

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

Case No: 58648/2020

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS
JUDGES: NO
(3) REVISED: YES/NO

DATE 13/08/2025

SIGNATURE

In the matter between:

ADV CLAIRE CAWOOD NO OBO A[...] S[...] A[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

REASONS FOR ORDER

FRANCIS-SUBBIAH J

[1] These are reasons for order dated 17 February 2025 regarding an application for default judgement in terms of rule 31 of the Uniform Rules of Court for general damages and legal costs.

- [2] The patient, a pedestrian was hit by an unidentified motor vehicle on 1 August 2018. The merits were conceded by the defendant, and it was agreed that the patient qualified for general damages. At the time of the accident the patient was a minor and in grade 4. He suffered a brain injury of moderate severity, as opined by Dr Domingo, a neurosurgeon. He also suffered a right humerus fracture. His arm was immobilized in a plaster cast. He was discharged from hospital three days later on 4 August 2018.
- [3] An undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 ("the Act") for future medical costs and treatments were given. He presents a risk for late post-traumatic seizures at 5-10%. His longevity has not been affected by the accident.
- [4] Prior to the accident the minor presented with developmental and neuropsychological delays. He struggled with speech and language difficulties. His cognitive difficulties included concentration, reading and writing. He had to repeat a grade prior to the accident. However, he was able to understand and follow instructions and participated in class and showed some progress at school. It was intended that he would attend a special school for skills.
- [5] His teacher, Ms S[...], reported a noticeable deterioration in his function after the accident. His behavior changed. He was easily agitated and aggressive. It was reported that since he was a busy child in the early years of childhood, he was prescribed the drug, Ritalin for ADHD which he may continue to use. Ms S[...] reported that he is still good with his hands and likes making things and drawing.
- [6] It was reported that the minor has no physical and neurological disability. His loss of amenities of life are said to come from his behavioral problems resulting in him interacting poorly with his peers. His level of consciousness after the accident was recorded on the Glasgow Coma Scale as 15/15. This is a tool

used by health practitioners that indicates a person's level of consciousness after a traumatic brain injury and 13 -15 TBI indicates a mild brain injury. A moderate brain injury is usually recorded as 9-12 TBI. Although it is noted that the severity of an injury can change over time. The minors's condition has stabilized, and he remains symptomatic. His cranial nerve examination was normal. There were no focal motor or sensory deficits.

[7] Counsel for the plaintiff referred to ***Van Rooyen No v RAF*** 2022 (8A4) QOD 156 (GNP) where an amount of R 2 200 000-00 was awarded to a farm manager of 29 years of age who suffered severe head injury resulting in severe physical disability, mostly wheel- chair bound, requiring care giver assistance, cognitive, behavioral, memory, and speech difficulties. In the matter of ***WV v RAF*** 2019 (7A4) QOD 113 (FB) in the Bloemfontein High Court, general damages was awarded in the amount of R 2 100 000-00. The patient had suffered traumatic brain injury with a skull fracture, pons bleed, mandible fracture, right lower leg, tibia and fibula fractures. He was transferred to ICU and ventilated. He was in a coma for one month and his GCS was 4/15. He had various other severe modalities with pain and discomfort.

[8] The caselaw presented by Counsel involve injuries that are distinguishable from the those suffered by the minor in the present matter, as they involve older claimants and variable brain and spinal cord injuries. Although each case is unique and presents with specific sequelae, comparatives from the presented caselaw failed to assist in quantifying general damages in the present matter.

[9] In turn I considered the following matters with more relevance to the present sequelae. In the case of ***B.S.P obo H.N.K v Road Accident Fund (16623/2018) [2025] ZAWCHC 156 (31 March 2025)*** R1 963 000-00 was awarded in damages. This Court considered the case of ***Maribeng v Road Accident Fund***, 2021 (8A4) QOD 39 (GNP), which involved a 4-year-old male who suffered severe brain damage as well as facial lacerations and a right femur fracture. The brain injury resulted in serious cognitive and higher mental processing sequelae as well as emotional and

behavioural problems. There was a 15% risk of developing epilepsy. The minor's education was affected. The history obtained from the mother included complaints of restlessness, headaches, hyperactivity, and memory problems.

