

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 728/19

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

04 June 2025

K. La M Manamela

In the matter between:

M[...]: S[...] B[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge's secretary. The date of the judgment is deemed to be 04 June 2025.

JUDGMENT

KHASHANE MANAMELA, AJ

Introduction

[1] Mr S[...] B[...] M[...], the plaintiff, born on 29 August 2003, was injured in a motor vehicle accident. The accident occurred, around 18h30 on 30 July 2018, when he was hit by a motor vehicle - with registration details D[...] ('the insured vehicle') – whilst a pedestrian in Vincent road, Zone 10 Meadowlands, Johannesburg.

[2] The plaintiff sustained a traumatic brain injury and right haemorrhage contusion. He, consequently, suffered damages, due to the injuries and their *sequelae*. On 14 January 2019 (then through his mother and natural guardian, Ms N[...] M[...]) caused summons to be issued against the defendant, the Road Accident Fund ('the RAF'), in terms of the Road Accident Fund Act 56 of 1996 ('the RAF Act') for his compensation for the damages he suffered. When the plaintiff came of age, he was substituted for his mother, as the plaintiff in this matter. The negligent driving of the insured vehicle (unidentified in the summons) was blamed as the sole cause of the accident and, consequently, for the injuries sustained by the plaintiff and their *sequelae*. The claim against the RAF was for compensation for the plaintiff's future loss of earnings, general damages and future medical and hospital expenses. The action was defended by the RAF, including by way of a special plea to do with the legal standing of plaintiff's mother to launch the action proceedings.

[3] The matter was set down for trial on 26 February 2025, when Ms B Nchabeleng appeared for the plaintiff and Mr L Mtshemla appeared for the RAF. The trial proceeded only on issues relating to quantum of the plaintiff's loss of earnings and/or earning capacity. By the date of trial all other heads of claims, including issues relating to the liability of the RAF to compensate the plaintiff had been settled between the parties. The RAF accepted 90% liability for the plaintiff's proven and/or agreed damages. This judgment was reserved at the conclusion of the trial.

Brief background

[4] I will briefly narrate the issues in the background of the matter necessary to place those issues requiring determination in a proper context. Largely, what appears below is common cause between the parties or not disputed.

[5] The plaintiff, as stated above, was born on 29 August 2003. He was injured during the accident on 30 July 2018. This means that he was almost 15 years old when he met the accident and about 21 years of age when this matter was heard.

[6] At the date of the accident, in July 2018, the plaintiff was still in grade 9 at Matseliso Secondary School. He was walking home with friends from a soccer practice, when a dog chased him and he ended up running onto the road to evade it. He was hit and injured by the insured vehicle. He briefly lost consciousness and sustained injuries to his back and the back of his head. He was taken to Bheki Mlangeni Hospital where he received initial treatment until he was transferred to Chris Hani Baragwanath Hospital. He was hospitalised for six days. Following his discharge from hospital he did not go to school for a month, counting from the date of accident.

Issues requiring determination

[7] Counsel when appearing at the hearing for this matter mentioned that the parties were in agreement on almost all aspects of the quantum of the loss of earnings suffered by the plaintiff, save for the contingency deductions to be made.

Plaintiff's case (including expert evidence and counsel's submissions)

General

[8] Ms Nchabeleng for the plaintiff described the injuries sustained by the plaintiff, referred to above, as serious. The plaintiff was assessed by experts retained on his behalf and, subsequently, medico-legal reports obtained from the experts regarding the injuries sustained by the plaintiff and their *sequelae*, were filed. Also, an actuarial report (on calculations quantifying the plaintiff's loss of earnings or earning capacity) was filed. No reports were filed on behalf of the RAF.

