

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Not reportable

Case no: 4899/2023

In the matter between

DIEKETSENG SINA MODISE obo TM

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Modise obo TM v The Road Accident Fund* (4800/2023) [2026]
ZAFSHC 81 (2 March 2026)

Coram: GREYLING-COETZER J

Heard: 9 and 12 September 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 15h00 on 2 March 2026.

Summary: Motor vehicle accident – general damages – serious injury threshold – multiple injuries – entitlement and quantification – principles restated.

ORDER

1 The Defendant shall pay the Plaintiff the sum of 759 591.20 (SEVEN HUNDRED FIFTY - NINE FIVE HUNDRED AND NINETY-ONE THOUSAND RAND AND TWENTY CENTS), in respect of the Plaintiff's claim for loss of earnings.

2 The Defendant shall pay the Plaintiff the sum of R550 000.00 (FIVE HUNDRED AND FIFTY THOUSAND RAND), in respect of the Plaintiff's claim for general damages.

3 The aforesaid amount is to be paid in the following bank account:

Name of account holder: VENTERS INC

Name of bank: ABSA Bank

Account number: 4[...] (TRUST)

Branch code: 532 005 - ABSA Universal

Reference number: JVB 307 MOD

4 Interest a tempore morae shall be calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 55 of 1995, one hundred and eighty (180) days from the date of this order.

5 The Defendant shall pay the Plaintiff's taxed or agreed party and party costs, on a High Court scale to date of this order, which shall include the reasonable qualifying fees (where applicable) of the following experts:

5.1 Dr M.B Deacon - Orthopedic Surgeon

5.2 Dr M.B Huth - Neurologist

5.3 Dr S van Heerden- Plastic & Reconstructive Surgeon

5.4 N du Plessis - Educational Psychologist

5.5 Dr JJ Schutte - General Practitioner

5.6 N Hassim - Occupational Therapist

5.7 A van der Bijl & L Emsley - Industrial Psychologist

5.8 W Loots - Actuary

6 The Defendant shall pay the Plaintiffs counsels fees on scale B which shall include heads of argument.

7 The Plaintiff shall allow Defendant 180 (ONE HUNDRED AND EIGHTY) calendar days to make payment of the taxed or agreed High Court costs.

8 Should payment of aforesaid costs not be made within 180 days from the date of settlement/taxation, the Defendant shall be liable for payment of interest calculated at the prescribed rate, from 14 days after the date of settlement/stamped allocatur, to date of payment.

JUDGMENT

Greyling-Coetzer J

[1] The plaintiff claims damages on behalf of her minor child TM, who is currently nine years old. TM sustained injuries as a result of a motor vehicle collision on 3 September 2019. TM was pedestrian and three years old at the time.

[2] Merits and the aspect of future medical expenses have been settled and set out in a court order dated 26 November 2024. In terms thereof the defendant is liable for payment of 100% of the plaintiff's proven or agreed damages and was also ordered to provide an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996 (RAF Act). The remaining issue was loss of earnings/earning capacity and general damages. The matter was scheduled for hearing before this Court to adjudicate the latter two issues.

[3] On the first day of trial the aspect of loss of earnings/earning capacity was settled in amount of R759 591.20. The only issue left for adjudication is the award of general damages. The parties agreed that the issue of general damages can be

determined on the strength of the expert reports as filed by both parties and on the assumption that the collateral information contained therein is correct.

[4] The plaintiff contends that the seriousness of the plaintiff's injuries was accepted for the purpose of qualifying for general damages per the RAF4 Serious Injury Assessment Report (RAF4) filed by the plaintiff, thereby affording this Court jurisdiction to make an award of general damages having regard to all the proven injuries per the filed expert reports. The defendant accepts that the court has jurisdiction to award damages but qualifies same by contending that the RAF4 submitted and accepted is limited to scarring both knees.

