

**IN THE HIGH COURT OF SOUTH AFRICA  
FREE STATE DIVISION, BLOEMFONTEIN**

**Not Reportable**

Case no: 6359/2023

In the matter between:

**MB M**

**PLAINTIFF**

and

**THE ROAD ACCIDENT FUND**

**DEFENDANT**

**Neutral Citation:** *MB M v The Road Accident Fund* (6359/2023) [2026] ZAFSHC 9 (16 January 2026)

**Coram:** OPPERMAN J

**Heard:** 18-21 November 2025. Heads of argument 28 November 2025 and 18 December 2025. Arguments by way of heads of arguments as agreed between the parties.

**Delivered:** The judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for the hand-down is deemed to be 16 January 2026 at 15h00.

**Summary:** Motor vehicle accident – severe injuries sustained – discretion of court – general damages – principles restated.

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## ORDER

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In addition to the order dated 21 November 2025 wherein judgment was reserved in respect of general damages the following order is made:

- 1 The defendant is ordered to pay to the plaintiff the sum of R1 100 000.00 (One Million One Hundred Thousand Rand) in respect of general damages.
- 2 Should the payment as aforesaid not be made within 180 days from the date of this order, the defendant shall be liable for payment of interest on the amount above calculated at the prescribed rate per annum, from 15 (Fifteen) days from the date of the granting of this order, to date of payment.
- 3 The payment referred to in paragraph 1 supra shall be paid into the trust account of the plaintiff's attorney being MAVUYA ATTORNEYS INC with account number 6[...] held at FIRST NATIONAL BANK.
- 4 The defendant is ordered to pay the plaintiff's party-and-party costs including costs of counsel on scale B in respect of any additional costs pertaining to the hearing on the damages claim not included in the 21 November 2025-order.
- 5 If costs are not agreed upon, the plaintiff shall serve a Notice of Taxation on the defendant's attorney of record; and the plaintiff shall allow the defendant 180 court days to make payment of the taxed costs on receipt of the allocator.

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## JUDGMENT

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### Opperman J

#### Introduction

[1] The merits of the matter have been settled, with the defendant accepting 100% liability for the plaintiff's proven or agreed damages. The sole issue remaining for determination is the quantum of general damages. The plaintiff seeks an award of R1 700 000.00 in respect of general damages, while the defendant contends that an award of R800 000.00 would be fair and reasonable.

[2] The claim as per the particulars of claim started with:

|                                               |                |
|-----------------------------------------------|----------------|
| Estimated future medical and related expenses | R2 000 000.00  |
| Loss of Earnings/Earning capacity             | R9 500 000.00  |
| General Damages                               | R3 000 000.00. |
| The total claim was                           | R14 500 000.00 |

[3] On 21 November 2025, this Court ordered, *inter alia* and, by agreement between the parties, that:

- '1. The defendant shall pay damages to the plaintiff in the sum of R 2 138 935.25 (TWO MILLION ONE HUNDRED AND THIRTY-EIGHT THOUSAND, NINE HUNDRED AND THIRTY-FIVE RAND AND TWENTY-FIVE CENTS) for loss of earnings.

...

4. Defendant shall provide an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, 56 of 1996, for the cost of future accommodation of Plaintiff in a hospital or nursing home, or treatment of or rendering of a service or supplying of goods

to him arising out of the injuries sustained by her in the motor vehicle collision on 10 NOVEMBER 2022, after such costs have been incurred and upon proof thereof.

5. The defendant shall pay the plaintiff's costs of suit, as taxed or agreed, on a scale between party and party including the costs of the Counsel on scale B subject to the discretion of the taxing master and which costs shall include the reasonable qualifying fees of the following expert witnesses: ...

...

7. Judgment in respect of General Damages is reserved.'

### **Cause of action**

[4] The case went to trial to address general damages. To summarise, on 10 November 2022, the plaintiff, then 28 years old, was travelling as a passenger on a bus along the N8 Road near Botshabelo when the insured driver lost control and crashed into another vehicle.

