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

Case number: 2567/2023

In the matter between:

F[...] J[...] K[...]

on behalf of E[...] C[...] K[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Coram: Van Zyl, AJ

Heard: 26 March 2025, 25 August 2025, 24 October 2025

Judgment: 28 November 2025

Summary: Minor involved in motor vehicle collision - claim against Road Accident Fund for past medical expenses, loss of earning capacity, and general damages

ORDER

1. The defendant shall pay to the plaintiff the sum of R3 588 495.10, comprising of:
 - 1.1 past medical expenses in the amount of R125 888.60;
 - 1.2 future loss of earnings / earning capacity in the amount of R3 362 606.50; and
 - 1.3 general damages in the amount of R800 000.00 less the interim payment of R700 000.00, that is, R100 000.00.
2. The defendant shall pay interest on the sum of R3 588 495.10 at the prevailing rate of interest, calculated from 14 days after date of judgment to date of final payment.
3. The defendant shall pay the plaintiff's costs of suit on the High Court scale, including the qualifying expenses of the expert witnesses in respect of whom expert reports have been delivered, as well as counsel's fees taxed on Scale B in respect of work done after 12 April 2024.

JUDGMENT

VAN ZYL, AJ:

Introduction

1. This action entails a claim pursuant to the provisions of the Road Accident Fund Act 56 of 1996 ("the Act").
2. The plaintiff claims damages on behalf of his minor son, E[...]. E[...]

was involved in a motor vehicle accident on 13 August 2021 next to the showrooms of McCarthy Toyota, Table View. He had been standing in front of the showrooms, waiting for his mother, when the insured vehicle ploughed into him.¹ He was 12 years old at the time.

3. As a result of the collision, E[...] suffered serious injuries, including a fracture of the right distal tibia and fibula; a fracture of the right distal radius; a fracture of the left wrist and thumb; a seroma of the left thigh; and serious psychological *sequelae*, including post-traumatic stress disorder (PTSD), anxiety, and depression.
4. The defendant conceded the merits. This court therefore has to consider the *quantum* of the various heads of damages claimed, in particular past medical expenses incurred in respect of the E[...]’s treatment, his future loss of earnings or earning capacity; and general damages.²
5. On the trial date first allocated in March 2025, the defendant indicated that it wished to appoint its own industrial psychologist, and the matter was postponed for that purpose. The appointment never occurred, but the parties did settle or partially settle certain of the heads of damages. In respect of future medical expenses, the defendant furnished an undertaking in terms of section 17(4)(a) of the Act, to compensate E[...] for 100% of the costs of future accommodation in a hospital or nursing home, or treatment of or rendering of a service or supplying of goods arising out of the bodily injuries sustained in the accident. This aspect has therefore been settled.
6. The defendant also paid, as an interim payment, the sum of R700 000.00 towards general damages. The *quantum* of general

¹ At the commencement of the trial the court was provided with security video footage of the collision which showed the graphic details of what had happened.

² It is common cause that Ethan’s injuries qualify as serious, as contemplated in sections 17(1) and 17(1A) of the Act.

damages was therefore partially settled, and it needs to be determined whether an additional payment is warranted in relation thereto.

7. The plaintiff made application, at the commencement of trial, for an order that the evidence of various witnesses, mostly expert witnesses, be adduced by way of affidavit under Rule 38(2) and admitted into the record. The application was unopposed, and the order sought was duly granted in respect of the following witnesses: Ms Tanusha Tia Hoosen, team leader at Discovery Health Medical Scheme; Ms Elize Burns-Hoffman, occupational therapist; Dr Neil Kruger, orthopaedic surgeon; Dr Larissa Panieri-Peter, specialist forensic psychologist; and Mr Daniel Lionel Saksenberg, actuary.
8. Industrial psychologist, Mr Bernard Swart, gave oral evidence at the trial, as did E[...]’s father, the plaintiff.
9. The defendant called no witnesses, and closed its case upon closure of the plaintiff’s case.
10. In what follows, I briefly discuss the evidence given on the plaintiff’s behalf. I shall thereafter consider the issues for determination in the light of the applicable legal principles.

The evidence for the plaintiff

E[...]’s father, Mr K[...]

11. Mr K[...] confirmed the details of the collision. E[...] was 12 years old and in Grade 6 when it occurred. The collision, and its aftermath, was by all accounts a harrowing experience. The insured driver was an elderly lady, 93 years of age at the time.

12. E[...] was transported to and treated in the trauma unit of the Milnerton Mediclinic, whereafter he was transferred to the orthopaedic department for further care. He remained in hospital for two to three days for observation, and was provided with painkillers. He had to undergo surgery for the tibia / fibula and radius fractures. Both arms were placed in casts, and pins were inserted at the fracture sites of his legs. He was unable to bend either his legs or his arms.
13. Mr K[...] explained the trauma of having to transport E[...] home from hospital. The family owned a Hyundai Tucson motor vehicle and during the journey home, E[...] was constantly looking out of the back window, panicking and screaming when he saw vehicles approaching from behind.
14. An important consideration for the family was that they wanted the insured driver to apologise for what had happened, given the emotional impact the accident had had on E[...]. Mr K[...] attempted to contact her, and although he managed to get hold of her daughter, no apology was ever given.
15. E[...] was initially placed in the room he shared with his brother. They shared a double bunk bed but the difficulties with mobility, given his plaster casts, necessitated the hiring of a hospital bed. This was placed in the lounge, where E[...] spent the first few months of his recovery. The circumstances were difficult, because he had no privacy. His mother had to tend to his personal needs and bathe him using a bed bath, which was embarrassing for a teenage boy. When family members visited, and E[...] needed to attend to ablutions, this would make the situation even more awkward and embarrassing.
16. According to Mr K[...], E[...] had “*taken a knock*” as a result of the collision. He withdrew into himself and did not want to speak. Prior to

