REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number:2015/30703

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES:NO
(3) REVISED: NO

DATE: 24/6/2025 SIGNATURE

In the matter between

PRINCE KGOSI KHAMBULE **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

WEIDEMAN, AJ:

[1] The plaintiff, an adult male born on 11 May 1991 instituted this action against the defendant (the RAF) in his personal capacity on 16 September 2015. His claim is for damages suffered as a result of injuries which he sustained in a motor vehicle accident on 19 June 2013 and which was caused by the negligent driving of the RAF's insured driver.

[2] The negligence aspect of this matter was settled between the parties on 15 March 2018 by way of offer and acceptance, the RAF accepting liability for 100% of the plaintiffs proven or agreed damages.

[3] The RAF has not yet made an election in respect of the seriousness of the injuries sustained by the plaintiff. The plaintiff's application in terms of Rule 33(4) for the separation of the aspect of general damages from the remainder of the issues before me was accordingly granted. The issues before me for adjudication were past and future hospital and medical expenses and past and future loss of income.

[4] The plaintiff's application in terms of the provisions of Rule 38(2) of the Uniform Rules of Court for expert evidence and the evidence of lay witnesses to be presented on affidavit was also granted.

[5] The plaintiff alleged in his particulars of claim that he suffered the following injuries as a result of the accident: Chest injury, injuries to both shoulders, a back injury, a head injury, a neck injury and multiple wounds.

[6] The plaintiff has placed sufficient evidence before court to support his claim in the amount of R77 152.21 in respect of past medical expenses.

[7] There is similarly ample substantiation in the medico-legal reports presented as evidence in terms of Rule 38(2) that the plaintiff will require extensive hospital and medical care in future. The provision of a Section 17(4)(a) Undertaking by the RAF is therefore appropriate in the circumstances.

[8] The plaintiff's case for loss of income is premised on the averment that it was at all times his intention to qualify as a firefighter and that the injuries sustained in the accident have now made it impossible for him to pursue his choice of career.

[9] In considering the factual information available at the time of the hearing of the matter I was not persuaded by the submissions of the expert witness in respect of the plaintiff's reported desire to become a firefighter prior to the accident. In fact, the evidence presented in this regard related solely to occurrences after the accident had already occurred. Counsel assured the court that there was evidence available that would support the reporting to the experts of his intentions and desires. The documentation relating to counsel's submissions was, however, only uploaded after the hearing of the matter.

[10] The plaintiff's training and education history consists of the following:

2009 - failed Grade 12;

2010 - basic ambulance assistance course;

2012 – passed Grade 12;

January to April 2013 - GEFSTA Fire Training Academy (did not complete)

[11] The accident occurred on 19 June 2013 and could clearly not have been the reason for the plaintiff not having completed the GEFSTA course. No reason was given for not completing the course during 2013.

[12] During the remainder of 2013 and 2014 he operated an internet café from his house, predominantly helping school children with their assignments.

[13] The plaintiff again attended the GEFSTA Fire Training Academy from January to May 2015, registering for the following courses:

Fire Fighting 1 (NFPA 1001).

Fire Fighting 2 (NFPA 1001).

Hazardous Materials for First Responders Operational Level (NFPA 472).

Hazardous Materials for First Responders Awareness Level (NFPA 472).

[14] His 2015 results show that the plaintiff passed the theoretical as well as the practical components of each of the above courses during May 2015.

[15] During 2016 and 2017 he was an unpaid volunteer firefighter at the Orange Farm Firehouse.

[16] In May 2018 the plaintiff successfully passed an Ambulance Emergency Assistant course.

[17] On or about 11 June 2018 the HPCSA recorded his qualification as a *"Certified Ambulance Emergency Assist – Impact Emergency Technologies"* and he was registered by the HPCSA as an Ambulance Emergency Assistant in the category "*Independent Practice*".

[18] The industrial psychologist prepared his original assessment on 17 October 2023 and a supplementary report, based on a telephonic follow up consultation, on 11 April 2025.

[19] In his report the industrial psychologist records the plaintiff's pre-accident occupation as "*Student – Fire Fighting*". This does not appear to be factually correct as the plaintiff discontinued the course two months before the accident.

It seems that the industrial psychologist might not have been provided with a factually complete pre – accident scenario.

[20] It is iniquitous to claim past loss of income based on a qualification which, *ex facie* the available documentation the plaintiff did not obtain prior to the accident and not as a result of the injuries sustained in the accident.

[21] The court accepts that the plaintiff's claim is represented by the difference between the projected future income as a Fire Fighter and the projected future income as an Emergency Care Officer. The evaluation must, however, go further.

[22] In the "but for the accident" scenario provision is made for promotion and income as if he would be able to secure employment at one of the larger metros and which would be able to pay more than the smaller municipalities. In addition, his father's income is used to account for a portion of the amount being used in the calculation. The calculation suggests that the plaintiff's income would peak at age 45 at R436 136.75 per annum, with inflationary increases thereafter until age 60. At age 57 his father was earning R711 480 per annum. If the plaintiff's projected income at age 45 is extrapolated forward to age 57, increased by inflation only, the result is a figure much higher than what his father was earning at that age.

[23] The statement is made that the plaintiff would automatically be able to obtain employment in the private sector once he retires and retain such employment to age 65. The evidence in support of this premise is inadequate.

[24] The income of a fire fighter makes provision for danger pay. This is equally true of his employment as an emergency care officer and which also includes danger pay. There is a reason why both options includes danger pay and it would be wrong to attempt to confine the evaluation of what the appropriate contingency deductions ought to be without providing for this element and which is not part of most other careers.

