IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

REPORTABLE

Case Number: 16623/2018

In the matter between

B[...] S[...] P[...] obo
H[...] N[...] K[...] **PLAINTIFF**

and

THE ROAD ACCIDENT FUND **DEFENDANT**
(RAF Ref: 503/12546291-Link no: 4376858)

JUDGMENT

Date of hearing: 25 March 2025
Date of judgment: 31 March 2025

BHOOPCHAND AJ:

1. The parties have submitted this matter for the adjudication of the Plaintiff's claim of general damages on behalf of the minor, H[...] K[...]. The Plaintiff is the

biological mother of the minor. The Court granted an order by agreement on 25 March 2025, which covered the claims for loss of earnings and past and future medical expenses. The parties agreed that the claim for general damages is to be adjudicated based on the expert reports filed, supported by affidavits under Rule 38(2), the papers properly before the Court, and the written and oral arguments presented by their legal representatives under Rule 39(20).

2. The minor was born on 15 September 2016. He was injured when seven months of age in a motor vehicle accident on 29 April 2017. He is now eight years and seven months old. The Plaintiff claimed general damages of R3 million but submitted that an award of R2.7 million was appropriate during the oral argument.

3. The Defendant is the statutory body established under the Road Accident Fund Act, 56 of 1996 ('the RAF Act') to pay compensation for loss or damages wrongfully caused by driving motor vehicles. The Defendant submitted that an appropriate award in this matter would be R1.5 million. Both parties referred to delictual awards made in previous cases adjudicated by our Courts. The Plaintiff filed expert reports from a Neurologist, a Clinical Psychologist who did a neuropsychological assessment, a Psychiatrist, a Speech Therapist, and an Occupational Therapist. The Defendant filed a report by an Educational Psychologist for the claim under this head of damages.

4. The minor was airlifted from the accident scene to Red Cross Children's Hospital. He suffered extensive injuries to his brain. The injuries included a fracture of the right clavicle and a supracondylar fracture of the humerus, which is the arm bone above the elbow. The Plaintiff did not file an Orthopaedic report. The Plaintiff does not rely on the injuries to the right upper limb for her claim for general damages. As for the brain injury, the minor sustained a linear fracture through the left parietal bone, extending to the coronal suture. There was an extradural and a subdural haematoma underlying the fracture.

5. The minor's Glasgow Coma Scale score on admission was 7/15. He required intubation and ventilation and underwent surgery on 30 April 2017 to insert

intracranial pressure and Licox monitors[1]. By 2 May 2017, the minor's left frontoparietal skull remained swollen. There were extensive bilateral low-attenuation areas in the frontal, temporal, parietal, and occipital lobes of the brain, suggestive of infarcts of brain tissue. Subarachnoid blood was noted on the left surface of the sulci.[2] The surface sulci were effaced diffusely, and the poor grey-white matter differentiation suggested brain swelling. There was a minimal midline shift of 2mm. The parietal subdural haemorrhage measured 3mm in addition to that in the interhemispheric fissure and over the tentorium cerebelli.[3] The minor suffered a focal seizure on 2 May 2017.[4] His CT scan showed severe traumatic brain injury. The EEG done on 5 May 2017 showed no signs of non-convulsive status.[5] The focal seizure seemed to arise from the left parietal lobe. The intracranial monitors were removed on 10 May 2017. On 12 May 2017, the GCS was 9/12 after the minor was extubated and improved to 10/15 on 14 May 2017 and 14/15 on 17 May 2017. The hospital notes recorded a right third cranial nerve palsy, traumatic retinal haemorrhage, and cortical blindness[6].

6. The minor has not experienced seizures since being discharged from the hospital. He can see normally with both eyes, meaning that the cortical blindness was transient. He began walking at 15 months and has been mobile and active since. He began speaking at the age of 3 but remained dysphasic, with difficulty

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1 A Licox monitor is a medical device used to measure brain tissue oxygen levels ($PbtO_2$) and temperature. It's commonly employed in neurosurgical and critical care settings to monitor patients with severe traumatic brain injuries or other conditions that may affect brain oxygenation. By providing real-time data on oxygen levels in the brain, the Licox monitor helps healthcare professionals detect and manage cerebral hypoxia, which can be critical for patient outcomes

2 The sulci, or sulcal markings, referred to in the scan, are grooves or troughs visible on the brain's surface, giving it its characteristic wrinkled appearance. The elevated areas between the sulci are known as the gyri. This design provides the brain with a larger surface area, thus packing more brain tissue into a confined space of the skull.

