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

Case Number: 87131/ 19

(1) REPORTABLE: YES/NO

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

(3) REVISED: YES/NO

DATE: 21/01/2026

SIGNATURE:

In the matter between:

ROSEMARY MOKOENA

PLAINTIFF

Obo

Minor

and

THE ROAD ACCIDENT FUND

DEFENDANT

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date of hand down is deemed to be 19 January 2026.

JUDGMENT

SEIMA, AJ

"He who profits by another's misfortune through deceit is no less a thief than one who steals with his hands."

1. The Road Accident Fund, once conceived as a bulwark of social justice and restorative compensation, now stands beleaguered by systemic mismanagement, fiscal insolvency, and administrative opacity. Its failure to honour claims timeously, and its inability to litigate effectively have culminated in a surge of default judgments. Yet, in this climate of dysfunction, legal practitioners as officers of the court and custodians of ethical advocacy must resist the temptation to convert procedural lapses into windfall enrichment. The pursuit of justice must not be distorted into a quest for overnight affluence. Inflated claims, speculative damages, and opportunistic litigation risk undermining the very integrity of the legal system and eroding public trust in the profession. It is precisely in moments of Institutional fragility that the ethical compass of the legal fraternity must remain most resolute: to vindicate rights without exploiting weakness, and to restore justice without compromising its moral foundation.

2. I am opening with statement as I am constrained to record its displeasure at the manner in which the Plaintiff's legal representatives have pursued this action. Legal practitioners are duty-bound to furnish proper and responsible advice to their clients, and to ensure that claims advanced before the Court are supported by admissible, cogent, and reliable expert evidence.

3. The Plaintiff is a minor child whose mother has instituted a claim against the Road Accident Fund arising from injuries sustained when the child, a pedestrian, was struck by a motor vehicle bearing registration number S[...] on 09 May 2018.

4. The issue of negligence and liability has been settled between the parties.

5. Counsel for the Plaintiff has informed the Court, both in oral submissions and in her heads of argument, that the matter proceeds on default basis solely in respect of the issue of loss of earnings and earning capacity, with the issue of general damages postponed sine die.

6. The amount claimed for the loss of earning capacity is in the amount of R6 710 000.00 (Six Million Seven Hundred and Ten Thousand Rand)

7. It is trite that the onus rests upon the Plaintiff to establish, on a balance of probabilities, the extent of any loss of earnings or earning capacity attributable to the accident.

8. The incidence of the onus is a matter of law. The general rule is that the plaintiff bears the onus of establishing the facts upon which the cause of action is based.

9. The plaintiff must prove the damages claimed as a result of the accident. The evidentiary burden rests upon the claimant to establish the causal link between the accident and the alleged sequelae.

10. In PJ Schwikkard et al in his work titled *Principles of Evidence, 5th Edition 2023* states this principle is formulated as follows:

"In civil cases the burden of proof is discharged as a matter of probability. The standard is often expressed as requiring proof on a "balance of probabilities" but that should not be understood as requiring that the probabilities should do no more than favour one party in preference to the other. What is required is that the probabilities in the case be such that, on a preponderance, it is probable that the particular state of affairs existed."

11. In *Miller v Minister of Pensions* 1947 2 All ER 372, Lord Denning articulated the civil standard of proof as follows:

"It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say, "we think it is more probable than not, but if the burden is discharged, but if the probabilities are equal, it is not."

12. In terms of s 17(1)(a) of the Road Accident Fund Act ('the RAF Act') and regulations promulgated thereunder, the defendant is liable to compensate victims of motor vehicle accidents arising from the driving of a motor vehicle where the identity of the owner or the driver has been established. The relevant provision provides:

"17. Liability of Fund and agents

(1) The Fund or an agent shall-

(a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee."

13. The minor child, sustained the injuries to his left lower leg, he was clinically examined by the Orthopaedic Surgeon, Dr Kumbirai, was found to have sustained a greenstick fracture of the distal tibia. The nature of the injury, while duly noted, is of a relatively minor character and does not present with features of seriousness or long-term sequelae.