[25] Next is the plaintiff's "having regard to the accident" projected income scenario. Based on the medical experts' opinions the industrial psychologist projected a delayed career and thus by implication a delayed income progression. The difficulty with the expert's opinion is that it does not provide guidelines as to why and how the employer, being a local government department, would evaluate

when to grant notch increases, who decides on it and why it would be every four years rather than every two years and for the duration of his whole career. The effect of this approach is that the plaintiff's income (both figures in 2025 values) would increase from R221 253 in April 2025 to R233 580 in April 2045, a miserly net increase of R12 327 over a period of twenty years.

[26] There is no evidence why it could not be, for example, every three years rather than every two years. If this is an equally possible option then it would significantly increase the plaintiff's post-accident income but, as indicated above, the expert failed to provide a factual basis for his opinion that the plaintiff would receive notch increases only every four years rather than the normal two years.

[27] The industrial psychologist makes a rather surprising statement "early retirement enforced by employer", at age 55. [CaseLines 004-114]. At that stage the plaintiff would have more than 20 years of service with the same employer, a local authority. The Municipal Workers Pension Fund must contain guidelines as to whether the plaintiff would lose any pension benefits due to medical enforced early retirement or whether he would still, at that stage, be medically boarded. Without this information the report is incomplete and the calculation flawed. In addition, I could not trace any explanation why his "pension income" from age 55 to age 60 should not be brought into the calculation as it represent his factual income during that period.

[28] Despite having allowed the plaintiff an opportunity to supplement his documentation the evidence that had been put before court is unsatisfactory. Nevertheless, it is all that is available and I must do the best it can with what is available.

[29] It is my view that in the calculation of the plaintiff's past loss of income the contingency deduction in respect of the "uninjured earnings" should be 25%. No deduction in respect of the "injured earnings" is called for as it represents his actual income received.

[30] Uninjured Earnings: R2 506 100 – 25% = R1 879 575

[31] Injured Earnings: R1132 900 – 0 % = R1 132 900

[32] Total Net Past Loss of Earnings: R746 675.

[33] The court will apply a 40% contingency deduction from the future "uninjured" income and a 25% contingency from the future "injured" income. The reasons and motivations for these contingencies have been fully canvased above.

[34] Uninjured Earnings: R7 534 700 – 40% = R4 520 820

[35] Injured Earnings: R4 088 700 – 25% = R3 066 525

[36] Total Net Future Loss of Earnings: R1 454 295

I grant an order which reads as follows:

[1] The plaintiff's application in terms of Rule 38(2) is granted;

[2] The Plaintiff's application in terms of Rule 33(4) is granted and the aspect of general damages is postponed *sine die;*

[3] By agreement between the Parties: The Defendant is liable to compensate the Plaintiff for 100% (One Hundred Percent) of his proven delictual damages suffered as a result of the motor vehicle collision which occurred on 19 June 2013.

[4] The Defendant shall pay the capital amount of R2 278 122.21(Two million two hundred and seventy eight thousand one hundred and twenty two rand and twenty one cent) in full and final payment of the Plaintiff's claim, which is calculated as follows:

4.1Past Hospital and Medical Expenses: R77 152.21

4.2 Past Loss of Earnings: R746 675.00

4.3 Future Loss of Earnings: R1 454 295.00

[5] The capital amount is payable by means of direct fund transfer into the trust bank account of the Plaintiff's attorneys; Mills & Groenewald Trust Cheque Account, Absa Bank, Vereeniging, Account no: 4042179809, Branch code: 630 137, reference: A VAN ZYL / DK / K1663.

[6] The Defendant shall furnish the Plaintiff with an unlimited 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 hospital and nursing home and treatment of and rendering of a service to the Plaintiff and the supplying of goods to the Plaintiff arising out of the injuries sustained by the Plaintiff in the motor vehicle collision of 19 June 2013 after such costs have been incurred and upon proof thereof.

[7] The Defendant shall pay the Plaintiff's taxed or agreed party and party costs up to date on the High Court scale, which party and party costs shall include, but not be limited to (as per the discretion of the Taxing Master):

7.1 The reasonable costs in respect of the preparation of the actuarial calculations, medico legal and addendum reports of the experts;

7.2 Costs of counsel on scale C in terms of Rule 67A to date hereof, including the preparation for and trial appearance on 29 April 2025 as well as the preparation and drafting of the Plaintiff's Heads of Argument and annexures.

7.3 Qualifying and preparation fees for drafting of the following medico-legal reports:

7.4 Dr G A Versfeld (Orthopaedic Surgeon) - Report and RAF4 Serious Injury Assessment Report; Sunninghill Radiology;

7.5 Mrs. R Bennie and C Rice (Occupational Therapists);

7.6 Dr W Pretorius (Industrial Psychologist) – Report as well as Addendum Report;

7.7 Munro Actuary reports.

[8] The Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant; The Plaintiff shall allow the Defendant to make payment of the taxed or agreed costs 30 (thirty) days after the costs were taxed and/or settled.

D F WEIDEMAN AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 24 JUNE 2025.

Heard: 29 April 2025

Delivered: 24 June 2025

APPEARANCES:

Applicant's counsel:	Adv. D Grobbelaar desmond@grobbelaarlaw.co.za
Applicant's Attorneys:	Mills & Groenewald dalene@mgp.co.za
Respondent	No appearance