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

CASE NO: 2022-032216

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 3/12/2025

SIGNATURE

In the matter between:

ADV FRANS ALBERTUS RAS

Plaintiff

appointed as the Curator ad Litem

obo A[...] T[...] V[...]

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

PIENAAR AJ

Introduction

[1] This is a delictual claim for damages resulting from injuries sustained by A [.....] T[...] V[....], a minor female who was born on 4 September 2011. The plaintiff was injured as a result of a motor vehicle accident on 25 October 2019 in which she was a passenger. She was 7 years and 11 months old when the accident occurred.

[2] As a result of the injuries sustained by A[...]. V[...], a curator ad litem had to be appointed to her to institute action on her behalf. Consequently, Adv Ras (the plaintiff), a practicing senior advocate, was duly appointed curator ad litem to A[.] V[...], and she is as such using the Road Accident Fund for damages in respect of bodily injuries sustained by A[...] V[...] during the collision in question.

[3] This matter came before me at the Special Default Judgment Court on 26 November 2025. When the matter was called, Adv Ras SC appeared on behalf of the Plaintiff, and Mr Mokgaka appeared for the State Attorney.

[4] On 13 August 2025, before the Honourable Justice Francis-Subbiah, an order was granted directing the parties to engage in mediation. The order further provided that, should the defendant fail to participate in the mediation, the plaintiff may seek an order striking out the defendant's defence. Counsel for the plaintiff agreed that the State Attorney could proceed to make submissions during the trial.

[5] On that basis, the State Attorney made the following submissions: the merits have been settled, 100% in favour of the plaintiff, which the plaintiff has accepted. An offer was tendered for future medical expenses by way of an undertaking, as well as for general damages and loss of earnings. The plaintiff has accepted the section 17(4)(a)

undertaking in respect of future medical expenses. However, the plaintiff rejected the aforesaid offer on quantum.

[6] This court is therefore required to determine quantum in relation to general damages and future loss of earnings.

[7] On 14 July 2025, Plaintiff Attorneys, served physically, in terms of Rule 28(1), a notice of amendment of Particulars of claim on the Defendant. In terms of the amendment, Plaintiff's amounts claimed were increased to as follows:

Loss of income	R7 127 568,00
General Damages	R3 200 000,00

[8] The plaintiff brought an application in terms of Rule 38(2), read with Section 3(1) of the Law of Evidence Act 45 of 1998, seeking leave to introduce evidence before this Court. Specifically, the plaintiff sought to admit medico- legal reports, corroborated by confirmatory affidavit. This application was duly granted, and these affidavits form part of the evidentiary material before this Court.

Quantum

Factual background

[9] On 25 October 2019 the plaintiff was injured in a motor vehicle accident, while being a passenger. At the time of the accident the plaintiff was 7 years and 11 months old. As a result of the accident, the plaintiff sustained serious bodily injuries consisting of:

a. Head and brain injury, with abrasions on the face and oedema of the brain (and a period of amnesia) - and left with possible moderate brain damage.

- b. Fracture of the orbital floor (as well as of the left cheek bone (zygoma/maxilla)
- c. An abdominal injury, with rupture of the spleen and a laparotomy and splenectomy done (as well as an intestinal laceration)
- d. An open fracture of the left tibia and fibula, complicated by osteomyelitis
- e. Multiple abrasions on the face, abdomen and lower extremities

[10] The following experts evaluated the plaintiff:

- a. Dr Lou van Wyk - Orthopedic Surgeon - examined on 17 March 2021
- b. Dr HET van den Hout - Orthopaedic Surgeon - examined on 15 January 2025
- c. Dr J A Smuts - Neurologist - Neurologist - examined on 5 July 2021 and addendum report dated 11 December 2024
- d. Dr Francois Greeff - General Surgeon - examined on 17 March 2021
- e. Dr J P M Pienaar - Plastic and Reconstructive Surgeon - examined on 6 July 2021
- f. Dr Merryll Vorster - Forensic Psychiatrist - examined on 18 November 2021
- g. Dr Merryll Vorster - Forensic Psychiatrist - examined on 18 November 2021 and an addendum report dated 10 December 2024
- g. Dr Marthé Pienaar - Educational Psychologist - examined on 17 February 2022 and an addendum report dated 27 February 2025
- h. Ms Annelies Cramer - Clinical & Neuropsychologist - examined on 29 November 2021 an addendum report dated 15 January 2025
- i. Ms Alice Nieuwoudt - Occupational Therapist - examined on 18 October 2021 an addendum report dated 26 February 2025
- j. Ms Hendrieka Kraehmner - Industrial Psychologist - examined on 18 October 2021 and telephonic follow up on 28 June 2022 and an addendum report dated 26 February 2025

