



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable / Reportable

Case no: 5982/2022

In the matter between

MALIA SUZAN MOTEKOANE

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Motekoane v Road Accident Fund* (5982/2022) [2025] ZAFSHC 2
(7 January 2026)

Coram: BOKWA AJ

Heard: 14 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 09h00 on 7 January 2026.

Summary: Road Accident Fund 56 of 1996 – loss of earnings – proof of income – uncontested expert evidence – contingency deductions – rule 38(2) affidavits.

ORDER

1 The defendant accepts liability to pay 80 percent (eighty percent) of the plaintiff's agreed or proven damages.

2 The defendant shall furnish to the plaintiff an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, limited to 80 percent in terms of which the defendant undertakes to pay the costs of future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him/her, pursuant to injuries sustained by him/her in a motor vehicle collision which occurred on 1 of May 2019, after the costs have been incurred and upon proof thereof. The said certificate to be served on plaintiff's attorneys no later than 26 January 2026.

3 The plaintiff's claim in respect of general damages is postponed to the pre-trial roll of 2 March 2026 and referred to the HPCSA for a serious injury assessment.

4 The defendant shall pay to the plaintiff the sum (capital amount) of R775 877.60 (seven hundred and seventy-five thousand eight hundred and seventy-seven rand and sixty cent), after apportionment, as total for past and future loss of income, general damages on or before 14 (fourteen) days from date of this order.

5 The capital amount R775 877.60 is calculated as R969 847.00 less 20 percent apportionment.

6 The defendant will not be liable for interest on the capital amount should same be paid before or on the expiry of the 180 days from date of judgment as per the preceding paragraphs, failing which the defendant will be liable for interest calculated from 14 days from date of court order.

7 The defendant pays the plaintiff's taxed or agreed party and party costs on the High Court scale up to the date hereof, which costs will *inter alia* include:

(a) Costs incurred in preparation for and presentation of plaintiff's rule 38(2) application as granted on date 14 October 2025 as well as the costs of drawing and obtaining the associated expert affidavits.

(b) The reasonable cost of the medico legal reports, RAF 4 assessment reports and the reasonable preparation and reservation fees (if any), addendum reports and the affidavits of the experts whom plaintiff gave notice of including the fees charged by the experts for purposes preparing and deposing to their affidavits in terms of the rule 38(2)

application of the experts as well as the actuarial reports.

(c) The costs of counsel for the trial, which cost will include attendance of pre-trial conference and drafting of minutes (other than that by the plaintiff's attorney, if any), costs of drafting of Heads of argument (if applicable) and a settlement fee to hand up the draft order on the settlement roll. The cost for counsel as from 12 April 2024 will be taxes on scale B.

(d) The reasonable travel expenses of the plaintiff in accordance with the AA tariff for attendance and accommodation of the medico legal examinations and attendance at court.

(e) The reasonable costs of instructing attorney and correspondent attorney at the seat of court, which will include the costs for preparation for and attending the hearing date as set down for the 14th of and 15th of October 2025 by the instructing correspondent and accompanying travel time, travel expenses and accommodation costs;

(f) The costs occasioned by the plaintiff attorney's preparation of trial bundles; and

(g) The reasonable costs incurred to obtain payment of the capital as well as taxed costs and s 17(4)(a) undertaking.

(h) Taxation or settlement of bills of cost will additionally be subject to the following general conditions:

(i) The plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the defendant's attorneys of record; and

(j) The plaintiff shall allow the defendant 14 (fourteen) court days to make payment of the taxed costs from date of stamped allocator and/or settlement.

(k) The defendant will not be liable for interest on the party and party costs except if not paid on or before the said agreed date in which case the defendant will be liable for interest calculated from date of stamped allocated and/or settlement.

(l) The interest rate on the outstanding monies due to the plaintiff will be calculated as prescribed in s 1 of the Prescribed Rate of Interest Act 55 of 1975, as amended by the Judicial Matters Amendment Act 24 of 2015, which act was promulgated on 15 December 2015.

8 Payment of the capital amount and taxed costs shall be made into the following bank account:

Account holder:

[REDACTED]

Bank:

[REDACTED]

Branch: [REDACTED]

Account Number [REDACTED]

Branch: [REDACTED]

JUDGMENT

Bokwa AJ

Introduction

[1] The plaintiff, Maelia Suzan Motekoane, an adult female currently residing at [REDACTED] R [REDACTED], Viljoenskroon, Free State Province instituted action against the Road Accident Fund (RAF) arising out of a motor vehicle accident which occurred on 1 May 2019. The plaintiff was struck down by a motor vehicle near house no [REDACTED] Ikaya Location, Rammulotsi, Viljoenskroon. The merits of the matter have been settled at 80 percent in favour of the plaintiff. The RAF 4 form has been rejected and the claim for general damages has been set down for pre-trial on 2 March 2026. The claim for future medical expenses and undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, has been provided to the plaintiff.