14. The minor child's orthopaedic injury, being a greenstick fracture of the distal tibia, was conservatively managed by the treating Orthopaedic Surgeon, Dr Kumbirai, through immobilisation in plaster of Paris, The child was discharged from hospital on the very same day, a fact which in itself is indicative of the limited gravity of the injury.

15. Subsequent follow-up confirms that the fracture has united, with radiological corroboration provided by Radiologist Mkhabela and Indunah Radiologist. The orthopaedic evidence is unequivocal: the injury is neither serious nor permanent, and is expressly categorised by the treating specialist as non-serious. No residual deformity, functional limitation, or long-term sequelae are anticipated. The injury is consistent with a transient orthopaedic insult, fully resolved without complication, and incapable of impairing the minor's developmental trajectory or future occupational capacity.

16. In consequence, the Plaintiff's injuries fall squarely within the category of minor, non-serious orthopaedic trauma, and do not warrant elevation to the realm of permanent or disabling harm.

17. The Court further notes the findings of the Orthopaedic Surgeon, corroborated by the Radiologist, that there were no anomalies in the right forearm on clinical examination and that the left tibia was normal. These objective medical findings reinforce the absence of any structural or neurological sequelae attributable to the accident.

18. The Court has considered the report of the Occupational Therapist. It is expressly noted therein that occupational therapists are not experts in the evaluation of psychosocial problems, and that a detailed assessment of cognition, affect and cognitive abilities properly falls within the domain of a Clinical Psychologist.

19. The Occupational Therapist records no cognitive challenges in respect of the minor child, and confines his findings to the fracture of the left tibia, as corroborated by the Orthopaedic Surgeon and Radiologist. That fracture was minor, treated conservatively with plaster of Paris, and is clinically normal. Notwithstanding these findings, the Occupational Therapist opines that should the minor child fail to attain Grade 12, he may be restricted to sedentary or light work. The Court is unable to discern any evidentiary basis for this conclusion. In the absence of cognitive impairment, neurological sequelae, or persisting orthopaedic disability, the suggestion that the minor child's vocational potential is compromised lacks foundation. The Court accordingly accords limited weight to the Occupational

Therapist's speculative vocational opinion, and relies instead upon the consistent medical evidence and school reports, which demonstrate both physical recovery and scholastic improvement.

20. The court accepts that Dr Thoko Mnguni, the Educational Psychologist, correctly records that the minor child was discharged from hospital on the same day of the accident and was unable to attend school for three days thereafter. It is further noted that the accident occurred while the child was in Grade 1, and that he has since progressed very well in his scholastic achievements. Dr Mnguni states that she was informed by the minor child's mother of alleged problems in the right forearm. This assertion is unsupported by any expert evidence or hospital records, and is contradicted by the Orthopaedic Surgeon and Radiologist, who found the forearm and left tibia to be clinically normal.

21. Dr Mnguni seeks to attribute poor handwriting and tiredness in writing to this alleged forearm difficulty, which the Court finds to be an absurd and unfounded inference. She further speculates that the minor child may have poor fine motor skills or experiences pain in writing, yet no medical or occupational evidence substantiates such a claim. The psychologist also records that the child made errors in long division and multiplication, but fails to establish any nexus between these mistakes and the accident. In the absence of demonstrable cognitive impairment, neurological sequelae, or orthopaedic disability, the Court finds that Dr Mnguni's attribution of scholastic difficulties to the accident is speculative, without causal foundation, and cannot be accorded probative weight.

22. The Court is further fortified in its rejection of the Educational Psychologist's opinion by the objective evidence contained in the school reports. These records demonstrate not a decline, but in fact an improvement in the minor child's scholastic performance post-accident. The Occupational Therapist expressly records no cognitive impairment or fall-out. Neither the Neurosurgeon nor Neurologist has furnished any report suggesting brain injury, and the Orthopaedic Surgeon, on the mother's account, confirms the absence of neurological sequelae. In the face of consistent medical and occupational evidence disclosing no cognitive sequelae, and contemporaneous school reports evidencing academic improvement, the

Educational Psychologist's attribution of diminished scholastic potential to the accident is speculative and without nexus. The Court accordingly finds that the report is tailored to suit the plaintiff's damages narrative and cannot be accorded probative weight. Greater reliance is placed upon the objective medical and occupational findings, corroborated by the school records, which collectively demonstrate that the minor child's educational trajectory has not been impaired by the accident.

