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

Case No: 2024/077761

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
25/02/2026

In the matter of:

LIZL SMITH N.O

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 25 February 2026 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 25 February 2026.

JUDGMENT

TEBEILE AJ:

Introduction

[1] The plaintiff is Lizl Smith N.O, in her capacity as *curator ad litem* appointed to [T] [M], a minor child born on 25 November 2013. The plaintiff claims damages from the defendant, the Road Accident Fund, arising from injuries sustained by the minor child in a motor vehicle collision that occurred on 2 August 2022.

[2] The minor child was 8 years old at the time of the collision. She was struck by a motor vehicle while walking as a pedestrian. The driver of the vehicle fled the scene and remains unidentified.

[3] The defendant filed a notice of intention to defend on 7 August 2024 but failed to file a plea. On 5 September 2024, the plaintiff served a notice of bar. The defendant failed to deliver a plea within the prescribed period and was *ipso facto* barred. The matter accordingly proceeds on an unopposed basis.

The merits

[4] On 2 August 2024 the minor child was involved in a motor vehicle collision and the minor child was a pedestrian. The plaintiff seeks an order that the defendant be held 100% liable for the damages suffered by the minor child relating to a motor vehicle accident that occurred on 2 August 2024.

[5] According to the witness statement of Ms Annette Molapisi, the minor child was walking with friends on the pavement when a motor vehicle approached a T-junction and turned left. Due to potholes in the road, the vehicle encroached onto the pavement and struck the minor child. The vehicle drove off without stopping.

[6] The particulars of claim set out the grounds of negligence, including that the driver failed to keep a proper lookout, travelled at an excessive speed, failed to apply brakes timeously, and failed to avoid the collision when by the exercise of reasonable care, he could and should have done so.

[7] The evidence before me establishes that the collision was caused solely by the negligence of the unidentified driver. In the absence of any plea from the defendant, and on the evidence presented, I am satisfied that the defendant is liable for 100% of the damages suffered by the minor child.

The injuries

[8] The plaintiff presented her evidence in terms of affidavits in terms of Rule 38(2) before this court.

[9] Dr Edeling, a neurosurgeon, reported the following injuries:

- 9.1. Head injury with right fronto-parietal scalp laceration, subgaleal haematoma and fractures of the frontal and parietal bones;
- 9.2. Severe traumatic brain injury with extradural haematoma, temporal lobe contusion, subfalcine herniation and midline shift to the left;
- 9.3. Soft tissue injury of the cervical spine.
- 9.4. The CT brain scan performed on 3 August 2022 revealed a left temporal lobe parenchymal contusion, midline shift of 3.255mm to the left, and subfalcine herniation.
- 9.5. The outcome diagnosis includes:

- 9.5.1. Post-traumatic organic brain syndrome with cognitive, executive, communicative, mood and behavioural disorders;
- 9.5.2. Post-traumatic cervicogenic headaches and neck pain;
- 9.5.3. Post-traumatic right sensorineural hearing loss.

[10] Dr Edeling opined that the traumatic brain injury was severe and noted an increased risk of late post-traumatic epilepsy, estimated at a 5% to 10% lifetime risk.

[11] Dr Fine, a psychiatrist, confirmed that the minor child sustained a traumatic head injury with organic brain damage, with a significant period of amnesia, unconsciousness and confusion. Dr Fine also noted symptoms of an accident-related anxiety disorder and depression.

[12] The minor child sustained catastrophic injuries, as documented in the expert reports.

Pre-accident potential

[13] The evidence establishes that prior to the accident, the minor child was developing normally. Ms Gibson, the educational psychologist, reported that the minor child was of average to above average intelligence, with no pre-existing difficulties of a developmental or intellectual nature. She was performing well scholastically in Grade 3 at the time of the accident.

[14] Ms Gibson opined that but for the accident, the minor child had the potential to complete NQF Level 4 (National Senior Certificate) and to progress to tertiary education as far as NQF Level 6 or 7 (diploma or degree). This opinion is supported by the fact that two of the mother's siblings have attended university.

[15] The industrial psychologist, Mr Jooste, concluded that but for the accident, the minor child would likely have completed a higher certificate (NQF5) after matriculating, followed by three years at Paterson A1 level, progressing to Paterson B1 level, and ultimately reaching Paterson C1/C2 levels by age 40 to 45 years. In an alternative scenario, with part-time studies towards a National Diploma (NQF6), she could have reached Paterson C3/C4 levels.

