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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: **61432/2019**

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

DATE: 2 Jube 2025

SIGNATURE: **JANSE VAN NIEUWENHUIZEN J**

In the matter between:

M[...] **L[...]** **M[...]** obo
K[...] **M[...]** **N[...]**

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

Introduction

[1] **K[...]** **M[...]** **N[...]** (“the minor”), being represented herein by her mother, the plaintiff, was involved in a motor vehicle accident on 22 April 2018. The minor was a pedestrian when a motor vehicle collided with her at approximately 18:30 along Thamakge Street, Mamelodi East, Pretoria. Mr Grobler SC, counsel for the plaintiff, submitted that the negligence of the insured driver was the sole cause of the accident. I agree.

- [2] It is evident from the evidence admitted at the hearing of the matter that the minor suffered injuries as a result of the collision. In the premises, the plaintiff claims payment of future medical and hospital expenses and of the minor's loss of future earnings / earning capacity.

Future medical and hospital expenses

- [3] According to the evidence contained in the medico-legal reports filed in respect of the sequelae of the injuries the minor suffered due to the collusion, the plaintiff will incur expenses in respect of future medical treatment of the minor. In the result, the plaintiff is entitled to a statutory undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, 56 of 1996.

Loss of earnings / earning ability

- [4] The medico legal reports of respectively, Dr Martin, an orthopaedic surgeon and N Arm, an occupational therapist, confirm that the minor's orthopaedic injuries will not result in a loss of earnings / earning ability.
- [5] The loss of earnings / earning ability is based on the finding by Dr Wynand-Ndlovu, a neurologist, that the minor suffered a mild traumatic brain injury. The diagnosis is based on "*reported clouding of consciousness and forehead abrasions.*"
- [6] The "*reported clouding of consciousness*" is based on the version the plaintiff provided to Dr Wynand-Ndlovu. According to the plaintiff she arrived at Mamelodi Regional Hospital a few hours after the accident and the minor did not immediately recognize her; she only recognised her an hour or so later.
- [7] In the clinical notes of Mamelodi Regional Hospital, there is, however, no indication of a *clouding of consciousness*. To the contrary, the notes reveal the following:

7.1 on arrival at the hospital at 18:20 the minor was “*awake and orientated*” and;

7.2 at 20:20 “*Pupils 3mm dilated and reactive; fully conscious;*”

- [8] The plaintiff’s version that supported the finding of “*clouding of consciousness*” is, furthermore, contradicted by the version she gave to Rita du Plessis, a counselling and neuropsychologist, to wit:

“2.2...She went to the hospital and her partner was already with K[...]. She did not speak to her daughter and was unable to recall her daughter’s mental state. Ms M[...] admitted that her fear stopped her from engaging her daughter at the time.”

- [9] In the result, the diagnosis of a mild traumatic brain injury can, on the facts before court, only be based on the forehead abrasions.

- [10] Nina du Plessis, an educational psychologist, opined that the mild traumatic brain injury will in future have an impact on the minor’s scholastic and academic performance. According to Nina Du Plessis, the minor would prior to the accident have obtained a Grade 12 National Senior Certificate with a Diploma/Higher Certificate Qualification level, should her family have been able to afford additional tertiary studies.

- [11] Post-accident the minor’s educability is described as follows:

“Should K[...] change school, and the standard of education is considered higher and therefore more challenging, it would most probably be better for her to rather attend a remedial school. Depending on how well she responds to this type of learning support system, she may still be able to complete her Grade 12 National Senior Certificate, especially when considering that some remedial schools offer higher levels of learning support and learners are able to choose from, a wider list (i.e. academic and practical types) of subjects when making their subject choices for grades 10, 11 and 12. Furthermore, it is

likely, that should K[...] decide to continue her studies after school, she would be better suited for a TVET Certificate Qualification.”

- [12] The aforesaid finding is somewhat at odds with the minor’s academic performance. Nina du Plessis noted the following in her report in respect of the minor’s academic performance:

“Grade 2 (2018):

Based on the available school report, it appears that there was an improvement in K[...]’s academic performance, in comparison to Grade 1, where she mostly obtained above average performance levels. Her teacher specifically commended her for the Mathematics subject. K[...] was successfully promoted to Grade 3.

It should be noted that the accident in question, took place on 22 April 2018, at the end of the first term.

