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

Case No: 2020/15524

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO

<u>10/03/2026</u>	_____
DATE	SIGNATURE

In the matter of:

P[...] R[...] C[...] obo L[...] M[...] C[...]

Plaintiff

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 CaseLines. The date for hand-down is deemed to be 10 March 2026.

JUDGMENT

TEBEILE AJ:

Introduction

[1] The plaintiff, acting in her representative capacity as the biological mother and legal guardian of L[...] M[...] C[...] (hereinafter "the minor child"), instituted action against the defendant, the Road Accident Fund, for damages suffered by the minor child as a result of injuries sustained in a motor vehicle collision.

[2] The motor vehicle collision occurred on 11 September 2016 along the R555 near De Hoop Dam. At the time, the minor child, aged 5 years and 9 months, was a passenger in a motor vehicle driven by the insured driver. The vehicle was being used as school transport and the aforesaid vehicle lost control after a rear tyre burst and overturned.

[3] The merits have been settled in terms of which the defendant in a letter dated 23 August 2023 conceded 100% liability for the proven damages of the plaintiff, arising from the sole negligence of the insured driver.

[4] Accordingly, the only issue for determination by this court is the quantum of damages, specifically the claim for future loss of earning capacity. At the hearing of the matter, Mr Tonyela who appeared for the plaintiff requested that the claim for general damages be postponed *sine die* and an order to that effect will be made.

[5] The defendant failed to deliver a plea within the prescribed time periods. When the matter came before the court on 05 February 2026, the defendant through Ms Mhlongo brought an application for postponement of the matter on the basis that the school reports of the minor child were not complete. That application was brought notwithstanding that

the defendant was barred from participating in the proceedings following failure to file a plea. I refused the application for postponement.

[6] The plaintiff brought an application in terms of Rule 38(2). Having regard to the fact that the evidence of the expert witnesses remains unchallenged, I granted an order permitting the evidence to be adduced by affidavit. This judgment is based on the affidavits, the expert reports filed of record, and the actuarial calculations presented.

[7] The matter came before me as an application for default and the application was unopposed.

The minor child's injuries and sequelae

[8] Following the collision, the minor child was transported by ambulance to Jane Furse Hospital, where she was admitted for a period of two weeks. The hospital records indicate that she sustained the following injuries:

- 8.1. A head injury (mild traumatic brain injury / concussion);
- 8.2. A degloving scalp wound;
- 8.3. Facial lacerations; and
- 8.4. Soft tissue injury to the right eye.

[9] A comprehensive body of expert evidence was placed before the court. All reports were prepared in accordance with the Rules of this court and have been considered.

[10] Dr MF Mkhonza (neurosurgeon) reported that the minor child sustained a mild traumatic brain injury. Upon examination, he noted disfiguring facial scars, a 10cm scar on the vertex of the scalp, and a laceration on the inner aspect of the lower eyelid. He

concluded that the minor child continues to suffer from persistent post-concussive symptoms, including neurocognitive deficits (lack of concentration and short-term memory problems) and behavioural changes. Maximum medical improvement has been reached.

[11] Dr Sello Solly Selahle (plastic and reconstructive surgeon) described the minor child's scars: a 2cm scar on the parietal scalp; a 2.5cm scar on the left side of the forehead; a 2cm scar on the right side of the forehead; and a 2.5cm scar on the right upper eyelid. He found these scars to be cosmetically unsightly, disfiguring, conspicuous, and difficult to conceal. They are permanent with little prospect of improvement through revision techniques.

[12] Ms Gaongalelwe Bokaba (clinical psychologist) conducted a neuropsychological assessment. She found that the minor child's performance fell within the average to below average range, suggesting areas of retained cognitive ability but also slight cognitive deficits. She opined that these deficits are attributable to the mild head injury sustained at a vulnerable developmental age, negatively impacting the minor child's cognitive, academic, and behavioural functioning. She further noted the significant emotional trauma resulting from the accident and the adverse psychological impact of the permanent scarring, particularly during adolescence.

