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

Case Number: 84339/2018

(1) REPORTABLE: YES/NO

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

(3) REVISED: YES/NO

DATE: 13/2/2026

SIGNATURE:

In the matter between:

S SAYED N.O.

Plaintiff

(Curator *ad litem* of MLN)

and

ROAD ACCIDENT FUND

Defendant

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 Case lines. The date for hand-down is deemed to be **13th February 2026**.

JUDGMENT

MAUBANE, AJ

Introduction

[1] The plaintiff is Advocate Sayed, practicing as such in the Pretoria Bar. The plaintiff acts herein as duly appointed curator *ad litem* of MLN a minor who is nine years of age.

[2] The aforesaid minor was involved in a motor vehicle accident on **6 July 2017**. At the time of the accident, the minor was six months old.

Background

[3] As a result of the accident and the injuries sustained by the minor, summons was issued against the defendant.

[4] It is stated in the particulars of claim that the minor sustained the following injuries:

- 4.1 head injury,
- 4.2 Left femur fracture,
- 4.3 Right hemiparesis,
- 4.4 Left silver subdural haematoma, and,
- 4.5 Convulsions and seizures.

[5] After the accident, the minor was transported to Laingsburg hospital where he was stabilized and then transferred to Tygerberg hospital for further treatment.

[6] The defendant entered appearance to defend and subsequently served and filed a plea.

[7] It is clear from the documents filed on record that, after filing a plea, the defendant failed to participate any further insofar as court processes were concerned.

[8] It bears mentioning that the issue of liability was settled by the parties and the issues to be ventilated before this court were general damages and loss of earning capacity.

[9] At the commencement of trial, counsel for the plaintiff requested that general damages be postponed and only loss of earning capacity be dealt with.

[10] The application in terms of Rule 38(2) of the Uniform Rules of Court was granted.

Quantum

[11] The plaintiff filed several medico-legal reports, and the defendant did not file any reports.

[12] All the experts opined that the minor suffered from brain injuries, has long term neurocognitive, neuro-psychiatric shortcomings and further than that, has physical limitations which will adversely affect her esteem, -interpersonal functioning, quality of life, scholastic outcomes as well as her future employability and earning capacity.

[13] Dr Englebrecht (Orthopedic surgeon) opines that the minor suffered notable traumatic brain injury with significant sequelae.

[14] Ms Cumming (Occupational Therapist) opines that the minor has a combination of severe, multiple, physical, cognitive, emotional, behavioral and functional deficits. These challenges render her incapable of formal or informal employment. She will not even be a suitable candidate for sympathetic employment. She will emerge unemployable within the open market. As a result of multiple functional limitations that she presents with, the combination of physical sequelae, the aetiology of her deficits, and the length of the time since the accident in question, her occupational prognosis will not improve with intervention.

[15] Dr Seabi (Educational Psychologist):

15.1 She opines that the accident caused both diffuse and focal brain injuries and lasting effects on her development. The neurological damage has

led to seizures, significant changes in personality. and emotional dysregulation, evident through her irritability and oppositional defiance. These challenges are consistent with long-term cognitive impairments typically associated with brain injury.

15.2 It is highly unlikely that she will be able to meet the demands of the senior phase, given the increasing complexity of the curriculum, which requires advanced thinking and learning skills. Her cognitive, behavioral, academic, and physical challenges place her at a distinct disadvantage.

15.3 Her highest level of education will, in all likelihood, be Grade 9, with support (repetition of two or three grades with condoned passes). Without a matric qualification, she will face major limitations in the job market and is likely to be restricted to unskilled, low-paying employment.

[16] Dr Moja (Neurosurgeon):

16.1 She is suffering from residual weakness on her right arm and right leg. She sustained severe diffuse and focal traumatic brain injury: Her repeated seizures have resulted in secondary brain injury.

16.2 The CT brain scan showed evidence of a thin left acute subdural hematoma and brain contusion.

[17] Dr Naidoo (Psychiatrist): There is evidence of a traumatic brain injury, and there is a marked worsening of pre-existing seizure disorder, visual field cuts, anosmia, and hemiparesis.

[18] Dr Smuts (Neurologist): She opined that the EEG is extremely abnormal and indicates an:

18.1 Excessive background slowing; and,

18.2 Generalized epileptiform dysfunction.

[19] According to Ingrid Jonker (Neuropsychologist), the minor is left with neuro-cognitive difficulties, which have been demonstrated by the results of neuropsychological assessment as well as by the following reports:

- 19.1 Memory difficulties as she has, for instance, been forgetful when sent on errands,
- 19.2 Mental slowing and a slow working pace, observed during the assessment,
- 19.3 Verbal fluency difficulties, and,
- 19.4 Delayed developmental milestones (she spoke much later than her peers).

