

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

CASE NO: 65300/2020

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

DATE: 17 NOVEMBER 2025

SIGNATURE

In the matter between:

R[...] M[...]P[...] Obo

O[...] B[...] I[...] P[...]

PLAINTIFF

and

ROAD ACCIDENT FUND

Defendant

Summary: Amount of general damages suffered in a motor vehicle collision. The minor suffered a mild brain injury.

JUDGEMENT

MATIKA AJ

BACKGROUND:

1. This is a personal injury claim that was before me on the 29th of September 2025 and appeared on the roll as matter number: 27B. The matter stood down until the 01st October 2025, at the request of the plaintiff's counsel, the court was informed that the parties are still trying to settle the matter themselves, the Court agreed to stand the matter down until 01st October 2025 as requested. On 01st October 2025, the court was informed that the parties could not settle, and as such the matter is ready to proceed on the issue of general damages.
2. The only issue before me at this stage is the amount of general damages to be paid to the plaintiff. It is common cause that the plaintiff qualifies for general damages as per the outcome from the Health Professions Council South Africa ("HPCSA") dated 17th of September 2025.
3. The defendant initially rejected RAF 4 serious injuries assessment completed on behalf of plaintiff by Dr J.A Ntimbani (Neurosurgeon) on the 22nd of May 2024, the issue was then referred to HPCSA which then found that the plaintiff's injuries are serious. The outcome from HPCSA is uploaded on case lines under section 37 from pages 37-1 to 37-3.
4. The issue of merits and future medical expenses in terms of section 17(4) (a) of the Act¹ had previously been adjudicated upon by virtue of the court order dated 23rd of May 2024 granted by Honourable Justice Flatela J, on the basis that the defendant is 100% liable to the plaintiff's proven and or agreed damages and quantum postponed sine die.
5. The matter proceeded on an unopposed basis on the default judgement roll of the 01st October 2025 in respect of the amount of general damages.

¹ Road Accident Fund, No 56 of 1996 ("Act") as Amended.

6. The issue of the plaintiff's loss of income/earnings was postponed sine die at the request of the parties.
7. The claim is in terms of the Road Accident Fund Act 56 of 1996 as amended.

THE DEFAULT OF THE DEFENDANT

8. The plaintiff R[...] M[...] P[...], an adult female born on the 09th August 1970, instituted action against the defendant in her representative capacity as the legal guardian of O[...] B[...] I[...] P[...] a minor born on the 01st of January 2011.
9. This claim arose out of a motor vehicle accident that occurred on or about the 05th June 2016 along Shiluuhene Street, Mamelodi East, Pretoria, Gauteng Province. At the time of the accident, the minor was a pedestrian.
10. At the time of the accident the minor was 5 (Five) years of age and currently as at date of this order 14 (Fourteen) years of age.
11. The summons were issued on the 11th December 2020 and served on the defendant on the 14th December 2020.
12. On 23rd May 2023, the defendant delivered notice of intention to defend the action in terms of Rule 19(5) of the uniform Rules.
13. On 13 March 2024, the Plaintiff served the defendant attorneys with notice of bar.
14. The defendant is under bar, there is no agreement between the parties to uplift the bar and to date the defendant failed to uplift the bar.
15. Application for this default judgment was served on the defendant on the 17th of May 2024.

16. The notice of set down for this matter to proceed on Monday, 29th of September 2025 was served on the Defendant on 07th of May 2025 and uploaded on case lines under section 17 item 2 page 17-4 until 17-5.

APPLICATION IN TERMS OF RULE 38(2)

17. Application to present evidence of the Plaintiff and his expert witnesses, and any other relevant witness by way of affidavit in terms of Rule 38(2) of the Uniform Rules was sought and granted.
18. **In Havenga vs Parker²**, confirmed by the Supreme Court of Appeal in Madibeng local Municipality vs Public Investment Corporation 2018(6) SA the (“SCA”), found that it is permissible to place expert evidence before the court by way of affidavit in terms of Rule 38(2), accordingly that application was granted.