the accident he was outgoing and an “*adrenaline junkie*” who loved dirt-biking. Mr K[...] also noticed that during the first few months post-collision, E[...] had intense internal anger, resentment, and explosive outbursts. This was reported to the occupational therapist, Ms Burns-Hoffman, who discussed it in her report.

17. Mr K[...] testified that he is an operations director for S[...] C [...], a company which provides services in the mining and petrochemical industry to other companies, such as De Beers. His current income, which includes a vehicle allowance, amounts to approximately R220 000.00 per month.
18. He testified that he has been married for 21 years. He and his wife have three children. The eldest son is 21 years of age, studying IT and Engineering at the University of Stellenbosch. Their second child, a daughter, is 17 years old and currently in Grade 11. She wants to study law. E[...] is the youngest. He is currently 16 years old and in Grade 10. It is fair to say that the parents hold high expectations for their children.
19. Mr K[...] referred to the fact, and it appears from the expert evidence on record that, although E[...] wrote the year-end Grade 6 exams (in the year in which the collision occurred), an average mark was taken as his final marks, rather than the specific exam results. E[...] battled with continuing with his Grade 6 studies via home schooling and tutoring, due to the need to take medication for pain, and his depressed mood. E[...] cried often, and remained angry with the insured driver.
20. At the start of the Grade 7 school year there was, for various reasons, no longer homeschooling or private tutoring, which meant that E[...] was academically lagging. Mr K[...] expressed the view that E[...] had missed out on the fundamentals of Grade 7 maths, given the injuries and time out of school. A maths tutor was reappointed, which was helpful, but

even though E[...] tried his best, it was clear that he struggled. Mr K[...]’s evidence was that prior to the collision, E[...] had progressed well at school. The collision caused him to miss three quarters of a school year. This was exacerbated by the Covid outbreak, and he has not been the same since.

21. In high school, E[...] switched from pure mathematics to “maths literacy”. He had previously wanted to become a veterinarian or a bush pilot in the game reserves, but with the school marks that he currently attains, he would have to consider another occupation.

22. In respect of sporting activities, Mr K[...] explained that E[...] had loved sport prior to the collision, having been captain of the first rugby team. After the collision, for the remainder of Grade 6, he did not play rugby again, which he found frustrating. E[...] developed a seroma³ on his upper left thigh, which is unsightly and causes him embarrassment.⁴ It took a while for E[...] to become mobile again. In 2022, whilst in Grade 7, E[...] was initially scared to take risks, even minor ones. That is still the case. The seroma impacts his movement and self-confidence. He does not want to wear shorts for fear of people staring at him. The leg is very sensitive to any touch.

23. Although E[...] still participates in sport, his confidence is low, and the seroma remains problematic. He currently plays rugby in the B team. Mr K[...] is of the view that the coach indulges him by putting him on the reserve team for the first team, but he never goes onto the field to play. Mr K[...] also noted that when E[...] plays in the B team, his teammates do not want to pass him the ball to him as he cannot move fast, and is hesitant to tackle.

³ A seroma is a collection of fluids that builds up under the surface of the skin. It may develop after a surgical procedure, most often at the site of the surgical incision or where the tissue was removed.

⁴ A photograph is contained in Dr Kruger’s addendum report, depicting the nature and extent of the seroma.

24. At home, although E[...] was given a puppy, he does not play with the dog because of the pain he suffers from the seroma. The seroma has twice before been drained, the last occasion being in August 2024. The doctor who did so referred E[...] to a plastic surgeon, who will be required to attend to an invasive operation to have the seroma removed. Although motivation was provided to the medical aid to cover the operation, this has been declined because the procedure is regarded as cosmetic in nature. The defendant has, however, now given an undertaking under section 17 of the Act, and the surgeon in question has been asked to furnish a quotation for the defendant's consideration.
25. Currently, travelling in a motor vehicle is fine, although E[...] does still become panicky at times. He refuses to cross the road on his own, and remains very hesitant. He recently received a bicycle, but does not want to ride outside of the yard. When he plays hockey in the road with his sister, E[...] wants his father to stand and watch while they do so.
26. As a parent, Mr K[...] feels that he has failed E [...], given the financial pressure the family is under for various reasons. They have not been able to provide E[...] with the necessary psychotherapy and medication, and his treatment has therefore not been optimal.
27. The impact of the collision on the family is that they are divided: given that the parents have taken so much time to care for E [...], his siblings feel left out, and this has led to some jealousy and unhappiness between them. Although Dr Panieri-Peter recommends therapy for the family, Mr K[...] feels that his wife and E[...] are in more serious need of psychotherapy given what they had gone through, if regard is had to the contents of the video footage of the collision.

