IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: **91871/2019**

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

....
DATE SIGNATURE

In the matter between:

ADV C CAWOOD NO obo JACOBS CHRIHENSIO CRISTEN **PLAINTIFF**

and

THE ROAD ACCIDENT FUND **DEFENDANT**

CLAIM NO: 560/12822996/313/0

LINK NO: 4683795

JUDGMENT

[1]. This is a delictual claim for damages as a result of a motor vehicle collision on the 04th May 2017. The matter appeared before court by a way of default judgment application on the 02nd December 2025. The plaintiff is **CLAIRE CAWOOD** an adult female advocate of this Honourable Court, nomine officio, as the duly appointed curator ad litem for the patient **JACOBS CHRIHENSO CRISTEN**, an adult female, who was born on **14 June 1996** (“the patient”) and who is currently 29 (twenty-nine) years of age. At the time of the collision, the plaintiff was twenty (20) years old.

[2]. The defendant is the **ROAD ACCIDENT FUND**, a juristic person established in terms of section 2(1) of the Road Accident Fund Act 56 of 1996 ("*the Act*") with full legal personality and of address 3[…] I[…] Street, Menlo Park, Pretoria, Gauteng.

[3]. The plaintiff made an application in terms of Rule 38(2), in order to lead evidence by a way of an affidavit. Such application was properly served and accompanied by the expert affidavits. The application was granted. For future medical expenses the Plaintiff is awarded an undertaking in terms of section 17 of the Road Accident Fund Act

In this regard the plaintiff evidence is unchallenged and uncontested as the defendant's plea was struck off by the court.

[4]. <u>THE MERITS:</u>

4.1. **<u>The issue of liability is resolved as follows:</u>**

Accordingly, the defendant is held liable for hundred percent (100%) of the plaintiff's proven or agreed damages.

[5]. <u>QUANTUM:</u>

5.1. The issues to be decided in this matter are what should be the fair, reasonable and appropriate amount for general damages and special damages (loss of earnings), the contingencies to be applied to the calculations and future medical expenses.

5.2. In quantifying it's claim the plaintiff obtained medico-legal reports from the following experts in support of her claim:

5.2.1. Dr T Sutherland (Psychiatrist);

5.2.2. Dr J Reid (Neurologist);

5.2.3 Dr K Roux (Psychiatrist);

5.2.4 Dr Z Domingo (Neurosurgeon);

5.2.5 Dr D Ogivly (Speech and Language expert)

5.2.6 R de Wit (NeuroPsychologist);

5.2.7 M le Roux (Occupational Therapist);

5.2.8 K Kotze (Industrial Psychologist);

5.2.9 Munro Consulting (Actuary).

[6]. The defendant did not appoint any medico-legal reports.

[**7].** The plaintiff's reports are unchallenged, it was correctly submitted by the plaintiff's counsel that they remain uncontested, and they should be admitted as evidence in terms of Rule 38(2). An application in terms of the said rule was granted.

Herewith follows a summary of the plaintiff's claim based on the aforementioned reports.

[8]. <u>INJURIES SUSTAINED:</u>

8.1. **<u>ACCORDING TO THE NEUROSURGEON DR DOMINGO:</u>**

8.1.1. The plaintiff sustained a severe traumatic brain injury (diffuse axonal injury) with neurocognitive deficits. Residual sequalae, with a history of loss of consciousness and;

8.1.2. Lumbar spine soft tissues injuries.

8.2. **SEQULAE**

8.2.1. The plaintiff currently complains of pain, headaches, forgetfulness, change in behaviour and anxiety symptoms;

8.2.2. She reports constant headaches; her GCS was 7/15. She describes the headaches as throbbing in character, severe at times;

8.2.3. The plaintiff is forgetful. She still has no recollection of the accident. She forgets names and things that happened in the past.

