REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 4809/21

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE 15/7/2025

SIGNATURE

In the matter between:

ADV M M KGWALE obo

K[...] E[...] T[...] Plaintiff

and

ROAD ACCIDENT FUND Defendant

JUDGMENT

PIENAAR (AJ)

Introduction

[1] The plaintiff who is currently 38 years old, sustained bodily injuries in a motor vehicle accident on 6 July 2014 between Arnot and Hendrina public road an accident occurred. As a result, she claims compensation from the Road Accident Fund in terms of the Road Accident Fund Act 56 of 1996 (as amended) (the Act).

[2] At the commencement of the trial I was informed that the issue of liability (the merits) was settled 100% in favour of the plaintiff.

[3] The parties have settled his claim in respect of general damages in the amount of R1 200 000,00 and the RAF has issued an undertaking in terms of s 17(4) of the Road Accident Fund Act 's future medical and hospital and related expenses. The only issue remaining in dispute is loss of earnings and the RAF have previously made an interim payment in the amount of R500 000,00 under this head of damages. I am called upon to determine the amount that remains due in this respect.

[4] A *Curator ad Litem* for the plaintiff was appointed on the 20 May 2016. Pieter Bernadus van Rooyen of Xirimele Trustees was appointed as *Curator Bonis* for the estate of K[...] E[...] T[...] on the 30 August 2018.

[5] Plaintiff's application in terms of Rule 38(2) was granted as prayed for in terms of Plaintiff's notice of motion.

Quantum

[6] K[...] was 27 years old when he was involved in a motor vehicle accident. He is currently 39 years of age. The plaintiff sustained head injury with GCS 8/15 and left

hand abrasions. He was admitted in Middleburg hospital in ICU for a month and he was transferred to the normal ward after that. When he was discharge from hospital he was still not talking, unable to walk and needed a full time care. The CT scan done showed the right frontoparietal hemorrhage and diffuse cerebral oedema. He has a flaccid left side with movements of the right side. His GCS improved to GCS 10/15.

[7] The Plaintiff was examined by the following experts:

a. Dr D M Maryanne - Neurologist
b. Dr Mazwi - Neurosurgeon
c. Dr Kagiso Maaroganye - Psychiatrist
d. Dr Amanda Peta - Clinical Psychologist
e. Audrey P Tau - Educational Psychologist
f. Mashaba - Occupational Therapist
g. Orgzone - Industrial Psychologist
h. GRS - Actuarial Consulting Actuaries

[8] According to Dr Mazwi (Neurosurgeon), the Claimant sustained a severe head injury, brain epidural hemorrhage, brain adema. He has a long term mental disturbance. Speech aphasia, left hemiparesis. He was admitted in high care from 6 July until 23 July 2014. Has reduced employability. He has poor memory and has difficulty with concentration.

[9] Dr Maryanne (Neurologist) reported that the claimant now presents with the following clinical sequelae of injuries sustained: “Severe traumatic brain injury, due to the severity of the head injury, the claimant is at risk of developing post-traumatic seizures.

[10] Dr Peta (Clinical Psychologist) confirmed that he will also be disadvantages by his current emotional distress and behavioral disturbances, which are exacerbated by living with persistent headaches and pain. This implies that he will nom longer be an equal

and fair competitor in the open market as compared to his non injured peers. Mr T[...] is, therefore considered a vulnerable and unequal competitor in the open labour market.

[11] Saddy Mashaba, an occupational therapist reported that in light of the presenting neuropsychological problems, he will not be able to compete equally with healthy individuals in the open labour market. The presenting cognitive limitations will have a direct impact on his ability to learn and compete in the open labour market.

Pre accident background

[12] Mr T[...] left school during his Grade 12 year. He decided to return to school to complete his Grade 12 year. However, due to being out of school for several years, he first had to repeat Grade 11. He successfully obtained his Grade 12 qualification in 2012. That same year, he secured employment at Eskom, where he worked until 2013.
In 2014, he began studying Electrical Engineering (N1) at Middleburg Technical College. The accident occurred in the same year as he started his course.

[13] Aubrey Tau (Educational Psychologist) is of the opinion that Mr T[...] would probably have managed higher certificate through courses (N4-6), which would have in turn enchanged his employment prospects.

[14] Pre-accident he would have managed to attain his N6 qualification that he was doing at the time of the accident at the age of 29.

Post accident educational ability

[15] Mr T[...] has since, never pursued his studies due to the challenges as result of the accident. He will not go beyond the current qualification of Grade 12. The injuries sustained in the accident and sequelae have compromised his educability so much that he no longer has confidence in himself. From a neuropsychological point of view, the claimant demonstrated cognitive limitations (poor ability to focus/concentrate, poor

decision making, slow through processing and poor memory). He also presents with behavioural problems. He will remain an unequal competitor in the open labour market.

[16] GRS Actuaries prepared the loss of earnings calculations based on the assumptions provided by the Industrial Psychologist. Plaintiff's Counsel is of the opinion that applying a 10% contingency for past and 15% for future loss of earnings is fair and reasonable. However, I disagree with this view. The claimant had already failed pre-morbidly and was 27 years old at the time of the accident. Given these factors, a 25% contingency for the uninjured future earnings scenario is more appropriate.

[17] The capital value of loss of earnings is calculated as follows:

a. Past Loss R582 056,00
b. Future Loss R4 835 106,00
c. Sub total R5 417 162,00
d. ***Less R500 000,00 interim payment***
e. **Total R4 917 162,00**

[18] In the result I make the following order:

1. Amended order mark "X" annexed hereto is made an order of court.

PIENAAR M
ACTING JDUGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing : 10 April 2025
Requested an updated actuary report : 8 July 2025

Received the updated actuary report : 15 July 2025

Judgment delivered :16 July 2025

APPEARANCES

Applicant Counsel : Adv Cassiem

Plaintiff Attorneys : N Nkala Attorneys

Curator ad Litem : Adv M M Mabotja (Kgwale)

For the Respondent : Road Accident Fund
No appearance
Link no: 3602196