[9] At the commencement of the trial, Ms Nchabeleng for the plaintiff moved an application in terms of Rule 38(2) of the Uniform Rules to proceed on the basis of the medico-legal reports filed on behalf of the plaintiff. The contents of the reports are

confirmed under oath by the experts. There was an objection on behalf of the RAF, due to the fact that the application was served and filed late. This, actually, was done a day before the hearing. Counsel for the plaintiff attempted to offer an explanation in this regard, but in the end all she could forcefully submit was that there was no apparent prejudice on the part of the RAF and that the application would save costs inherent in the physical presence of the expert witnesses in Court for the trial. But Mr Mtshemla for the RAF indicated that he was concerned with the findings of the neurosurgeon, which he wanted clarified. I extemporaneously made a ruling granting the application.

Plaintiff's expert findings/diagnosis

Neurosurgeon

[10] The plaintiff was examined by Dr MN Majeed on 11 October 2021. This was just over three years after the accident in which the plaintiff was injured. The neurosurgeon expressed opinions regarding the plaintiff's head injuries including the following. He noted that the plaintiff was taken to Baragwanath Hospital by an ambulance after the accident. He lost consciousness with the Glasgow Coma Scale or GCS at 10/15. The plaintiff also suffered soft tissue injury with occipital and forehead abrasions.

[11] A CT scan revealed that the plaintiff had suffered from a right haemorrhage contusion temporal lobe. According to the plaintiff, as recorded by Dr Majeed, he suffers from back pain when walking for long distances and has problems with short term memory since the accident. Due to the latter, the plaintiff reported to this expert that his school marks have dropped as he has problems relating to recollection. Further, according to the neurosurgeon the plaintiff says he easily loses his temper and becomes irritated on petty issues since the accident. He has decreased hearing in his right ear and cannot concentrate for more than five minutes, which deficits the plaintiff also attributes to the accident. The plaintiff also complains of chronic headaches and dizziness since the accident. Dr Majeed opined that the plaintiff suffered from a moderate brain injury, considering the GCS reading of 10/15.

Clinical Psychologist

[12] On 21 October 2021, the plaintiff was examined by Dr V Guqa, a clinical psychologist. This was about 3 years from date of the accident. The observations and opinions of this expert include what appears next. The plaintiff lost consciousness immediately after being hit by the motor vehicle and regained awareness of his surroundings in hospital. The expert noted from available clinical records that the plaintiff's initial level of awareness on the day of the accident was GCS 15/15 with a drop to GCS10/15.

[13] Dr. Guqa opines that current neuropsychological assessment reveal that, the plaintiff's premorbid scholastic aptitude was within the average, although his abstract reasoning ability, falls within the higher order thinking domains. This suggests that the plaintiff's mostly impaired results on the rest of the domains are suggestive of residual neurocognitive impairment. The compromised functioning is notable on different areas of function involving concentration and mental tracking ability, memory, speed and quality of information processing. The expert concludes that the plaintiff's performance is attributable to neurocognitive deficits due to his traumatic brain injury, aggravated by chronic pain and stress response. Three years on, the injury has had significant alteration of the plaintiff's cognitive function. His post-traumatic mild headaches, mood changes, poor concentration and memory difficulties have an adverse impact on his educational functioning. There is also psychological *sequelae* in the form of psychological distress, with the plaintiff presenting with symptoms of residual post-traumatic stress disorder (i.e. PTSD). Overall, the plaintiff's clinical psychological profile suggests that he experiences severe depressive disorder symptoms.

[14] Dr Guqa also opines that the fact that the plaintiff has post-accident neurocognitive difficulties and is aware of his academic progression decline is likely to increase his psychological distress and affect self-confidence within the plaintiff's academic setting. However, the plaintiff would benefit from interventions of a psychotherapeutic nature to address his reactive psychological problems and neurocognitive deficits. Other deficits of a physical nature include severe persistent back pain aggravated by prolonged walking, standing or sitting. The plaintiff also

suffers from fatigue which may affect him when he is involved in demanding physical activities.