3 The tentorium cerebelli runs horizontally, separating the upper cerebrum from the lower part of the brain, known as the cerebellum.

4 A focal seizure, also known as a partial seizure, originates in a specific area of the brain, typically affecting only one hemisphere. The symptoms depend on the part of the brain involved and can vary widely.

5 Non-convulsive status, often referred to as Non-Convulsive Status Epilepticus (NCSE), is a type of prolonged seizure activity that occurs without the dramatic physical convulsions typically associated with seizures. Instead, it manifests as subtle or non-obvious symptoms, such as confusion, altered mental status, or unresponsiveness

6 Cortical blindness is a condition in which a person loses their vision due to damage to the brain's occipital lobe, which is responsible for processing visual information. Interestingly, the eyes themselves remain structurally normal and functional, but the brain cannot interpret the visual signals they send

articulating his speech. The developmental milestones were thus delayed. The minor suffered nocturnal enuresis till the age of 5, but that has now ceased. The minor had aggression and attention issues. The school reported that the minor was not academically on par with his peers and had issues with attention and hyperactivity. He was a grade R scholar in 2022. He has no new comorbidities and was not on any chronic medication.

7. Upon examination on 10 October 2022, Dr. Richardson ('Richardson'), the Plaintiff-appointed Neurologist, noted a small scar on the minor's right frontal scalp. His hair had not grown over it. A photograph taken in August 2023 does not show evidence of the scar. The minor's cranial nerve examination revealed no abnormalities; in particular, the third cranial nerve paralysis was no longer evident. Richardson concluded that the minor suffered a severe head injury with neurocognitive, neurobehavioral and neuropsychological impairment. She stated that the minor also demonstrated neurophysical abnormalities on examination. It is not apparent from the report as to what those abnormalities were. She defined the accident-related head injury to have two distinct components: a diffuse and focal brain injury. The latter component, i.e., the focal brain injury, related to the subdural and extradural haematomas. It is assumed the doctor intended to convey that the haemorrhages compressed the underlying brain tissue, resulting in focal areas of brain injury. The haemorrhage was managed conservatively. Richardson expressed the opinion that the minor's neuropsychological sequelae, which included cognitive, memory, and behavioural complications, would continue to negatively and materially affect his amenities of life for the foreseeable future. The minor's focal brain injury was more likely to cause head injury-related sequelae.

8. Richardson states that the minor's post-accident pain would have been adequately managed in the hospital. She did not elicit a history of frequent complaints of headaches. She stated that the minor could perform his basic and advanced activities of daily living. The minor had reached the period of maximum medical improvement when Richardson assessed him.

9. The Psychiatrist's report dated 15 December 2022 noted that the minor's tics and balance problems had improved. His eyesight had recovered. He could hold a pencil, and his speech had improved.

10. The Clinical Psychologist, Elspeth Burke ('Burke'), who has a special interest in Neuropsychology, reassessed the minor in October 2023. Her follow-up report dated 30 October 2023 is the most recent report filed by the Plaintiff. The minor was seven years and one month old when she assessed him. Burke's first assessment occurred when the minor was two years and six months old. The minor has been attending a Special Needs Adapted Program (SNAP) since the beginning of 2023. He is given Ritalin to control his hyperactivity. The mother reported that the minor 'had come a long way', 'learnt a lot', and had done well. His speech improved dramatically since 2021. His sentence construction improved, and he was able to communicate with his mother more effectively. He has a slurred speech and stutter. Other people found it difficult to understand the minor at that stage. He had no seizures but had developed tremors in his left hand. His tendency to bang his head had subsided, but he had taken to biting his nails. The minor still had memory problems. His hyperactivity resurfaced when he was off his Ritalin. The minor displayed disinhibited behaviour at times. His attention remained poor. The mother was aware that the minor functioned at a different level to children of his age and accepted that a special needs school was the only alternative for him. His judgment was inferior to that of his peers, but he occasionally surprised her. His mood was volatile, labile and somewhat unpredictable.

