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

Case number: 2021/50569

Date of hearing: 5 May 2025

Date delivered: 6 August 2025

(1) REPORTABLE: YES/NO

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

(3) REVISED

DATE: 6/8/25

SIGNATURE

In the application between:

BS M[...] OBO

N M[...]

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

SWANEPOEL J:

[1] The plaintiff claims damages on behalf of her daughter, N, pursuant to a motor vehicle accident that occurred on 18 November 2020. N was a pedestrian standing next to the road, when a vehicle that was attempting to park collided with her. She was taken to hospital with a right ankle injury. Upon examination she was found to have sustained a right ankle and foot soft tissue injury with abrasions. Dry dressings were applied and she was discharged.

[2] The plaintiff seeks general damages and damages for loss of earnings. The defendant has not accepted that the injury is serious, for good reason, as will appear from this judgment, and thus general damages are to be postponed. It is only the claim for loss of income that is before me.

[3] An orthopaedic surgeon, Dr Heymans, reports that N is a young girl in good health and that she walks with a normal gait. Of her right ankle and foot Dr Heymans writes:

“The patient has a 40 mm scar over the lateral aspect of the right ankle. The right foot and ankle movements are full and free from pain. The ankle is stable.”

[4] Further x-rays show that the right foot and ankle are normal. N complained that she experiences pain in her right foot and ankle when the weather is inclement, and when she has to walk long distances. Dr Heymans reported that N would be capable of completing her schooling, and to be employed in her employment of choice until normal retirement age.

[5] Ms. Liebenberg, an occupational psychologist reported that N suffers occasional pain in her right ankle, especially when it is cold or when she has to walk far. The plaintiff reported that N walks with a limping gait, which contradicts Dr Heymans’s findings. Ms. Liebenberg reported that N has personal issues, unrelated to the accident, that made her sad, but she was unwilling to discuss them.

[5] As regards N’s educational history, Ms. Liebenberg reported that N has passed every grade, notwithstanding the accident. She has no cognitive difficulties. She would be able to seek employment in most jobs of her choice.

[6] The educational psychologist, Ms. Yolanda Bekker, reports that N has an extremely low IQ, (between 50 and 60) and possibly suffers neuro-cognitive deficits. She says that N has passed all her grades, but that her academic performance has been declining. There is no indication whatsoever that the reported decline has anything to do with the accident. In fact, Ms.. Bekker herself acknowledges that she has no idea whether the accident contributed to N’s neuro-cognitive issues, and it would be hard to understand how a relatively minor ankle and foot injury would result

in neuro-cognitive difficulties. Notwithstanding the above findings, and in the same paragraph, Ms. Bekker says the following:

“I am therefore of the opinion that the patient would, with rehabilitation, in all probability, still be able to complete her NQF level 4 (Grade 12) and continue to study towards an NQF level 6 (Diploma) but that it will, in all probability, take her longer than the allocated time, to complete.”

[7] It is beyond understanding how Ms. Bekker could possibly have come to the above finding, and I would have to suspend all logic to accept her opinion, more especially in a society in which an extremely small portion of the population (some 15.3%) achieve a qualification beyond NQF level 4¹ in any event. N suffers neuro-cognitive difficulties (with an extremely IQ), but I am still expected to believe that she would have achieved a diploma, which is now denied her because of a relatively minor injury.

[8] An expert is expected to place all relevant facts before a court, and to provide opinions based on those facts. An expert is not a hired gun who will say whatever is necessary to promote the plaintiff's case. A court is not obliged to accept the expert's opinion where the opinion is found to be flawed, and in this case I have no hesitation in rejecting Ms. Bekker's opinion. The same is applicable to the report of Mr. Erasmus the industrial psychologist, who premised his report upon the postulation proposed by Ms. Bekker, as did the actuary.

[9] I also find that the plaintiff has failed to establish that N has, as a result of her injury, suffered any potential loss of income. Consequently, the claim for loss of earnings must fail. However, the plaintiff is entitled to an order in terms of section 17 (4) (a) of Act 56 of 1996 in respect of future medical expenses.

[10] I make the following order:

[10.1] The claim for loss of earnings is dismissed.

[10.2] The claim for general damages is postponed sine die.

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

[10.3] The respondent shall, within 10 days hereof, provide the plaintiff with an undertaking in terms of section 17 (4) (a) of Act 56 of 1996, for the cost of future accommodation of N M[...] or supplying of medical goods or services arising from the motor vehicle collision that occurred on 18 November 2020.

[10.4] The defendant shall pay the costs of the action to date on Scale B, excluding any costs relating to the claim for loss of earnings, which costs shall specifically exclude the appearance on 5 May 2025, and the costs of the plaintiff's experts, Dr Heymans, Ms. Liebenberg, Ms. Bekker, Mr. Erasmus and the plaintiff's actuary.

**SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

Counsel for the applicant:

Adv. Y Ndziba

Instructed by:

Booyesen De Kock Attorneys

Heard:

5 May 2025

Judgment on:

6 August 2025