it considers to be a fair and adequate compensation for the injured party.
- [22] The plaintiff referred me to the case of Schmidt v Road Accident Fund 4834/05 (2006) ZAGPHC 64 (23 June 2006) where it was stated:

“the plaintiff had suffered fractures of the left humerus, left proximal radius and ulna at the elbow, right midshaft radius and left tibia. She also had a knee injury that became infected at some stage, thus increasing a possibility of a bilateral knee replacement and one revision later. She was awarded R 600 000, 00. The value was R 1 550 000, 00 in 2023.”

[23] In the case of Isaacs N.O obo Yantolo v Road Accident Fund (9083/2021) [2025] ZAGPHC 64 (13 January 2025) a case involving a 21 year old woman, it was stated at paragraph [46]:

“While I am not satisfied that the plaintiff sustained a traumatic brain injury and suffers the sequelae complained of, I am satisfied that she sustained a pelvic injury which has left her with chronic pelvic pain and residual sciatic nerve damage with weakness and altered sensation in the left foot. The plaintiff has a foot-drop type gait abnormality and disturbed bladder function. She experiences pain in the lower back, the left hip and leg which is exacerbated by physical activity and during inclement weather.

She is unable to remain static for prolonged periods, is unable to walk medium to long distances, handle medium to heavy objects or run.”

[24] Whilst the plaintiff’s injuries have healed, the sequelae and prognosis thereof remains poor and permanent. I do not agree with the Mr Gama on the proposed amount of R 1 400 000, 00 for general damages. I also do not agree with Mr Setati for a proposed amount of R 850 000, 00 for general damages. I am of the view that a reasonable amount for general damages in this matter is an amount of R 1 200 000, 00.

[25] With regard to the issue of loss of earnings, it is clear that the plaintiff has never returned to work post-accident and is on income replacement earning by Old Mutual. The recommendations and findings by experts is that she will never be able to return to her pre-accident employment. Also that, should there be an opportunity of employment, it will be sympathetic employment. The income replacement will also be offered until the age of 60 years. The plaintiff is therefore, for all intents and purposes, practically unemployable. I see no reason to deviate from the calculations and contingencies applied by the actuary.

[26] I further see no reason to deviate from the norm that costs follow the suit.

Order

[27] I therefore make an order as follows:

3. This amount shall be paid into the plaintiff’s attorneys’ trust bank account, on or before the expiry of 180 days from the date of this order.

J. T. MAODI

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

NORTH WEST DIVISION, MAHIKENG

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Date Judgment Reserved : 22 April 2025

Date Judgment Delivered : 04 June 2025

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