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

CASE NO:17394/2019

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED:

01/10/2025

In the matter between:

NICOLAAS JOHANNES RAUBENHEIMER N.O.
In his capacity as curator ad litem to a minor child

PLAINTIFF

V[...], L[...]

And

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MOGOTSI AJ

Introduction

1. This is an action against the Road Accident Fund (hereinafter referred to as RAF) instituted by R[...] V[...] in her capacity as a natural mother and legal guardian of her minor child, K[...] B[...] V[...] due to injuries sustained by a minor child as a

result of a motor vehicle accident which occurred on 25 November 2017, at or near Dipuo Street, Braamfischerville, Soweto.

2. The matter was allocated to the default trial court on 25 August 2025, in the virtual court for the determination of loss of earning capacity.

The factual matrix

3. The plaintiff launched an application by virtue of Rule 38(2) of the Uniform Rules of the Court and Section 3(1)(c) of the Law of Evidence Amendment Act¹ 45 of 1998 that was served on the Defendant on 04 July 2025. The application was granted. It is apposite to state at this stage that the parties filed no joint minutes.
4. According to the orthopaedic surgeon, Dr Oelofse, the minor was hospitalised for 12 days from 29 October 2017 to 10 November 2017. Currently, the minor experiences severe headaches probably twice per week; he has sleep pattern disturbances, such as nightmares and talking in his sleep. According to the information obtained from the minor's mother, he has the following behavioural disturbances, viz, severe aggression, moderate depression and mild anxiety. He diagnosed the minor as having sustained a traumatic brain injury; however, the final opinion was deferred to the relevant experts. Regarding education and employability, the expert stated that at the time of the accident, he was in grade 3, progressed to grade 4 in 2016, and repeated grade 4. The mother advised that the minor child is required to attend the remedial school due to a lack of concentration in class.
5. A clinical psychologist, Dr L Grootboom, rehashes the circumstances of the accident initially, and the same will not be repeated herein. The minor continues to experience headaches; he talks in his sleep, and his mother states that his handwriting has changed for the worse. He continues getting headaches and suffers from urinary incontinence, in that he is unable to hold his urine at times. He suffers

¹ The Law of Evidence Amendment Act 45 of 1998.

from visual difficulties and can therefore not sit at the back of the class; and lastly, the minor now suffers from motor and coordination difficulties in that his handwriting has worsened post-accident.

6. According to him, cognitively, the patient forgets items, for example, his stationery; he forgets to do tasks, such as what to buy when sent to the shops. He appears to be a minor and seems distracted. He is being bullied and is regarded as “crazy” by other bullies. At night, he sees a figure which he believes is a vampire and has difficulty sleeping. He has poor self-esteem and increased aggression. He becomes anxious and distressed when he sees a car behind him, and he avoids anything that is accident-related. He developed irritable behaviour, feels disconnected from others, has exaggerated startle response and is hyper vigilant. The neuropsychological test revealed that he that he has a highly defective non-verbal working memory, defective visual scanning, highly defective visual-spatial attention, defective immediate attention, defective short-term/rote memory, highly defective auditory recognition, impaired immediate verbal recall, compromise delayed verbal recall, compromise narrative memory, defective Visio-graphic, clerical, psychomotor and processing speed and divided attention, compromise verbal conceptual abstract reasoning, significantly impaired non-verbal abstract and social reasoning.

7. The expert concurs with the educational psychologist in stating that his premorbid intellectual functioning was likely at least lower average. The minor appears to have mild to more significant neurocognitive outcomes following the accident, which, in all likelihood, exacerbated his premorbid difficulties. He is currently a psychologically vulnerable individual. His neuro-cognitive deficits will probably impact his future functioning in the academic environment; his overall deficit indicates that he struggles in most domains. According to educational psychologist K. Lazarus, the minor’s assumed pre-accident IQ, given their history and family, is of low average. The expert is of the opinion that the minor may have been able to complete his

primary and high school with a probability of furthering his studies in tertiary education, but for the accident.

