



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

CASE NO: 9084/2021

DELETE WHICHEVER IS NOT APPLICABLE

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

01/10/2025
DATE


SIGNATURE

In the matter between:

Adv C CAWOOD OBO KLASIE MANUEL.

PLAINTIFF

and

ROAD ACCIDENT FUND

JUDGEMENT

MOGOTSI AJ

1. This is an action against the Road Accident Fund (hereinafter the Fund) instituted by Advocate Cawood in his representative capacity of the Klasie Manuel, hereinafter referred to as the patient, due to injuries sustained as a result of a motor vehicle accident which occurred on 11 November 2018. At the time of the accident, the patient was a pedestrian, and later, the RAF conceded the merits 100%.
2. The plaintiff is seeking the following issues: past medical expenses (indemnity) and future medical (section 17(4)(a) undertaking), R1,404,240.00 for loss of earnings, and R3,200,000.00 for general damages.
3. The patient sustained the following injuries:
 - Traumatic head injuries with fractures and brain injuries, resulting in significant residual cognitive, communicative and behavioural deficits.
 - Whole person impairment of 43%
 - Major neurocognitive disorder secondary to a traumatic brain injury and adjustment disorders.

Evidence

4. The Plaintiff was examined by several experts whose reports were confirmed by their affidavits filed. The Plaintiff launched a Rule 38 (2) for such evidence to be adduced by way of affidavit, and the application was granted. 5. Dr Z Domingo, a neurosurgeon, compiled a report based on the assessment done on 26 February 2025. He opines that the patient sustained a moderate to severe head injury with intracranial haemorrhages as seen on CT scan. His WPI IS 43% and his longevity has been affected. He has residual physical, cognitive-communicative, and behavioural problems. He is permanently disabled and unemployable. He had a well-controlled epileptic condition. He was blind in his left eye due to a childhood injury. He recommended that curator ad litem be appointed on his behalf. He was born on 10 November 1978, unmarried, with two children aged 14 and 23 years respectively. His highest level of education is grade 7. At the time of the accident, he was employed casually as a general worker and a gardener, but failed to return to any form of work after the accident due to poor memory and difficulty understanding and following instructions. Since the accident, he was born on 10 November 1978, unmarried, with two children aged 14 and 23 years respectively. His highest level of education is grade 7. At the time of the accident, he was casually employed as a general worker and a gardener, but failed to return to any form of work after the accident due to poor memory and difficulty understanding and following instructions. Since the accident, he has withdrawn socially and has no friends. Due to difficulty following conversations, he tends to be withdrawn socially. He has poor memory and concentration. He had poor hand coordination and a mild, unsteady gait. Loss of earnings - considering the nature of his physical, cognitive, communicative and behavioural deficit, he opined that he is permanently disabled and unemployable in the open labour market.
5. Dr Taryn Sutherland, a psychiatrist, provided his report on 14 January 2025. He opined that during assessment, he had cognitive, communicative and behavioural symptoms. He experiences distress regarding his altered cognitive functioning. He is profoundly impaired and will require supervision and assistance permanently. Considering the combination of behavioural, cognitive and communicative difficulties, he is permanently unemployable in any capacity. He requires a lifelong home-based career and residential care facility.

6. Renee de Wit and Transient Schoeman, neuropsychologists, compiled an addendum report based on the assessment done on 4 August 2025. The patient expressed severely impaired functional communication skills, and his ability to express his thoughts and ideas meaningfully to others, understand and remember what others are saying is severely compromised.
7. According to Me Let Roux, an occupational therapist, he presented with mild ataxia bilaterally, severe dyspraxia and dexterity was poor on both sides. His hand movement was slow, slightly ataxic and dyspraxia. Pre-accident, he did general work, gardening and construction piece jobs and was a recipient of disability grant due to epileptic seizures and could manage his finances independently. Post-accident, he has not worked in any capacity and remains unemployed. He is unemployable in any capacity.
8. Karen Kotze, an industrial psychologist, provided a report dated 11 November 2018 and an addendum report dated 12 August 2018. His occupation was unknown until the accident. He was a gardener, construction worker, and his employment was project-based contract and pie jobs. For the period October 2017, he was employed at a scrap metal dealership as a general worker on a casual basis. His wages in 2018 were R500.00 per week, equating to R 2 165.00 per month and R25 980.00 per annum. For the period 2014, he was employed as a gardener for Me Brown, in Kraaifontein, Western Cape. He was earning R300.00 per week, equating to R1299.00 per month and R15 588.00 per annum. Pre-accident career postulation - At the time of the accident, he was 40 years old and in possession of a grade 7 level of education. His employment history is characterised by unskilled work roles. The actuaries confirm that they have interpreted the information supplied as adequately as possible and accept that the alternative interpretation is possible. He has withdrawn socially and has no friends.