28. Overall, E[...] is not as confident as he used to be prior to the collision. He overthinks things and doubts himself, and still has outbursts of anger. He blames the insured driver as, in his view, she has “*ruined his life*”. He has mentioned that he does not “*want to be around*” any longer. E[...] tries his best, but according to Mr K[...] the accident has had a far-reaching impact on him and, for that matter, on the entire family.

Mr Swart, industrial psychologist

29. Mr Swart confirmed that for the purposes of his first report, he perused and considered the various medico-legal reports prepared by the other experts, as well as other documentation such as school reports and clinical notes. E[...] was accompanied by his parents to his first consultation with Mr Swart.

30. He also confirmed in his evidence the summaries provided in his report in respect of E[...]’s injuries and his present complaints. He confirmed the extended family history in respect of qualifications and employment. At the time of his consultation with him, Mr K[...] was earning R184 000.00 per month, plus 3% of profit-sharing and a 13th cheque. This has increased to about R200 000.00 as stated by Mr K[...] in his evidence. Mr Swart testified that it is important to refer to the occupation of parents because, when dealing with a minor, the parents’ positions (as well as those of siblings) are used as guidelines, as are those of siblings.

31. According to Mr Swart, E[...] had indicated that he wanted to become a veterinarian, engineer, or pilot. He was, however, a very young boy at the time. He currently struggles academically and at the time of compiling the report, Mr Swart was of the view that E[...] would probably have to repeat Grade 8. E[...] struggles, in particular, with mathematics.

32. In his first report, Mr Swart described E[...]’s school performance in Grades 5 to 8. His school reports show a decline in academic performance. The decline from Grades 5 and 6 to Grade 8 is marked, and in Grade 8 E[...] failed mathematics in all three academic terms. He also failed English and Afrikaans. He was on the cusp of failing history in two consecutive academic terms, and based on the abysmal results in English, Afrikaans, and mathematics, he concluded in his report that E[...] would probably fail Grade 8. E[...] was however proverbially “*pushed through*” to Grade 9, but on the basis that he now had to continue with maths literacy.

33. Mr Swart compiled an addendum report in May 2025 to update the information where necessary for purposes of the trial. In this report, he dealt with E[...]’s Grade 8 marks for the 2023 year, as well as his Grade 9 marks for 2024 and the first term of Grade 10. During his evidence in chief, Mr Swart remarked that E[...]’s report card for the second term of Grade 10 was also obtained, having just become available. Although there has been a substantial improvement in mathematics literacy, his report still shows a general decline in his marks, if Grade 10 terms one and two were compared. The substantial increase in the mathematics marks was due to a tutor being appointed again. Given that E[...] was failing English and Afrikaans, the term two marks were indicated to be a “*fail*”, and Mr Swart concluded that he would probably fail the grade.

34. Mr Swart also did a comprehensive psychometric assessment of E[...]. He explained that this was something which he generally does not do, except in certain circumstances, such as where there is underlying depression (as in E[...]’s case), and when the surrounding history and information points to a person needing urgent intervention.

35. Mr Swart postulated a probable career path for E[...]. In opining on an

uninjured career path, Mr Swart confirmed that he takes into account the fact that both parents are in skilled occupations, the fact that neither of E[...]’s siblings has failed a grade, and their current and future study paths: E[...]’s brother is studying engineering at Stellenbosch, and his sister is doing well at school. Given that E[...] is so young, an industrial psychologist would promote a career option which is generic, as it is difficult to postulate a specific career option. He would also consider the earnings of the parents as a guideline, and a comparison is then made using information at hand. Mr Swart used the Paterson career statistics, obtained from the Robert Koch *Quantum* Yearbook, as a generic base for E[...]’s uninjured career path. The career path is postulated on a balance of probabilities, given all of the available information.

36. Mr K[...] falls within the corporate sector as regards his salary and work position. Against this background, Mr Swart is of the view that E[...]’s uninjured career path would likely have been as follows: he would have completed Grade 12 by yearend 2027, and a three-year tertiary education by yearend 2030. He would then have attempted to enter the open labour market in 2031, possibly experiencing difficulty in doing so as a result of the high level of unemployment in South Africa. He might have been unemployed for up to six months, until mid-2031. E[...] might have secured employment in the general open labour market by mid-2031. By utilizing the Koch *Quantum* Yearbook values (2023 edition), E[...] could then have progressed as follows:

36.1 Entering the general open labour market at Paterson B3 and earning R203 000.00 *per annum* (basic salary lower quartile).

36.2 Progressing to Paterson B5 after two to four years and earning R376 000.00 *per annum* (basic salary upper quartile).

36.3 Progressing to Paterson C2 after two to three years and earning R550 000.00 *per annum* (total package median).

36.4 Progressing to Paterson C3 after two to four years and earning R764 000.00 *per annum* (total package upper quartile).

36.5 Progressing to Paterson C4 after two to four years and earning R908 000.00 *per annum* (total package upper quartile).

36.6 Progressing to Paterson C5 after two to four years and earning R1 057 000.00 *per annum* (total package upper quartile).

36.7 Receiving annual earnings inflationary increases.

36.8 Retiring at 65 years of age.

37. In respect of E[...]’s injured career path, Mr Swart explained that one looks at medical opinion, the school reports, the personality assessment he carried out, and the psychological influence of the injuries on his prowess and ability to perform. Mr Swart confirmed in his addendum report that he had considered the latest school records but that, in effect, the pre- and post-morbid career paths as suggested in his first report remains unchanged. In his view, the best way to deal with E[...]’s loss of earning capacity would be by applying a contingency differential, that is, by applying a significantly higher than usual contingency on the proposed post-morbid career path, as opposed to the pre-morbid career path, where a lower contingency should apply.