11. The minor's school report indicated that he had achieved the planned outcomes with support in mathematics, life skills and English, his home language. The minor had made good progress during the report term. Upon testing, Burke found impairments in attention, concentration, and motor dexterity. His pencil grip was poor. The minor had discernible difficulties with his speech. His ability to listen and recall a story narrated to him was severely defective, even on repetition (short-term auditory memory). His visuospatial and perceptual abilities yielded variable results. The minor's executive functioning was predominantly impaired.

12. Burke assessed the minor's full-scale intelligence quotient at 71, which she interpreted to mean that the minor was cognitively handicapped. This result must be viewed in the context of the minor being the child of parents who have obtained tertiary education, a mother who had an uneventful pregnancy, and him having a normal infancy.

13. The Speech Therapist found mild disturbances of speech production but marked cognitive, linguistic, and cognitive-communicative deficits. The minor had impaired language content, word retrieval deficits, and poor verbal working memory. The Occupational Therapist noted defective visual perception integration and motor coordination. The Defendant-appointed Educational Psychologist concluded that the minor presented to him in May 2023 at the age of six years and eight months with many difficulties, and his scholastic abilities were non-existent when assessed. He confirmed the cognitive, memory and concentration deficits exposed through the neuropsychological evaluation.

GENERAL DAMAGES

14. The nature of injuries is that there is an acute phase of physical pain and suffering from the time the injury occurs to the time it stabilises or disappears, followed by chronic or ongoing sequelae. In road accident cases, awards for general damages have introduced two new concepts, namely maximum medical improvement and whole-person impairment, to determine whether injuries are compensable or not. They do not affect the determination of an award for general damages once the initial assessment is conducted but allow the appropriate expert to identify the acute and chronic effects of accident-related injuries, especially those to the brain and spinal cord.

15. The award of general damages is intended to compensate for three key elements: pain and suffering, which includes psychological effects of injury, loss of amenities of life, and disfigurement. The scar left by the surgical intervention on the minor's frontal scalp area appears to have been concealed by his hair growth. Richardson noted that the minor's physical pain experience would have been adequately managed whilst in the hospital. Richardson suggested in her report that

the minor's accident-related injuries had stabilised, and he had reached maximum medical improvement when she assessed him in October 2022.

16. The evaluation of the minor's brain injury and its sequelae must commence from Richardson's classification of the initial injury as severe and her opinion that the neuropsychological sequelae may also be evident for the foreseeable future. Burke's findings confirm that the minor's brain injury has impacted his neuropsychological functioning and his neurobehavioural control.

17. The cases referred to on behalf of the Plaintiff to assist the Court make an award under this head of damages shall be briefly considered.

18. *Bonessa v Road Accident Fund 2014 (7A3) QOD 1 (ECP)* involved a 13-year-old female who sustained a severe closed head injury, multiple rib fractures, haemopneumothorax, fractured thoracic spine, injury to the spinal cord and paraplegia. She underwent surgical procedures and became wheelchair dependent with limited ability to manage bi-manual tasks and was incontinent of urine and stool. She suffered post-traumatic dementia and severely compromised speech, vision, memory and executive functioning. There was also a frontal lobe injury, which caused her to become aggressive, disinhibited and emotionally isolated. She had a promising scholastic and vocational future before the accident occurred. The injuries rendered her uneducable and unemployable. She was awarded R2.5 million, which is valued at approximately R4.31 million in present-day terms.

19. *Adv M van Rooyen NO obo JPM van Reenen v Road Accident Fund* case no 82697/2015, Gauteng Division, Pretoria (8 November 2017), involved a young man in his twenties. He suffered a severe head injury with permanent physical, cognitive and neuropsychological sequelae. He was hospitalised for a prolonged period and underwent a range of invasive medical procedures. He suffered from hemiparesis and was essentially wheelchair-bound, although he was able to walk for short distances. He required ongoing care and supervision and was considered unemployable. The Court awarded R2.2 million, which has a present-day value of R3.24 million.

20. *Anthony v Road Accident Fund* (27454/2013) [2017] ZAGPPHC 161 (15 February 2017) involved a 22-year-old female student. She suffered a moderate concussive brain injury and had facial and orbital fractures. She developed neuropsychological and neurocognitive deficits. The neuropsychological difficulties were subtle. She was scarred from her injuries. She struggled at university as a result of the sequelae of her injuries. She was awarded R1.6 million, which has a current-day value of R2.35 million.

