

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

Case Number: 76671/2017

(1) REPORTABLE: NO/YES

(2) OF INTEREST TO OTHER JUDGES: NO/YES

(3) REVISED: NO/YES

DATE: 1 OCTOBER 2025

SIGNATURE

In the matter between:

N[...] P[...] M[...] OBO Minor

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

***Delivered:** This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 1 October 2025.*

JUDGMENT

Makhoba J

[1] The plaintiff instituted an action on behalf of her minor child against the defendant for damages suffered as the result of injuries sustained in a motor vehicle accident that occurred on the 25 May 2017.

[2] At the time of the accident the minor was 5 years and 6 months old. For the purpose of this Judgement I will refer to the minor as M[...].

[3] On the date of hearing the defendant was not represented. The matter was on Default Judgement Roll and the Defendant's defence was struck (case lines 14 -1 to 14-3).

[4] The court is satisfied that the defendant is 100% liable for the plaintiffs damages. Counsel for the plaintiff addressed the court and referred to her heads of argument.

[5] The court allowed the medico-legal reports which were made under oath in terms of Rule 38 (2).

[6] The claim by the plaintiff is loss of earnings in the amount of R7 840 592.00

[7] M[...] was knocked down by a motor vehicle. He was taken to hospital by car, he sustained the following injuries:

7.1 Bruises on the right side of the forehead

7.2 Swelling on the right side of the face around the eye and forehead.

7.3 Loss of consciousness.

He was admitted and discharged the following day.

[8] Dr M.N Majeed opined that, the minor sustained a mild brain injury. His Glasgow Coma scale (GCS) was reckoned at 15/15 and no surgical intervention was required.

[9] The clinical psychologist, N.N Mqhayi says that M[...] will benefit from psychotherapy.

[10] The issue in this matter is whether after hearing counsel this court should grant the amount as requested on behalf of the plaintiff.

[11] It is indeed so that even though defendant is not represented in the proceedings the court cannot simply grant the order as requested, the court must see to it that the requested order is in accordance with justice.

[12] The evaluation of the amount to be awarded for loss does not involve proof on a balance of probabilities. It is matter of estimation. Where a court is dealing with damages which are dependent upon uncertain future events, which is generally the case in claims for loss of earning capacity, the plaintiff does not have to provide proof on balance of probabilities.

[13] It is trite that the onus rests on the plaintiff to prove his case on balance of probabilities see *Pillay v Krishna*, 1946 SA 946. Thus, the duty is on the plaintiff to produce evidence that because of the injury, he has suffered loss of future income.

[14] I am called upon to perform the delicate judicial duty in that I must decide what is the reasonable amount the plaintiff would have earned but, for the injuries and the consequent disability.

[15] In the matter of *De Kock v Road Accident Fund*, Case no. 2337/2013 reported on the 22nd of April 2015 in the High Court of South Africa (Gauteng Division, Pretoria) the court once again confirmed the approach to be taken with the calculation of loss stated in paragraph 22 as follows:

"[22] In approaching claims of this nature, the courts have always had open to two possible approaches, namely:

22.1 either that the Judge makes a round estimate amount which seems to him to be fair and reasonable. That process is entirely a matter of guesswork- a blind plunge into the unknown;

Or

22.2 that the Judge tries 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 assumption, and these may vary from the strongly probable to the speculative. "

[16] The general approach of the actuary is to posit the plaintiff, as he is proven to have been in his uninjured state and then to apply assumptions as to his state with the proven injuries and their sequela.

[17] The deficits which arise between those scenarios (if any) are then translated with reference to the various baseline means and norms used. These exercises are designed with the aim of suggesting the various types of employment which would hypothetically be available to the plaintiff both pre and post morbidity.

[18] It thus stands to reason that, if the base scenarios adopted by the actuary are fallacious, the actuarial calculations are of no value to a court or the road accident fund.

[19] In my view, the amount claimed by the plaintiff is too excessive and the calculations by the actuary is misplaced.

[20] The amount claimed cannot be justified for the following reasons:

20.1 The minor was treated and discharged the following day with no surgical intervention or subsequent treatments.

20.2 The clinical psychologist, N.N Maqhayi has reported that M[...] will benefit from psychotherapy (Caselines 05-51 par 11.10.1)

20.3 There is no proof that M[...] have sustained permanent mental disability or impairment.

[21] It is further my view that, it will be premature to award damages in respect of future loss of earnings because the injuries sustained are not commensurate to the assessment by the experts as reflected in their reports.

[22] In the premises, the following order is made:

22.1 The future loss of earnings is postponed until such time that the injured minor is older and proper re-assessment can take place.

22.2 Defendant to pay plaintiffs costs.

D. MAKHOB A J
JUDGE OF THE HIGH COURT
PRETORIA

Date of Hearing: 09 September 2025

Judgment delivered: 1 October 2025

Appearances

For Applicant: Adv T Raikane

For Respondent: No Appearance