8.2.4. She sustained severe diffuse axonal injury with multiple intracranial haemorrhage seen on CT scan

8.2.5. She has permanent residual cognitive, psychological and behavioural deficits.

8.2.6. Her CT Scan confirmed the presence of structural brain damage with multiple bilateral frontal grey-white matter interface haemorrhages. This is indicative of diffuse axonal injury (DAI)

[9]. ACCORDING TO THE NEUROLOGIST DR REID:

9.1. The plaintiff had a single generalized seizure which occurred on the day of the accident;

9.2. The plaintiff's reported duration of post traumatic amnesia was more than two weeks;

9.3. Her level of consciousness was slow to improve. Glascow Coma Scale was still abnormal by the time of discharge back to the rural hospital more than a week later;

9.4. Her ongoing problems include poor concentration, forgetfulness, altered emotion, behaviour and personality, unprovoked aggression, poor motivation, lumbar backache, daily holocranial headache, emotional lability, intolerance of stress;

9.5. Her examination revealed poor short-term memory, limited reading, writing and spelling skills, slow mental activity, short attention span, dysexecutive syndrome, primitive reflexes, reciprocal in co-ordination,

9.6. She was diagnosed with severe closed head trauma, frontal lobe contusion, diffuse axonal shearing, permanent neurocognitive compromise, frontal lobe syndrome and post traumatic epilepsy.

[10]. <u>ACCORDING TO THE SPEECH LANGUAGE THERAPIST DR OGILVY:</u>

10.1. The plaintiff has a word retrieval deficit and reduced flexibility in the use of words.

10.2. She has difficulties in the verbal formulation of her thoughts.

10.3. She losses track of her thoughts when conversing or if interrupted whilst speaking, which is likely underpinned by disturbances of complex attention and mental tracking difficulties.

10.4. She has significantly reduced verbal working memory capacity.

10.5. She has disturbances of auditory attention, including a restricted auditory attention span and difficulties sustaining auditory attention.

10.6. She has central auditory dysfunction.

10.7 Her communication impairments negatively impact on her daily socio-communicative interactions, on her social relations and on her level of social interaction.

10.8 Based on her communication, cognitive and emotional difficulties, the expert opines that she is unemployable in the open labour market.

[11]. <u>ACCORDING TO THE PSYCHIATRIST DR SUTHERLAND:</u>

11.1. The plaintiff, since the accident has developed behavioural and mental health difficulties. She reports that the medication made her feel sedated and her husband described her as “Zombie” like whilst taking the treatment. She had an unprovoked episode of aggression where she assaulted another woman. She reports that she “went” blank and

had no recollection of the assault, this led her to her discontinuing the medication.

11.2. The plaintiff suffers from physical symptoms (She has episodes of dizziness and feels she will “fall over” particularly when standing in the sun). She has intermittent back pain.

11.3. The plaintiff has Cognitive and Behavioural Symptoms (She has difficulty reading and struggles to spell words when writing, she struggles to read correspondence from the school regarding her son and her husband must read same and explain the content to her and she is easily angered, including towards her children).

11.4 She has psychiatric symptoms (her mood is frequently low and following the accident, she began to have distressing intrusive thoughts about harm coming to her child or about harming himself).

11.5 The Psychiatric Clinical Examination, revealed that she was anxious and distressed and her mood was slow. It was confirmed that she has neurocognitive disorder.

11.6 It is opined that there has been marked change in her personality post-accident characterised by high levels irritability and aggression, impulsivity and difficulties with emotional regulation. This is in keeping with the nature of the brain injury sustained. The combination of her cognitive and behavioural difficulties has rendered her unemployable in the open labour market. She is vulnerable to exploitation and requires protection.

[12]. **ACCORDING TO THE CLINICAL PSYCHOLOGIST RENEE DE WIT:**

12.1. The plaintiff presents with the following complaints:

12.1.1. After the accident she struggled with the day-to-day functions;

12.1.2. She reports that she experiences regular headaches since the accident. She sometimes complains of back pain. She sleeps a lot during the day. Her sleep is disrupted.

Cognitively, she is very forgetful since the accident. She struggles to maintain concentration and sometimes pauses in the middle of a sentence because she forgets what she wanted to say. She is generally slower to think and reason compared to before the accident.

Behaviourally, she is much more dependent on her boyfriend and relatives. She is very quick to anger since the accident. She is aggressive when she is angered. She lost control of her temper and assaulted a woman. She lacks energy and drive since the accident. She spends most of the day resting and sleeping. She is less social and isolates herself at home. She prefers to be at home, alone in her own room. She becomes stressed and upset about minor issues very easily.

12.1.3. On her return to work she struggled to work on the same level as prior to the accident and injuries sustained and her overall productivity dropped;

12.1.4 The company began to send her less work, and she reports that by the time she realised that she was not going to cope in the position of a cashier.

