IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION, (MBOMBELA MAIN SEAT)

Case No: 2435/2024

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED **YES/NO**

DATE 21 September 2026

SIGNATURE

In the matter between:

DIBAKOANE PRUDENCE **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

INTRODUCTION

[1] The Plaintiff is suing the Defendant ("the Fund") for damages she suffered as a result of a motor vehicle accident that occurred on the 26th of March 2022 along the R[...] N[...] Road, White River, Mpumalanga Province.

[2] The Plaintiff was a passenger in the motor vehicle with registration letters and numbers J[...] 3[...] M[...], driven by the first insured driver, when it collided with another vehicle with registration letters and numbers F[...] 2[...] M[...], driven by the second insured driver.

[3] The Plaintiff alleges that the second insured driver was negligent. No need to set out the details of the negligence, as the Fund has conceded merits at 100%. Accordingly, the Fund is not disputing that the second insured driver was negligent.

[4] The matter was before me for trial on 26 and 27 February 2026.

[5] During trial, I was informed that:

5.1 The Fund has conceded merits 100%;

5.2 The Fund has furnished an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 26 of 1996 ("the Act");

5.3 The Fund has rejected the Plaintiff's serious assessment report.

[6] Accordingly, the parties requested that the question of general damages be postponed *sine die*.

[7] In the circumstances, the only question I am called upon to determine is the Plaintiff's claim for past and future loss of earnings.

THE TRIAL

[8] The Plaintiff testified o as follows:

8.1 She was a passenger in the above-described vehicle when the accident occurred.

8.2 She was admitted at Kiaat Hospital.

8.3 Her right middle and ring fingers were amputated. She also suffered a back injury as per RAF 4 form and the medico-legal report prepared by the orthopaedic surgeon, Dr SP Maelane.

8.4 That at the time of the accident she was employed as a hairdresser at Split-ends salon.

8.5 That after the accident she did not work for 1 year.

8.6 She earned a salary of R6 200.00 per month before the accident. After the accident, she returned to the same salon and earned a reduced amount of R3 200.00 per month.

8.7 Counsel referred me to photos of the Plaintiff's injuries at pages 0005-4.

8.8 I was further referred to pre-morbid bank statements at pages 0002-22 and 0002-172.

8.9 I was referred to post-accident statements at pages 0002-22 and 0002-30. Also at pages 0002-193 to 0002-256.

8.10 The Plaintiff also testified about her former employer's certificate confirming how much she earned. The employer's certificate indicated she earned R4 000.00 per month, which is R2 200.00 less than R6 200.00.

8.11 She said she received R2 00.00 as a monthly benefit.

8.12 She received part of her salary into her bank account and the remainder in cash.

8.13 She returned to work in April 2023 according to the employer's certificate.

8.14 She denied receiving R13 000.00 while she was recuperating at home and does not know why the employer made this statement.

8.15 In October 2024, she started her own salon and initially earned R9 800.00, but it has declined to R8 000.00. The decline started in 2025.

8.16 Her injuries have slowed her down, and she can no longer do certain hairstyles.

8.17 Her duties as a hairdresser include plaiting hair, installing artificial hair and applying make-up.

8.18 Her workspace is in White River, and she rents a chair in an open room. The salon is called Vivian Salon, and the rental is R2 000.00 per month.

8.19 Her business expenses are: hair relaxer products, hair food, shampoo and razors. Her transport cost is a bus ticket at R844 per month.

8.20 She also received a SASSA grant. I was referred to her grant documents at pages 0002-42 to 0002-44. The grant is for permanent disability.

[9] Under cross-examination, she testified as follows:

9.1 She confirmed that Split-ends employed her and that she was earning a salary of R6 000.00.

9.2 She was then referred to pages 0005-33 and asked whether she knew the affidavit, and she confirmed that she did.

9.3 It was put to her that the affidavit indicated that she earned R6 200.00. She responded that the employer would deposit R3 000.00 and give her the remainder in cash for overtime.

9.4 When asked whether she had a payslip, she said no. She was further asked whether she was registered with the UIF or tax, and she said no.

9.5 She confirmed that after the accident she received a salary of R3 800.00.

9.6 When asked how this was paid, she said some money was paid into her bank account and some in cash.

9.7 She was taken to task about the certificate reflecting that she received R13 000.00 while recovering from her injuries, and she denied it, saying that was not correct. When asked what else was incorrect besides the certificate, she said everything else in the certificate was correct.

9.8 She confirmed that after the accident, she became self-employed and initially earned R9 800.00.

9.9 She was asked whether someone else helped her in this business; she said yes, and that they all had one person assisting them in the salon.

9.10 It was put to her that the need for an assistant was not related to her injuries, and she said yes.

9.10 She was asked whether she had a client register, and she said no.

9.11 When asked how she can tell the amount of the income. She said some clients paid in cash and some into her bank account, and she saves the money.

9.12 She was referred to post-morbid bank statements at pages 0002-14 to 0002-17.

9.13 She testified that monies are paid into her savings account, and she then transfers them to her easy account.

9.14 Her grant money is paid into her Standard Bank account.

9.15 When asked whether she is able to use her injured fingers. She responded that she uses the other 2 fingers and can plait and finish, but she is slow.

