

SOUTH AFRICA / JUDGMENT

Mnenov RAF (4942/2022) [2025] ZAFSHC 212 (11 July 2025)

[2025] ZAFSHC 212

COURT

Free State High Court, Bloemfontein

BEFORE

JP Daffue

CASE / FILE NUMBER

4942/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

NOT

REPORTABLE

Case

no: 4943/2022

In

the matter between:

FAITH

MNENO

Plaintiff

And

ROAD

ACCIDENT FUND

Defendant

Neutral

Citation: Mnenov RAF (4942/2022) [2025] ZAFSHC 212
(11 July 2025)

Coram:

JP Daffue J

Heard:

26 November 2024

Reserved:	13 February 2025
Delivered:	11 July 2025 Judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 13h00 on 11 July 2025.
Summary:	Quantum of damages – 28 year-old female sustained a diffuse brain injury resulting in a diffuse axonal injury as well as several serious injuries of orthopaedic nature – permanent neuropsychological sequelae with significant limitations – plaintiff compromised to compete in open labour market – RAF failed to file expert reports and to appear at the quantum hearing – award granted in respect of past medical and hospital expenses as well as loss of past and future earnings – undertaking in terms of s 17(4)(a) of the Road Accident Fund Act ordered – claim for general damages postponed sine die. ORDER 1. The Defendant shall pay to the Plaintiff the capital amount of R 9 157 586.00 (Nine Million One Hundred and Fifty Seven Thousand, Five Hundred and Eighty Six Rand) which is calculated as follows: 1.1. Past Loss of Earnings: R728 179.00 1.2. Future Loss of Earnings and Earning Capacity: R8 429 407.00 1.3. TOTAL: R9 157 586.00 2. Payment of the capital amount shall be effected within 14 days from the date of this order being granted. Interest at the prevailing rate of interest in terms of the Prescribed Rate of Interest Act, will accrue on the capital amount from 14 (fourteen) days of this order being granted, until date of payment of the capital amount. 3. The amount in paragraph 1 (one) above shall be paid directly to the Plaintiff's attorneys

of record with the following particulars:	NAME OF ACCOUNT : Munro Flowers & Vermaak Trust Account BANK : Nedbank BRANCH CODE : 187505 UNIVERSAL BRANCH
CODE :	198765 BRANCH : Northern Gauteng ACCOUNT NO : 1[...] REFERENCE : MS. T Britz/ac/Mneno (M5014) 4. The Defendant shall pay the Plaintiff's taxed or agreed party and party costs on a High Court scale up to 13 February 2025, subject to the taxing master's discretion, which will include the following, but
will not be limited to:	4.1. All costs relating to the Rule 38(2) application; 4.2. The costs in respect of the preparation of all the medico legal reports, addendum reports, RAF4 serious injury assessment reports, actuarial calculations, consultation with legal representatives, preparation fees and reservation fees (if any) for trial, of the

following experts:

- 4.2.1. Dr Versfeld
(Orthopaedic Surgeon);
- 4.2.2. Dr Marus
(Neurosurgeon);
- 4.2.3. Ms Maganlal
(Clinical Psychologist);
- 4.2.4. Dr. W.
Pretorius (Industrial Psychologist);
- 4.2.5. Gregory
Whittaker (Actuary).
- 4.3.
The costs in respect of the transcription of the proceedings on 26
November 2024, preparation of addendum
reports and consultations of

legal representatives with
the following experts:

- 4.3.1. Dr Marus
(Neurosurgeon);
- 4.3.2. Ms Maganlal
(Neuropsychologist);
- 4.3.3. Dr Pretorius
(Industrial Psychologist);
- 4.3.4. Mr Whittaker
(Actuary).
- 4.4.
The costs of two counsel, including the preparation for trial and
attendance on 26 November 2024; drafting
of Exhibit A and Heads of
Argument and Supplementary Heads of Argument, the costs of senior
counsel on scale C and junior counsel
on Scale B;
- 4.5.
Travelling and accommodation costs for the Plaintiff and her Legal
Representatives for the 25th and 26th
of November 2024;
- 4.6.
Costs of obtaining confirmatory affidavits for the above-mentioned
experts for purposes of trial;
- 4.7.
Any costs attendant upon the obtaining of payment of the capital
amount as well as the taxed costs.
- 5.1.
The Plaintiff shall, in the event that costs are not agreed, serve
the notice of taxation on the Defendant's
attorney of record;
and
- 5.2.
The Plaintiff shall allow the Defendant 14 (Fourteen) court days to
make payment of the taxed costs.
- 5.3. No
interest will be payable, except in the event of default of payment
of such costs, in which case interest

will be payable a tempore
morae at the prevailing rate of interest in terms of the
Prescribed Rate of Interest Act from date of taxation.