[5] The plaintiff's boyfriend was seated next to her in the bus and tragically lost his life in the accident. According to the particulars of claim, her injuries include head trauma, orthopaedic injuries and permanent scarring. The head injury apparently resulted in aftereffects that impacted her hearing.

[6] The plaintiff testified and no experts were called as the defendant admitted the plaintiff's expert reports<sup>1</sup> to be true, correct and authentic. It is imperative to make some introductory remarks on the law.

### **The law**

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<sup>1</sup> Dr M.F. Mkhoza (neurosurgeon), Dr E Schnaid (orthopaedic surgeon), Dr K.M.S Mosito (otorhinolaryngologist), Dr U.L.I. Kunzman (ophthalmologist), Dr E.M. Moshokoa (urologist), S. R. Senzere (occupational therapist), Dr G Sibiyi (clinical psychologist), T Manci (educational psychologist), S Van Jaarsveld (industrial psychologist), D Mureriwa (actuary).

[7] Claims against the Road Accident Fund (RAF/the Fund) are compensatory in nature and are intended to place the claimant, as far as money can do so, in the position he or she would have been in had the collision not occurred. They are not designed to enrich the claimant. The purpose of compensation under the Road Accident Fund Act is *restitutio in integrum*. The Fund is obliged to compensate proven loss and damage, not to confer a benefit or windfall upon a claimant.

[8] All evidence must be evaluated comprehensively; parties may not selectively reference only particular portions. In civil cases, the burden of proof lies with the party asserting a claim. A *prima facie* case can become conclusive if the opposing party fails to provide evidence rebutting the claim. This is the situation in *casu*; the evidence of the experts as per the reports were accepted without any reservation by the defendant.

[9] In *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*<sup>2</sup> it was decreed that unchallenged evidence (including expert evidence) may be accepted unless manifestly implausible, underscoring the importance of proper cross-examination. Crucial is that expert opinion is admissible to assist the court, but the court remains the final arbiter.

[10] The evaluation of expert evidence has occupied much judicial attention and has been established through a long line of cases in our law. In *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämpfung MBH*<sup>3</sup> the following was stated at 371:

‘As I see it, an expert's opinion represents his reasoned conclusion based on certain facts or data, which are either common cause, or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert's bald statement of his

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<sup>2</sup> *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC) paras 61–65.

<sup>3</sup> *Coopers (South Africa) (PTY) LTD v Deutsche Gesellschaft für Schädlingsbekämpfung MBH* 1976 (3) SA 352 (A).

opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert.’

[11] Procedural fairness in trials is crucial, and litigants may not be ambushed. If the battle lines were drawn, counsel for the defendant cannot take issue with the evidence of the experts. If the foundation for expert evidence is questioned, only then is it necessary for the opposing party to consider tendering its own expert evidence. Experts, in turn, are required to assist the court – they cannot act as advocates. The principle is that expert witnesses should assist the court with objective opinions within their area of expertise and should not function as advocates for a party.

### **The expert evidence**

[12] Dr M.F. Mkhonza (neurosurgeon) reports that the plaintiff sustained a mild traumatic brain injury (concussion); facial bone fractures (right zygomatic, temporal bone, maxilla, and bilateral mandibular fractures), grade 4 liver injury, grade 2 splenic injury, right radio-ulna fracture and right femur fracture during the bus accident. She is still suffering from persistent post-concussive symptoms (post-traumatic headaches; neurocognitive deficits and personality changes); musculoskeletal complaints (painful right wrist and right femur), and hearing deficits. Psychotherapy by a clinical psychologist is recommended for the post-concussive symptoms. Provision with pain medication is also recommended for post-traumatic headaches while no future neurosurgical operation is anticipated. Her risk of post traumatic epilepsy is the same as the general population.

