

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

Case Number: 24796 / 2021
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED:
DATE: 26 August 2025
SIGNATURE

In the matter between:

In the matter between:

ADV Y ISAACS NO obo S[...] W[...]

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be the 26 August 2025

JUDGMENT

BOTSI-THULARE AJ

Introduction

[1] This is a delictual claim for damages resulting from injuries sustained by S[...] W[...] (the plaintiff), a minor female who was born on 4 April 2010. The plaintiff

was injured as a result of a pedestrian vehicle accident in which she was a pedestrian. The claim is brought before this court by Advocate Yvette Isaacs as the duly appointed *curator ad litem* for the plaintiff. Accordingly, any reference to the plaintiff in this judgment should be understood to also include Advocate Yvette Isaacs as the duly appointed *curator ad litem* for the plaintiff.

- [2] Negligence have become settled between parties and the matter is before this court on the aspect of quantum only. In this regard, it is worth noting that the issue of merits was settled 100% in favour of the plaintiff.
- [3] This court is therefore required to determine quantum in relation to general damages and past and future loss of earnings. The plaintiff also seeks a section 17(4)(a) undertaking for his future hospital and medical expenses in terms of his agreed and/or proven damages subject to the apportionment.

Factual background

- [4] On 29 January 2019 the plaintiff was injured in a pedestrian vehicle accident. As a result of the accident, the plaintiff sustained serious bodily injuries consisting of:
- a. Traumatic head injuries with fractures and severe brain injuries, resulting in significant residual cognitive, cognitive-communicative and behavioural problems, and post-traumatic seizures.
 - b. Major neurocognitive disorder secondary to a traumatic brain injury.
 - c. Symptoms of post-traumatic stress disorder.
 - d. WPI = 47%.
- [5] The plaintiff and the Road Accident Fund (the defendant) appointed experts whose reports have been submitted to this court as expert evidence. Below is the summary of each of the expert reports.

Dr M Pillay (Neurologist) and Dr Z Domingo (Neurosurgeon)

- [6] Drs Pillay and Domingo provided a joint expert report in which they opined that based on the Glasgow coma score (GCS) and prolonged period of posttraumatic amnesia, the plaintiff has sustained a severe traumatic brain injury. Further, that CT scan confirmed the presence of a diffuse brain injury with haemorrhagic contusions in addition to subarachnoid and subdural haemorrhages.
- [7] Drs Pillay and Domingo stated that the plaintiff has been left with significant cognitive, cognitive-communicative and behavioural deficits that have been confirmed on formal neuropsychological assessment. According to Drs Pillay and Domingo, the reported and confirmed deficits are in keeping with the nature of the brain injury sustained.
- [8] They opined that they defer to the neuropsychologists regarding the extent and severity of the residual deficits. They further opined that, because of the deficits she has been placed in a special needs school. In this regard, Drs Pillay and Domingo stated that they defer to the educational psychologists regarding the need for special needs education.
- [9] Drs Pillay and Domingo stated that the structural brain injury and early post-traumatic seizures places her at an increased risk of developing late post-traumatic seizures. They further stated that the accident has had a negative impact on her future employability and, in this regard, deferred to the industrial psychologists regarding the plaintiff's employability in the open labour market.
- [10] Drs Pillay and Domingo opined that the plaintiff's injury can be considered to be serious and she will continue to suffer a permanent and long-term impairment in respect of her work and personal life.

Dr R De Witt and Dr NL Nkwanyana (Neuropsychologists)

- [11] Drs De Witt and Nkwanyana opined that they agree that the plaintiff has sustained a severe brain injury which is clear from the following medical analysis:
- a. initial GCS 5/15 and decorticate position;

- b. CT brain scan showed a left skull fracture, significant intra-cranial injury, and global oedema;
- c. intubation and placement of ICP and Licox monitors were necessary;
- d. she had seizures while in hospital;
- e. her recovery was slow and her GCS remained depressed for 6+ months; and
- f. she presented with hallucinations and prominent cognitive communicative difficulties during her hospital admission.