[13] Ms E.D. Monyela (educational psychologist) assessed the minor child's scholastic potential. She concluded that, had the accident not occurred, the minor child would most probably have passed Grade 12 with a bachelor's degree admission and would likely have achieved an NQF Level 7 qualification. However, post-accident, and considering the cognitive sequelae, she opined that the minor child would pass Grade 12 only after repeated failures, with admission to a higher certificate, and would most likely obtain an NQF Level 5 qualification. She stated unequivocally that the minor child will not achieve her pre-morbid educational potential.

[14] Mr Kgatale Malatse (occupational therapist) confirmed the presence of neurocognitive and neurobehavioural difficulties. He found that the minor child will not be able to compete with her uninjured peers academically or in the labour market. He noted that her competitiveness has been compromised, that she will have limitations in career choice, and that she will require an accommodating employer. He expressed the view that her productivity may be affected and that she may not be eligible for promotions or bonuses as readily as her uninjured peers.

[15] Ms Talifhani Ntsieni (industrial psychologist) synthesised the expert opinions and provided a pre-accident and post-accident career trajectory. She concluded that, pre-accident, the minor child would have entered the labour market at Paterson level B4/B5/C1, progressing to D1/D2 by age 45. Post-accident, she concluded that she is likely to enter the labour market at Paterson level B1/B2, with limited career progression.

She noted that her post-accident career will be characterised by uncertainty, and that a higher-than-normal contingency deduction is warranted to account for her employment risks.

The actuarial calculation and loss of earnings

[16] An actuarial report was prepared by Munro Forensic Actuaries, dated 3 February 2026. The report calculated the capital value of the minor child's loss of earnings based on the assumptions provided by the industrial psychologist and other experts.

[17] The actuary summarised the uninjured and injured earnings scenarios as follows:

	Uninjured Earnings	Injured Earnings
Future Earnings (Gross)	R14,525,400	R5,403,300

[18] The actuary illustrated a scenario applying contingency deductions of 15% to the uninjured earnings and 25% to the injured earnings. This resulted in a loss of earnings of R8 293 200 after the application of the RAF cap.

[19] The RAF Amendment Act cap was applied to the annual losses, and the final capped loss was calculated at R8 293 200.

[20] During the hearing, the plaintiff sought an order for 30% for uninjured earnings and 25% for injured earnings.

[21] However, in the exercise of this court's discretion, and having carefully considered all the evidence, I am of the view that a different application of contingencies is warranted to arrive at a just and equitable award.

[22] It is trite that the application of contingencies is a matter for the court's discretion, to be exercised based on the facts of each case. The purpose of a contingency deduction is to account for the "vicissitudes of life"—the myriad uncertainties that could affect a person's earning capacity, such as illness, accident, unemployment, or economic downturn. As was stated in *Bee v Road Accident Fund*¹, the younger the minor child, the greater the uncertainty about their future, and the higher the contingency deduction that may be appropriate. The Supreme Court of Appeal in *Bee v Road Accident Fund* stated:

“I do not think, with respect, that one can speak about a ‘normal’ contingency deduction for loss of future earnings, at least not without taking into account the age of the claimant. For obvious reasons, the younger the victim, the longer the period over which the vicissitudes of life will operate and the greater the uncertainty in assessing the claimant's likely career path. Since the appellant's future loss of earnings only spanned eleven years, a 15 per cent contingency deduction might, absent special circumstances, have been at the high end.”²

[23] The minor child was only 5 years old at the time of the accident and is now 15 years old. She has her entire working life ahead of her. While the pre-accident projection of her career is based on a hypothetical scenario, it must be viewed against the inherent

¹ 2018 (4) SA 366 (SCA).

² Ibid at para 116.

uncertainties that attend any young child's future. The actuary report cites the work of Dr Robert J Koch, who suggests that for a person under the age of 20, a contingency deduction in the region of 25% is a general rule for a person with average employment prospects.

[24] In this matter, the pre-accident projection is for the minor child to achieve a degree-level qualification and progress to senior management levels. While this is a legitimate projection based on the opinion of the educational psychologist, it is not without risk. The path from Grade R to a senior management position is a long journey and is subject to a vast array of potential life events. A contingency deduction at the upper end of the normal range is necessary to account for this lengthy period of uncertainty.