[13]. <u>TREATMENT RECEIVED:</u>

13.1. The Plaintiff was initially transported to Tygerberg Hospital by ambulance, where she was assessed and stabilized;

13.2. The plaintiff was sent for X-rays and scans. CT scan confirmed the presence of multiple intracranial haemorrhages and cerebral oedema. Her traumatic brain injury was treated conservatively.

13.3. She remained stable. She was intubated and transferred to Paarl hospital for rehabilitation. At that time she was confused, disorientated and not talking. After approximately two weeks she was discharged home. She remained confused and required assistance with activities of daily living. Her condition has stabilised. She remains symptomatic.

The plaintiff went to a public hospital, and there are no vouchers for past medical expenses. Therefore, there are no past medical expenses incurred by the plaintiff.

[14]. <u>TREATMENT ENVISAGED IN THE FUTURE:</u>

14.1. The Neurosurgeon recommends an allowance of analgesia, which costs R 10 000.00. An allowance of R350 000.00 should be made available for the investigation and treatment of late post-traumatic seizures.

14.2. The plaintiff will require future treatment for the management of pain.

14.3. The plaintiff is incapable of independent living; provision will need to be made for home-based care should family members no longer be able to cater for her.

14.4. The plaintiff will require psychiatry assessment and treatment for the depressive, post-traumatic stress disorder related and psychotic symptoms.

As a result, the plaintiff is awarded future medical expenses in terms of Section 17 of the Road Accident Fund Act. In the matter of **Koetze obo Malinga and Another v Road Accident Fund (77573/2018; 54997/2020 [2022 ZAGPPHC 819; [2023] 1 All SA 708 (GP),** the CEO of the Defendant offered a blank undertaking for all proven future medical hospital and related expenses in all cases before the court where such are proven and therefore it is held that the plaintiff is entitled to such an undertaking.

[15]. <u>EFFECT ON EMPLOYMENT / LOSS OF EARNINGS:</u>

15.1. At the time of the accident the plaintiff was working as a Cashier. Currently she is not working, she was dismissed from her

employment. Her qualifications include a grade 09. She struggles with manual work because of the left shoulder and left knee pain.

15.2. Her main complaints are her headaches. With his current complaints, it is foreseen that she will struggle to find employment in the open labour market. She will need a sympathetic employer.

[16]. <u>MEDICO-LEGAL REPORT OF THE NEUROSURGEON:</u>

16.1. The plaintiff's cognitive and communicative deficits will have a negative impact on her employment and promotional prospects. Her behavioural problems will affect her interaction with employers, fellow workers and customers. Should she develop seizures then she will be unable to work at heights or with power equipment. Taking all factors into account the expert opined that the plaintiff is permanently disabled and will have difficulty obtaining and retaining employment. She is unemployable in the open labour market.

16.2. The injuries already had a profound impact on the plaintiff's amenities of life, productivity and working ability and will continue to do so in the future.

16.3. According to the plaintiff, she returned to his employment for a few months but was experiencing difficulty with some of her activities due to the accident and injuries sustained and could not continue any longer.

16.4. The plaintiff's workability has been disturbed and restricted because of her injuries.

16.5. The plaintiff's workability was detrimentally influenced by her injuries and its *sequelae*. It is unlikely that she will be able to return to her pre-accident activities and work capabilities as a result of the symptoms arising from her injuries.

[my own emphasis]

16.6. The plaintiff is no longer an equal competitor in the open labour market. The injuries the plaintiff sustained in the accident make her an unfair competitor in open labour market.

16.8. At the time of the accident, she was working as a cashier. She sustained injuries of her head and soft tissue injuries, of which she still suffers from the sequelae. The plaintiff injuries have had a profound impact on her occupation as a cashier.

[17]. <u>MEDICO-LEGAL REPORT OF PSYCHATRIST DR SUTHERLAND:</u>

17.1. Following the accident, she was “very emotional” and “had no patience”. She did not feel she would be able to appropriately deal with clients as a cashier as they often haggled over the price of goods, and she felt she would lose her temper.

17.2. She was thus changed to the position of packer. She experienced difficulties in this role as she forgot instructions, was irritable and shouted at and scolded her colleague and clients. She was prone to

errors when writing inventories and made a mistake when she accepted an incomplete order of milk. She was dismissed after a year.