9. Munro Cconsulting provided an actuarial report dated 13 August 2025, based on the addendum compiled by Kotze, which, amongst others, assumed the career path and earnings opined by Kotze and applied normal contingencies of 5% to past and 15% to future injured earnings. The following calculations were provided:

	UNINJURED	INJURED	LOSS
PAST	R476 400	-	
LESS	5%	-	
=	R452 580	-	R452 580
FUTURE	R1 119 600	-	
=	R951 660		R951 660
TOTAL LOSS OF EARNINGS			R1 404 240

General damages

10. It is a common cause that the plaintiff suffered serious injuries. Plaintiff claims an amount of R3,200 000.00 for general damages.

Legal principles applicable to claims of general damages

11. *In Van der Merwe v Road Accident Fund and Another*,¹ Moseneke DCJ had the following to say about general damages:

“The notion of damages is best understood not by its nature but by its purpose. Damages are “a monetary equivalent of loss “awarded to a person with the object of eliminating as fully as possible [her or] his past as well as future damage.” The primary purpose of awarding damages is to place, to the fullest possible extent, the injured party in the same position she or he would have been in, but for the wrongful conduct. Damages also represent “the process through which an impaired interest may be restored through money.” To realise this purpose, our law recognises patrimonial and non-patrimonial damages. Both seek to redress the diminution in the quality and usefulness of a legally protected interest. It seems clear that the notion of damages is sufficiently wide to include pecuniary and non-pecuniary loss, and it is understood to do so ordinarily in practice. Non-patrimonial damages, which also bear the name of general damages, are utilised to redress the deterioration of highly personal legal interests that attach to the body and personality of the claimant. However, ordinarily, the breach of a personal legal interest does not reduce the individual’s estate and does not have a readily determinable or direct monetary value. Therefore, general damages are, so to speak, illiquid and are not instantly sounding in money. They are not susceptible to exact or immediate calculation in monetary terms. In other words, there is no real relationship between the money and the loss. In bodily injury claims, well-established variants of general damages include “pain and suffering”, “disfigurement”, and “loss of amenities of life. It is important to recognise that a claim for non-patrimonial damages ultimately assumes the form of a monetary award. Guided by the facts of each case and what is just and equitable, courts regularly assess and award to claimants’ general damages sounding in money. In this sense, an award of general damages to redress a breach of a personality right also accrues to the successful claimant’s patrimony.

¹ *Van der Merwe v Road Accident Fund and Another* (CCT48/05) [2006] ZACC 4

After all, the primary object of general damages, too, in the patrimonial sense, is to make good the loss; to amend.”

12. In the case of *Protea Assurance Co Ltd v Lamb*² Potgieter, JA stated that although the determination of an appropriate amount for general damages is largely a matter of discretion of the court, some guidance can be obtained by having regard to previous awards made in comparable cases; however, as stated by the learned Potgieter J, in that case:

“... 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 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.”

Quantification of General Damages

13. When determining general damages, Holmes J in *Pitt v Economic Insurance Co Ltd*³ said ‘[T]he court must take care to see that its award is fair to both sides – it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant’s expense.’