[12] Drs De Witt and Nkwanyana opined that the plaintiff is unable to give a reliable and accurate account of herself. Further, her sister, A[...] W[...], provided adequate and consistent collateral to both experts regarding the severe difficulties the plaintiff presents with, as set out in their respective reports.

[13] Drs De Witt and Nkwanyana opined that the applicant remains entirely dependent on care and supervision in all aspects of daily living, including maintaining her hygiene; dressing herself; following a morning routine to get ready for school; meal preparation and she requires prompting to eat; managing money (she does not understand the value of money and cannot count money); initiating and completing domestic chores; traveling; and her social reactions (requires monitoring as she lacks judgement and is extremely vulnerable to exploitation).

[14] Drs De Witt and Nkwanyana agreed that the plaintiff continues to experience anxiety as a pedestrian and resists walking past the place where the accident occurred. Furthermore, her mood is reported to be stable; she smiles and laughs excessively and gives the impression of being happy most of the time.

[15] Drs De Witt and Nkwanyana stated that they agree with Dr Sutherland, Psychiatrist, that the plaintiff seems to be unable to adequately verbalise her emotional and internal experiences, which in the future, may lead to increased frustration and acting out behaviour.

- [16] Drs De Witt and Nkwanyana further stated that the plaintiff presents with profound neuropsychological deficits which are in keeping with the nature and severity of brain injury she sustained in the accident in question. In this regard, they opined that from a neuropsychological perspective, her deficits are permanent, and no significant improvement in her level of functioning is anticipated.
- [17] In fact, they aver that the plaintiff's severe deficits have become even more evident over time, as she has failed to reach age-appropriate cognitive, behavioural, and social milestones, which resulted in a progressively widening gap between her and her peers. She has been unable to acquire basic life skills and at the age of 15 years remains entirely dependent on guidance and supervision for all activities of daily living.
- [18] Against this background, Dr De Witt and Nkwanyana concluded that the appointment of a curator bonis, curator ad litem, and curator personae is necessary. Furthermore, the plaintiff will require a high level of care and supervision for the rest of her life, and long-term placement at a care facility should be considered. Lastly, provision should be made for treatment by a psychiatrist.

M Le Roux and R Ramoganyana (Occupational Therapists)

- [19] The Occupational Therapists stated that they observed severe attention deficits, poor memory, slow processing speed, and significantly impaired visual perceptual skills and visuomotor integration from the plaintiff.
- [20] Furthermore, she struggles to comprehend and respond to even simple instructions, lacks basic cognitive skills such as colour, shape, and number recognition, and is unable to write her name or perform basic calculations. Cognitive maturity is well below average, her problem-solving and judgement are poor, and she demonstrates literal thinking and limited comprehension.
- [21] According to the Occupational Therapists, while the plaintiff retains basic mobility, her motor skills are compromised by low muscle tone, poor

coordination, dyspraxia, impaired balance, and weak fine motor control with poor bilateral integration.

- [22] They stated that she is largely non-verbal, unable to engage in meaningful conversation, and displays emotional immaturity, social difficulties, and dysregulation. These impairments have permanently impacted her independence, participation in life roles, enjoyment of life, and any prospects for employability.
- [23] The Occupational Therapists opined that the plaintiff had normal early childhood development and was progressing adequately through mainstream schooling until the accident. However, the accident disrupted her educational trajectory, leading to placement in a specialised educational setting.
- [24] Accordingly, she has since shown extremely limited progress and despite efforts to promote her through grades with significant assistance, her scholastic achievements have remained minimal. Furthermore, she is not expected to develop the fundamental educational skills necessary to read, write, or perform basic mathematical tasks at a functional level, and will thus remain essentially illiterate.
- [25] They further opined that the cumulative effects of her cognitive, emotional, and physical impairments severely limit her employability, rendering her permanently unemployable in the open labour market as an adult.
- [26] Against this background, the Occupational Therapists stated that they support the appointment of curators. They are of the opinion that the plaintiff will never be able to live independently and requires lifelong supervision and guidance. Provision is advised for a qualified carer who can also assist with domestic tasks. Should she develop epilepsy, 24/7 live-in care may be required.
- [27] Further, the appointment of a case manager is essential to monitor her ongoing needs. If her current home becomes unsuitable or unavailable, placement in a residential care facility could be considered and psychological intervention is also supported.