[10] Under re-examination, she testified as follows:

10.1 She confirmed that she did not receive the R13 000.00 stated in the employer's certificate.

10.2 When asked how the lady assisted her. She said that the lady would help her by washing the client's hair. For this, she would pay her.

10.3 She also stated that there is a possible further amputation of her fingers.

10.4 When asked how many clients she has lost due to her slowness. She said a lot and estimated 10 clients per month.

10.5 She was asked why she is not registered for UIF or tax. She said she does not know.

10.6 When asked whether she knows the sector in which the salon busy is, she said no.

Expert evidence

[11] Expert evidence was admitted in terms of Rule 38(2) of the Uniform Rules of Court.

[12] The Occupational Therapist's report may be summarised as follows:

12.1 The Plaintiff complained of reduced speed due to the right middle and ring finger amputation and pain.

12.2 On manual material handling, she has a residual ability to lift medium work, and her occupation falls within light-work parameters with a job match in this regard.

12.3 The handgrip strength protocol showed below-average scores for the right hand.

12.4 Her limitations and pain will compromise her ability to function at the same level as her uninjured co-workers; therefore, she is considered a vulnerable competitor in the open labour market when compared to her non-injured counterparts.

12.5 Being a hairdresser requires using both hands and all fingers when braiding hair. Because of the amputation, her work speed and execution are affected.

12.6 In conclusion, the Plaintiff remains an unequal competitor compared to her peers in the open labour market.

[13] The Industrial Psychologist's report can be summarised as follows:

13.1 Pre-morbid, the Plaintiff had no tertiary or vocational qualifications. Her earnings were at the median for semi-skilled non-corporate workers, with retirement age set at 65-70 or until death. She has worked as a hairdresser her whole life.

13.2 Post-accident, she is no longer doing her pre-accident duties due to her fingers being amputated, and she was only limited to washing and dyeing hair. This is not entirely correct, as the Plaintiff testified that she can plait but is slow.

13.3 Her earnings are now at the midpoint of the upper quartile level because she has become self-employed; however, her earnings would have been in the upper quartile, thus indicating a past loss of income.

13.4 Regarding future loss of earnings, the Plaintiff's work speed is lower than expected in the open labour market. She will likely lose customers as customers will be impatient while she takes longer to finish their hair.

13.5 Due to her limitations in her duties and slow work pace, her earnings are expected to remain as current, and therefore she will have future loss of earnings.

[14] The Actuarial report may be summarised as follows:

14.1 The Actuary based his calculations on two scenarios, i.e., a pre-morbid retirement age of 65 years and a premorbid retirement age of 70 years.

14.2 On pre-morbid earnings, relying on the Industrial Psychologist's findings that the Plaintiff was a hairdresser earning a salary of R4500.00 per month in March 2022, equal to an annual income of R54 000.00 in March 2022. He projected this income with linear increases for 10 years until March 2032. He opined that thereafter she would have been able to earn a net income in a self-employed capacity equivalent to the upper quartile income of non-corporate semi-skilled workers at R233 000.00 per annum according to the Quantum Yearbook 2026. He also considered inflationary increases until retirement at 65.

14.3 Regarding earnings after the accident (post-morbid). He projected no income for the Plaintiff for 1 year until March 2023, as she was absent from work due to injuries sustained in the accident. Later, the Plaintiff had an income as a hairdresser with the same employer at a salary of R3 200.00 per month in March 2023. The annual income is equivalent to R33 400.00 in March 2023. He projected this income for 4 months until July 2023. Thereafter, he projected no income until 01 April 2024 due to unemployment. Thereafter, the Plaintiff earned a net profit after business expenses as a self-employed hairdresser in the amount of R5 000.00 per month. The annual income is R60 000.00 in current monetary terms, and the income was projected with inflationary increases until the retirement age of 65.

14.4 His calculations, based on a pre-morbid retirement age of 65 and a post-morbid retirement age of 65, are that, had the accident not happened, the Plaintiff would have earned R337 454.00 regarding past earnings. With regard to future earnings, had the accident not happened, the Plaintiff would have earned R4 180 641.00.

14.5 Regarding pre-morbid retirement at age 65 and post-morbid at age 65, , he projected that the Plaintiff would have earned R135 223.00 for past earnings and R1 243 461.00 for future earnings.

14.6 Based on the above, he issued a certificate for total loss of earnings at R2 799 714.00.

14.7 Moving to the Actuaries' calculations, based on pre-morbid calculations at retirement age of 70 and post-morbid at retirement age of 65, he projected that the Plaintiff would have earned R337 454.00 in past earnings and R4 399 159.00 in future earnings.

14.8 Had the accident occurred, he projected that the Plaintiff would have earned R135 223.00 for past earnings and R1 243 461.00 in future earnings.

14.9 Based on the above, he issued a certificate for total loss of earnings at R3 123 154.00.

APPLICABLE LEGAL PRINCIPLES

[15] It is trite that an Applicant bears the onus to prove the extent of past and future loss of any earning capacity. This means that a Plaintiff must adduce evidence from which it can properly be inferred that his or her earning capacity has diminished. Impairment in itself is not proof that a Plaintiff has suffered loss of earning capacity.

