



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case No: **12081/2016**

In the matter between:

J[...] G[...] obo

D[...] G[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Neutral citation: *G[...] v Road Accident Fund* Case No 12081/2016 [2025]
ZAWCHC (27-10-2025)

Coram : **MAPOMA, AJ**

Heard : 14 August 2025

Judgment : 27 October 2025 (Delivered Electronically)

Summary : **Delict** - action for damages – personal injuries - mother claiming in her representative capacity as guardian on behalf of her minor child for injuries she sustained as a result of a motor vehicle accident –parameters to be used in calculating loss of earnings and contingency deduction to be applied determined

ORDER

1. The Defendant is liable to pay the Plaintiff the total sum of **R5 591 973 (Five Million Five Hundred and Ninety-One Thousand Nine Hundred and Seventy-Three Rand)** for loss of earnings.
2. The Defendant is liable to pay the Plaintiff's costs as between party and party, which costs shall include:
 - 2.1. Counsel's fees on Scale C of the High Court.
 - 2.2. The costs of reports, addendum reports and qualifying fees of the medico-legal experts, where applicable.

JUDGMENT

MAPOMA, AJ

[1] The plaintiff instituted damages claim in her representative capacity, acting on behalf of her minor child, against the Road Accident Fund (RAF) in terms of

the Road Accident Fund Act 56 of 1996 as amended (the Act) for injuries sustained by her minor child (“the minor”). This emanates from a motor vehicle accident that occurred on 4 September 2011.

[2] The minor was born on 27 July 2011. On 4 September 2011, at about 17h15, and in Chatsworth Road, Malmersbury, Western Cape, a collision occurred when the insured motor vehicle in which the minor was a passenger left the road and drove into a cement sewage barrier. At the time of the accident the minor was a 6-week-old baby.

[3] The plaintiff’s case is that the collision is attributable to the negligence of the driver of the insured motor vehicle. As a direct consequence of the accident caused by the negligence of the driver of the insured motor vehicle, the minor suffered bodily injuries.

[4] The defendant conceded the issue of liability at 100% of the plaintiff’s proven or agreed damages on the merits. The defendant also accepted that the plaintiff sustained serious injuries that qualify for the payment of general damages. In this regard, the parties settled the general damages claim at an amount of R1 400 000.00 (*One Million and Four Hundred Thousand Rands*).

[5] The only issue for determination by the Court is loss of earnings. In particular, the Court is called upon to determine the earning parameters and the contingency to be applied to the pre-morbid and post-morbid future loss of income calculation in respect of the plaintiff’s claim. Thus, the Court will determine the amount to be used for the future loss, from which the deductions are to be made once the Court determines the contingency to be applied.

[6] The plaintiff filed the medico-legal reports of the expert witnesses in terms of rule 36(9)(a) and (b) of the Uniform Rules of Court, namely, Prof Hartzenberg, Neurosurgeon; Elspeth Burke, Neuropsychologist; Prof Anthony Figaji, Neurosurgeon; Dale Ogilvy, Speech Therapist; Margaretha Labuschagne, Occupational Therapist; Carli Brummer, Occupational Therapist Anneke Strauss, Industrial Psychologist; and Mary Cartwright, the Actuary.

[7] The defendant also filed the medico-legal reports of the congruent expert witnesses in terms rule 36(9) (a) and (b) of the Uniform Rules of Court. These include MP Ndlovu, Educational Psychologist; SJS Nteso, Industrial Psychologist; Dr Mahesh Pillay, Neurologist; and Shaun Burger, Actuary.

[8] During trial, the plaintiff led oral evidence of two expert witnesses, namely, Dr Dale Ogilvy, the speech therapist and Ms Anneke Strauss, the Industrial Psychologist. The defendant did not call any witness to lead oral evidence.

[9] Dr Ogilvy, the speech therapist, testified that she examined the minor, and duly prepared a medico-legal report that was filed on record. In summary, her findings she presents normal speech production and use of syntax, she demonstrates significant cognitive linguistic and communicative deficits. These include word retrieval deficit and poor flexibility in use of words; poor verbal reasoning in determining causal relations between words; and marked difficulties processing, comprehending and recalling auditory verba information of increased length; and significant disturbances in the acquisition of written decoding skills.