Summary of the Plaintiff's evidence

[11] The Orthopaedic Surgeon, Dr Louw van Wyk, reported that the patient had a laparotomy for removal of her spleen as well as intestine rupture correction. The tens pins was removed approximately 6-8 months after the accident. She was in Grade 2 at the time of the accident. He reported that he expected her to complete her school career. She did not lose a school year due to the accident. From an Orthopaedic point of view, she has now developed chronic Osteomyelitis, which could be a lifelong problem, and future surgery would be needed due to the left tibia chronic osteomyelitis.

[12] Dr van den Bout reported that it is probably reasonable to make provision for early retirement of a few years than a normal retirement age of 65 years (about 3-5 years earlier) due to the fact that she has developed chronic osteomyelitis off the left tibia, which will probably flare up in future, and which will need surgery (including possible below knee amputation of the left leg) in future.

[13] The neurologist, Dr Smuts established that the plaintiff sustained orthopedic injuries, splenectomy, soft tissue injury and a head injury with a brain injury in the accident. She had a moderate concussive head and brain injury resulting in brain dysfunction.

[14] The plastic and reconstructive surgeon, Dr Pienaar, reported that the accident has left this young girl with serious permanent scarring and disfigurement. It affects her appearance and dignity. It causes social anxiety and embarrassment and will do so in future.

[15] The Forensic Psychiatrist, Dr Merryll Vorster, reported that A[...] has just completed her primary schooling, not having failed a year, and is about to embark on secondary schooling in 2025. She will experience difficulties as she progresses through high school and as the volume and complexity of the work increases.

[16] Dr Pauw, the Clinical and Neuropsychologist notes that the combination of mood, affective, behavioural, cognitive, physical problems and chronic pain pose a significant risk to T[...] future academic functioning. As the demands and complexity of higher grades increase, her academic performance could be adversely affected and eventually render her an unequal competitor in the open labour market.

[17] Ms Nieuwoudt, the Occupational therapist, reported that at the time of reassessment, physical ability testing indicated the absence of active dorsiflexion in the left ankle. This resulted in her inability to perform heel walking and a persistent left-sided limp. The absence of active dorsiflexion in the left ankle, coupled with a persistent limp and reduced balance, could have significant implications for T[...] future ability to work. Mobility challenges could lead to difficulties in performing jobs that require prolonged standing, walking or dynamic movements. Her reduced balance may increase the risk of falls and may limit her ability to work in environments where stability is crucial, such as jobs involving uneven surfaces. Persistent limping can lead to compensatory movements, potentially causing strain or pain in other parts of the body, such as the hips, knees or lower back. This might further restrict her ability to engage in physically demanding tasks. Should a below-knee amputation become a reality, her mobility and physical endurance may be further affected, especially if she experiences discomfort or challenges with using a prosthesis. The psychological effects of an amputation, such as anxiety, depression, or reduced self-confidence, can also influence workplace performance.

[18] A case manager should additionally be appointed to ensure that the funds are utilized appropriately and that the child receives all the recommended treatment interventions. The case manager should also monitor her progress as she ages,

keeping in mind that changes in the brain and body can result in different problems later in life.

[19] The Educational Psychologist, Ms Pienaar reported that T[.] was in Grade 2 at the time of the accident. Pre morbidly, T [..] would likely have coped adequately with the academic requirements of a mainstream school up to and including Grade 12 (NQF4). She would probably have passed with degree endorsement and had the potential to pass a three (3) year university degree (NQF 7). Her pre accident profile would have been that of a learner with the potential to succeed academically and therefore also occupationally. She probably had an average ability.

[20] Post morbid scenario, she will probably (with extra help) be able to pass her National Senior Certificate (NQF4) with a higher certificate endorsement. There is, however, a risk possibility that she will not be able to succeed in passing the examination. It is unlikely that T[.] will obtain further post-metric qualifications due to her brain injury, her anxiety, social adjustments problems and fear of failure. She will, therefore, probably enter the open labour market as a vulnerable and unequal competitor with an NQF 4 qualification at the most.