[15] Regarding the educational and occupational impact of the injuries sustained by the plaintiff from the accident and *sequelae*, the views of the clinical psychologist include the following. He noted that the plaintiff was in grade 11 when he assessed him. He now performs tasks at a slower pace than pre-morbid. He also forgets important details, requires more time to comprehend complex tasks, and has difficulties with tasks that require sustained attention.

Educational Psychologist

[16] The plaintiff was examined by Dr A Moyo, an educational psychologist, on 05 January 2025, a month and half before the hearing of this matter. This expert also compiled a report which included the following opinions in respect of the effect of the injuries suffered by the plaintiff and their *sequelae* on his academic cognitive functioning.

[17] The plaintiff says that he completed his primary schooling without repeating a grade. There is no record of any academic setbacks during the plaintiff's foundation phase of schooling (i.e. grades 1 to 7). He was in grade 9 when the accident occurred. The occupational psychologist, however, notes that she was not furnished with verifiable academic records, save the anecdotal reports of the plaintiff repeating no grade prior to the incident. This posed a challenge for this expert to ascertain the extent of the plaintiff's pre-morbid academic strengths, learning profile or potential areas. Therefore, the assumptions made regarding the plaintiff's post-morbid academic trajectory are so made with caution, due to the absence of objective academic information.

[18] Dr Moyo, rather tentatively due to the absence of the requisite information, opines that, the plaintiff's pre-morbid positive development and reported prior-history of no grade repetition, are suggestive of capability to achieve at least a matric with admission towards a higher certificate qualification in his chosen field of study. Now that the accident has occurred, Dr Moyo, while noting the opinions of the other

experts, is of the view that, the plaintiff would require ongoing educational and medical support to manage his academic demands. Further, that the plaintiff may struggle to compete in the open labour market, and his physical endurance may be limited by the lower back pain he experiences. This may adversely affect his ability to perform manual labour, without the use of assistive devices and other interventions.

[19] The plaintiff experiences significant physical, cognitive, and emotional challenges due to the accident. Although he, reportedly, completed his primary schooling without repeating a grade, he failed grades 10 and 11 in high school. This was after the accident. He also failed grade 12 and did not qualify for the National Senior Certificate as projected, albeit tentatively, by this expert. It is also Dr Moyo's opinion that the plaintiff's cognitive deficits, including his forgetfulness, concentration difficulties and irritability have negatively affected his school performance. This has led the plaintiff to abandon his pre-morbid aspiration of becoming a lawyer and has rather opted to become a teacher. According to the comprehensive assessment of the plaintiff his cognitive, academic, and psychological well-being have been significantly impacted by his injuries from the accident. The expert, again, lamented the lack of pre-morbid academic information which she opined, as also stated above, that this negatively affects her assessment of the pre-morbid potential of the plaintiff. What is available to her is to the effect that, post-morbid, the plaintiff has had considerable setbacks in his academic progression with persistent struggles across multiple subjects in grades 10 and 11, in the process, failing the latter grades, including the subsequent grade 12. There was multiple grade repetitions. The plaintiff, ultimately, dropped out.

[20] Dr Moyo, opines that the persistent challenges suggest existence of underlying learning barriers attributable to a combination of factors, such as the effect of the accident, as well as socio-economic, psychosocial, or biological influences. The accident may have exacerbated the plaintiff's difficulties and led to significant disruptions in his educational journey.

[21] A cognitive assessment of the plaintiff by Dr Moyo revealed that his intellectual functioning falls within the lower-average range and the findings highlight significant delays in scholastic achievement and below-average intellectual

functioning. These factors pose substantial barriers to success within a mainstream academic setting.