Post-accident functioning

[16] The evidence reveals a devastating picture of the minor child's current functioning. Ms Gibson's neuropsychological assessment identified severe neurocognitive deficiencies in:

- 16.1. Immediate span of attention;
- 16.2. Complex attention/working memory;
- 16.3. Double mental tracking;
- 16.4. Information processing;
- 16.5. Inferential reasoning;
- 16.6. Language-based concept formation;
- 16.7. Comprehension;

16.8. Inductive/deductive reasoning.

[17] Ms Greaves, the speech therapist, found moderately to severely delayed and disordered skills in all three areas of language: expressive, receptive and pragmatic language. She concluded that the minor child does not have age-appropriate language skills and that this is unlikely to improve spontaneously. The gap between her and her peers is expected to widen over time.

[18] Ms Van Onselen, the occupational therapist, found significant visual perceptual, cognitive, psychological, behavioural and communicative deficits that will negatively impact the minor child's future educability and vocational potential. Her Montreal Cognitive Assessment score was below normal, with fallout in executive function, fluency, orientation, abstraction and attention.

[19] The minor child's school results show a pattern of deterioration. In Grade 6 (2025), her final results trailed her grade by significant margins:

- Natural Sciences: 46% (grade average 64%) - 18% below;
- Mathematics: 40% (grade average 56%) - 16% below;
- Social Sciences: 4% below grade average;
- Sesotho Home Language: 5% below grade average.

[20] Teacher comments note that she is talkative in class, does not pay attention to instructions, and struggles with reading.

Employment prospects

[21] The expert opinions on the minor child's future employment prospects are uniformly pessimistic. Dr Edeling stated:

"On neurological grounds it is probable that, irrespective of the certificate with which she leaves the educational system, her capacity for gainful employment will be seriously compromised. She has probably been rendered permanently unemployable for gain on the open labour market."

[22] Ms Gibson opined that she is unlikely to be a reliable employee, will have long periods of unemployment, will have a shortened working life, and lacks the motivation and self-determination to create her own employment.

[23] Ms Van Onselen concluded that she is academically and vocationally vulnerable, with cognitive, behavioural, communicative and psychological impairments limiting her ability to achieve matric-level qualifications. Given her significant limitations and the competitive labour environment, it is unlikely she will find accommodating employment. She may be better suited to a sheltered or therapeutic setting rather than competitive work.

[24] Mr Jooste, the industrial psychologist, recommended that for quantification purposes, the minor child will probably be restricted to low-level unskilled work. In a best-case scenario, she will probably earn at the minimum wage from the age of 20 years.

The actuarial calculation on loss of earnings

[25] The Algorithm Consultants and Actuaries CC prepared a report calculating the loss of income on two bases. The calculation date is 1 November 2025.

Basis I (pre-accident ceiling at Paterson C1/C2 level):

Future loss:

Value of uninjured earnings:	R6 931 425.00
Less 25% contingency deduction:	R1 732 856.00
	R5 198 569.00
Value of injured earnings:	R1 247 490.00
Less 45% contingency:	R561 370.00
	R686 120.00
Total future loss:	R4 512 449.00

Basis II (pre-accident ceiling at Paterson C3/C4 level):

Value of uninjured earnings:	R8 741 262.00
Less 25% contingency:	R2 185 316.00
Net uninjured value:	R6 555 946.00
Value of injured earnings:	R1 247 490.00

Less 45% contingency:	R561 370.00
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Net injured value:	R686 120.00
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Net future loss:	R5 869 826.00
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[26] The actuaries applied a net discount rate of 2.5% per annum compound and assumed retirement at age 65. General contingency deductions of 25% for uninjured earnings and 45% for injured earnings were applied.

[27] It was submitted on behalf of the plaintiff that the court consider the median of the two figures, which is approximately R5 191 138.00.

Assessment of loss of earnings

[28] The quantification of loss of earnings in matters involving young children with severe brain injuries is inherently difficult. The court must do its best to arrive at a figure that is fair and reasonable in all the circumstances.

[29] The approach adopted by the actuaries is based on estimations and which estimations are not perfect. One cannot ignore that the accuracy of actuarial work is not absolute, as it is influenced by the inherent uncertainties in data quality, the choice of analytical models, and the estimated parameters used.

[30] In the present case, two scenarios are presented, reflecting uncertainty about the exact level the minor child would have achieved but for the accident. Although the median of the two figures represents a reasonable estimate, I must similarly consider that

the minor child's post-accident earning capacity may be even more limited than assumed in the actuarial calculation. Several experts have expressed the view that she may be unemployable in the open labour market altogether.