JUDGMENT

Daffue J:

Introduction

[1] Ms Faith Mneni, a female plaintiff born on [...] J[...] 1990, was 28 years old when she was seriously injured in a motor vehicle collision which occurred on 25 November 2018 on the national road between Reddersburg and Smithfield in the Free State Province. At the time of the hearing, six years later, she was 34 years old. The court was eventually called upon to adjudicate the plaintiff's claim in respect of past and future loss of earnings.

Litigation history

[2] On 6 October 2022 the plaintiff instituted action against the Road Accident Fund (RAF) to claim damages. Before that the RAF made an offer to settle the merits (negligence) which offer was accepted. The RAF defended the matter and on 14 December 2022 filed its plea, including two special pleas. The two special pleas deal with the plaintiff's right to claim general damages as she allegedly failed to file a serious injury assessment report as provided for in regulation 3 of the Road Accident Fund Regulations of 2008 as amended.

[3] The parties' pre-trial minutes are dated 20 February

2024. They recorded the following in paragraph 7 thereof:

'Does the defendant agree that this matter should not be referred to another court? Agreed- save for the issue of General damages which may be referred to the HPCSA should a dispute arise.'

They also agreed in paragraph 3.2 of the minutes that in the event of the RAF failing to file expert reports, it will rely on those expert reports filed by the plaintiff.

[4] The plaintiff filed expert reports by the following experts:

- a. Dr Versfeld (Orthopaedic Surgeon);
- b. Dr Marus (Neurosurgeon);
- c. Ms Maganlal (Clinical Psychologist);
- d. Dr. W. Pretorius (Industrial Psychologist);
- e. Gregory Whittaker (Actuary).

- [5] Notwithstanding the detailed expert reports filed by the plaintiff, the RAF failed to file any expert reports. The matter was declared trial-ready.
- [6] Insofar as the RAF failed to consider the plaintiff's Serious Injury Assessment Report Forms compiled by Drs Versfeld and Marus, the plaintiff on 26 September 2024 applied for an appropriate order to compel the RAF. On that day the court granted an order as requested and also granted leave to the plaintiff, in the event of the RAF failing to comply, to file a dispute in terms of regulation 3 with the HPCSA for adjudication.
- [7] When the file was eventually allocated to me for the quantum hearing herein. I requested my secretary to send an email to the parties' legal representatives, which she has done on 7 November 2024. The email was also sent to five attorneys of the local branch of the RAF in Bloemfontein. The RAF was inter alia requested to advise, in light of its failure to file any expert reports, which paragraphs of the plaintiff's expert reports were in dispute and, if so, its contentions in that regard. No response was received from the RAF. In fact, no one appeared for the RAF at the quantum hearing.
- [8] No decision has been made by either the RAF or the HPCSA in respect of the serious injury assessments referred to above. Consequently, general damages could not be adjudicated and therefore its adjudication was postponed sine die.

The proceedings on the first day of trial, to wit 26 November 2024

- [9] On 22 November 2024, the plaintiff's attorney filed an application in terms of rule 38(2) which was properly served on the RAF. Leave was sought to inter alia present the evidence by way of affidavit. On 26 November 2024 I considered the arguments of plaintiff's counsel and decided to grant the application, save insofar as I insisted that the plaintiff presented her evidence viva voce. I did this, bearing in mind the nature of the proceedings, the failure of the RAF to file any expert reports, the saving of costs and time if the application was to be granted and in the interest of fairness.
- [10] After considering the admitted evidential material, the plaintiff's evidence and the submissions of her counsel, I made the following order on 26 November 2024 which also encapsulated the order granted at the start of the proceedings in terms of rule 38(2):
- '1. The heads of damages in respect of the quantum of plaintiff's claim are separated and the claim for general damages is postponed sine die.
 2. Leave is granted to the plaintiff to present evidence of her expert witnesses and that of Ms Molanda by way of affidavit in terms of rule 38(2).
 3. The evidence set out in paragraph 2 of the plaintiff's application in terms of rule 38(2) dated 22 November 2024 is admitted into evidence in terms of section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988.

