HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 28680/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 21 OCTOBER 2025

SIGNATURE

In the matter between:

SIBONGAKONKE PHIWAYINKOSI NDLOVU Plaintiff

and

THE ROAD ACCIDENT FUND Defendant

Summary: *Damages – claim against the Road Accident Fund – application of contingencies in respect of future loss of income*.

ORDER

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1. The defendant is liable for 100% of the applicants proven or agreed damages as a result of the accident which occurred on 6th August 2021.

2. The defendant is ordered to pay General Damages to the Plaintiff in the amount of R 700 000.00 (Seven Hundred Thousand Rands).

3. The defendant is ordered to pay the sum of R3 360 288.00 (Three Million Three Hundred and Sixty Thousand Rand and Two Hundred and Eighty-Eight Rand) in respect of loss of earnings and earnings capacity. The said amount is payable into the following bank account:

NAME OF THE BANK:	**FNB**
ACCOUNT HOLDER:	**SONTSELE ATTORNEYS**
TYPE OF ACCOUNT:	**TRUST ACCOUNT**
ACCOUNT NO:	**6[...]**
BRANCH CODE:	**2[...]**
BRANCH:	**ARCADIA**
REF:	**5[...]**

4. The defendant is ordered to issue a certificate in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996.

5. The defendant shall be liable for interest on the above amount provided that same is paid within one hundred and eighty (180) days from the granting of this order, in which event the defendant will be liable to pay interest on the outstanding amount at the prevailing rate of interest, as determined from time to time in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended.

6. The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs of suite on a High Court scale B to date hereof.

7. In the event that the costs are not agreed,
   7.1. The plaintiff shall serve the notice of taxation on the defendant's attorneys of record;
   7.2. The plaintiff shall allow the defendant Fourteen (14) court days to make the said payment of the taxed costs; and
   7.3. Should payment not be effected timeously, the plaintiff will be entitled to recover interest on the outstanding amount at the prevailing rate of interest, as determined from time to time in

terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended.

8. The above costs will also be paid into the above trust account, which costs shall include:

8.1. The fees for the employment of counsel on Scale B, for appearance on 6th August 2025 when the matter was postponed to 8th September 2025.

8.2. The plaintiff's reasonable costs for obtaining all medico-legal reports, as well as addendum reports and of the following experts being:

8.2.1. Neurosurgeon (Dr Segwapa)

8.2.2. Clinical Psychologist (N Ngubane)

8.2.3. Educational Psychologist (Dr X S Fakude)

8.2.4. Occupational Therapist (N Mbokane)

8.2.5. Actuary (Johan Sauer)

J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 21 October 2025.

DAVIS, J

Introduction

[1] The Plaintiff was born on 9 December 2006. On 3 April 2021, when he was 14 years old he was involved in a motor vehicle accident. He was a pedestrian at the time. The action was initially instituted by the plaintiff's legal guardian who he has subsequently replaced, upon having become a major.

[2] The defendant is the Road Accident Fund ("*RAF*"). The plaintiff was represented by Adv. C Mosala and the RAF by Adv. T Mukasi.

[3] Both parties had delivered expert reports however, no joint minutes have been produced. The matter stood down for purposes of obtaining such joint minutes and eventually came to be heard on 8 September 2025. By that time it was clear that joint minutes would not be in the offing as the RAF has terminated the services of the service provider who arranged for the appointment of and liaising with experts. The court was therefore left with competing expert reports and a set of actuarial calculations on behalf of each of the parties.

[4] The legal representatives had both represented arguments to the effect that R700 000.00 as an award for general damages would be fair in the circumstances. The only outstanding issue was the amount of loss of earnings capacity and this judgment shall therefore be restricted thereto. The parties had agreed that the affidavit evidence presented by the experts can be accepted in terms of Rule 38(2).

[5] The issue in question is whether the plaintiff would, in a pre-accident scenario, have obtained an NQF7 qualification and what estimated qualification he would now obtain post-accident. The parties also presented argument on the contingency percentages to be applied.

