



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
JUDGMENT**

**Not Reportable**

Case no: 333/2024

In the matter between:

**MANANYANA JANE MOLOI**

**APPLICANT**

and

**ROAD ACCIDENT FUND**

**RESPONDENT**

**Neutral citation:** *Moloi v Road Accident Fund* (333/2024) [2026] ZASCA 13 (06 February 2026)

**Coram:** MATOJANE, UNTERHALTER and KOEN JJA and DAWOOD and KUBUSHI AJJA

**Heard:** 18 November 2025

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for the handing down of the judgment is deemed to be 11h00 on 06 February 2026.

**Summary:** Delict – claim for damages – Road Accident Fund – future loss of earning capacity – applicant's expert evidence uncontroverted by respondent – trial court accepting expert evidence for past loss of earnings but rejecting same experts' evidence for future loss of earnings – whether the trial court's rejection of unchallenged expert evidence constituted a misdirection.

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## ORDER

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**On appeal from:** Free State Division of the High Court, Bloemfontein (Molitsokane and Mhlambi JJ and Mthimunye AJ, sitting as a court of appeal):

The application for special leave to appeal against the judgment and order of the full court of the Free State Division of the High Court Bloemfontein, is dismissed with no order as to costs.

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## JUDGMENT

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**Kubushi AJA (Matojane, Unterhalter and Koen JJA and Dawood AJA concurring):**

### Introduction

[1] This is an unopposed application for special leave to appeal against the judgment and order of the full court of the Free State Division of the High Court, Bloemfontein (the full court), which dismissed the applicant's appeal against the judgment of the High Court, Bloemfontein (the high court). The high court had granted the applicant's claim for past loss of earnings but dismissed her claim for future loss of earnings with costs. Leave to appeal to the full court was granted to the applicant on petition to this Court. The full court upheld the order of the high court and refused leave to appeal.

[2] Following the refusal of leave to appeal by the full court, the applicant petitioned this Court for special leave to appeal. This Court subsequently directed that: (a) the application for special leave to appeal be referred to oral argument in accordance with s 17(2)(d) of the Superior Courts Act 10 of 2013; and (b) the parties should be prepared, if required, to address this Court on the substantive merits of the appeal.

### The factual background

[3] The relevant facts can be briefly stated as follows. Ms Mananyana Jane Moloji (the applicant) instituted action in the high court against the respondent, the Road

Accident Fund (the RAF), for damages for personal injuries she sustained in a motor vehicle accident that occurred on 7 August 2016. The RAF was sued in its capacity as the statutory insurer in terms of s 17(1)(a) of the Road Accident Fund Act 56 of 1996.

[4] The applicant sustained a head injury with multiple open wounds to her face and soft tissue injuries on her right lower limbs. She claimed damages from the RAF in the amount R8 711 483, calculated as follows: general damages R900 000; future medical expenses R200 000; and past and future loss of earnings R7 611 483. The merits of the case were settled 100 percent in favour of the applicant, and an agreement was later reached by the parties to settle the general damages in the amount of R800 000. The only damages in issue before the high court were for past and future loss of earnings.

[5] The applicant did not personally testify at the trial. In order to prove her claim, she proffered the oral evidence of the following expert witnesses whose opinions were contained in the expert reports filed of record: a clinical psychologist, Ms Lenmarie Stanton (Ms Stanton), an industrial psychologist, Dr Lukas Albertus Fourie (Dr Fourie), and an actuary, Mr Ryan Immerman. She also tendered the evidence of an educational psychologist, Ms Margaret Anne Gibson (Ms Gibson), by means of an affidavit. The evidence of Ms Gibson formed the basis of Dr Fourie's expert report, to which he (Dr Fourie) referred during his oral evidence. Ms Gibson's report was filed and referred to without it having been admitted into the record in terms of rule 38(2) of the Uniform Rules of Court. Worthy to note from the report is that at the time of the accident, the applicant was a student, and by the time the matter was heard, she had completed her studies and employed.

[6] Ms Stanton had assessed the applicant two years after the accident and four years before the matter was heard, and she conceded that her report was terribly outdated. The report indicated that at the time of assessment, the applicant was suffering from anxiety and a depressed mood as a result of the accident. Ms Stanton opined that this condition would affect the applicant's emotional life and impact her quality of life. The condition was found at the time of the assessment to have impacted her studies, as she had to repeat her first year of the accounting degree that she was enrolled for.