8. He opined that post-accident, a minor presented with exceptionally low intelligence levels, which is a decline compared to the low average estimation of his pre-accident intellectual ability. Therefore, he will not be able to achieve his pre-accident potential. He recommends that the minor's present intellectual difficulties should be considered permanent, and recommends that he attend a special needs school/remedial school.
9. An ophthalmologist, Dr Kunzman, recommends that, given the traumatic brain injury, the minor requires lifelong annual evaluations to monitor the risk of developing Glaucoma at a later stage.
10. Dr Matyaba, a neurosurgeon, stated that the minor suffered a moderate to severe traumatic brain injury in the accident and currently suffers from residual *sequelae*. His prognosis is at best guarded.
11. Dr Kleinhans, a therapist, opined that from a physical perspective, the minor should be able to obtain any employment of his choice; however, he will not be an equal competitor to his uninjured peers because of the affected cognitive skills, coupled with neuropsychological *sequelae*, all of which have a negative impact on occupational sustainability and stability.
12. According to the industrial psychologist, Nel & Schoeman, pre-accident, the minor was of low average intellectual ability. He may have been able to complete his primary and high school education, with the probability of furthering his tertiary education (the diploma/university degree). Post-accident, he presents with extremely low intelligence, which represents a decline compared to his lower average intellectual ability prior to the accident. It is further recommended that the minor attend a special needs school/remedial school.

13. Regarding pre-accident, he opined that two scenarios were postulated: Firstly, with a diploma and an NQF level 6 qualification, it is assumed he may have entered the open labour market at Patterson level B3 and reached a career plateau with an earning potential at Patterson level C4. Secondly, with a degree or qualification, it is assumed he may have entered the open labour market at Patterson level B5 and reached his career plateau with an earning potential at Patterson level D1. Post-accident scenarios: He will certainly not reach his pre-accident earnings potential because he is unfit to perform any form of employment in the open labour market due to the head/brain injury sustained in the reported accident and its sequelae. As a result of the accident and injury sustained, he has become unemployable in all labour markets.
14. PG Human, an actuary, opined that there are two scenarios. The first scenario, and not applying the RAF cap, being that, but for the accident, a three-year diploma qualification, and a career as a skilled worker versus unemployable, amounted to

Table 1a: Scenario 1. Career path and loss of income (Rands)

But For the Accident 3 Year Diploma Qualification Skilled Worker career	Having Regard to the Accident Unemployable No future income	Loss
25 November 2017: Accident Age 18: Completes Grade 12 Age 21: Completes 3 Year Diploma Age 24: Entry R 187 172 a year i.e. B3 LQ (Basic Salary) To age 45: Straight line increases Ceiling: R 707 793 a year i.e. C4 Median (Total Package) To age 65: Inflation increases Age 65: Retires Contingency deductions Future: 15% (Normal)	25 November 2017: Accident Brain injury, depression and stress Compromised educational potential Unfit for employment Total future loss of income	6 143 982

[Ms Riana Schoeman: Assessment 12 May 2021. Report 02 August 2021]

the following calculation:

15. The second scenario is but for the accident, a three-year degree qualification with a career in middle management versus unemployable, the calculation comes to the

Table 1b: Scenario 2. Career path and loss of income (Rands)

But For Accident 3 Year Degree Qualification Middle Management career	Having Regard to Accident Unemployable No future income	Loss
25 November 2017: Accident Age 18: Completes Grade 12 Age 21: Completes 3 Year Degree Age 24: Entry R 380 448 a year i.e. Median B5 (Total Package) To age 45: Straight line increases Ceiling: R 1 008 086 a year i.e. Median D1 (Total Package) To age 65: Inflation increases Age 65: Retires Contingency deductions Future: 15% (Normal)	25 November 2017: Accident Brain injury, depression and stress Compromised educational potential Unfit for employment Total future loss of income	8 716 248

[Ms Riana Schoeman: Assessment 12 May 2021. Report 02 August 2021]

following:

16. Contingencies include any possible relevant future event which might cause damage or a part thereof, or which may otherwise influence the extent of the plaintiff's damage. The traditional principle and rationale guiding restitution loss of earning capacity was expressed in *Dippenaar v Shield Insurance Co Ltd*² per Rumpf JA, where he held that:

'In our law, under the lex Aquilia, the defendant must make good the difference between the value of the plaintiff's estate after the commission of the delict and the value it would have had if the delict had not been committed. The capacity to earn money is considered to be part of a person's estate, and the loss or impairment of that capacity constitutes a loss, if such loss diminishes the estate. ³This was the approach in Union Government (Minister of Railways and Harbours) v Warneke 1911 AD 657 at 665, where the following appears: "In later Roman law, property came to

² *Dippenaar v Shield Insurance Co Ltd* 1979 (2) SA 904 (A), para 9.