[25] In my view, 45% contingency deduction for uninjured earnings is appropriate. While this is a significant departure from the 15% illustrated by the actuary, I am mindful of the facts of this specific case that it is appropriate. The expert evidence consistently points to the minor child having been of average intelligence pre-accident, with a supportive family environment. However, there are no objective indicators—such as exceptional academic performance in early schooling, or immediate family history of tertiary education and professional employment—that reduce the inherent uncertainty of such a high trajectory. The minor child's mother has a Grade 12 qualification and is unemployed. The step-father is a taxi driver. In the absence of concrete evidence of an

exceptional talent or a family history of high achievement, the court must be cautious in projecting an unimpaired career path that culminates in a D-level Paterson grade.

[26] In *Deyzel v Road Accident Fund*³, Plasket J applied a 15% contingency deduction to the future uninjured earnings of a qualified artisan electrician with a stable work history and demonstrable ambition. The plaintiff in that case was older and had already proven his capabilities in the workplace. In the present matter, the minor child is a young child with no such track record. The level of uncertainty is exponentially higher.

[27] I have also had regard to the judgment of Mokgohloa DJP in *M J v Road Accident Fund*⁴ where a 25% contingency deduction was applied to the future earnings of a severely injured plaintiff. While the facts of that case differ, it illustrates the court's willingness to depart from standard deductions where there is uncertainty.

[28] It is my view that an appropriate contingency deduction for the uninjured earnings is 45%.

[29] Turning to the injured earnings, at the hearing of the matter the plaintiff sought a 25% contingency deduction, and which is similar to the actuary illustration. The expert evidence overwhelmingly demonstrates that the minor child's post-accident earning

³ (1886/2013) [2014] ZAECPEHC 51 (14 August 2014).

⁴ (2391/2015) [2017] ZALMPPHC 12 (26 June 2017).

capacity is fragile and compromised. The clinical psychologist, educational psychologist, and occupational therapist all agree that she faces significant challenges in learning, concentration, memory, and emotional regulation. The industrial psychologist concluded that her career will be characterised by uncertainty and that she will require an accommodating employer.

[30] I am of the view that a contingency deduction of 25% is appropriate and does adequately account for the neurocognitive and neurobehavioural difficulties identified by the experts. This does not result in a departure from the plaintiff's prayer.

[31] Applying the determined contingency deductions to the gross actuarial figures yields the following result:

	Uninjured Earnings	Injured Earnings
Gross Future Earnings (per Actuary)	R14 525 400.00	R5 403 300.00
Contingency Deduction	45%	25%
Value After Contingencies	R7 988 970.00	R4 052 475.00
Loss of Earnings (Before Cap)		R3,936,495

[32] The actuarial report indicates that the RAF Amendment Act cap has an impact on this claim. The cap must be applied to each annual loss after the deduction of contingencies. The actuary has performed this calculation in the report, resulting in a capped loss of R8 293 200.

[33] However, that capped amount was based on a different contingency scenario (15%/25%). The recalculation of the capped amount is a mechanical exercise. To avoid any further delay, and in the interests of finality, I will utilise the ratio between the pre-cap loss and the capped loss as set out in the actuarial report, and apply it to the pre-cap loss calculated by this court.

[34] The actuarial report calculates:

- Pre-cap loss (15%/25%): R8,294,115
- Capped loss (15%/25%): R8,293,200

[35] The capped loss is effectively identical to the pre-cap loss. The report states that “[t]he RAF Amendment Act cap has an impact on this scenario.” However, the numerical impact, given the level of earnings and the contingencies applied, is negligible.

[36] I am satisfied that, applying the same actuarial methodology to the pre-cap loss calculated by this court (R3,936,495), and having regard to the nature of the cap and the

level of earnings, the capped award will effectively be the same amount. The cap does not serve to reduce the award in this specific instance.

[37] Accordingly, the award for future loss of earning capacity is determined to be R3 936 495.00.

General Damages

[38] The plaintiff sought an order that a claim for general damages be postponed *sine die* and given that there is no decision by the Health Professions Council of South Africa on the issue of serious injury, an appropriate order is to postpone claim for general damages *sine die*.

Undertaking in terms of section 17(4)(a)

[39] The plaintiff claims an undertaking in terms of section 17(4)(a) of the Act for the costs of future accommodation in a hospital or nursing home, or treatment of, or rendering of a service to, or supplying of goods to the minor child, arising from the injuries sustained in the accident.

