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

Case no: 34761/18

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE **7/10/2025**

SIGNATURE

In the matter between:

ADV L BOSMAN N O OBO W[...] M[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PIENAAR AJ

Introduction

1. On or about 22 January 2017, on the N7 roadway (“the roadway”), Citrusdal, Cape a motor vehicle with registration number F[...], driven by Nkopane (“the insured driver”), left the roadway and overturned after the insured driver lost control thereof. The minor child W[...] M[...] was a passenger in the Insured vehicle at the time of the collision. The RAF conceded liability on the merits, leaving quantum in dispute.

2. As a result of the injuries sustained by W[...] M[...], a curator ad litem had to be appointed to him to institute action on his behalf. Consequently, Adv Lauren Bosman (the plaintiff), a practicing advocate, was duly appointed curator ad litem to W[...] M[...], and he is as such suing the Road Accident Fund (the Fund) for damages in respect of bodily injuries sustained by W[...] M[...] during the collision in question.

3. This matter came before me at the Default Judgment Court on 1 July 2025. When the matter was called, Adv. Strydom appeared on behalf of the Plaintiff, and Ms. Riba appeared for the State Attorney. Both parties agreed that this matter stand down until Thursday, 3 July 2025, for the RAF to obtain instructions for an offer.

4. On 7 February 2024, before the Honourable Judge Rangata AJ, the Defendant’s defence was struck out. Plaintiff’s counsel, Adv. Strydom, agreed that the State Attorney, Ms. Riba, could proceed to make submissions during the trial. On that basis, the State Attorney made the following submissions: An interim payment of R500,000 for loss of earnings is to be tendered. The remainder of the loss of earnings to be *postponed sine die*. With regard to General damages, the RAF has accepted that the injury is serious; however, no formal offer has been made. Nevertheless, Ms. Riba submitted that an amount of R1,200,000 for General damages would be fair and reasonable.

5. On 17 February 2025, Plaintiff Attorneys, served physically and electronically, in terms of Rule 28(1), served a Notice of amendment of Particulars of claim on the Defendant. In terms of the amendment, Plaintiff's amounts claimed were increased to the following:

Past hospital and medical expenses	R500 000-00
Future medical expenses	Undertaking in terms of Section 17(4)(a)
Past and Future loss of earnings	R10 000 000-00
General Damages	R4 000 000-00
TOTAL	R14 500 000-00

6. On 5 March 2025, Plaintiff Attorneys, served physically and electronically, the Plaintiff's amended pages (amended particulars of claim) upon the Defendant.

7. The Plaintiff's made an application in terms of rule 38(2) of the Rules, that evidence be produced by way of an affidavits, therefore, the application was granted.

Issues for determination

8. On 3 July 2025 the defendant State Attorney, Ms Riba, submitted that the claim for loss of earnings should be *postponed sine die*. However, the Court is of the view that the Plaintiff is entitled to proceed with both the claim for loss of earnings and general damages in this matter, as there will be no prejudice to the Defendant. It is now more than eight years since the accident and his deficits are permanent - Dr Domingo (Neurosurgeon) paragraph 8.8 - CaseLines 006-9

9. This matter is being heard eight years later. The RAF could have instructed experts on the issue, but the only expert presented by the Defendant is Dr. Ngqandu, a neurosurgeon, whose report is dated 2019. The Defendant's defence has been struck off. Therefore, the court grants that the matter may proceed.

Quantum

9. According to the medico legal and addendum reports as well as hospital records W[...] M[...] sustained the following injuries and sequelae which is of significance in determining his loss of income:

1. Left frontal extra cranial soft tissue swelling
2. Right frontal bone fracture
3. Left parietal bone fracture
4. Traumatic brain injury of moderate severity with associated skull fractures with significant residual cognitive, cognitive-communicative and behavioural problems.

Megan Clerk - Educational Psychologist

Pre accident potential

10. Megan Clerk assessed W[...] M[...] on 1 June 2021. At the time of the accident W[...] was one year and eight months old. The family educational history revealed that none of W[...] M[...]’s family members have completed a Grade 12 (NQF 4) level of education. Three family members obtained a Grade 9 (NQF 1) level of education including two of his paternal aunts as well as his oldest brother. His mother obtained a Grade 7 level of education. His older sister is currently a Grade 4 learner and his twin brother also commenced with Grade R in 2021. Considering the above, and the fact that W[...] M[...] sustained a significant head injury in the accident, his organic cognitive potential was likely negatively impacted. He would have had the capacity to complete at least a Grade 10 (NQF 2) level of education (as his father has done). He would probably have benefit from skills training in order to learn a marketable skill for future vocation or become a seasonal farm worker as his father did.

Post accident potential

11. Following W[...] M[...]’s involvement in the accident on 22 January 2017, it is noted that he suffered a moderately severe closed head trauma with skull fractures (Neurologist) as well as scalp lacerations and a frontal linear fracture. Collaboratively, these lead to permanent neuro cognitive change which will negatively impact on his education and career earnings (Neurologist).

12. W[...] did not attend any schooling or creche until 2021. According to the progress letter dated 30 April 2021 W[...] struggles to remember and recall certain information, is not able to concentrate within a group, is easily distracted, reacts very slow, and requires a lot of individual attention and support from his teacher. Despite these difficulties, W[...] has a positive approach to learning and gives his best to competing tasks. Ms Clerk reported that she of the view that it is unlikely that W[...] will be able to achieve academically and will probably reach an educational ceiling in Grade 9 (NQF 1- Remedial) or 10 (NQF 2 - Remedial).