² *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 535H-536A

³ *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (D) at 287E-F

Comparable cases

14. In *van Rooyen NO v RAF*⁴ 2022 (8A4) QOD 156 (GNP) (“Van Rooyen”), in the Pretoria High court, Brand AJ on 8 December 2017, awarded general damages of R2 200 000-00, with a current value of R3 241 171-00 (R2 200 000-00 x 9862/6694 – see Koch Quantum Yearbook: 2025 on page 2), to a junior farm manager, Mr JPN van Reenen, 29 years of age at the time of the award, who sustained a severe head injury resulting in severe brain damage with permanent physical, cognitive, neuropsychological and physical consequences. Post-accident, the patient is severely and permanently impaired. Hospitalised for a prolonged period and underwent a range of invasive medical procedures. The accident occurred on 4 May 2013, and he was eventually discharged from the rehabilitation centre on 2 August 2013. He is severely physically disabled: he suffers from persistent hemiparesis (weakness on one side of the body); he has problems with incontinence and with feeding; he is essentially wheelchair bound (although he can walk, it is only for short distances and his right side must be supported); he experiences spasticity in all four limbs, to the extent that his left hand is useless; and his hand co-ordination and dexterity in his right hand remains poor. His physical condition is such that he requires constant assistance from a carer to help him walk and in other respects. He has suffered severe and disabling cognitive and behavioural changes and impairments. He has poor attention, working memory, processing speed, verbal and visual memory, visual organisation and executive functioning. His speech and language have also been badly affected (slowness, poor articulation, distortions, reduced clarity and unintelligibility of speech, poor word retrieval and poor listening attention).

15. In *Wv v RAF* 2019 (7A4) QOD 113 (FB) (“WV”)⁵, in the Bloemfontein High Court on 1 February 2019, Mbhele AJ awarded general damages of R2 100 000-00,

⁴ VAN ROOYEN NO v RAF⁴ 2022 (8A4) QOD 156 (GNP)

⁵ WV v RAF 2019 (7A4) QOD 113 (FB) (“WV”),

with a current value of R2 842 000-00 (Koch: 2025 on page 52), to a 27-year-old apprentice, who in 2011 sustained traumatic brain injuries with base of skull fracture and pons bleed; mandible fracture; right lower leg, tibia and fibula fractures. He was in a coma and transferred to the ICU, ventilated on a T-piece, and had a GCS of 4/15. He uses a cane to walk, and he can read but is unable to write. He is still taking medication for his injuries. The internal fixation on his right lower leg was removed due to excessive pain and discomfort. He currently complains of headaches. He has behavioural and emotional disorders (aggressive, forgetful, depressed, isolates himself and uses foul language). He has a permanent speech defect. The plaintiff is permanently disabled due to his brain stem injury. He will never be able to work again. He cannot live on his own and has to be supervised 24 hours a day. The evidence showed that the plaintiff is permanently disabled with significant mental and physical impairment. He will need constant supervision and nursing services. His career, social life, and family life are destroyed. He is at a high risk of developing epilepsy in the future.

Discussion

16. Baliso v Firststrand Bank Limited t/a Wesbank [2016] ZACC 23⁶

“In terms of our civil procedure, a 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 typically provides evidence only 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.”

17. I am duty-bound to follow precedent, and my approach in the evaluation of the evidence is based on what was articulated in the matter mentioned supra. The

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

defendant did not file any expert report. The only evidence before me is the plaintiff's version. Submissions from the bar do not amount to evidence, although I have considered the same.

18. I am not persuaded by the defendant's counsel that the cases mentioned by the plaintiff's counsel are not comparable to the current case because the patient is not in a wheelchair. There can never be broadly similar matters.

19. Having considered all the evidence, it is my considered view that the amounts claimed by the plaintiff for loss of earnings. And general damages are fair and reasonable.

20. The defendant has been provided with vouchers, and the plaintiff is therefore entitled to indemnity against claims from the supplier in respect thereof and further entitled to a section 17 (4) (a) undertaking.

Order

In the circumstances, the following order is made:

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


MOGOTSI AJ

JUDGE OF THE HIGH COURT

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