[22] The plaintiff was at the time of the assessment by Dr Moyo unemployed and financially dependent on government social grants received by his family members. He was not enrolled in any formal educational programs and due to his 'borderline intellectual functioning, history of academic struggles, and socio-economic constraints', he is unlikely to return to mainstream schooling with positive educational outcomes. Therefore, grade 11 could be considered his realistic highest academic level. Dr Moyo strongly suggests that the plaintiff transition into a skills development program with emphasis on practical and vocational training in order to enhance his prospects to meaningfully engage in the workforce. Also, the plaintiff should consider Adult Basic Education and Training (ABET), as alternative, or other non-traditional learning or educational programs. Dr Moyo recommends that the plaintiff receive psychotherapy to address his psychological symptoms.

Occupational Therapist

[23] Ms K Yaca assessed the plaintiff on 10 February 2025 and, subsequently, furnished a medico-legal report of her findings and opinions, including the following regarding the plaintiff's functional and vocational capacity. The plaintiff presents with impaired concentration, difficulty following instructions and poor recall. He also lacks basic cognitive and executive functioning skills expected at his age. His cognitive and psychological impairment negatively affected his ability to learn within a structured environment of a classroom, particularly in respect of progression to the higher grades and dealing with the intensity and complexity of the workload.

[24] Ms Yaca referred to the opinion of the clinical psychologist that there is a decline in cognitive abilities which could negatively affect other areas of plaintiff's life, including professional and personal development. The plaintiff's deficits relating to the head injury has negatively affected his scholastic, cognitive and psychological ability. Consequently, plaintiff is unable to meet his pre-morbid potential. From a physical point of view the assessment revealed that the plaintiff is suited to work with medium physical demands, as he suffers from pain in the lower back affecting his

frequent postural tolerance and load handling demands. Therefore, the plaintiff is likely to be disadvantaged when competing with his uninjured peers in the open labour market. His chance of securing employment lies with a sympathetic employer.

Industrial Psychologist

[25] The plaintiff consulted with the industrial psychologist, Ms S Mahlasela, on 15 March 2024. From her report, as the industrial psychologist, the following are some of the findings made and opinions expressed regarding the plaintiff's injuries and earning prospects.

[26] Ms Mahlasela noted the views expressed by the educational psychologist regarding the plaintiff's premorbid intellectual ability and likely educational progression, including the effect of the lack of records on the plaintiff's pre-morbid foundation phase educational history. This expert also noted the educational psychologist's postulation that the plaintiff was likely to attain a post-matric higher certificate qualification, provided he met the admission criteria for his chosen field of study. Therefore, Ms Mahlasela opined that the plaintiff pre-morbid academic and career progression would have probably led him to a career based on his grade 12 certificate level of education (i.e. NQF Level 05). He would have worked until normal retirement at the age of 65 years. Now that the accident has occurred, the plaintiff, who passed grade 9 in the year of the accident, had mixed fortunes in that in 2019 he enrolled and failed grade 10, and in 2021 progressed to grade 11, which he also failed, including in 2022. When he consulted with the industrial psychologist in 2024 he was in grade 12 still at Matseliso Secondary School. There is also mention of the plaintiff having qualified for supplementary examinations, but there is no mention of the outcome of this, if any.

[27] The plaintiff, reportedly, now earns a living from waste recycling with his twin brother. The industrial psychologist concludes, on the basis of Dr Moyo's opinion, that the plaintiff's post-morbid career progression is likely to be on a scenario below grade 12 level of education. After failing grade 12, grade 11 would seem to be his academic ceiling. He is likely to continue his recycling activities to earn a living until he enters the open labour market at the lower quartile of the early career stages of

persons with no grade 12 level of education, when he reaches 24 years of age. But his cognitive, psychological, psychosocial, physical, and functional deficits render him an unequal competitor of his peers. While noting the opinion and findings of the occupational therapist, including that the plaintiff is suited to work with medium physical demands, Ms Mahlasela opines that without treatment the plaintiff's lower back pain would persist or worsen affecting his ability to maintain prolonged static position and to handle heavy loads. Consequently, Ms Mahlasela is of the opinion that the plaintiff's opportunities to secure well-paid employment in the open labour market have been compromised by the effects of the injuries from the accident. He will not attain his uninjured career prospects with a consequential dip in his earnings.

