

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

Case No: 20/38204

DELETE WHICHEVER IS NOT APPLICABLE	
REPORTABLE: NO	
OF INTEREST TO OTHER JUDGES: NO	
REVISED: YES	
13/10/2025	_____
DATE	SIGNATURE

IN THE MATTER BETWEEN:

ADV JOHAN MALHERBE KILIAN N.O

In his capacity as *Curator ad Litem* to

G[...], A[...]

PLAINTIFF

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MOSTERT AJ

1. On the 21st of October 2024 Modau J handed down an Order apparently by agreement between the Plaintiff and the Defendant that the Defendant is liable to compensate the Plaintiff for 100% of the agreed or proven damages that A[...] G[...] (Identity number: 8[...]) (hereinafter referred to as “the Patient”) suffered as a result of the accident that occurred on the 14th of March 1991.
2. On the 2nd of June 2025 Manoim J handed down an Order to strike the Defendant’s defence and authorised the Plaintiff to proceed to trial by Default.
3. The application for Default Judgment came before this Court the week of 2 September 2025.
4. The Plaintiff in this matter is acting in his representative capacity as curator ad litem for the Patient.
5. The basis of the Patient’s claim against the Defendant is an accident that took place on the 14th of March 1991 in Johannesburg where the Patient was knocked over by an unidentified motor vehicle that failed to stop after the accident. According to the Particulars of Claim as a result of the collision the Patient suffered a severe brain injury with GCS 5/15.
6. The Patient was 9 years and 3 months old at the date of the accident and is currently 42 years old.

7. When the Summons was initially issued the Plaintiff claimed R1 500 000,00 in respect of estimated future loss of earnings and earnings capacity and claimed a sum of R1 000 000,00 in respect of general damages.
8. In the current Particulars of Claim the Plaintiff claims R14 561 136,00 in respect of past loss and estimated future loss of earnings and estimated future loss of earnings capacity based on an actuarial report by Algorithm Consultants and Actuaries as well as a sum of R2 000 000,00 in respect of general damages. The Plaintiff's counsel brought an application during argument to increase the sum of R2 000 000,00 to R3 000 000,00.
9. When the matter was argued the Plaintiff brought an application in terms of the provision of Rule 38(2) to present evidence of experts on affidavit. This application was granted.
10. The Plaintiff utilised the services of Dr Leon Fine (psychiatrist) as an expert witness in the matter.
11. His conclusion is that the patient presents with having sustained a head injury with a very significant organic brain damage. She has significant ongoing deficits with memory, mood and personality, affecting her ability to perform and enjoy her normally day of living and life amenities. She revealed that her functioning level was in the intellectual disabled range with global alteration in mental status, condition and highest integrated function, and in all areas and affecting her ability to function normally.

As

a result of her brain damage she is functioning in the range of mental retardation which can be considered as permanent and irreversible.

12. Trevor Reynolds who is a forensic clinical and neuro psychological specialist concludes that his examination reveals severe neuro cognitive impairments consistent with a profound traumatic brain injury, but with some surprisingly relative preserved abilities, most notably with regards to incidental visual learning and working memory for logical related auditory / verbal material (Case lines 08-52).
13. He concludes that past loss of earnings is not material in the matter as the Patient was a scholar at the date of the accident. Future loss of earnings must be considered absolute as the patient does not have the cognitive or behavioural capacity to be trained for, or gain and maintain employment in anything other than especially protective employment. The realistic prospect of accessing such employment is minimal.
14. The actuary utilised by the Plaintiff is G A Whittaker who assessed the Patient when she was age 42. He assumed a normal life expectancy namely an additional 35,94 years. He assumed that the patient would have completed grade 12 and would have obtained a NQF 6 qualification. However, both these conclusions are based on the contingencies of the life expectancy of an HIV positive person and is open to severe doubt, and amounts to speculation.

15. For purposes of this Judgment it is accepted that the Patient has zero capacity for future income or income capacity as a result of the injuries she sustained in the accident.
16. It is possible to determine damages for loss of earning and earning capacity at the date of the trial and not the date of delict. See in that regard Visser & Potgieter The Law of Damages Third Edition, page 92. See also General Accident Insurance Company SA Ltd vs Summers etc 1987 (3)SA577(A). See Muller vs Government of the RSA 1980 (3)SA970(T) at 974 -975 – **“The general rule is that damages must be assessed as at the date of the wrong, although it may be that in the case such as the present (where the Plaintiff’s only became aware of the wrong at the later date when the damages may have been increased by the amount of additional interest accrued) the time for the assessment of damages may be the date when they got to know of the wrong.”**
17. According to Visser & Potgieter page 465 there is not only one generally accepted measure of damages for loss of earning capacity.
18. In Southern Insurance Association Limited vs Bailey 1984 (1SA98(A)) the Court accepted that the aim to calculate future loss of earnings and earning capacity is to try and make an assessment by way of mathematical calculation on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of these assumptions and these may vary from the strong probable to the speculative.

19. Accordingly, it is appropriate in the instant case to evaluate the damage that the Patient has suffered by due consideration to facts known even though it is more than 30 years since the delict occurred.
20. Whittaker assesses past loss uninjured applying a contingency of 10% leaving a value of R5 988 240,00. This according to the actuary is the amount she is entitled to for the period 14 March 1991 being date of accident up to 1 September 2023 being the calculation date, in total just over 32 years.
21. I am of the view that given the contingencies of the case and particularly the likelihood of the Patient having achieved a qualification anything higher than NQF4 is optimistic. I value the past loss of income up to the calculation date of R3 570 000,00.
22. Insofar as the Patient's future loss of earnings and earning capacity is concerned the actuary values the future income of the Patient uninjured to be R9 685 759,00 less an 11.5 contingency of R1 113 862,00 leaving future loss of income to be R8 571 987,00. In my view this is also an over optimistic view of the contingencies in this case. The Patient is HIV positive and of the necessity has a lower life expectancy. The aforesaid amount also does not take into consideration the fact that the Patient in all likelihood would have had endured long periods of unemployment as a result of child birth as well as not having qualification.

23. I consider an amount of R4 531 500,00 to be an appropriate amount for loss of future income and earnings capacity.
24. The general damages that the Patient suffered is severe. Life dealt her a cruel blow. The accident robbed the Patient of a normal life. Instead, she has to go through life with severe intellectual disabilities. However, the life she has is not without its rewards. As one factor she gave birth to three children and is in the position to care with her life partner for at least two of them. One possible way of assessing general damages would be to postulate what a Court would have awarded in 1991 and extrapolate the value of money at that given time up to today's date. I am of the view that the result will be the same. Accordingly, I award the Patient the sum of R1 500 000,00 in respect of general damages and loss of amenities of life.
25. I hand down the order enclosed herewith marked "X".

DNH MOSTERT
ACTING JUDGE OF THE
HIGH COURT
JOHANNESBURG

This Judgment is handed down electronically by circulation to the Plaintiff's Legal Representative and the Defendant by email, publication on Case Lines. The date for the handing down is deemed 13 October 2025

Date of appearance: 4 September 2025

Date Judgment delivered: 13 October 2025

Appearances

For the Plaintiff: Adv Danie Combrink / Adv Anton Louw

Instructed by: Erasmus De Klerk Inc

For the Respondent: Ms Moyo / Ms Booyens (RAF State Attorney)