38. In respect of what contingency differential should be applied, he acknowledged that this is the Court’s prerogative.⁵ Given the pre- and post-morbid information he had highlighted in his evidence in chief, he

⁵ *Phalane v Road Accident Fund* [2017] ZAGPPHC 759 (7 November 2017) para 3.

stated that although he could not specify the exact percentage differential, the post-morbid career path should have a contingency applied which is significantly higher than the contingency applied to the pre-morbid career path.

39. In cross-examination, Mr Swart confirmed that he considered the general principle that minors' income would exceed that which their parents achieved in the latter's' career progressions. He also defended E[...]’s career progression as postulated, stating that this was extremely conservative if one looked at the final progression at the end of his career, especially since at the high end of E[...]’s uninjured career, he would still be earning less than 50% of what his father was currently earning.

The evidence presented on affidavit

40. I briefly refer to the evidence admitted into the record by way of affidavit under Rule 38(2).

41. Ms Hoosen confirms that she is employed as a team leader of the Discovery Medical Scheme, and confirms payment of the past medical, hospital and related expenses incurred, pursuant to the injuries sustained by E[...] in the collision. The costs were reasonable, and the treatment provided was necessary. She also states that these past medical expenses are related to medical scheme claims submitted to Discovery Medical Scheme from the date of injury, as per the claims submitted, as billed by the various relevant healthcare practitioners and other relevant service providers. The sum paid by Discovery Medical Scheme amounted to R125 880.60.

42. Ms Burns-Hoffman, occupational therapist, discusses the impact of the seroma. Further, although E[...] has regained full mobility and no longer

requires personal assistance or support aids to enable him to move around, it appears that he struggles with deficits in muscle strength in the left dominant hand and the right lower limb; educational challenges and the possibility of not advancing with his own age group (in this regard Mr Swart provided substantial evidence); unresolved psychological trauma around a multitude of motor vehicle accident-related *sequelae*, including anger, frustration, loss, feeling left out, fear, and an alleged shift in family dynamics. These are all aspects confirmed in Mr K[...]’s evidence.

43. Dr Kruger, orthopaedic surgeon, states that the injuries and the treatment thereof resulted in large periods away from school. This has had a knock-on effect which E[...] is still trying to catch up. E[...] has, largely, physically healed now, but struggles with lasting effects. These include pain in his right ankle, and a residual valgus deformity of his ankle which, should it not correct by itself, will require surgery in future. Most significantly, he has suffered a left large thigh soft-tissue injury which has resulted in a post-traumatic seroma that, despite drainage on two occasions, still persists and becomes enlarged when he exercises. This has prevented from him being as active as he used to be. E[...] requires an open debridement of the seroma and layered closure, to ensure that it does not return. The operation has an 80% to 90% chance of success.

44. Dr Panieri-Peter, psychologist, sets out E[...]’s personal and educational, medical and psychiatric history prior to the collision, the nature of the collision and the treatment received, as well as the relevant medical psychiatric and educational history after the collision. E[...] still has symptoms of depression. He was objectively sad during the assessment, and indicated that he feels sad and upset. He quickly becomes irritable and angry and has considerable rage towards the insured driver. He has temper outbursts, often struggles to sleep, and

is very self-conscious about his seroma, which is painful and uncomfortable.

45. She states that after the collision E[...] developed an acute stress reaction, which has developed into PTSD, with symptoms of anxiety and depression. The injuries occurred during early adolescence, an important developmental time when the body changes, and when an emerging sense of self takes place. Identities are fragile and in development.

46. E[...] has not had any psychiatric or psychological treatment. Urgent intervention by a clinical psychologist is required as he tries to integrate his feelings, his sense of self and identity, and his unprocessed anger, and as he tries to move past the impact of the collision to a more functional state. She also proposes therapeutic intervention for the family as a whole, given the difficulties they have experienced.

47. Mr Sacksenberg, actuary, did a calculation of E[...]’s possible career path based on Mr Swart’s first report. He sets out the various methodologies and actuarial assumptions utilized, and applies a 20% premorbid, as well as a 40% post-morbid contingency. The calculations were done mindful of the effect of the statutory cap on future loss of earnings:⁶

“[7] ... In this matter, following the approach of actuaries over decades, Mr Morris used the assessments of industrial psychologists as to the career path likely to have been followed by Ms Sweatman, her probable remuneration, prospects of promotion, working lifespan, retirement and other factors that might have affected her income stream over the years. He then calculated the present estimated value of the future income that she would have earned, taking into account the net capitalization rate, which in turn has regard to the expected investment return. From the amount calculated he made deductions

⁶ Road Accident Fund v Sweatman 2015 (6) SA 186 (SCA) paras 7-8.

on the basis of future inflation rates, for taxation and likely changes in the rates of taxation, and, importantly, took into account accepted life tables reflecting mortality rates.