Actuarial Calculations

[28] The actuary retained on behalf of the plaintiff calculated his loss in terms of two scenarios, with a difference in 5% and 10% contingency spread. Ms Nchabeleng for the plaintiff urged the Court to consider making an award based on the latter scenario.

[29] The total of the past loss in the amount of R32 041, arrived at by deduction of the figure in [29.2] from the figure in [29.1] below, as follows:

[29.1] R128 649 (gross pre-morbid income), less R6 432 (5% contingency deduction) equalling a subtotal of R122 217 (net pre-morbid income), and

[29.2] R94 921 (gross post-morbid income), less R4 746 (5% contingency deduction) equalling R90 175 (net post-morbid income).

[30] For the total future loss in the amount of R5 433 075 is also arrived at by deduction of the figure in [30.2] from the figure in [30.1] below, as follows:

[30.1] R8 478 769 (gross pre-morbid income), less R1 271 815 (15% contingency deduction) equalling a subtotal of R7 206 954, and

[30.2] R2 365 171 (gross post-morbid income), less R591 293 (25% contingency deduction) equalling R1 773 878.

[31] When the amount of R32 041 for total past loss (in [29]) is added to the amount of R5 433 075 for future loss (in [30]), the aggregate total loss is in the

amount R5 465 116. Obviously, a 10% deduction is to be effected to the amount of the loss to accord with the 90% liability admitted by the RAF.

Conclusion

[32] Ms Nchabeleng for the plaintiff concludes her submissions by urging the Court to compensate the plaintiff for his damages resulting from the accident. She submits that her client's career opportunities and ability to generate income have been negatively affected by the accident. The RAF ought to be held liable to pay the plaintiff's damages in respect of his past and future loss of income. A fair and equitable compensation for the plaintiff's loss of earnings will be an award in the amount of R 5 465 116, counsel concludes. Costs should follow the result and that the RAF should be directed to pay the costs of trial on a party and party scale of the High Court, at scale B.

Defendant's case (including submissions by counsel)

[33] Mr Mtshemla made submissions in defence of the action on behalf of the RAF. This was primarily based on the medico legal reports filed by the plaintiff. The RAF, as indicated above, has not filed any reports. But, as also stated above, the issues between the parties had crystallised to the level where at the trial only the contingency deductions to be applied to the figures for the loss were the issues remaining in dispute between the parties. Obviously, the Court – for its part - had to go through the evidence and submissions to properly equip itself to determine every necessary issue in the matter, including the application of contingency deductions.

[34] Mr Mtshemla's submissions included the following. He found no logic in the postulations and submitted that there were discrepancies in the evidence before the Court. In the latter he included the fact that the industrial psychologist stated that the plaintiff was conducting recycling business with his twin brother in 2021. This is the same year when the plaintiff was reported to still be at school. Counsel also appeared to doubt the existence of the alleged twin brother and appeared to suggest that it is an attempt to obfuscate or to explain the latter contradiction. Further,

counsel referred to the lamentations by the experts, particularly Dr Moyo, of the absence of pre-morbid educational history on the part of the plaintiff.

[35] Also, according to counsel, the actuarial calculations ought to be explained in respect of the plaintiff's alleged past loss. There is uncertainty with regard to the plaintiff's past loss. Mr Mtshemla urged the Court to apply a 15% contingency deduction to both pre- and post-morbid figures in respect of the past loss to result in a total loss in the amount of R28 668.80. For the future loss he submitted that a 74% contingency deduction on the gross pre-morbid income of R8 478 769 should be applied in order to arrive at an amount of R2 204 479.94 and 84% to the post-morbid income of R2 365 171 to equate to R378 427.36. Counsel submitted that the result of this calculation, including a 10% apportionment will be an amount of R1 669 249.24, which he submitted represented a fair and equitable compensation to the plaintiff on the facts of this matter.

