IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Case no: 7507/2021

In the matter between:

ADV G SLINGER N.O **PLAINTIFF**

(A[...] K[...])

and

THE ROAD ACCIDENT FUND **DEFENDANT**

Neutral citation:

Coram: **PATHER S AJ**

Heard: 8 October 2025

Delivered:15 October 2025

ORDER

1 The Defendant is ordered to pay the Plaintiff the sum of R1 575 564.00 (One Million Five Hundred and Seventy-Five Thousand, Five in respect of the Plaintiff's claim for Loss of Earnings.

2 The Defendant shall pay interest on the aforementioned amount from the 30th day of the date of this Order, at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended.

3 The Defendant is directed to furnish the Plaintiff with an undertaking in terms of Section (17) (4) (a) of the Road Accident Fund Act 56 of 1996, for the payment of all of the future accommodation in a hospital or a nursing home or treatment of or rendering of a service or supplying of goods to the minor child after such costs have been incurred and on proof thereof, relating to the injuries sustained by the Plaintiff on 5 August 2012, such undertaking to be provide on or before 25 November 2025.

4 The Defendant is to pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, in accordance with Rule 70 of the High

Court, subject to the discretion of the taxing master, which costs shall exclude the Plaintiff's Application in terms of Rule 38(2), and which costs shall include the following third-party disbursements :

2.1 costs of counsel to be taxed on Scale B;

2.2 all costs incurred with the appointment of a curator ad litem;

2.3 the reasonable and necessary fees and disbursements of the following expert witnesses:

(a) Dr Z Domingo;

(b) K Polden

(c) Rose Wood Medico Legal:

(i) T Ellis;

(ii) T Van Wyk

(iii) G Pretorius

5 The above costs are to be paid within 30 days from the date upon which the costs are taxed by the taxing master and/or agreed between the parties;

6 In the event that the Defendant fails to make payment of cost on due date, Defendant shall be liable to pay interest on the taxed/or agreed costs at the prevailing rate of interest, as determined from time to time, in terms of Prescribed Rate of Interest Act, 55 of 1975, as amended.

7 The Curator Ad Litem is directed to conduct a proper investigation into the management of the funds to be paid to the minor child/and or his guardian.

JUDGMENT

PATHER, AJ

Introduction:

[1] The case once again illustrates the necessity to adopt o a "crystal ball" perspective that the Court has to adopt in determining the future income of a minor in cases where expert reports are unable to provide the court with a definitive answer. The court was not aided by t the Defendant's failure to engage with any expert to refute any of the allegations as set out in the reports submitted by the Plaintiff. Given the number of matters involving the Defendant that take up the court's rolls, a more hands on approach would be better and would be of assistance to the court.

[2] The Court raised the following issues at the beginning of the trial: the Plaintiff's representative provided an updated actuarial report from Mr Grant Pretorius dated 16 September 2025. A submission was made by the Plaintiff's representative that the report had already been filed and was in the court file, and that it was identical to the one that was filed. This was not the case, and in fact the report filed previously was dated some 3 years prior to the current date. The Court

cautioned the Plaintiff’s attorney to refrain from making these submissions, as they may be misleading..

[3] On 2 October 2025, three days prior to the trial the Plaintiff’s representative had delivered an application in terms of Rule 38 (2). The application was defective and filed out of time. The Defendant’s counsel had no objection to the report and the order that was sought. The Court granted this application due to the absence of opposition..

Plaintiff’s Case

[4] The Plaintiff is A[...] K[...], hereinafter referred to as **(“the minor child”),** was a passenger in a motor vehicle that was involved in a collision on 5 August 2018.

[5] The Defendant conceded/agreed to liability, general damages, and future medical costs prior to the hearing of the matter. The Defendant had accepted liability for 100% of the Plaintiff’s proven damages.

[6] There was no dispute on the minor child’s future medical expenses, and the Defendant tendered an undertaking as contemplated in Section 17 (4) (a) of the Road Accident Fund Act.

[7] The principal issue was the minor child’s future loss of earnings and earning capacity. In order to prove the minor child’s claim, the Plaintiff had submitted expert reports from a number of experts in the form of reports. There were affidavits to support the reports of the experts and the Plaintiff relied on the

acceptance of these affidavits pursuant to its Rule 38(2) application which I have already referred to. The Defendant did not submit any expert reports.

[8] The minor child's injuries primarily related to the head injury that he sustained during the collision and in particular, traumatic brain injury. The blow to the head which resulted in the scalp swelling and also facial abrasions. Cognitive and behavioural functioning were anticipated to be impaired due to the nature of the brain injury.

[9] The Plaintiff's claim was supported by the expert reports of the educational psychologist, the industrial psychologist, and the actuary. In turn these experts relied on the report of the neurosurgeon Dr Domingo. The Court did not see a need for Dr J Oosthuizen, who provided a report as a mathematical statistician in the circumstances where a report was sought from an actuary. Consequently, the court did not include all the costs of Dr Oosthuizen to form part of the Order.