[13] Dr E Schnaid (orthopaedic surgeon) notes that the plaintiff sustained fractures of the right femur (open wound), right radius, right tibia and fibula and soft tissue injury to the cervical spine. The fractures were treated surgically with

open reduction of the radius and intramedullary fixation of the femur. Her gait was normal.

- a) The femur fracture has united with the nail in situ thus provision should be made to the fixative to be removed.
- b) The right tibia fracture has fully united, and fixatives should be removed.
- c) The radius and ulna fractures have united, and the fixatives should be removed.
- d) She sustained a whiplash injury to the cervical spine of which physiotherapy and anti-inflammatory agents will be beneficial.
- e) Provision should be made for a cervical fusion, when indicated. A lumbar back sprain and physiotherapy rehabilitation is indicated.

[14] Dr K.S.M. Mosito (ENT surgeon/Otorhinolaryngology) indicates that the plaintiff complained of right sided hearing loss associated with tinnitus. She had symptoms of allergic rhinitis before the accident but now it has worsened. Examination of the right ear revealed normal pinna, external ear canal and normal tympanic membrane. An audiology assessment for assessment of hearing is suggested and a hearing aid on the right for rehabilitation of hearing depending on the frequencies of hearing loss. The surgeon notes that:

‘In my considered professional opinion, the claimant, Ms MM, sustained a right-sided sensorineural hearing loss as a direct consequence of a head injury suffered in the motor vehicle accident in question. She further presents with right sided epiphora attributable to nasolacrimal duct obstruction. These conditions are, in my view, causally related to the accident.’

[15] Dr U Kunzman (ophthalmologist) notes that Ms Moshounyane did not sustain serious permanent injuries to her eyes during the MVA in November 2022. Her current visual symptoms are caused by allergic conjunctivitis and low myopia. These conditions are unrelated to the MVA in November 2022. The plaintiff did sustain a corneal scar in the incident but since this scar lies outside the visual axis,

it bears no visual implications for the plaintiff. She suffers from low myopia and mild allergic conjunctivitis. These conditions are both unrelated to the accident. From an ophthalmological point of view, there will be no future medical costs originating from the accident.

[16] The evidence of Dr Moshokoa, a specialist urologist, is of clinical significance. The plaintiff, during *viva voce* evidence in the trial, reported persistent urinary incontinence, which constitutes a functional impairment attributable to the injuries sustained in the accident and has adversely affected her activities of daily living. The plaintiff testified that she suffers from chronic urinary incontinence, which has resulted in a significant loss of bodily function, diminished dignity, and a sustained reduction in her quality of life. The urologist noted *inter alia* that she cannot hold urine for a long time, no incontinence, she has urgency, has nocturia and wakes up three to five times a night to urinate but with no bedwetting. She was in a relationship for eight months. She is not affected sexually. She is planning to have two more children. With severe lower urinary tract symptoms (LUTS), she should have treatment. She currently has lower urinary symptoms. She has no abnormalities visualized on upper tracts. With reasonable medical certainty she has an overactive bladder and causal events are related to the accident. A neurogenic cause should be excluded by means of an MRI of the spine. Her life expectancy is not affected by urological *sequelae*. The plaintiff's lower urinary tract symptoms are medically consistent with a neurogenic bladder dysfunction arising from the cervical spinal injury sustained in the collision.

[17] Dr. Sibiya (Clinical Psychologist) reports that:

- a) An emotional assessment revealed scores suggesting severe depression and anxiety levels.



- b) The plaintiff did not present with any overt psychopathology and did not meet the diagnostic criteria for any psychological illness, as per the Diagnostic and Statistical Manual of Mental Disorders.
- c) She however reported to experience some cognitive, emotional and physical difficulties since the accident.
- d) No indications of organic brain damage were observed. Her overall performance on the assessment revealed fluctuating (average to below average) neurocognitive functioning. Difficulty was observed in three of the four assessed domains, while her scores on the emotional assessment revealed an undesirable presentation.
- e) The observed difficulties could be the result of several factors or a combination of factors including but not limited to the language of assessment, her socio-economic status and background, the lack of intellectual stimulation, the hearing impairment, the weakness on the right arm/hand and the diagnosed mild brain injury.
- f) Individual psychotherapy is recommended. An assessment of anxiety and depressive symptoms by a psychiatrist is recommended.