23. The Court is required to evaluate the credibility and probative value of expert evidence. It is trite that expert opinion must be grounded in fact and demonstrate a clear causal nexus between the alleged sequelae and the conclusions drawn. In *M R v Road Accident Fund* (Case No. 2457/2017, Free State Division), Opperman J emphasised that expert evidence must be based on facts proved before the court and the reasoning which led to the conclusion must be disclosed. An expert is not entitled to merely state a conclusion without indicating the factual basis and the reasoning which led to it. And he stated:

"[17] It is vital that the evidence pinioned by an expert is solid. "Solid" supposes veracity of the facts of the particular case, expertise on the issue and an opinion that makes legal sense based on the facts combined with the expertise.

[18] In Southern Insurance Association v Baily NO 1984 (1) SA 98 (A) that was supported in Adv Johan Malherbe Kilian N.O Plaintiff in his capacity as Curator Ad Litem to Jansen Van Rensburg: Andre Abraham Petrus Le Grange v Road Accident Fund, The High Court of South Africa (Gauteng Division, Pretoria) Case No. 34116/2016 Judgement 15/9/2016 Gauteng Division, Pretoria it was held that:

"[1] Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the court can do is to make estimates, which is often a very rough estimate, of the present value of loss. It has open to it, two possible approaches: One is for the judge to make a round estimate of an amount which seems to him to be fair and

reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative.

[2] It is manifest that either approach involves guesswork to a greater or lesser extent. When it comes to scanning the uncertain future, the Court is virtually pondering the imponderable, but must do the best it can, on the material available even if the result may not inappropriately be described as an informed guess, for no better system has yet been devised for assessing general damages for future loss.

[6] I must however emphasise that because of the speculative nature of the enquiry, when parties elect to approach the court on a stated case and lump sum of money is claimed, as in the present case, R6 653 636.00 from the public coffers, it is incumbent on the parties to place before the court sufficient evidence in the form of admissions and other admitted format.”

[19] The case of National Justice Compania Naviera S.A v Prudential Assurance Co Ltd 1993 (2) Lloyds Reports 68-81 set out the duty and role of an expert.

"1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.

2. An expert witness should provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within his expertise. An expert witness should never assume the role of an advocate.

3. An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.

4. An expert witness should make it clear when a particular question or issue falls outside his expertise.

5. *If an expert opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one. In the case of where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report."*

[20] *The above duties were reaffirmed in Nicholson v Road Accident Fund (11453/2007) 2012 SGHC (unreported):*

"A number of expert witnesses called on behalf of the plaintiff overstepped the mark by attempting to usurp the function of the court and to express opinions based on certain facts as to the future employability of the plaintiff and to express views on probabilities. It is the function of the court to base its inferences and conclusions on all the facts placed before it. "

[21] *In Mathebula v RAF (05967/05) [2006] ZAGPHC it was stated that:*

"An expert is not entitled, anymore more than any other witness, to give hearsay evidence as to any fact, and all facts on which the expert witness relies must ordinarily be established during the trial, except those facts which the expert draws as a conclusion by reason of his or her expertise from other facts which have been admitted by the other party or established by admissible evidence."

[22] *In Schneider NO & Others v AA & Another 2010 (5) 203 WCC, which was quoted in the Nicholson judgment, Judge Davis stated at paragraph 211J-212B:*

"In short, an expert comes to court to give the court the benefit of his or her expertise. Agreed, an expert is called by a particular party, presumably because the conclusions of the expert, using his or her expertise, are in favour of the line of argument of the particular party. But that does not absolve the expert from providing the court with as objective and unbiased an opinion,

based on his or her expertise, as far as possible. An expert should not be a hired gun who dispenses his or her expertise for the purpose of a particular case. An expert does not assume the role of an advocate, nor gives evidence which goes beyond the logic which is dictated by the scientific knowledge which that expert claims to possess."

