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REPUBLIC OF SOUTH AFRICA



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

Case Number: **28540-2022**

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: YES |

13 FEBRUARY 2026

DATE

SIGNATURE

In the matter between:

**ADVOCATE S SAYED N.O
(CURATOR AD LITEM OF BR N[...])**

Plaintiff

and

ROAD ACCIDENT FUND

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be **13 February 2026**.

JUDGMENT

Haskins AJ

Introduction

- [1] This is a delictual claim against the Road Accident Fund (“the Fund”). The plaintiff is B[...] N[...], a minor, who appears before court represented by his curator, Advocate S. Sayed.
- [2] The collision occurred on 7 December 2019. B[...] was six years old at the time and was travelling as a front-seat passenger in a motor vehicle. He was conscious at the scene and was initially taken to KwaMhlanga Hospital in Mpumalanga. He was later transferred to Sunshine Private Hospital for further management.
- [3] The hospital records reflect that B[...] sustained facial injuries, including a mandibular fracture with associated lacerations to the lower lip and gingiva. He also sustained bilateral upper limb fractures involving the radius and ulna. His treatment included supportive care and surgical intervention. In respect of the facial injury, he underwent open reduction and internal fixation of a right parasymphysal mandibular fracture, with placement of a mandibular mini plate.
- [4] In determining the issues before me, I also considered the RAF 1 form, the hospital records from KwaMhlanga Hospital and Sunshine Private Hospital, the ambulance and paramedic notes, and the various expert reports filed on behalf of the plaintiff.

- [5] The matter proceeded on the basis that liability and quantum were in dispute. Pursuant to an order of court, the evidence on both issues was placed before court by way of affidavits and expert reports in terms of Uniform Rule 38(2), which I granted.

Liability

- [6] I was satisfied that the affidavit filed in terms of section 19(f) by B[...]’s mother, B[...] N[...], together with the confirmatory affidavit of his sister, T[...] N[...], established negligence on the part of the insured driver.
- [7] On that basis, I found the Fund to be 100% liable for the plaintiff’s proven and or agreed damages.

Quantum

- [8] The disputes on quantum are narrow but significant. They concern whether, and to what extent, the plaintiff has established a claim for future loss of earnings or earning capacity. While it is common cause that B[...] sustained injuries in the collision, the central question is what those injuries mean, in practical terms, for his future functioning, his educational prospects, and his earning capacity, and what would constitute fair compensation in the circumstances.
- [9] Subject to one important qualification addressed later in this judgment, I accept the factual observations made by the experts within their respective disciplines. However, those observations must be situated within, and tested against, the contemporaneous medical and emergency records generated at the time of the collision. Those records provide the earliest and most objective account of B[...]’s condition, and they form the factual foundation against which later expert opinions, particularly in relation to the alleged head injury, must be evaluated.

Hospital and Emergency Records

- [10] The medical records provide important context for the assessment of B[...]’s alleged head injury.

- [11] B[...] was taken to KwaMhlanga Hospital in Mpumalanga following the collision. The records of the emergency response team, who transported B[...] from the scene to hospital, were also considered. They record that, on arrival at the scene, the team found a six-year-old male passenger who was seated in the vehicle and was fully conscious, with a recorded Glasgow Coma Scale (GCS) score of 15/15. He complained of chest pain, a painful chin, and a painful right lower limb. Vital signs were taken and a medical history was obtained at the scene. Oxygen was administered. A head-to-toe survey was conducted. B[...] was monitored during transportation to hospital for further management. During the secondary survey, the emergency personnel recorded that no additional complications were identified throughout transportation.

- [12] The hospital records note that B[...] was brought into casualty after being involved in a motor vehicle accident. On presentation, he was recorded as having sustained an injury to the right arm, an injury to the skull, and bleeding from the mouth. In relation to the head injury, the hospital records note that B[...]’s GCS score was 15/15 on arrival. He was placed under neuro-observation. After a period of 12 hours, he remained stable, with a GCS of 15/15 still recorded.

- [13] On the following day, the hospital records note that B[...] was treated with Panado and Brufen. Diagnostic imaging was performed. In respect of the CT scan of the brain, the report records that the skull was intact and that no acute intracranial injury or pathology was identified.

- [14] The RAF1 form was also considered. Under section 22 of the medical report, the treatment plan records that the hospital only administered Panado and

Brufen. No further treatment in respect of a head injury is recorded. On the following page of the medical report, no additional information is provided, as the remaining content appears to have been marked as not applicable.

- [15] These contemporaneous records, including the RAF1 and the hospital and emergency notes, provide the factual platform upon which the expert evidence is built. The various experts were furnished with these records and, to differing degrees, relied upon them together with their own clinical assessments and the history obtained from B[...] and his caregivers.
- [16] It is against that shared factual backdrop that the expert opinions must be understood, compared, and ultimately evaluated.

Expert Evidence

The Neurosurgeon

- [17] The neurosurgeon examined B[...] approximately three years after the collision. In preparing the report, the neurosurgeon had sight of the RAF1 form and the hospital records from KwaMhlanga Hospital and Sunshine Hospital, including history obtained from B[...] and his mother.
- [18] According to the history provided by B[...]’s mother, the injuries sustained included a mandible fracture and bilateral forearm fractures.
- [19] The neurosurgeon also note that a CT scan of the brain, performed on 10 December 2019, revealed:
- 19.1 a right mandible fracture;
 - 19.2 a right extra-axial anterior temporal homogeneous hypodense lesion, with a differential diagnosis of arachnoid cyst or epidermoid, for which MRI was recommended for further characterisation; and

19.3 no acute intracranial injury or pathology.

- [20] The neurosurgeon further note that B[...] was diagnosed with bleeding from the mouth with a laceration of the lower gum, a mandible fracture, a left distal radius and ulnar fracture, and a right midshaft radioulnar fracture, that he was transferred to Sunshine Hospital on 9 December 2019. On arrival, he was again recorded as fully conscious, with a GCS of 15/15. He underwent surgical procedures to address the mandible fracture and the forearm fractures and was discharged on 19 December 2019.

- [21] The neurosurgeon recorded that, at the time of the accident, B[...] had passed Grade 1. Post-accident, he passed Grades 2 and 3, and at the time of assessment he was in Grade 4. Before the accident, he was physically healthy, had no chronic medical conditions, no history of neurological problems, and had achieved normal developmental milestones.

- [22] The neurosurgeon recorded that, post-accident, B[...] complained of headaches, bilateral forearm pain, and learning difficulties. According to his mother, although he had not repeated a grade, his performance had declined. No pre- or post-accident school reports were available to the neurosurgeon for review.

- [23] On examination, the neurosurgeon recorded a normal general and neurological examination. Noting that B[...] was orientated, cooperative, and had normal speech. Cranial nerves, motor function, reflexes, coordination, sensation, and gait were normal. No focal neurological deficits were identified.

- [24] Based on the history, records, imaging, and examination, the neurosurgeon concluded that B[...] sustained facial trauma, as evidenced by the mandible fracture, and consequently found that B[...] sustained a minor-to-mild brain concussion.

- [25] The neurosurgeon expressly noted that there was no contemporaneous documentation of loss of consciousness, that B[...] was recorded as fully

conscious (GCS 15/15) at the scene and throughout admission, and that the CT scan showed no acute intracranial pathology. The cystic lesion was regarded as incidental and unrelated to trauma.

[26] The neurosurgeon stated that a minor-to-mild concussion is generally not expected, in the absence of complicating features, to result in long-term organic brain dysfunction. Life expectancy was unaffected, and the risk of late post-traumatic epilepsy was assessed as less than 3%.

[27] This report therefore establishes a clear objective platform: a minor-to-mild concussive injury, no acute intracranial pathology, no documented loss of consciousness, and no residual neurological deficit, alongside subjective complaints of headaches and learning difficulty by B[...]’s mother.

The Neurologist

[28] The neurologist recorded that B[...]’s injuries were well documented and that his GCS score at the scene was 15/15. B[...]’s eyesight, hearing, smell, and taste were normal. He complained of weekly headaches treated with Panado, after which he slept. He continued with school activities when headaches occurred.

[29] Importantly, the neurologist recorded that there was no loss of consciousness that the mother was aware of. On neurological examination, cranial nerves, motor function, reflexes, sensation, and cerebellar testing were all normal.

[30] Under the heading “Higher Function”, the neurologist recorded that this was “most likely affected”, without identifying objective abnormalities on examination.

[31] Despite the consistently normal objective findings and imaging, the neurologist expressed the opinion that B[...] sustained a “significant head injury” resulting in mild to moderate brain injury. That conclusion appears to

be derived primarily from self-reported behavioural and scholastic difficulties rather than from demonstrable neurological or radiological pathology.

