

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

Case No: 50765/2019

Reportable: No

Of interest to other Judges: No Revised: No

Date: 27 June 2025

In the matter between:

A[...] G[...] obo A MINOR CHILD

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGEMENT

Mooki J

1 The plaintiff seeks damages against the Road Accident Fund. She sues on behalf of her minor child, who was involved in a car accident on 15 August 2017. The child (L[...]) was 4 years and 9 months at the time of the accident. L[...] was in grade 7 when the matter came before Court.

2 The defendant conceded liability on a 100% basis in favour of the plaintiff, with the Court (Kubushi ADJP) making an order in that regard on 17 October 2024. The claim in these proceedings pertains to a loss of earnings. The Court received evidence in terms of Rule 38(2).

3 The orthopaedic surgeon (Dr M Tladi) assessed L[...] on 17 February 2023, when L[...] was 10 years old. Dr Tladi was not given hospital records. The plaintiff told Dr Tladi that L[...] was a passenger in a bakkie that collided with a private car and that L[...] lost consciousness which she regained at the scene. Dr Tladi found nothing untoward following a systemic examination of L[...].

4 Dr A B Mazwi, a specialist neurosurgeon, examined L[...] on 17 February 2023. Dr Mazwi considered two documents when assessing L[...]. He also took the history of the incident from L[...], who told him that she suffered a head injury when a bakkie collided with a private car and that she lost awareness and woke up at the scene. She also told Dr Mazwi that she was admitted to casualty and received emergency treatment and nursing care.

5 The two documents considered by Dr Mazwi were a RAF 1 form completed by Dr T Boto and a radiology report by Dr Etienne Steenkamp. The x-ray of the skull showed nil fractures. Dr Mazwi concluded that L[...] had a brief loss of consciousness following a bakkie collision on 15 May 2017, in keeping with a mild head injury.

6 Mr Z L Khubeka, an educational psychologist, interviewed L[...] and the plaintiff. He records that the incident occurred on 15 May 2015. The plaintiff told Mr Khubeka that L[...] sustained a head injury but that there was no loss of consciousness. L[...] was seen by a general practitioner in a hospital, returning for a follow-up on 19 May 2017. L[...] was not admitted to inpatient care.

7 The plaintiff told Mr Khubeka that the incident resulted in L[...] having persistent headaches, being oppositional and defiant and that L[...] tends to withdraw socially. Mr Khubeka recorded that L[...] was attending a creche at the time of the incident. She never failed a grade. Mr Khubeka stated that L[...]’s school reports indicate a reasonable average to above average learning potential.

8 Mr Khubeka opined that L[...]’s intellectual potential before the accident was likely to have been in the high average to above average range. This was according

to the “best performance method”, which considers the highest scoring cognitive domains. L[...] would pass Grade 12 with a bachelor’s admission and would then enter a field of her choice aligned to the NQF level 7 qualification.

9 Mr Khubeka stated that the position was different following the accident:
“In contrast to the school records provided, the scholastic profile is indicative of prevailing learning problems. L[...]’s performance on the English reading was adequate. Of concern was her reading comprehension, spelling, creative writing, and numeracy skills were noted to be below the grade level”. He continued that the head injury was superimposed on L[...]’s brain, and that it is probable that “there is a nexus between L[...]’s learning difficulties and the accident in question.” The cognitive profile pointed to L[...] having suffered mild to moderate cognitive/ neurocognitive fallouts that are consistent with the mild-traumatic brain injury diagnosed by the specialist neurosurgeon Dr. A. B Mazwi.

10 Mr Khubeka further opined that L[...] presented with cognitive deficits that “can be wholly attributable to the head injury sustained during the accident.” The “mild to moderate cognitive deficits” were said to likely hinder L[...]’s capacity to fully utilise her residual cognitive potential in a consistent and effective manner. The possibility of “a sleeper effect” could not be excluded and that it was anticipated that “[L...] may experience increasing difficulty coping with complex information processing and abstract reasoning tasks” as she progressed into grades 10 to 12. L[...] was now likely to complete grade 12 with a diploma- level pass. Her highest probable academic attainment was now projected to be an equivalent of NQF Level 6.

11 Mr Mbhekiseni Dhlamini, an occupational therapist, assessed L[...] when she was in grade 4. Mr Dhlamini recorded the injury as having occurred on 15 May 2017. The plaintiff told Mr Dhlamini that L[...] was transported by private vehicle to a general practitioner and was discharged the same day. L[...] returned to the creche the day after her discharge. There were no follow-up consultations upon her discharge by the general practitioner. L[...] was not on any medication. The plaintiff told Mr Dhlamini that feedback from educators was that L[...] displayed significant difficulties with maintaining concentration.