[28] Lastly, point-to-point transport should be arranged for the plaintiff and her carer for the remainder of her life due to her cognitive and functional impairments and annual occupational therapy follow-up is advised to monitor her progress within a special school setting.

Dr T Sutherland (Psychiatrist)

[29] Dr Sutherland opined that the plaintiff was far more childlike than expected given her chronological age. She smiled fatuously and was overfamiliar. She confabulated and her answers were brief, unelaborated and not always relevant to the topic at hand. Questions had to be repeated as she did not always understand what was asked. She did not appear to have any insight into her difficulties which is not unexpected given her level of cognitive impairment.

[30] Dr Sutherland stated that the plaintiff did not know her age or the name of her school. She did not know her address or what suburb she lived in. She was not able to write her name or surname and could not count to five but she was able to make rudimentary drawings of a house and a person.

[31] Dr Sutherland opined as per the guides the claimant is rated using the Psychiatric Impairment Rating Scale (PIRS); section 14.7. This gives a PIRS impairment score of 5%. The claimant is also rated using the Brief Psychiatric Rating Scale (BPRS); section 14.8. This gives a score of 41 which is converted to a BPRS impairment score of 5%.

[32] Furthermore, an update published online on the AMA website on 9 July 2021 advised that the global assessment of functioning scale no longer be used to rate mental and behavioural impairment. Impairment rating is thus calculated below by averaging the scores of the BPRS and PIRS as per revised guidelines.

[33] According to Dr Sutherland, this gives a rating of 5% for mental and behavioural disorders. This is combined with the ratings for the central nervous system of 44% as per Dr Domingo giving a combined WPI of 47%.

- [34] Dr Sutherland stated that the plaintiff sustained a severe traumatic brain injury with a diffuse axonal injury. Diffuse axonal injury is the widespread shearing of neurons in the brain which can result in diverse and severe neurological and cognitive symptoms. The plaintiff's post injury course was complicated by a period of hypoxia and raised intracranial pressure which likely resulted in the development of a secondary brain injury.
- [35] Dr Sutherland opined the plaintiff required a prolonged period of ventilation and a tracheostomy was sited. She was initially unable to walk. During her time in hospital, she was described as extremely distractible and disinhibited. She was very impulsive and displayed inappropriate behaviour. On discharge from St Joseph's, it was noted that her impulsivity and poor reasoning and judgement place her at risk and constant supervision was needed to ensure her safety and prevent her from being taken advantage of.
- [36] Dr Sutherland opined that the impression gained during the interview was that the plaintiff does not seem capable of verbalising her emotions and internal experiences. In the future her inability to make her emotions known verbally or to achieve her objectives via verbal communication may lead to increased frustration and result in externalising behavioural difficulties.
- [37] Against this background, Dr Sutherland opined that the plaintiff will be unemployable in the open labour market. She is very vulnerable to abuse, exploitation and neglect and will remain vulnerable into adulthood. She will be unable to adequately manage her finances and protection is required. Accordingly, Dr Sutherland suggested the appointment of a curator *ad litem* and a curator *bonis* and the appointment of home-based caregivers and/or placement in a residential care facility as personal circumstances dictate over her lifetime.