[5] The relevant expert reports presented on behalf of the plaintiff consists of Dr Deacon, an orthopaedic surgeon; Dr Huth, a specialist neurologist; Dr van Heerden, a plastic and reconstructive surgeon; Mrs. Du Plessis, an educational psychologist; Ms. Hassim, an occupational therapist and Dr Schutte, a general practitioner. On behalf of the defendant, the expert reports consist of Dr Pillay, a neurologist, and Dr Du Plessis, an educational psychologist.

[6] Dr Deacon (orthopaedic surgeon) records on admission to Pelenomi Hospital that a Glasgow Coma scale score of 15/15 was recorded. Under examination TM presented with abrasions on the forehead, hematoma to the left eye, a swollen left eyelid, bruises on the cheek and abrasions to both knees. A CT scan of the brain revealed left frontal fracture extending into the foot and lateral wall of the orbit, left frontal scalp and preseptal swelling and left lamina papyracea fracture. TM was diagnosed with a head injury as well as soft tissue injuries to his face and knees.

[7] Dr Deacon states TM reports that he is experiencing pain in his knees, he struggles to play with friends on account of this and it is exacerbated by cold weather conditions. X-rays of the knees did not exclude ligament meniscus pathology. There was also a vacuum phenomenon in the left knee joint. Regarding the non-orthopedic diagnosis, he states that the minor sustained a head/facial injury with residual complaints of headaches, cognitive changes, behavioral changes and scarring. Dr Deacon diagnoses TM with soft tissue injuries to the left and right knees resulting in residual pain and symptoms as well as scarring. He furthermore states that TM struggles to play with his friends due to the pain in his knees and struggles to bend when playing with toys on the floor.

[8] Dr Huth (specialist neurologist) records that TM was attended to in the emergency department of Pelonomi Hospital and it was noted to have sustained abrasions over the frontal region and zycoma, hematoma over the left eye and abrasions on both knees. A GT-scan of the head was performed which revealed left frontal and orbital fractures. The minor was diagnosed with skull fractures and spent 13 days in hospital. Dr Huth's final neurological diagnosis is chronic post-traumatic headaches, tension-type, post-traumatic behavioral disturbance and post-traumatic cognitive disturbance. He states that according to TM's history and clinical record, the head injury will be classified as moderate. He states, under post-accident status, that the TM is aggressive at times and has symptoms of post-traumatic headaches of tension-type. He confirmed that TM has reached Maximum Medical Improvement (MMI). The symptoms are chronic, established and unremitting. No future medical treatment and expenses for neurological diagnosis were identified. The identified future treatment relates to conservative treatment for headaches. Dr Huth deferred TM's post-traumatic cognitive disturbance symptoms for qualification and quantification by a neuropsychologist; similarly, the post-traumatic behavioral disturbance and effect on psychological function and emotional state were referred for qualification and quantification by a clinical psychologist.

[9] Dr Pillay, (neurologist), recorded that the minor sustained a mild head injury and currently presents as healthy, with no obvious neurological deficits and no history suggestive of neurocognitive impairment. No post-traumatic epilepsy was reported, and no increased risk of epilepsy is anticipated. Although the minor experiences regular headaches, Dr Pillay regarded these as insignificant, noting that he does not use analgesics regularly and has not sought formal investigation. He confirmed that the minor has clinically recovered fully in respect of motor function and does not exhibit adverse neurological *sequelae* from the motor vehicle accident.

[10] Dr Pillay stated that any alleged neurocognitive deficits should be identified and quantified through formal psychological testing and deferred to a neuropsychologist in that regard. He further noted that radiological investigations were conducted, including X-rays and a CT scan, which revealed left frontal and orbital fractures. The minor was diagnosed with skull fractures, admitted to hospital on 4 September 2019, and remained there for thirteen days. In his report, Dr Pillay criticised Dr Huth's classification of the injury as moderate, stating that the criteria had not been correctly applied, but he

provided no explanation for this conclusion. He likewise did not explain how he reconciled his diagnosis of a mild head injury with the CT scan findings, the hospital diagnosis of skull fractures, and the duration of the minor's hospitalisation.

