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

Not reportable

Case no: 3268/2018

In the matter between

M[...] K[...]

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *M K[...] v Road Accident Fund* (3268/2018) [2026] ZAFSHC 61 (18 February 2026)

Coram: MHLAMBI J

Heard: 19 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 9h30 on 18 February 2026.

Summary: Road Accident Fund – general damages – quantum –minor pedestrian – mild traumatic brain injury – orthopedic injuries –scarring – comparative case law – discretion of the court.

ORDER

The draft order is made an order of court, with the following amendments to paragraphs 2.2 and 3.1:

‘2.2 The defendant shall pay the plaintiff the sum of R540 000.00 (five hundred and forty thousand rands) in respect of general damages within 180 days.

3.1. The defendant is to pay the plaintiff’s taxed or agreed party and party costs, up to and including the trial dates of 18 and 19 November 2025 and the date when this order is made an order of court.’

JUDGMENT

Mhlambi J

[1] This is a minor’s claim against the Road Accident Fund arising from a collision in which the insured driver struck a 15-year-old pedestrian. When the matter came before me, it was partially settled, and, by agreement between the parties, a draft order was submitted, which reads as follows:

‘1.

1.1 The issues of general damages and future medical expenses are separated from past and future loss of income in terms of Rule 33(4).

1.2 The issue of loss of earning capacity is postponed to the pre-trial date of 02 February 2026.

2.

2.1 The Defendant is liable to pay 90% (Ninety Percent) of the Plaintiff’s proven or agreed damages;

2.2. The Defendant shall pay the Plaintiff the sum of R 720 000, 00 (SEVEN HUNDRED AND TWENTY THOUSAND RAND) in respect of general damages within 180 days.

2.3 The Defendant shall pay the abovementioned amount into the Plaintiff’s Attorneys’ trust account.

The Plaintiff’s Attorney’s trust account details are as follows:

ACCOUNT HOLDER: VZLR INC
 BRANCH: ABSA BUSINESS BANK HILLCREST
 BRANCH CODE: 632005
 TYPE OF ACCOUNT: TRUST ACCOUNT
 ACCOUNT NUMBER: 3[...]
 REFERENCE: MAT115081

2.4 The Defendant shall furnish the Plaintiff with an Undertaking in terms of Section 17(4)(a) of Act 56 of 1996, limited to 90%, in respect of future accommodation of the Plaintiff in a hospital or nursing home or treatment of or the rendering of a service or supplying of goods of a medical and non-medical nature to the Plaintiff (and after the costs have been incurred and upon submission of proof thereof) arising out of the injuries sustained in the collision which occurred on 26 May 2015.

2.5 In the event that the Defendant does not, within 180 (one hundred and eighty) days from the date on which this order is handed down, make payment of the capital amount, the Defendant will be liable for payment of interest on such amount at 10.5% (the statutory rate per annum) compounded and calculated fourteen days from date of this order.

3.

3.1 The Defendant to pay the Plaintiffs taxed or agreed party and party cost, up to and including the trial dates of 18 & 19 November 2025 and the date when this order is made an order of court, for the instructing and correspondent attorneys, which cost shall include, but not be limited to the following:

3.2 The fees of Counsel, in terms of amended Uniform Rule 67A(3)(a) read with Rule 69(7) on scale B, which costs shall include, but not limited to, the preparation for trial; preparation, consideration and completion of the "submission document", heads of argument accompanying this order; and day fee in respect of the trial dates of 18 & 19 November 2025;

3.3 The reasonable qualification fees of all the Plaintiff's experts of whose reports had been furnished to the Defendant and/or its experts:

- 3.3.1 Dr LF Oelofse -Orthopaedic Surgeons
- 3.3.2 Dr JJ Labuschagne- Neurosurgeon
- 3.3.3 Dr S Van Heerden-Plastic & Reconstructive Surgeon
- 3.3.4 Dr A Naicker-Educational Psychologist
- 3.3.5 Ms Anel Booyse-Rita van Biljon Occupational Therapists
- 3.3.6 Mr Ben Moodie-Industrial Psychologist
- 3.3.7 Mr Johan Sauer-Actuary

3.4 In the event of default on the costs payment, interest shall accrue on such outstanding amount at the statutory more rate on the date of taxation / settlement of the bill of cost, as per the Prescribed Rate of Interest Act, 55 of 1975, as amended, per annum, calculated from due date until the date of payment.'

[2] The only issue for adjudication is the amount in respect of general damages to be awarded. In support of its claim, the plaintiff relied on the expert reports of the orthopedic surgeon and neurosurgeon, Doctors LF Oelofse and JJ Labuschagne. According to Doctor Oelofse, the plaintiff sustained a head injury and right shoulder and upper-arm injuries. She was diagnosed with a united clavicle fracture with a painful AC joint and a united humerus fracture with residual pain. She continues to experience headaches due to the head injury, which are associated with forgetfulness and behavioural changes. The injuries have affected the patient's productivity, ability to work, and quality of life, and continue to do so. From an orthopedic perspective, successful treatment of her injury will improve the patient's productivity.