17.3. Collateral information from Ms Andrea Willemse the plaintiff's supervisor at the China Shop was that prior to the accident she was a very good worker. She worked as a cashier and helped in the shop. She took initiative and would run the shop alone on weekends without any difficulties.

17.4. Ms Willemse further reported that following the accident the plaintiff "was different". She was very emotional and often cried. She worked briefly as a cashier but argued with customers and was verbally aggressive. In addition, she made errors when ringing up items.

17.5. She was therefore moved to the position of a packer and her shifts were reduced to working three days a week as she created so many problems with clients because of her behaviour that Ms Willemse felt she was constantly needing to placate disgruntled customers.

17.6. She no longer took initiative, her work had to be checked due to errors she made, she could not be left alone in the shop and was no longer capable of managing the shop independently. Her work speed was slow, she miscounted stock, submitted incorrect orders and accepted two incomplete deliveries which resulted in her being dismissed.

17.7. She reported that following the accident she worked as a farm worker for a period. She could not cope with working in the sun as it precipitated episodes of dizziness and light headedness where she felt she would collapse. She was moved to the storeroom but lost her temper and argued with a colleague and subsequently left the job as her husband did not feel she was coping.

[18]. <u>MEDICO-LEGAL REPORT OF SPEECH AND LANGUAGE THERAPIST DR OGILVY:</u>

18.1. Based on the plaintiff's communication, cognitive and emotional difficulties , the expert opined that the plaintiff is unemployable in the open labour market. This is a tragedy considering her young age , that she has a young child to provide for , that prior to the accident she had managed to secure full time employment , and that had the accident not happened , she would have likely held long-term steady employment , obtained promotions and maintained her independence like other family members and her fiancé.

[19]. <u>MEDICO-LECAL REPORT BY THE CLINICAL PSYCHOLOGIST RENEE DE WIT:</u>

19.1. Pre-accident, she worked as a factory worker for a year and subsequently as a cashier at Saron China Shop for approximately one year, up until the accident. Prior to the accident she would most probably have continued working in similar positions, should she have left her job at the China shop.

19.2. Post-accident, following the accident, she realized that she was not going to cope in the position of a cashier and therefore returned to working at the China shop in a lowered capacity as a shelf packer, which is less cognitively demanding work. She was short tempered and made mistakes, and she was eventually dismissed.

19.3. The expert opines that she should be considered unemployable in the open labour market due to significant memory, concentration, and emotional control difficulties she experiences post-accident. She will most likely lose any employment which she might be able to secure. Her supervisor at the china shop is a friend, but despite that, the plaintiff was eventually dismissed after she made a mistake, any other employer who did not know her before the accident would be even more unsympathetic.

[20]. **MEDICO-LEGAL REPORT BY THE OCCUPATIONAL THERAPISTS MARTINETTE LE ROUX:**

20.1. From a physical perspective, the Plaintiff is restricted to predominantly sedentary to light work where she has the opportunity to alternate posture to avoid being on her feet for long periods.

20.2. She should cope with the frequent standing work, but it is restricted to occasional static, forward bending as well as crouching and kneeling in combination therewith, should be confined to occasionally.

20.3. Considering the aforesaid, she does not have the physical capacity to work in a production line/packing shelf as before, and it is plausible that physically, she endured difficulties at the Saron China shop. Should she develop epilepsy her options would be further compromised.

20.4. The combination of her physical, neuropsychological and cognitive communicative difficulties, severely limits her employment options, opportunities and ability to secure employment. Her prominent behavioural problems are highly likely to prevent her from sustaining any position in the open labour market.

20.5. It is noted that she could not even maintain employment in an empathetic work environment where her supervisor was also her friend, and who attempted to accommodate her as far as possible. It is the opinion of the expert that the plaintiff is essentially unemployable.

[21]. **<u>MEDICO-LEGAL BY THE INDUSTRIAL PSYCHOOGIST KAREN KOTZE:</u>**

The impact of the collision and injuries upon plaintiff's earning.

21.1. **INDUSTRIAL PSYCHOLOGICAL OPINION:**

Based on the assessment and expert opinion in section 5 supra, it appears that the plaintiff career prospects and employability have been impacted by the sequelae of the injuries sustained in the accident in the following respects:

21.1.1. Medical experts are in agreement that the accident and it's sequelae have rendered Plaintiff unemployable in the open labor market.

21.1.2. In this regard, from a physical perspective, her residual physical capacity has been restricted to sedentary to light category work. She is no longer suited to her pre-accident work role, and it is plausible that she endured difficulties post-accident.

