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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 2020/27135

Date of hearing: Considered in chambers

Date delivered: 28 July 2025

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO

(3) ~~REVISED~~

DATE: 28/7/25

SIGNATURE

In the application between:

P[...] N[...] obo
K[...] N[...] N[...] **Plaintiff**

and

THE ROAD ACCIDENT FUND **Defendant**

JUDGMENT

SWANEPOEL J:

[1] This matter first came before me on 14 June 2024. Having considered the papers, I indicated to the plaintiff's counsel that I was not satisfied with the report of the educational psychologist, inasmuch as the plaintiff's school reports were lacking, and consequently I postponed the matter sine die for a supplementary report. The report was filed on 7 May 2025, and I have been asked to consider the matter in chambers without further argument from the plaintiff's counsel.

[2] The plaintiff claims damages on behalf of her son, K, who is now almost 11 years old, pursuant to an accident that occurred on 30 July 2017. At that time K was two years and eleven months old. The defendant is the Road Accident Fund. It has acknowledged liability for 100% of the damages suffered by K. The matter is thus before me for consideration of the quantum of K's damages for loss of income. As has become usual in many of these matters, the defendant has not participated in the trial.

[3] The accident happened at approximately 06h40 in Carolina, when K's father lost control of the car in which they were travelling. It overturned and in the process K suffered a head injury. There are allegations that K suffered a leg injury, or perhaps injuries to both legs, but those allegations are contradicted by the X-ray reports and the hospital records. In any event, there is no averment made that K's income earning capacity has in any manner been affected by a leg injury, and it is only the head injury that is relevant to the matter before me.

[4] K lost consciousness during the accident, and upon admission to hospital he was reported to be drowsy with a GCS of 12/15. Some two hours later his GCS had recovered to 15/15. A CT-scan showed that he had suffered a right parietal bone displaced fracture, and a Grade 1 subarachnoid haemorrhage. He was treated conservatively and discharged five days later.

[5] Subsequently, K suffers from headaches that are treated with analgesics. He has emotional difficulties and has undergone a personality change. He suffers from a measure of short-term memory loss and enuresis.

[6] The educational psychologist, Dr. Segabutle, reports that before the accident K had attained all of his developmental milestones within normal ranges. Post-morbid, K is short-tempered, angry and he cries easily. The clinical psychologist, Ms. Mqhayi, reports that K suffers from impaired complex attention and mental speed. He demonstrates moderate neurocognitive impairments. He is unlikely to recover any further.

[7] K's latest school reports show that he performs adequately, and in some subjects he performs above his grade level. However, I accept that as K promotes to higher grades, his cognitive impairment will affect his scholastic performance, and he will progressively struggle more and more. Currently, K is assisted by a tutor in those subjects with which he struggles.

[8] The fact that K was a toddler when the accident occurred makes is difficult to predict his possible career path. Both his parents attained a Grade 12 qualification and both achieved tertiary qualifications. Dr Matlala, the initial educational psychologist, pointed out that the family and home environment is the primary factor in shaping a person's potential. She opined that children generally achieve higher qualifications than their parents. Given that K was a normal child pre-accident, and had achieved all of his developmental milestones, she postulated that he would have passed Grade 12 and would have achieved an NQF 7 qualification. Given his cognitive deficits, she postulated that K would now only achieve an NQF 6 qualification.

[9] Having considered the report of the industrial psychologist the actuary considered two uninjured scenarios. The first is that K would have attained an NQF 7 qualification, and would have entered the job market at age 23 at an income of R 298 000 per annum, increasing to age 45 at level D1/D2 (basic median) in the sum of R 814 000 per annum, remaining constant thereafter until retirement at age 65. The second scenario is essentially the same, save that it is postulated that K would have attained a ceiling of R 1 194 000 per annum at level D1/D2 (Package median).

[10] In the injured scenario, the actuary calculated that K would now commence employment at age 23 having achieved an NQF 6 level qualification, at an income of R 241 500 which would remain constant until retirement at age 65. The plaintiff justifies the lack of growth of the post-accident income on the grounds that K would be a compromised and vulnerable employee who would most likely be overlooked for promotion as a result of his cognitive difficulties.

[11] The plaintiff argues that K's pre-morbid income, based on Scenario 2, would have amounted to R 10 389 885, without justifying why that scenario is preferable to

scenario 1, which predicts an income of R 7 987 343. Now that the accident has occurred, K's income is predicted to be R 3 658 873.