[3] Dr. Labuschagne reports mild cognitive disturbances consistent with a mild head injury, with mild residual memory and concentration deficits. The claimant exhibited neuropsychological and neurocognitive effects from her head injury. An accurate quantification should be performed by a clinical psychologist. The Plastic and Reconstructive surgeon, Dr S van Heerden, described the injuries sustained as a facial injury, a right upper limb injury, and bilateral thigh injuries. There was a horizontal, hyperpigmented scar measuring three cm x two mm on the plaintiff's forehead, which became obvious with animation of the frontal muscles.

[4] The plaintiff referred me to the following three cases: *Sefuthi v Road Accident Fund (Sefuthi)*,¹ *MJM obo LJM v Road Accident Fund (MJM obo LJM)*,² and *Methule obo Minor v The Road Accident Fund (Methule)*.³ The plaintiff argued that, in light of the comparative case law, the amount claimed was fair, even though those cases were not on all fours with the facts of this matter. In *Sefuthi*, the plaintiff did not sustain a brain injury, but the case dealt with orthopaedic injuries and scarring of the face. In *MJM obo LJM*, the plaintiff was diagnosed with a mild traumatic brain injury and extensive scarring, but no orthopaedic injuries. In *Methule*, the minor sustained a concussive head injury, forehead scarring, headaches, and post-traumatic stress

¹ *Sefuthi v Road Accident Fund* [2022] ZAFSHC 268 paras 20-27.

² *MJM obo LJM v Road Accident Fund* [2022] ZAFSHC 154 para 7.

³ *Methule obo Minor v The Road Accident Fund* [2022] ZAGPPHC 192 paras 8 and 30.

disorder, but no orthopaedic injuries. In this case, an award of R 500 000 was made in 2022, with a 2025 value of R 580 000.

[5] The plaintiff argued that her injuries resulted in chronic right shoulder and arm pain, aggravated by lifting or carrying heavy objects and radiating to the elbow. Range of motion was restricted (40° difference in flexion and abduction, 15° in external rotation compared to the left side). Physical capacity was limited to sedentary to light work, with occasional elevated-arm tasks. She struggled with daily activities, household tasks, and productivity. Her neurological and cognitive injuries resulted in concentration disturbances, daily headaches, dizziness, mood disturbances, difficulty concentrating, distractibility, anxiety, and fear when walking. There was a 2-3 percent risk of epilepsy. These cognitive issues contributed to her withdrawal from school.

[6] The defendant noted that, according to the expert report, the orthopaedic injury would not adversely affect the patient's life expectancy. She also noted that the clinical neuropsychologist's report had not been filed, as the neurosurgeon had suggested. She referred to *Nkephang v Road Accident Fund*,⁴ in which the plaintiff was awarded R400 000 on 17 September 2024 for a laceration of the left wrist, a right cheek soft tissue injury, a right shoulder neck of humerus fracture, thoracolumbar spine soft tissue injuries, and extensive scars on the face and upper limbs. She also referred to *Smith v Road Accident Fund (Smith)*,⁵ in which an award of R300 000, equivalent to R612 800, was made.

[7] The defendant contended that in *Smith*, the plaintiff suffered more severe orthopaedic injuries that had not united and required surgical intervention, unlike the present matter. Because the plaintiff's fractures had united, with no past or future surgical intervention, the defendant submitted that an award of R400 000.00 for general damages would be fair and reasonable.

[8] In *Road Accident Fund v Marunga*,⁶ the court stated that when the question of

⁴ *Nkephang v Road Accident Fund* [2024] ZANWHC 239 para 21.

⁵ *Smith v Road Accident Fund* [2011] ZAGPJHC 203 para 30.

⁶ *Road Accident Fund v Marunga* [2003] ZASCA 19; [2003] 2 All SA 148 (SCA); 2003 (5) SA 164

general damages for pain and suffering, disfigurement, permanent disability, and loss of amenities of life arises, a trial court, in considering all the facts and circumstances of a case, has wide discretion to award what it considers fair and adequate compensation to the injured party. Regard should be given to awards in previously decided cases, even though it may be difficult to find a case on all fours with the one being heard. Nevertheless, awards in decided cases may provide useful guidance. Assistance may be derived from the general pattern of previous awards.

[9] I have considered the plaintiff's injuries and the sequelae thereto and I am of the view that an amount of R600 000 is a fair and reasonable compensation for the plaintiff's general damages. The defendant is, however, liable to pay 90 percent of the plaintiff's proven or agreed damages.

[10] Consequently, I make the following order:

The draft order is made an order of court with the following amendments to paragraphs 2.2 and 3.1:

‘2.2 The defendant shall pay the plaintiff the sum of R540 000.00 (five hundred and forty thousand rands) in respect of general damages within 180 days.

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J J MHLAMBI
JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:	A Sander
Instructed by:	Du Plooy Attorneys,

Bloemfontein

For the respondent:

Instructed by:

C Bornman

State Attorney,

Bloemfontein.