Conclusion and costs

[36] I agree with Dr Moyo, as forcefully reiterated by Mr Mtshemla for the RAF in his submissions, that the absence of evidence or information on the plaintiff's pre-morbid academic performance is critical for the determination of his loss. It cannot be mechanically accepted that the accident is the sole cause of the plaintiff's post-morbid academic challenges and shortcomings when nothing is known about his pre-morbid performance. Ironically, the report about the plaintiff's pre-morbid academic travails was relayed by the plaintiff himself. Far from second-guessing the accuracy of his report and the inherent propensity to advance one's cause, the plaintiff's deficits include problems with recollection and other psychological challenges. The school reports or some form of information obtained from his foundation phase school(s) would have served an objective purpose under the circumstances. This would have a bearing on the award to be made.

[37] The plaintiff's persistent challenges, have also been found to be suggestive of underlying learning barriers attributable to a combination of other factors (than the accident), such as those of a socio-economic or biological influence. The Court agrees with the expert evidence that the barriers or factors may have been

exacerbated by the accident leading to the plaintiff's significant disruptions in his educational pursuits.

[38] Although there appears to be some level of credence in the suspicions of Mr Mtshemla regarding the plaintiff's involvement in recycling at the same time when he was supposed to be at school, I do not have anything more than suspicions to reject the available evidence. I would thus award the plaintiff the amount of R32 041 as his past loss of earnings.

[39] Considering what appears above, including the plaintiff's age when he was injured and the nature and extent of his injuries, I will make an award in the amount of R4 279 518.60 for the plaintiff's future loss of earnings or earning capacity. This I achieved by effecting a contingency deductions of 30% on both estimated pre-morbid and post-morbid income. This figure is to be added to the R32 041 for past loss of earning to the amount of R4 311 559.60. The latter amount would be reduced by the 10% apportionment to the total award of R3 880 403.64. I consider this amount fair and equitable considering the facts and evidence in this matter. Costs will follow this result at party and party scale, at scale B.

Order

[40] In the premises, I grant an order in the following terms, that:

1. Defendant shall pay to the Plaintiff an amount of **R3 880 403.64 (three million eight hundred and eighty thousand four hundred and three rand and sixty four cents)** post 10% deduction/apportionment in respect of Plaintiff's total claim for past and future loss of earnings damages sustained by the Plaintiff during the motor vehicle collision which occurred on 30th July 2018.
2. the amount in paragraph 1 of this order is payable by means of direct fund transfer within 180 (one hundred and eighty) days into the Trust Bank Account of the Plaintiff's attorneys which details are as follows:

NAME OF ATTORNEYS : AKHONA PELE ATTORNEYS

NAME OF BANK : A[...]
ACCOUNT NUMBER : 4[...]
ACCOUNT TYPE : TRUST ACCOUNT
BRANCH CODE : 6[...]
REFERENCE : M[...]

3. the Defendant will not be liable for interest on the above-mentioned amounts provided that same is paid within one hundred and eighty (180) days, failing which interest at the prescribed rate per annum will be payable calculated from 181 days from the date on which this Draft Order is made an Order of Court;

4. the Defendant shall pay the Plaintiff's taxed or agreed party and party costs up to date on the High Court scale, which party and party costs shall include subject to the discretion of the taxing master, but not be limited to:

4.1. The costs of all medico-legal reports served onto the Defendant;
and

4.2. The reasonable fees of Counsel on scale B for 26 February 2024.

5. the claim of the Plaintiff is not subject to a contingency fee agreement.

Khashane La M. Manamela
Acting Judge of the High Court

Dates of Hearing: 26 February 2025

Date of Judgment: 04 June 2025

Appearances:

For the Plaintiff: Ms B Nchabeleng

Instructed by: Akhona Pele Attorneys

For the Defendant: Mr L Mtshemla

Defendant's Attorneys: State Attorney, Johannesburg