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

CASE NUMBER: 31955/22

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE

SIGNATURE

In the matter between:

M[...] MA OBO

PLAINTIFF

M[...] PP

And

ROAD ACCIDENT FUND

DEFENDANT

This judgement is handed down electronically by circulation to the e-mail addresses of the legal representatives of the parties. The date of the order is as indicated herein below.

JUDGMENT

DE JAGER J AJ

(1) This matter was before me on 25 and 26 June 2025.

- (2) The Plaintiff was a passenger who is a minor (assisted by her biological mother) in a vehicle which was involved in a collision on 9 November 2020 on the R 511 in Pretoria and was subsequently transported to Kalafong hospital by ambulance.
- (3) The issues to be determined by this Court are the merits of the Plaintiff's claim and the quantum of damages to be awarded should the claim be successful.
- (4) Summons was issued on 13 June 2022 [Caselines: 013];
- (5) The matter was defended by the State Attorney on 3 June 2024 [Caselines: 0001-0002];
- (6) A notice of bar was served on the Defendant on 12 July 2024 [Caselines 018:1]. Subsequently the Defendant was *ipso facto* barred, and no subsequent application to uplift the bar was filed;
- (7) The Plaintiff requested that the affidavits in terms of Rule38(2) as well as the affidavits of the medical experts be accepted by this Court as evidence. Evidence was also presented by two experts being the educational psychologist and the Neuro Clinical Psychologist (referred to later herein).

MERITS

- (8) The fact that the Plaintiff was a passenger is supported by the documents included in [Caselines 014].
- (9) A complete affidavit in terms of section 19(f) was requested and received on 30 October 2025. This confirmed the phone call between the Plaintiffs' mother and the insured driver where he admitted to her that he "*lost control of the vehicle*" This was also referred to in the comprehensive head of argument on [Caselines 016:2].

- (10) On the basis that the Plaintiff was a passenger she needs to prove 1% negligence by the insured driver in support of her claim. On the finding that the insured driver was 1% negligent, the Defendant is liable for 100% of the plaintiffs proven damages (See: Groenewald Road Accident fund (74920/2014[2017])).
- (11) The accident report reflects that the insured driver could not speak due to his injuries.
- (12) In the affidavit attested to by the Plaintiff's mother [Caselines 015:1] it is stated that the insured driver lost control of the vehicle that subsequently overturned.
- (13) I therefore find that the Plaintiff has proven the negligence of the insured driver on a balance of probabilities.
- (14) The merits of the Plaintiff's claim are upheld.

QUANTUM

- (15) The next issue is to determine the quantum of the Plaintiffs claim.
- (16) The quantum of the claim concerned are (a) general damages and (b) the Plaintiff's loss of earnings.
- (17) The following experts were appointed by the Plaintiff to provide medico- legal reports:
- | | |
|-----------------|-----------------------------|
| Dr Seroto | Neurosurgeon |
| De Baloyi | Orthopaedic surgeon |
| Dr Mputi | Neuro Clinical Psychologist |
| Mrs Y Segabulte | Educational Psychologist |
| L Lauauise | Industrial Psychologist |
| Mrs Phasa | Occupational therapist |
| Dr Moja | Neurosurgeon |
| Mr Mureiriwa | Actuary |

- (18) The hospital records confirmed the date of the accident and the Plaintiff's injuries including the admission documents confirming a head and spine injury, an MRI report and various scripts.
- (19) The minor was in hospital for 8 days and was released on the 17 November 2020.

BRIEF SUMMARY OF EXPERT REPORTS

- (20) Not all expert reports will be referred to and summarized but was duly considered. Two experts were called to testify to clarify their reports. They are Dr Mputi the Clinical psychologist that specializes in neuropsychology and the education psychologist Mrs M Segabutle. The most important expert evidence is summarised in paragraph (21-24 herein below).

- (21) Dr Seroto (neurosurgeon):

- a) The minor sustained a head injury with bruising on the face and neck. Clinical records show that the Glasgow Scale was 15/15 when she admitted.
- b) The plaintiff has post concussive syndrome and this is evidenced by frequent headaches (twice a week), irritability, memory problems and dizziness, neuro cognitive and neuro physical impairment, specifically memory impairment and suffers from emotional liability and some signs of post-traumatic stress disorder.
- c) A definite change in personality is also recorded.
- d) Unsightly scarring in the face is recorded.
- e) A mild traumatic brain injury [Caselines 002-128].
- f) Qualifies is the narrative test is applied of more than 30% WPI.