- [32] The neurologist deferred to psychological experts regarding cognition and learning.

The Neuropsychologist

- [33] The neuropsychologist assessed B[...] approximately three years post-accident. Developmental milestones were reportedly normal. B[...] progressed through Grades 2 to 4 and was in Grade 5 in 2023. The report included school results reflecting variability and a decline by Grade 4, as well as significant absenteeism in 2020 and 2021, which forms part of the educational context.
- [34] Collateral history obtained from B[...]’s grandmother included a report of brief loss of consciousness. This differs from the ambulance and hospital records and is therefore treated as collateral history weighed against the objective documentation.
- [35] Neuropsychological testing revealed mixed results, with inefficiencies in attention, working memory, mental tracking, and aspects of delayed recall, alongside average performance in other domains.
- [36] Crucially, the neuropsychologist expressly recorded the neurosurgeon’s opinion that B[...] sustained a minor-to-mild concussion and acknowledged that such an injury is not expected to result in long-term organic brain dysfunction. The report cautioned that cognitive difficulties are complex and not necessarily indicative of organic brain injury, and postulated that psychological factors, post-traumatic stress symptoms, pain, and environmental influences may contribute to the presentation.

The Psychiatrist

- [37] The psychiatrist noted B[...]’s GCS of 15/15 at the accident scene and that he remained fully conscious on admission. The mother reported difficulties with concentration, mathematics, and writing due to forearm pain, but no behavioural concerns were noted by the school.
- [38] The psychiatrist expressed the opinion that B[...] “may be considered” to have sustained at least a mild traumatic brain injury, with reference to DSM-5 criteria and the concept of “sleeper effects” in a developing brain. At the same time, the psychiatrist acknowledged limitations in the available information, deferred to the neurosurgeon and psychologists, and noted that the opinion might require revision should further information become available.
- [39] The working diagnosis of depressive disorder “due to” traumatic brain injury was materially informed by reported functional and behavioural changes rather than by objective neurological or radiological markers of significant brain injury.
- [40] When the evidence of the neurosurgeon, neurologist, neuropsychologist, and psychiatrist is considered together, the following emerges:
- 40.1 There is consistent objective evidence of a minor-to-mild concussive injury, with preserved GCS scores, no acute intracranial pathology, and no focal neurological deficits.
 - 40.2 There is consistent reporting of post-accident functional difficulties, particularly in attention, learning efficiency, mood regulation, and behaviour.
 - 40.3 There is divergence in the attribution of those difficulties: some experts characterise them as consequences of traumatic brain injury, while others expressly caution against equating functional impairment with organic brain damage.

40.4 Importantly, none of the experts identify objective neurological or radiological evidence of a significant traumatic brain injury.

[41] It is against this evidential landscape, marked by objective findings, subjective functional complaints, and differing interpretive emphases, that the court must evaluate the nature and consequences of the head injury and assess the extent to which B[...]’s educational and vocational difficulties can properly be attributed to the collision.

[42] Having addressed the evidence relating to the head injury and its alleged neurocognitive sequelae, it is necessary to turn to the plaintiff’s orthopaedic injuries.

[43] Unlike the evidence concerning cognitive and educational functioning, the nature, treatment, and healing of the orthopaedic injuries are largely common cause.

[44] The relevance of the orthopaedic evidence lies not in dispute as to diagnosis, but in assessing the extent of any permanent physical impairment, its functional consequences, and whether those consequences are likely, on their own, to materially restrict B[...]’s future capacity to work.

The Maxillofacial and Oral Surgeon

[45] B[...] was examined by the maxillofacial and oral surgeon on 12 July 2022. Occlusion and mandibular movement were normal. The temporomandibular joints showed no clicks or crepitus, and there was no muscle pain or tenderness. Dentition was appropriate for age, with exfoliation occurring in line with normal developmental timelines.

[46] A panoramic radiograph demonstrated normal bone architecture and visualised mandibular mini-plate osteosynthesis in the parasymphyseal region consistent with prior fixation.

- [47] The mini-plate remained in situ. The surgeon expressed the opinion that it should be removed to prevent incorporation into the mandible during ongoing mandibular growth, given B[...]’s young age at the time of injury.
- [48] The report set out the expected surgical management and associated costs.
- [49] In summary, the mandible fracture has healed well from a functional and structural perspective. However, the retained mini-plate gives rise to a foreseeable future surgical requirement, which remains a consequence of the maxillofacial injury.

The Orthopaedic Surgeon

- [50] On examination, B[...] presented with a normal general appearance, normal gait and normal recorded intellectual function.
- [51] Examination of the head and neck revealed mild muscle spasm in the mid-cervical region without significant tenderness. B[...] is right-handed. Neck movements were recorded, including flexion to within 1 cm of the sternum. There were no neurological deficits and the upper limbs were neurovascularly intact.
- [52] The chest and abdomen were normal. The lumbo-dorsal spine examination recorded normal movement, no neurological deficits and no signs of nerve-root compression. The thoraco-lumbar spine and pelvis were clinically normal.
- [53] Upper limb examination showed a normal range of movement in the left shoulder, elbow, wrist and hand. On the right, shoulder and elbow movement were normal. Right wrist movement was assessed; grip strength was slightly diminished but Tinel’s sign was negative. The right thumb and fingers were normal, and there were no neurological deficits.
- [54] Lower limbs were symmetrical with equal leg lengths, no muscle atrophy, normal hips, stable knees and ankles, and no localising signs.

- [55] The mandible fracture was noted to have healed well.
- [56] Radiographs taken at the time of examination confirmed that the bilateral forearm fractures had healed well with intact adjacent joints.
- [57] The orthopaedic surgeon considered B[...] to have reached maximum medical improvement. Applying the AMA 6 Guides, the surgeon assessed a combined whole person impairment of 10%, arising from residual scarring, impairment of right wrist motion and soft-tissue cervical injury.
- [58] As to work capacity, the orthopaedic surgeon noted that B[...] had returned to school. From a purely orthopaedic standpoint, the surgeon opined that there was little, if any, permanent loss of work capacity attributable to the orthopaedic injuries. Any greater effect on future work capacity would, if present, more likely arise from psychological sequelae or the head injury, which lie outside the orthopaedic domain.

The Plastic and Reconstructive Surgeon

- [59] On local examination, the plastic surgeon recorded an 8.5 cm by 2.5 cm broad, hyperpigmented and hypertrophic surgical scar over the right forearm, described as extremely visible and unsightly. A C-shaped hyperpigmented scar of approximately 2 cm was recorded over the left wrist, likewise described as very visible and unsightly.
- [60] The surgeon expressed the view that B[...] would benefit from scar revision surgery and removal of the plates and screws in the mandible. Scar revision was said to be capable of improving the appearance by approximately 30%. Even with intervention, considerable residual scarring would remain and would not be amenable to further meaningful surgical improvement, for which compensation would be warranted. An estimate of R70 000 was advanced for future plastic surgical treatment.

- [61] Post-operative care was described as including sunblock and tissue oil for two years, strapping for approximately three months, and the use of compressive garments for six to eight weeks.
- [62] The plastic surgeon concluded that the accident left B[...] with serious permanent scarring and disfigurement which impacts appearance and dignity and is likely to give rise to social anxiety and embarrassment.
- [63] The expert evidence of the maxillofacial and oral surgeon, the orthopaedic surgeon, and the plastic and reconstruction surgeon is largely consistent in its description of the physical injuries sustained and their treatment.
- [64] The central area of divergence concerns the head injury: its severity, its clinical significance, and whether later-reported cognitive, behavioural and emotional difficulties can properly be attributed to it. These differences do not arise from competing versions of the contemporaneous records, but from the inferences drawn from them and the weight accorded to subsequent symptom reporting by B[...]’s family.

Discussion

- [65] It is trite that expert evidence is intended to assist the court, not to replace the court’s function. The evaluation of expert opinion remains the responsibility of the court.
- [67] In ***Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another*** 2001 (3) SA 1188 (SCA) at paras 24 and 36, the Supreme Court of Appeal explained that an expert’s opinion carries weight only to the extent that it is grounded in facts that are common cause, established by evidence, or capable of being proved. The Court cautioned that a court is not bound to accept an expert’s conclusion and must be satisfied that the reasoning process leading to it is sound.