Karin Gerber - Educational Psychologist

Pre morbid potential

13. Considering his early developmental trajectory and the educational attainment of close family members (including his sister currently completing Grade 12 despite becoming disabled in the same accident) it is reasonable to conclude that W[...] would have had the cognitive and academic capacity to complete Grade 12 (NQF 4) in a mainstream academic environment. It is further probable that had the injury not occurred, W[...] could have pursued a tertiary qualification at the NQF 6 level.

Post morbid potential

14. Expert opinion of Dr Ogilvy and Dr Domingo concurs that these deficits are permanent and materially affect his academic and functional potential. W[...] is unlikely

to progress beyond Grade 9 (NQF 1) and his risk of grade failure remains high given his limited verbal reasoning, executive functioning and auditory memory capacity.

Kotze Blake and Associates

Pre morbid scenario

15. Ms Kotze assessed W[...] on 30 March 2022 and an addendum report was done on 27 June 2025. W[...] would have secured employment probably by 2033 on a Paterson B4 level earning R373 000 per annum. As he gained experience, he would probably have been able to expand his work related skills set, which in turn would have enabled him to secure employment of a higher level of job complexity. With the level of job complexity associated with Paterson Grade C1 (median, total package), earning R526 00 per annum. Upon reaching his career ceiling and on the proviso of the availability of vacancies and successful application, W[...] would probably have been able to earn on a Paterson Level C3 and C4 level. Retirement age of 65 years.

Post morbid scenario

16. According to Ms De Witt allowing for two grades failure advised that W[...] is at high risk of failing grades, especially in high school. He would probably have commenced employment, probably by 2027 to 2038. For 2025 his presented income is R28 8800 per annum. Retirement age of 65 years.

Munro actuaries

17. Munro actuaries applied uninjured 20% and injured 25% contingencies. Plaintiff Counsel Adv Strydom submissions is to apply 25% uninjured and 35% injured, is fair and reasonable.

18. Nicholas JA in Southern Insurance Association Ltd v Bailey NO [1] stated:

‘Any enquiry into damages for loss of earnings capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. 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 guess work, a blind plunge into the unknown. The other is try to make an assessment, by way of mathematical calculations, on the basis of the 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 either approach involves guess work to a greater or lesser extent. But the Court cannot for this reason adopt a non possum's attitude and make no award.’

18. The widely accepted benchmark in South African case law stems from the “sliding scale” approach popularised by Robert Koch. This model applies a general deduction of 0.5% per year to retirement age, typically resulting in:

- 1) 25% for a child,
- 2) 20% for a young adult, and
- 3) 10% for a middle-aged person.

19. However, Koch’s model is only a guide. Courts retain the discretion to vary the contingency percentage upward or downward based on the claimant’s personal circumstances and the broader socio-economic context. As confirmed in *Legal Aid South Africa v Magidiwana and Others*[2]:

“ Expert evidence, including actuarial evidence, is designed to assist the court in areas outside its ordinary expertise. However, it is for the court to determine what weight to attach to such evidence.”

20. Accordingly, applying a 30% contingency deduction to the pre-morbid earnings figure of R7,993,300 results in a net pre-accident loss of R5,595,310.00. This adjustment represents a realistic appraisal of the plaintiff's likely prospects in the open labour market and helps to avoid the risk of unjust enrichment. It is noted that W[...] is still young and hasn't failed any grades yet. A 40% contingency deduction should be applied to the post-morbid earnings figure of R508,100, resulting in a net amount of R304,860.00.

21. The difference between the pre- and post-morbid earnings amounts to **R5,290,450.00.**

General Damages

22. The parties are agreed that W[...] should be compensated for general damages. The Plaintiff's submission is that W[...]’s general damages are worth at least R2 100 000 million rand . In support of this contention, the Plaintiff's counsel referred me to the following judgments:

1. Zarrabi v RAF 2006 (5B4) QOD 231 (T), in the Pretoria High Court, De Vos Judge on 6 April 2006, awarded general damages of R800 000 with a currently value of R2 291 000, to a 30 year old female trainee medical specialist who sustained a severe diffuse axonal brain injury with severe neuron-physical, neuro cognitive and neuro psychiatric consequences, multiple facial lacerations, fractures nose, contusions of the chest with bilateral contusions of the lungs, rupture of the liver, contusion of the kidneys with hematuria, closed fracture of the right humerus, open fracture of the right radius and ulna, loss of vision of the right visual field and lack of drive.

23. The State Attorney, Ms Riba submitted that there is no instructions amount. The minor child sustained only a head injury. The Court should consider what is fair and reasonable. She is of the view that an amount of R1 200 000 for General damages is fair and reasonable .

24. It is trite that there is no hard and fast rule of general application requiring a trial court or a court of appeal to consider past awards. This is because it is difficult to find a case on all fours with the one being heard.

25. The award of general damages is by no means an easy task. There is no basic formula for the assessment of this kind of damages.

26. There is no doubt that W[...] has suffered severe injuries and he must be fairly compensated. I am therefore of the view that when considering the injuries by W[...] and the general trend followed by the courts in awarding, it would be fair and reasonable if he is awarded an amount of **R1 700 000,00**.

I therefore make the following order:

1. Draft Order X as amended is made an Order of Court.

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

Heard on : 3 July 2025

Judgment delivered : 7 October 2025

The judgment was handed down electronically by circulation to the parties presentative by email, by being uploaded to CaseLines. The date and time for hand down is deemed to be 7 October 2025.

Appearances

On behalf of the Plaintiff : Adv Carel Strydom

Instructed by : Savage Jooste & Adams

On behalf of the Defendant : State Attorney - Ms Riba

Link no: 4207329

[1] Southern Insurance Association v Bailey NO 1984 (1) SA 98 (A) at 113 F– 114 A.

[2] [2014] ZASCA 141 at paragraph [53].