[40] The evidence from the clinical psychologist, educational psychologist, and occupational therapist establishes that the minor child will require future therapeutic intervention, including ongoing consultations with a neurologist, a clinical psychologist, and an educational psychologist, as well as occupational therapy and educational support.

[41] I am satisfied that the plaintiff is entitled to an order for the undertaking in terms of section 17(4)(a).

Past medical expenses

[42] The plaintiff's claim for past hospital and medical expenses was pleaded in the amount of R0.00. No vouchers or accounts were placed before the court. No order is made in this regard.

Costs

[43] The plaintiff has been substantially successful in her claim. The defendant's failure to defend the action necessitated this application for default judgment. The defendant is liable for the plaintiff's costs., including the costs of 03 February 2026 when the matter was stood down for possible settlement.

[44] The plaintiff is entitled to her costs on the party-and-party scale.

Order

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

1. The plaintiff's application in terms of Rule 38(2) is granted.
2. The defendant shall pay the plaintiff the sum of **R3 936 495.00** (Three Million Nine Hundred and Thirty-Six Thousand Four Hundred and Ninety-Five Rand) in respect of the plaintiff's claim for future loss of earning capacity.

3. The payment of the amount of **R3 936 495.00** (Three Million Nine Hundred and Thirty-Six Thousand Four Hundred and Ninety-Five Rand) to be made within 90 days of the date of this order.
4. Interest on the amount in paragraph 2 above shall accrue at the prescribed legal rate of interest *a tempore morae*, calculated from 15 (fifteen) days from the date of this order to the date of final payment.
5. The amount of **R3 936 495.00** (Three Million Nine Hundred and Thirty-Six Thousand Four Hundred and Ninety-Five Rand) shall be paid directly to the attorneys of the plaintiff, **Mudzusi Molobela Inc.**
6. That the attorneys for the plaintiff, **Mudzusi Molobela Inc.**, are ordered:
 - 6.1. To cause a trust to be established in accordance with the Trust Property Control Act No. 57 of 1988.
 - 6.2. To deposit all proceeds minus the deductions as below hereof in an interest-bearing account, for the benefit of the minor child pending the establishment of the trust;
 - 6.3. 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;
 - 6.4. The trust instrument contemplated above shall make provision for the following:
 - 6.4.1. That the minor child is the sole beneficiary of the trust;
 - 6.4.2. That the trustee(s) are to provide security to the satisfaction of the Master of the High Court;

- 6.4.3. That the ownership of the trust property vest in the trustee(s) of the trust in their capacity as trustees;
- 6.4.4. Procedures to resolve any potential disputes, subject to the review of any decision made in accordance therewith by this Honourable Court;
- 6.4.5. 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;
- 6.4.6. 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.
- 6.4.7. That the amendment of the trust instrument be subject to the leave of this Honourable Court;
- 6.4.8. 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 **10 December 2028**, and that upon such termination, all monies remaining must be paid to the minor child within 60 days from the date of termination;
- 6.4.9. That the trust property and the administration thereof be subject to an annual audit.
7. The plaintiff's attorneys shall be entitled to make payment of fees and/or expenses incurred in respect of:

- 7.1. an amount of R300 000.00 (Three Hundred Thousand Rand) to **Ms P[...]**
R[...] **C[...]** 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;
- 7.2. 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;
- 7.3. the costs of the trustee in administering the capital amount referred to supra;
and
- 7.4. the costs of the furnishing of annual security in terms of section 77 of the Administration of Estates Act 66 of 1965 (as amended).
8. The defendant is ordered to furnish the plaintiff in her representative capacity with an undertaking 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, or supplying of goods to her, arising out of the injuries sustained by her in the motor vehicle collision that occurred on 11 September 2016, after such costs have been incurred and upon proof thereof.
9. The defendant is to pay the plaintiff's taxed or agreed costs on a party and party High Court scale B, including the following:
 - 9.1. Trial on 3 & 5 February 2026, including costs of a counsel;

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

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

11. 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 M Tonyela

Instructed by: Mudzusi Molobela Inc

For the Defendant: Ms Nkateko Mhlongo (barred)

Date of Hearing: 05 February 2026

Date of Judgment: 10 March 2026