- [68] In practical terms, the court must examine not only what an expert concludes, but how the conclusion is reached. An opinion resting on assumptions not borne out by the objective evidence cannot be preferred merely because it is expressed by an expert.
- [69] This principle assumes particular importance in Road Accident Fund matters involving alleged brain injuries, where later-reported symptoms and functional complaints must be tested against contemporaneous medical records.
- [70] In ***Bee v Road Accident Fund*** 2018 (4) SA 366 (SCA) at paras 63 and 67, the Supreme Court of Appeal emphasised that a plaintiff bears the onus of establishing a causal link between the accident and the injuries relied upon. The Court held that expert opinion must amount to a logical and reasoned inference from proved facts, and cautioned that where an opinion rests on assumptions not supported by the evidence, its persuasive force is diminished.
- [71] These authorities make clear that where expert opinions diverge, the court must prefer the opinion most firmly rooted in proved facts, objective indicators, and coherent reasoning.
- [72] Against that legal framework and having regard to the objective contemporaneous records together with the neurosurgeon's assessment, I am not persuaded that B[...] sustained anything more than a minor to mild concussive injury. I prefer the neurosurgeon's classification not because it is decisive by status, but because neurosurgery is the discipline best placed to classify the nature and severity of a brain injury by reference to contemporaneous clinical markers and radiology, and because that classification accords with the objective record.
- [73] B[...]’s future earnings claim is premised on a stark contrast: a pre-accident trajectory of degree or honours-level attainment, and a post-accident ceiling of Grade 10 education with unskilled, minimum-wage employment.

- [74] I accept that even a mild head injury can be distressing and can produce symptoms. The question before me, however, is more specific and more demanding: whether there is a sound factual and medical basis for concluding that this minor-to-mild head injury probably derailed B[...]’s educational trajectory to the extent claimed.
- [75] On the evidence before me, I am unable to make that causal leap.
- [76] The contemporaneous medical records do not reflect the markers ordinarily expected if a significant traumatic brain injury had occurred. On the contrary, B[...] was recorded as fully conscious at the scene, with a Glasgow Coma Scale score of 15/15. He remained neurologically stable during transport and on arrival at KwaMhlanga Hospital, was placed under neuro-observation, and remained GCS 15/15 after twelve hours. The CT scan of the brain revealed no acute intracranial injury or pathology, with the skull noted to be intact. The only intracranial finding was an incidental extra-axial lesion, not linked to traumatic injury.
- [77] These objective indicators form the factual foundation against which all expert evidence must be evaluated. The neurosurgeon’s opinion aligns squarely with that foundation. His conclusion that B[...] sustained a minor-to-mild concussive injury is grounded in the consistently normal GCS scores, the absence of documented loss of consciousness, and the lack of radiological evidence of traumatic brain injury. Where the dispute concerns the existence and severity of a head injury, that factual grounding is of particular importance.
- [78] By contrast, the downstream opinions of the neurologist, neuropsychologist and psychiatrist must be read with care. Their observations regarding cognition, behaviour, mood and learning are not ignored. However, to the extent that any of those opinions proceed on the premise that B[...] sustained a significant traumatic brain injury, that premise is not borne out by the objective records or the neurosurgeon’s assessment, but rests primarily on later-reported accounts by B[...]’s mother and grandmother.

[79] Once that premise is weakened, the conclusions drawn from it must likewise be approached with caution.

[80] This is not to suggest that B[...] suffered no head injury, or that he experienced no post-accident symptoms. It is to recognise that the evidence establishes, at most, a minor-to-mild concussive injury, and that the court must be satisfied that any claimed long-term neurocognitive or educational consequences probably flow from that injury.

[81] I have also considered the contention that, because the injury occurred in a developing brain, delayed or “sleeper” effects may emerge over time. That is a recognised hypothesis in some contexts. The difficulty in this matter is evidential: where the contemporaneous clinical markers and radiology consistently indicate a minor-to-mild concussion without acute intracranial pathology, the court cannot treat that hypothesis as a substitute for proof of probable causation. On this record it remains a possibility, not a probability capable of carrying the decisive weight required for the earnings claim.

[82] On the totality of the evidence, that causal connection has not been established to the extent contended for.

[83] That finding is central to the evaluation of B[...]’s future loss of earnings claim. The dramatic shift posited between a pre-accident trajectory of degree or honours-level attainment and a post-accident ceiling of Grade 10 and unskilled employment presupposes a level of cognitive impairment not supported by the objective medical evidence. It is in this context that the educational, industrial and actuarial evidence must ultimately be assessed.

B[...]’s education and work capacity

[84] The psycho-educational report addresses B[...]’s scholastic functioning, cognitive efficiency and emotional presentation as at the date of assessment.

It is detailed and contains material plainly relevant to the pleaded loss of earning capacity.

- [85] The educational psychologist records that B[...]’s concentration in a one-on-one context was inadequate and that he was easily diverted by external stimuli. Testing revealed low performance in several verbal and memory-based domains, including delayed recall and working memory, extremely low performance on the Coding subtest, and material weakness in mathematics, reading and spelling.
- [86] These findings cannot be dismissed. They support that B[...] experiences real learning and emotional challenges and are consistent with the broader post-accident narrative of headaches, pain, anxiety and depressed mood.
- [87] However, the court must still ask the question required by **Linksfeld** and **Bee**: whether the conclusions ultimately advanced are logical inferences from proved facts, and whether the reasoning chain properly distinguishes between what is objectively established and what is reported, assumed or postulated. The court is not determining educational outcomes as a matter of expert preference; it is determining whether the plaintiff has discharged the onus of proving the pleaded educational and vocational outcomes as probable consequences of the accident.
- [88] The most reliable educational indicators in the record remain the school reports, as they reflect performance over time rather than a once-off assessment snapshot.
- [89] Those reports reveal a mixed trajectory.

89.1 Pre-accident Grade 1 averages were in the low-60s, with Mathematics relatively strong.

89.2 Post-accident Grade 2 reflected an average of 68%, with a noted drop in Mathematics.

89.3 Grade 3 showed variability across terms, but B[...] was progressed and the year average remained in the mid-50s.

89.4 The most marked difficulty emerged in Grade 4, where “Not Achieved” decisions were recorded in Terms 1 and 2, linked chiefly to Mathematics and English.

[90] This pattern supports that difficulties became more evident as scholastic demands increased. What it does not support, on its own, is the sharp before-and-after rupture implied by a fixed postulated ceiling at Grade 10. The decline is later-emerging and subject-specific rather than immediate and global.

[91] The educational psychologist appropriately defers to the neurosurgeon and neuropsychologist regarding the nature and severity of the head injury, as head-injury classification is primarily a medical determination. Nevertheless, parts of the report proceed on factual premises not consistently supported by the contemporaneous record, including references to fainting, momentary loss of consciousness, and inferred concern about skull fracture. The difficulty is not that these are impossible, but that the contemporaneous markers ordinarily grounding such conclusions are absent.

[92] To the extent that a more serious injury narrative is imported into the educational reasoning chain, it weakens the probative weight of downstream conclusions presented as flowing from that premise.

[93] The conclusion that B[...] developed secondary ADHD following the accident is particularly significant, given its implications for scholastic trajectory and employability. While the report documents attentional difficulty, reliance is placed heavily on reported symptoms and observation in a one-on-one assessment context. That establishes present difficulty, but not accident-causation as a matter of probability, particularly where the head injury is objectively minor-to-mild.

[94] The report itself records contextual factors capable of contributing to scholastic vulnerability, including large class size, emotional dysregulation, anxiety and depressed mood. These are not peripheral considerations; they affect concentration, motivation and classroom benefit. The neuropsychologist expressly cautions that cognitive difficulties are multifactorial and may reflect psychological dysfunction and pain rather than organic brain injury.

[95] Accordingly, while I accept that B[...] displays attention and concentration difficulties, I am not satisfied that the conclusion of secondary ADHD caused by the accident is established with the degree of factual and medical support necessary to carry the decisive weight it is asked to bear in the earnings claim. This does not amount to a rejection of ADHD symptomatology; it is a rejection of accident-causation as a probable explanation on the present evidential platform.

[96] The educational psychologist's projection of a pre-morbid honours-level trajectory and a post-accident Grade 10 ceiling represents ambitious endpoints.

96.1 The premorbid estimate rests on inferential markers rather than a measured baseline, while the post-accident ceiling is framed as a categorical outcome.

96.2 On the objective record, the more sustainable inference is narrower. B[...] has developed scholastic vulnerability, particularly in attention-dependent and language-linked tasks, which may be exacerbated by untreated psychological sequelae.

96.3 That is relevant to contingency assessment and earnings risk, but does not justify a decisive educational cap as a matter of probability grounded in minor-to-mild concussion alone.