4. The costs of the rule 38(2) application shall be costs in the cause.
 5. The defendant shall pay to the plaintiff the amount of R690 980.99 in respect of past hospital, medical and related expenses.
 6. 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 100% of the costs of the future accommodation of the plaintiff in a hospital, or treatment or rendering of services to her, or supplying of goods to her arising out of the injuries sustained by her in the motor vehicle collision which occurred on 25 November 2018 after such costs have been incurred and upon proof thereof.
 7. Judgment is reserved in respect of the plaintiff's past and future loss of earnings and earnings capacity as well as the costs of the action.'
- [11] After the hearing I decided to request supplementary reports from the plaintiff's experts pertaining to her viva voce evidence. I was particularly concerned about the fact that she continued with her work at Nedbank after the collision, was thereafter head-hunted by Standard Bank and worked at this bank for some time until she resigned; also that she obtained a MBA degree and she was admitted by the HULT University in Dubai to do a second MBA. She also presented her evidence well and I was amazed that a person with a diffused brain injury could be so well-spoken. The plaintiff's attorneys did as I requested. They provided me with the required documents on 13 February 2025. I want to extend my gratitude towards them.

Evaluation of the evidence

- [12] There is no need to deal with the evidence in any detail. The initial expert reports as well as the supplementary reports, confirmed under oath by the experts, are not in dispute. I am satisfied that the plaintiff's viva voce evidence did not show that there was any reason to reject any of these reports. The criticism of Wallis JA in *AM and Another v MEC For Health, Western Cape*[1] does not apply in casu. It is clear from the supplementary reports that the experts considered the plaintiff's viva voce evidence, but notwithstanding that, remained steadfast in their initial approach. They did not have to alter their reasons and/or

opinions. I repeat that the RAF did not file any expert reports as mentioned, but also refused and/or failed to respond to my invitation

to indicate which allegations in the various reports are denied. In my view, the version presented by the plaintiff must be regarded as admitted and/or proven. It can never be argued that the experts relied on speculation, especially insofar as they were given a further opportunity to consider the viva voce evidence of the plaintiff.

- [13] Dr Versfeld deposed to an affidavit on 21 November 2024 wherein he dealt with the Plaintiff's past hospital and medical expenses and confirmed the reasonableness of the amount of R690 980.99. I was satisfied that the plaintiff had proven her claim in this regard. Consequently, I already made an order as set out above. It is obvious from the experts'

evidence that the plaintiff will require future hospital and/or medical treatment and therefore, an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act has been ordered as set out above.

[14] Dr Marus the neurosurgeon, issued three reports, the first on 6 September 2021, an addendum report on 3 May 2023 and a supplementary report as directed by the court on 13 January 2025. In his initial report, Dr Marus referred to the MRI scan performed on 6 September

2021. He stated the following in paragraph 11.2.2.2 of his first report:

‘. . . The dominant brain injury that she sustained was a diffuse brain injury – a diffuse axonal injury. Amongst the areas this affected was the posteromedial temporal lobe, supporting the short term memory difficulties that she is experiencing.’

He insisted then already that the plaintiff sustained a significant brain injury that limited her cognitive functions. In paragraph 5.2.1.2.5 of his report of 3 May 2023 he concluded as follows:

‘Conclusion: On the basis of the above reviewed information, she would be regarded as sustaining a significant diffuse axonal injury, that on the basis of prolonged period of post-traumatic amnesia and confusion, would be regarded as severe. Long-term cognitive and behavioural problems would be expected after this type and severity of brain injury. Quantification of her neurocognitive and neurobehavioural problems would need to be outlined by the clinical psychologist.’

In his supplementary report of 13 January 2025, Dr Marus predicted that the plaintiff ‘could pass the proposed MBA in Dubai.’ He remained steadfast that she sustained a significant and severe diffuse brain injury and continued as follows: ‘The accepted outcome is that patients retain some degree of cognitive impairment . . .’ but that ‘the extent however varies, dependent on various factors, . . . one relevant factor would be pre-accident level of intellectual capacity.’

His conclusion in paragraph 3 reads as follows:

‘It would appears (sic) that she was well endowed pre-accident in this regard and thus appears to have made a better outcome that (sic) expected in certain ways especially in retaining her high pre-accident goals, but unfortunately no longer having the intellectual ability to achieve them due to the effects of the brain injury, a problem that is commonly seen. These patients continue to strive for previously achievable tasks but invariably fail, and have difficulty in being persuaded otherwise.’