### **The evidence of the plaintiff**

[18] The plaintiff tendered strong detailed evidence with much veracity. Although she misstated the term of her hospital stay, confusion is common among plaintiffs in such cases due to rapidly unfolding events and intense trauma. The court must seek context and reliability in the evidence of the experts and where else it can be located.

[19] Crucial is that the expert does not indicate any damage causally linked to the myopia suffered by the plaintiff whereas the plaintiff reports challenges with her eyesight. She continues to experience pain in her left leg and arm, headaches, and emotional distress.

[20] The clinical psychologist noted that the plaintiff presented with signs of severe depression and anxiety. The plaintiff also testified that she used to be socially active and was in a relationship with her deceased boyfriend prior to the accident.

[21] Under cross examination she was pressed that she informed the urologist that she has entered into another relationship subsequent to the accident. However, she informed the court that she did not regard the dalliance as a relationship as it did not even last three weeks. She explained that she is no longer interested in romantic relationships because she harbours feelings that ‘she is no longer enough’.

[22] The urologist diagnosed the plaintiff with severe LUTS, noting its impact on her quality of life. The plaintiff testified that her kidney injuries limit her ability to retain urine, leading to an incident where she urinated on herself in public. As a result, she now restricts her outings to locations near her home to prevent recurrence.

[23] The plaintiff has endured a significant amount of pain during her stay at the hospital post discharge and her mobility was restricted to the use of a walking frame and subsequently a crutch. In addition, the plaintiff still complains of pains despite all the medical experts confirming that she reached maximum medical improvement.

[24] She further explained how she struggled with using the bus on the same road on which the accident occurred when going to school. She also testified that post-accident she has become easily irritable and emotional. Furthermore, during her admission, the plaintiff testified about being on a catheter until she was discharged

which is invasive in nature and she also underwent several procedures which is confirmed by the hospital records.

[25] As a result of the injury to her jaw and the treatment she underwent, the plaintiff was restricted to a soft and liquid diet. She testified that she attended Pelonomi Hospital for the removal of the fixation and that she continues to have trouble chewing hard or solid food, as it causes her pain. Unfortunately, the plaintiff will continue to endure ongoing pain and discomfort, as the expert's evidence indicates that she is likely to undergo further medical procedures in the future.

[26] The plaintiff also testified about her ongoing ordeals with standing for a long time or being seated for long periods as well as long periods of physical pain which is still ongoing signified by pain on the left leg and arm, persistent headaches and emotional anguish as confirmed by the clinical psychologist. The neurosurgeon has also confirmed this, including poor memory and concentration as a *sequela* of the accident. She testified that she experiences these headaches about three times a day with each episode lasting about 30-54 minutes.

[27] She also testified that she struggles to turn while sleeping and would require the assistance of her mother to turn her which happens around three times per night. The orthopaedic surgeon is of the opinion that: 'All physical activities will be restricted in the future. She will continue having difficulties in performing household chores.'

[28] She testified about how she struggles to perform household activities such as moving furniture around and, due to the loss of the ability to firmly grip objects, she also struggles scrubbing pots. The plaintiff testified that, as a result of persistent pain in her back and leg, she is no longer able to carry heavy objects,

jump, or walk for prolonged distances. She is unable to engage in physical activities with her daughter, particularly those requiring jumping or sustained physical exertion.

## **The allocation of general damage**

[29] The *locus classicus* regarding allocations is the case of *Southern Insurance Association v Bailey* (*Southern Insurance Association*).<sup>4</sup> The court decreed that: ‘where the method of actuarial calculations is adopted, it does not mean that the trial Judge is tied down by inexorable actuarial calculations. He has a large discretion to award what he considers right’.