- [97] The addendum psycho-educational report introduces updated scholastic data through Grade 7 and warrants careful consideration. It aligns with the contemporaneous medical record in confirming a minor-to-mild concussive injury with GCS 15/15, no acute intracranial pathology and no documented loss of consciousness.
- [98] The updated school history reflects progression through Grades 2 to 6, condonation in Grades 4 and 5, and current enrolment in Grade 7. While ongoing difficulty in Mathematics and language-based subjects is evident, the record also reflects periods of achievement, including Substantial, Adequate and Meritorious performance in certain terms. This does not demonstrate a linear or inexorable decline, but variable performance as demands increase.
- [99] The addendum records some improvement in verbal and non-verbal IQ scores, which the educational psychologist attributes in part to practice effects. That acknowledgement highlights the limits of repeated psychometric testing as a predictor of long-term outcomes and does not support a conclusion of progressive neurocognitive deterioration attributable to structural brain injury.
- [100] While the addendum reiterates the conclusion that B[...] will likely not progress beyond Grade 10 and would have attained an honours degree but for the accident, those conclusions extend beyond what the objective evidence comfortably supports. They reflect possibilities rather than probabilities grounded in the record.
- [101] At most, the evidence establishes heightened educational risk shaped by a combination of mild concussive injury, pain, psychosocial stressors and untreated anxiety and depressive symptomatology. It does not establish, on a balance of probabilities, irreversible educational truncation at Grade 10 as a consequence of the accident.
- [102] Much of the conclusion that B[...] is confined to unskilled, minimum-wage employment flows from assumed severity of neurocognitive impairment. Once

the head injury is properly located, on the objective evidence, as minor to mild, downstream opinions must be read through that lens.

[103] The claim for future loss of earnings, more accurately described as loss of earning capacity, requires the court to make a sensible estimate of probable future outcomes. That exercise is inherently predictive. Actuarial calculations are a tool, not a result. The court retains a discretion to award what is fair, recognising the limits of prediction and addressing uncertainty through contingencies.

[104] That discretion assumes particular importance where the competing postulations are wide apart and depend on assumptions that are contested on the facts. In those circumstances, contingencies serve as the means by which the court tempers the award so that it remains fair, realistic and proportionate to the proven risk of loss.

B[...]'s future loss of earnings and or earning capacity

[105] For the reasons already set out, I am not persuaded that the medical evidence establishes anything more than a minor-to-mild concussive injury. Nor am I persuaded that the causal leap from such an injury to the asserted dramatic truncation of educational potential is supported by the objective contemporaneous records.

The educational evidence and B[...]'s trajectory

[106] The psycho-educational material confirms that B[...] has genuine scholastic and emotional vulnerabilities. These are plainly relevant to the assessment of future earning capacity, as they may affect academic endurance, resilience, and competitiveness in the labour market.

[107] However, the updated scholastic history contained in the educational psychologist's addendum materially qualifies the more pessimistic projections advanced in earlier reports. On the updated record, B[...] progressed through

Grades 2 and 3 post-accident; he achieved “Achieved” and “Progressing” outcomes in multiple terms; he passed Grade 6 and is currently enrolled in Grade 7 at the same mainstream school; and his performance reflects fluctuation rather than early or irreversible educational collapse.

[108] The addendum further records some improvement in measured intellectual functioning when compared with earlier testing, with the educational psychologist acknowledging the likelihood of practice effects.

[109] Taken together, the educational evidence establishes that B[...] is at educational risk, not that he is educationally foreclosed. The evidence supports vulnerability requiring support and accommodation. It does not support, on a balance of probabilities, a finding that he will probably be capped at Grade 10 purely by reason of accident-related brain injury.

[110] The industrial and actuarial evidence necessarily rests on assumptions regarding likely educational attainment and vocational outcome. Where those assumptions track proved facts, they assist the court. Where they proceed from an unproved premise, namely that B[...] sustained a significant brain injury with major, permanent neurocognitive consequences, the resulting projections must be treated with circumspection.

[111] The most drastic earnings scenario advanced on behalf of the plaintiff presupposes a level of neurocognitive impairment sufficient to confine B[...], for the entirety of his working life, to unskilled minimum-wage employment. That presupposition is not supported by the contemporaneous clinical markers, the neurosurgeon’s assessment, the consistently normal GSC scores, or the absence of acute intracranial pathology on imaging. The educational addendum, far from curing that difficulty, introduces objective school progression data demonstrating continued participation in mainstream education, albeit with uneven performance.

112] This does not mean that the accident had no impact. The evidence supports ongoing headaches, pain-related limitation affecting writing endurance, and

clinically meaningful emotional distress that may compromise concentration and learning. These factors may warrant an enhanced contingency to reflect increased vulnerability in educational and occupational competition. But an enhanced contingency is conceptually distinct from accepting, as probable, a permanent educational ceiling at Grade 10 and lifelong confinement to unskilled work.

[113] On the totality of the evidence, I accept as probable that B[...] is likely to experience ongoing educational difficulty, particularly in numeracy and attention-dependent tasks; that he may require supportive interventions, including psychological treatment and educational support; and that emotional symptomatology and pain complaints may compound academic inconsistency if left untreated. These vulnerabilities may translate into reduced competitiveness in the open labour market and an elevated risk of underemployment or slower progression when compared with an uninjured peer from a similar socio-economic background.

[114] What has not been established, however, is that, but for the accident, B[...] would probably have attained a degree or honours qualification, or that as a consequence of the accident he will probably be confined to Grade 10 and unskilled minimum-wage employment. The plaintiff's case, as formulated, overstates both ends of the counterfactual and does not sufficiently engage with the objective scholastic progression reflected in the addendum.

The proper approach to quantification

[115] The quantification of future loss of earnings is not appropriately undertaken on a binary "high-trajectory versus unskilled labourer" basis. A fair approach, consistent with the evidence, is to recognise that the plaintiff faces a real and increased vulnerability affecting educational and vocational progression, while rejecting the most severe post-morbid scenario as unproven.

[116] In practical terms, that adjustment is achieved through the application of contingencies and moderated scenarios, rather than by adopting an extreme

educational or vocational ceiling. I accept that the plaintiff's contingencies should be materially higher than those applicable to an uninjured comparator, to reflect increased risk, reduced resilience, and the possibility of curtailed progression. I do not accept, however, that the evidence justifies modelling the plaintiff's future earnings solely on the basis of Grade 10 education and unskilled work.

[117] The actuarial evidence is useful in illustrating the financial consequences of competing assumptions, but it cannot be adopted uncritically. To the extent that the calculations depend on premises not established on a balance of probabilities, they must be adapted to reflect a moderated scenario: continued mainstream schooling with meaningful risk of underachievement, possible early exit from formal education, and reduced competitiveness in the labour market, without assuming catastrophic and permanent truncation of educational potential.

[118] The plaintiff has proved that the accident resulted in injuries with lasting consequences and that B[...] is more vulnerable educationally and psychologically than he would otherwise have been. The plaintiff has not, however, proved that the accident probably caused the drastic educational and vocational derailment contended for. Where actuarial projections are founded on that unproved premise, they cannot be adopted as they stand.

[119] B[...]’s future loss of earnings must therefore be assessed on a moderated basis that recognises increased risk and disadvantage, but rejects the assumption of inevitable confinement to unskilled, minimum-wage employment. The appropriate measure lies not at either extreme presented, but in a reasoned adjustment that reflects diminished earning capacity without attributing to the accident consequences that the evidence does not support.

Contingencies

[120] The assessment of future loss of earnings necessarily involves uncertainty. That uncertainty is addressed, not by speculative certainty about future

outcomes, but by the application of contingencies. Contingencies represent the court's recognition of the vicissitudes of life and the limits of prediction, particularly where the claimant is a minor whose educational and vocational path has not yet crystallised.

[121] In ***Southern Insurance Association Ltd v Bailey NO*** 1984 (1) SA 98 (A) at 116G–117A, the Appellate Division made clear that actuarial calculations are no more than a tool, and that a trial court is not bound by “inexorable actuarial calculations” where the assumptions feeding into them are uncertain. The court's task is to arrive at an award that is fair, using contingencies as the means to temper prediction with realism.

[122] Where the claimant is a child, courts have consistently recognised that a higher “normal” contingency is warranted even in the absence of injury, because the future is inherently more uncertain. There is no fixed percentage, but contingencies in the region of 15% to 25% have frequently been applied as a normal pre-morbid allowance for minors, depending on age, socio-economic context, and the absence of an established career trajectory.

