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

Not reportable
Case no: 2460/2023

In the matter between:

THATO VIOLET MOHAPI **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

Neutral citation: *Mohapi v RAF* (2460/2024) [2026] ZAFSHC 412 (28 August 2026)
Coram: NAIDOO J
Heard: 3, 4 and 6 February 2026
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 11h00 on 28 August 2026.
Summary: Road Accident Fund – undefended proceedings – damages – personal injury claim – liability and quantum – pedestrian – fractured ankle – unemployed after accident – not able to work – future medical expenses – undefended proceedings – rule 38(2) – contingency deductions – actuarial calculations to be recalculated

ORDER

1 The defendant is liable to pay 100% of the plaintiff's proven or agreed damages.

2 The defendant is liable for payment to the plaintiff of the amount of three hundred thousand rand (R300 000.00), in respect of the plaintiff's claim for general damages resulting from a motor vehicle accident that occurred on 10 July 2021.

3 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 costs of the future accommodation of the plaintiff in a nursing home or the treatment of or the rendering of a service or the supplying of goods to the plaintiff, arising out of the injuries sustained by the plaintiff in the aforementioned motor vehicle collision, in terms of which undertaking the defendant will be obliged to compensate the plaintiff in respect of the said costs, after the costs have been incurred and on proof thereof.

4 The award in respect of the loss of income is to be recalculated by the actuary, Mr Mellet, taking into account a 25% contingency deduction in respect of the pre-morbid future loss of income in scenario 2 of his report.

5 The defendant shall pay the plaintiff's taxed or agreed party and party costs, on the High Court scale, up to the date of this order, including the fees of counsel on scale B, and the costs set out in 5.1, in the discretion of the Taxing Master:

5.1 The reasonable qualifying and reservation fees and expenses, if any, of the follwing experts:

5.1.1 Dr RS Kahn (Independent Medical Examiner)

5.1.2 Dr JF Ziervogel (Orthopaedic Surgeon)

5.1.3 Ms Letita Reyneke (Occupational Therapist)

5.1.4 Ms Susan Van Jaarsveld (Industrial Psychologist)

5.1.5 Mr GJ Mellet (SNG Argen Actuarial Solutions).

JUDGMENT

Naidoo J

[1] The plaintiff was injured in a motor vehicle accident which occurred on

10 July 2021, when a motor vehicle collided with her whilst she was a pedestrian. She sustained a fracture and lacerations of the left ankle. The trial of this matter was scheduled for hearing in respect of the merits and quantum on 3, 4 and 6 February 2026. The plaintiff applied for the reports of the various medical experts, who did not testify, to be introduced into evidence in terms of Uniform rule 38(2). The court provisionally accepted the reports, provided that it would be unnecessary for the relevant experts to testify. I mention that at the end of the plaintiff's case, the court did not consider it necessary for the experts to testify, and accepted the reports. The necessary discussions thereon will be undertaken later.

[2] Mr Ostermeyer, who had represented the Road Accident Fund (RAF), indicated that he did not have instructions to proceed with the trial in this matter. He had expected an offer of settlement from the RAF in respect of the loss of earnings claim, but as none was forthcoming, he was unable to proceed in the absence of instructions to do so. He requested leave to withdraw as attorney for RAF. His request was granted and the matter proceeded on an undefended basis. This Court was required to adjudicate the merits and quantum in this matter. I will deal with the background of the matter before dealing with the issues for adjudication.

[3] The plaintiff testified and called the evidence of Maria Kopi (Mrs Kopi), an eye witness, and Mr Gert Johannes Mellet (Mr Mellet), an actuary who filed his report containing his calculations in respect of the plaintiff's loss of income. The plaintiff was 53 years old at the time of the accident and was approximately 57 years and 6 months old when the trial commenced. She testified that she was walking along the sidewalk of a street in Thabong in the evening, between 18h00 and 19h00. There was a palisade fence on her right hand side, and as she walked along, she saw Mrs Kopi on the other side of the palisade fence. She spoke to Mrs Kopi as she walked and whilst speaking to Mrs Kopi, she became aware of the lights of a motor vehicle behind her, and thereafter she did not know what happened. She later became aware that she was lying on the ground and members of the community had gathered around her.