- (22) Dr Mphuthi (Neuro clinical psychologist report):

- a) The neuro psychological performance as indicated by the neurocognition index, is very low denoting the presence of neuro cognitive impairment and deficit.

- b) The quantitative EEG results indicate that the brain connectivity measures show indicators of poor integration of information.
- c) Persistent patterns in the cognitive domains specifically referring to executive function, cognitive flexibility and complex attention are recorded.
- d) Low performance could be due to neuro cognitive deficits as a result of the brain injury and is aggravated by the chronic pain and stress response interfering with the allocation of cortical resources.
- e) Specific reference is made to the three factors that compounds the seriousness of brain injuries being; a) trauma to the cranium) alter consciousness and c) a period of post traumatic amnesia. It is confirmed that all three factors were present with the Plaintiff.
- f) Head injuries sustained earlier in childhood interrupt developmental processes leading to neurological deficits when then met with cognitive and self-monitoring skills emerge during the adolescent years.
- g) The minor child suffers from greater neuro cognitive impairment than the apparent injury and neuro cognitive impairment is over moderate severity. There is a very poor prognosis with the sleeper effect, and therefore the cognitive deficit should be considered to be permanent.
- h) The expert clarified two main aspects in this testimony being:
 - 1) What the sleeper effect referred to in this report is and the seriousness of the sleeper effect in the functioning of the life of the claimant.
 - 2) That verbal IQ (intelligence sufficient) that remains in the *normal category* after the incident is a direct indication that the minor was able to achieve normal milestones as this function was intact prior to the accident. This clarification was necessary as the educational psychologist could not adequately address this.
 - 3) He further emphasized the that a head injury in early developmental stages interrupt developmental processes leading to neurological deficits that present during early adolescent years when the functions of self- monitoring skills and meta cognisance emerge.

- 4) The conclusion of his testimony is that this claimant suffers from greater neuro cognitive impairment than the apparent injury and neuro cognitive impairment is greater than *moderate severity*.
- 5) There is therefore a poor prognosis given the confirmed sleeper effect of the head injury and this is considered permanent.

(23) Mrs Y Segabulte (educational psychologist):

- a) Her report indicated that the claimant failed both grade 2 and grade 4 of her foundation phase schooling. No pre-accident school reports were attached to the expert report, and she was called to testify and specifically address this issue.
- b) She testified that she contacted the different primary schools where the claimant attended but that they did not have electronic copies of the reports, as it was provided on a physical piece of paper and handed to the parents at the time.
- c) She indicated that no negative inference could be drawn from the claimant's failure of grade 2 and 4 respectively as the minor underwent two separate events (unrelated to the accident), the one being a change of school with an abrupt change in the langue of instruction that made it impossible for the claimant to excel at school. The other event was the covid pandemic where the claimant did not attend school for an extended period and due to lack of resources of the school to facilitate an online platform had to repeat the year as they children barely had school for the period of the pandemic.
- d) She confirmed that her parents both reached and completed grade 12 and that her siblings were in grade 9 and in a creche respectively.
- e) She premised that the claimant would have finalised grade 12 and be able to obtain her qualification at bachelor's level. [Caselines 002-54]
- f) She detailed the claimants continued struggles at school post-accident and that she would most likely fail out of the school system at grade 9. She also referred to her continued medical symptoms being headaches, confusion and forgetfulness.

- (24) Against the testimony of Dr Mputi and Mrs Y Segabutle the remainder of the reports of the Industrial Psychologist (Lowane Mayayise) and the occupational therapist (Mrs Adedlaide Phasa) was considered.
- (25) Having regard to the different expert reports, the Claimant has proven the nexus between the accident and her loss.
- (26) The court assesses loss of earnings by estimating what the Plaintiff would have earned had the accident not occurred compared to her current earning potential.
- (27) The principles governing these calculations are established in inter alia:
- (27.1) Santam Versekering BPK vs Byleveldt 1973 (2) SA 146 A; Southern Insurance Association Ltd vs Bailey No 1984(1) Herman v Shapiro and Co 1926 (TPD379); Anthony and Another v Cape Town Municipality 1976(4) SA 445(A); Union and National Insurance Co Ltd vs Coetzee 1970(1) SA 295 (A) and Roe v Road Accident Fund QOD Volvi J2-59.
- (28) An amended calculation based on the level of a diploma (and not a Bachelor's degree was requested) and the actuary was requested by the claimant to apply a 15% contingency and the Plaintiff's loss was calculated at: R 9 450 860.00.
- (29) The actuaries applied a 15 % contingency.

