

**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 48015/2020

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHERS JUDGES: YES/NO

(3) REVISED

DATE

SIGNATURE

In the matter between:

**ADV CLAIRE CAWOOD N.O. on behalf of
E[...] A[...]**

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

REASONS FOR JUDGMENT

Introduction

[1] In this matter, The Plaintiff, W[...] A[...] acts in her personal capacity as well as in her representative capacity as the natural mother and guardian of her son E[...] A[...] a minor born on 21 March 2006.

- [2] The minor who was sitting on a wall next to the roadway, was seriously injured in a motor vehicle collision.
- [3] The defendant conceded its liability to pay the Plaintiff 100% of the damages out of the collision.
- [4] The injuries suffered by the minor in the collision are as follows:
- 4.1. Head injuries with permanent neurocognitive compromise.
 - 4.2. Haematoma and lacerations of the mouth.
 - 4.3. Rib fractures and pneumothorax.
 - 4.4. Right ear laceration.

Loss of Earnings and Contingencies

- [5] The merits of the matter had been conceded and only contingencies in respect of loss of earnings and the amount in respect of General Damages needed to be adjudicated. Regarding past hospital and medical expenses, an offer had been made and was accepted.
- [6] The Plaintiff relied on the following reports:
- 6.1. Dr Z Domingo (Neurosurgeon)
 - 6.2. Dr M Ostrofsky (Maxillo Facial and Oral surgeon)
 - 6.3. R de Wit (Neuropsychologist)
 - 6.4. Dr D Oglivy (Speech and Language expert)
 - 6.5. Dr D Stroebe (Audiologist)

6.6. Ms M Clerk (Educational Psychologist)

6.7. Ms E Auret-Besselaar (Industrial Psychologist)

6.8. Messrs Munro Consulting (Actuaries)

- [7] The defendant had delivered expert reports but those reports had not been confirmed by way of affidavits and they were also out of date and stale. They could therefore not be of any assistance in the adjudication of the matter.

The context in which the issues were considered are as follows:

Since the accident Mr A[...] had cognitive problems and performed poorly at school. The extent and severity of the reported deficits were outlined in the relevant reports. Generally, even though it had been twelve years since the injury, the deficits could be considered permanent.

- [8] Neuropsychological opinion was that the assessed deficits were in keeping with traumatic brain injury. The deficits affected not only his school performance but also his future employability. Applying the Narrative Test and having regard to his personal circumstances, I accepted that his injury could therefore be considered severe and that he would continue to suffer a permanent and serious long-term impairment in respect of his work and personal life.
- [9] On the other hand, there were some positive aspects regarding his condition which could not be ignored when assessing what damages were claimable by him.
- [10] As reflected in Dr Domingo's report, he had suffered a moderate degree of pain from the injuries sustained and at the time of examination, he was experiencing no pain or discomfort. There was no disfigurement. He had no

physical neurological limb impairment and there was no physical disability and he had suffered a mild loss of the amenities of life.

- [11] Across all assessment E[...] presented with reading and spelling difficulties as well as attention difficulties accompanied by hearing difficulties.
- [12] Having considered the expert reports and what is summarised above, I also considered the actuarial report dated 18 April 2023 wherein 25% contingencies were applied to future uninjured earnings, and 75% to future injured earnings. Counsel for the plaintiff submitted that the statutory cap might have an impact on the calculations.
- [13] Munro Consulting calculated the total loss of earnings after the contingencies in the sum of R 5 613 100. 00 which the plaintiff was claiming.
- [14] After listening to counsel, I suggested a recalculation of the amount claim in light of the positive aspects of plaintiff's condition pointed out above.
- [15] The recalculated amount for future loss of earnings amounted to R 3 311 880. 00 (Three Million Three Hundred and Eleven Thousand Eight Hundred and Eighty Rand) which is the amount which was awarded in that regard.
- [16] The Private past medical expenses were settled at R 1 475.00 (One Thousand Four Hundred and Seventy-Five Rand).

General Damages

- [17] The HPCSA had determined that the minor's injuries were serious and the quantum of general damages had to be adjudicated.
- [18] It is trite that general damages are within the discretion of the Court and that each case should be adjudicated in accordance with its own facts and that previous decisions can only serve as guidance.

[19] Utilising the above approach, I was guided by the decision in **ZARRABI v RAF 2006 (5B4) QOD 231 (T)**, in this court where De Vos J awarded general damages of R 800 000.00 (current value R2 067 000.00) to a 30 year old female trainee medical specialist (Koch : 2023 p46) who had suffered injuries similar to E[...].

[20] I came to the conclusion that in the present case, the appropriate amount regarding general damages would be an amount of R 750 000.00 (Seven Hundred and Fifty Thousand Rand) which is the amount I awarded in that regard.

SELBY BAQWA
JUDGE OF THE HIGH COURT
PRETORIA

DATE OF HEARING: 2 MAY 2023
JUDGMENT DELIVERED: 7 JULY 2023

APPEARANCES:

For the Plaintiff:	Advocate BP Geach SC and Advocate CPJ Strydom Instructed by Mr Jurie Terblanche
For the Defendant:	Mr Lebogang Lebakeng State Attorney