[123] That discretion is well recognised. In ***Legal Insurance Company Ltd v Botes*** 1963 (1) SA 608 (A) at 614F, Holmes JA held that a trial judge ‘has a discretion to award what under the circumstances he thinks right’.

[124] As Margo J observed in ***Goodall v President Insurance Co Ltd*** 1978 (1) SA 389 (W) at 392H–393A, the assessment of future loss necessarily involves elements of arbitrariness, because the art of foretelling the future is not a science, and contingencies are the means by which the court accommodates that reality.

[125] In ***Makupane v Road Accident Fund*** (Gauteng Division, Pretoria, case no 17192/2016, judgment delivered 6 March 2019), the court accepted that a claimant's future earnings were subject to substantial uncertainty and emphasised that contingencies provide the appropriate mechanism to reflect

both ordinary life risks and injury-related vulnerability, rather than resorting to rigid or extreme career assumptions.

[126] Similarly, in **Sanders v Road Accident Fund** (Gauteng Division, Johannesburg, case no 2014/36418, judgment delivered 18 October 2017), the court stressed that increased post-morbid contingencies are justified where injuries introduce additional risk into educational progression and employability, even where the claimant is not rendered unemployable. The court cautioned against treating actuarial projections as deterministic, and reaffirmed that contingencies are the proper judicial instrument for dealing with increased uncertainty.

[127] The same principle was endorsed at appellate level in **Road Accident Fund v Guedes** 2006 (5) SA 583 (SCA) at para 9, where the Supreme Court of Appeal observed that the enquiry into future loss is inherently speculative and that the final award depends on the trial court's view of what is fair in light of the evidence.

[128] In the present matter, the evidence does not justify adopting radically different pre- and post-accident career models. What it does justify is recognising that, while B[...] retains meaningful educational potential, the accident has introduced additional vulnerability in the form of pain, emotional sequelae, attentional difficulty, and reduced educational resilience. Those factors increase the risk of underachievement and diminished competitiveness in the labour market.

[129] In these circumstances, a pre- and post the same scenario is accepted. A normal pre-accident contingency of 25% appropriately reflects the ordinary uncertainties applicable to a minor child.¹ A substantially higher 60% post-accident contingency properly accounts for the proven injury-related risks, without assuming catastrophic or inevitable failure.² This approach accords

¹ R12 705 332.00 less 25% contingency is R9 528 999.00

² R12 705 332.00 less 60% contingency is R5 082 133.00

with principle, reflects the evidence, and produces a fair and proportionate assessment of future loss.

Order

[130] The following order is made:

130.1 The defendant is liable for 100% of the plaintiff's proven and or agreed damages arising from the motor vehicle collision of 7 December 2019.

130.2 The defendant is ordered to pay to the plaintiff damages for future loss of earnings and or loss of earning capacity in the amount of R4 446 866.00;

130.3 The defendant is directed to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for the reasonable costs of future medical treatment, accommodation, services, and goods arising from the injuries sustained in the collision.

130.4 The defendant is ordered to pay the plaintiff's taxed or agreed costs of suit, such costs to include:

- (i) The costs of all expert reports obtained and relied upon by the plaintiff;
 - (ii) The reasonable qualifying, preparation, and consultation costs of the plaintiff's experts;
 - (iii) The costs occasioned by the appointment of the curator ad litem; and
 - (iv) Counsel's fees, on scale C.
-

L HASKINS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Plaintiff: Adv J Bam – (082 828 2388)
Instructed by: David Fourie – (072 219 0306)

For the Respondent: Adv K Makgoka – Kgabom@raf.co.za
Instructed by: State Attorney

Date of the hearing: 05 August 2025
Date of judgment: 13 February 2026

“X”

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION. PRETORIA

Case No: 28540/2022

On 5 August 2025, before the Honourable Justice **Haskins J**
In Court **8A**

In the matter between:

ADVOCATES SAYED N.O
(CURATOR AD LITEM OF B R NKONDE) **PLAINTIFF**

And

ROAD ACCIDENT FUND
(Link Number: 4967282) **DEFENDANT**

DRAFT ORDER

After having heard counsel, and after having considered the evidence;

IT IS ORDERED THAT:

1. The Plaintiffs application in terms of Rule 38(2) is granted as per the prayers in the Notice of Motion.

2. The Defendant is liable for 100% of the Plaintiff's proven or agreed Damages.

3.1 The Defendant pay the Plaintiff an amount of R4 446 886.00 (Four Million, Four Hundred and Forty-Six Thousand, Eight Hundred and Eighty-Six Rands) in full and final settlement of the Plaintiff's claim for **Loss of Earnings**,

payable into the Plaintiff's attorneys of record trust account with the following details:

Account Holder: Ehlers Attorneys

Bank Name: FNB Branch Code: 261550

Account Number: 6[...]

3.2 The Plaintiffs claim, in respect of General Damages is separated in terms of the provisions of Rule 33(4) and postponed *sine die*. The Plaintiff is permitted to refer the issue of General Damages to the HPCSA without the input and/or assistance of the Defendant in order to obtain a final outcome/resolution

4. The Defendant shall be liable for interest on the above-mentioned amount, at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended, per annum, from and including 15 days after date of order, up to and including date of payment thereof.

5. The Defendant is ordered to furnish the Plaintiff with an undertaking, in terms of Section 17 (4) (a) of the Road Accident Fund Act 56 of 1996, for the costs of the administration of the proposed trust, future accommodation in a hospital or a nursing home or treatment of or rendering of a service or supplying of goods to the injured after such costs have been incurred and on proof thereof, relating to the injuries sustained by the Plaintiff on 7 December 2019.

7. The Defendant is ordered to pay the Plaintiffs taxed or agreed party and party costs on High Court scale, in accordance with Rule 70 of the High Court, **subject to the discretion of the taxing master**, which costs may include, but will not be limited to the following:

7.1 The reasonable taxed fees for consultation with the experts mentioned below, together with delivery of expert bundles including travelling and time spent travelling to deliver such bundles, preparation for trial, qualifying and reservation fees (if any and on proof thereof), including the costs of all consultations (inclusive of telephonic consultations) with Counsel and/or Plaintiff's attorney and the costs of all consultations, as well as costs of the

reports, addendum reports, full day fees for court attendance (if at Court) of the following experts:

- 7.1.1 Dr Moja - Engelbrecht - Orthopaedic Surgeon
- 7.1.2 Dr Moja - Neurosurgeon
- 7.1.3 Dr JA Smuts - Neurologist
- 7.1.4 I Jonker - Neuropsychologist
- 7.1.5 Dr Seabi - Educational Psychologist
- 7.1.6 Dr M Naidoo - Psychiatrist
- 7.1.7 Dr Pienaar - Plastic Surgeon
- 7.1.8 Dr S Naidoo - Maxillofacial Surgeon
- 7.1.9 K Cumming - Occupational Therapist
- 7.1.10 Dr Fredericks - Disability and Impairment Assessor
- 7.1.11 T Talmud - Industrial Psychologist
- 7.1.12 G Jacobson -Actuary

7.2 The costs for Accommodation and transportation (as per the prescribed AA rates) of the plaintiff and / or family members, to the medical legal examination(s) arranged by Plaintiff.

7.3 The costs for Accommodation and transportation with JT Transportation Services or any alternative transport provider, for the Plaintiff as well as a family member to attend Court.

7.4 The costs for preparation of Plaintiffs bundles of documents for trial purposes, as well as the travelling costs (as per the prescribed AA rates) and time spent to deliver these bundles.

7.5 The costs for preparation of Plaintiffs bundles of documents for experts, as well as the travelling costs (as per the prescribed AA rates) and time spent to deliver these bundles and loading same on Caselines.

7.6 The costs and fees of the Curator ad litem shall be on scale B in accordance with Rule 69 and Rule 70 of the High Court. These costs shall include, but not be limited to, any consultations deemed necessary, such as consultations with trustees, the Master's office, the Plaintiff's attorney, family members of the injured, medical experts, and any other experts deemed necessary. Additionally, the costs shall cover the drawing of reports and day fees for 5 August 2025.

7.7 The costs for preparation of Plaintiff's bundles of documents for the *curator ad litem*, as well as the travelling costs to deliver these bundles.

7.8 The costs of Adv Jaco Bam shall be on scale C in accordance with Rule 69 and Rule 70 of the High Court, briefed and appearing for trial, including but not limited to the following:

7.8.1 Preparation for Trial;

7.8.2 Consultations with Plaintiff's Attorney in respect of Preparation for Trial;

7.8.4 Drafting heads of argument;

7.8.5 Day fee for 5 August 2025.

7.9 The costs of the Affidavits compiled by the listed Experts in order for the Plaintiff to proceed to trial or on a default Judgment basis.