[8] The second step taken was to ascertain what difference the injury and disability arising from the collision made to Ms Sweatman: to determine the estimated present value of her future income stream in her injured and disabled state. Once that calculation had been done the two amounts were adjusted having regard to the contingencies of life: any factor that would influence her life and earning capacity – the hazards of life. The amount calculated in respect of the income stream in the injured state was then deducted from the amount she would have earned but for the injury, and that represented the estimated present value of Ms Sweatman's loss. The limitation introduced by the amendment was then compared with the actual loss: if the actual loss was less than the annual loss – the limit or cap – then the Fund would be liable for the actual loss. If it exceeded the limit then only the amount which was gazetted before the date of the accident (the annual loss) would be payable."

48. On the basis of this approach, the cap does not apply in the present case.

49. I turn to a consideration of the issues for determination against this background.

Loss of earning capacity

The expert evidence on record

50. The defendant appointed no experts in this matter, even though it had the opportunity to do so.⁷ This court is thus reliant on the opinions

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See *Bheme v Road Accident Fund* [2025] ZAMPMBHC 43 (29 May 2025) para 18: a challenge to the content of an expert report in circumstances where no rebutting evidence has been provided, should be dealt with with caution and not merely at a defendant's asking, who had the opportunity of leading evidence, and elected not to do so.

provided by the experts who adduced evidence by way of affidavit, as well as Mr Swart's oral evidence.

51. It has been held⁸ that the functions of an expert witness are threefold. Where they have themselves observed relevant facts that evidence will be evidence of fact and admissible as such. They also provide the court with abstract or general knowledge concerning their discipline that is necessary to enable the court to understand the issues arising in the litigation. This includes evidence of the current state of knowledge and generally accepted practice in the field in question. Although such evidence can only be given by an expert qualified in the relevant field, it remains essentially evidence of fact on which the court will have to make factual findings. It is necessary to enable the court to assess the validity of the opinions that they express. They give evidence, in addition, concerning their own inferences and opinions on the issues in the case, and the grounds for drawing those inferences and expressing those conclusions.

52. An expert witness is there to assist the court, and must thus be neutral.⁹ He or she must provide the court *"with as objective and unbiased an opinion, based on his expertise"*, and is *"not a hired gun who dispenses his expertise for the purposes of a particular case"*.¹⁰

53. In the heads of argument delivered on its behalf, the defendant criticises the reports provided by Dr Kruger, Dr Panieri-Peter, and Ms Burns-Hoffman, mainly for making reference to and discussing E[...]’s school performance and thus drawing conclusions which, according to the defendant, fall outside of the scope of their respective fields. These points were not raised at the time when the experts’ evidence was, by agreement between the parties, admitted by way of affidavit, and they

⁸ *AM and another v MEC for Health* 2021 (3) SA 337 (SCA) para 17.

⁹ *Stock v Stock* 1981 (3) SA 1280 (A) at 1296F.

¹⁰ *Schneider NO and others v Aspeling and another* 2010 (5) SA 203 (WCC) at 211J–212B.

were not canvassed in cross-examination. A consideration of the relevant reports shows, in any event, that these witnesses discuss the factual narrative of E[...]’s progress, or lack thereof, at school, in the context of his injuries and their consequences. They do not seek to make definitive educational and career recommendations arising therefrom for the purposes of E[...]’s claim for loss of earnings or earning capacity.

54. Mr Swart, on the other hand, the only industrial psychologist giving evidence in this matter, is independent, has based his opinion on properly obtained substantiated facts and information, and provided an opinion as to how E[...]’s future career progression would be influenced, given the *sequelae*, inclusive of the psychological *sequelae*, of the collision.

55. The defendant criticises Mr Swart too, arguing that his evidence “*cannot usurp that of an Educational Psychologist*”, and that the Court “*should not allow itself to be hoodwinked by an industrial psychologist who sees fit to interpret the minor’s available school reports with a view to corroborating the Plaintiff’s evidence that the minor has suffered a decline in his academic performance as a result of the injuries under consideration.*”

56. I did not understand Mr Swart as doing, or attempting to do, any hoodwinking. He duly considered the facts relating to Erhan’s progress as obtained from the plaintiff and as set out in the other expert reports. There is no fault to be found with the evidence of the other expert witnesses, submitted by way of affidavit.¹¹ As indicated, the defendant

¹¹ When confronted with expert reports, the court is guided by the reasoning in *Road Accident Fund v Zulu* [2011] ZASCA 223 (30 November 2011) para 14: what is required in the evaluation of expert evidence is to determine whether, and to what extent their opinions advanced are founded in reasoning.

did not in the course of the trial point take issue with those reports.¹² The logical conclusion to be drawn from these reports as a whole is that the consequences of the collision had a detrimental impact on E[...], both physically and psychologically.

57. E[...]'s results at school have undoubtedly dropped after the collision. He has not received any proper medical treatment, particularly in respect of psychological intervention. The outcome of his poor academic results will no doubt be that he will no longer have the wide scope of opportunities for further training or studies he would have had, had the collision not occurred and had his school results not suffered as a result:¹³

[23] The conclusions by the experts set out in their reports referred to above, are properly motivated expert opinions which were admitted by the Respondent.

[24] It is a matter of logical reasoning that all the factors mentioned by the experts and summarized ..., will probably result in future in a reduction of the Appellant's patrimony (earnings) having regard to the injuries, in comparison to what he would have earned, for example, due to less incentive remuneration, delays in promotion and/or career progression, lower career ceiling etc, all as a result of lower productivity. The Appellant's loss may not be calculable according to the method proffered in the matter of Prinsloo v Road Accident Fund 2009 SA 406 (SE) ..., but it can be quantified applying different contingencies (a higher post-accident contingency) which method is applied on a daily basis in the courts over many years.