21.1.3. Furthermore, noting her level of education, she has been rendered unsuited to work roles associated with her residual physical capacity, as sedentary to light category work roles are usually of an administrative nature, requiring

grade 12 level of education.

21.1.4. She furthermore sustained a severe closed head trauma, resulting in permanent neurocognitive compromise, marked expressive and receptive cognitive-communicative deficits as well as neuropsychological deficits.

21.1.5. Despite the above but driven by the necessity to generate a much-needed income, she returned to her pre-accident work following the accident. Noting the sequelae of the injuries sustained in the accident, she should be commended for her determination and diligence to attempt to generate an income.

21.1.6. She was unable to cope with the job demands but was fortunate to have been employed by an employer who was willing to accommodate her in a light duty capacity with reduced responsibilities. Despite the accommodation, she was eventually dismissed, as her error proneness resulted in notable losses to the business.

21.1.7. Noting expert opinion on the sequelae of the

injuries sustained in the accident, which is supported by what has transpired in the workplace post-accident, the expert opines that her occupational functioning and career prospect have been obliterated by the accident.

21.1.8. Now that she has forfeited her accommodated employment, the expert opines that she will remain unemployed for the remainder of her working life.

21.1.9. The Plaintiff's post-accident career prospects have been significantly truncated. She is physically, neurocognitive, and psychologically compromised, making her unsuited for heavy physical work or managerial roles.

[22]. LAW

22.1. **LOSS OF EARNINGS**

It is accepted that earning capacity may constitute an asset in a person's patrimonial estate. If loss of earnings is proven the loss may be compensated if it is quantifiable as a diminution in the value of the estate. It must be noted, a physical disability which impacts on the capacity to an income does not, on its own,

reduce the patrimony of an injured person. It is incumbent on the plaintiff to prove that the reduction of the income earning capacity will result in actual loss of income.

22.2. In quantifying such a claim an Actuary is often used to make actuarial calculations based on proven facts and realistic assumptions regarding the future. The role of the Actuary is to guide the court in the calculations to be made. Relying on its wide judicial discretion the court will have the final say regarding the correctness of the assumptions on which these calculations are based. The court should give detailed reasons if any assumptions or parts of the calculations made by the actuary are rejected. It must be borne in mind that the actuary depends on the report of the Industrial Psychologists, who in turn are dependent on the information provided by the claimant.

22.3. The learned author Dr R.J. Koch in *The Quantum of Damages Year Book* states at page 118 that the usual contingencies which the Road Accident Fund accepts is 5 % on the past income and 15 % on the future income. The aforesaid is only a guideline, but it indicates the general approach adopted by the defendant in similar matters. The learned author continues on page 118 to suggest (based upon the authorities of ***Goodall v President Insurance*** **and** ***Southern Insurance Association v Bailey N.O***. that as a general rule of thumb, a sliding scale can

be applied, i.e. “1/2% per year to retirement age, i.e. 25% for a child, 20% for a youth and 10% in middle age:”

22.4. The court, in the case of ***Road Accident Fund v Guedes*** **at paragraph [9]** referred with approval to *The Quantum Yearbook*, by the learned author Dr R.J. Koch, under the heading *'General Contingencies*', where it states that:

> *“…[when] 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...”.*

22.5. The percentage of the contingency deduction depends upon a number of factors and ranges between 5% and 50%, depending upon the facts of the case.

22.6. The importance of applying actuarial calculations and its advantages was discussed in the case of *Southern Insurance Association v Bailey NO*, the court referred with approval to the case *of Hersman v Shapiro and Company 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 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."

22.7. Ultimately, the award for future loss of earnings or earning capacity must be based on good medical evidence and corroborating facts. There must be some reasonable basis for arriving at a particular figure. In the event of a mathematical approach, one has to first work out what the third party's earnings would have been but-for the accident (that is,

if the accident had not occurred), and secondly, one has to calculate what the plaintiff's earnings are now that the collision has occurred (having regard to the accident) and the difference between these two amounts will then represent the loss.

[23]. GENERAL DAMAGES

23.1. The awarding of general damages is within the court's discretion which discretion has to be exercised reasonably and judiciously. Tritely, there are no two cases which are similar in nature. The circumstances of the patient here cannot be mirrored against any of the cases which have been used by the parties. However, these cases do serve as a guide for this court to take into consideration the award of general damages.