CONTINGENCIES APPLIED

- (30) In **Ralph v Road Accident Fund** (3069/2018) [2023] ZAFSHC 102 (3 February 2023) a detailed approach on the determination of contingencies is set out as follows by Molitsoane, J:
- “[20] The court in **Oosthuizen v Road Accident Fund** 2015 JDR 1717 (GJ) gave a useful summary of case law on contingencies and I refer extensively as follows:*

“Matters which cannot otherwise be provided for or cannot be calculated exactly, but which may impact upon the damages claimed, are considered to be contingencies, and are usually provided for by deducting a stated percentage of the amount or specific claims. (De Jongh v Gunter 1975 (4) SA 78 (W) 80F).

Contingencies include any possible relevant future event which might cause damage or a part thereof or which may otherwise influence the extent of the plaintiff's damage. (Erdmann v SANTAM Insurance Co Ltd 1985 3 SA 402 (C) 404-405; Burns v National Employers General Insurance Co Ltd 1988 3 SA 355 (C) 365).

In a wide sense contingencies are described as “the hazards that normally beset the lives and circumstances of ordinary people”. (AA Mutual Insurance Association Ltd v Van Jaarsveld 1974 4 SA 729 (A); Van der Plaats v SA Mutual Fire & General Insurance Co Ltd 1980 3 SA 105 (A); Southern Insurance Association Ltd v Bailey 1984 1 SA 98 (A) 117). Contingencies have also been described as “unforeseen circumstances of life”. (De Jongh v Gunther 1975 (4) SA 78 (W) 80F).

The percentage of the contingency deduction depends upon a number of factors and ranges between 5% and 50%, depending upon the facts of the case. (AA Mutual Association Ltd v Maqula 1978(1) SA 805 (A) 812; De Jongh v Gunther 1975(4) SA 78 (W) 81, 83, 84D; Goodall v President 1978(1) SA 389 (W) 393; Van der Plaats v SA Mutual Fire & General Insurance Co Ltd 1980(3) SA 105(A) 114-115A-D).

Contingencies are usually taken into account over a particular period of time, generally until the retirement age of the plaintiff

(Goodal v President Insurance Co Ltd 1978 1 SA 389 (W) 393; Rij NO v Employers' Liability Assurance 1964 (4) SA 737 (W); Sigournay v Gillbanks 1960 2 SA 552 (A) 569; Smith v SA Eagle Insurance Co Ltd 1986 2 SA 314 (SE) 319).

Often, what is described as a "sliding scale" is used, under which it is allocated a "1/2% for year to retirement age, i.e 25% for a child, 20% for a youth and 10% in middle age". **(Goodall v President Insurance Company Limited 1978(1) SA 398(W) and Road Accident Fund v Guedes 2006(5) SA 583(A) 588D-C. Likewise, see Nonwali v Road Accident Fund (771/2004) [2009] ZAECHC 5 (21 May 2009) (para 23))**

Colman J provided a useful exposition **Burger v Union National South British Insurance Co 1975 (4) SA 72 (W) 75** of the approach to be adopted by the Court:

"A related aspect of the technique of assessing damages is this one; it is recognized as proper, in an appropriate case, to have regard to relevant events which may occur, or relevant conditions which may arise in the future. Even when it cannot be said on a preponderance of probability that they will occur or arise, justice may require that what is called a contingency allowance be made for a possibility of that kind. If, for example, there is acceptable evidence that there is a 30 percent chance that an injury to the leg will lead to amputation, that possibility is not ignored because 30 percent is less than 50 percent and there is therefore no proved preponderance of probability that there will be an amputation. The contingency is allowed for by including in the damages a figure representing a percentage of that which would have been included if amputation had been a certainty. That is not a very satisfactory way of dealing with such difficulties, but no better way exists under our procedure."