MEDICO-LEGAL REPORTS

19. The Plaintiff obtained medico-legal reports from the following experts and the reports were served on the defendant in terms of Rule 36(9)(a) & (b): Dr Ntimbani (Neurosurgeon); Dr Linda Maya(Clinical psychologist); Dr Ndzungu & associates (Occupational Therapist); Dr Zethu Gumede (educational Therapist); Sechudi (industrial psychologist) and Munro (Actuary).
20. The Defendant elected not to appoint any experts and therefore the plaintiff’s experts reports, and hospital records are uncontested.

² 1993 (3) SA 724(T)

21. Having regard to the Defendant's aforesaid failure, due regard should be had to the principles as set out in **Prince v Road Accident Fund**³ per **Lowe, J**, and at paragraphs 55, 56 and 59 thereof in the evaluation of the probabilities in respect of the aforesaid experts evidence, as follows:

“ It is useful to be reminded, again at the first principle level, that the party in a civil trial whose version of the facts appears to be the more probable is entitled to judgment, the proof being on a balance – preponderance – of probabilities.”

“ Sufficient proof is established when an inference can be drawn about the fact in issue, provided that the inference is consistent with all the proven facts. In civil matters, it suffices if the inference is the most probable inference.”

“ Further, once prima facie proof or evidence has been provided, That is proof calling for an answer. This becomes conclusive proof on the point in issue usually if no evidence is produced to rebut it. The fact of the matter is, however, that the Court must at the end of the case review all the evidence and evaluate this according to the applicable primary criterion.”

“ It must be accepted, of course, that where, for example, a Defendant fails to produce evidence, this does not mean necessarily that the opponent's version in the case, falls to be accepted. The acceptance of Plaintiff's case depends on the probative strength of Plaintiff's case, being whether or not it is

³ CA 143/2017) [2018] ZAECGHC 20 (20 March 2018)

sufficient to cast, an evidential burden on the Defendant to present evidence.”

THE PLAINTIFF INJURIES AND SEQUELAE

22. The injuries sustained by the plaintiff are not in dispute.
23. Hospital records from stanza Bopape Clinic 05/06/20216 states that the minor sustained abrasion to the right forehead and immediately awake and ran off after.
24. According to Dr Ntimbani (Neurosurgeon) report concluded that, the minor sustained the following injuries : Head Injury-facial abrasion which is categorised as mild brain injury and Bilateral knee injury .The minor complains of: Headaches; average 3-4 episodes a week, associated with nose bleeding and relived by analgesia. Memory problem: easily forgets what is taught in class, forgets given tasks and when asked to go buy sugar he buys back salt, Poor concentration and Right knee pain. The risk of post traumatic epilepsy has not increased. The whole person impairment (WPI) is 24%.The GCS is not recorded
25. According to Dr Linda Maye (Clinical Psychologist) concluded that: His experience of a mild traumatic head injury with post-concussive symptoms and cognitive decline may further affect his academic performance, progression and quality and enjoiment of life.
26. Dr Ndzungu (Occupational therapist) concluded that the minor sustained: mild brain injury, soft tissue injury to forehead and right knee injury.

Treatment received: Radiological scan examination, Pain management/analgesic medication, antibiotics, wound care and consecutively managed.

27. Loss of Life Amenities: The claimant presents with right knee pain affecting his daily life and school activities. He has right limb limitations which are affecting his engagement in physical tasks and may affect his future work capacity. He has cognitive limitations and psychological limitations affecting his learning, Reduced future earnings capacity, Loss of enjoyment of life. The accident in question has had a negative impact on his vocational capacity. His amenities of life have been negatively affected by his involvement in the accident under review.