[10] The Plaintiff's Counsel, Mr Claassens, presented the Court with expert reports and relied on the authority of *RAF v Kerridge*[1] in his submissions. Mr Claassens conceded that he concurred with the reports and assessments of the educational psychologist and the industrial psychologist that the minor child would not have been able to achieve a high standard of education. He noted that this was corroborated by the minor child's family circumstances (parents and siblings). The Court enquired about any investigation in respect of the minor child's biological father, and it was tendered that the father was not in the minor child's life and that no information was available regarding him.

[1] (1024/2017) [2018] ZASCA 151

[11] *In Southern Insurance Association Ltd v Baily*:[2]

‘The Appellate Division held that while actuarial calculations are a valuable tool for assessing loss of earnings, the Court retains a significant discretion to adjust these calculations by applying a discount for “contingencies” or the “vicissitudes of life”. This means that factors like potential unemployment, future illness, or economic conditions can be factored into the award, preventing the court from being rigidly bound by purely mathematical figures and ensuring a fair and reasonable outcome.’

- Contingencies are unpredictable future events, such as:
  - The possibility of the plaintiff having a shorter-than-normal life expectancy.
  - Periods of unemployment due to incapacity from illness or accident.
  - Unfavorable labor unrest or general economic conditions.

Van der Plaats v South African Mutual Fire and General Insurance Co Ltd[3]

- The Court emphasised that provision for contingencies is a matter falling within the discretion of the trial Court and that the amount allowed for contingencies is variable and closely related to the facts and circumstances of each case.[4]
- The Court applied higher contingencies in a child case, recognising the uncertainty of a child’s career path.

[2] 1984(1) SA 98 (A)
[3] 1980 (3) SA 105 (A).
[4] 114F-115 CD.

Road Accident Fund v Reynolds[5]

- Contingencies may consist of a wide variety of factors. They include matters such as the possibility of error in the estimation of a person's life expectancy, the likelihood of illness, accident or employment which in any event would have occurred and therefore affects a person's earning capacity.

RAF v Guedes[6]:

- The SCA determined that the High Court had incorrectly applied the contingency deductions, particularly the method of applying them to the "but for" scenario.
- The Court endorsed a sliding scale for contingency deductions, suggesting that 0.5% per year of a person's working life should be the baseline for these deductions.[7]
- The SCA emphasised there's no fixed formula, but courts must apply discretion guided by fairness.

1. Judicial Practice[8]

- Actuarial experts, legal practitioners, and judges have developed conventional guidelines that are frequently referred to in practice.

[5] (A5023/04) [2005] ZAGPHC 19 (18 February 2005).
[6] 2006 (5) SA 583 (SCA).
[7] Para 9.
[8] Koch, R.W. *The Quantum Yearbook* (updated annually), which is widely used in RAF matters. Koch notes the sliding scale and emphasises higher contingencies in child cases.

- The most widely cited is the so-called “sliding scale”: 0.5% deduction for each year to retirement.
- For a child, often rounded up to 25–30% or more because of added uncertainties.
- This rule of thumb is not legislated but often quoted in actuarial reports and accepted in judgments.
- 5–10% for past loss (as the past is less uncertain).
- 25%+ for future loss (with adjustments depending on the child’s circumstances).

[12] In the present case, the minor child will likely not be able to complete his education to NQF4, and there is limited probability that he will be able to advance beyond. . There is also the possibility that specific categories of unskilled labour may not be suitable for him. The unemployment rate in South Africa is staggering and workers in unskilled positions are paid minimum wage.

[13] As I have indicated previously, the expert reports and opinions expressed therein are merely a guide, and this court is obligated to look beyond those reports to consider the interests of the minor child as his upper guardian.

Conclusion

[14] The Plaintiff succeeds in his claim for the claim for future loss of earnings in a total sum of R1 575 564.00. The Court accepted Plaintiff’s counsel’s submissions on the rate of contingencies to be applied be 15%.

Order

[15] In the circumstances, the following Order is made:

1 The Defendant is ordered to pay the Plaintiff an amount of R1 575 564.00 (One Million Five Hundred and Seventy-Five Thousand, Five in respect of the Plaintiff's claim for Loss of Earnings.

2 The Defendant shall pay interest on the amount from the 30th day of the date of this Order at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended.

3 The Defendant is directed to furnish the Plaintiff with an undertaking in terms of Section (17) (4) (a) of the Road Accident Fund Act 56 0f1996, for the payment of all of the future accommodation in a hospital or a nursing home or treatment of, or rendering of a service or supplying of goods to the minor child after such costs have been incurred and on proof thereof, relating to the injuries sustained by the Plaintiff on 5 August 2012.

4 The Defendant is to pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, in accordance with Rule 70 of the High Court, subject to the discretion of the taxing master, which costs shall

exclude the Plaintiff's Application in terms of Rule 38(2), and which costs shall include the following third-party disbursements :

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7 The Curator Ad Litem is directed to conduct a proper investigation into the management of the funds to be paid to the minor child/and or his guardian.

S. PATHER

ACTING JUDGE OF THE HIGH COURT

Appearances

For applicant:	N Moodley
Instructed by:	Colyn and Associates, Plattekloof
C/O:	Von Lieres, Cooper & Barlow, Cape Town

For respondent:	A Titus
Instructed by:	Elroy Adams & Associates, Sarepta