Facts

[2] The only issue for this Court to adjudicate on, was the plaintiff's future loss of earnings. At the hearing of the matter on 14 October 2025 counsel on behalf of the plaintiff submitted a notice in terms of rule 38(2) of the Uniform Rules of Court that the plaintiff be granted leave to present her evidence in respect of quantum, read together with s 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988. The court agreed and admitted the affidavit of the plaintiff's experts pertaining to the issue of quantum and specifically the evidence of the following experts:

- (a) Dr Human Smeer Wentzel (General Practitioner);
- (b) Dr Lodewikus Andries Oelofse (Orthopedic Surgeon);
- (c) Cindy-Lee du Randt (Occupational Therapist);
- (d) Amanda Cornelia Rautenbach (Industrial Psychologist); and
- (e) Johan Potgieter (Actuary).

[3] Dr Human Smeer Wentzel, examined the plaintiff for the purpose of completing an RAF 4 (serious injury assessment report) on 25 April 2022. From a general practitioner's perspective his evidence was that the plaintiff's presented with a total whole person impairment rating equal to 17 percent and accordingly she was entitled to claim in terms of regulation 3(1)(b)(iii)(aa). Further to that, as far as the narrative test is concerned he indicated that the plaintiff's injuries were indeed of such severity that it resulted in serious long-term impairment.

[4] Dr Lodewikus Andries Oelofse, consulted with the plaintiff on 29 June 2023. He formulated his medico legal opinion on 29 June 2023 and confirmed that according to his observation as an orthopedic surgeon, and insofar as the narrative is concerned the plaintiff's injuries were indeed serious.

[5] Ms Cindy-Lee du Randt, the occupational therapist, consulted with the plaintiff on 13 June 2023. According to her opinion, the plaintiff's injuries and the consequences thereof would affect her occupational performance as well as her activities of living for the rest of her life. This opinion was formulated in a medico legal report compiled on 14 October 2023.

[6] Ms Amanda Cornelia Rautenbach, the industrial psychologist, also compiled a report after assessing the plaintiff's probable loss of earnings. She took a wholistic approach to the plaintiff's probable pre-morbid career progression and associated income, the plaintiff's career history, physical abilities, personality, cognitive abilities, interpersonal relationships as well as other psychological and behavioral factors. Her report also stated that the plaintiff was left with a residual earning capacity and sustainability or feasibility thereof, elaborated on having regards to the realities of both the plaintiff's post-morbid circumstances and the South-African labour market.

[7] According to the industrial psychologist report together with the notes of the occupational therapist, the plaintiff does not present with a positive outcome related to her future earning capacity. The plaintiff experiences chronic pain and disfunction and her physical scope of employment has as a result, been reduced from being capable of at least light work with significant mobility and agility requirements, to work of

sedentary nature with limited mobility and agility requirements. The plaintiff had achieved grade 7 as her highest educational qualification. She is dependent on her physical abilities and her loss of work capacity will result in loss of productivity. Of significance, she postulates that the plaintiff's career will not remain the same as in the uninjured scenario and was rendered functionally unemployable in the open labour market and a higher pre-accident contingency could be applied if deemed reasonable by the Court. Simply put, the plaintiff lost her physical abilities to earn an income and simply does not have the qualifications to obtain and sustain sedentary work.

[8] Mr Johan Potgieter is practicing as a consulting actuary at GRS Actuarial Consulting. He prepared a report on 2 June 2025 after reading the recommendations of the report of the industrial psychologist, Ms M Rautenbach dated 12 February 2024. Based on the industrial psychologist report, the actuaries calculated the plaintiff's past loss of income in the amount of R256 000.00 (two hundred and fifty-six thousand rand) and future loss of income in the amount of R713 847.00 (seven hundred and thirteen thousand eight hundred and forty-seven rand), giving her a total loss of income in the amount of R969 847.00 (nine hundred and sixty-nine thousand eight hundred and forty-seven rand). The calculation of the plaintiff's future loss of earnings was based squarely on the national minimum wage calculation to the age of retirement being 65.