*But the difficulty with this approach was appreciated by Margo J in **Goodwill v President Insurance Co Ltd** 1978(1) SA 389 W at 392H:*

“In the assessment of a proper allowance for contingencies, arbitrary considerations must inevitably play a part, for the art of science of foretelling the future, so confidently practiced by ancient prophets and soothsayers, and by modern authors of a certain type of almanac, is not numbered among the qualifications for judicial office”.

- (31) If one considers the principle of a ½% a year until retirement age calculated from the age of 25-65, a period of 40 years it will be a contingency of 20 percent.
- (32) Considering the severity of the injury compounded by the sleeper effect I am satisfied that the 15% as calculated by the actuary is fair in this instance.
- (33) The Plaintiff sought an order that general damages be postponed *sine die*.
- (34) Counsel stated that there is a valid contingency fee agreement.

[35] Accordingly, the following order is made:

- 1. The Defendant is ordered to pay 100% of the Plaintiffs proven damages.
- 2. The Defendant shall pay the Plaintiff an amount of R 9 450 860.00 (NINE MILLION FOUR HUNDRED AND FIFTY THOUSAND, EIGHT HUNDRED AND SIXTY RAND) as payment of the Plaintiffs claims for loss of earnings. Such amount is to be paid within 180 days from the date of the order.
- 3. In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the prescribed legal rate, calculated from the 15th calendar day after the date of this Order to date of payment.

4. The Defendant/Respondent shall furnish the Plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for the costs of future accommodation in a hospital or a nursing home or treatment of or rendering of a service or supplying of goods to the Plaintiff/Applicant after such costs have been incurred and on proof thereof.
5. The Defendant/Respondent shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale in respect of both merits and quantum, from the onset of the matter, up to and including 25 and 26 June 2025, and notwithstanding, and over and above the costs referred to in paragraph 5.2.1 below, subject to the discretion of the Taxing Master:
 - 5.1. In the event that the costs are not agreed:
 - 5.1.1. The Plaintiff/Applicant shall serve a notice of taxation on the Defendant's attorneys of record;
 - 5.1.2. The Plaintiff/Applicant shall allow the Defendant 14 (FOURTEEN) days from date of allocator to make payment of the taxed costs;
 - 5.1.3. Should payment not be affected timeously; the Plaintiff will be entitled to recover interest at the prescribed legal rate on the taxed or agreed costs from date of allocator to date of final payment.
 - 5.2. Such costs shall include:
 - 5.2.1. The costs incurred in obtaining payment of the amounts mentioned in paragraphs 2 and 3 above;
 - 5.2.2. The costs of and consequent to the appointment of the counsel, his preparation and his day fee for the 25 and 26 June 2025 on scale B;
 - 5.2.3. The costs of all medico-legal reports, as well as such reports and/or forms furnished to the Defendant and/or its attorneys of record, as well as reports and/or forms in their possession and all reports and/or forms contained in the Plaintiffs trial bundles;

- 5.2.4. The reasonable and taxable preparation, qualifying and reservation fees if any;
- 5.2.5. The reasonable costs incurred by and on behalf of the Plaintiff in attending all the medico-legal examinations as well as all the medico-legal expert reports that have been served to the Defendant;
- 5.2.6. The costs incurred transporting the Plaintiff as the only witness and as a necessary witness, if any.
6. The amounts referred to in paragraph 2, 3 and 5 will be paid to the Plaintiff's attorneys of record, MOLEFE MACHAKA ATTORNEYS INC, by direct transfer into their trust account with details as follows:

ACCOUNT HOLDER	:	MOLEFE MACHAKA ATTORNEYS INC.
ACCOUNT TYPE	:	TRUST
ACCOUNT NUMBER	:	4[...]
NAME OF BANK	:	ABSA
BRANCH CODE	:	6[...]
REFERENCE NO	:	MMP/0195/2022

7. General Damages are postponed *sine die* / referred to HPCSA for determination.

J DE JAGER
ACTING JUDGE, THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing : 25-26 June 2025
Date of Judgment : 5 November 2025

Appearances:

For The Plaintiff : Adv. Ruben Maphutha
Instructed by : Molefe Machaka Attorneys Inc
For The Defendant : No Appearances