K Gerber and MP Ndlovu (Educational Psychologists)

- [38] The Educational Psychologists agree that the motor vehicle accident has had a profound impact on plaintiff's overall cognitive, academic, and functional abilities. They both agree that the plaintiff presents with significant

neurocognitive, language, and functional impairments, consistent with the severe traumatic brain injury sustained in the accident.

[39] The Educational Psychologists opined that they noted that the plaintiff was 8 years and 9 months old at the time of the accident on 29 January 2019. She sustained a severe traumatic brain injury and required prolonged hospitalisation and intensive care.

[40] Both experts agree that, had the accident not occurred, the plaintiff would probably have been able to complete Grade 12 (NQF 4) and would have gone on to complete further studies at NQF 6 level.

[41] Both experts agree that the plaintiff displays features consistent with severe neurocognitive impairment. Clinical observations revealed immature behaviour, perseveration, and disorientation. Observations included poor insight, confusion, impaired communication, and a lack of awareness of personal details. Further, that her current psychological profile is marked by emotional and behavioural dysregulation and profound cognitive-emotional impairment.

[42] Against this background, the Educational Psychologist opined that the plaintiff is severely academically delayed and unable to engage meaningfully in formal learning. WIAT-III scores were at the floor level across all domains, and academic skills were at a preschool level.

[43] Furthermore, both experts agree that she will not attain a formal academic qualification and is not educable within the mainstream or even remedial academic systems. Lastly, she will require extensive assistance in all aspects of daily living and will remain dependent on others for the remainder of her life.

[44] Accordingly, a curator *bonis* should be appointed to manage any awarded funds.

K Kotze and NYF Zwane (Industrial Psychologists)

[45] The Industrial Psychologists stated that they note that Ms R de Wit (Clinical Psychologist and Neuropsychologist) and Dr NL Nkwanyana (Clinical Psychologist), agree that the plaintiff would have been able to complete Grade

12, pursue further education, acquire skills, and sustain employment in the open labour market. Further, they note that the Educational Psychologists, similarly believe that the plaintiff would probably have been able to complete Grade 12 (NQF 4) and would have gone on to complete further studies at NQF 6 level.

[46] Given the above, the Industrial Psychologists opined that the plaintiff would probably have completed her secondary education by 2029. Assuming that the plaintiff studied on a full-time basis, she would probably have completed her studies by 2033 or 2034 and she would probably have entered the open labour market by 2035 or 2036.

[47] Therefore, but for the accident, the plaintiff would have secured employment, probably by 2035 to 2036 and she would probably have commenced earning remuneration commensurate with the level of job complexity associated with Paterson Grade B4 (median, total package). As per the Quantum Yearbook, in 2025 terms, this is presented as R373 000.00 per annum.

[48] The Industrial Psychologists further opined that as she gained work experience, from age 30, the plaintiff would probably have been able to expand her work-related skills-set, which in turn would have enabled her to secure employment of a higher level of job complexity. She would probably have been able to earn remuneration commensurate with the level of job complexity associated with Paterson Grade C1 (median, total package). As per the Quantum Yearbook, in 2025 terms, this is presented as R526 000.00 per annum. Straight-line increases up to age 30 would probably have applied.

[49] According to Dr K Kotze, upon reaching her career ceiling at age, the plaintiff would probably have been able to earn remuneration commensurate with the level of job complexity associated with Paterson Grades C3/C4 (median, total package). As per the Quantum Yearbook, in 2025 terms, these are presented as C3: R668 000.00 per annum and C4: R797 000.00 per annum, respectively.

[50] Dr NYF Zwane is of the opinion that with further career progression, the plaintiff would have likely reached her career ceiling within Paterson level C2/C3, total packages by the approximate age of 45. To corroborate the aforesaid career

ceiling, cognisance is taken of the salary information noted by STATSSA earnings by level of education (R. Koch, 2025) which stated that individuals with a diploma in their later career usually earn within the upper range of R622 000.00 per annum.