12 Mr Dhlamini concluded that L[...] should be able to enter an occupation with sedentary to light to medium physical demands. She would struggle executing duties that require high levels of higher cognitive and executive functioning “due to the sequelae of the diagnosed mild head injury”. Mr Dhlamini further opined that L[...] would not reach her pre-accident level of functioning due to deficits arising from the injuries sustained in the accident. The injuries curtailed her career choices.

13 Dr K L Tshikovhele, a clinical psychologist, recorded the accident having occurred on 15 August 2017. The plaintiff told Dr Tshikovhele that L[...] had a brief loss of consciousness and was cut by glass. She took L[...] to a general practitioner for stitches and treatment. L[...] and the plaintiff reported various impairments in relation to L[...]. The stated impairments were physical, cognitive, behavioural, and social. L[...] complained of headaches following the accident. The plaintiff told Dr Tshikovhele that L[...], following the accident, had poor concentration, was forgetful and had spelling problems at school.

14 Dr Tshikovhele concluded that L[...] had intact neurodevelopmental functioning before the accident. She now has several afflictions, including psychological sequelae. Her cognitive deficits were likely to impact her future academic and occupational productivity. The test results indicated cognitive impairment that was likely due to psychological challenges and pain.

15 Ms Esther Slabbert, an industrial psychologist, recorded the incident as occurring on 15 August 2017. Ms Slabbert opined that the vocational and educational profile of the L[...]’s family play a role in postulating L[...]’s career path had the accident not occurred and that “...today, in South Africa, many children achieve higher levels of education than their parents...”.

16 Ms Slabbert stated that L[...]’s pre-morbid earning potential was based on L[...] having obtained an NQF level 7 qualification. She would enter the workforce at Paterson B5, reaching her ultimate level at age 45 at bracket D1. She would then receive inflationary increases until age 65. The post-morbid potential entailed L[...] obtaining an NQF level 6 qualification. She would enter the workforce at bracket B4,

reaching her ultimate level at age 45 on bracket C4. She would then receive inflationary increases to age 65, on retirement.

Analysis

17 The plaintiff's pleaded case is that L[...] was a *pedestrian* when she was injured in a car accident on 15 August 2017. The pleaded injury was framed as follows:

"7. As a result of the aforesaid accident, the Plaintiff sustained severe bodily injuries consisting of:

7.1 Severe bodily injuries characterized by:

7.1.1 Head Injury"

18 The evidence does not support the pleaded case on how L[...] got to be injured. The RAF 1 form records that L[...] was a passenger and had fastened a seatbelt at the time of the incident. The accident report records that L[...] was a passenger conveyed at the back of a bakkie.

19 It bears mentioning that the defendant has conceded liability. It is therefore immaterial whether the plaintiff was a pedestrian or a passenger.

20 There are no hospital records pertaining to the incident. Indeed, there is no record of L[...] having been admitted to hospital. The following details are recorded in the RAF 1 form. Dr T Boto completed the form, which he signed on 27 March 2018. The accident occurred on 15 August 2017, and the injured person was a passenger. The injured person received "non-emergency medical treatment." The treatment plan referenced medication and an x-ray of the skull and facial bones.

21 The "report" referred to by Dr Boto is a radiology statement in the name of Dr Etienne Steenkamp. Dr Steenkamp's radiology report was "Checked for Syntax & Grammar by: Dr ETIENNE STEENKAMP on 2017/05/19 8:31 AM". The examination date is recorded as "19/05/2017".

22 The accident report and the plaintiff's affidavit in terms of section 19(f) record

that the accident occurred on 15 August 2017. There is no explanation why an x-ray that was performed on 19 May 2017, some three months before the accident, is relied upon in support of the plaintiff's case.

23 Witnesses for the plaintiff referenced the x-ray report in one way or another in support of their findings. For example, Dr Mazwi, the neurosurgeon, says "the clinical records" recorded that the claimant had a "head injury". Dr Mazwi only had the RAF 1 form and Dr Steenkamp's radiology report as supporting documents. The documents do not state that L[...] suffered a "head injury". The radiology report does not pertain to the incident on 15 August 2017.