[11] Dr van Heerden (plastic and reconstructive surgeon) confirms that TM has sustained abrasion injuries to his lower legs with hyper pigmented areas present superior to the patella on both legs. The scars are visible, permanent and disfiguring as TM has reached MMI.

[12] Mrs. du Plessis (educational psychologist), records that TM complains of frequent headaches. The plaintiff confirmed poor concentration, becomes easily angered, cries easily and fights with friends and family. Historically, TM struggled with being easily distracted. From her clinical observations Mrs. Du Plessis found that TM finds it extremely difficult to express himself in English. He also struggled to appropriately understand the test instructions in English. His attention span and concentration ability fluctuated considerably throughout assessment. His work was presented in a disorganized manner, and he appeared somewhat restless and fidgety during the assessment. She held that on a pre-morbid level, the minor most probably presented with an average cognitive ability.

[13] Mrs. Du Plessis states that TM is unable to absorb information from the environment, integrate it and generalize it to other situations. He is also unable to reason with previously learned verbal information and cannot positively respond to formal educational stimulation received within his home, social and academic environment. TM demonstrates below average ability to reason independently, to analyse and synthesize both concrete and abstract information; and to problem-solve successfully, which often include higher order cognitive functions. TM is therefore struggling to integrate visual stimuli, reason non-verbally, and apply visual-spatial and visual-motor skills to solve problems, not typically taught through formal learning and is therefore also unable to use his innate potential to solve problems in most environments in an abstract manner. TM presents with a below average working memory ability. He also appears to have below average general intellectual profile. He presented with below average Crystallized Intelligence as measured by the Verbal Scale as well as below average Fluid Intelligence as measured by the Performance Scale. She found that based on the assessment, TM does not have the required auditory attention span system skills to efficiently focus on what he is learning and further suggests that he will

get easily distracted at an auditory level which therefore can be expected to create gaps in conceptualisation of new learning content.

[14] Mrs. Du Plessis identified areas of concern as spatial perception, fine motor coordination, verbal comprehension, numerical ability and the Gestalt perception. She found that these areas will hamper TM's ability to learn, to read, write and perform mathematical tasks. Mrs. Du Plessis' interpretation of the Draw-A-Person Projective Drawing Test revealed aggressive tendencies, social withdrawal tendencies and feelings of rejection, feelings of insecurity, feelings of inadequacy, self-consciousness with poor self-image and some anxious feelings. She explains that it is likely that the injuries sustained in the accident, as well as the negative *sequelae* of the injuries and the psychological trauma because of said accident, has resulted in a post-accident onset of Secondary Attention Deficit Disorder with impulse control difficulties that commonly follow children who do not present with ADHD prior to the accident and who sustained a head injury.

[15] As to TM's cognitive functioning, Mrs. Du Plessis opines that a combination of both the head injury sustained as well as the post-morbid anxiety is likely to play a negative role in TM's overall cognitive functioning. TM is presenting with significant psycho-emotional, social, and behavioral difficulties, which will inadvertently hamper his cognitive performance and ability to cope with the demands and expectations of formal school.

[16] Dr du Plessis (educational psychologist) stated that post-accident the minor presents with an average general intellectual ability. There is somewhat below average performance in verbal tests, but it may be as a result of second language testing. No indication of intellectual or academic vulnerability was noted during her assessment. Dr du Plessis made use of the SSAIS-R to obtain a differential picture of certain cognitive abilities. She also made use of the Draw-a-Person test as well as the Trial Making test.

[17] Dr Du Plessis did not comment at all on the test results obtained by Mrs. du Plessis and her findings in this regard. She further did not give any reason why all the test results discussed by Mrs. du Plessis and her subsequent findings should be ignored.

[18] Me Naseelah Hassim (occupational therapist) held that from her clinical observation, TM was unable to close his right eye independently and experienced

difficulties skipping using a rope. She explains that this may be suggestive of impaired gross motor function and central nervous system immaturity. She notes that during the physical assessment TM complained of bilateral knee pain while kneeling. She states that TM's current visual-perceptual deficits as well as slightly impaired gross motor and fine motor skills have the potential to impact on his academic performance and progress. His poor visual-perceptual skills may result in letter or number reversals which could translate into difficulties with reading, writing and mathematics.

