

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case Number: 2022-041561

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED.

DATE 13/03/2025

SIGNATURE

In the matter between:

SIKELELA PAUL BOOI

Applicant/Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

WEIDEMAN AJ

- [1] This matter was called on 18 February 2025. There was no representation for the defendant. Counsel for the plaintiff presented the plaintiff's case and the matter was fully ventilated. At the conclusion of counsel's submissions this court handed down its judgment *ex tempore*. Counsel requested that the matter stand

down until 19 February 2025 to allow her to reduce the judgment to writing. On 19 February 2025 the written ruling was handed up and made an Order of Court. Paragraphs 1 & 2 of the Order reads as follows:

1 *'The Defendant is directed to compensate the Plaintiff an adult male for delictual damages he sustained in the motor vehicle collision which occurred on 17 August 2020 and its sequelae.*

2 *The Defendant is ordered to pay the Plaintiff the sum of R679 158.40 within a period of 180 days.'*

- [2] The remainder of the Order deals with costs, interest and taxation and is not relevant to the matter at hand.
- [3] On 25 February 2025 the plaintiff's attorneys of record requested reasons for the judgment.
- [4] The reasons for the judgment follow below:
- [5] The aspect of liability was resolved directly between the parties on 8 September 2022 on the basis that the defendant shall be liable for 100% of such damages as the plaintiff may be able to substantiate in due course.
- [6] On or about 15 November 2022 the plaintiff accepted a further offer from the defendant in respect of the plaintiff's claim for future hospital and medical expenses in the form of an Undertaking as is provided for in Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996.
- [7] On the same day, the plaintiff also accepted an offer in respect of general damages. The amount offered and accepted in respect of general damages had been redacted and the court is not privy to the value thereof.
- [8] On 3 September 2024 the defendant submitted a third offer of settlement, this time in respect of the plaintiff's claim for loss of income. As with the offer for general damages the amount tendered had been redacted. This offer was not accepted. Incidentally, included in the offer was another Section 17(4)(a) offer for future hospital medical and ancillary expenses.

- [9] What is clear from the above is that the defendant was desirous of settling the matter without further litigation and had made several sincere attempts to do so during the course thereof.
- [10] On 17 August 2020 at about 18:10 pm and in Ivory Park, Gauteng Province, Sikelela Paul Booi, who had since attained the age of majority and had been substituted as the plaintiff, was crossing June 16 Main Road when a motor vehicle with registration letters and numbers unknown, collided with him.
- [11] According to paragraph 7 of the particulars of claim, the plaintiff sustained the following injuries as a result of the accident:
1. Head injury; and
 2. Fracture left tibia and fibula.
- [12] The only issue before this court was the plaintiff's claim for future loss of income/earning capacity, if any.
- [13] During February 2024 the plaintiff amended his particulars of claim to increase the amount claimed for future loss of income from R4 000 000 to R8 813 769.00. The injuries allegedly suffered by him were left unchanged.
- [14] In reaching its conclusions, the first report which the court considered was the addendum report of the educational psychologist. Educational psychologists and industrial psychologists rely heavily on the educational qualifications and employment history of the family of the plaintiff in coming to their conclusions regarding the possible academic and career trajectory of the plaintiff.
- [15] In *casu* the following has been recorded in the educational psychologist's report in relation to the 13 members of the plaintiff's family, which were listed:
- a) 2 have matric (one of which is his sister);
 - b) 4 have Grade 9;
 - c) 3 have grade 8 (2 of which is his brother and mother);
 - d) 1 has Grade 7;

e) 1 has grade 5;

f) In respect of 2 of the family members the level of education is unknown, but if it was significant, it would probably have been recorded. One could deduce that it would be somewhere between Grade 5 and Grade 9.

[16] In relation to the plaintiff's own academic career, it is recorded that he failed Grade 2, before the accident, and Grades 9 and 10 after the accident.

[17] When an educational psychologist records school marks in detail, as was done in this case, but fails to compare it to the Grade average, it raises concerns.

[18] In *casu* the Grade average, except for Life Orientation, of the plaintiff's classmates for Grade 10 in 2024 was 46%. This was represented by three subjects in respect of which the averages were 46%, 45% and 41% and two subjects in respect of which the averages were 39% and 35% with the lowest Grade average being 26% for maths literacy.

[19] In the ordinary course, an average implies that 50% of the students scored below the average and 50% above the average. If all the plaintiff's marks were below the averages recorded in the previous paragraph, he is in the company of half of his classmates who also achieved lower than the averages, but who do not have injuries or damages which could account for it. Why should the reason for the plaintiff's below – par marks be different from theirs? One would expect an educational psychologist who prepares a report for the assistance of the court to give guidance in this regard. All that is now known is that he was below average along with approximately half of his classmates in a school where the Grade average should be a matter of shame for the school.