[10] Under cross examination she confirmed her language is normal but her communicating deficiency is a serious limitation. She further confirmed that

whilst the minor does not have physical impairment, she would find difficulty following instructions even in relation to physical work due to the abovementioned deficiencies, partly because she cannot comprehend and follow processes.

[11] Ms Strauss, the Industrial Psychologist testified that the joint-minute dated 4 June 2024 was concluded by and between her and her counterpart Ms Nteso. In concluding the joint minute, these experts took into account, amongst others, Robert Koch Quantum Yearbook 2024.

[12] She testified that due to the injuries sustained by the minor, the latter's employment prospects are severely diminished, in that she is unlikely to obtain a matriculation qualification, and as such would not be easily employable. She further opines that, if employed the minor would only be employed as an unskilled employee. This is exacerbated by the fact that she is epileptic and as such, will not be able to sustain employment, in that she will not be able to work with machinery.

[13] Under cross-examination, Ms Strauss testified that while the minor will not be unemployable, she will have to perform physical work only as an unskilled employee due to intellectual impairment. She further testified that while she is not physically impaired, the minor epileptic condition is a limitation to her access to the job market.

Loss of Earnings Parameters

[14] In *Road Accident Fund v Kerridge*¹, the Supreme Court of Appeal (SCA) confirmed that any claim for future loss of earning capacity requires a comparison of what the claimant would have earned had the accident not occurred, with what a claimant is likely to earn now that the claimant has injuries post-accident. The loss is the impact of the accident on the claimant, this being the difference between the monetary values of earning capacity immediately prior to the injury and immediately thereafter.

Industrial Psychologists

[15] The parties instructed their respective industrial psychologists to evaluate the impact of the accident and its *sequelae* on the minor child's future employment prospects. The prospects are evaluated by considering the pre- and post-accident career prospects of the claimant taking into account the evidence and findings of the expert witnesses. *In casu*, the medico-legal reports of the neurosurgeons, neuropsychologist, speech therapist, occupational therapist, and educational psychologist were considered.

[16] The respective industrial psychologists of the parties concluded a joint minute on 4 June 2024. In the joint minute the experts agreed and recorded their common ground on certain facts when projecting on the minor's pre-morbid career path.

Pre-morbid Potential

[17] In their joint minute, the respective psychologists agreed that at the time of the accident, the plaintiff was a minor and thus, has no remuneration history; that she was healthy and would pass matric in 2029 at age 18, and progress to a 4-year University degree of her choice.

¹ 2019 (2) SA 233 (SCA) para 40-44

[18] They also agree that she would have entered the open labour market but would have suffered 12 to 18 months of unemployment before gaining employment. The experts opine that upon entering the labour market, she would be earning between R161 000 to R303 000 per annum, based on the STATSSA earning by level of education, Robert Koch, The Quantum Yearbook 2024, Bachelors Degree, lower and median quartile early career.

[19] According to the joint minute, her earning would increase at age 35 to between R421 000 and R759 000 per annum, based on the STATSSA earning by level of education, Robert Koch, The Quantum Yearbook 2024, Bachelors Degree, median and upper quartile mid-career. Further, at age 45 by between R535 000 and R1012 000 per annum, based on the STATSSA earning by level of education Robert Koch Quantum Yearbook 2024, median upper quartile, late career, whereafter she would have received annual inflationary increases until retirement at age 65.

Post-morbid potential

[20] In their joint minute, the respective industrial psychologists note that the minor is repeating some grades due to the effect of the accident. They opine that the claimant's academic potential and thus future employability have been compromised by the accident. They projected that based on these factors, the claimant is unlikely to pass matriculation.

[21] She will therefore enter the open labour market as an unskilled employee in 2031, earning R56 000 to R71 000 per annum. At age 35 she will be earning R94 000 to R162 000; and at age 45 earning R118 000 to 216 000, whereafter her future earnings would be accompanied by annual inflationary increases until she retires at age 65.