Summary of the relevant evidence

[6] The Plaintiff has delivered expert reports in respect of a neurosurgeon, an educational psychologist, a clinical psychologist, an occupational therapist, and industrial psychologist and an actuary. The gist of opinions of various experts were summarised in heads of argument delivered on behalf of the plaintiff to which I shall refer to hereunder.

[7] The neurosurgeon has determined that the plaintiff had suffered direct trauma to the head in the accident resulting in a mild concussive head injury. The remaining neurological consequence thereof is that he is forgetful. He did not have an increased risk of epilepsy.

[8] The clinical psychologist, who had referred to the neurosurgeon as to the severity of the injury, was of the opinion that the areas of neurocognitive impairment were: impaired visual memory, learning and auditory memory, visual and motor-visio perceptual skills and executive functioning. He also concluded that there was a slight impairment to the plaintiff's attention and working memory. He expressed the view that physical and neurocognitive deficits caused the plaintiff significant distress at school, home and in his social life.

[9] The educational psychologist stated that the plaintiff was battling with school and could not concentrate. His memory disturbances caused emotional problems and he experienced difficulty in processing information faster as a result of the slight impairment in his attention and working memory domains. She was of the opinion that the plaintiff had significant compromised functioning.

[10] The occupational therapist was of the opinion that should the plaintiff pursue any physical based vocational options, his limitations and restrictions would result in occupational barriers which may make it difficult to obtain employment. She was therefore of the view that he was suited for sedentary medium to heavy capacity work. She expressed the view that the plaintiff's cognitive issues will narrow his work options and make him vulnerable in the open labour market.

[11] Reliant on the above, an actuarial report postulated that the plaintiff would progress to a Bachelor's degree and would have been able to earn an income equivalent to the medium income for individuals holding such a decree up to his mid-career stage and thereafter with linear income increases until age 45, reaching his career ceiling. As to post-morbid income, the postulation was that the plaintiff would be likely to obtain only a Grade 12 qualification. The contingency deductions were 20% pre-morbid and 40% post-morbid, resulting in a total loss of R7 175 098.00 (the CAP imposed in the Road Accident Fund Amendment Act 19 of 2005 did not effect this calculation).

[12] The RAF's educational psychologist was very general in her prognosis. This was due to the fact that she lamented that there had been no specialised academic supports from the plaintiff and no psychological therapy for him or his mother to heal

from the secondary trauma post-accident. Regarding loss of earnings she simply stated the following: "*The negative impact of his injuries on his cognitive, physical and psychological functioning will interfere with his academic and vocational education and consequently his vocational prospects. His future earnings potential should be considered in terms of compromised academic and vocational potential which will consequently impact negatively on his livelihood prospects*".

[13] The RAF's occupational therapist was more specific and reported inter alia as follows: "*The Claimant reports that he completed Grade 10 in 2023. He states that he did not fail any grade post-accident. He is currently doing Grade 11 at Lutuli High School in 2024. He was in Grade 8 at the time of the accident. He says his performance was good before the accident. He has now poor memory and poor concentration which impacts his performance poorly. He has poor memory and poor concentration since his accident according to him. These difficulties will impact his scholastic and work performance in a negative way. Deference is given to the opinion of a Clinical Psychologist and Educational Psychologist regarding these difficulties. The Claimant will be able to enter the open labour market in most job categories which are medium and light in nature*".

[14] The RAF's industrial psychologist concluded the following in respect of the plaintiff's future loss of earnings: "*The Claimant has incurred future loss of income aimed to the injuries sustained in the reported accident. Furthermore, it is accepted that he will find it difficult to compete on par with his uninjured peers and has thus been rendered a vulnerable competitor in the open labour market. It is opined that his pre- and post-accident earning potential should be used to calculate his future loss. The writer notes the challenges he currently experiences due to the accident in question and acknowledges that the granting of contingency remains the prerogative of the courts and is a matter for negotiation by the legal experts*".

Evaluation

[15] It is clear that the plaintiff has suffered some cognitive and attention impairment but it is equally clear that he has retained a significant income earning potential. At the time of the hearing he had successfully negotiated Grade 11 and was then in Grade 12. There is no indication that he would fail Grade 12 and the

question is simply how far he would go academically if he could not reach his pre-accident potential.