³ *Union Government (Minister of Railways and Harbours) v Warneke* 1911 AD 657 at 665

mean the universitas of the plaintiff's rights and duties, and the object of the action was to recover the difference between the universitas as it was after the act of damage, and as it would have been if the act had not been committed (Greuber at 269) ..."

17. It should be noted that contingencies are arbitrary and also highly subjective, and this was best described in *Goodall v President Insurance Co Ltd*⁴ where the court said:

"In the assessment of a proper allowance for contingencies, arbitrary considerations must inevitably play a part, for the art or science of foretelling the future, so confidently practised by ancient prophets and soothsayers, and by authors of a certain type of almanack, is not numbered among the qualifications for judicial office."

18. The trial court has a wide discretion when it comes to determining contingencies. An appeal court will therefore be slow to interfere with a contingency award of a trial court and impose its own subjective estimates.
19. The advantage of applying actuarial calculations to assist in this task was emphasised in the leading case of *Southern Insurance Association Ltd v Bailey*⁵ 1984 1 SA 98 (A) 113H-114E, where the Court stated:

"...Any enquiry into damages for loss of earning capacity is of its nature speculative. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss. It has open to it two possible approaches. One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends, of course, upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that

⁴ *Goodall v President Insurance Co Ltd* 1978 1 SA 389 (W)

⁵ *Southern Insurance Association Ltd v Bailey* 1984 1 SA 98 (A) 113H-114E.

either approach involves guesswork to a greater or lesser extent. But the Court cannot, for this reason, adopt a non-possums attitude and make no award. In cases where the Court has before it material on which an actuarial calculation can be made usefully, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an 'informed guess' it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial Judge's 'gut feeling' (to use the words of appellant's counsel) as to what is fair and reasonable is nothing more than a blind guess."

20. The courts have, over time, developed general rules regarding contingency deductions, one being the age of a claimant. It is generally accepted that the younger a claimant, the more time he or she has to fall prey to the vicissitudes and imponderables of life.
21. In *Baliso v Firstrand Bank Limited t/a Wesbank*⁶, the Constitutional Court articulated the procedure of dealing with a default judgment as follows,

"In terms of our civil procedure, default judgment for a debt or liquidated demand is granted on an acceptance of the allegations as set out in the summons, without any evidence. Where the claim is not for a debt or liquidated demand, the court may, after hearing evidence, grant judgment. This is usually only evidence on the amount of unliquidated damages. The reason for not hearing evidence on the other factual allegations made in the summons or particulars of claim is that, because the claim is not opposed, it may be accepted that those allegations are admitted or not disputed."

Analysis

22. It is clear ex facie the expert's reports the minor's current intellectual difficulties are permanent, and given the traumatic brain injury the minor sustained, it is apparent

⁶ *Baliso v Firstrand Bank Limited t/a Wesbank*⁶ [2016] ZACC 23

that the minor requires lifelong annual evaluations to monitor the risk of developing Glaucoma at a later stage. What exacerbates the minor's difficulties is that he currently suffers from motor and coordination difficulties, in that his handwriting has worsened post-accident, and he is required to attend a special needs school/remedial school. The plaintiff, in my view, proved his case on the balance of probabilities. Although I considered the reports of the defendants, I am of the view that they are not properly on the record since no application for the admission thereof was launched.

Order

23. The draft order marked "X" is made the order of the court.

MOGOTSI AJ

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG, GAUTENG

This Judgment was handed down electronically by circulation to the parties and or their representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 17H00 on 01 October 2025

Date of Hearing:	12 August 2025
Date of Order:	12 August 2025
Date of Judgment:	01 October 2025
For the Plaintiff:	Ms J Barrows instructed by Van der Elst Inc
For the Defendant:	Ms P Letsoalo / Mr L Klaas instructed by the Road Accident Fund