[22] The joint minute of the respective industrial psychologists was used by both parties' respective actuaries. The latter have submitted their respective actuarial reports. In particular, Mary Cartwright and Shaun Burger prepared and submitted their respective actuarial reports for the plaintiff and defendant respectively, in which they propose the earning parameters.

Actuarial Reports

[23] In their respective reports, the actuaries presented their calculations to depict the present value of minor's earnings to assist the Court in determining the parameters of her loss of earnings. The respective actuaries provided their proposed calculations of the earnings parameters and proposed contingency allowances. The Court has carefully considered the actuarial reports and evidence led in arriving at the parameters and the appropriate contingencies to be applied in making a determination of the loss of earnings.

[24] It seems to me that in order to arrive at the value parameters of future income, the respective actuaries made their calculations based on the information supplied by the industrial psychologists in their joint minute. The only difference in the proposed amounts is attributable to the time-influenced figures.

[25] In the most recent actuarial report submitted by Mary Cartwright based on the calculations of 1 April 2025, applying the updated Robert Koch Quantum Yearbook 2025, the figures of R9 105 200 for pre-accident earnings scenario, and R2 707 500 for post-accident scenario. These figures are slightly higher than the figures submitted by the defendant's appointed actuary, Shaun Burger, which are R9 059 536 for pre-accident earnings and R2 687 106 for post-

accident scenario. In the Court's assessment, the differences in the above figures make no difference, for it is simply attributable to nothing more than a time lag between the dates of calculations based on the time value of money.

[26] It is trite that a court is not bound by an opinion of an expert, and that the court must make its own determination on what is just and fair, based on the evidence presented to prove the loss of earning capacity. In this case, the Court has carefully considered the joint minute of the industrial psychologists that illustrates the value of the claimant's future loss of income based on both the pre-accident and post-accident scenarios, as well as the calculations of the actuaries as illustrated in their respective actuarial reports.

[27] Having assessed the factual situation as shown by the industrial psychologist and the actuarial calculations, the Court is satisfied that the figure of R9 105 200 is an appropriate amount to be used as the pre-accident future income, from which the deductions are to be made once the court determines the contingency to be applied. The Court is also satisfied that the amount of R2 707 500 for post-accident scenario is a just, fair and appropriate amount to be used. I now turn to the appropriate contingencies to be applied to the above earning parameters.

Contingencies

[28] In approaching the issue of the appropriate contingencies to be applied, the Court will consider a number of factors that include the vicissitudes of life on the part of the claimant now that the accident has occurred. In *Goodall v President Insurance Co Ltd*², the court stated that in assessing a proper allowance for contingencies, arbitrariness will play a part. Naturally, the court

² 1972 (2) QOD 717 (W)

will exercise its discretion and decide as to what is fair. In so doing, the Court will have to make a fair determination of the appropriate contingencies to be applied based on the particular facts in this case.

[29] In her actuarial report dated 1 April 2025 submitted on behalf of the plaintiff, Mary Cartwright proposes a contingency deduction of 20% to be applied to the minor's uninjured income and 50% on uninjured income. In this regard, the defendant's actuary has used 15% and 25% respectively.

[30] The facts which the Court notes are that the claimant was 6 weeks of age at the time of the accident and is now 14 years which is basically a period post-accident. According to the industrial psychologist, had she not been injured as a result of the accident, the claimant would have entered the open labour market with a degree qualification in 2035 at age 24. This means she would have 41 years of work life until retirement age of 65.

[31] Applying the Robert Koch Quantum Yearbook 2025, 0.5% per year to retirement, the contingency deductions on the plaintiff uninjured scenario over 41 years is 20.5%, based on calculations of 0.5% per annum. The court notes that the plaintiff's actuary has used 20% contingency whereas the defendant used an assumed 15% contingency in this scenario. The Court takes the view that the normal contingency of 20% is an adequate contingency deduction to be applied on the pre-accident scenario.