[4] She was unable to stand up, she had a headache and her left leg moved limply. Before she was struck, she did not turn to look at the vehicle, and was unable to say where it was coming from. She walked on the side of the road facing oncoming traffic. She testified that if a vehicle approached from behind her on the street she was walking

in, it was on the wrong side of the road. I will refer to the vehicle as the insured vehicle. The plaintiff was taken to hospital, where X-rays revealed a fractured left tibia/fibula. She received surgery to repair the fracture of her ankle and treatment for the laceration and other associated injuries. She spent four days in hospital, and had to use crutches to mobilise herself. She spent seven months using the crutches.

[5] Mrs Kopi testified that the plaintiff is known to her and confirmed the plaintiff's evidence of how she came to be knocked down. She elaborated that the insured vehicle was travelling on a side road which is at right angles to the two-lane street on which the plaintiff was walking. The side road was behind the spot where the plaintiff was struck. The insured vehicle turned left out of the side road and instead of keeping on the left lane of the street, it turned onto the side of the road where the plaintiff was. Both the plaintiff and Mrs Kopi confirmed that this was the side of the road for oncoming traffic, being the opposite direction to which the insured driver ought to have been driving. The insured vehicle collided with the left side, particularly the leg, of the plaintiff's body. She knew the driver of the vehicle., and testified that he did not stop after knocking the plaintiff down. He proceeded down the road to the street where his parents and his in-laws lived. He left the car outside his in-laws' home and proceeded to his parental home on the same street. Mrs Kopi followed him and yelled at him for what he had done. She surmised that he had behaved in this way because he was drunk.

[6] Mr Mellet, the actuary, from SNG Actuarial Services, testified that he was requested to prepare a calculation in respect of the plaintiff's loss of income. He based his calculations largely on the report of Ms Van Jaarsveld, the Industrial Psychologist (IP). He allowed for three assumptions and titled them scenario 1, scenario 2 and scenario 3. He made no allowance for a post- morbid contingency deduction as the IP's view was that it is highly unlikely that the plaintiff would secure alternative employment and that she is functionally unemployable. Mr Mellet explained, referring to his report, that scenario 1 was calculated on the assumption that plaintiff would have earned according to her reported pre- morbid income, and the loss was calculated at R239 986.00. scenario 2 is based on the assumption that the plaintiff would have earned at the National Minimum Wage hourly rate, working 17.02 hours per week, and the loss was calculated at R249 928.00. scenario 3 is based on the assumption that the plaintiff would have earned at the National Minimum Wage hourly rate, working 45 hours per week, and the loss was calculated at R660 677. As is evident, each of these calculations

is based on assumptions. I will discuss the loss of income further after reviewing the opinions of some of the experts.

[7] It was not in dispute that the plaintiff suffered the injuries and *sequelae* of the accident that I mentioned earlier, but same must be examined in the light of the documentary evidence, which was mainly in the form of the medico-legal reports, as well as the *viva voce* evidence before court. As I indicated, the accident occurred on 10 July 2021. The experts examined and assessed the plaintiff during 2022 and 2024, Dr RS Kahn, an independent Medical Examiner completed the RAF 4 Serious Injury Assessment Report and attached his report to the RAF 4 form, which he signed on 8 February 2026. He assessed the plaintiff on 11 August 2022, which was approximately one year after the accident. At that stage, the plaintiff informed him that she was a domestic worker but could no longer work every day, and worked only once a week. From the plaintiff's answers to a questionnaire, Dr Kahn found that she had moderate difficulty *inter alia*, in standing, walking on even ground, walking up and down hills, standing on her toes and doing heavy work such as pulling, pushing , climbing and carrying. She was also unable to squat, hop on the left foot and running on even and uneven ground.