21. *M v Road Accident Fund* (12601/2017) [2018] ZAGPJHC (18 June 2018) concerns a 27-year-old male. He suffered a severe head injury with brain damage and neurocognitive deficits. His GCS was 9/15 when admitted. He was left with some weakness in his right arm and leg, which was alternatively described as slight and then as a right hemiplegia with severe coordination and mobility difficulties. The Plaintiff was rendered unemployable. The Court awarded R1.9 million, which has a present-day value of R2.7 million.

22. None of the cases submitted on behalf of the Plaintiff are comparable as they involve older claimants and variable brain and spinal cord injuries that are either more or less severe than those suffered by the minor *in casu*. The cases relied upon by the Defendant follow.

23. *Rabie v MEC for Education, Gauteng* 2013 (6A4) QOD 227 (GNP), involved a grade 8 schoolboy. He sustained a head injury with skull and facial fractures during a rugby match. He was thrown into the air and landed on his head. The boy needed a tracheostomy and craniotomy. He spent an inordinate time in intensive care. He subsequently managed to pass his matriculation exams and was registered for tertiary studies. He was able to find employment after the accident. The Court awarded R800 000, which is equivalent to R1 403 000 in current terms.

24. *Ndokweni v Road Accident Fund*, case number 2159/2012 ECHC, involved an older male with a serious diffuse brain injury, fracture of the left femur, fracture of the anterior aspect of the C1 vertebra, fracture of the left clavicle, deep degloving laceration on the back of the head and lacerations of the face. The Court awarded R800 000, which translates to approximately R1,403,000 in 2024 terms.

25. *Raupert v Road Accident Fund* [2011] LNQD 23 (ECP) involved a 23-year-old male with a 'very significant' head injury. There was extensive fracturing of the Plaintiff's skull with bifrontal lobe contusions involving the left frontal area. There was also bifrontal traumatic subarachnoid haemorrhage. There was generalised brain oedema with some compression of the right ventricle, causing a developing right infratemporal haematoma. The head injury probably included diffuse axonal injury. The Court awarded R750 000, which is equivalent to R1469 000 in current terms.

26. *Fouche v Road Accident Fund* (3214/2017) [2024] ZAFSHC 57 (11 March 2024) involved a thirteen-year-old male. The minor was catapulted off the back of a bakkie and landed on the tarred road surface when their vehicle was rear-ended by another car and then driven over by their vehicle. The minor suffered multiple fractures and a mild concussive head injury, as well as a crush injury. The adjusted award for inflation is R525 000.

27. *Manqele obo PNT v Road Accident Fund* (D6921/2019) [2023] ZAKZDH 48 (11 September 2023): involved a minor who was 9 years and 11 months at the time of the accident. He sustained a right cranial fossa base of skull fracture, a right parietal skull fracture, and a small right temporal lobe cerebral contusion. The GCS on admission to the hospital was 3/15. The minor was hospitalised for three weeks. The minor suffers from lifelong epilepsy, a post-traumatic brain injury, vertical gaze paresis, and is unstable while standing. The Court awarded R1.2 million in 2023.

28. The Court has dutifully read the provided cases but is unable to find many similarities between those cases and the case this Court must adjudicate. Cases are submitted to the Court to assist it in making a fair and just award for general damages. Plaintiff's Counsel placed great emphasis on the minor's neurocognitive, psychophysical, and neuropsychological deficits. They have been covered across the expert reports. The Court was also referred to a further case.

29. In *Pietersen (obo J St I) v Road Accident Fund*, the injured child was four years and seven months old at the time of the accident.[7] He sustained a significant brain injury resulting in daily seizures and cognitive deficits, an inability to pass grade 12 in the mainstream academic environment and a vulnerable candidate in the open labour market. Experts agreed that he ought to be placed in a school for learners with special educational needs. His future earning capacity was compromised. He also suffered injuries to both feet, his buttocks, right shoulder, right side of his face, scalp and occiput and his right forearm. Repeated debridement and split skin graft procedures were necessary, but severe disfiguring scars remained unsightly. The court awarded R750 000 for general damages. The current award is R1 382 000, as per the Quantum Yearbook,