[9] In oral submissions and written heads, counsel for the defendant asked the Court not to consider the evidence of the plaintiff regarding her pre-morbid earnings because she did not supply reliable evidence to the occupational therapist and industrial psychologist of collateral documents in support of her earnings. Regarding the post-morbid earnings, counsel for the defendant also submitted that plaintiff's evidence was inconclusive and unreliable.

The law

[10] In *Makhubu v Road Accident Fund*,¹ Pienaar AJ quoted with approval the unreported matter of *Boy Petrus Modise and Passenger Rail Agency of South Africa*. On appeal against the dismissal of a claim for damages for loss of earnings and damages for future loss of earnings, Wright J with Carelse J concurring, held:

¹ *Makhubu v Road Accident Fund* [2023] ZAGPPHC 283 para 32.

'This is an unfortunate case. One suspects that the plaintiff did suffer a past loss of earnings and will suffer future loss of earnings. However, I may not allow a suspicion, nor my sympathy for the plaintiff, to translate into a basis for awarding damages where the evidence does not allow this. The variables in the equation are simply too many.'

[11] Further to this, counsel for the defendant cited the matter of *Road Accident Fund v Madikane*,² in support of its argument that in that case, the Court held the appeal must succeed because there was no admissible factual evidence to support the conclusions that Mr Madikane's medical witnesses drew. Their opinions lacked the requisite factual foundation that our courts have consistently demanded should be the basis for the expression of opinions by an expert.

[12] In its heads of arguments, counsel for the defendant submitted further in oral arguments as follows:

'2.11 In a trial action it is fundamental that the position of an expert must be based on facts that are established by the evidence and the court assesses the opinion of experts on the basis of "whether and to what extent their opinions advanced are founded on logical reasoning". It is for the court and not the witness to determine whether the judicial standard of proof has been met.'³

2.12 The court must first consider whether the underlying facts relied on by the witness have been established on a prima facie basis. If not, then the expert's opinion is worthless because it is purely hypothetical, based on facts that cannot be demonstrated even on a prima facie basis. It can be disregarded. If the relevant facts are established on a prima facie basis, then the court must decide whether the expert's view is one that can reasonably be held on the basis of those facts. In other words, it examines the reasoning of the expert and determines whether it is logical in the light of those facts and any others that are undisputed or cannot be disputed. If it concludes that the opinion is one that can reasonably be held on the basis of the facts and the chain of reasoning of the expert the threshold will be satisfied.

2.13 In the case of *Bee v Road Accident Fund*,⁴ the court stated that:

"It is trite that an expert witness is required to assist the court and not to usurp the function of the court. Expert witnesses are required to lay a factual basis for their conclusions and explain

² *Road Accident Fund v Madikane* [2019] ZASCA 103 para 42.

³ *MV Pasquale Della Gatta; MV Filippo Lembo; Imperial Marine Co. v Deiulemar Compagnia di Navigazione Spa* [2011] ZACSA 131; 2012 (1) SA 58; [2012] 1 All SA 491 (SCA) paras 25-26. See also *Micheal & Another v Linksfield Park Clinic (Pty) Ltd & Another* [2001] ZASCA 12; [2002] 1 All SA 384 (A); 2001 (3) SA 1188 (SCA) paras 34-40.

⁴ *Bee v Road Accident Fund* [2018] ZASCZ 52; 2018 (4) SA 366 (SCA) para 22.

their reasoning to the court."

In *Road Accident Appeal Tribunal & Others v Gouws & Another*, the Supreme Court of Appeal said "courts are not bound by the view of any expert. They make the ultimate decision on issues on which experts provide an opinion."

The court must satisfy itself to the correctness of the expert's reasoning the facts on which the expert witness expresses an opinion must be capable of being reconciled with all other evidence in the case. For an opinion to be underpinned by proper reasoning, it must be based on correct facts. Incorrect facts militates against proper reasoning and the correct analysis of the facts is paramount for proper reasoning, failing which the court will not be able to properly assess the cogency of that opinion. An expert opinion which lacks proper reasoning is not helpful to the court.'

[13] In the matter of *Lorenzo Bevan Nelson v Road Accident Fund*,⁵ Naidoo J, quoted with approval the judgment of *Rudman v Road Accident Fund*:

'Indeed, a physical disability which impacts on the capacity to earn an income does not, on its own, reduce the patrimony of an injured person. There must be proof that the reduction in the income earning capacity will result in actual loss of income...Put differently, there must be proof that the disability gave rise to patrimonial loss.'