[25] Having regard to the facts emanating from the various expert reports referred to above there is a clear nexus between those facts and the conclusions reached."

58. I accordingly accept that there is a loss of earning capacity. The

¹² The court remains the final arbiter: *IM v Road Accident Fund* 2023 (1) SA 573 (FB) para 21, and see *Twine and another v Naidoo and another* [2018] 1 All SA 297 (GJ) para 18.

¹³ *Spamer v Road Accident Fund* [2018] ZAGPPHC 608 (20 April 2018) paras 23-25 (my emphasis).

defendant argues that, in that case, the facts of this case lend themselves to compensation by way of a nominal lump sum payment as contemplated in *Roxa v Mtshayi*:¹⁴

“While evidence as to probable actual earnings and probable potential earnings (but for the injury) is often very helpful, if not essential, to a proper computation of damages for loss of earning capacity, this is not invariably the case. In the present instance the imponderables were vast. The Court had to consider the position of a young child struck down almost in infancy. It was virtually impossible to foresee what he would do in life or to foretell what he would have done had he not suffered the injury. As to the actual future, no one can say what work he will be able to carry out after he leaves school and later when he becomes an adult; what effect his disabilities and the possibility of behavioural problems will have upon his employment and employability; whether he may not end up in some form of institution, and so on. As to the potential future, he was so young when the injury occurred that any enquiry as to what type of working career he might have followed must amount to pure speculation. When one further considers that the working period under consideration stretches some 30 or 40 years into the future, it becomes clear that any attempt at an actual calculation of loss of future income would be a fruitless exercise. The trial Judge took a broad view of the situation and awarded a globular amount which he considered appropriate in the circumstances to compensate Boy-Boy for all that he had lost, including diminished earning capacity. I remain unpersuaded that this was an incorrect approach.”

59. The defendant does not suggest, however, what such a lumpsum should be, and on what basis it should be preferred over the reasoned approach taken by Mr Swart and given effect to in the actuarial calculations. In *Roxa*¹⁵ the injured child was 7 years old at the time of the accident, and there was no evidence presented in relation to the plaintiff's loss of earning capacity:

¹⁴ 1975 (3) SA 761 (A) at 769G–770A (my emphasis).

¹⁵ *Roxa supra* at 769E-F (my emphasis).

“In attacking the award of R17 000 appellant’s counsel did not suggest that the trial Judge had in any way misdirected himself in regard to the evidence. He merely submitted that about half the award must be taken to relate to future loss of income; that there had been no attempt to present evidence, such as evidence of the relative earnings of a simple labourer and, say, a bus-driver (the occupation of Boy-Boy’s father), in support of such a claim for loss of future income; that, accordingly, respondent had failed, in this respect, to discharge the onus resting upon him; and that the Court should have made no award or, at least, no more than a nominal award, on this score.”

60. The situation is different in the present case. Mr Swart’s evidence in respect of the approach followed by him cannot be faulted. It seems sensible that, given E[...]’s tender age, any future loss of earnings or earning capacity would best be addressed by applying a contingency differential to a pre-morbid established career path. His evidence was clear that this would be a generic career path based on the factors mentioned in this evidence and the relevant Paterson scales, given that it is uncertain which specific occupation E[...] would have obtained in the uninjured state. The exercise is by its nature speculative.¹⁶

61. One of the ways to test the reasonableness of Mr Swart’s opinion is to compare the maximum figure he states E[...] would have earned in the uninjured state once he reaches his highest level of functioning and/or qualification. This would have E[...] progressing to the Paterson C5 level, in which he would have earned R1 057 000.00 *per annum*, being a total upper quartile package. This income, if attainable in his 40s, is still substantially less than the total earnings which E[...]’s father earns at age 53.

¹⁶ *Road Accident Fund v Zulu* [2011] ZASCA 223 (30 November 2011) para 10: “It has to be borne in mind that an enquiry into damages for loss of earning capacity is of its nature speculative. The court below had to determine the issues on predictions based on facts.

62. The defendant points out that E[...] was, even prior to the collision, an average learner. Mr Swart takes into account E[...]’s performance at school prior to the collision, and does not suggest that E[...] would have earned nearly as much as his father is currently earning. This is, in my view, an objective and fair approach, based on the relevant factors. Despite the defendant’s criticism I did not gain the impression that Mr Swart was biased. He came across as thorough and credible, and his evidence was not undermined in cross-examination.

The applicable contingencies

63. Contingencies are the hazards of life that normally beset the lives and circumstances of ordinary people, and should therefore, by its very nature, be a process of subjective impression or estimation rather than objective calculation.¹⁷

“[17] ... Contingencies for which allowance should be made, would usually include the following:

- (a) the possibility of illness which would have occurred in any event;*
- (b) inflation or deflation of the value of money in future; and*
- (c) other risks of life such as accidents or even death, which would have become a reality, sooner or later, in any event*

[18] In the Quantum Yearbook (by Robert Koch, 2017 Edition, p 126) the learned author points out that there are no fixed rules as regards general contingencies. However, he suggests the following guidelines:

‘Sliding scale: Yz% per year to retirement age, i.e. 25% for a child, 20% for a youth and 10% in the middle age...