30. The Court may consider comparable cases. It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time, it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration.[8]

31. The assessment of awards for general damages, with reference to awards made in previous cases, is fraught with difficulty. The facts of a particular case need to be examined as a whole, and few cases are directly comparable. They serve as a useful guide to what other courts have considered appropriate, but they hold no higher value than that.[9]

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7 2012 (6A4) QOD 88 (GSJ)
8 *Protea Assurance Co. Limited v Lamb* 1971 (1) SA 530 (A) at 535H-536B
9 *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) pp. 325-326

32. This Court has adjudicated a case involving a minor concurrently with this case. In *C.D.K obo C.L.K v Road Accident Fund* (1809/2022) [2025] ZAWCHC 149 (27 March 2025)**,** the 3-year-old minor suffered a fracture line of the skull extending from the left occipital bone to the foramen magnum. The key injury involved the minor's brain. She sustained brain swelling and repeated seizures. The tests performed by the Neuropsychologists revealed extensive difficulties. Their results confirmed much of the extensive neuropsychological symptoms reported by the mother. The minor suffered florid symptoms of brain injury and behavioural problems that followed a relentless progression. The minor began displaying signs of hyperactivity and inability to sustain attention in the aftermath of the accident. The minor remained on anti-epileptic medication. The tests performed by the Neuropsychologists revealed extensive deficits that had translated into psychological pain, suffering, and loss of amenities of life. The minor was diagnosed with post-traumatic epilepsy and attention deficit hyperactivity disorder (ADHD). The minor exhibited fine and gross motor and visuomotor integration difficulties, which all suggested that the minor experienced a more severe brain injury than the categorisation provided by the Neurologist who coincidentally assessed the minor *in casu*. The Minor obtained a global IQ score of 96, which the expert considered to be in the average range. Her verbal score was just below average at 87, but her performance score at 100 was average. This Court awarded the Plaintiff R2 million in general damages on 27 March 2025.

33. In awarding R2 million in damages, this Court considered the case of *Maribeng v Road Accident Fund*,2021 (8A4) QOD 39 (GNP), which involved a 4-year-old male who suffered severe brain damage as well as facial lacerations and a right femur fracture. The brain injury resulted in serious cognitive and higher mental processing sequelae as well as emotional and behavioural problems. There was a 15% risk of developing epilepsy. The minor's education was affected. The history obtained from the mother included complaints of restlessness, headaches, hyperactivity, and memory problems. The value of the Court's award in present-day terms was R1 963 000.

34. The latter cases are comparable in terms of age, the nature of the injuries, and the severity of the sequelae that followed. Few cases are alike in every respect. The Court considers that the primary injury, in this case, is more severe than in *C.D.K obo C.L.K v Road Accident Fund*, but the sequelae are less severe. There was a relentless progression of the sequelae, whereas there has been significant improvement *in casu*. Whilst the Court is acutely aware of its role as the upper guardian of children and its obligation to ensure their best interests, which it has done in this case, it must also ensure that awards made are congruous with the underlying injuries and their sequelae. The Court exercises its discretion and awards the minor R2 million in general damages.

35. As alluded to, the Court granted an order by agreement that covered the remaining claims of Plaintiff and costs, including the costs of the experts as well as Counsel's costs, on 25 March 2025. The order below shall reflect the award for general damages alone. In the premises, the following order is made.

ORDER

1. The Plaintiff is awarded R2 000 000 (R2 million) in general damages for the minor's accident-related injuries and their sequelae,

2. Defendant shall pay the amount into the Plaintiff's attorneys' trust account within 180 days, with interest at the prescribed rate from 14 days after the date of this order.

3. The Defendant shall pay the costs incurred in obtaining payment of the amount.

4. The details of the Attorneys' trust account are:

Bank:	FNB Business
Account Holder:	De Vries Shields Chiat Inc.
Branch:	Portside
Account number:	6[…]

Branch Code: 210651

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Bhoopchand AJ
Acting Judge
High Court
Western Cape Division

Judgment was handed down and delivered to the parties by e-mail on 30 March 2025

Plaintiff's Counsel: J-H Le Roux SC
Instructed by De Vries Shields Chiat Inc
Defendant's attorney: C Thomas, State Attorney