[31] In *Maqula*¹, the court held:

“It is settled law that a trial Court has a wide discretion to award what it in the particular circumstances considers to be a fair and adequate compensation to the injured party for his bodily injuries and their *sequelae*.”

[32] In determining a reasonable figure for loss of earnings, I have had regard to established legal principles relating to award for loss of earnings.

[33] I am mindful that the importance of applying actuarial calculations and its advantages was discussed in the case of *Southern Insurance Association v Bailey NO*² where the court referred with approval to the case of *Hersman v Shapiro and Company*³ at 379 per Stratford J where the following was said:

“Monetary damage having been suffered, it is necessary for the Court to assess the amount and make the best use it can of the evidence before it. There are cases where the

¹ *AA Mutual Insurance Association Ltd v Maqula* 1978 (1) SA 805 (A) at 809A-B.

² 1984 (1) SA 98 (AD) (“*Bailey NO*”).

³ 1926 TPD 367.

assessment by the Court is little more than an estimate; but even so, if it is certain that pecuniary damage has been suffered, the Court is bound to award damages.’

“Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss.

It has open to it two possible approaches. One is for the Judge to make a round estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown.

The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative.

It is manifest that either approach involves guesswork to a greater or lesser extent. But the Court cannot for this reason adopt a non possumus attitude and make no award.”

[34] I am also mindful of the fact that the determination in awarding an appropriate amount that should be fair to both parties is in the courts’ discretion. The Supreme Court of Appeal in *De Jongh*⁴ correctly opined that while the plaintiff should be properly compensated, at the same time the plaintiff should not be overly compensated with an exceedingly high award which would burden the defendant.

⁴ *De Jongh v Du Pisanie N.O.* [2004] All SA 565 (SCA).

[35] The court in *P.G.M. obo M.M. v Road Accident Fund* (22670/2018) [2025] ZAGPJHC 469 (8 May 2025) per Nigrini AJ held:

“I accept as part of my rough estimate of the loss of earnings that a 25% contingency deduction to M[...]’s income if the accident did not occur (but for) be applied. Therefore, R 8 554 596 less 25% contingency deduction in an amount of R 2 138 649 = R 6 415 947. In the process of determining fair and reasonable compensation I also take into account the value of the amount at which M[...] would have entered the open labour market. M[...] has not been rendered entirely incapacitated. She should make use of counselling for her anger issues. It is impossible to determine the amount which she would be able to earn or her life expectancy with any measure of certainty. I must, accordingly, do the best I can with the available evidence.

Taking all the aforementioned factors into account I apply a 40% contingency to her pre-morbid estimated income in an amount of R2 566 378 (R 6 415 947 x 40%) and deduct the said sum from the estimated amount which she would have earned (R 6 415 947 less R2 566 378) = R3 849 567 (three million eight hundred and forty nine thousand five hundred and sixty seven rand).

I award a lump-sum award in the amount of R3 849 567 (three million eight hundred and forty nine thousand five hundred and sixty seven rand) to the Plaintiff in her representative capacity. The lump-sum constitutes the best rough estimate and fair compensation for her loss of earnings based on the facts of this case.”

[36] Although these cases have been of some assistance, it is trite that each case must be determined upon its own merits and no one case is factually the same as another.

[37] I have considered the approach towards a determination of a loss of earning capacity by our courts, in particular, in *Bailey NO*⁵ where the approach was articulated as follows:

"Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augers or oracles. All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of a loss. It has open to it two possible approaches. One is for the Judge to make a round estimate on an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try and make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser extent. But the court cannot for this reason adopt a non possumus attitude and make no award."

[38] I am aware that, due to her injuries, the minor child will not be able to compete on equal footing with her healthier peers in the open labour market, nor will she be able to perform tasks as efficiently or effectively as they can. The accident has resulted in

⁵ *Bailey NO* at footnote 2 supra.

impairments that will negatively affect her future career and employment prospects. As a direct consequence of the incident, the minor has sustained a medically supported loss of earnings capacity and reduced ability to work.

[39] I now turn to deal with calculations in the actuary report. Subject to adjustment of contingency deductions below, I am of a view that scenario 1 of the actuary report is fair and reasonable. I am of the view that the 25% contingency deductions applied in respect of income uninjured in scenario 1 do not make allowance for the inherent uncertainties in projecting future earnings over such a long period, and consequently 35% contingency deductions for income uninjured is reasonable.