[12] I have some difficulty with the plaintiff's case. Firstly, although I have often heard the opinion of experts that in general children perform better academically than their parents, it is exceedingly difficult to predict the possible academic progression of a toddler. There are many unpredictable factors that could possibly have an influence on K's academic and career progression. The scenarios postulated by the experts depend upon K progressing academically, completing Grade 12, being able to obtain funding for tertiary education, etc, and many other exigencies of life.

[13] It has struck me in the past that the experts' glib assertion that the child will achieve higher qualifications than the parents ignores the challenges faced by young people in our society in general, but more especially with the education system.

[14] My reservations as to the correctness of this theory were confirmed by an article published recently in the *De Rebus* magazine.[1] The authors demonstrate that 84.7% of learners do not achieve a qualification higher than NQF 4. That means that only a relatively small percentage of learners achieve higher than NQF level 4, and only 5.9% achieve a degree qualification. The question in each case should be: what differentiates this particular child from the average, and why do the experts say that this particular child was likely to have achieved a degree?

[15] In this case the experts have provided no factual basis to support their postulation. However, there is nothing from the defendant to gainsay their opinion. It is my view that one should factor in the fact that generally not than many learners achieve a degree, and I propose to deal with this aspect by the application of a higher contingency deduction in respect of the postulated future uninjured earnings.

[16] Furthermore, there is no factual justification for the application of scenario 2 instead of scenario 1. Therefore, I intend to calculate the loss on an average

[1] De Rebus (July 2025): Medico-legal educational predictions leave much to be desired, Prof. R Tabane, Mr. A Baron, Prof. H Lern, Mr D Berndt

between the two scenarios. Finally, the plaintiff has suggested that a 40% contingency deduction be applied to the injured income. In light of the fact that the actuary has already postulated that K will not progress in his career at all, and would reach maximum income at age 23, I find the application of a 40% contingency deduction on the injured income to be excessive.

[17] Consequently, I calculate the plaintiff's loss as follows:

	UNINJURED	**INJURED**	**LOSS**
FUTURE LOSS	9 188 614	3 658 873	
LESS CONTINGENCIES	25%: 2 297 153.50	20% 731 774.60	
NET	6 891 460.50	2 927 098.40	
TOTAL			3 964 362.10

[18] I make the following order:

[18.1] The defendant shall pay the plaintiff R 3 964 362.10 (three million nine hundred and sixty four thousand three hundred and sixty two rand, ten cents) in respect of the plaintiff's claim for loss of earnings.

[18.2] The aforesaid amount shall be paid to the following account:

MHP MALESA ATTORNEYS

FIRST NATIONAL BANK ACCOUNT NO: 6[...], branch code 2[...]

RAF reference: R[...]

[18.3] If the defendant fails to pay the aforesaid amount within 180 days of this order interest will run on the outstanding amount at the rate of 10.5% per annum from date of judgment to date of payment.

[18.4] The capital shall be protected by way of a trust, for the benefit of the minor child K, and the plaintiff's attorney is ordered to apply to this court within three months for an order establishing the trust.

[18.5] Pending the establishment of the trust, the plaintiff's attorneys, Messrs MHP Malesa Attorneys, shall invest the capital in an interest bearing account in terms of section 86 (4) of the Legal Practice Act, 2014, and shall retain such monies in the account until the trust referred

to above has been established, save that the plaintiff's attorney may make reasonable payments to the plaintiff for medical care of the minor child K.

[18.6] The defendant shall pay all costs associated with the establishment and administration of the trust, including, but not limited to the setting of security by the trustee and the costs of the application to establish the trust.

[18.7] The defendant shall deliver an undertaking in terms of section 17 (4) (a) of the Road Accident Fund Act, 1996, to the plaintiff within 14 (fourteen) days wherein the defendant undertakes to pay to the plaintiff 100% of the cost of K's future accommodation in a hospital or a nursing home or treatment or rendering of a service or supplying of goods to the plaintiff, in respect of the injuries sustained by the minor child K in the motor vehicle accident that occurred on 30 July 2017, after the costs have been incurred and upon proof thereof.

[18.8] The defendant shall pay the plaintiff's agreed or taxed part and party costs on Scale B, which costs shall include the qualifying and reservation costs of the plaintiff's expert witnesses, as well as the costs of the preparation of medico legal reports.

[18.9] The defendant shall pay the costs within 180 days from the date upon which the accounts are taxed by the taxing master, or agreed upon by the parties ("the due date"), failing which the costs shall attract interest at the rate of 10.5% per annum calculated from the due date until date of payment.

[18.10] The issue of general damages is postponed sine die.

[18.11] There is no contingency fee agreement.

SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

Counsel for the applicant:	**Adv. F Sathekge**
Instructed by:	**MP Malesa Attorneys**
Heard:	**In chambers**
Judgment on:	**28 July 2025**