[7] At the trial, only the issue of loss of earnings remained for determination. The high court found that the applicant's claim for damages was not based on the physical injuries sustained in the accident, but on the effects of those injuries on her emotional, cognitive, psychological and social functioning. The high court reached this conclusion mainly on the evidence of Ms Stanton, who testified that she assessed the applicant's emotional state.

[8] The high court upheld the claim for past loss of earnings but dismissed the claim for future loss of earnings. Therefore, the application for special leave to this Court pertains only to the claim for future loss of earnings.

### **Special leave to appeal**

[9] The threshold for special leave to appeal is trite. In addition to reasonable prospects of success, 'some additional factor or criterion [is] to play a part in the granting of special leave'.<sup>1</sup> This Court in *Cook v Morrison*<sup>2</sup> held that:

'The existence of reasonable prospects of success is a necessary but insufficient precondition for the granting of special leave. Something more, by way of special circumstances, is needed. These may include that the appeal raises a substantial point of law, or that the prospects of success are so strong that a refusal of leave would result in a manifest denial of justice, or that the matter is of very great importance to the parties or to the public. This is not a closed list.'

[10] For the reasons that follow hereunder, I am of the view that the applicant failed to prove the existence of reasonable prospects of success, let alone the existence of any special circumstances that would justify special leave to appeal being granted.

### **No case made out in the application**

[11] An application for leave to appeal to this Court is brought on notice of motion supported by an affidavit. Rule 6(5)(a)(i) and (iii) of the Supreme Court of Appeal Rules prescribes that:

'(5) Every application, answer and reply–

(a) shall–

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<sup>1</sup> *Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd* 1986 (2) SA 555 (A) at 561E-F.

<sup>2</sup> *Cook v Morrison and Another* [2019] ZASCA 8; [2019] 3 All SA 673 (SCA); 2019 (5) SA 51 (SCA) (*Cook*) para 8.

- (i) be clear, succinct and to the point;
- (ii) furnish fairly all such information as may be necessary to enable the Court to decide the application;
- (iii) deal with the merits of the case only in so far as is necessary for the purpose of explaining and supporting the particular grounds upon which leave to appeal is sought or opposed...'

[12] As a point of departure, it is my view that the applicant failed to place before this Court the information necessary to determine an application for special leave to appeal. Nor has the applicant provided the information that is necessary to set out the grounds on which such special leave is sought. The founding affidavit does not specifically deal with any of the requirements for special leave to appeal. Special leave to appeal is mentioned in passing under the heading dealing with the purpose and nature of the application. This is the only place where the applicant refers to the application for special leave to appeal. While the applicant deals at length with the merits of the matter in the founding affidavit, those submissions relate to the appeal itself and not to the distinct requirements for special leave to appeal. They provide no explanation whatsoever of the grounds upon which special leave is sought. She has, as such, not provided this Court with the information necessary to enable it to decide the application. On this ground alone, the application ought to be dismissed.

### **Reasonable prospects of success**

#### *Approach to expert witnesses*

[13] The applicant's principal witness in seeking to prove her alleged loss of earnings, was Dr Fourie, the industrial psychologist who was to assess the applicant's ability to continue her career and any other work she might have been able or not able to perform. Dr Fourie's oral evidence was based on the addendum to his report. He testified that the addendum was done because the applicant's circumstances had changed since the first report, and because he had received a report from Ms Gibson, an educational psychologist, which made him aware that the applicant was employed.

[14] The evidence on record was that at the time of the accident, the applicant was studying towards a Bachelor of Administration degree, which she could not complete due to her poor marks, which were said to be as a result of the accident. However, as at the date of the trial she had completed a degree in Accounting with the University

of South Africa and had registered for an honours degree (NQF level 8). She had also secured employment as an articled clerk at an accounting firm, where she had been employed for a period of three months.

[15] Dr Fourie's evidence was that due to the accident-related injuries, the applicant could, premorbid, advance to an income at the Paterson level D2 at the age of 45 and postmorbid only advance to an income at the Paterson level D1 at the same age. The loss of earnings was alleged to be the difference between the likely earnings before the accident and those after the accident. Since the applicant was employed at the time of Dr Fourie giving evidence, for Dr Fourie to display that loss, it was important that he prove how the accident-related injuries affected the applicant's ability to perform her job or would affect her career advancement. Some of the information that he had to place before the high court was the evidence of the applicant's employer. This information was crucial, since the applicant did not testify in person. Without this, there was no evidence before the high court to conclude that the applicant's emotional state had a detrimental effect on her employment, and that it would negatively impact her future career prospects. The evaluation of the applicant's historic career performance, though relatively short, was vital in determining her future earnings potential. It was thus imperative, as the full court found, that the applicant's employer should have been consulted to determine how her diagnosis impacted her job. Significantly, because she was initially assessed as a student.

