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

Case no: 62121/19

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 15/9/2025

SIGNATURE

In the matter between:

S[...] N[...]

Applicant/Plaintiff

and

ROAD ACCIDENT FUND

Respondent/Defendant

JUDGMENT

PIENAAR AJ

Introduction

[1] This is a claim by the plaintiff against the Road Accident Fund for damages arising from a motor vehicle collision which occurred on or about **11 February 2018** at or near

Scottsburgh. On the 22nd day of August 2019, the plaintiff caused summons to be issued against the defendant, the Road Accident Fund ('the RAF'), in terms of the Road Accident Fund Act 56 of 1996 ('the RAF Act') for his compensation for the damages he suffered due to the accident.

[2] The matter was before me on the default judgment roll for 25 June 2025. The issues for determination is both merits and quantum.

[3] The Plaintiff served the notice of set down on the Defendant on 25 March 2025. The defendant's defence was struck out on 11 November 2022 before Judge Mnyovu (AJ).

[4] The Plaintiff brought an application in terms of Rule 38(2) of the Uniform Rules of Court for the expert reports and affidavits to be admitted into evidence. *Havenga v Parker* 1993 (3) SA 724 (T), confirmed by the Supreme Court of Appeal in *Madibeng Local Municipality v Public Investment Corporation* 2018 (6) SA 55 (SCA), found it is permissible to place expert evidence before the Court by way of affidavits in terms of Rule 38(2). The Rule 38(2) application was granted.

[5] It must be noted that even though the Rule 38(2) application was granted, this court must still be satisfied, after considering all the evidence, that the Plaintiff has a valid claim. By admitting the expert affidavits without viva voce evidence, this Court is not bound to accept the evidence presented for the purpose of granting default judgment.

[6] The Plaintiff served electronically on the Defendant an amended particulars of claim on the 10th of June 2025. Plaintiff also served a notice of substitution on the Defendant on 11 November 2024.

[7] The Fund did not admit the RAF 4 serious injury assessment of the Plaintiff. Therefore, the issue of General Damages is *postponed sine die*.

[8] I reserved this judgment at the conclusion of the trial after listening to oral submissions by Plaintiff Counsel, Adv Huskins.

Merits

[9] The plaintiff was born on 31 July 2006 and was injured in the motor vehicle accident on 11 February 2018. He, therefore, was about 11 years old at the time of the accident and about 19 years of age at the time of trial.

[10] According to the statement of the biological mother Ms N[...] P[...] N[...] her son was walking on the side of the road on 11 February 2018 when the Insured driver driving motor vehicle with registration number N[...] 1[...] had a tyre burst and lost control of the vehicle and knocked down her son.

[11] According to the OAR report, the motor vehicle accident occurred on 11 February 2018, and the accident was reported on 11th February 2018.

[12] The hospital records of the Department of Health of the province of KwaZulu Natal, confirmed that the child was admitted on 30 September 2017.

Medico legal reports

[13] The Plaintiff appointed several experts to assess and evaluate the nature of his injuries and the sequelae of the injuries sustained. The Plaintiff served the following medico legal and addendum reports on the Defendant:

- 13.1 Dr Bongobi - Orthopaedic Surgeon
- 13.2 Dr Mqhayi - Clinical Psychologist
- 13.3 Dr Mazwi - Neurosurgeon
- 13.4 Dr Kubheka - Educational Psychologist
- 13.5 J T Matsape - Occupational Therapist
- 13.6 Moipone Kheswa - Industrial Psychologist
- 13.7 Wim Loots - Actuary

[14] According to all the experts mentioned above, the claimant sustained injuries as a result of a motor vehicle accident that occurred on **30 September 2017**. However, according to the OAR report, Section 19(f) affidavit, and the amended particulars of

claim, the accident occurred on **11 February 2018**. Therefore, there is a dispute as to the exact date of the motor vehicle accident. The expert reports are of no assistance to the court.

[15] The Court noted that the RAF stamp on the lodgment letter is illegible.

[16] The date and place of the accident is a substantial compliance with the RAF Act No. 56 of 1996.

[17] Given the various contradictions in this matter, the court is not satisfied that the interests of justice would be served by granting default judgment.

ORDER

Accordingly, the following order is made:

1. Default Judgment application is refused.
2. The determination of merits is *postponed sine die*
3. The determination of quantum is *postponed sine die*
4. No order as to costs

M PIENAAR
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand down is deemed to be 16 September 2025.

Date of hearing : 25 June 2025
Date of judgment : 16 September 2025

For the Applicant : Adv Lizelle Huskins

Instructed by : D D Kotlolo Attorneys

For the Respondent : Road Accident Fund
No appearance
Link no: 4360417