Normal contingencies: The RAF usually agrees to deductions of 5% for past loss and 15% for future loss, the so-called normal contingencies.”¹⁸

64. Mr Swart’s evidence is that a contingency differential approach should be followed. This means that a specific contingency should be applied

¹⁷ *Shield Ins Co Ltd v Booysen* 1979 (3) SA 953 (A) at 965G-H.

¹⁸ *Phalane v Road Accident Fund* [2017] ZAGPPHC 759 (7 November 2017) paras 17-18.

to the pre-morbid career path, and a substantially higher contingency to the post-morbid career path. Both career paths are in essence the same, given E[...]’s age, which makes it difficult to predict a career progression. What does differ are the different contingencies applicable pre- and post-morbidly respectively, which then equates to the contingency differential, and which would amount to E[...]’s future loss of earnings or earning capacity.

65. The evaluation of the amount to be awarded in this respect does not involve proof on a balance of probabilities. It is a matter of estimation, and the court has a wide discretion.¹⁹ In the current matter, there is an uncontested actuarial calculation before the court, based on Mr Swart’s proposed career progression. Even though the actuary has applied a 20% and 40% contingency on the future uninjured and future injured career paths respectively, the court is not bound by this, but is at liberty to consider the totality of the evidence in deciding which contingencies to apply.

66. Having considered the issue, and given Mr Swart’s evidence that a substantially higher contingency should be applied in the injured scenario, I agree with the plaintiff’s counsel’s submission that a contingency differential of 30% would properly address E[...]’s loss of earning capacity, inclusive of all the uncertainties applicable to both the uninjured and injured career progression. A future uninjured contingency of 20%, and a contingency of 50% in respect of the future injured career path, would equate to a 30% differential. This means that the final calculation in this respect will be as follows, with reference to the actuarial report on record:

66.1 Future uninjured earnings: R11 208 687.00 x a future uninjured contingency of 20% = R8 966 950.00.

¹⁹ *M S v Road Accident Fund* [2019] ZAGPJHC para 84, and see *Bheme supra* para 25.

66.2 Future injured earnings: R11 208 687.00 x future injured contingency of 50% = R5 604 343.50.

66.3 The total calculated future loss of earnings / earning capacity: R8 966 950.00 less future injured earnings of R5 604 343.50 = total loss of earnings / earning capacity (based on a 30% contingency differential) of R3 362 606.50.

Past medical expenses

67. The judgment of a full bench appeal of this Division which was argued on 12 September 2025 in respect of whether the defendant should pay past medical expenses paid by the plaintiff's medical aid scheme, is currently awaited.²⁰

68. As the law stands, however, the defendant is liable to pay those expenses. There are various decisions in this Division to this effect.²¹ In any event, in respect of E[...]’s past hospital and medical expenses, the defendant generally pleaded a “no knowledge” defence in its plea, and led no evidence in rebuttal of the affidavit evidence adduced by Ms Hoosen. The defence that the defendant is not liable to pay for past medical expenses where medical aid schemes have paid on behalf of the plaintiff, was never formally raised in the pleadings in the present matter.

²⁰ *Road Accident Fund v Nicolaas Johannes van Wyk*, case no. A186/2025 (court a quo case no. 11691/2020).

²¹ See, for example, *Mooideen v Road Accident Fund*, unreported WCHC judgment of Davis J under case no. 17737/2015, delivered on 11 December 2020; *Van Tonder v Road Accident Fund* [2023] ZAWCHC 305 (1 December 2023); *Jaffer v Road Accident Fund* [2025] ZAWCHC 136 (20 March 2025); *Basson v Road Accident Fund* [2025] ZAWCHC 229 (30 May 2025); *Moss v Road Accident Fund* [2025] ZAWCHC 110 (17 March 2025)

69. In *Esack NO v Road Accident Fund*²² the applicable principle was stated as follows:

“To conclude on the issue, the deceased incurred past medical and hospital expenses. These were paid by the deceased’s medical-aid scheme ,,, On the application of the common law principle of res inter alios acta, the defendant is liable to compensate the plaintiff as such payment is a matter between the deceased and his medical aid-scheme. Having regard to all of the above, I am satisfied that the plaintiff’s claim for past hospital and medical expenses must succeed.”

70. There seems to me to be no reason to deviate from this approach in respect of the plaintiff’s claim, which has long awaited determination at trial and which falls squarely within the applicable legal principles as they currently stand.

General damages

71. The purpose of an award of general damages is to compensate a victim for the pain, suffering, shock, and discomfort suffered as a result of a wrongful act.²³ The courts have consistently preferred a flexible approach, determined by the broadest general considerations, depending on what is fair in all the circumstances of the case.²⁴

72. In *De Jongh v Du Pisanie NO*²⁵ the Supreme Court of Appeal dealt with issues such as fairness and the Court’s discretion in the context of previously decided cases of similar facts. The comparison is not a mechanical process because the court must still exercise its discretion. Other cases only serve as broad guidelines to indicate a pattern of previous awards based on the facts of each case. On the fairness of the

²² 2025 (4) SA 201 (WCC) para 19.

²³ *TPN v Road Accident Fund* [2024] ZAKZDHC 37 (11 June 2024) para 17.