[21] Ms Kraehmer, the Industrial Psychologist, reported that T[.] would not have failed any years in school, she would have matriculated (NQF4) in 2029 (aged 18) with a degree endorsement. (NQF7). It is generally accepted that a person with a Grade 12 qualification will be in a position to perform semi skilled work (including, but not limited to a Cashier, Sales Assistant, Clerk or Waiter). Her income would probably have been comparable to the lower quartile for individuals with Grade 12 (R33 667 per annum). With a degree she would then probably have been appointed at a level equivalent to Paterson B4/B5 (earning R236 953 per annum in current value). She would have probably have been able to progress steadily to approximately Paterson D1/D2 as her hierarchical career ceiling (earning R662 326 per annum in current value) to be reached at age 45. She would probably have reached her career ceiling earnings, equivalent to the median on Paterson D1/D2 (earning R868 963) per annum in currently value at

approximately age 50-55. Regarding retirement age she would probably have been able to continue working until age 64, depending on the retirement age of her employer at the time.

[22] Post morbidly, following the accident on 25 October 2019 she stayed home for the rest of the year. T [...] is currently in Grade 8 and has not failed any grades yet.

Dr Pienaar (Educational Psychologist) indicates that post accident her low average cognitive ability with concentration and memory difficulties, plus her psycho-emotional and physical problems, will impact her scholastic and career prospects. Her poor attention and concentration, distractibility and memory difficulties will likely prevent her from using appropriate coding and retrieval strategies, resulting in the inability to master new skills. In all probability, she will be left with a Grade 12 (NQF4) qualification. She will be earning R33 667 per year until R63 100 per year at age 35. Thereafter, early retirement age to be at age 60.

Quantum actuarial services actuary report

[23] The actuary report is based on the findings of the Industrial report. The actuary applied contingency deductions of 20% and 40% respectively. Plaintiff Counsel argues that he applied a higher future pre morbid contingency of 25% instead of 20%.

[24] The defendant submits that the minor child has not failed a grade. He also submitted that the pre- and post-morbid contingencies should be the same. The court indicated to the State Attorney that the minor child sustained serious injuries. He submitted that a 35% pre-morbid contingency and a 35% post-morbid contingency should be applied.

Contingencies

Pre morbid-scenario

[25] It does however fall within the wide discretion of the court to make a general contingency adjustment after the basic calculations have been accepted. In assessing delictual damages it is the duty of the court to ensure that both objective and subjective factors are considered in such a manner that the assessment may be regarded as an application of “fair mathematics”.

[26] In applying contingencies, the courts often employ what is known as a “sliding scale”, which varies depending on the age of the claimant. This approach was highlighted in *Goodall v President Insurance* [1], where the court applied a scale of deductions, suggesting a 25% deduction for a child, 20% for youth, and 10% for middle-aged claimants. In practice, it is common for the Road Accident Fund to agree to standard deductions, typically 5% for past loss and 15% for future loss, reflecting the “normal contingencies”

[27] In addition to applying the 0.5% per year sliding scale in determining the appropriate contingency deduction for the pre morbid scenario the court must consider factors such as economic conditions affecting employment prospects, and T [..]’s family background and socio-economic status. Accordingly, a higher pre morbid contingency (25-30%) may be more appropriate given these factors.

Post morbid scenario

[28] I accept that T [..]’s position is extremely vulnerable, exacerbated by her post morbid emotional and physical condition and that she would not be an equal competitor in the open market.

[29] The Plaintiff applies a 40% deduction, for the future post morbid scenario.

[30] The Defendant's proposed of 35% deductions is more aligned with precedents where severe impairments significantly limit earning capacity. A balance approach would be to adopt a 35%, ensuring that both employment and significant career challenges are accounted for.

[31] *Ndzundzukani v Road Accident Fund* [2], the court acknowledged the Plaintiff's increased vulnerability in the labour market due to accident related injuries, which limited her to less strenuous tasks and necessitated time off for treatment. Recognizing these challenges, the court applied a 35% contingency deduction in the post accident scenario to account for the heightened risk of unemployment and reduced career prospects.

[32] In my view, a settlement figure should consider a slightly higher pre morbid contingency (25-30) and a higher post morbid contingency (35-40%).