GENERAL DAMAGES

28. The Plaintiff's Counsel submitted that an amount of 1,5 million (One million - Five hundred Thousand) will be fair and reasonable in the circumstances.
29. Counsel referred the court to the matter of: *Torres v Road Accident Fund*⁴. This court finds that the facts in *Torres* are distinguishable from the current matter in that in *Torres* plaintiff suffered a severe diffuse brain injury, soft tissue injury to the neck, and soft tissue injuries to the face and chin, Significant neuro-cognitive and neuro-behavioural deficits associated with concentration, working memory, impulsive control and abstract reasoning. Depression and adjustment disorder. Probable successful career in jewellery

⁴ 2007(6A4) QOD 1(GSJ)

design no longer possible and limited to sympathetic employer. Value of this case in 2007 was R600 000.00 and value as in 2023 is around R1 464 000.00.

30. In this matter before the court, all the plaintiff's experts agreed that the minor sustained mild brain injury/mild head injury.

APPROACH TO GENERAL DAMAGES:

31. The assessment of general damages is a discretionary function of the court which has been described by the Supreme Court of Appeal (***The "SCA"***) in the matter of **Road Accident Fund v Marunga**⁵ at page 169 E-G as follows:

" This Court has repeatedly stated that in cases 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 the case has a wide discretion to award what it considers to be fair and adequate compensation to the injured party...."

32. The exercise of this discretion referred to above is not always an easy task. In the matter of **Minister of Safety and Security v Seymour**⁶ at par [17] the SCA held that:

" The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that..."

33. In the case of **Dikeni v RAF 2002 (5) 171 GP Van Heerden J** stated:

⁵ 2003 (5) SA 164 (SCA)

⁶ 2006 (6) SA 320 (SCA)

“ *Although these cases have been of assistance, it is trite law that each case must be adjudicated, on its own merit. No one case is factually the same as the other. It only provides a guide in the assessment of damages.*”

34. In considering comparable case law, the following cases come to the fore:

34.1 **In Maele v Road Accident Fund**⁷ A 7-year-old scholar suffered, Mild concussive brain injury and fractured left tibia. The fracture and alignment of the left tibia had healed well after the accident. The child was hospitalised for five days after the accident and had a plaster of Paris cast applied to the leg. She endured acute pain for approximately four to five days after the accident and was in moderate pain for about eight weeks. She had some discomfort when running, standing or walking for long distances and when kneeling. The fracture healed completely, but provision was made for conservative future treatment with possible arthroscopy and debridement of left knee. She experienced serious learning difficulties prior to the accident and had a dismal school record which was not exacerbated by the injuries. He was awarded R330 000 in respect of general damages, which translate to R569 000.00 in 2025 terms in terms of Robert Koch 2025 quantum year book by Robert Koch page 19.

34.2 **In the matter Methule obo Minor v The Road Accident Fund**⁸ In this matter a minor boy, 7 years old at the time of the accident and 16 years old at the time of the trial. sustained a Face and head. Minor concussive head injury.

⁷ 2015 (7E4) QOD 1 (GNP),

⁸ 2022 (8G4) QOD 1 (GNP)

Scarring on forehead (two scars), right eyebrow and right lateral upper eyelid. The latter scar is hyperpigmented, irregular, very visible and is said to cause distortion and destruction of the minor's right lateral eyebrow and distortion of his right upper eyelid. Scalp abrasions which have healed without leaving serious scarring, save for over the right temporal scalp where there is a scar visible close to the anterior hairline and is said to be very unsightly. Other scars are over the minor's right wrist, left wrist and left hand. Also internal derangement of the right knee joint. The minor would require, as future treatment, surgery for scar revision. However, he will retain considerable scarring which will not lend itself to any further surgical improvement. He has been left with serious permanent disfigurement and scarring. He suffers from headaches and will require future treatment for the management of the headaches. He suffers from symptoms of post-traumatic stress disorder and the accident has rendered him psychologically more vulnerable. He seems prone to emotional vulnerability and has been rendered more vulnerable on cognitive and emotional levels. General damages in the amount of R 500 000.00 was awarded in 2022 and the current value is R 586 000 in 2025 quantum year book by Robert Koch page 23.

