

**REPUBLIC OF SOUTH AFRICA
THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NR: 87135/2016

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES YES/NO
(3) REVISED:
DATE: 11/06/2025
SIGNATURE:

In the matter between:

M[...] L[...] obo T[...]

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 11 June 2025.

JUDGMENT

MARUMOAGAE AJ

1. The plaintiff instituted action proceedings in her representative capacity on behalf of T, the minor child, against the defendant for the injuries T sustained as a

passenger in a motor vehicle accident that occurred on 21 October 2014. T was two years old at the time of the motor collision.

2. The defendant conceded that the collision resulted from the sole negligence of its insured driver. It offered to settle the issue of negligence concerning the motor vehicle collision, as the insured driver was solely negligent in causing the motor vehicle accident.
3. The defendant made an offer to the plaintiff for payment of general damages of R 450,000.00, which the plaintiff accepted. The issue the court is called to determine is the amount of past and future loss of earnings, as well as future medical and related expenses that the defendant should pay to the plaintiff.
4. Due to the collision, T's teeth were extracted. He sustained head injuries and soft tissue injuries. After the accident, T was admitted to the Steve Biko Memorial Hospital, where he was evaluated, treated, and stabilised.
5. The plaintiff procured the services of an orthopaedic surgeon who provided his report to the court. The orthopaedic surgeon noted that T sustained a cut on the lower lip and facial abrasion from the accident. He noted that T is reasonably healthy with no apparent signs of a systemic disease. Furthermore, he did not foresee any significant negative orthopaedic effects on T.
6. The orthopaedic surgeon further noted that T must be compensated for all reasonable expenses already incurred and any complications that arise from the treatment of his injuries. Most importantly, the orthopaedic surgeon stated that there is no negative effect on T's academic performance or social development that was reported. It is concerning that the summary of the findings of this expert was not provided in the heads of argument that were submitted on behalf of the plaintiff in this matter.
7. A report of a neurosurgeon was also provided to the court. This expert witness stated that T sustained a mild head injury, significant long-term behavioural and mental disturbance, forehead scar, and post-injury recurrent headaches as a

result of the accident. He stated that T has significant permanent residual memory disturbances and severe difficulty with concentration.

8. The neurosurgeon opined that T would need future treatment such as analgesia, physiotherapy, consultation with the general practitioner, and epilepsy treatment. He is of the view that the head injury is a direct result of the accident and contributes to pain and suffering, with persistent headaches post the injury. He recommends that T must be compensated for general damages, future treatment, and loss of earning capacity.
9. A report of an educational psychologist was also provided to the court. The educational psychologist noted that T failed grade one and was taken to a different primary school, where he passed all the grades until he reached grade 7 without failing any of them. He observed that T's performance fluctuates, and he struggles to concentrate in class.
10. According to the educational psychologist, T's general intellectual functioning is not on par with his peers. T will struggle with tasks that require verbal reasoning, logical thinking, and auditory sequencing and attention. He may struggle to work under pressure, and his academic performance may be negatively affected. T's inability to attend to verbal commands in the classroom fluctuates, which makes it difficult for new information to be stored sufficiently. His reading and spelling are below his current age group and grade level.
11. The educational psychologist states further that:
 - 11.1. before the accident, T had chances of completing Grade 12, with a bachelor's pass. He would also have been able to obtain a NQF7 tertiary qualification;
 - 11.2. the disabling nature of the injuries sustained in the accident, which are expressed in the form of psychological, physical, and cognitive complaints, renders effective learning difficult;

11.3. T's learning ability has deteriorated since the accident, and he is going to find it difficult to complete grade 12 with his current cognitive and learning challenges;

12. The report of the occupational therapist was also provided, and she noted that:

12.1. although there is no evidence of delayed physical development that T currently experiences, injuries suffered by minor children have been proven to interfere with the children's physical/cognitive/emotional development;

12.2. as an adult, T is physically seen to be able to perform sedentary, light, and medium to heavy physical type of activities with reasonable accommodation;

12.3. as an adult, T is expected to experience moderate limitation in his occupational functioning and career choice due to his cognitive and behavioural difficulties if no intervention is received.

13. Another report provided to the court is that of the industrial psychologist. In this report, it is stated that it can be accepted that a minor with impairment or disability will be disadvantaged in the open labour market to a lesser or greater extent. In terms of general employment prospects, with reference to personal and work ability, T experiences significant physical, emotional, behavioural, and cognitive deficits, some of which are due to the residual effects of the accident.

14. The industrial psychologist is of the view that T's employment prospects are likely to be limited in light of his injuries. T is likely to be reliant on an accommodating employer, where he is allowed to take frequent rests. Should he not get an employer who is accommodating him, lengthy periods of unemployment are envisaged, and an appropriate contingency for unemployment should be applied in his injured state. Although there was no past loss of earnings, T must be compensated for the possible loss of future earnings because he cannot cope in the open market due to the residual effects of the accident.