[33] I apply the following contingencies:

Pre morbid income R10 043 959

Pre morbid contingency **(27%)**

Adjusted Pre morbid income: R7 332 090

Post morbid income R1 512 665

Post morbid contingency **(35%)**

Post morbid income R983 233

Revised Future Loss calculation

Net Future Loss calculation **R6 348 857,00**

[34] This amount recognizes that T[.]’s injuries, permanently impact her earning capacity and acknowledges her significant future loss while ensuring that the contingencies applied remain within a reasonable range.

General Damages

Legal principles

[35] In D v Road Accident Fund (15/24390) [2017] ZAGPJHC 61 (3 March 2017) at para 17 the court confirmed the following principle:

‘ In determining general damages the court is called upon to exercise its discretion to award what it considers to be fair and adequate compensation having regard to a broad spectrum of facts and circumstances connected to the plaintiff and the injuries sustained by him including their nature, permanence, severity and their impact on his lifestyle.’

[36] In Road Accident Fund v Marunga 2003(5) SA 164 (SCA) at para 23 the court also stated this principle as follows:

‘This Court has repeatedly stated that in cases in which the question of general damages comprising pain and suffering, disfigurement, permanent disability and loss of amenities of life arises a trial Court in considering all the facts and circumstances of a

case has a wide discretion to award what it considers to be fair and adequate compensation to the injured party. . . .’

[37] From the totality of the expert reports, it is evident that the plaintiff sustained the following injuries:

- a. Head and brain injury, with abrasions on the face and oedema of the brain (and a period of amnesia) - and left with possible moderate brain damage.
- b. Fracture of the orbital floor (as well as of the left cheek bone (zygoma/maxilla)
- c. An abdominal injury, with rupture of the spleen and a laparotomy and splenectomy done (as well as an intestinal laceration)
- d. An open fracture of the left tibia and fibula, complicated by osteomyelitis
- e. Multiple abrasions on the face, abdomen and lower extremities
- f. In addition, the plaintiff suffers from severe and permanent scarring and disfigurement.

[38] Plaintiff Counsel referred to comparative cases and I also performed my own research for case law on general damages awarded in respect of a moderate concussive head and brain injury resulting in brain dysfunction as well as orthopedic injuries and permanent scarring.

[39] Plaintiff Counsel referred the Court to the matter of *Moneuoa v RAF*, quantum of damages, Corbett & Honey, volume 8, A4-68, (26 June 2020):

In this matter a mother claim on behalf of a her 15 year old son who sustained a traumatic brain injury with subdural haematoma, as well as injuries to his right arm and right leg. As a consequence of the brain injury, a right frontal burr-hole craniotomy was performed to evacuate the haematoma and an intra-cranial pressure monitor was inserted. He has reached his academic ceiling and has become a candidate for a special school. Neukircher J awarded an amount of R1 500 000,00 (present value R1 950 000) for the claim for General Damages.

“In the present case of T [...], she is currently attending a regular school and has not failed any grades to date.”

[40] I was also referred to the matter of Mafalo v RAF (case number 17806/2010, North Gauteng High Court), in this matter Jansen van Nieuwenhuizen J awarded R1 200 000,00 in March 2014 in respect of severe head and brain injuries suffered by 13 year old student. The sequelae that she experienced was poor concentration, suffered mood- and personality changes, and she could no longer participate in all the sporting activities which she had participated in before the accident. The award in 2025 is R2 100 000,00.

[41] Plaintiff’s counsel also argued that we shouldn’t add up each individual injury to arrive at a total for general damages.

[42] The Defendant counsel is of the view that an amount of R1 900 000,00 is fair and reasonable.

Conclusions on general damages:

[43] In awarding R2,2 million in damages, this Court considered the case of Maribeng v Road Accident Fund, 2021 (8A4) QOD 39 (GNP), which involved a 4-year-old male who suffered severe brain damage as well as facial lacerations and a right femur fracture. The brain injury resulted in serious cognitive and higher mental processing sequelae as

well as emotional and behavioural problems. There was a 15% risk of developing epilepsy. The minor's education was affected. The history obtained from the mother included complaints of restlessness, headaches, hyperactivity, and memory problems. The value of the Court's award in present-day terms was R1 963 000.