[14] Counsel for the plaintiff submitted in his oral and written heads that the plaintiff's evidence as it appears from all expert reports, stated categorically that she did not have any proof of her pre-accident earnings. She also testified to this aspect that she was paid always in cash. This evidence was not disputed during the trial. In the circumstances counsel for plaintiff submitted that her testimony should stand because it was not contested. In support of this argument in this regard, counsel submitted that this Court must have regard to the judgment of Loubser J, (a judgment of this division), in the matter of *Masimola v RAF*⁶ where it was held as follows:

In the present matter, the court has the benefit of an actuarial calculation presented by the plaintiff. The actuary calculated the past loss of earnings to be R370 791.00 and the future loss of earnings to be R2 465 491.00. This amounts to a total loss of earnings in the sum of R2 836 282.00. In calculating these figures, the actuary used the alleged R46 000.00 profit

⁵ *Lorenzo Bevan Nelson v Road Accident Fund* [2023] ZAFSHC 147 para 18.

⁶ *Masimola v Road Accident Fund* [2023] ZAFSHC 447 at paras 9 and 10.

Draft Order, attached hereto should be granted.'

[16] In conclusion, I agree with the submission made by counsel for the plaintiff that it would be incorrect to argue that the plaintiff could not prove her pre-accident income as she could not produce any pay slips or any other confirmatory evidence thereof. I do agree with the submission by counsel that her testimony in this regard stood uncontested, and as such, this Court has to accept same. Further to this, having studied the judgment of Loubser J in this regard in the *Masimola* matter which is quoted herein above, it is clear in my mind that the judgment of the court is correct and on point. I am persuaded that the legal principal extrapolated in that judgment is relevant to the facts of this case.

[17] A draft order was prepared for me dated 05 November 2025 after the parties prepared comprehensive heads of argument at request of the Court. I incorporate that order as part of the judgment of the Court and as such the following order is made:

4 The defendant accepts liability to pay 80 percent (eighty percent) of the plaintiff's agreed or proven damages.

5 The defendant shall furnish to the plaintiff an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996, limited to 80 percent in terms of which the defendant undertakes to pay the costs of future accommodation of the plaintiff in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him/her, pursuant to injuries sustained by him/her in a motor vehicle collision which occurred on 1 of May 2019, after the costs have been incurred and upon proof thereof. The said certificate to be served on plaintiff's attorneys no later than 26 January 2026.

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5 The capital amount R775 877.60 is calculated as R969 847.00 less 20 percent apportionment.

9 The defendant will not be liable for interest on the capital amount should same be paid before or on the expiry of the 180 days from date of judgment as per the

preceding paragraphs, failing which the defendant will be liable for interest calculated from 14 days from date of court order.

10 The defendant pays the plaintiff's taxed or agreed party and party costs on the High Court scale up to the date hereof, which costs will *inter alia* include:

(a) Costs incurred in preparation for and presentation of plaintiff's rule 38(2) application as granted on date 14 October 2025 as well as the costs of drawing and obtaining the associated expert affidavits.

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(c) The costs of counsel for the trial, which cost will include attendance of pre-trial conference and drafting of minutes (other than that by the plaintiff's attorney, if any), costs of drafting of Heads of argument (if applicable) and a settlement fee to hand up the draft order on the settlement roll. The cost for counsel as from 12 April 2024 will be taxes on scale B.

(d) The reasonable travel expenses of the plaintiff in accordance with the AA tariff for attendance and accommodation of the medico legal examinations and attendance at court.

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(j) The plaintiff shall allow the defendant 14 (fourteen) court days to make payment of the taxed costs from date of stamped allocator and/or settlement.

(k) The defendant will not be liable for interest on the party and party costs except if not paid on or before the said agreed date in which case the defendant will be liable for interest calculated from date of stamped allocated and/or settlement.

(m) The interest rate on the outstanding monies due to the plaintiff will be calculated as prescribed in s.1 of the Prescribed Rate of Interest Act 55 of 1975, as amended by the Judicial Matters Amendment Act 24 of 2015, which act was promulgated on 15 December 2015.

11 Payment of the capital amount and taxed costs shall be made into the following bank account:

Account holder: [REDACTED]

Bank: [REDACTED]

Branch: [REDACTED]

Account Number [REDACTED]

Branch: [REDACTED]

[REDACTED]

IR O BOKWA

ACTING JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:

Instructed by:

H E De La Rey SC

Brandt & Lambrechts Attorneys,

Klerksdorp

c/o Horn & Van Rensburg Attorneys,

Bloemfontein

For the defendant:

Instructed by:

S L Moodley

State Attorney,

Bloemfontein.