

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 6183/2022

In the matter between

**SANDER, ANDRE NO as *curator ad litem* obo
P[...]; A (The Minor)**

FIRST PLAINTIFF

**SANDER, ANDRE NO as *curator ad litem* obo
D[...] K[...] T (The Patient)**

SECOND PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Sander NO and Another v RAF* (6183/2022) [2025] ZAFSHC 238 (15 August 2025)

Coram: Parks AJ

Heard: 30 July 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 14h00 on 15 August 2025

Summary: Claim for damages – loss of support arising out of accident – final decision of court based on the evidence presented before it.

ORDER

- 1 The defendant shall pay 100% of the plaintiffs proven or agreed damages.
- 2 The defendant shall pay to the plaintiffs within 180 (one hundred and eighty) days

hereof, in respect of the plaintiffs' claim against the defendant for the following heads of damages:

2.1 Loss of support for the minor child: R1 935 772

2.2 Loss of support for the patient: R177 911

3 In the event of the aforesaid amount not being paid 180 days from the date of this order, the defendant shall be liable for interest on the amount at the prevailing interest rate, calculated from the 15th calendar day after the date of this order to date of payment in line with prevailing legislation.

4 The defendant shall pay the plaintiff's taxed or agreed party and party costs on the High Court scale in respect of both merits and quantum, up to and including 30 July 2025, inclusive of the following:

4.1 The costs of counsel on Scale C, including but not limited to the following: for trial, including but not limited to counsel's fee for 29th and 30th July 2025, and the preparation and reasonable attendance fee of counsel for attending

4.1.1 The case management meetings held on 11 March 2024 and 5 April 2024

4.1.2 The drafting of the rule 38(2) Application

4.2 The reasonable and taxable preparation, qualifying and reservation fees, if any un such amount as allowed by the Taxing Master, of the following experts:

4.2.1 Mr M Peverett, Industrial Psychologist

4.2.2 Mr P Govindasamy, Actuary

4.2.3 Mr R Immerman, Actuary

4.3 The costs of and consequent to the plaintiff's trial bundle and witness bundle, including the costs of four copies.

5 In the event that the costs are not agreed:

5.1 The plaintiff shall serve a Notice of Taxation on the defendant's attorney of record;

5.2 The plaintiff shall allow the defendant, 180 (one hundred and eighty) days from the date of allocatur, the plaintiff will be entitled to recover interest at the prevailing interest rate on the taxed and agreed costs from 15 (fifteen) days from date of allocatur to date of final payment.

6 The amounts referred to in paragraph 2 will be paid to the plaintiff(s) attorney A Wolmarans Incorporated, by direct transfer into their trust account, which are the following:

NAME OFF ACCOUNT HOLDER: A WOLMARANS INC

NAME OF BANK & BRANCH: ABSA BANK, NORTHCLIFF

ACCOUNT NUMBER: 4[...]

BRANCH CODE: 632005
 TYPE OF ACCOUNT: CHEQUE (TRUST)
 REFERENCE: G VAN ROOYEN/MAT13216

7 The attorneys for the plaintiff(s), A Wolmarans Inc, shall pay all the monies held in trust by them for the benefit of the patient and the minor, to the trusts as are to be established in terms of court order dated 10 June 2021 under case number 2524/2021.

JUDGMENT

Parks AJ

Introduction

[1] Adv Andre Sander instituted a claim for damages against the defendant for loss of support in his capacity as *curator ad litem* appointed on behalf of the minor child and the partner of the deceased, hereinafter referred to as the patient.

[2] The respective actions were initially filed separately under case numbers 6183/2022 and 6184/2022 but consolidated to be heard as one matter in a court order dated 13 February 2025 under case number 6183/2022.

Facts

[3] On the morning of 17 April 2021, what began as a routine cycling outing for the deceased, his father, and his fiancée turned tragic when an accident occurred on the N8 in the Free State Province. The incident resulted in the death of the deceased and left his fiancée with severe injuries. At the time of his passing, the deceased's child was approximately two and a half months old.

[4] At the time of the accident, the patient was 33 years old and employed as a clerk at the Department of Health, having commenced her employment on 1 November 2008. Due to injuries sustained in the accident, she subsequently left her position. She was compensated for her loss of income in the amount of R3 174 505 as per a court order issued in August 2024

[5] This matter was initially enrolled for trial on 29 and 30 July 2025. On the former date, I was requested to roll the matter over to 30 July 2025 for a possible settlement on

the quantum since the defendant had conceded to the merits.

[6] On the subsequent date, I was informed that no settlement offer was forthcoming from the defendant since no instructions were received and the matter proceeded before me on the issue of quantum only. I was also informed by Adv Cilliers that an application would be brought in terms of rule 38(2) of the Uniform Rules and I henceforth proceeded with the matter.

[7] Mr Ostermeyer, on behalf of the defendant, confirmed that merits were conceded; that the application in terms of rule 38(2) will not be opposed, that he has no instructions to proceed with the matter, and therefore requested to withdraw as attorney of record, which I have granted and excused him from the proceedings.

[8] The application to present the evidence of the plaintiff's experts by way of affidavit in terms of rule 38(2) of the Uniform Rules of Court was accompanied by a request that the court admits into evidence various documents in terms of s 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988.

[9] These documents were the affidavits of:

(a) Ms T d[...] K[...], the patient, merely asserts that she was cohabiting with the deceased, was engaged to marry him, and had a child, A[...] P[...], with him at the time of the accident.