[8] Dr JF Ziervogel, an orthopaedic surgeon assessed the plaintiff on 15 January 2024, some two and a half years after the accident. He found, *inter alia*, that she still had pain in the left ankle, could only walk for about 2 kilometers without pain, she could not stand for long, there was a loss of some active movement in the left ankle. Dr Ziervogel postulated that the plaintiff required further treatment, such as removal of the instrumentation in her ankle, corrective osteotomy must be done to correct a malunion of the distal tibiofibular joint and the necessary analgesics for pain. He concluded that '*[t]he patient should be able to work again as a domestic servant once she was treated successfully*'. He also indicated that the injury is known to be painful and that her mobility was adversely affected. Her life expectancy was not affected by her injury.

[9] The Occupational Therapist, Letitia Reyneke, examined and assessed the plaintiff on 20 May 2024, 2 years and 10 months after the accident and found that her movement, some of her activities of daily living and particularly her ability to perform some of her domestic chores were restricted due to her injuries, therefore affecting her functionality in these areas. This causes her frustration as she relies on her daughter to assist with some of the functions, she is not able to attend to. The plaintiff has no specific

training in any other field except her experience in domestic work. Her pre-morbid hearing impairment limited her employment prospects, and the accident has reduced her employability even further. She postulates that the plaintiff's memory and concentration problems may be due to unresolved post-traumatic stress disorder (PTSD). I note that she did not consider the plaintiff's age as a factor causing or contributing to these issues, nor has she commented on Dr Ziervogel's opinion that the plaintiff would be able to work as a domestic worker again after successful treatment.

[10] The IP, Ms Van Jaarsveld, assessed the plaintiff on 18 June 2024, almost three years after the accident. She was requested to assess the impact of the accident on the plaintiff's present and future employability, and reiterated that her report was based on the information and reports made available to her, presumably by the plaintiff and the medical practitioners I have mentioned earlier. She did not perform psychometric testing on the plaintiff to determine her potential training and employment prospects either in the open labour market or in sheltered informal employment. The plaintiff informed the IP that she passed Grade 7 at school, and provided an overall picture of her employment history, without being able to provide exact details. Having considered the reports of Drs Kahn and Ziervogel and that of the OT, Ms Reyneke, the IP was of the opinion that the plaintiff was no longer able to perform the work of a domestic worker or any similar position, it is highly unlikely that she will be able to secure any alternative employment as she would not be competitive in the open labour market, and as her injuries have prevented her from performing any remunerative work. The IP postulated that the plaintiff must be compensated for loss of income from July 2021 until the retirement age of 65 years.

[11] As I indicated earlier, Mr Mellet based his calculations on the assumptions that were postulated in the IP's report. In scenario 1, he calculated the loss of income to be R227 986.00, in scenario 2 R237 431.00 and in scenario 3 R627 643. He made no provision for post morbid income or contingencies as the IP was of the opinion that the plaintiff was unemployable as a result of her injuries. I will return to this later.

[12] The trial in this matter was heard on 3, 4 and 6 February 2026, which was approximately four and a half years after the accident. The plaintiff's evidence with regard to her current position in relation to her injuries is that she is still restricted with regard to her functioning. She created the impression that she was severely hampered in that she

was not able to carry out the domestic chores she used prior to the accident. She indicated that she has had no improvement in her ability to walk, stand, clean and cook. On being pressed for details, it seemed that she is able to walk to the shops to purchase what she needs. She testified that in her last job before the accident, she worked for approximately five years as a domestic worker. She could not remember her employer's name and a name, Girley Motsamai, was put to her, which apparently made her remember her employer's name. She was paid in cash, and had no proof of the salary she earned.