23.2 Determining quantum for general damages is certainly not an exact science:

"*This is so because although 'the law attempts to repair the wrong done to a sufferer who has received personal injuries in an accident by compensating him in money, yet there are no scales by which pain and suffering can be measured, and there is no relationship between pain and money which makes it possible to express that one in terms of the other with any approach to certainty'. A trial court is required, in the exercise of 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 or her bodily injuries and their sequelae'*".[1]

[1] Road Accident Fund v Van Rhyn 2007 JDR 0125 (E) at para 30.

Further, "*in the exercise of that broad discretion the trial court must: consider a broad spectrum of facts and circumstances connected to the plaintiff and the injuries suffered by him or her, including their nature, permanence, severity and impact on his or her life; take into account the tendency for awards now to be higher than they once were, as a result of changing values in our society, improvements in the standard of living and the fact that awards have traditionally been lower in this country than in many others; and allow itself to be guided by the broad patterns of awards made by courts in the past*."[2]

23.3. The plaintiff's counsel referred the court to the following several cases to be considered in awarding general damages. Clearly, they are distinguishable to the facts before the court. The plaintiff had suffered orthopaedic injuries. For an instance the court was referred to the case of **Advocate G Slingers NO OBO Sophia Wilhelmina Esterhuizen v Road Accident Fund**, in which the plaintiff suffered orthopaedic injuries (such as a fractured tibia and fibula). The Plaintiff's counsel argued that an amount of **R 3 500.000 (Three Million and Five Hundred Thousand)** should be awarded as general damages. I hold a different view regard with regard to the amount as suggested by the Plaintiff's counsel. On the other hand, there were several cases referred to by the Curator ad litem. I am in agreement with the case (**DU TOIT NO JVW v RAF 2024 (8A4) 206 156 (GNP**), that was referred by the curator ad litem in her report dated 25 June 2025.

23.4. Therefore, an amount of **R2 200.000 (Two Million Two Hundred Thousand)** is fair and reasonable in the circumstances.

[2] Id at para 31.

24.4. In **Megalane NO v Road Accident Fund 2006 (5A4) QOD 10 (W**), a case of comparable severity, but where life expectancy was limited to 49 years, unlike here where there is no cap on life expectancy. Here an inflation award of R **1 946 000.00** was made.

23.5 In Webb v Road Accident fund (Gauteng Division , Pretoria : case number 2203/2014, 14 January 2016) QOD (Vol VII)A3-24, a case of paraplegia without any brain damage, in which the victim was still employable (an updated amount of **R 1 600 000.00** was awarded).

23.6 In **Bhekisisa Simon Dlamini (Gauteng Division, Pretoria ,case number 59188/2013, 3 September 2015** (a brain injury only ,without hemi or paraplegia) where an amount (updated) of **R 1 500 000.00** was awarded.

23.7 In **Advocate Van Rooyen NO v Road Accident Fund** at paragraph 11, the court dealt with the injuries sustained by the claimant as a severe head injury that resulted in severe brain damage with permanent physical, cognitive, neuropsychological and psychological consequences. In short, post-accident he is severely and permanently impaired. The court awarded **R 2 200 000.00.**

23.8 In **Mazibuko v Passenger Rail Agency of South Africa (6371/2017[2024] ZAGPJHC 585 (21 June 2024),** the court awarded an amount of **R1 900 00 00**. The plaintiff was ejected and fell out of a moving train and sustained severe injuries inclusive of a severe head injury. Upon admission he had a low Glasgow coma scale (9/15) and he

was hospitalised for 5 months. He had a comminute depression left frontal parietal skull fracture, subarachnoid and intraparenchymal haemorrhage.

23.9 **In Maponya v Road Accident Fund 2018 JDR 1142 (GJ)** is an unreported judgment of Moshidi J dated 18 June 2018 where the Plaintiff was granted an amount of **R 1 900 000** in respect of general damages. The Plaintiff had sustained a severe head injury, leading to neurocognitive and neurobehavioral changes which manifested in poor memory and concentration, aggressive behaviour and various other injuries which left him disabled and disfigured.

23.10 Taking account of these comparable cases and the higher or lesser degrees of the severity in them, I am satisfied that the amount of R 2 200.000.00 for general damages proposed by the Curator ad litem in her initial report is appropriate, fair and reasonable.