²⁴ See *Road Accident Fund v Marunga* 2003 (5) SA 164 (SCA).

²⁵ 2005 (5) SA 457 (SCA) paras 63-64.

award the Supreme Court of Appeal cited,²⁶ with approval, the following passage from *Pitt v Economic Insurance Co. Ltd*²⁷ where the following was stated that the court “*must take care to see that its award is fair to both sides-it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense.*”

73. In exercising my discretion, I should thus consider a broad spectrum of facts and circumstances that include the nature of the injuries, the severity thereof, and how it impacts on E[...]’s quality of life. Account should also be taken of the modern approach which acknowledges the rising standards of living and the fact that past awards in our courts were conservative as compared to other jurisdictions²⁸ (with due regard to the warning in *De Jongh*’s case).

74. It is clear from the evidence on record that E[...] has, apart from physical injuries, suffered persistent psychological consequences as a result of the collision. The defendant argues that these consequences are treatable, as is the seroma, and that E[...] will not necessarily suffer life-long effects.

75. Counsel for the plaintiff has referred to *Noble v Road Accident Fund*,²⁹ in which the plaintiff had sustained various injuries, including an ankle fracture, right foot scarring, and a fracture of the right femur and right hand. General damages in the amount of R600 000.00, with a current day value of R1 212 000.00, were awarded.

76. In *Kaduku v Road Accident Fund*³⁰ the plaintiff sustained a fracture to the left tibia and fibula, as well as a head injury with lacerations of the

²⁶ At para 60.

²⁷ 1957 (3) SA 284 (D) at 287E-F.

²⁸ *Road Accident Fund v Marunga supra* para 27.

²⁹ [2011] ZAGPJHC 6 (24 February 2011).

³⁰ [2017] ZAGPPHC 432 (22 March 2017).

scalp. An open reduction internal fixation, with tibial nails, was performed, the head injury was treated conservatively, and the scalp lacerations sutured. The plaintiff made a good recovery from the head injury and no neuropsychological *sequelae* followed. General damages in the amount of R750 000.00 were awarded, which would amount to approximately R900 000.00 in current day value.

77.E[...], apart from his orthopaedic injuries and the seroma which developed, also suffers substantial psychological *sequelae* in the form of PTSD, anxiety and depression, which have contributed to a large extent to his poor academic performance, and have, together with his physical injuries, impacted on his ability to participate in sport.

78.The defendant, on the other hand, has referred the court to *Sefatsa v Road Accident Fund*,³¹ in which the plaintiff suffered a bimalleolar fracture and dislocation of the ankle, underwent two surgical operations, and suffered from scarring, insomnia, PTSD and constant pain. The plaintiff remained very anxious in traffic and feared another accident occurring. She had intermittent flashbacks of the accident and suffered from insomnia. The court awarded general damages in the amount of R350 000.00 (R410 000 in current terms).

79.In *Jacobs v Road Accident Fund*³² the plaintiff sustained whiplash affecting her neck and back, and developed PTSD. She retained a serious permanent neck injury negatively affecting her daily life and causing a loss of self-esteem. The court awarded general damages of R80 000 (currently R250 000).

80.Considering these wide-ranging scenarios, I am of the view that E[...]’s case falls at the higher end of the spectrum. In the circumstances, an award of R800 000.00 in respect of general damages is fair, without

³¹ [2022] ZAGPPHC 846 (24 October 2022).

³² [2003] LNQD 10 (T).

being overly generous to the plaintiff at the expense of the defendant's purse.

Conclusion

81.I accordingly find that damages should be awarded to the plaintiff as follows:

81.1 past medical expenses in the amount of R125 888.60;

81.2 future loss of earnings / earning capacity in the amount of R3 362 606.50; and

81.3 general damages in the amount of R800 000.00 less the interim payment of R700 000.00, that is, R100 000.00.

Costs

82.Costs should follow the event. In the exercise of my discretion under Rule 67A,³³ counsel's fees should be taxed on Scale B, given the nature and scope of the case, the amounts involved, and the importance of the matter to E[...] and his family.³⁴

Order

83.I accordingly order as follows:

1. The defendant shall pay to the plaintiff the sum of R3 588 495.10, comprising of:

³³ Which applies to work done after 12 April 2024.

³⁴ Rule 67A(3)(b), in relation to the scale of counsel's fees, refers to considerations which may include the complexity of the matter, the value of the claim and the importance of the relief claimed. This is not a closed list of considerations.

- 1.1 past medical expenses in the amount of R125 888.60;
 - 1.2 future loss of earnings / earning capacity in the amount of R3 362 606.50; and
 - 1.3 general damages in the amount of R800 000.00 less the interim payment of R700 000.00, that is, R100 000.00.
2. The defendant shall pay interest on the sum of R3 588 495.10 at the prevailing rate of interest, calculated from 14 days after date of judgment to date of final payment.
 3. The defendant shall pay the plaintiff's costs of suit on the High Court scale, including the qualifying expenses of the expert witnesses in respect of whom expert reports have been delivered, as well as counsel's fees taxed on Scale B in respect of work done after 12 April 2024.

P. S. VAN ZYL

**Acting Judge of the High
Court**

Appearances:

For the plaintiff:

Instructed by:

Mr C. Bisschoff

Jonathan Cohen & Associates

For the defendant:

Instructed by:

Mr G. Cerfontyne

The State Attorney