*[23] In RAF v Zulu **[2011] ZASCA 223** the court dealt with the approach to expert evidence that has to be adopted by the courts. The court reaffirmed the principles set out in Michael v Linksfield Clinic (Pty) Ltd **2001 (3) SA 1188** (SCA) that:*

"What is required in the evaluation of such evidence is to determine whether and to what extent their opinions advanced are founded on logical reasoning."

[24] The common theme is that courts must jealously protect their role and powers. Courts are the ultimate arbiters in any court proceedings. The facts that caused the expert opinions in this case are vital. It was supplied by the plaintiff.

[25] It is not for the opposing party to prove the true facts of the plaintiff's case; it is the onus of the plaintiff.

[26] Only if the expert's opinion based on the correct facts is questioned could it be expected that a countering expert should be called. It is the expertise that will then be at issue and not the accuracy of the facts on which it is based. Counsel must identify and separate the two aspects. The argument of the actuary in this case that the failure to call an expert in the defendant's case is tantamount to a default judgment is wrong. It is not the expert's veracity that is in dispute; it is the facts on which he based his calculations. Experts must assist the court not a party to the dispute.

24. Applying this principle, the Court finds that the Educational Psychologist's opinion is speculative. Dr Mnguni correctly records that the minor child was discharged from hospital the same day, missed three days of school, and has since

progressed well in scholastic achievements. However, her reliance on the mother's report of right forearm problems is contradicted by the Orthopaedic Surgeon and Radiologist, who found no anomalies. The attribution of poor handwriting, tiredness in writing, and mathematical errors to the accident is unsupported by medical or occupational evidence and lacks causal nexus.

25. Similarly, the Occupational Therapist expressly acknowledges that occupational therapists are not experts in psychosocial evaluation. He records no cognitive challenges, notes only the minor fracture of the left tibia (treated conservatively and clinically normal), yet speculates that the child may be restricted to sedentary work if Grade 12 is not attained. This conclusion is without evidentiary foundation.

26. The Court is guided by the principle articulated in *MR v Road Accident Fund* that the duty of an expert witness is to assist the court. An expert must provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within his expertise.

27. Measured against this standard, the Educational Psychologist's and Occupational Therapist's speculative opinions cannot be accorded probative weight. By contrast, the Orthopaedic Surgeon and Radiologist provide consistent, objective findings: no anomalies in the right forearm, normal left tibia, and no neurological fall-out. The school reports further demonstrate improvement in scholastic performance, contradicting any suggestion of diminished educational trajectory.

28. The Court has considered the report of the Industrial Psychologist. His trajectory and conclusions are premised upon the findings of the Occupational Therapist and Educational Psychologist. While he cannot be faulted for adopting those opinions as the foundation of his assessment, the Court has already found both reports to be speculative, lacking causal nexus, and without probative value. It follows that the Industrial Psychologist's report, being derivative of those rejected opinions, cannot stand independently. In the absence of reliable underlying expert evidence, the Court is unable to place reliance upon his conclusions regarding the minor child's vocational potential.

29. I reiterate the principle governing expert evidence is well established as also espoused in *Road Accident Fund v Kerridge* 2019 (2) SA 233 (SCA) that expert evidence should not be accepted on face value.

"[50] The role of experts in matters such as these and the opinions they provide can only be as reliable as the facts on which they rely for this information. Too readily, our courts tend to accept the assumptions and figures provided by expert witnesses in personal injury matters without demure. The facts upon which the experts rely can only be determined by the judicial officer concerned. An expert cannot usurp the function of the judicial officer who is not permitted to abdicate this responsibility - the court should actively evaluate the evidence. Ideally, expert evidence should be independent and should be presented for the benefit of the court. It is not the function of an expert witness to advocate the client's cause and attempt to get the maximum payout, as most seem to believe.¹⁵ This problem is exacerbated by the Road Accident Fund (the Fund) which fails to properly investigate the true situation of a claimant and is content to rely on projections and assumptions of experts with no factual basis."