[13] I mention that a form was attached to the papers, ostensibly from her employer, titled 'Details Required in Respect of Third Party Claim Injuries Sustained: Accident 10 July 2021', and purports to provide details of the plaintiff's employment with a person who signed at the bottom of the form and recording the name as 'Mpuetsi Girley Motsamai'. There are amounts reflected thereon which were not mentioned in the experts reports or in *viva voce* evidence, for example R20 per day for transport, basic overtime at time of accident R500, bonus lost as a result of absence from work R30 000 and salary lost due to absence from work R126 000.00. There is no indication of how these amounts were calculated and if the plaintiff was indeed paid these amounts prior to the accident. This is not a sworn statement, and as such the court is constrained to place any reliance on it.

[14] At the end of the plaintiff's evidence in chief, the court asked questions in order to clarify certain issues raised in chief. The court asked for a description of what her typical day looked like. The plaintiff said she washes dishes, but not daily, she cooks, assists with either hanging out or removing washed clothes from the line, ironing and picking vegetables from her garden. When questioned about that, she said that she plants tomatoes, spinach, beetroot carrots, potatoes and beans. She weeds and tends to the garden as well. Continuing with her typical day, she said that when she is done with hanging or removing the washing, she would watch television for the rest of the day. She has five children, three of whom work and contribute to household expenses. From the expert reports, it seems that her husband is a cleaner at a school. She was asked about her evidence that she cooks food for re-sale and she confirmed that she is doing that and earns an income of about R150.00 per day from that. Although the impression was created that these are activities for survival, it seems that the plaintiff's husband and children do contribute to living expenses.

[15] The issues for this Court to adjudicate are:

(a) Liability for the accident;

(b) General damages;

(c) Future medical and hospital expenses; and

(d) Whether the contingency deduction postulated by the actuary in respect of pre-morbid future income is commensurate with the plaintiff's circumstances.

[16] With regard to liability, there was no evidence to gainsay the plaintiff's version as corroborated by Mrs Kopi. I accordingly accept her version and find that the insured driver was solely negligent in causing the accident. It is trite that the plaintiff bears the onus to prove, on a balance of probabilities, that the injuries she sustained in the accident reduced her earning capacity, which results in actual loss. This matter was undefended and, as I indicated, there is no dispute that the plaintiff was injured and suffered the *sequelae* of such injuries. This Court must decide if the evidence bears out the extent to which she claims that she has been hampered or disabled by her injuries. The plaintiff testified four and a half years after the accident occurred. The medical experts saw her between two and three years after the accident and about two years before she testified.

[17] That the plaintiff's condition has improved somewhat is evident from her testimony. While her movement and her ability to perform certain tasks have been compromised, it appears to me that her functionality has definitely improved. In order to do gardening to the extent she testified about, her ability to bend, crouch and stand seem to have improved. In order to cook and bake food for re-sale, similarly entails an improvement in her ability to stand, cook and generally endure. There is no indication whether the plaintiff has undergone the further treatment that Dr Ziervogel has postulated. His view was that if she successfully receives this treatment, she would be able to work again as a domestic worker.

[18] I note that neither the OT nor the IP made any mention of this or commented on Dr Ziervogel's opinion. I am however, cognisant of the fact that the plaintiff is now 58 years old and that factor alone may militate against her finding employment. But I am not convinced that she is not able to engage in any other type of remunerative work. She clearly has cooking skills, which have created a demand for the food she cooks. There is no reason why she cannot pursue this with more vigour once she has had the

further treatment postulated by Dr Ziervogel. In my view, a balance must be brought to bear in respect of the interests of both parties in this matter, particularly as the public purse is implicated in the award of damages of this nature. In my view, a contingency deduction of 25% in respect of the pre-morbid future income in scenario 2 would achieve that fairness. The actuary will be required to recalculate the figures in scenario 2 on this basis.