[44] This Court has adjudicated a case involving a minor concurrently with this case. In *C.D.K obo C.L.K v Road Accident Fund (1809/2022) [2025] ZAWCHC 149* (27 March 2025), the 3-year-old minor suffered a fracture line of the skull extending from the left occipital bone to the foramen magnum. The key injury involved the minor's brain. She sustained brain swelling and repeated seizures. The tests performed by the Neuropsychologists revealed extensive difficulties. Their results confirmed much of the extensive neuropsychological symptoms reported by the mother. The minor suffered florid symptoms of brain injury and behavioural problems that followed a relentless progression. The minor began displaying signs of hyperactivity and inability to sustain attention in the aftermath of the accident. The minor remained on anti-epileptic medication. The tests performed by the Neuropsychologists revealed extensive deficits that had translated into psychological pain, suffering, and loss of amenities of life. The minor was diagnosed with post-traumatic epilepsy and attention deficit hyperactivity disorder (ADHD). The minor exhibited fine and gross motor and visuomotor integration difficulties, which all suggested that the minor experienced a more severe brain injury than the categorisation provided by the Neurologist who coincidentally assessed the minor in casu. The Minor obtained a global IQ score of 96, which the expert considered to be in the average range. Her verbal score was just below average at 87, but her performance score at 100 was average. This Court awarded the Plaintiff R2 million in general damages on 27 March 2025.

[45] I have duly considered the comparative awards the plaintiff referred me to and the ones I came across during my own research. One should be mindful of the fact that the plaintiff has a Whole Body Impairment of more than 30%. She also has a severe long term mental or severe long term behavioural disturbance or disorder, due to the head and brain injury sustained in the accident. The plaintiff has serious long-term impairment or loss of body function and also permanent disability, scarring and disfigurement. The severe impact the plaintiff's injuries have had in the past and will have in future, is evident from the evidence. Considering that an award of general damages comprises the consideration of the pain and suffering, disfigurement, permanent disability and loss of amenities of life a plaintiff suffered, I consider the present case as serious in respects of all these aspects. The injuries had a profound impact on the plaintiff's life amenities and will continue to do so. It resulted in functional limitations that are severely impacting her daily life and her future, also in respect of her future employment. It has also impacted upon her emotionally and psychologically and has affected her self-esteem and confidence. The Plaintiff's condition will be on medication for life and will also have to undergo further medical procedures in future.

[46] I accordingly find that an amount of **R2 200 000** in respect of general damages is fair and reasonable.

Curator ad Litem

[47] Adv Ras, the duly appointed *curator ad litem*, submitted that the money must be protected. He consulted with the parents, and the mother agreed that the funds should be protected. The State Attorney also agreed that the money should be protected by way of a trust.

[48] Plaintiff's counsel argued that this is a complicated matter and that Scale C is the appropriate scale. The State Attorney confirmed that he does not have any objection in this regard.

Therefore, I made the following ordered:

ORDER:

[1] The Defendant is liable to compensate Plaintiff for 100% of the proven damages suffered by A [...] T [...] V[...] - as agreed by both parties;

[2] The Defendant must pay the amount of R8 548 857,00 (Eight million, five hundred forty-eight thousand, eight hundred fifty-seven) to Plaintiff in delictual damages in respect of the Plaintiff's claim for damages within 180 (one hundred and eighty days) from the date of this Court Order.

[3] The amount referred to in the above mentioned paragraph comprises of the following heads of damages in favour of the patient:

General Damages R2 200 000,00

Future loss of income R6 348 857,00

[4] The Plaintiff uploaded a draft order onto Caselines in Word format, which I have amended. Therefore, Draft Order X, as amended, is made an Order of Court.

M PIENAAR
HIGH COURT GAUTENG
DIVISION, PRETORIA

This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to Case Lines. The date and time for hand-down is deemed to be 03 December 2025.

Date of Hearing : 26 November 2025

Judgment delivered: 03 December 2025

APPEARANCES:

For the Plaintiff: Adv F A Ras SC

***Curator ad Litem* Adv Ras**

Instructed by Goosen & Hattingh Attorneys

**For the Defendant State Attorney
Mr Kgabo Makgoka
Link no: 5111190**

[1] Goodall v President Insurance Co Ltd 1978 1 SA 389 (W)

[2] Ndzunduzukani v Road Accident Fund (532/2022) [2024] ZAMPMBHC 19