30. Expert evidence must be based on facts proved before the court and the reasoning which led to the conclusion must be disclosed. An expert is not entitled to merely state a conclusion without indicating the factual basis and the reasoning which led to it.

31. The duty of an expert witness is to assist the court. An expert must provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within his expertise.

32. The Court has also considered the report of the Industrial Psychologist. It is apparent that his trajectory and conclusions are premised upon the findings of the Occupational Therapist and Educational Psychologist. While the Industrial Psychologist cannot be faulted for adopting the opinions of those experts as the foundation of his assessment, the Court has already found the reports of both the

Educational Psychologist and Occupational Therapist to be speculative, lacking causal nexus, and without probative value. It follows that the Industrial Psychologist's report, being derivative of those rejected opinions, cannot stand independently. In the absence of reliable underlying expert evidence, the Court is unable to place reliance upon his conclusions regarding the minor child's vocational potential. The report is accordingly accorded no weight.

33. The Industrial Psychologist's report cannot be accorded probative weight. His conclusions are derivative of expert opinions already rejected as speculative and unfounded. The Court accordingly accords no reliance to his report and places weight instead upon the consistent medical evidence, occupational findings limited to physical assessment, and school records, which collectively demonstrate that the minor child's educational and vocational trajectory has not been impaired by the accident.

34. It is trite that the onus to discharge rests upon the plaintiff. The plaintiff bears the duty to establish, on a balance of probabilities, that the minor child's educational and vocational trajectory has been impaired by the accident.

35. I find that the Educational Psychologist's report is speculative and unsupported; the Occupational Therapist's vocational opinion is without foundation; and the Industrial Psychologist's conclusions are derivative of those rejected findings. By contrast, the medical and radiological evidence, corroborated by school records, demonstrate recovery and scholastic improvement. The plaintiff has accordingly failed to prove impairment of the minor child's educational or vocational trajectory.

36. I am compelled to observe that Counsel bears a dual and solemn duty first, to advance the cause of her client with vigour, yet always in a manner that assists the Court in its pursuit of justice. In the present matter, however, both in her written heads of argument and in oral submissions, Counsel persisted in pressing a case long bereft of merit. In so doing, she sought to elevate the interests of her client above the broader demands of justice. Such an approach, though zealous, regrettably amounts to little more than the flogging of a horse long since dead, and does not serve the proper administration of justice.

37. The Court is unable to comprehend the submission advanced by Counsel, Ms Sobukwa, that the injuries sustained in the accident have impaired the minor child's learning and comprehension abilities. The medical evidence before us, as curtailed in the orthopaedic surgeon's report, records only a Greenstick fracture of the tibia. No mention is made of neurological sequelae or any other injuries of the nature now alleged. The subsequent introduction of an arm injury and purported neurological deficits appears to be an attempt to inflate a claim that is, in truth, non-existent. Such embellishment is regrettable, for it undermines the integrity of the forensic process and detracts from the solemn duty of Counsel to assist the Court in the fair determination of issues before it. Advocacy must be anchored in evidence; where it strays into invention, it ceases to serve either the client or the Court.

38. Moreover, Counsel Sobukwa herself conceded that no neurological report exists to substantiate her assertions. Equally, there is no evidence from the orthopaedic surgeon to support the alleged arm injury. In the absence of such corroboration, these claims cannot be sustained. The Court is therefore compelled to regard these submissions as speculative and unfounded, serving only to balloon the Plaintiff's claim without evidentiary foundation.

39. Measured against the afore mentioned standards, I therefore find that *the* plaintiff failed to prove the damages claimed as a result of the accident and failed to discharge the onus upon her. I therefore make the following order:

39.1 The Plaintiff claim for loss of earnings or earning capacity is dismissed.

E SEIMA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 24 October 2025
Judgment delivered: 19 January 2026

APPEARANCES:

Counsel for the Applicant: Ms Sobokwa

Attorneys for the Applicant: Ngqumshe M Attorneys

Counsel for the Respondent: No Appearance

Attorneys for the Respondent: No appearance