[20] Dr Fredericks (Disability and impairment assessor) opined that the minor has been rendered unemployable in the open market.

[21] T Talmud (Industrial psychologist):

21.1 He opined that since the minor is a minor, there is no loss of past earnings, however noted that she has been rendered unemployable in the open labour market and as such, future loss of earnings arise.

21.1.1 Pre-morbid: At the time of the accident, the minor was only six months old. According to the psychological report of the industrial psychologist, the minor was attending Grade 2 in 2024. The industrial psychologist opined that but for the accident, she would have completed Grade 12 at the age of eighteen, that is in 2034.

21.1.2 It would have taken 3 to 5 years to secure formal employment. During that time, she would have worked in temporary positions, earning in line with the National Minimum Wage for 6 months per annum.

21.2 Post-morbid:

21.2.1 Given the accident and injuries sustained by the minor, it was concluded that she is regarded as unemployable, and as such, a total loss of earnings is assessed until the age of 65.

Contingencies

[22] Contingencies in Road Accident fund cases reflect the uncertainties or risks associated with future outcomes, especially in claims for loss of earning capacity. The courts recognise that exact quantification is often impossible, resulting in reliance on expert evidence, actuarial calculations, and judicial discretion (which should not be malicious or unjust).

[23] In ***Van der Plaats v South African Mutual Fire & General Insurance Co Ltd***,¹ the court emphasised that provision for contingencies is a matter falling within the discretion of the trial Court, and that the amount allowed for contingencies is variable and closely related to the facts and circumstances of each case.

[24] It was further held in ***Road Accident Fund v Guedes***² that:

"In assessing damages for loss of earnings or support, it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is the prerogative of the court."

[25] Robert Koch, in *The Quantum Yearbook*, 2025 (at 133) emphasized that the normal or general contingencies are 5% for past loss of earnings and 15% for future loss of earnings.

[26] In ***Phahlane v Road Accident Fund***,³ the court stated that:

"Contingencies are the hazards of life that normally beset the lives and circumstances of ordinary people and there should therefore, by its very nature be a process of subjective impression or estimation rather than objective calculation.

[27] In ***Southern Insurance Association Ltd v Bailey NO***,⁴ the court said that:

¹ 1980 (3) SA 105 (A) at 114F-115C-D.

² 2006 (5) SA 583 (SCA) at para 9.

³ [2017] ZAGPPHC 759.

⁴ 1984 (1) SA 98 (A) at 99E-F.

"Where the method of actuarial computation is adopted in assessing damages for loss of earning capacity, it does not mean that the trial judge is "tied down by inexorable actuarial calculations". He has "a large discretion to award what he considers right" ..

.. The amount of any discount may vary, depending upon the circumstances of the case".

Amount claimed

[28] The plaintiff claimed an amount of R 6 257 408. for future loss of earnings. She submitted that a 20% contingency on future loss of earnings should be applied. Having regards to all available evidence presented to the court, I fully agree with the plaintiff's submission regarding the contingencies applied and after such application, the defendant is liable to pay the plaintiff an amount of R 5 005 929.

Order

[29] Having considered the evidence led, the court is convinced that a proper case has been made out, and the following order is granted:

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. Merits were previously finalised on the basis that the Defendant was liable for 100% of the Plaintiff's agreed or proven damages.

3.1 The Defendant pay the Plaintiff an amount of **five million five thousand nine hundred and twenty-six rand (R5 005 926.00)** in full and final settlement of the Plaintiff's claim for Loss of Earnings, Sand such payment should be made within 180 days from the date of judgment, 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,

6. 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 6 July 2017.

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 Plaintiffs 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 Engelbrecht - Orthopaedic Surgeon

7.1.2 Dr Moja - Neurosurgeon

7.1.3 Dr JA Smuts - Neurologist

7.1.4 Jonker - Neuropsychologist

7.1.5 Dr Seabi - Educational Psychologist

- 7.1.6 Dr M Naidoo - Psychiatrist
- 7.1.7 Dr Weitz - Ophthalmologist
- 7.1.8 K Cumming - Occupational Therapist
- 7.1.9 Dr Fredericks - Disability and Impairment Assessor
- 7.1.10 T Talmud - Industrial Psychologist
- 7.1.11 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 Case lines.

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 19 January 2026.

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

7.8 The costs of Adv JF Grobler SC 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 Plaintiffs Attorney in respect of Preparation for Trial;

7.8.4 Drafting heads of argument.

7.8.5 Day fee for 19 January 2026.7.9 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: **Saqsby 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. It is recorded that a Contingency Fee Agreement is applicable. The aspects relating to VAT issue in the contingency fee agreement shall be determined by the outcome an appeal relating to this issue.

M C MAUBANE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Plaintiff: ADV J.F GROBLER SC
Instructed by: EHLERS ATTORNEYS

For the Defendant: No Appearance