[19] Dr Schutte (general practitioner) found a 20% whole person impairment and per the narrative test qualified TM for serious long-term impairment or loss of body function, permanent serious disfigurement and severe long-term mental or severe long-term behavioral disturbance disorder. With reference to the report by Drs Deacon and Huth, as well as Mrs. Du Plessis, Dr Schutte diagnosed a class 2 moderate traumatic brain injury with neurocognitive and neuropsychological deficits and chronic headaches. With further reference to the report by Dr van Heerden and Dr Deacon, he diagnosed TM with disfigurement, scarring of both knees and scalp, and with further reference to reports by Dr Deacon, soft tissue injuries to the left and right knees resulting in residual pain and symptoms.

[20] The plaintiff contends on the strength of the acceptance of the seriousness of TM's injuries and having regard to TM's injuries and subsequent *sequelae*, as well as taking into consideration comparable case law, an award for general damages in the region of R800 000 will be fair and reasonable.

[21] The defendant contends Dr Huth and Dr Pillay diagnosed Mild/Moderate Traumatic brain injury and headaches, the severity of which is disputed. Notwithstanding aforesaid, no RAF4 was completed by any neurologist to qualify TM for general damages based on the narrative test 5.1 or 5.3. Cognitive disturbance, behavioral disturbance, psychological functioning and emotional state was deferred to a neuropsychologist and clinical psychologist for testing, and it is common cause that no report by either a neuropsychologist nor a clinical psychologist was obtained and no diagnosis was made. Therefore, same cannot be considered for general damages quantification. Consequentially, the only RAF4 before court in terms of which the TM was qualified, is the RAF4 by Dr van Heerden, the plastic and reconstructive surgeon, who qualified TM under the narrative test 5.2 for permanent serious disfigurement for scarring on both knees. As such, this Court can only make an award of damages in

respect of the injuries and *sequelae* of said scarring and not for TM's brain injury as no RAF4 had been filed and accepted in respect of the brain injury. The defendant submits that a fair and reasonable award in this instance, for scarring over the minor's knees, would amount to R100 000.

[22] The scope of acceptance of the seriousness of the plaintiff's injuries for purposes of general damages is the first issue which this Court is called upon to decide. The question is whether injuries that have been suffered by TM, but which have not individually been accepted as serious by the defendant, can be considered in the determination of quantum of general damages. In this respect the parties presented diametrically opposed contentions as summarised above.

[23] In the case of *Manqana v Road Accident Fund*¹ (*Manqana*), the question of law was whether all injuries sustained in an incident are relevant for the determination of general damages, or only those that have been accepted as serious by the Road Accident Fund. The plaintiff in that matter, amongst others, obtained the reports from one Dr Rajah, a specialist orthopaedic surgeon, and Dr Du Trevou, a specialist neurosurgeon. According to the neurosurgeon, the injuries sustained constituted a mild brain injury while Dr Rajah noted evidence of left knee cruciate instability and assessed an anterior cruciate laxity of grade 2. Both doctors completed separate RAF4 forms which were submitted to the defendant, and both were rejected.

[24] Both were subsequently taken on appeal by the plaintiff to the HPCSA. The HPCSA refused the appeal in respect of Dr Du Trevou's RAF4 but upheld the appeal in respect of Dr Rajah's, stating that the orthopaedic injuries sustained constituted serious long-term impairment and loss of body function under the narrative test. The plaintiff argued entitlement to general damages for all injuries sustained in the incident. The defendant, on the other hand, contended that the court was restricted in determining what general damages the plaintiff was entitled to and that only the *sequelae* arising out of the orthopaedic injuries could be considered to the exclusion of those arising from the head injury and disfigurement.