[40] In light of the above, I am of the view that a reasonable and fair compensation for loss of earning is R3 819 306.25 computed as follows:

Future loss:

Value of uninjured earnings:	R6 931 425.00
Less 35% contingency deduction:	R2 425 998.75
	R4 505 426.25
Value of injured earnings:	R1 247 490.00
Less 45% contingency:	R561 370.50
	R686 120.00
 Total future loss:	 R3 819 306.25

[41] Taking all the above factors into account, and having regard to the actuarial calculations, I consider that a compensation of R3 819 306.25 for the loss of earnings is fair and reasonable. This figure although somewhat lower than the median of the actuarial

calculations, it reflects the inherent uncertainties in this matter and the possibility that the minor child's post-accident earning capacity may be even more limited than assumed.

General Damages

[42] The plaintiff claims general damages in the amount of R2 000 000.00. The RAF4 reports confirm that the minor child's injuries are serious as contemplated in section 17 of the Act.

[43] It is noted that the minor child has suffered a severe traumatic brain injury with permanent cognitive, behavioural and communicative sequelae. She has lost the amenities of life that she would otherwise have enjoyed. Her pain and suffering are ongoing, with daily headaches, neck pain, and emotional difficulties.

[44] The assessment of general damages requires careful consideration of comparable cases and the effects of inflation. The plaintiff has indicated that a comparative case law study will be uploaded to assist the court and that the claim for general damages be postponed *sine die* for appropriate determination.

[45] In the circumstances and given that the plaintiff seeks to provide further assistance to the court on this aspect, I consider it appropriate to postpone the claim for general damages *sine die*.

Future medical expenses

[46] The minor child was treated at a government hospital and has no past medical expenses. For future medical expenses, an undertaking in terms of section 17 of the Act is sought.

[47] The expert reports identify ongoing treatment needs, including:

- Medical consultations, prescription medication and physiotherapy for headaches and neck pain (R2 000 to R5 000 per annum);
- Specialist treatment and monitoring for epilepsy should it develop (R15 000 to R25 000 per annum);
- Psychotropic medication as recommended by psychiatrists;
- Speech therapy (40 hours intensive, then ongoing support);
- Occupational therapy (79 hours total);
- Case management;
- Possible placement in a specialised school or care facility.

[48] I am of the view that an undertaking in terms of section 17(4)(a) of the Act is appropriate to cover the future medical and related expenses.

Protection of funds

[49] The minor child is 12 years old and has been found by multiple experts to have significant cognitive deficits. Dr Edeling noted that she is not mentally fit to provide

evidence in court and is unlikely to develop the mental capacity for independent living or independent management of her personal, financial or legal affairs.

[50] Dr Fine recommended suitable protection for any large sum of money awarded, including the appointment of a curator ad litem. Ms Gibson, Ms Greaves and Ms Van Onselen similarly recommended protection of funds.

[51] A *curator ad litem* has already been appointed by court order dated 11 November 2025. The minor child's funds should be protected, preferably by a suitably constituted trust with securities.

Costs

[52] The plaintiff has been successful in establishing liability and in obtaining an award for loss of earnings. The defendant is liable for the plaintiff's costs, including the costs of the curator *ad litem* as provided for in the court order of 11 November 2025.

Order

[53] In the result, I make the following order:

1. The Plaintiff's application in terms of Rule 38(2) is granted.
2. The defendant is liable for 100% of the damages suffered by the minor child born on 25 November 2013, arising from the motor vehicle collision that occurred on 2 August 2022.

3. The defendant is ordered to pay to the plaintiff, in her capacity as curator *ad litem* to the minor child, the amount of R3 819 306.25 (Three Million Eight Hundred and Nineteen Thousand Three Hundred and Six Rand and Twenty-Five Cents) in respect of loss of earnings.
4. The amount of R3 819 306.25 (Three Million Eight Hundred and Nineteen Thousand Three Hundred and Six Rand and Twenty-Five Cents) shall be paid directly to the attorneys of the Plaintiff, **Renier van Rensburg Incorporated**, with the following details:

NAME OF ACCOUNT: R[...] v[...] R[...] I[...] T[...] A[...]t

BANK: S[...] B[...], M[...]

BRANCH CODE: 0[...]

ACCOUNT NO: 4[...]

REFERENCE: T[...]

5. Payment is to be made within 90 days from date of judgment.
6. Interest on the aforesaid amounts *a tempore morae* from 15 days from date of judgment date of payment.