8. The Defendant is ordered to pay the Plaintiffs taxed and/or agreed party and party costs within 14 days from the date upon which the accounts are taxed by the Taxing master and/or agreed between the parties.

9. The Defendant shall be liable for interest on the costs aforementioned, at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended, per annum, from and including 15 days after date of allocatur, up to and including date of payment thereof.

10.1 A trust is to be established for the protection of the funds awarded in this matter;

10.2 The trust shall subsist for the lifetime of the plaintiff, subject to plaintiff's right to apply to the High Court, for the dissolution of the trust.

10.3 The following trustees for the trust are appointed: Sagsby Administrators (Pty) Ltd and RW Robbertse. Attached is the draft trust instrument, marked annexure "XYZ".

11. The trustees shall provide security in accordance with the requirements of the Master of the High Court. The Plaintiff's attorneys, Ehlers Attorneys, are authorised to pay from the abovementioned funds held in trust, the costs to set security to the

Master of the High Court by the trustees of the trust to be created, which costs in turn shall be refunded by the Defendant to the Plaintiff on proof of payment thereof.

12. The Plaintiff's attorneys of record, Ehlers Attorneys, shall appoint a company specialising in Road Accident Fund trust registrations to attend to the creation of the inter vivos trust in order to protect the awarded funds for the exclusive benefit of the injured. It is noted that such company has the authority to act as the founder of the trust.

13. The remuneration of the trustees shall be in accordance with the trust instrument, attached hereto.

14. Amendments to the trust instrument relating to the termination or remuneration of the trustees shall be subject to the approval of the High Court.

15. The Defendant shall be liable for the costs and expenses for the creation and management of the trust, which form part of s 17(4)(a) of the Road Accident Fund Act. Such costs will include the fees of the trustees as set out in the trust instrument, attached hereto and mentioned in paragraph 12.

16. The Plaintiff's attorneys, Ehlers Attorneys, shall keep the monies received as set out in paragraph 3.1 of this order in their Attorney's trust account and will only be allowed to pay such monies over to the trustees of the trust to be created in terms of paragraph 11. of this order, once the Master of the High Court has issued the trustees with the necessary letters of authority.

17. The Plaintiff's abovementioned attorneys are, however, authorised and ordered until such time as the trustees are able to take control of the capital sum and to deal with same in terms of the trust deed, to pay from the capital amount:

18.1 Any reasonable payments to satisfy any of the Plaintiff's needs that may arise and that are required in order to satisfy any reasonable need for maintenance, treatment, care, aids or equipment that may arise in the interim;

18.2 The attorney and client fees and expenses of the Plaintiff from the abovementioned funds held in their Attorney's trust account.

19. There is a valid Contingency Fee Agreement signed by the Client.

Attorney for Plaintiff: David Fourie - 0722190306
(david@ehlersattorneys.co.za)

Counsel for the Plaintiff: Counsel for the Plaintiff: Adv J Barn 082 828 2388
(bamjaco@gmail.com)

State Attorney for the Defendant: Kgabo Makgoka (kqabom@raf.co.za)

**BY ORDER
REGISTRAR**

"XYZ"

THE BR N[...] INVESTMENT TRUST

MADE AND ENTERED INTO BY AND BETWEEN:

THE FOUNDER
SAQSBY ADMINISTRATORS (PTY) LTD
2016/444494/07
REPRESENTED BY
ABDUL QADIR OSMAN
IDENTITY NUMBER: 8[...]

And

THE TRUSTEES
(for the time being)
ROBERT WESSEL ROBBERTSE
IDENTITY NUMBER: 8[...]

and

SAQSBY ADMINISTRATORS (PTY) LTD
2016/444494/07
REPRESENTED BY
ABDUL QADIR OSMAN
IDENTITY NUMBER: 8[...]

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- A) The founder is desirous of creating a trust for the benefit of the beneficiary;
- B) The trustees have agreed to accept office as such and to administer the trust and trust asset in terms of this trust deed.

WHEREAS: The Founder wishes to create a trust whereby the net award from the Road Accident Fund is entrusted to the trustees for the purpose of establishing a trust for the benefit of the beneficiary mentioned in 1.2.2 and 1.2.3 (hereinafter jointly referred to as the "beneficiary"), subject to the terms and conditions set out by the Founder and contained in the trust deed.

1 DEFINITIONS

In this Trust Deed, unless the context otherwise indicates:

1.1 INTERPRETATION

1.1.1 The singular shall include the plural and vice versa and words importing any gender shall include the other gender;

1.1.2 Any reference to persons, shall include natural persons, legal persons and trusts;

1.1.3 Any reference to a company shall include a close corporation or other legal person and any reference to shares shall include members' interests, if applicable;

1.1.4 Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not affect the interpretation of the trust.

1.2 The following expressions shall have the following meanings:

1.2.1 "the assets", "the trust assets", "the trust", "the capital", "the trust capital" , "trust income" and the " ____ **Investment Trust**" shall be interchangeable and shall mean and include:

1.2.1.1 the capital of the trust, consisting of the trust fund, any capital gain realised on the trust fund and including any part of the net income which is not distributed in the course of the tax year during which it accrues to the trust and is accumulated to the capital, but after deducting the following:

1.2.1.1.1 the liabilities of the trust, both actual and contingent; and

1.2.1.1.2 the sum of all provisions for renewals or replacement of assets and for liabilities (as envisaged in 1.2.1.1.1 above) the amount of which cannot be determined with substantial accuracy, as the trustees in their discretion deem necessary.

1.2.2 "income beneficiary" shall mean ____ identity number: ____

1.2.3 "capital beneficiary" shall mean the income beneficiary referred to above;

1.2.4 "the curator" means the curator ad litem appointed by the court to assist the beneficiary with the litigation against the Road Accident Fund ("RAF");

1.2.5 "the trustees" shall mean and include the original trustees or any persons assumed by or succeeding them as trustees;

1.2.6 "the court order" shall mean court orders granted by the High Court of South Africa, Gauteng Division, Pretoria, under case number ____ on the ____;

1.2.7 "the undertaking" means the undertaking provided to the beneficiary by the RAF in terms of Section 17 (4) (a) of the Road Accident Fund Act 56 of 1996.

2 NAME OF TRUST

The trust created in terms of this deed shall be known as the ____ (hereinafter referred to as "the trust").

3 NO DONATION

It is hereby confirmed that the creation of this trust is not a donation but a payment for compensation for injuries sustained in terms of the Road Accident Fund Act 56 of 1996.

4 VESTING OF TRUST ASSETS

4.1 The Founder hereby transfers to the trustees an amount equal to the net award received from the Road Accident Fund. The said amount is accepted by the trustees for the purposes of the trust. This award shall be the initial capital of the trust.

4.2 The trust assets vest in the trustees in their official capacities as trustees to deal with the trust assets on behalf of the beneficiary and not to the personal benefit of the trustees. At no time shall the trustees be deemed to acquire for themselves or their personal account any vested right to the trust assets.

5 TRUSTEES

5.1 The trustees named at the commencement of this deed shall be the first trustees of the trust.

5.2 The trustees shall have the right to nominate a replacement in their wills and to appoint any competent person to take their place as trustees, who's appointment will be subject to approval by the Master of the High Court in which jurisdiction the trust is registered.

5.3 The trustees in office from time to time shall have the right:

5.3.1 to appoint any person as trustee to take the place of any trustee dying, resigning or vacating office for any reason, subject to the approval of the Master of the High Court;

5.3.2 to assume such additional trustee or trustees as they may deem necessary or desirable, subject to the approval of the Master of the High Court;

5.3.3 to change or vary any appointment or assumption so made before effect is given thereto.

5.4 There shall at all times be not less than two nor more than five trustees acting under this deed unless the trustee is a financial institution specializing in the administration of trusts, in which event one trustee will be sufficient.

6 SECURITY

6.1 The trustees will furnish security to the satisfaction of the Master of the High Court of South Africa or any other official in terms of the Trust Property Control Act 57 of 1988 or any other legislation which may now be or which may hereafter become of force and effect.

6.2 The cost of the security will be refunded by the RAF in terms of the court order or the undertaking.

7 ACCOUNTS AND ANNUAL STATEMENTS

The trustees shall, from time to time, appoint an Accounting Officer and/or a Chartered Accountant to act as the accountant of the Trust and to perform the function defined hereinafter in this paragraph. On the 28th day (or in a leap year, the 29th day) of February (or on such other date as the trustees may set from time to time) of each year, the trustees shall have an account of the administration of the trust prepared, setting out the capital of the Trust, with all additions to it and all income and expenses incurred by the trustees and the way in which the trust fund was kept and invested. The beneficiary in terms of the Trust Deed or his legal representative will be entitled, at request, to a true copy of each such account, properly certified by the trustees and to request that such account be audited.