Actuary expert report (Munro consulting)

[51] The Actuary provided the following summary of loss of income:

- a. The Actuary used a calculation dated of 1 August 2025.
- b. The Actuary assumed the career path and earnings opined by the Industrial Psychologists in their joint minute.
- c. The Actuary applied contingencies of 20% to future uninjured earnings.
- d. Provided calculations for each scenario and then also an average, as suggested by the Industrial Psychologists in.
- e. Provided an average calculation after contingencies of R7 037 600-00.

Issues

[52] Against this background, this court is required to determine quantum regarding the following issues:

- a. General damages
- b. Past and Future medical expenses; and
- c. Past and Future loss of earnings.

[53] I deal with each of these issues below.

General damages

[54] The plaintiff claim compensation for general damages in the amount of R3 500 000.00. This was disputed by the defendant. In fact, the defendant argued that this court should grant the plaintiff the amount of R2 000 000.00 in general damages.

The Law

[55] Having said that, it is trite that the assessment of the quantum of general damages primarily remains within the discretion of the court. In *Pitt v Economic Insurance Company Ltd*¹ the court stated the following:

“... [T]he Court has to do the best it can with the material available, even if, in the result, its award might be described as an informed guess. I have only to add that the Court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but must not pour our largesse from the horn of plenty at the defendant's expense.”

[56] In *RAF v Marunga*² it was held that:

“[I]n cases in which the question of general damages arose, a trial Court had a wide discretion to award what it considered to be fair and adequate compensation to the injured party.

There was no hard and fast rule of general application requiring a trial Court to consider past awards, although the Court might derive some assistance from the general pattern of previous awards.”

[57] In *Protea Assurance Co. Limited v Lamb*³ the court held:

“... [T]he Court may have regard to comparable cases. It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being

¹1957 (3) SA 284 (D) at 287E-F

² 2003 (5) SA 164 at 165B

³ 1971 (1) SA 530 (A) at 535H-536B

had to all the factors which are considered to be relevant in the assessment of general damages. At the same time, it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration.”

Reasons for the decision

[58] Against this background, I have considered decided cases with approximately similar facts as in this matter. For instance, *Bonessa v Road Accident Fund*⁴ involved a 13-year-old female who sustained a severe closed head injury, multiple rib fractures, hemopneumothorax, fractured thoracic spine, injury to the spinal cord and paraplegia. She underwent surgical procedures and became wheelchair dependent with limited ability to manage bi-manual tasks and was incontinent of urine and stool. She suffered post-traumatic dementia and severely compromised speech, vision, memory and executive functioning. There was also a frontal lobe injury, which caused her to become aggressive, disinhibited and emotionally isolated. She had a promising scholastic and vocational future before the accident occurred. The injuries rendered her uneducable and unemployable. She was awarded R2 500 000.

[59] In *Adv M van Rooyen NO obo JPM van Reenen v Road Accident Fund*⁵ involved a young man in his twenties suffered a severe head injury with permanent physical, cognitive and neuropsychological sequelae. He was hospitalised for a prolonged period and underwent a range of invasive medical procedures. He suffered from hemiparesis and was essentially wheelchair-bound, although he was able to walk for short distances. He required ongoing care and supervision and was considered unemployable. The court awarded R 2 200 000 in general damages.

[60] Whilst there are certain similarities between these cases and this matter, each of these cases differ on the facts and the considerations raised therein from the

⁴ 2014 (7A3) QOD 1 (ECP)

⁵ [2017] ZAGPPHC 1279 (8 December 2017)

present. They nevertheless serve as a guide to the general trend in the value of awards made. To the extent that guidance may be derived from these matters I have therefore considered them.

[61] In deciding on the reasonable and fair compensation, I was cognisant that it was stated in *Wright v Road Accident Fund*⁶ quoting *Wright v Multilateral Vehicle Accident Fund* reported in *Corbett and Honey* where Broom DJP stated that when having regard to previous awards one must recognise that there is a tendency for awards now to be higher than they were in the past.