7. That the attorneys for the Plaintiff, **Renier van Rensburg Incorporated**, are ordered:

7.1. To cause a trust (“the trust”) to be established in accordance with the Trust Property Control Act No. 57 of 1988.

7.2. To deposit all proceeds minus the deductions as below hereof in an interest-bearing account, for the benefit of the minor child, as contemplated in the Legal Practice Act 28 of 2014, pending the establishment of the trust;

7.3. To pay all monies held in trust by them for the benefit of the minor child immediately to the trust, upon creation of the trust;

7.4. The trust instrument contemplated above shall make provision for the following:

7.4.1. That the minor child is the sole beneficiary of the trust;

7.4.2. That the first trustee shall be LEANE EDWARDS in her capacity as nominee of ABSA TRUST LTD and is hereby authorised to act as trustee or failing her,

such an employee of ABSA TRUST LTD as they may nominate

7.4.3. That the trustee(s) are to provide security to the satisfaction of the Master of the High Court;

7.4.4. That the ownership of the trust property vest in the trustee(s) of the trust in their capacity as trustees;

7.4.5. Procedures to resolve any potential disputes, subject to the review of any decision made in accordance therewith by this Honourable Court;

7.4.6. That the trustee(s) be authorised to recover the remuneration of, and costs incurred by the trustee(s), in administering the undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 in accordance with the certificate of undertaking to be provided by the Defendant;

7.4.7. The remuneration of the trustee(s) shall be a once-off fee of 0.75% plus VAT on the amount of the award to be charged on acceptance of the Trust. A yearly management fee for the trustee(s) at a rate of 1% per annum plus VAT, calculated on the capital held under administration.

7.4.8. That the amendment of the trust instrument be subject to the leave of this Honourable Court;

7.4.9. The termination of the trust upon the minor child turning the age of majority, and for avoidance of doubt, turning the age of 18 on **25 November 2031**, and that upon such termination, all monies remaining must be paid to the minor child within 60 days from the date of termination;

7.4.10. That the trust property and the administration thereof be subject to an annual audit.

8. The Plaintiff's attorneys shall be entitled to make payment of fees and/or expenses incurred in respect of:

8.1. the fees and disbursements owing and due to Renier van Rensburg Inc

8.2. counsel and appearing attorneys employed on behalf of the Plaintiff,

8.3. the curator *ad litem*;

8.4. accounts rendered by the expert witnesses; and

8.5. an amount of R350 000.00 (Three Hundred Fifty Thousand Rand) to **Ms T[...]**
M[...] in her capacity as mother and natural guardian of the minor child for the benefit of the minor child pending the creation of the Trust from the aforesaid funds held by them for the benefit of the minor child.

9. The Defendant is to provide an undertaking to the Plaintiff in her representative capacity in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for the costs of the future accommodation of the minor child in a hospital or nursing home or treatment of or rendering of a service to her or supplying of goods to her arising out of the injuries sustained by her in the motor vehicle collision on 2 August 2022 which costs shall include;

9.1. the agreed or taxed cost to be incurred in the establishment of a trust to inter alia protect, administer and/or manage the capital amount and the proceeds thereof referred to supra;

9.2. the costs of the trustee in administering the capital amount referred to supra;
and

9.3. the costs of the furnishing of annual security in terms of section 77 of the Administration of Estates Act 66 of 1965 (as amended).

10. The Defendant is to pay the Plaintiff's taxed or agreed costs on a party and party High Court scale B, including the following:

10.1. The costs of:

10.1.1. Trial on 3 & 5 February 2026, including costs of a counsel;

10.1.2. The curator *ad litem*;

10.1.3. The costs of:

10.1.3.1. Obtaining expert medico-legal reports delivered in terms of Rule 36(9)(a) and (b) by the experts listed below as well as the minor child's travelling and lodging costs in attending the Plaintiff's experts;

10.1.3.2. Reservation fees of Plaintiff's experts, if any, including:

10.1.3.3. The costs of the experts attending to the RAF4 Serious Injury Report;

10.1.4. The reasonable travelling costs of the minor child and her Parents, who are hereby declared necessary witnesses;

11. The claim of general damages is postponed *sine die*.

12. The Plaintiff is authorised to refer the issue of the seriousness of the injuries in respect of general damages to the Health Professions Council of South Africa.

SS TEBEILE

ACTING JUDGE OF THE HIGH COURT OF SOUTH

AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

For the Plaintiff: Adv AP den Hartog

Instructed by: Renier van Rensburg Inc

For curator *ad litem*: Mrs L Smith

For the Defendant: Ms Nkateko Mhlongo

Date of Hearing: 05 February 2026

Date of Judgment: 25 February 2026