8 TRUSTEE'S POWERS

In addition to the powers vested in them by law the trustees shall have the following powers:

8.1 To invest

To invest or reinvest the proceeds of any assets or any monies of the trust in their hands from time to time in such investments that are held by or through a registered financial institution such as Sanlam Glacier, Investec or the like.

8.2 To vary investments

To vary any investments made in terms of sub- clause 8.1 for other investments of like nature.

8.3 Name in which trust assets to be held

To hold the whole or any part of the trust assets in the name of the trust.

8.4 To manage the trust assets

To manage the trust assets for the benefit of the beneficiary in accordance with the court order and/or the undertaking, which management, in the discretion of the trustees, will include but not be limited to: determining and paying the beneficiary a monthly allowance; obtaining and paying the security bond; paying any accident related medical expenses; and claiming any permissible refunds from the RAF in terms of the court order and the undertaking.

8.5 To exercise voting powers

To exercise all the voting powers attaching to any investments at any time forming part of the trust assets.

8.6 To decide what money represents capital and what income

To determine whether any sums received or disbursed are on account of capital or income or any part thereof and in what proportions. The decision of the trustees whether made in writing or implied from their acts shall be conclusive and binding upon the beneficiary.

8.7 To apportion

To make all apportionments in the account of the trust which may be necessary.

8.8 To employ agents

To employ the necessary professional services inter alia accountants, attorneys, agents, brokers, or such professional or other assistants as the trustees may consider necessary to transact all or any business of whatsoever nature of the trust and pay all such fees, charges and expenses so incurred as a first charge. The trustees shall not be responsible for the default of such professionals and other assistants or for any loss occasioned by such employment.

8.9 To determine questions

To determine all questions and matters of doubt which may arise in the course of their management, administration, realisation, liquidation, partition or winding up of the trust assets.

8.10 To open and operate a banking account

To be empowered to open and to operate upon (either themselves or by a person or persons authorised by them) a banking account or accounts in the name of the trust.

8.11 To charge the cost of secretarial and or administration services

To have any secretarial or administration services, which they consider necessary for the administration of the trust, carried out at the cost of the trust, limited to the remuneration as set out in clause 10 of this trust deed.

8.12 To pay costs

To pay out of the capital or income of the trust assets all expenses (including legal fees) incurred in the formation of the trust. Such expenses are recoverable from the RAF in terms of the court order and limited by clause 10 of this trust deed.

8.13 To engage in legal proceedings

To institute or defend legal proceedings and to sign all deeds, powers of attorney and other documents that may be necessary.

8.14 To accept further gifts

To accept and acquire for the purpose of the trust any gifts, bequests or payments from any person, firm, company or association that may be given, bequeathed or paid to the trust as an addition or with the intention to add to the funds hereby donated to the trust, any additions so accepted and acquired shall be deemed to form part of the trust fund to be administered and dealt with subject to the terms of this deed.

8.15 To determine income

To determine in such manner as they may consider fit what shall be treated as income and what shall be treated as capital and generally to decide any question which may arise as to how much constitutes capital and how much constitutes income by apportioning in such manner as they may consider fit and proper.

8.16 To pay in specie or cash

In making payment out at any time to the beneficiary of any portion of the trust fund in terms of this deed, the trustees shall be entitled to make any such payment either in cash or in specie or partly in cash and partly in specie. The trustees' valuation of any asset distributed by them in specie in terms hereof shall be final and binding on all interested parties. For the purpose of this clause the word "specie" shall be deemed to include any capital asset that is held as a portion of the trust fund which is in a form other than cash money.

8.17 Power to apply capital and/or income for the maintenance, education or benefit of the beneficiary

The trustees may, use and apply the whole or any portion of the capital and/or income of the trust assets for the maintenance, education (including university education in the Republic of South Africa or globally), to support the advancement and general welfare of the beneficiary. Any income which may be so applied or used by the trustees in terms hereof may at their discretion be paid either to the beneficiary or to any other person (including the parent or legal guardian of the minor) or to any school or university on his or her behalf. If the income of the trust assets is, in the opinion of the trustees, insufficient for the aforementioned purposes or any of them, the trustees shall be entitled to apply or use so much of the capital of the trust as they may consider reasonable.

8.18 To investigate and pay any accident related medical expenses

The trustees may obtain any scripts, quotations, invoices and other related documentation or information from the beneficiary or any supplier of medical treatment or services as they may deem fit, to consider any possible medical related claim and upon approval to pay same, either to the beneficiary or the service provider. The trustees may within their sole discretion decline any medical claims that do not comply with the undertaking or any other RAF requirements or which claims are not capable of being refunded by the RAF in terms of the court order or undertaking.

8.19 To claim refunds from the RAF

The trustees may claim from the RAF any applicable refunds including but not limited to trust registration fees, disbursements, initiation fees, annual trustee and administration fees, security bond costs and any accident-related medical expenses, that may be lawfully claimed in terms of the court order and the undertaking.

9 ADMINISTRATIVE FUNCTIONS AND PROCEDURES IN RESPECT OF MEETINGS

9.1 Subject thereto that the trustees consistently carry out the objects of the trust, they are entitled, in their administration of the affairs of the trust, to follow such policy

guidelines and lay down procedural and administrative steps as they from time to time deem desirable.

9.2 Any trustee is at all times entitled to convene a meeting of trustees by giving 4 (FOUR) days notice to all trustees.

9.3 The required quorum for any meeting of trustees shall be the majority of serving trustees but must include Mr Abdulqadir Osman, while he is a trustee. If there is no quorum, the trustees may adjourn the meeting for 24 (Twenty Four) hours or longer and at the continuation of the said adjourned meeting those trustees who are present shall form a quorum provided that the absent trustees have received reasonable notice of the adjournment and continuation of the meeting.

9.4 All decisions and actions of the trustees shall be taken on a majority vote. In the event of the trustees being equally divided in opinion then the matter shall be referred to the Master of the relevant High Court for a decision.

9.5 A written resolution signed by all the trustees has the same legal standing as a resolution passed at a properly constituted meeting.

9.6 The trustees shall minute all resolutions concerning affairs of the trust.

9.7 The trustees shall meet at least once a year and shall decide upon the use and/or allocations of income earned by the trust.

9.8 The trustees may authorize one or more of them to sign all documents for official purposes as may be required for the administration of the trust and for the execution of any transaction in respect of the affairs of the trust on behalf of the trustees, and any resolution which is certified by a trustee as being a true extract from the minutes of a particular meeting of the trustees has the legal effect of a resolution signed by all the trustees.

9.9 Any trustee shall be entitled in writing to appoint any other person (including one of the other trustees) to act and vote on his behalf at all or any specified

meetings of the trustees provided that the person so appointed shall, if he is not one of the other trustees, previously be approved of in writing by the other trustees.

9.10 Any dispute arising from equality of votes must, if only two trustees are in office, be referred by any trustee for a decision to an arbitrator appointed by the current sitting President of the Law Society for the area of the Master's Office where the trust is registered. The arbitrator's decision will be final and binding on the trustees. The decision of the arbitrator must be noted in the minutes as if the decision has been taken properly by the trustees.

10 REMUNERATION

10.1 Remuneration payable to the trustees shall be:

10.1.1 R7500.00 plus VAT as a once off trust registration and preparation fee;

10.1.2 1.15% plus VAT as a yearly trust administration management fee;

10.1.3 0.35% plus VAT as a yearly trustee fee;

10.1.4 2% plus VAT as a once off termination fee.

10.2 The remuneration of the trustees shall be refunded by the RAF in terms of the court order.

11 FEES FOR PROFESSIONAL SERVICES RENDERED

Any attorney, accountant or broker acting as a trustee under this deed shall be able to be remunerated for his benefit or for the benefit of any firm or company of which he may be a member, to charge normal fees for professional services rendered to the trust or in connection therewith (in addition to his normal trustee remuneration).

12 INDEMNITY

12.1 A trustee shall in the performance of his duties and the exercise of his powers act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another.

12.2 No trustee shall be liable for any loss sustained by the trust or the beneficiary save and except such loss as may arise from or be caused by his own dishonesty. The trustees shall be indemnified by and from the trust or the beneficiary against any loss or damage or claim whatsoever which might arise against them or any of them out of the bona fide administration by them of the trust.