[62] I believe this to be a natural reflection of the changes in society, the recognition of greater individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significantly lower than those in most other countries.

[63] Accordingly, on a consideration on all the facts of the present matter and awards previously made in similar matters, I have concluded that an award in the amount R 2 000 000.00 would represent fair compensation.

Past and Future medical expenses

[64] On past hospital and medical expenses, it is common cause that the defendant has been provided with documentation which supports the plaintiff claim in this regard in the amount of R211 939.00. In my view, I do not see any reason why the plaintiff's claim should not succeed. Accordingly, the plaintiff's claim for past medical expenses succeeds.

[65] Regarding the plaintiff's future medical/hospital expenses, the plaintiff seeks an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 (the RAF Act) as indicated by the experts in their medico-legal reports.

[66] Concerning the future medical treatment there appears to be no contentious issues there. It has not been contested that the plaintiff is entitled to a section 17(4)(a) undertaking and I am accordingly satisfied that the claim on this head should succeed.

⁶ [2011] ZAECPEHC 15 at para 23.

Loss of earning

- [67] It is accepted that earning capacity may constitute an asset in a person's patrimonial estate. If loss of earnings is proven the loss may be compensated if it is quantifiable as a diminution in the value of the estate.⁷ Accordingly, for a claim to succeed, the injured person or plaintiff must prove that they suffered a reduction in the earning capacity which will result in the actual loss of income.
- [68] It must also be noted that, in *Rudman v Road Accident Fund*⁸, it was stated that a physical disability which impacts on the capacity to earn an income does not, on its own, reduce the patrimony of an injured person. In other words, the plaintiff must prove that the reduction of the income earning capacity will result in actual loss of income. He must prove the physical disabilities resulting in the loss of earnings or earning capacity and also actual patrimonial loss.
- [69] In this matter, the expert opinions are all of the view that the accident has resulted in long-term physical restrictions and cognitive impairment that significantly limit the plaintiff's ability to live her life independently. Further, she will never enter the open labour market and will require lifelong care. Lastly, the experts agree that she will require extensive assistance in all aspects of daily living and will remain dependent on others for the remainder of her life.
- [70] In addition, the Industrial Psychologists is of the opinion that, but for the accident, the plaintiff would have secured employment, probably by 2035 to 2036 and she would probably have commenced earning remuneration commensurate with the level of job complexity associated with Paterson Grade B4 (median, total package).
- [71] The Industrial Psychologists further opined that as she gained work experience, from age 30, the plaintiff would probably have been able to expand her work-related skills-set, which in turn would have enabled her to secure employment of a higher level of job complexity. She would probably have been able to earn

⁷ *Prinsloo v Road Accident Fund* 2009 (5) SA 406 (SE) at 409C-410A.

⁸ 2003 (2) SA 234 (SCA) at para 11.

remuneration commensurate with the level of job complexity associated with Paterson Grade C1 (median, total package).

[72] Based on the above expert report of the Industrial Psychologists, the Actuary concluded that the total amount of compensation for the plaintiff's past and future loss of earnings therefore amounts to R7 037 600.00. The Actuary arrived at this amount after applying the contingency of 20%.

[73] On the other hand, the defendant argued that a higher percentage should be deducted because the plaintiff suffered from Corpus Callosun Agenesis at the time of the accident. This was also confirmed by the medical information and CT scans. I am of the view that the defendant's argument in this regard is incorrect. Besides mention the fact that the plaintiff suffered from Corpus Callosun Agenesis, the defendant has failed to prove to this court that the sickness contributed to the plaintiff's accident. Accordingly, it will be unfair for this court to apply a higher percentage of contingency purely on the basis that the plaintiff suffered from Corpus Callosun Agenesis without any evidence that suggest that the sickness contributed to the plaintiff being involved in the motor vehicle accident.