[25] The court in *Manqana* found that it was:

‘. . . unable to agree with the argument raised by the defendant on this restriction. The Act makes it clear that the assessment of an injury sustained in a particular instance is serious or

¹ *Manqana v Road Accident Fund* [2024] ZAKZDHC 87.

not is not a matter of degree or individual qualification but rather a Boolean - once the injuries have been established as serious, an entitlement to general damages then after exists. The full scope of the injuries sustained in the incident are therefore claimable and will then form the quantification of general damages, and any restriction or quantification based on what the Road Accident Fund might have accepted or rejected, or the Health Professional Council would have accepted or rejected, would be an irrelevance as neither these bodies are permitted by the legislation to exclude parts of the quantification of damages, and such decision is limited to assessing the extent of the injuries as serious or not.²

It was found that the court must take into account all of the injuries of the plaintiff in assessing general damages.

[26] In coming to aforesaid conclusion, the court in *Manqana* reasoned that an approach that suggests certain injuries should be taken into account while others are to be disregarded for purposes of determining general damages, is neither contemplated by the RAF Act nor justified – it is arbitrary and inappropriate as the purpose of the RAF Act is to protect members of the public from claims that could render them financially destitute indefinitely, and to provide compensation to those who have suffered harm as a result of the wrongful conduct of road users. The court further stated that approach further overlooks the fact that the assessment concerns whole person impairment, requiring consideration of all injuries arising from the particular incident.³

[27] The defendant contended that leave to appeal has been granted by the Supreme Court of Appeal in respect of *Manqana*. As such, that the judgment of the full court, and the soundness thereof, remains pending until clarity has been obtained through the Supreme Court of Appeal.

[28] A similar but not identical issue served before the court in *M v Road Accident Fund*.⁴ Here the seriousness of the minor's injuries was challenged, leading to the referral to the Appeal Tribunal of the Health Professions Council of South Africa. The Appeal Tribunal found that the minor's injuries qualified as serious under narrative test 5.3 (severe long-term mental or behavioural disturbance). At the time, the evidence primarily concerned cognitive and psychological sequelae of a mild to moderate head injury. Later expert reports filed confirmed permanent hearing loss and vertigo, and an additional RAF4 form indicated serious long-term impairment under narrative test 5.1.

² Ibid para 48.

³ Ibid paras 45-47.

⁴ *M v Road Accident Fund* [2024] ZANHC 21 (8 March 2024).

There is no indication in the judgment whether the later RAF4 was submitted to the defendant. What is clear is that the defendant filed no expert reports to gainsay the findings in the plaintiff's reports inclusive of the later expert reports and further RAF4. The question was thus whether the court was restricted by the Appeal Tribunal decision to only consider the earlier expert reports when assessing quantum and thereby limited to considering only the expert evidence that served before the Appeal Tribunal when determining the quantum of the general damages.

[29] The court held that 'the task of an appeal tribunal appears to be to only settle a dispute as to whether injuries are serious (for purposes of claiming and awarding non-pecuniary damages/general damages) and not to prescribe to the Court what should be taken into consideration and what not, in eventually determining the quantum of such damages'.⁵ Therefore, the court held it was entitled to consider all expert evidence, including reports obtained after the Tribunal's ruling in determining the appropriate quantum to be awarded in respect of the general damages.

[30] The relevant portion of s 17(1) of the RAF Act provides that defendant shall be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, provided that the obligation of the defendant to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.

[31] Section 17(1A) provides

'(a) Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party. (b) The assessment shall be carried out by a medical practitioner registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974).'

[32] Regulation 3 of the Road Accident Fund regulations, 2008 provides that a third party who wishes to claim compensation for non-pecuniary loss shall submit him- or herself to an assessment by a medical practitioner in terms of the provisions of regulations. In doing so, the medical practitioner who assesses the third party/plaintiff as

⁵ Ibid para 38.

mentioned above, shall complete the required RAF4 form, such being a Serious Injury Assessment Report, in the case of an envisaged claim for general damages and shall indicate, *inter alia*, the whole person impairment (the WPI) of the relevant plaintiff. The Regulations furthermore state that if the medical practitioner finds that the patient's injuries resulted in a WPI of 30% or more, such injuries shall be regarded as serious whereas injuries will only be regarded as serious in the event of a finding of a WPI of less than 30%, if that injury: Resulted in a serious long-term impairment or loss of a body function, constitutes permanent serious disfigurement, resulted in severe long-term mental or behavioral disturbance or disorder; or resulted in the loss of a foetus.