[16] Besides, Dr Fourie's evidence was based on the evidence of Ms Stanton as to the prognosis of the applicant's psychological state, and the report of Ms Gibson, which confirmed Ms Stanton's prognosis and noted that the applicant had been rendered psychologically vulnerable due to her involvement in the accident. The question is whether this evidence has sufficient probative value. The evidence was, correctly, found by the full court to be of little value and rejected on the following basis. First, Ms Stanton's evidence was based on the applicant's assessment, prepared some four years before the matter came to trial. Undisputedly, the evidence was outdated and, its probative value, therefore, marginal. The evidence could, rightly so, not be relied upon and was rejected. Second, Ms Gibson's report, as tendered by the applicant through the oral evidence of Dr Fourie, was hearsay evidence, the admissibility of which was in question. It is common cause that despite Dr Fourie

deferring to the opinion of Ms Gibson, she was not called to testify. Moreover, Ms Gibson's report, on which Dr Fourie relied for his evidence, was not admitted into evidence as to the truth of its content. In my view, the evidence was prejudicial to the RAF, which was not allowed to cross-examine Ms Gibson. The cross-examination could have shed light on the credibility and reliability of that evidence. Therefore, the evidence was correctly rejected as the failure to cross-examine her, reduced the probative value of her findings.

[17] To test the opinion of experts, the facts from which they draw their conclusions must be considered. If the facts are incorrect, which is part of the judicial function to determine, then *a fortiori* the opinion may be flawed, possibly fatally.<sup>3</sup> Dr Fourie's opinion that the appellant would reach a lower career ceiling was based on reports from Ms Stanton and Dr Gibson. None of these experts sought to obtain objective evidence from the appellant's current employer. In a claim that hinges on an impaired ability to progress in one's career, the failure to lead evidence from the one source that could provide objective insight into her actual performance and future prospects is a fatal flaw. It left the theory of future loss of earnings entirely unmoored from objective reality. Thus, Dr Fourie's evidence, which was primarily based on the applicant's vocational assessment, could not be of assistance to the applicant to prove the loss of future earnings, it only assisted in assessing the past loss of earnings.

***Failure by the applicant to give personal evidence***

[18] As already mentioned, Ms Stanton assessed the applicant for emotional challenges. The assessment revealed that the applicant was suffering from anxiety and a depressed mood resulting from the accident. Ms Stanton opined that this condition would affect the applicant's emotional life and impact her quality of life. Ms Stanton testified that a disorder, such as the one suffered by the applicant, could become chronic after six months and would plateau two years after the accident, meaning that the condition becomes stabilised and permanent. She, however, testified and, in fact, conceded during cross-examination that, when treated, the applicant's diagnosis can be ameliorated. She could not say whether at the time of the assessment the applicant was on treatment or whether she subsequently received

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<sup>3</sup> *Ndlovu v Road Accident Fund* [2013] ZAGPJHC 201; 2014 (1) SA 415 (GSJ) para 35.

treatment. She furthermore conceded, under cross-examination, that there was a possibility that the applicant, if reassessed, could show signs of improvement, more particularly because at the time of assessment the applicant was not working and still at school. Ms Stanton, therefore, could not know how her condition might impact her work at the time of her testimony and conceded that her report in that regard was outdated.

[19] This is where the applicant's oral evidence would have been of particular value. Given the nature of the injuries upon which she based her claim, her own testimony would have constituted the best available evidence. In circumstances where Ms Stanton was unable to confirm whether the applicant was receiving treatment, the applicant herself was best placed to provide that information. In the absence of such evidence, the high court could not have determined whether the applicant's condition had improved. Ms Stanton was unable, also, to confirm the impact of the applicant's prognosis on her work at the time of giving evidence, and the applicant was best placed to provide that evidence in this regard. This would have enabled the high court to form a view as to whether the diagnosis was adversely affecting the applicant's work performance.

[20] I conclude that the applicant was the only witness who could provide the best evidence of whether she was on treatment or not, and, if on treatment, whether her diagnosis had been ameliorated. As the high court correctly found, her claim, was predicated on subjective sequelae: cognitive difficulties, emotional trauma and loss of confidence. Without her employer's evidence, the applicant was the only person who could testify to the impact of her prognosis on her employment.