- [10] Further, the case of ***Nawe v Road Accident Fund 2021 (8A4) QOD 46 (GNP)***, finds relevance. Whilst the plaintiff's brain injury is classified as mild, severity was highlighted. The plaintiff suffers pain in several areas as described and will suffer such pain in all likelihood for the rest of his life. His scarring on several places is very severe and can only partially be addressed by plastic surgery. He suffers and will continue to suffer depression with a poor prognosis to treatment. He has permanent severe neuropsychological sequelae which will impair his ability to further his education. The court awarded R 950 000,00.
- [11] In ***Fouche v Road Accident Fund*** (3214/2017) [2024] ZAFSHC 57 (11 March 2024) this matter involved a thirteen-year-old minor who fell off the back of a bakkie and landed on the tar road. He suffered multiple fractures and a mild concussive head injury, as well as a crush injury. The adjusted award with inflation was R525 000.
- [12] In ***Pietersen (obo J St I) v Road Accident Fund***, 2012 (6A4) QOD 88 (GSJ) the injured minor was four years and seven months old at the time of the accident. He sustained a significant brain injury resulting in daily seizures and cognitive deficits, an inability to pass grade 12 in the mainstream academic environment and a vulnerable candidate in the open labour market. The experts agreed in this matter too that he ought to be placed in a school for learners with special educational needs. His future earning capacity was compromised. He also suffered injuries to both feet, his buttocks, right shoulder, right side of his face, scalp and occiput and his right forearm. Repeated debridement and split skin graft procedures were necessary, but severe disfiguring scars remained unsightly. The court awarded R750 000 for general damages. The current award is R1 382 000, as per the Quantum Yearbook.

- [13] In ***Minister of Safety and Security v Seymour*** 2006 (6) SA 320 (SCA) at 325-332, it was emphasised that the assessment of awards for general damages, with reference to awards made in previous cases, is fraught with difficulty. The facts of a particular case need to be examined as a whole, and few cases are directly comparable. They serve as a useful guide to what other courts have considered appropriate, but they hold no higher value than that. Therefore, in the circumstances in consideration of all the facts of the present matter and previous awards made in similar matters it is my considered view that an award of R1 200 000,00 is a fair and reasonable compensation.

Legal Costs

- [14] On the question of costs, the plaintiff contents that the court disallowed the costs claimed under prayer 15-18. However, these costs were not disallowed. These costs are subject to the discretion of the taxing master. In all cases it is not the function of the court to declare such costs necessary in a court order and so a court should not usurp the function of the taxing master by making such an order. However, the court is open to giving any indication to the taxing master it considers may be useful. ***Transnet Ltd t/a Metrorail and Another v Witter*** 2008 (6) SA 549 (SCA) at 560-1.
- [15] The claim for costs under prayer 14 adequately provide for the defendant paying the party and party costs of the plaintiff subject to the discretion of the taxing master with counsel's fees on scale B as provided in section 69 of Uniform Rules of Court.
- [16] A party is generally entitled to recover the reasonable and necessary cost resulting from litigation. In this instance, the taxing master must decide whether the evidence would have been necessary and material. These include the reports, consultations of experts and costs of counsel for the professional and legal work done. On the other hand where it is clear that a litigant cannot

recover those costs from the opposing side, by bringing an unreasonable number of experts to establish the same point cannot be reimbursed for those expenses. It is trite that these considerations are not the function of the court but that of the taxingmaster.

- [17] Rule 70(2) of the Uniform Rules of Court allows the taxingmaster to call for and direct any party to produce books, documents, papers or accounts that are necessary to enable her to properly determine any matter arising upon such taxation. The taxingmaster is entitled to demand proof for services rendered before allowing a fee as claimed. ***Payen Components South Africa Ltd v Bovic Gaskets CC*** 1999 (2) SA 409 (W). Therefore the costs claimed under prayer 15-18 are for determination by the taxingmaster and the court does not usurp the function of the taxing master by making such an order.

R. FRANCIS-SUBBIAH

Judge of the Gauteng High court: Pretoria

Date of hearing and order: 20 February 2025

Date of reasons: 13 August 2025

APPEARANCES

For the Applicant: Adv A Laubscher

Instructed by: Adendorff Attorneys Inc.

For the Respondent: L Lebakeng (State Attorney)

Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 16H00 on 13 August 2025