[33] The above statutory framework establishes a serious injury threshold as a minimum requirement before general damages may be claimed from the defendant. The Supreme Court of Appeal in *Road Accident Fund v Duma*, *Road Accident Fund v Kubeka*, *Road Accident Fund v Meyer*, *Road Accident Fund v Mokoena*⁶ held:

'In accordance with the model that the legislature chose to adopt, the decision whether or not the injury of a third party is serious enough to meet the threshold requirement for an award of general damages was conferred on the Fund and not on the court. That much appears from the stipulation in regulation 3(3)(c) that the Fund shall only be obliged to pay general damages if the Fund – and not the court – is satisfied that the injury has correctly been assessed in accordance with the RAF 4 form as serious. Unless the Fund is so satisfied the plaintiff simply has no claim for general damages. This means that unless the plaintiff can establish the jurisdictional fact that the Fund is so satisfied, the court has no jurisdiction to entertain the claim for general damages against the Fund. Stated somewhat differently, in order for the court to consider a claim for general damages, the third party must satisfy the Fund, not the court, that his or her injury was serious.'⁷

[34] In *Road Accident Fund v Faria*⁸ the Supreme Court of appeal held:

'The amendment Act, read together with the Regulations, has introduced two 'paradigm shifts' that are relevant to the determination of this appeal: (i) general damages may only be awarded for injuries that have been assessed as 'serious' in terms thereof and (ii) the assessment of injuries as 'serious' has been made an administrative rather than a judicial decision.'⁹

[35] Although the entitlement to claim general damages is now an administrative

⁶ *Road Accident Fund v Duma*, *Road Accident Fund v Kubeka*, *Road Accident Fund v Meyer*, *Road Accident Fund v Mokoena* [2012] ZASCA 169; [2013] 1 All SA 543 (SCA).

⁷ *Ibid* para 19.

⁸ *Road Accident Fund v Faria* [2014] ZASCA 65; 2014 (6) SA 19 (SCA).

⁹ *Ibid* para 34.

rather than a judicial decision, the quantification of general damages to be awarded to a plaintiff remains a matter of judicial discretion. General damages, by their very nature, are not capable of being measured in exact monetary terms and a court is therefore tasked with determining the quantum based on what is fair and just in the particular circumstances of the case before it and by means of a holistic consideration of all the facts and evidence.

[36] Once the serious injury threshold is met (i.e., at least one injury has been properly assessed as serious under the regulatory process), the plaintiff becomes entitled to bring a claim for general damages arising from the accident. The key point based on the purpose of the threshold and how courts treat general damages is that the threshold does not restrict recovery only to the specific injury that met the serious criteria. Once the statutory threshold has been crossed, claimants can recover general damages for all non-pecuniary harm flowing from the accident, including pain, suffering, disability and loss of amenities arising from other injuries sustained in the same incident, provided those injuries are causally connected and proved in the claim. This reflects the general delictual principle that quantification of general damages considers the total non-pecuniary harm suffered by the plaintiff, not a 'single-injury box'. This is aligned with the broader damages jurisprudence where once liability exists for non-pecuniary loss, the award reflects the total pain and suffering and not merely one isolated aspect of harm.

[37] The contention by the defendant that each injury sustained as a result of the collision ought to have been individually assessed in terms of the regulatory process (and found to be a serious injury) in order to empower this Court to have regard to said injury for the purpose of quantification of general damages, is not borne out by the applicable legislation nor authorities referred to.

[38] It is common cause that no expert report was obtained from a neuropsychologist and clinical psychologist regarding the plaintiff's symptoms related to post-traumatic cognitive and behavioral disturbances as well as the effects exerted on the plaintiff's psychological function and emotional state, notwithstanding the deferrals by Dr Huth and Dr Pillay for qualification and quantification.

