



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2022/029293

**DELETE WHICHEVER IS NOT APPLICABLE**

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

21 October 2025

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DATE

  
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SIGNATURE

In the matter between:

**ANELE MXOLI obo MINOR**

Plaintiff

And

**ROAD ACCIDENT FUND**

Respondent

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**JUDGMENT**

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**MOGOTSI AJ**

### *Introduction*

1. This is an action against the Road Accident Fund (hereinafter referred to as the fund) instituted by Anele Mxoli in her natural and representative capacity of the plaintiff due to injuries she sustained as a result of an accident which occurred on or about the 29<sup>th</sup> August 2020.
2. The matter was allocated to me in the default trial court on in a virtual hearing for the determination of loss of earning capacity.
3. The plaintiff avers that the defendant is liable to compensate the plaintiff an amount of R6 335 789.00.

### *Factual background*

4. The accident occurred at the corner of Pritchard & Nugget Street, Johannesburg, when the plaintiff was knocked down by an unknown vehicle insured by the respondent.
5. The issue of the merits was previously settled at 90% because the plaintiff was found to have alcohol in his body at the time of the accident.
6. The plaintiff sustained a head injury with convulsion, fractured mandible, and right ear injury.

### *The law*

7. In *Baliso v Firststrand Bank Limited t/a Wesbank*<sup>1</sup> [2016] ZACC 23, the Constitutional Court articulated the procedure of dealing with a default judgment as follows,

“In terms of our civil procedure, 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 is usually only evidence 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.”

*The factual matrix*

8. The applicant launched an application for the evidence to be led by way of affidavits deposed to by experts and their reports to be admitted as evidence by virtue of Rule 38 (2) of the Uniform Rules of the Court. The application was granted. See *New Zealand Insurance Co Ltd v Du Toit*<sup>2</sup>, 1965(4)136 (T).
9. Dr T P Moja, a specialist neurosurgeon, and Dr P T Kumbirai, an orthopaedic surgeon, stated that the plaintiff sustained a moderate to severe focal traumatic brain injury. He has poor concentration and memory loss related to injury of the left frontal and temporal lobes. Currently, he is repeating grade 10, and a deference was made to the occupational therapist and industrial psychologist for an opinion on his future earning capacity.

<sup>1</sup> In *Baliso v Firststrand Bank Limited t/a Wesbank*<sup>1</sup> [2016] ZACC 23

<sup>2</sup> *New Zealand Insurance Co Ltd v Du Toit*<sup>2</sup>, 1965(4)136 (T).

10. DR P T Kumbirai, further stated that the patient complains of low back pain-this exacerbated by prolonged standing, walking, and lifting heavy weights. According to him, recurrent headaches, poor short-term memory, poor concentration span, and poor academic performance are the sequelae of the head injury and deferred the opinion to an educational psychologist.
11. Dr Leslie Berkerwitz, a plastic and reconstruction surgeon, opined that the applicant, despite reaching maximum medical improvement, has been left with disfiguring scarring which will benefit from surgical revision.
12. Dr Bryan Malakou, an ear, nose and throat surgeon, confirmed that the patient has a mild to moderate hearing loss, worse in the right ear and that he might benefit from bilateral hearing aids at R 60 000.00, which has a life span of about three to five years, at a cost of about R120.00 per month. Due to the nature of the loss, the middle ear surgery would not likely be of much benefit due to nature of the loss however, there may be a slight case for exploring the ear surgically, but likely for minimal benefit. The cost for the surgery would be R 50,000.00 to R60,000.00.
13. To address emotional issues, Dr Zama Radebe, a clinical psychologist, recommended that the applicant be referred for psychotherapy to address his emotional issues relating to his psychological losses as a result of the accident in question and that he will benefit from 30 sessions at the cost of R1400.00 per session. He further recommended 12 sessions valued at R1700.00 per session with a family therapist.
14. An educational psychologist, Dr A Nailer, recommended that psycho-education and family therapy be provided to aid the plaintiff and his family in coping with the changes he experiences, and psychotherapy is imperative to help him deal with the trauma of the accident.
15. Dr Corneli Myurg, an occupational therapist, opines that the plaintiff is limited to an unskilled level work due to lower levels of education, to which the head might have contributed, this does not exclude other contributory factors, however, should



complete a qualification at a TVET college, which requires motivation, he should be able to work at a semi-skilled level. He might, however, qualify for compensation under the narrative test should the court find that the head injury was the most important contributing reason for discontinuing his schooling.

16. The doctor recommended 8 hours of occupational therapy, which includes pain and stress management, balanced lifestyle, improving insight and cognition, and teaching safe postures to perform activities. The therapy is currently charged at about R980.00 per hour.
17. Lastly, he opined that the plaintiff was a grade 9 scholar at the time of the accident. He returned to school and passed the end of the year with good marks, and therefore, he suffered no direct loss of income. He, however, discontinued his schooling in grade 11, about 18 to 24 months after the accident. This may, inter alia, be attributed to cognitive difficulties after sustaining a head injury; his use and misuse of alcohol at a young age, lower socio-economic challenges with a lack of supervision and assistance, changing schools every two years or lower intellect or learning difficulties from other origins.
18. Dr Christe du Toit, industrial psychologist, opined that his reduced cognitive potential, as well as emotional, loss of hearing, inclusive of scarring, may likely contribute to a vulnerable work profile. However, from a functional perspective, no limitations are indicated, and he should be able to handle the full range of physical job demands.
19. Clemens, Muffin & Rolland, the actuaries, summarised his loss of income is set out as follows: scenario 1: R 6 368 007, scenario 2: R 10 056 808.00.
20. In the Road Accident Fund v Kerridge<sup>3</sup>, 2019 (2) SA 233 (SCA) Para 40, the Supreme Court of Appeal, in dealing with loss of income, articulated as follows:

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<sup>3</sup> the Road Accident Fund v Kerridge<sup>3</sup>, 2019 (2) SA 233 (SCA) Para 40

“Any claim for future loss of earning capacity requires a comparison of what a claimant would have earned had the accident not occurred, with what a claimant is likely to earn thereafter. The loss is the difference between the monetary value of the earning capacity immediately before the injury and immediately thereafter.”

#### *Evaluation*

21. The pith of my decision is based on the matter of Balito mentioned supra because I am duty-bound to follow precedent. In my view, the plaintiff succeeded in proving his case on a balance of probabilities through the uncontested evidence placed before the court. The plaintiff suffered a head injury, loss of hearing in the right ear, and a fractured mandible.

22. He was in grade 9 at the time of the accident and discontinued his schooling in grade 11, about 18 to 24 months after the accident. It is found that probabilities are that he discontinued schooling as a result of the accident and the sequelae of the injuries. According to him, recurrent headaches, poor short-term memory, poor concentration span, and poor academic performance are the sequelae of the head injury. Therefore, he qualifies for compensation under the narrative test.

23. In the circumstances, the following order is made:

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

A handwritten signature in black ink, appearing to be 'P J Mogotsi', is written over a solid black rectangular redaction box. The signature is fluid and cursive.

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**P J MOGOTSI**

**ACTING JUDGE OF THE HIGH COURT**

**GAUTENG, DIVISION**

**JOHANNESBURG**

**Appearances**

Attorney for Plaintiff: Mr Mudau

instructed by TP Mudau Inc

Attorney for respondents: State Attorney (RAF)

Date heard: 12 August 2025

Date of Judgment: 21 October 2025