15. The actuary's report was also provided. After calculating what T's income would have been had there not been an accident and what is likely to be after the accident, the actuary calculated T's loss of income to be R 1,257, 237,00. The actuary did not apply any contingencies when calculating this amount.
16. It was submitted on behalf of the plaintiff that this court should consider two contingency scenarios. In the first scenario, it is submitted that 5% future contingency must be applied to the proposed uninjured income and 15% to the injured income which will lead to the eventual amount of R 1,308,885,55 being paid to the plaintiff.
17. In the second scenario, it is submitted that a 15% future contingency must be applied to the proposed uninjured income and a 25% contingency to the injured income, which will result in an eventual amount of R 1,183,161.85 being paid to the plaintiff.
18. In *Ndzundzukani v Road Accident Fund*,¹ the court accepted that deductions of 5% for past loss and 15% for future loss are the normal contingencies that are usually accepted by the defendant. In *A.M obo Z.M v Road Accident Fund*, the court accepted that when dealing with a minor child, a higher-than-normal contingency should be applied.² Thus, I am convinced that the second scenario will lead to a just and equitable compensation in this case.
19. It cannot be denied that T's life was altered by the accident, and this will have a serious impact on his future earning capacity. However, after evaluating expert reports provided in this matter, it is clear that T is not necessarily a struggling learner, despite the injuries he sustained in the accident. While he occasionally performs poorly in some subjects, he appears to excel in others, where he has achieved impressive grades, demonstrating his academic ability.

¹ (532/2022) [2024] ZAMPMBHC 19 (25 March 2024) para 16.

² (2019/44093) [2025] ZAGPJHC 142 (17 February 2025) paras 53, 63 and 64.

20. Most significantly, T only repeated grade 1 and has completed other grades without repeating them, and he is now at grade 7. This is an important factor to consider when one assesses his chances of completing primary education and the potential for tertiary education. T's past performance indicates that he stands a chance of completing matric. It is difficult to accept that his chances of completing matric are less, given his performance thus far.

21. To the extent to which the assumptions of the experts are correct that T will experience difficulties completing matric, it is worth noting that the educational psychologist has opined that T will require enrichment and additional learning support in all learning areas. In particular, he recommended that T be considered for enrollment at a school with an inclusive curriculum, or at a remedial school that also offers a vocational learning environment.

22. This suggests that measures can be put in place to enhance T's academic learning and improve his employment prospects. It is not clear why a curator ad litem was not suggested in these proceedings to ensure that appropriate measures are put in place to ensure that the money that the plaintiff will receive on behalf of T is used to give him a fair chance at life.

23. In the premises, I make the following order:

23.1. The Defendant is ordered to pay an amount of R 1,183,161.85 [One Million One Hundred and Eighty-Three Thousand One Hundred Sixty-One Rand and Eighty-Five Cents] future loss of earnings to the plaintiff's attorneys, NEFURI ATTORNEYS, by way of a lump sum payment via an electronic transfer into their trust account within 180 (one hundred and eighty) calendar days of service of the order, by way of electronic transfer to the trust account, details of which are set out hereunder ("the capital payment").

NEFURI ATTORNEYS TRUST ACCOUNT

BANK: STANDARD BANK

BRANCH CODE: W[...]

ACCOUNT NO: 3[...]

TYPE: CURRENT ACCOUNT

23.2. Establishment of a trust account with standard bank trust division and 60% of capital received be invested until T reaches 21 years of age.

23.3. The Defendant shall make payment of the Plaintiff's taxed or agreed Party and Party costs of the action on the High Court Scale, which costs subject to the discretion of the Taxing Master, may include but not be limited to the following:

23.3.1. The Plaintiff shall serve the notice of taxation on the Defendant and allow the Defendant 180 (ONE HUNDRED EIGHTY) days to make the said payment of the taxed costs; and

23.3.2. Should payment of the aforementioned amount not be effected timeously, the Plaintiff will be entitled to recover interest, at the prescribed rate, as per legislation.

23.4. The above costs shall also be paid into the above trust account, which costs, subject to the discretion of the Taxing Master may include, but will not be limited to the following:

23.4.1. The reasonable taxable fees for consultation (including telephonic consultations) with Counsel and Attorney, preparation for trial, full qualifying and reservation fees (if any and proof thereof as well as the costs of the experts' reports of the Plaintiffs that were served on the Defendant, (if any);

23.4.2. The fees of Counsel on the High Court Scale B, inclusive of but not limited to Counsel's reasonable fee for the drafting of Heads of arguments and for; and reasonable fee for preparation and attendance for 28 May 2025 for trial hearing;

23.4.3. The costs in respect of the preparation, drafting and copying of all the bundles of documents, including trial bundles and bundles for the experts containing expert calculations, pleadings and notices, and all other documents and all indexes thereto;

23.4.4. The reasonable travelling costs, traveling time, subsistence, and transportation costs, (if any), of the Plaintiff to attend Court on the trial days;

23.4.5. The reasonable costs consequently in the preparation of and obtaining the medico legal and actuary reports and joint minutes/addendum reports (if any), that were served on or provided to the Defendant.

23.5. The above costs are in the discretion of the Taxing Master and shall also be paid into the aforementioned trust account.

23.6. There is a Contingency Fee Agreement in accordance with the Contingency Fee Agreement Act 66 of 1997.

C MARUMOAGAE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

COUNSEL FOR THE PLAINTIFF :

INSTRUCTED BY : NEFURI ATTORNEYS

COUNSEL FOR THE DEFENDANT : No appearance

INSTRUCTED BY : No appearance

DATE OF CONSIDERATION : 29 May 2025

DATE OF JUDGMENT

: 11 June 2025