[39] Without repeating the summary of the evidence per the expert reports set out earlier in this judgment, it has been established that TM experienced a traumatic brain

injury mild to moderate with neurological deficits and neurocognitive and neuropsychologic deficits as well as chronic headaches. The severity of the latter is disputed.

[40] TM's post-accident scholastic and cognitive abilities as well as visual-perceptual and motor skills have been diagnosed by experts, as evinced by reports discussed earlier in this judgement. Accordingly, it is unlikely that TM will reach his estimated pre-morbid ability as it was established that he struggles to sustain focus and has a poor ability to follow instructions.

[41] TM sustained soft tissue injuries to the left and right knees resulting in residual pain and symptoms as well as scarring. As confirmed by Dr Deacon, he struggles to play with his friends due to the pain in his knees as well as bending when playing with toys on the floor. He has sustained abrasion injuries to his lower legs with hyper pigmented areas present superior to the patella on both legs. As mentioned previously, these scars are visible, permanent and disfiguring.

[42] Both the plaintiff and defendant placed reliance on various comparable decisions. It is trite that although comparable decisions can be instructive, they are by no means decisive, and each case are to be decided on its own merits. The awards in the decisions relied on by the plaintiff ranged from R587 000 to R1 404 590 and the awards in the decisions relied on by the defendant R400 000 to R250 000.

[43] Having considered all the factors and circumstances relevant to the assessment of damage and having regard to the similarities and differences between the decisions relied on by the parties and the facts relevant to the present matter, I find R550 000.00 is a just and equitable award in respect of the general damage suffered by TM.

[44] It is therefore ordered that:

1 The Defendant shall pay the Plaintiff the sum of 759 591.20 (SEVEN HUNDRED FIFTY - NINE FIVE HUNDRED AND NINETY-ONE THOUSAND RAND AND TWENTY CENTS), in respect of the Plaintiffs' claim for loss of earnings.

2 The Defendant shall pay the Plaintiff the sum of R550 000.00 (FIVE HUNDRED AND FIFTY THOUSAND RAND), in respect of the Plaintiff's claim for general damages.

3 The aforesaid amount is to be paid in the following bank account:

Name of account holder: VENTERS INC

Name of bank: ABSA Bank

Account number: 4[...] (TRUST)

Branch code: 532 005 - ABSA Universal

Reference number: JVB 307 MOD

4 Interest a tempore morae shall be calculated in accordance with the Prescribed Rate of interest Act 55 of 1975, read with section 17(3)(a) of the Road Accident Fund Act 55 of 1995, one hundred and eighty (180) days from the date of this order.

5 The Defendant shall pay the Plaintiff's taxed or agreed party and party costs, on a High Court scale to date of this order, which shall include the reasonable qualifying fees (where applicable) of the following experts:

- 5.1 Dr M.B Deacon - Orthopaedic Surgeon
- 5.2 Dr M.B Huth - Neurologist
- 5.3 Dr S van Heerden- Plastic & Reconstructive Surgeon
- 5.4 N du Plessis - Educational Psychologist
- 5.5 Dr JJ Schutte - General Practitioner
- 5.6 N Hassim - Occupational Therapist
- 5.7 A van der Bijl & L Emsley - Industrial Psychologist
- 5.8 W Loots - Actuary

6 The Defendant shall pay the Plaintiffs counsels fees on scale B which shall include heads of argument.

7 The Plaintiff shall allow Defendant 180 (ONE HUNDRED AND EIGHTY) calendar days to make payment of the taxed or agreed High Court costs.

8 Should payment of aforesaid costs not be made within 180 days from the date of settlement/taxation, the Defendant shall be liable for payment of interest calculated at the prescribed rate, from 14 days after the date of settlement/stamped allocatur, to date

of payment.

D GREYLING-COETZER
JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff: M.D.J Steenkamp

Instructed by: Venters Inc

For the Defendant: C Bornman

Instructed by: State Attorney