[19] With regard to general damages, the plaintiff must be compensated for the pain and suffering, the loss of amenities and enjoyment of life that she has suffered as a result of the accident. It is therefore, trite that the award of damages under this head is in the discretion of the court, which discretion is exercised after consideration of the documentary, *viva voce* and all other relevant evidence before the court. As indicated earlier there is no dispute that the plaintiff was injured and suffered the sequelae thereof. I am however of the view that the plaintiff's injuries did not cause the *sequelae* to the extent that she claimed. At her age, it is likely that she would not recover as quickly as someone younger, but she clearly has improved since she was last seen by the doctors in 2024.

[20] A court must decide a matter on the specific circumstances before it, and comparison with other cases is merely a guide. In *Storm v Road Accident Fund*[1] (*Storm*), the plaintiff a motor technician suffered a broken ankle, injuries to his knee and other injuries. The injury to his ankle developed complications and he had to undergo further surgeries and treatment. Days before the accident, he had accepted a new job which paid twice what he earned at the time of the accident. As a result of his injuries and resultant incapacity, he was not able to take up the new position. His injures also had a severe effect on him mentally and emotionally, which negatively affected his relationship with his family and others. The award for general damages was made in the amount of R450 000.00.

[21] In my view, the *sequelae* of the plaintiff's injuries in this matter were less severe than that of the plaintiff in *Storm.* My view is that her claim for general damages in the amount of R500 000.00 is on the high side. I am of the view that a lower amount for general damages should be awarded in this case. With regard to future medical expenses, I am in agreement that these can be secured by way of an undertaking in

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[1] *Storm v Road Accident Fund* (17949/2018) [2021] ZAGPJHC 12 (29 January 2021) paras 5-9 and 36.

terms of section 17(4)*(a)* of the Road Accident Fund Act 56 of 1996. I am also in agreement with Mr Louw's submission that costs should follow the result. The plaintiff made no mention of past medical expenses and led no evidence in this regard.

[22] In the circumstances, I make the following orders:

1 The defendant is liable to pay 100% of the plaintiff's proven or agreed damages.

2 The defendant is liable for payment to the plaintiff of the amount of three hundred thousand rand (R300 000.00), in respect of the plaintiff's claim for general damages resulting from a motor vehicle accident that occurred on 10 July 2021.

3 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 costs of the future accommodation of the plaintiff in a nursing home or the treatment of or the rendering of a service or the supplying of goods to the plaintiff, arising out of the injuries sustained by the plaintiff in the aforementioned motor vehicle collision, in terms of which undertaking the defendant will be obliged to compensate the plaintiff in respect of the said costs, after the costs have been incurred and on proof thereof.

4 The award in respect of the loss of income is to be recalculated by the actuary, Mr Mellet, taking into account a 25% contingency deduction in respect of the pre-morbid future loss of income in scenario 2 of his report.

5 The defendant shall pay the plaintiff's taxed or agreed party and party costs, on the High Court scale, up to the date of this order, including the fees of counsel on scale B, and the costs set out in 5.1, in the discretion of the Taxing Master:

5.1 The reasonable qualifying and reservation fees and expenses, if any, of the following experts:

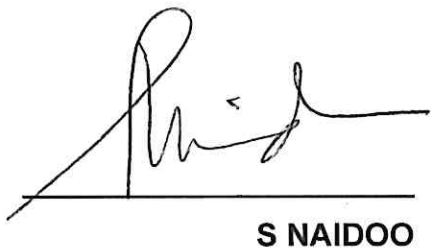
5.1.1 Dr RS Kahn (Independent Medical Examiner)

5.1.2 Dr JF Ziervogel (Orthopaedic Surgeon)

5.1.3 Ms Letita Reyneke (Occupational Therapist)

5.1.4 Ms Susan Van Jaarsveld (Industrial Psychologist)

5.1.5 Mr GJ Mellet (SNG Argen Actuarial Solutions).



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JUDGE OF THE HIGH COURT

Appearances

On behalf of plaintiff:	M Louw
Instructed by:	BL Kretzmann Attorneys c/o McIntyre & Van Der Post, Bloemfontein
On behalf of defendant	No appearance State Attorney, Bloemfontein c/o The Road Accident Fund, Bloemfontein.