[21] Moreover, the trial judge, as a trier of fact, noted that he could not, from the bench, observe any significant facial scarring of the applicant. This direct observation directly contradicted the expert reports which cited scarring as a factor affecting the appellant's confidence. In the absence of the appellant's testimony to demonstrate this, the court was entitled to find that this aspect of the claim was not proven.

[22] The onus to prove the claimed loss was on the applicant. She failed to discharge such onus on a balance of probabilities. On all the above reasoning, it is clear that there are no reasonable prospects of success on appeal in this matter.

### ***Special circumstances***

[23] As has been held, for the applicant to succeed in her application for special leave, additional factors or criteria, by way of special circumstances, are required. These may include that the appeal raises a substantial point of law, or that the prospects of success are strong, that the refusal of leave would result in a manifest denial of justice, or that the matter is of great importance to the parties or of great public interest. This is not a closed list.<sup>4</sup>

[24] As earlier stated, in her founding affidavit in support of the application for special leave to appeal, the applicant did not traverse the grounds upon which special leave is sought. The additional factors upon which the applicant contends she establishes special circumstances are set out in the heads of argument. I may add that the said factors are merely stated without any substantiation. The said factors are:

- '11. The applicant submits that there are additional factors that deserve the attention of this court in consideration of a special leave to appeal.
12. These are, inter alia, the factors –
  - 12.1. The applicant claims an amount of R3 121 850.00 for the future loss of earnings. This amount is substantial.
  - 12.2. The amount was assessed and is contained in the undisputed the (*sic*) Actuarial report of Mr Immermann.
  - 12.3. The matter has great significance to the applicant because of the personal injuries, loss of income, and trauma resulting from the motor vehicle accident.
  - 12.4. Granting this amount will positively transform or impact the applicant's financial and social life; offer substantial compensation for the long-lasting trauma and effects [scars] of the unfortunate motor vehicle accident.

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<sup>4</sup> Cook fn 2 above para 8.

12.5 The matter is of great importance not only to the applicant but also to litigants who find themselves in the position of the applicant.

12.6 The refusal to grant future loss of earnings after granting past loss of earnings is a manifest denial of justice to the applicant'

[25] It became clear during oral argument before this Court that what was contended on behalf of the applicant, as special circumstances, was the substantial amount the applicant would stand to lose should special leave to appeal not be granted.

[26] It is my view that the determination of quantum in this matter does not raise questions of law. The determination of quantum is essentially a fact-bound enquiry which does not require a further appeal to this Court. Whether the amount of compensation should be awarded depends on the specific evidence tendered during trial rather than the strict application of legal principles. When assessing quantum for loss of future earnings, a court relies on the evidence of experts. In this matter, reliance was placed on the evidence of a clinical psychologist, an industrial psychologist, an educational psychologist, and an actuary.

[27] It is trite that special leave to appeal is not intended to afford litigants a further attempt to procure relief that has already been refused. This Court in *National Union of Metalworkers of SA v Fry's Metals (Pty) Ltd*,<sup>5</sup> stated that mere dissatisfaction with the full court's decision or perceived prospects of success are insufficient to grant special leave.

[28] The magnitude of the quantum claimed, cannot, in itself be inherently regarded as a special circumstance for granting leave to appeal. The quantum of a claim is a consequence of the alleged loss and not a reason to have the matter heard by this Court. The focus should be on the legal or public importance of the issues sought to be appealed, rather than on the monetary value of the claim.

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<sup>5</sup> *National Union of Metalworkers of SA and Others v Fry's Metals (Pty) Ltd* [2005] 3 All SA 318 (SCA); 2005 (5) SA 433 (SCA); (2005) 26 ILJ 689 (SCA); 2005 (9) BCLR 879 (SCA); [2005] 5 BLLR 430 (SCA) para 42.

[29] The applicant's submission that the matter is of great importance to other litigants who may find themselves in her position, and that refusal to grant the applicant future loss of earnings is a denial of justice, is not supported by the facts of this matter. The appeal does not raise an arguable point of law, let alone one of general public importance which this Court ought to consider. This matter turns on whether there is a loss of future earnings. The applicant does not state what point of law, if any, the appeal raises to establish special circumstances.

**Order**

[30] In the premises, the following order is issued:

The application for special leave to appeal against the judgment and order of the full court of the Free State Division of the High Court Bloemfontein is dismissed, with no order as to costs.

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E M KUBUSHI  
ACTING JUDGE OF APPEAL

**Appearances:**

For the applicant:

M Mphaga SC (with N Gama)

Instructed by:

Mokhetle Attorneys Inc, Mahikeng

Phatshoane Henney Attorneys, Bloemfontein.

For the respondent:

No appearance.