[20] The educational psychologist does not assist the court by placing the plaintiff's modest academic record in context, given the equally modest academic records of his extended family and his classmates.

[21] The second precept on which educational psychologists usually base their projections is that "*children do better than their parents*", and that "*upward mobility*" can be expected. Educational psychologists quoting these precepts

do however not specify the extent to which children are expected to overtake the achievements of their parents. If the average level of education of an extended family is Gr 5 to Gr 9, would Gr 11 or Gr 12 be considered to be significantly better? If this reasoning is followed, what must be made of the fact that by passing Gr 10 the plaintiff in *casu* had already “done better” than his brother and mother?

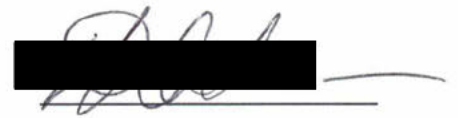
[22] In paragraph 8.3.4 on CL07-162 the educational psychologist makes the following statement: “*It is my opinion that had it not been for the accident, Sikelela could have achieved at least a Diploma NQF Level 6.*” This is on the bottom of page 21 of her report. There is not a single fact, not a single piece of collateral evidence, nothing, to support this statement.

[23] In *Bee v Road Accident Fund 2018 (4) SA 366 (SCA)* the court held:

- i. “*It is trite that an expert witness is required to assist the court and not to usurp the function of the court. Expert witnesses are required to lay a factual basis for their conclusions and explain their reasoning to the court. The court must satisfy itself as to the correctness of the expert’s reasoning. In Masstores (Pty) Ltd v Pick ‘n Pay Retailers (Pty) Ltd [2015] ZASCA 164; 2016 (2) SA 586 (SCA) para 15, this court said ‘[I]astly, the expert evidence lacked any reasoning. An expert’s opinion must be underpinned by proper reasoning in order for a court to assess the cogency of that opinion. Absent any reasoning the opinion is inadmissible’. In Road Accident Appeal Tribunal & others v Gouws & another [2017] ZASCA 188; [2018] 1 ALL SA 701 (SCA) para 33, this court said ‘[c]ourts are not bound by the view of any expert. They make the ultimate decision on issues on which experts provide an opinion’. (See also Michael & another v Linksfield Park Clinic (Pty) Ltd & another [2002] 1 All SA 384 (A) para 34.)*
- ii. *The facts on which the expert witness bases an opinion must be capable of being reconciled with all other evidence in the case. For an opinion to be underpinned by proper reasoning, it must be based on correct facts. Incorrect facts, militate against proper reasoning and the*

correct analysis of the facts are paramount for proper reasoning, failing which the court will not be able to properly assess the cogency of that opinion. An expert opinion which lacks proper reasoning is not helpful to the court. (See also Jacobs v Transnet Ltd t/Metrorail [2014] ZASCA113; 2015 (1) SA 139 (SCA) paras 15 and 16; see also Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft Für Schädlingsbekämpfung mbH 1976 (3) SA 352 (A) at 371F.”

- [24] In light of this test, I rejected the educational psychologist’s opinion as it fails to meet the criteria set out in *BEE* supra.
- [25] The industrial psychologist’s report and opinion is based on and underpinned by the educational psychologist’s report. If the educational psychologist’s report is rejected then the opinion expressed by the industrial psychologist (page 13 of her report CaseLines 07-99) suffers the same fate.
- [26] The post-accident scenario set out by the industrial psychologist in her report, in my view, represents the most probable future career for the plaintiff. It is in accordance with the environment in which he finds himself, the level of academic teaching at the school that he attends and the educational level of the broader family of which he is part.
- [27] The amount as per the actuarial calculation is not significant, R848 948 and it is accepted that within the pool of candidates in which he will have to compete for a job, he will be compromised. At the same time, the vicissitudes of life and a residual earning capacity cannot be left out of the calculation.
- [28] Although the period over which the calculation is to be done implies that a higher-than-average contingency deduction should be applied, the low point of departure makes a 20% contingency deduction more reasonable. The net effect of the above approach is R679 158.40, which was the amount awarded in respect of future loss of earnings.



WEIDEMAN AJ

Acting Judge of the
High Court of South
Africa, Johannesburg

Representatives

For the Applicant: Adv. N Q Mabena

Attorneys of records: Ndebele- Chitongo Attorneys

Hearing date: 18 February 2025

Order granted: 19 February 2025

Reasons for an order: 13 March 2025