24 L[...] was unaccompanied when she met with Dr Mazwi. She was 10 years old at the time. Dr Mazwi reached conclusions about what happened, including that L[...] lost consciousness, based on the history related to him by L[...]. It beggars belief that Dr Mazwi would consult with a 10-year-old child unaccompanied by an adult. It beggars greater belief that Dr Mazwi accepted, as fact, the recollection of a 10-year-old about an event when the child was 4 years and 9 months old.

25 The various witnesses for the plaintiff premised their findings and opinions on L[...] having suffered a head injury. Mr Khubela, the educational psychologist, wrote that Dr Mazwi diagnosed L[...] as suffering a mild traumatic brain injury. A finding that L[...] suffered a traumatic brain injury is foundational to Mr Khubela's own conclusion that the accident so affected L[...], resulting in the stated impairments. The same applies to findings of Mr Dhlamini, the occupational therapist. He concluded that L[...] would struggle executing duties that required high levels of higher cognitive and executive functioning "due to the sequelae of the diagnosed mild head injury".

26 There is no foundation to the finding that L[...] suffered a head injury. There is no medical record suggestive of that fact. The plaintiff sought to rely on the radiology report by Dr Steenkamp that L[...] suffered a head injury. That report is unrelated to the accident. There is simply no explanation why Dr Boto referenced this document when completing the RAF 1 form. Dr Boto recorded in the RAF 1 form that the accident occurred on 15 August 2017, yet he enclosed as supporting documentation an x-ray report done on 19 May 2017.

27 The plaintiff told Mr Khubeka, the educational psychologist, that L[...] was seen by a general practitioner in a hospital, returning for a follow-up on 19 May 2017. There is no evidence of L[...] being admitted to a hospital. The plaintiff's referencing a follow-up on 19 May 2017 had nothing to do with the accident of 15 August 2017. The radiology report is dated 19 May 2017. This shows that the plaintiff sought to use an x-ray report that was unrelated to the events of 15 August 2017 as justification for L[...] having suffered a head injury.

28 L[...]’s stated “head injury” is premised on a misrepresentation. The mentioning of a traumatic brain injury is but a ploy to suggest that L[...] has learning difficulties, when, in fact, there is no evidence supporting such a finding. The various experts turned the proverbial blind eye to evidence at hand. This includes the educational psychologist disregarding school reports and concluding that L[...] had problems with learning. The witnesses were seemingly at peace to advance a narrative that L[...] suffered a head injury, for which she was to be compensated.

29 Dr Mazwi was the first expert to opine on L[...] having suffered a head injury. He noted in his report that “the clinical records” recorded that the claimant had a “head injury”. Dr Mazwi over-stated the facts in referring to “clinical records”. He only had the RAF 1 form by Dr T Boto and a radiology report by Dr Etienne Steenkamp. The radiology report had nothing to do with what occurred on 15 August 2017. That is because the x- ray examination that is the subject of the report was performed on 19 May 2017.

30 There is no good reason for Dr Mazwi to say L[...] was involved in a collision that occurred on *15 May 2017*. The RAF 1 form expressly records that the incident occurred on 15 August 2017. Dr Mazwi’s report was tailored for a specific outcome. He had to say the collision occurred on 15 May 2017 because that date allowed him to reference Dr Steenkamp’s radiology report of 19 May 2017 as the basis for saying L[...] suffered a head injury. This is apart from the report not stating that there was a head injury.

31 The plaintiff contradicted herself, telling some experts that L[...] lost

consciousness, while telling others that there was no loss of consciousness. Mention of the loss of consciousness was clearly intended to buttress the claim of L[...] having suffered a head injury and that she developed learning difficulties as a result.

32 The other experts called by the plaintiff premised their opinions on L[...] having suffered a head injury. This is illustrated by the educational psychologist, who opined that L[...]’s cognitive profile points to L[...] having suffered mild to moderate cognitive/ neurocognitive fallouts that are consistent with the mild-traumatic brain injury diagnosed by the specialist neurosurgeon Dr. A. B Mazwi.

33 I do not accept that L[...] will no longer be able to attain a NQF level 7 profession. The evidence does not support this claim. L[...] was 4 years and 9 months when she was involved in the accident. She was attending a creche at the time. She returned to the creche the day following the accident. She has performed well at school since, often performing above the grade average.

34 L[...] was in Grade 1 in 2019. All her marks were a 5 (60 – 69 %) and above. The plaintiff presented only marks for the first term in grade 2. L[...] had one mark of 4, with the rest of the marks at 6 (70 – 79%). She had 4 marks at 5 in grade 3, with the remaining 12 marks at 6 in the year. She obtained 76% for term 1 in grade 4. There are no results for other terms. There were no results for grade 5. She obtained 72% to 75% in her subjects in grade 6 for the year.