[30] Zulman JA, with reference to various authorities including *Southern Insurance Association*, ruled in *Road Accident Fund v Guedes*<sup>5</sup> that the dictum that evolved is that the calculation of the quantum of the future amount, such as loss of earning capacity, is not a matter of exact mathematical calculation. By its nature, such an enquiry is speculative, and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate.<sup>6</sup> Courts have adopted the approach that, the amount to be awarded as compensation and the figure arrived at, depends on the court’s view of what is fair.

[31] The following has developed through the years:

- a) It must be reminded that general damages is an intangible phenomenon. General damages are a category of damages awarded by a court to compensate a claimant for non-patrimonial (non-financial) loss suffered because of a wrongful act. The adjudication is highly discretionary. No two injuries have identical life impacts. Fair and adequate compensation is the ambition of the court.
- b) A claim for general damages does not require exact proof of monetary value but must be supported by evidence of the injury and its consequences.
- c) In exercising its discretion, the court will generally be guided by awards made in comparable precedents and the principle of *stare decisis* plays a roll.

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<sup>4</sup> *Southern Insurance Association v Bailey* NO 1984 (1) SA 98 (A) at 116-117.

<sup>5</sup> *Road Accident Fund v Guedes* (611/04) [2006] SCA 19; 2006 (5) 583 (SCA).

<sup>6</sup> *Ibid* para 8.

- d) The court will be alive to the tendency for awards to be higher in recent years than was previously the case. They do not bind a court to a specific amount.
- e) In considering previous awards, it is appropriate to have regard to the depreciating value of money due to inflation. Courts acknowledge the erosion of money's value over time. Inflation-adjusted figures simply inform, rather than determine, the court's ultimate discretionary assessment.
- f) In South African law, the assessment of general damages is a flexible process governed by judicial discretion rather than rigid formulas.

## **Conclusion**

[32] I have reviewed a number of comparable cases presented by counsel and considered the guidance they provide. It is, however, well established that no two cases are identical in terms of injuries sustained, the *sequelae*, and the anticipated impact on the claimant's future. Having evaluated the conspectus of evidence in this matter, I am of the firm opinion that an amount of R1 100 000.00 represents a fair, just, and equitable award in compensation for the injuries sustained by the claimant.

[33] Costs will follow the event and as on scale between party and party including the costs of counsel on scale B as was the case in the settlement above and will cover any costs not included in the order made on 21 November 2025.

## **Order**

[34] Considering the above, the following is ordered:

In addition to the order dated 21 November 2025 wherein judgment was reserved in respect of general damages the following order is made:

- 1 The defendant is ordered to pay to the plaintiff the sum of R1 100 000.00 (One Million One Hundred Thousand Rand) in respect of general damages.

- 2      Should the payment as aforesaid not be made within 180 days from the date of this order, the defendant shall be liable for payment of interest on the amount above calculated at the prescribed rate per annum, from 15 (Fifteen) days from the date of the granting of this order, to date of payment.
- 3      The payment referred to in paragraph 1 supra shall be paid into the trust account of the plaintiff's attorney being MAVUYA ATTORNEYS INC with account number 6[...] held at FIRST NATIONAL BANK.
- 4      The defendant is ordered to pay the plaintiff's party-and-party costs including costs of counsel on scale B in respect of any additional costs pertaining to the hearing on the damages claim not included in the 21 November 2025-order.
- 5      If costs are not agreed upon, the plaintiff shall serve a Notice of Taxation on the defendant's attorney of record; and the plaintiff shall allow the defendant 180 court days to make payment of the taxed costs on receipt of the allocator.

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**M OPPERMAN**  
**JUDGE OF THE HIGH COURT**

**Appearances**

For the plaintiff: KP Mohono  
Instructed by: Mavuya Attorneys Incorporated,  
Bloemfontein

For the defendant: NP Banda  
Instructed by: Office of the State Attorney,  
Bloemfontein.