[74] Further, the defendant argued that the contingency of 25% should be applied. In this regard, the defendant relied on the decision of the Supreme Court of Appeal in *Road Accident Fund v Guedes (Guedes)*⁹. In my view, the defendant's reliance on *Guedes* is misplaced. *Guedes* involved a plaintiff who was already 22 years of age at the time sustaining bodily injuries due to the motor vehicle accident and the plaintiff in this matter is a young girl who will require everyday caregiver because of the injuries she sustained.

[75] More pointedly, the plaintiff in *Guedes* was able to resume work on a part-time basis, whereas in this matter, it is clear from the expert evidence that the plaintiff's prospects of working are nil considering the severity of the injuries sustained because of the motor vehicle accident. Accordingly, to compare this matter with *Guedes* will be like comparing apples with oranges.

⁹ 2006 (5) SA 583 (SCA).

[76] Having said that, it should be noted that it is trite that the actuarial calculations must be based on proven facts and realistic assumptions regarding the future. The actuary guides the court in making calculations. The court has a wide judicial discretion and therefore the final say regarding the calculations.

[77] In this matter, the Actuaries relied on the opinion evidence of the Industrial Psychologists, which in my view was correct. In my view, I am satisfied that with the opinion of the Industrial Psychologists that the earning capacity of the plaintiff had been lost to a point that his patrimony is reduced in due course.

[78] The Industrial Psychologists expert reports are properly motivated. It follows therefore that the actuarial calculations made by the Actuary stand since they were arrived at using the opinion of the Industrial Psychologists which is, in my view, properly motivated.

[79] I am therefore persuaded that the evidence supports the claim that the plaintiff has suffered loss of earnings capacity because of the injuries sustained in the collision. Consequently, the plaintiff's claim for loss of future earnings succeed. I have concluded that an award in the amount R7 037 600.00 would represent fair compensation.

Costs

[80] The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there be good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. The plaintiff was successful on all the issues. Accordingly, I do not see any reason why the general rule should not follow the result.

Order

[81] The court granted an order by agreement that covered the claims of Plaintiff and costs, including the costs of the experts as well as Counsel's costs, on 25 July 2025. The order below shall reflect the aforementioned order as far as possible. In the result, I make the following order:

1. The Defendant shall pay 100% of the Plaintiff's proven claim.
2. The Defendant is ordered to pay the Plaintiff the amount of R 9 249 539.00 transfer to the trust account, details of which are set out hereunder ("the capital amount").
3. The capital amount is made up as follows:
 - a. General Damages: R 2000 000.00;
 - b. Past medical expenses: R211 939.00; and
 - c. Future loss of earning: R7 037 600-00.
4. The Defendant indemnifies the Plaintiff against any claims by suppliers in respect of past medical and hospital expenses.
5. Payment of the aforesaid sum must be made directly to the Plaintiff's Attorneys of Record, ADENDORFF INC. by direct transfer into their trust account with the following details:

ACCOUNT HOLDER	: ADENDORFF INC
BANK	: FIRST NATIONAL BANK
BRANCH CODE	: 201 409
ACCOUNT NUMBER	: 6[...]
REFERENCE NUMBER	: WIL79/0001

6. The Defendant is ordered to furnish the Plaintiff with an unlimited undertaking within 30 days from date hereof, free from caveats and qualifications, in terms of section 17(4)(a) of the Road Accident Fund Act, for 100% (one hundred percent) of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service to Plaintiff or supplying of goods to Plaintiff arising out of the Plaintiff's injuries sustained in the motor vehicle collision which gave rise to the action, after such costs have been incurred and upon proof thereof.