Grade 3 (Terms 1 -3)

From the available school report, additional academic improvement was observed across all of her subject areas, in comparison to her Grade 2 performance levels. Her teacher further commented that it was an excellent report.”

- [13] Having had regard to the minor’s academic performance, Nina du Plessis stated that it does not appear that the minor is presenting with any specific learning difficulty, nor does there appear to be a pre-existing learning difficulty.
- [14] Nina du Plessis subjected the minor to various assessments and reported as follows on the minor’s **estimated** pre-morbid cognitive functioning:

“8.1.1.1 *When considering K[...]’s current level of cognitive ability, it is likely that on a pre-morbid level, she most likely presented with an average cognitive ability. This assumption being based on*

*Lezak's opinion as well as taking into consideration K[...]s developmental history, familial educational history and the negative impact that even a mild traumatic brain injury **can** have on current cognitive performance levels, **should this be confirmed as the case**" (own emphasis)*

[15] In respect of the minor's cognitive functioning post-accident, Nina du Plessis indicated that the minor's cognitive ability has been indicated as considerably lower in comparison to the **suggested** pre-accident cognitive ability.

[16] It is clear that the findings based on the assessments are not borne out by the facts before court.

[17] The difference between the assessments and the scholastic performance is attributed by Nina du Plessis to:

17.1 the fact that the scholastic assessment tools used in the assessment are standardized for learners learning in English as their home language; and

17.2 the possible substandard level of education being provided at the minor's current educational institution.

[18] Rita du Plessis also subjected the minor to assessments and reported, *inter alia*, as follows:

"9.37 ...Cognisance has been taken of the opinion of Ms N du Plessis, the educational psychologist on focal damage lying at the root of the scholastic difficulties. In this regard comments by the neurosurgeon on the possibility of focal damage should be obtained. There is no evidence of focal neurological signs after the accident. I recommend advanced optometric eye examinations and the opinion of a specialist on Irlen Syndrome for comments on the findings of the educational

psychologist and the nexus between the accident and the learning difficulties identified in her assessment. I agree with Ms Du Plessis that K[...]’s scholastic performances have remained stable.”

and

“10.8 Her performance in the psychometric test did not concur with her marks in the available school reports. Poor working memory could be partially influenced by a traumatic brain injury. Poor working memory ability probably underlies the poor learning skills revealed when exposed to rote verbal information. She revealed learning difficulties and poor English proficiency which one cannot ascribe to the accident under discussion. Her school marks do not reflect the difficulties she revealed in the psychometric testing.”

- [19] In summary, Rita du Plessis opined that the minor does not function according to her pre-accident level and that this is at least to some extent due to the accident.
- [20] Based on the aforesaid expert opinions, N Kotze, an industrial psychologist, suggested a probable career path for the minor pre-and post-accident. Having regard to the probable career path of the minor, J Sauer, an actuary calculated the minor’s loss in respect of two scenarios. In Scenario 1, the minor would have obtained uninjured and injured post matric a certificate and in Scenario 2, the minor would post matric have obtained a diploma uninjured and in the injured scenario a certificate.
- [21] Having applied contingencies, scenario 1 amounts to a loss of R 1 926 219 and scenario 2 a loss of R 3 163 397. Mr Grobler submitted that the average of the two calculations should be used, which results in a loss of R 2 544 808, 00.

Discussion

- [22] I am mindful that the opinions of both Nina du Plessis and Rita du Plessis are based on their respective expertise in their respective medical disciplines. I furthermore accept that the minor has the learning difficulties identified during the various assessments.
- [23] I am, however, not satisfied that the plaintiff has on a balance of probabilities proved that the learning difficulties are as a result of the injuries suffered during the accident.
- [24] The minor attended the same educational facility pre-and -post accident. If the injuries sustained in the accident had an impact on the minor's academic performance, one would have expected that her scholastic performance would have deteriorate post-accident. The facts indicate the contrary, the minor's performance has improved after the accident.
- [25] In the result and having had regard to the expert evidence and the proven facts, I am unable to find on a balance of probabilities that the injuries suffered by the minor in the accident will result in a loss of earning / earning ability.

ORDER

In the premises, I grant an order in terms of the order attached hereto as "X".

N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD:

11 March 2025

DATE DELIVERED:

2 June 2025

APPEARANCES

Counsel for the Plaintiff:	Adv Grobler SC
Instructed by:	Wehmeyers Attorneys

Defendant:	Not represented.
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