IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 019792/2023

DATE: 13-05-2025

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO.
(3) REVISED.
DATE 13/5/2025
SIGNATURE

In the matter between

CHIKODZA NYASHA Applicant

and

ROAD ACCIDENT FUND Respondent

J U D G M E N T

WEIDEMAN, AJ: The accident from which this claim arose, occurred on or about 21 October 2021 at which stage the plaintiff was a pillion passenger on a motorcycle. The plaintiff's statutory section 19(f) affidavit in respect of the circumstances of the accident may be found on CaseLines 18-522. Having heard counsel and having considered the documentation, I am confident that the plaintiff was indeed involved in the accident as averred and that the insured driver was the predominant cause of the accident. The

required degree of negligence is therefore present and the plaintiff is entitled to 100% of such damages as he may be able to substantiate.

In paragraph 10 of the particulars of claim the plaintiff's injuries are recorded as follows:

1. a right distal femur fracture;
2. deep lacerations to the right lower leg;
3. disfigurement and psychologically sequelae.

The claim as reflected in paragraph 14 of the particulars of claim consists of the following:

Past hospital and medical expenses:	R 50 000
Future hospital and medical expenses:	R 136 244.63
Past loss of income:	R 51 562
Future loss of income:	R 1 077 964
General damages:	R 650 000

In presenting the plaintiff's case, counsel at the outset brought a rule 38(2) application, which was granted in respect of paragraphs 1 and 2 thereof.

Counsel confirmed, from the bar, that the claim for past hospital and medical expenses was not being pursued any further and that the claim for general damages must be

postponed *sine die*. The claim for general damages will accordingly be separated from the other heads of damage and postponed in terms of rule 33(4).

As far as future hospital medical expenses are concerned, the medico legal reports filed of record confirm future treatment and as such it would be appropriate for the defendant to provide the plaintiff with the standard statutory undertaking in terms of section 17(4)(a) of the Road Accident Fund Act.

This brings us to the remaining issue of loss of income. As far as the plaintiff's claim for past loss of income is concerned, the amount of R51 562 being claimed represents the income that had been forfeited as a result of the period of hospitalisation and recovery after the accident and which the plaintiff could have earned had the accident not occurred. There is, as was also debated with counsel, ample case law to confirm that the earning capacity of an individual is unaffected by the legality of his or her status when it comes to the consideration of past or accrued income. As such there is no impediment and it is in line with the existing case law to allow the claim for past loss of income as substantiated, being in the sum of R51 562.

The aspect of future loss of income or impairment of earning capacity is more complicated. In the first instance, the contract that the plaintiff sought to engage in, in coming to South Africa from his country of origin would have, had the accident not occurred, enabled him to earn approximately R215 000 per annum. However, the plaintiff is not an ignoramus and has a number of qualifications that enabled him to successfully start a business in South Africa and which, three years after the accident in 2024, resulted in him being able to record an annualised income of R691 200, approximately triple that he would have earned had he not been in the accident and the original contract came into play.

Counsel valiantly attempted to present evidence from the bar on the steps taken by the plaintiff to legalise his stay in South Africa. There is no reason to doubt the submissions made by counsel. Factually, at the time when this matter came before this court, the plaintiff was not in possession of the required documentation which would enable the court to award an amount for future loss of income on a quantifiable basis.

It does not matter whether the calculation and consideration is done in South Africa or in the plaintiff's country of origin,

what is factually true is that the injuries and its sequelae would have an impact on the plaintiff's ability to conduct his future business affairs in either country. As such this court is competent to deny the claim for future loss of income on the basis that it is not substantiated on the documentation available, but to accept a claim for impairment of capacity as such a claim would be unaffected by the country in which the loss is suffered. Having considered the documentation, the injuries and its sequelae, it is the view of this court that an appropriate reward for the claim for future impairment of earning capacity is R600 000.

ORDER

1. The plaintiff's application in terms of rule 38(2) is granted.

2. The plaintiff's claim for general damages is separated from the other hits of damage in terms of rule 33 (4) and postponed *sine die*.

3. The defendant shall be liable to the plaintiff for 100% of such damages as the plaintiff may be able to substantiate in that the required degree of negligence is present.

4. The defendant shall provide the plaintiff with an unlimited Undertaking in terms of Section 17(4)(a) of the RAF Act for such future hospital, medical or ancillary expenses as the plaintiff may require as a result of the injuries sustained in

the accident of the 21st October 2021.

5. The defendant shall pay the plaintiff the sum of R51 562 in respect of past loss of income.

6. The defendant shall pay the plaintiff the sum of R600 000 in respect of impairment of earning capacity.

6. The plaintiff is entitled to his party and party costs as taxed or agreed, with counsel's fees to be on scale B.

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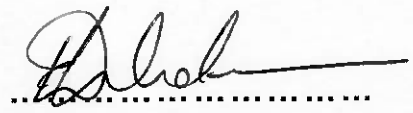

WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 13/5/2025