12.3 The trustees shall be indemnified by the trust funds against all claims that may be made upon them arising out of the exercise or purported exercise of any of the powers hereby conferred upon the trustee subject, to the provisions of section 9 of the Trust Property Control Act 57 of 1988.

12.4 No trustee is liable for any dishonest deed committed by another trustee unless he had had a part in it. No trustee is obligated to take any steps against a co-trustee for any breach of trust committed by such co-trustee.

12.5 Should the trustees acting *bona fide* and having followed all due process make any payment to any person whom they are led to believe is entitled thereto under the terms of this deed and it subsequently be found that some other person or persons is or are entitled thereto hereunder, the trustees shall not be held responsible for the monies so paid.

12.6 The trustee may recover from the trust funds all legal costs it has necessarily incurred by way of taking advice, defending or prosecuting any legal proceedings.

13 INCOME TO THE BENEFICIARY

13.1 None of the income of the trust shall be deemed to be attributable to the share or the prospective or contingent share of the beneficiary but shall be held as a whole by the trustees.

13.2 The trustees may from time to time pay the beneficiary any amount as the trustees consider appropriate, for their maintenance or generally for such purposes that are in the best interest of the beneficiary.

13.3 The trustees shall be entitled to accumulate the whole or any part of such income for any period they think fit and reasonable and either retain the same un-invested (without responsibility for any loss) or invest the same in any of the securities or investments hereinbefore authorised.

13.4 The capital and/or income to which any beneficiary may be entitled, owing to the conditions of this trust deed, cannot before being paid by the trustees to such beneficiary be:

13.4.1 ceded, transferred or pledged by such beneficiary;

13.4.2 seized by any creditor of such beneficiary or vested in his curator at his insolvency.

14 TERMINATION, VESTING AND DISTRIBUTION OF TRUST ASSETS

14.1 The trust shall subsist for the lifetime of the beneficiary;

The trust may terminate in the following scenarios:

14.2 The beneficiary reaches the age of 65 years-

Upon the beneficiary reaching the age of 65 the trustees may elect on reasonable grounds being shown to either dissolve the trust or continue with the trust until the beneficiary's death; or

14.3 When the beneficiary dies and:

14.3.1 Leaves a valid will then the proceeds of this trust will be paid as per the last will and testament;

14.3.2 If there is no valid will and the beneficiary:

14.3.2.1 leaves a lawful spouse but no descendants, such spouse shall succeed to the part of the trust capital not paid to the deceased beneficiary, failing a lawful spouse, the descendants by representation

per stirpes of the deceased beneficiary shall succeed to the part of the trust capital not paid to the deceased beneficiary; or

14.3.2.2 does not leave surviving descendants, his biological mother and father or, failing any of them, any blood siblings by representation per stirpes of the deceased beneficiary shall succeed to the part of the trust capital not paid to the deceased beneficiary; or

14.4 The trustees in their discretion may terminate the trust due to its financial viability. If the trustees in their discretion believe on reasonable grounds that the trust is not financially viable to meet its administrative expenses, then the trustees may terminate the trust.

15 PAYMENT OF MINOR'S SHARE

15.1 Any monies payable to or on behalf of or for the benefit of the beneficiary, while such beneficiary is still a minor, shall not be paid or handed over to the Guardian's Fund or any other statutory fund.

15.2 While the beneficiary is a minor, the trustees may pay and hand over to the beneficiary's parent or guardian or to any person in whose legal custody the beneficiary is, all monies due to such beneficiary for their maintenance in terms of this trust deed.

16 EXCLUSION OF COMMUNITY OF PROPERTY

All benefits which the beneficiary may receive in terms of this trust deed shall at all times and for all purposes be excluded from any community of property or any community of profit and loss or any accrual in terms of the Matrimonial Property Act 88 of 1984 or any similar system applicable to permanent life partnerships or domestic partnerships.

17 SUSPENSION OF BENEFICIARY'S CONTINGENT RIGHTS IN THE EVENT OF CESSION, ATTACHMENT, OR INSOLVENCY

17.1 The trust assets and/or income to which the beneficiary is entitled under the provisions of this trust deed shall not, prior to distribution or payment thereof by the trustees to the beneficiary, be capable of being ceded, assigned, mortgaged or pledged by the beneficiary or be attachable by any creditor of the beneficiary or vest in his trustee on insolvency.

17.2 If, prior to distribution of the trust assets or payment of income as aforesaid being made to the beneficiary:

17.2.1 The beneficiary purports to or attempts to cede, assign, mortgage or pledge such trust assets and/or income of any part thereof; or

17.2.2 The beneficiary commits or suffers any act, default or process of law whereby such trust assets and/or income or any part thereof would, but for the provisions of this paragraph, become vested in, attachable by or payable to any other person or persons; or

17.2.3 The beneficiary commits an act of insolvency or is declared insolvent or assigns his estate for the benefit of his creditors; or

17.2.4 The beneficiary becomes incapable of managing his own affairs, then in each case, the contingent right of the beneficiary to the trust assets and/or income shall be suspended and shall remain vested in the trustees subject to the provisions of sub-clause 17.3 hereof.

17.3 The trustees shall in any of the events mentioned in sub-clause 17.2 hereof, apply the trust assets and/or income for the maintenance of the beneficiary.

17.4 Where the beneficiary dies and none of the events set out in sub-clause 17.2 hereof has taken place, then the right of the beneficiary which has been so suspended, shall pass to his testate or intestate heirs as the case may be.

18 PAYMENT TO BENEFICIARY MAY BE IN CASH OR IN ASSETS

Payments to the beneficiary under this trust deed may be made by the trustees either by delivery of assets of the trust or in cash as the trustees in their reasonable discretion shall determine. The trustees shall have the right to make payment to the

beneficiary by delivery or transfer of assets or to pay cash in lieu of assets to the beneficiary. The trustees in their reasonable discretion shall determine the valuation of such assets delivered or to be delivered or transferred to the beneficiary.

19 LOSS OF OFFICE

The office of a trustee shall be vacated:

19.1 If he resigns by written notice to his co-trustees; or

19.2 if he is convicted of an offence of which dishonesty is an element; or

19.3 if he becomes of unsound mind; or

19.4 if he becomes unfit and/or incapable of acting as trustee; or

19.5 if he becomes insolvent or assigns his estate for the benefit of or compounds with his creditors; or

19.6 if he shall become disqualified in terms of the Companies Act as amended from time to time to act as a director of a company; or

19.7 if the majority of the trustees in writing require him to resign.

20 REGISTRATION OF TRUST DEED

The trustees undertake to register this deed of trust and any amendment with the Master of the High Court of South Africa in terms of the Trust Property Control Act 57 of 1988 and the trustees shall be entitled to pay the cost of and incidental to the preparation and registration of this trust deed and any amended deeds out of the trust funds. The trust registration costs, initial donation and bank costs will be refunded by the RAF in terms of the court order and/or the undertaking.

21 AMENDMENT OF DEED

21.1 This trust deed may be amended from time to time in such manner as shall be agreed upon between the trustees or as the court order determines subject to the provisions of the Trust Property Control Act 57 of 1988.

22 CONSTRUCTION OF DEED

This deed shall be construed and have effect in all respects as settlement constituted under the laws of the Republic of South Africa and the trusts and provisions of this deed shall operate in accordance with such laws. The courts of the Republic of South Africa shall have exclusive jurisdiction to determine all questions and matters relative to this deed or arising out of it.

23 ACCEPTANCE CLAUSE

23.1 Founder to be bound

The founder shall be irrevocably bound by the terms and conditions set out in this deed;

23.2 Acceptance by trustees

The trustees hereby accept their appointment as trustees subject to the terms and conditions set out in this deed and the provisions of the Trust Property Control Act 57 of 1988.

SIGNED AT _____ ON THE _____ DAY OF _____ 2024 IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

**ABDUL QADIR OSMAN O.B.O SAQSBY ADMINISTRATORS (PTY) LTD
AS FOUNDER**

WITNESSES:

1. _____
(signature of witness)

(full names and surname of witness)

2. _____
(signature of witness)

(full names and surname of witness)

**ROBERT WESSEL ROBBERTSE
AS TRUSTEE**

WITNESSES:

1. _____
(signature of witness)

(full names and surname of witness)

2. _____
(signature of witness)

(full names and surname of witness)

**ABDUL QADIR OSMAN O.B.O SAQSBY ADMINISTRATORS (PTY) LTD
AS TRUSTEE**

WITNESSES:

1. _____
(signature of witness)

2. _____
(signature of witness)

(full names and surname of witness)

(full names and surname of witness)