[16] In this matter, it is not disputed that the Plaintiff works in the informal sector, i.e., the hairdressing industry. It is not disputed that some of her income was not accounted for in terms of documentary proof. However, it was not seriously disputed that some of her income was received in cash. I have no reason to doubt this, as cash payments are common in the informal sector. I therefore reject the Defendant's argument that there is no collateral evidence, considering the Plaintiff's undisputed evidence on this aspect.

[17] Furthermore, case law authorities tell us that where a Plaintiff has proved some patrimonial loss, but there is insufficient evidence (which, in my view, is not the case in this matter) to enable assessment, the Court may, in some instances, estimate damages on the best evidence available. See de Klerk v Absa Ltd 2003 (4) SA 315 SCA at 333H as quoted in the judgment of Capasana v Road Accident Fund (5876/2022) (2025 ZAFSCHC 82 (11 March 2025). The SCA set out the principle as follows:

"There have been numerous decisions in which our Courts have said that a Court will come to a plaintiff's aid in a case of uncertainty and make an estimate in his favour, provided he has led the best evidence available - see, for instance, Enslin v Meyer 1960 (4) SA 520 (T) at 523F - 524A."

[18] It is unnecessary to invoke the principle stated above as I have already found that the evidence led by the Plaintiff is sufficient. In any event, the parties have agreed on the pre-morbid income and the assumptions upon which the Actuary premised his calculations.

[19] I consequently find that the Plaintiff has duly proved her total past loss of earnings and a total future loss of earnings.

[20] Before moving to contingencies and the award to be made . I need to deal with the Defendant's contention that the Plaintiff would not have earned an income in a self-employed capacity equivalent to the upper-quartile income of non-corporate, semi-skilled workers.

[21] The Industrial Psychologist projected that the Plaintiff would have progressed after about 10 years into self-employment and earned upper-quartile earnings in the relevant band for semi-skilled non-corporate workers. The Defendant is disputing this.

[22] The objective evidence supports this view. The Plaintiff did transition into self-employment in the very manner that the industrial psychologist's report postulates, notwithstanding her injuries and the very limitations of which she complains. Her earnings rose to R9 800.00 minus costs, despite the slowness occasioned by her injuries.

[23] Accordingly, I find that there is no merit in the Defendant's contention that she would not have progressed to the upper-quartile of non-cooperative workers.

<u>CONTINGENCY DEDUCTIONS</u>

[24] In the quantum yearbook by Robert J. Koch, 2021, at page 118, the author says the following:

"When assessing damages for loss of earnings or support, it is usual for a deduction to be made for several contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is a prerogative of the Courts. However, most matters do not go to Court, so the relevant deduction becomes a matter for negotiation. Even when matters go to Court, some judges seek advice from expert witnesses as regards the appropriate deductions to make. General contingencies cover a wide range of considerations which vary from case to case and may include: taxation, early death, safe travel costs, loss of employment, promotion prospects, divorce, etc. There are no fixed rules to general contingencies……...."

[25] Considering my findings above, I find that an additional 5% contingency deduction would lead to a fair and just award. Accordingly, the calculation is as follows:

Past loss of earnings (per actuarial certificate, unadjusted)	R 192 119.00
Future loss of earnings (per actuarial certificate)	R2 607 595.00
Less further contingencies deduction of 5%	
Adjusted future loss of earnings	R2 477 215.25
Total award – past and future loss of earnings	R2 669 334,25

<u>COSTS</u>

[26] The costs shall follow the result.

<u>ORDER</u>

[27] In the circumstances, I make the following order:

1. The Defendant shall pay the Plaintiff the sum of R 2 669,334,25 in respect of past and future loss of earnings.

2. The Defendant shall pay interest on the amount in paragraph 1 above at a rate of 10.25% per annum, calculated from the date of judgment to the date of payment.

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 payment of 100% of the costs of the Plaintiff's future accident-related medical, hospital and related treatment, upon proof thereof, as agreed between the parties on 26 February 2026.

4. The Plaintiff's claim for general damages is postponed sine die, pending the outcome of the referral of the RAF 4 serious injury assessment to the Health Professions Council of South Africa.

5. The Defendant shall pay the Plaintiff's costs of suit on a party-to-party scale, scale B, including the costs of the application in terms of rule 38(2), and the qualifying, preparation and reservation fees of experts, such costs to be taxed or agreed in default of agreement.

6. The costs relating to the Plaintiff's claim for general damages are reserved for later determination.

TS Ngwenya
Acting Judge of the High Court
Mbombela (Main Seat)

Appearances

For the Plaintiff: Adv D M Dennis

William Mokhare Chambers, Mbombela

Instructed by: Mahlalela Attorneys, Mbombela

For Defendant: Adv M B Monyemoratho

Pretoria Society of Advocates, Circle Chambers

Instructed by: State Attorney, Mbombela

Date of hearing: 27 February 2026

Date of Judgment: 21 September 2026