[15] Although I was initially of the view that the plaintiff’s brain injury could not be as significant as stated by Dr Marus, bearing in mind that she continued to work at Nedbank and thereafter at Standard

Bank and even obtained her first MBA degree, I am persuaded that the plaintiff would never be able to function on her pre-accident level. I say this based on Dr Marus' evidence, as well as the evidence of the other experts to which I shall now refer.

[16] Ms Maganlal, the Clinical Neuropsychologist, filed a report on 4 February 2021 and a supplementary report on 21 February 2024. An addendum report as requested by me was filed on 24 January 2025. She dealt in her latest report with my observation that the plaintiff could enter the academic field, which may be less strenuous than the positions she held at Nedbank and Standard Bank. I quote from paragraph 6.4 of her latest report, bearing in mind that the expert has personal experience in the academic and business environments, being full-time in academia for a long time:

'In this respect, and in response to the court's question on her ability to work in academia and advance to Dean, I contend that this is not likely to be sustainable. Even while it is plausible that Ms Mneno could utilise her premorbid expertise in academia, it is expected that she may work better as a research assistant or junior lecturer. However, as in the corporate/business world, her ability to advance will be dependent upon how well she is able to cope with multiple responsibilities and the demands imposed by academia, and her consistency therein. It is therefore my opinion that given her greater neuropsychological profile (post-accident), her noted deficits will affect her ability to advance and may eventually lead to job dissatisfaction.'

She concluded as follows in paragraph 7.1:

'When it comes to lesions in the central nervous system, I accept that each person is an individual with their own unique background and existing in a particular environment. Clinical conclusion (in spite of the literature) can often be defied and there are reports of people who are able to succeed despite the odds. However, I hasten to add that this is all too often the exception rather than the rule.'

[17] Dr Pretorius, the Industrial Psychologist, evaluated the plaintiff on 15 January 2021 and 18 March 2024. He filed an updated report on 23 May 2024. In paragraph 10.2.6 of this report he stated as follows:

'... She will never be able to reach the same level of career and earnings growth that was expected of her in her uninjured state and will be vulnerable in her injured state.'

[18] In paragraph 11.4 of the addendum report of Dr Pretorius dated 31 January 2025 he stated that it would be highly optimistic to postulate full-time employment for the plaintiff and that her reputation 'is expected to become tainted by lower performance which is expected to result in significant challenges in securing future contracts'. He then concluded that she 'is not considered an equal competitor and will likely have difficulties competing successfully for and sustaining future positions' with the 'risk of long period of unemployment with no earnings.'

[19] Mr Whittaker, the Actuary, filed a report on 5 July 2024 which was updated on 4 February 2025 as instructed by the court. He considered

the report of Dr Pretorius, dated 31 January 2025 and presented two scenarios which came down to the same total net loss of R9 157 586

after applying the statutory loss limit with reference to RAF v Sweatman[2] at the date of the accident in the amount of R276 928 per annum. Therefore, even if the more favourable contingency deduction of 30% pertaining to future loss in the injured state is considered as set out in scenario 1 and not 40% as in scenario 2, the end result remains the same.

[20] I therefore conclude that the plaintiff has proven that she is entitled to be awarded the amount of R9 157 586 in respect of her past and future loss of earnings.

[21] I am satisfied that she is also entitled to the costs of the action, inclusive of the costs of two counsel on the respective scales as set out in the order. The plaintiff resides in Gauteng and although the

collision occurred in the Free State, she was fully entitled to make use of Gauteng attorneys and counsel.

Order

[22] The following order is made:

NAME OF ACCOUNT : Munro Flowers & Vermaak Trust Account

BANK

: Nedbank

BRANCH CODE

: 187505

BRANCH

: Northern Gauteng

ACCOUNT NO

: 1[...]

REFERENCE

: MS. T Britz/ac/Mneno (M5014)

JP DAFFUE J

Appearances For plaintiff: JJ Wessels SC and H Schouten Instructed by: Munro, Flowers & Vermaak Attorneys c/o Webbers Attorneys Bloemfontein For defendant: No appearance.

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- [1] AM and Another v MEC For Health, Western Cape 2021 (3) SA 337 (SCA) at paras 17 & 21-22; HAL obo MML v MEC For Health, Free State 2022 (3) SA 571 (SCA) para 212.
- [2] RAF v Sweatman (162/2014) [2015] ZASCA 22.
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