[16] The impairment that he might have suffered as a result of the lower back injury and the possible impairments to his one ear was neither fully explained nor explored. The extent of either these impairments were not mentioned as debilitating circumstances regarding his academic progress. The plaintiff always had and still has the intention of becoming an accountant. This would fit in neatly with the experts' opinion that he should pursue sedentary or light physical work.

[17] On behalf of the RAF it was argued that it could be accepted that the Plaintiff would have reached an NQF7 qualification which would have resulted in pre-accident earnings of R12 316 590.00.

[18] It was argued however that he would at least post-accident be able to obtain an NQF6 qualification resulting in a post-accident income of R8 768 875.00.

[19] I find some support for the RAF's argument that the impairment that the plaintiff has suffered did not have such a material effect that it would have reduced his vocational ability to lower than reaching an NQF6 level. This support is found in the following finding by the plaintiff's clinical psychologist: "*Sibonga Konke is said to be coping well at school. The CPM revealed average functioning in his intelligence. His intelligence function remains comparable to that in the pre-morbid capacity*". Although the clinical psychologist indicates that the plaintiff is experiencing difficulties with processing information faster and is easily distractible and complains of some memory issues, this appears to be more mood related. Psychotherapy to deal with moderate symptoms of depression and coping with feelings of helplessness and hopelessness was recommended.

[20] This court has often expressed the view that it is lamentable that persons injured in motor vehicle accidents do not receive treatment at the soonest possible junction. In particular, youthful plaintiffs or minors will benefit from such treatment, including psychotherapy and educational assistance while they are still at school. Obtaining such assistance, the earliest opportunity will not only assist such plaintiffs

in their recovery and reduce their loss of amenities but will in all likelihood have a positive impact on their future academic or vocational progress and their occupational prospects. This will also go a long way to satisfy the general obligation on plaintiffs to mitigate their damages. In the present instance, although the plaintiff's mother was a single parent, there was no evidence of her seeking any relief from any state institutions or her being advised by her attorney to do so. Be that as it may, the court is also entitled to take into account that, once the order is granted, the plaintiff will have the benefit of a statutory certificate contemplated in Section 17(4)(a) of the Road Accident Fund Act 56 of 1996.

[21] Taking all the above into consideration as well as the often quoted case law that contingencies and the enquiry into damages for loss of earning capacity is of its nature speculative[1], I find that a 30% contingency deduction in the pre-morbid scenario, having regard to the plaintiff's youthful age and the contingent aspects of future study, would be appropriate and that in the post-morbid scenario a 40% contingency would be fair and reasonable in the circumstances.

[22] Applying these contingencies the difference between the postulated pre-morbid income of R8 621 613.00 and the post-morbid income of R5 261 325.00 equals an amount of R3 360 288.00.

[23] The parties have also favoured the court with a draft order making provision for the terms on which they had otherwise reached each other relating to the furnishing of the certificate as mentioned above and the issue of costs. I shall insert the above determination in the draft order and make it an order of court.

Order

[24] Having hear the parties it is ordered that:

1. The defendant is liable for 100% of the applicants proven or agreed damages as a result of the accident which occurred on 6th August 2021.

[1] *Southern Insurance Association Ltd v Bailey* NO 1984 (1) SA 98 (A) and *RAF v Guedes* 2006 (5) SA 583 (SCA).

2. The defendant is ordered to pay General Damages to the Plaintiff in the amount of R 700 000.00 (Seven Hundred Thousand Rands).

3. The defendant is ordered to pay the sum of R3 360 288.00 (three million three hundred and sixty thousand rand and two hundred and eighty eight rand) in respect of loss of earnings and earnings capacity. The said amount is payable into the following bank account:

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8.2.5 Actuary (Johan Sauer)

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 12 September 2025
Judgment delivered: 21 October 2025

APPEARANCES:

For the Plaintiff:	Adv C Mosala
Attorney for the Plaintiff:	Sontsele Attorneys, Pretoria

For the Defendant :	Mr T Mukasi
Attorney for the Respondent:	The State Attorneys, Pretoria