7. The issue and consideration for the appointment of a *Curator Bonis* is referred to the Western Cape High Court, where the application for the appointment of the Curator Bonis is still pending.
8. In the event of the Western Cape High Court, or another competent Court having jurisdiction, appointing a *Curator Bonis* to the Plaintiff, the Defendant shall pay the costs of the *Curator Bonis*, as taxed or agreed, such costs including for the sake of clarity, but not limited to, the following:
 - a. The costs of the application to the appoint the *Curator Bonis* on the High Court scale as between party and party, as taxed or agreed, plus VAT ("the application costs").
 - b. The costs, if any, incurred by the *Curator Bonis* in furnishing security to the Master.
 - c. The fees and costs of the *Curator Bonis* in respect of administering the capital and the undertaking.
 - d. The fees of the *Curator Bonis* shall be paid by way of the Undertaking.
 - e. That the nett proceeds of the payment to the plaintiff referred to in this Order as well as the plaintiff's taxed or agreed party & party costs payable by the defendant, after deduction of the plaintiff's attorney and own client costs, shall be payable to the Curator Bonis.
9. Until such time as the *Curator Bonis* is able to take control of the capital amount, the Plaintiff's attorneys are authorised and ordered to make any reasonable payments to satisfy any of the needs of the Plaintiff that may arise and that are required in order to satisfy any reasonable need for treatment, care, aids or equipment that may arise in the interim.

10. The Defendant shall pay the Plaintiff's taxed or agreed High Court Scale party and party costs and the Plaintiff's travelling and related costs to the Defendant's appointments, subject to the discretion of the Taxing Master, inclusive of the costs related to any motions and applications and including for the sake of clarity, but not limited, to the costs of the Plaintiff's instructing attorneys, Adendorff Incorporated in Cape Town and the correspondent attorneys in Pretoria, Savage Jooste and Adams Inc, as well as the other costs set out hereunder.
11. Regarding the expert witnesses listed below ("the experts"), the taxed or agreed qualifying expenses, if any, the taxed or agreed attendance, traveling, waiting time, if any, the costs attached to the procurement of the Medico-Legal and other reports, inclusive of those referred to, as well as RAF4 and Narrative reports, including x-rays, MRI scans, Pathology reports, addendum reports, confirmatory affidavits and all consultations with counsel and Plaintiff attorneys. The experts are:
 - a. Dr J Reid (Neurologist)
 - b. Dr Zayne Domingo (Neurosurgeon)
 - c. Dr Taryn Sutherland (Psychiatrist)
 - d. Ms Renee De Wit (Clinical and Neuro Psychologist)
 - e. Ms Dale Ogilvy (Speech and Language Therapist)
 - f. Ms Michelle Bester (Occupational Therapist)
 - g. Ms Martinette Le Roux (Occupational Therapist)
 - h. Ms Megan Clerk (Educational Psychologist)
 - i. Ms Karin Gerber (Educational Psychologist)
 - j. Ms Karen-Jerling Kotze (Industrial Psychologist)
 - k. Munro Consulting (Actuaries)
12. The costs counsel, inclusive of preparation, day fees and Heads of Argument, on scale C.

13. The costs of the Curatrix *ad Litem*, inclusive of days fees, on scale B.
14. The application costs of appointing the Curatrix *ad Litem*.
15. The costs of Dr Zayne Domingo (Neurosurgeon), Dr Taryn Sutherland (Psychiatrist), Ms Renee De Wit (Clinical and Neuropsychologist), Ms Karin Gerber (Educational Psychologist), Ms Karen-Jerling Kotze (Industrial Psychologist), and Mr Willem Boshoff (Actuary) attending trial to testify, including preparation, qualifying and attendance fees according to their individual hourly rates.
16. The capital is to be paid within 180 days of service of this order, but interest shall accrue at the prescribed interest rate, from the 15th day of service of this order.
17. Costs are to be paid within 14 days of settlement or taxation, but interest shall accrue at the prescribed interest rate, from the 15th day of settlement or taxation.
18. The above costs shall be paid into the Applicant attorney's trust account as mentioned in paragraph 5 above.
19. It is recorded that the Plaintiff entered into a contingency fee agreement and that same complies with the Act.

MD BOTSI-THULARE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

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Date of Hearing : 25 July 2025

Date of Judgment: 26 August 2025