[32] In respect of the post-morbid scenario, the plaintiff has proposed that the Court apply higher than normal contingencies for loss of earnings. In this regard, the plaintiff has proposed 50% contingency deduction. However, in its actuarial report, the defendant has proposed 25% deductions. It seems to me that

both parties accept that higher than normal contingencies are required, noting that they both envisage the application of contingency above the normal contingency which, in the Court's view would be 22%. This is plausible in the Court's view, bearing in mind the factors that have severely affected the claimant now that the accident had occurred.

[33] It is trite that the Court can deviate from normal contingencies in circumstances where they are not appropriate. In this regard, the court has a wide discretion and may deviate from the normal contingencies to arrive at the most appropriate contingencies to be applied based on the relevant factors and uncertainties that have to be provided for.

[34] Some of the factors the Court considered are that the claimant's academic potential and future employability have been severely affected by the accident. This is exacerbated by the fact that due to her epileptic condition, the claimant will not be able to work on machinery where her safety will be jeopardised. This situation further limits her employment choices, in that she will require a sympathetic employer and will thus be unable to compete effectively for employment in the open labour market.

[35] The Court has considered the factors raised by the plaintiff for deviation to higher-than-normal contingencies on future post-morbid scenario. While the court has a discretion to apply, it is incumbent upon the court to apply the discretion judiciously, bringing justice and fairness to bear in determining the appropriate amount. The Court is persuaded that the application of higher-than-normal contingencies is justified in the circumstances. However, the Court is not persuaded that a contingency deduction as high as 50% is justified and fair.

[36] The Court is mindful of the devastating effect the accident had on the academic performance in the mainstream schools. However, in the Court's view, the effect might be ameliorated by the claimant attending specialised schools. Thus, having considered all the relevant factors, the Court takes the view that the contingency deduction of 37.5% is justified, fair and reasonable in the circumstances.

[37] Applying the amounts determined as appropriate loss of earnings parameters and the contingencies, the Court has arrived at the loss of earnings as follows:

	Pre-morbid	Post-Morbid	Net Loss
Value of future income	9 105 200	2 707 500	
Less Contingency deduction	20%	37.5%	
Net Value of Future Income	7 284 160	1 692 187	5 591 973

[38] The Court has also taken into account that the cap stipulated in the Road Accident Fund Amendment Act ("the RAF Amendment Act cap") does not apply in this case. Thus, after applying the contingencies of 20% and 37.5%, a total amount of R5 591 973 is awarded for plaintiff's loss of earnings.

Costs

[39] It is an established principle that costs follow the results. I find no reason to deviate from this principle in this case. The plaintiff has succeeded in her claim and is therefore entitled to an award of costs on a party and party scale.

[40] In terms of Rule 67A of the Uniform Rules of Court, Counsel's fees in the context of a party and party costs in the High Court are awarded on Scales A, B, and C as the case may be, depending on a number of factors set out in Rule 67A(3) to be considered when setting out a scale of costs. Such factors include the complexity of the matter, value of the claim, importance of the relief sought and any other relevant factors.

[41] It is the Court's view that Scale C is warranted in this case, based on the factual and legal complexity of the matter, necessitated by the absence of settlement on the matter and incidental skills required to be applied by a legal professional senior enough to assist in resolving the matter. The value of the claim is substantial. The Court is satisfied that an award of counsel's fees on the High Court Scale C is justified in the circumstances.

Order

[42] In the result, the following order is made:

3. The Defendant is liable to pay the Plaintiff the total sum of **R5 591 973 (Five Million Five Hundred and Ninety-One Thousand Nine Hundred and Seventy-Three Rand)** for loss of earnings.
4. The Defendant is liable to pay the Plaintiff's costs as between party and party, which costs shall include:
 - 4.1. Counsel's fees on Scale C of the High Court.

- 4.2. The costs of reports, addendum reports and qualifying fees of the medico-legal experts, where applicable.

ZL MAPOMA
ACTING JUDGE OF THE HIGH COURT

Appearances

Counsel for the Plaintiff : Adv Engers SC

Instructed by : Kruger & Co, Cape Town

Counsel for the Respondents : Mr S Mushwana

Instructed by : State Attorney, Cape Town