35 L[...] was in grade 7 when the matter came before Court. She obtained 62% in grade 7 during the first term. There were no results for the other terms. The following general comment is made in her report for this term: *“L[...] has produced some good results. There is, however, still room for improvement. Keep doing your best. Good behaviour, keep it up!”*

36 The educational psychologist, when faced with the fact that L[...]’s schooling had not been affected; chose to undermine the school reports by championing the view that his testing showed L[...] to be compromised. This is demonstrated by the educational psychologist saying the following in his report:

In contrast to the school records provided, the scholastic profile is indicative of prevailing learning problems. L[...]’s performance on the English reading was adequate. Of concern was her reading comprehension, spelling, creative writing, and numeracy skills were noted to be below the grade level.

37 There is simply no cogent basis for the educational psychologist to seek to disregard the school reports. There is no support that L[...] had “prevailing learning problems.” There is equally no support for the stated concern about L[...]’s reading comprehension, spelling, creative writing, and numeracy skills being below the grade level.

38 The educational psychologist simply chose to ignore facts that do not support his unfounded view that L[...] has been impaired. There is no information showing comparative marks against the grade in relation to “spelling”, “creative writing”, “reading comprehension”, and “numeracy skills”. These criteria do not appear in the school reports. Entries in the school reports contradict the statement that L[...] had learning difficulties in equivalent areas mentioned by the educational psychologist.

39 The equivalent fields in the areas in which L[...] is said to have learning difficulties show the following. L[...] performed as follows during term 1 of grade 7: she scored 76% against the grade average of 67% in ‘creative arts’. She scored 65% against the grade average of 57% in mathematics. She scored 50% against the grade average of 51% for English Home Language. The grade 6 result for the four terms in relation to mathematics were as follows: she scored 74% (compared with the grade average of 63%); 73% (compared with the grade average of 62%); 60% (compared with the grade average of 61%), and 71% (compared with the grade average of 62%). Her score for English Home language was as follows: 71% (compared with the grade average of 61%); 61% (compared with the grade average of 60%), 75% (compared with the grade average of 64%), and 67% (compared with the grade average of 60%). L[...] clearly outperformed the grade average.

40 The industrial psychologist did not fair better in his report. He ultimately rested his claims on the following unsubstantiated assertion: that the vocational and

educational profile of L[...]’s family play a role in postulating L[...]’s career path had the accident not occurred, and that “...today, in South Africa, many children achieve higher levels of education than their parents...”.

41 The various reports presented as evidence in support of the plaintiff’s claim cannot be truly said to be independent reports by their authors. The reports strike one as products of an echo chamber, with each expert reflecting the opinion of an expert in a different field to buttress their own views.

42 It would be far more salutary for each expert to express an opinion based on their expertise, without commenting on the views of an expert in a different discipline. The industrial psychologist, given the nature of their professed expertise, would be the exception. The reports by the experts otherwise become instances of positive reinforcement, which may lack merit.

43 I find that there is no support that the accident affected L[...] as contended for by the various experts. Dr Mazwi did not file an affidavit confirming his report. His report is therefore hearsay. This is a further basis for the court rejecting his evidence, in addition to what the Court has said about his evidence elsewhere in this judgement. Dr Mazwi’s report was, in any event, “stale” and cannot be relied upon as evidence. Dr Mazwi restricted reliance on this report to 24 months of his assessment of L[...]. The assessment was on 17 February 2023. The matter came before Court on 7 May 2025, more than 24 months later. There was no supplementary report.

44 The plaintiff has not shown that L[...] was injured as contended for in the pleadings.

45 I do not accept that the Court should make a finding that the plaintiff made out a case for the contended loss, including based on the stated “sleeper effect” according to the educational psychologist. The plaintiff would have the Court make a finding that there will be an adverse outcome and for such a finding to be made on speculation. The plaintiff chose to prosecute her claim now. Nothing prevented the claim being prosecuted later, or for further reports to be filed, if the plaintiff seeks to make a case that L[...] suffered a loss in part because of the “sleeper effect”.

46 I make the following order:

(1) The claim for loss of earnings is dismissed.

O Mooki

Judge of the High Court Gauteng Division, Pretoria

Counsel for the plaintiff: M E Ngobeni

Instructed by: M G Mali Attorneys Inc.

Date heard: 7 May 2025

Date of judgement: 27 June 2025