(b) Mr HJ P[...], father of the deceased, confirmed that on the day of the accident, he had been cycling alongside his son, now deceased, and the patient, who was his son's fiancée.

(c) Mrs MM P[...], mother of the deceased, confirmed that the deceased and the patient were engaged to be married, cohabiting at the time, and had a son who was seven weeks old.

(d) Lastly, the testimony of Mr R de Beer relates to both the merits of the matter and the confirmation of the deceased's identity.

[10] As the defendant conceded the merits, I granted the application for the abovementioned documents to be admitted as evidence in terms of section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988. Leave was also granted for the evidence of

Mr. M.C. Peverett, the industrial psychologist, and Mr. R. Immerman, the actuary, to be presented by way of affidavit.

[11] In granting this relief, I followed the principles summarised in *Madibeng Local Municipality v Public Investment Corporation Ltd*,¹ and I quote:

‘The approach to rule 38(2) may be summarized as follows: A trial court has a discretion to depart from the position that, in a trial, oral evidence is the norm. When that discretion is exercised, two important factors will inevitably be the saving of costs and the saving of time, especially the time of the court in this era of congested court rolls and stretched judicial resources. More importantly, the exercise of the discretion will be conditioned by whether it is appropriate and suitable in the circumstances to allow a deviation from the norm. That requires consideration of the following factors: the nature of the proceedings, the nature of the evidence, whether the application for evidence to be adduced by way of affidavit is by agreement, and ultimately, whether, in all circumstances, it is fair to allow evidence on affidavit.’

[12] The actuary compiled two reports, taking into account the recommendation from the industrial psychologist, who indicated the deceased’s retirement age as 65. The actuarial reports were dated June 2022 and 14 July 2025, respectively.

[13] In the actuary’s report dated June 2022, the patient’s loss of support was calculated at R929 879. For the minor child, the past loss of support was calculated at R91 790, and the future loss at R2 103 776, amounting to a total of R2 195 566. The future loss of support was projected until the minor child reaches the age of 21.

[14] The most recent report, dated 14 July 2025, was compiled in conjunction with the recommendations of a supplementary report by an industrial psychologist dated June 2025. It reflects a reduction in the calculated amounts due to the patient’s early retirement in May 2025, which was necessitated by ill health. The reduction also accounts for the settlement she received for loss of earnings resulting from the accident.

[15] The loss of support, in the most recent actuarial report, is calculated as R177 911 in respect of the patient and in respect of the minor child, for past loss of support as R295 369 and future loss of support at R1 640 403, with a total of R1 935 772.

¹ *Madibeng Local Municipality v Public Investment Corporation Ltd* [2018] ZASCA 93; 2018 (6) SA 55 (SCA) para 26.

[16] It is important to note that, in both actuarial reports, the calculations were made using contingency deductions of 5% for past loss of support and 15% for future loss of support.

[17] Adv Cilliers argued that I must not deviate from the 15% contingency percentage referred to in the actuary's report and highlighted the following authority: *Southern Insurance Association Ltd v Bailey NO*,² wherein the court held that the result of an actuarial computation has the advantage of an attempt to ascertain the value of what was lost on a logical basis. The appeal court held the approach of the court *a quo* in regard to the assumptions made by the actuary and the discount for contingencies were not wrong. A trial judge has the discretion to award what is considered right and exercises a discretion by way of making a discount for 'contingencies' or the 'vicissitudes of life'.

[18] In forming the assessment, the actuary took into account the deceased's salary advice, the presumption of continued employment until retirement, the patient's salary advice, and the projection that the minor child would attain financial independence by the age of 21.

[19] The issue of the patient possible remarrying also came to the fore. The authority of *FASS and Another v Road Accident Fund*³ was highlighted to substantiate the argument that a reduction of the contingency should not be applied either. In that case, the court held that a remarriage does not necessarily result in a benefit to a party and if there is no evidence that it must be included it may offend the principle of fairness and justice. The court ultimately excluded the proposed contingency deduction.

[20] In *Van Ghent v Road Accident Fund*,⁴ Daffue J reiterated that the 15% contingency on future loss of income has become the norm and a court should be persuaded by presenting evidence that justifies a deviation.

[21] This was again reaffirmed in the Supreme Court of Appeal in *Road Accident Fund v C K*,⁵ where the Court held that 5% and 15% for past and future loss, respectively, have

² *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A).

³ *F.A.S.S and another v Road Accident Fund* [2014] ZAGPPHC 1028.

⁴ *Van Ghent v Road Accident Fund* [2017] ZAFSHC 187.

⁵ *RAF v C K* [2018] ZASCA 151.

become accepted as 'normal contingencies'.

[22] In the absence of any opposing evidence from the defendant, I am constrained to rely exclusively on the evidence before me. Consequently, I find no grounds to depart from the contingency deductions proposed in the actuarial report

[23] I accordingly make the following order:

- 1 The defendant shall pay 100% of the plaintiff's proven or agreed damages.
- 2 The defendant shall pay to the plaintiffs within 180 (one hundred and eighty) days hereof, in respect of the plaintiffs' claim against the defendant for the following heads of damages:
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Parks AJ

Appearances

For the plaintiffs:	HJ Cilliers SC
Instructed by:	A Wolmarans Inc, Bloemfontein.