

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case No: 20/38204

DELETE WHICHEVER IS NOT APPLICABLE
REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: YES

DATE

SIGNATURE

IN THE MATTER BETWEEN:

ADV JOHAN MALHERBE KILIAN N.O

In his capacity as *Curator ad Litem* to

G[...], A[...]

PLAINTIFF

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

MOSTERT AJ

1. In this matter I handed down a written Judgment as well as an Order on the 13th of October 2025.
2. The monetary component of the Order was an award of R9601500,00 to the Plaintiff in his representative capacity being calculated as follows:
 - 2.1 R3 570 000,00 in respect of the patient's past loss of income claim;
 - 2.2 R4 531 500,00 in respect of the patient's future loss of income claim;
 - 2.3 R1 500 000,00 in respect of the patient's claim for general damages.
3. The Plaintiff was not satisfied with the Court Order as well as the Court's reasoning and launched an Application for Leave to Appeal.
4. The facts of the case is to a certain extent unique. The patient's claim against the Defendant was based on the damages that she suffered as a result of an accident that took place on the 14th of March 1991 where she was knocked over by an unidentified motor vehicle. She suffered a severe brain injury in the accident. She was 9 years and 3 months old at the date of the accident. She was still in primary school at the time of the accident, currently she is 44 years of age.
5. The current claim against the Defendant was instituted in 2020.

6. The Multilateral Motor Vehicle Accident Fund Act, 93 of 1969 was applicable at the date that the accident occurred. The current Road Accident Fund Act, 56 of 1996 came into operation on the 1st of May 1997.
7. The reason why the claim was only instituted against the Road Accident Fund in 2020 is not known. After institution of the claim it was defended by the Defendant. The Defendant filed a generic plea to the Plaintiff's Particulars of Claim from which it is clear that the drafter of the plea did not apply his mind.
8. The way that the Defendant dealt with this claim illustrates a serious dereliction of duty on the part of the Fund and a disregard for the fact that payments to members of the public such as the patient in the instant case is funded by the taxpayer, as well as motorists. There was no engagement on quantum with experts who appeared on the part of the Plaintiff even though the quantum in the case is considerable.
9. On the 2nd of June 2025 Manoim J struck out the Defendant's defence and authorised the Plaintiff to proceed to trial by default.
10. When the matter came before me in the RAF Defaults Court the week of 2 September 2025 the Plaintiff appeared with two counsel. The curator ad litem advocate Johan Killian was also present.

11. On behalf of the Fund there were two counsel present, however none of them held any instructions or engaged in the argument of the matter.
12. The Plaintiff utilised the services of a number of experts. The experts can only base their opinions on the proven facts and cannot make up the facts themselves as they go along.
13. The facts are relatively simple taking into account that the motor vehicle accident left the patient permanently brain damaged.
14. She is 44 years of age currently. She has given birth to three children, one of whom resides with her.
15. Plaintiff's counsel submitted that the fact that she had children was a liability and not an advantage that added to her quality of life and affected her claim for general damages. The submission that a mentally challenged person cannot enjoy parenthood is certainly a startling proposition. This will mean that no mentally challenged person can ever enjoy amenities of life that is associated with "normal" people.
16. Plaintiff's counsel also submitted that as a result of the accident the patient became promiscuous.
17. The function of the actuary in motor vehicle collision matters is to place contingencies before a court as to what reduction or increase needs to be

applied to the personal injury losses that the victim of a motor vehicle collision has suffered. He deals with complicated mathematical calculations. Invariably the actuary bases his calculation on the opinion or factual conclusions of other experts. The court is not bound by the calculations that the actuary provides. See Visser & Potgieter Law of Damages First Edition p 367. See also Legal Ins v Botes 1963 (1) SA 608 A. The Court is entitled and in fact duty-bound to evaluate the conclusions of the actuary.

18. Based on the speculative nature of the patient's education and what she would have achieved in life there is a high degree of contingency variation applicable in this case.
19. The patient suffers from HIV. According to the Plaintiff's counsel the patient's HIV condition is under control as she receives proper treatment. However, it is a medical fact that HIV infection increases the risk of chronic diseases such as cardiovascular disease, certain cancers and diabetes (www.verywellhealth.com).
20. It is a fact that woman who bear children often compromise their career opportunities by deciding to rather focus on the rearing of their children. See article "The complexity of childbearing and career advancement in senior leadership in South African", reference <https://repository.up.ac.za>. This fact invariably leads to reduction in earning capacity.

21. The actuary Whitaker submitted two expert reports, one dated 3 August 2023 and the other dated 18 June 2025. In the latter report he reduced the patient's claim for past and future loss of income based on an addendum of a report of the industrial psychologists Linde and Jooste. The latter compiled an addendum dated 10 August 2023 where they concluded that should the patient have completed an NQF5 qualification (post matric) it is expected that she would have worked in internship and contract positions for 2-3 years while completing her tertiary studies and gaining workplace experience. During this period of time, she would have earned at the Patterson A1 level (basic salary). She would then have entered the open labour market earning within the Patterson B2 level. The fact that the same actuary provided two reports against emphasizes the highly speculative nature of the patient's claim. The actuary did not consider the patient's HIV status on her career path, nor the fact that she had children.
22. I did not agree with the conclusions of the Plaintiff's witnesses insofar as it related to the quantum of the patient's claim. It is a known fact that a court of first instance has a wide discretion to apply contingencies to proposed quantifications. I made due provision to the fact that in all likelihood the patient would not have worked until the age of 65. I also make provision for unemployment due to motherhood.
23. In terms of the claim for general damages the claim significantly escalated during the pursuit of the claim. When Summons was initially instituted the patient's claim amounted to general damages of R1 million. Subsequent to the issue of the Summons the claim was amended to R2 million. When the matter was argued counsel brought an application for

general damages to be awarded in R3 million. The question can be asked how can a claim

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for general damages increase with the facts giving rise to the claim for general damages not changing.

24. The test for whether a court should grant leave to appeal is set out in Section 17(1)(a)(i) of the Superior Courts Act, 10 of 2013 namely whether there is a reasonable prospect of success. I am not convinced that a different court will come to a different conclusion.

25. ORDER

Application for leave to appeal is refused

DNH MOSTERT
ACTING JUDGE OF THE
HIGH COURT
JOHANNESBURG

This Judgment is handed down electronically by circulation to the Plaintiff's Legal Representative and the Defendant by email, publication on Case Lines. The date for the handing down is deemed 25 February 2026

Date of appearance: 3 February 2026

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Date Judgment delivered: 25 February 2026

Appearances

For the Plaintiff: Adv Danie Combrink

Instructed by: Erasmus De Klerk Inc

For the Defendant: NO APPEARANCE