- 34.3. **In Sauerman v Road Accident Fund**⁹ a 36-year-old policeman employed by SAPS Synopsis of injuries and after-effects: Concussive head injury of, at most, moderate to severe intensity leading ultimately to so-called 'concussive syndrome' which became irreversible, whereas concussive patients normally recover fully within about 3 months, provided the symptoms are immediately addressed effectively. If not, they can become irreversible, which is what the

⁹ 2004 (5B4) QOD 190 (AF)

expert believed had occurred in the claimant's case. Such symptoms commencing with a failure to cope with the demands of everyday living and work, and developing into poor attention and memory, irritability, headaches, dizziness, fatigue and eventually anxiety. The claimant fitted this typical picture, and improper management and a lack of timeous rehabilitation had rendered his symptoms irreversible. His behaviour and personality had changed dramatically. From the outset (at hospital) he was very aggressive and difficult to control. He now lacked interpersonal skills and had become violent and abusive and was constantly coming into conflict with others, family, colleagues and members of the public alike, and he was unable to cope with any jobs, even menial ones. For this reason he was repeatedly transferred internally to other departments, but the complaints about his aberrant behaviour and his inability to cope continued until he was finally declared by the Medical Board to be permanently unfit for duty. Tests showed his neuro-psychological and intellectual functioning and his concentration to be severely impaired, and that he made an inordinate amount of errors, and he was no longer considered to be employable. Also a whiplash injury of the neck with no significant permanent after-effects. The plaintiff awarded general damages in the amount of R 200 000.00 in 2004 and the current value is R620 000.00 in 2025.

ANALYSIS

35. Despite what is presented as the case and injuries of the plaintiff, it is important to note further that this court is not a rubber stamp of amounts being

presented by the Plaintiff to support their case even though their matters is undefended by the Road Accident Fund.

36. The Court considers the total evidence presented to sustain the claims brought by the Plaintiff in any action. In matters of this nature where the defendant did not oppose the claim, the court is even extra-cautious to avoid being used as a rubberstamp of the plaintiff's claims. The Road Accident Fund is not a largesse as stated in **Pitt v Economic Insurance Co. Ltd**^[16] where the following was stated:

“ The courts must take care to see that its awards are 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 ”.

37. Having regard to the submissions of Counsel and the comparable cases above, as well as the caution outlined in the **Protea Assurance case**¹⁰, and Marunga judgement above, I am of the view that a fair and reasonable amount for general damages is an amount of **R600 000-00 [Six Hundred Thousand Rands]**.
38. In respect of the costs of this action, there is no reason to deviate from the norm of the costs that costs follow the result. Accordingly, the Defendant is liable for the costs of the Plaintiff, including the costs of counsel on scale B. It is my view, however, that all the expert reports dealing with the loss of earnings or earning capacity should not be awarded costs at this stage and should be dealt with at the time this head of damage is finalised.

¹⁰ Protea Assurance Co Ltd v Lamb **1971 (1) SA 530** (A) @ 535H – 536B

39. Plaintiff's Counsel prepared a Draft Order which excludes the amount for general damages which has now been inserted an mount . The Draft Order also makes provision for the creation of trust, the court is in agreement that any funds awarded should be protected by way of trust for the benefit of the minor .

40. **Accordingly,** the following Order is made:

a). The Court Order marked "X" as amended is made an order of Court

F MATIKA (AJ)

ACTING JUDGE OF THE HIGH COURT

OF SOUTH AFRICA, GAUTENG

DIVISION, PRETORIA

Heard: 01 October 2025

Judgment delivered: 17 November 2025

Appearances:

For the Plaintiff: Adv TC Mapehelela

Instructed by: E T NKUNA ATTORENYS INC

Email: Info@etnkunaattorenys.co.za

For the defendant: No Appearances