[24]. APPLICATION OF LAW TO FACTS

24.1. The plaintiff's future loss of earnings or capacity to earn has been actuarially calculated and the basis of such calculations, which is discussed below are consistent with the facts and probabilities in the matter.

24.2. The plaintiff's case remains undisputed and remains unchallenged. The defendant has not appointed a single expert to challenge and or contradict the plaintiff's expert witnesses. There is also no evidence

before me that prior to the collision the plaintiff had any neurocognitive problems.

24.3. In so far as the injuries are concerned, it has not been disputed that the plaintiff sustained severe traumatic head injury (with 07/15 GCS) and soft tissue injuries which was consequent to the motor collision. It remains undisputed that the plaintiff's neuropsychological, neurocognitive and neurobehavioral arising from the accident has been impaired.

24.4. The Clinical psychologist opines that the plaintiff's employment has been adversely affected and as result curtailed. Her restricted range of movement and cognitive challenges including memory and attention deficits, make her an unfair competitor in the open labour market.

24.5. The psychiatrist opines that the plaintiff's productivity and career prospects may be limited due to his physical and psychological impairments.

24.6. The occupational therapist opines that the cognitive deficits would have a negative impact on his work abilities and future employment. She competitiveness in the open labour market has been compromised, especially for roles exceeding medium physical demands. She is unemployable in the open labour market. Her career options are significantly reduced as a result of the injuries sustained.

24.7. The industrial psychologist's uncontested postulations regarding the pre and post morbid future loss of earnings prior to and but for the accident is the only evidence that is before me which I must accepted.

24.8. I accept that the plaintiff would require an understanding employer who will be willing to accommodate her cognitive limitation should she secure work in future. Her working environment would also need to be less cognitively demanding as she would struggle to perform with the pressures of work, as a Cashier. I have also considered that she is no longer performing at her pre-accident potential as a result of the accident.

The plaintiff is therefore likely to suffer a future loss of earnings to be calculated as the difference between her pre-accident earning potential and her post-accident earning potential.

24.9. I am mindful that the plaintiff will be an unequal competitor at the open labour market compared with her healthier peers and that she will not be able to perform functions efficiently and effectively as compared to her counterparts. The injuries sustained from the accident will hinder her career and future employability. The plaintiff has suffered a medically justifiable loss of earnings or work capacity as a direct result of the accident.

24.10. I find that the plaintiff's expert witnesses remain the only evidence before me. The submissions made by industrial psychologist are clear, reasonable and persuasive. I therefore find that the evidence before me is credible and I accept it as reliable and plausible.

[25]. According to the actuarial calculations by Munro.

25.1. Pre-Morbid (retirement age 65)

According to the addendum report of Karen Kotze (industrial psychologist), dated 11th November 2025, plaintiff earned an income of R150.00 per day, as a cashier, stock receiver and shop assistant. She worked for six days per week. She would probably have continued working as such with straight line increases and earnings inflation to 65 years. It is postulated that she would have earned R900 per week., R 3 897 00 per month and R46 764 00 per annum. It is postulated that she would have reached a career ceiling at 45 years, she would probably earned in the upper quartile for semi-skilled workers and for 2025, this is expressed as R 228 000.00.

25.2. Post-Morbid (retirement age 65)

According to the addendum report of Karen Kotze (Industrial Psychologist), it is postulated that the Plaintiff will remain unemployed for the remainder of her working life and a total loss of earnings has occurred.

A total loss of earnings had occurred from the date of the termination of her accommodated employment on 11 October 2019. At that stage she was twenty three (23) years old. She had a future working life span of forty two years (42), that was interrupted and affected by the injuries sustained in the accident.

[26]. Plaintiff's counsel submitted that contingencies are to be applied as usual since *the Road Accident Fund Amendment Act 19 of 2005* cap does not have an impact on this case. In this regard counsel argues the contingency deductions of 5% on uninjured earnings and 15% on uninjured future earnings should be applied. I agree with the contingencies applied in the past loss of earnings.

I hold a different view with respect to future contingencies:

A 5% deductions on past pre-morbid income is acceptable.

No deductions on past post-morbid income

20% deductions for future pre-morbid income is applied.

No deductions for future post-morbid.

Future contingency deductions:20%

	Pre-morbid	**Post-morbid**	**Loss (difference)**
Past earnings	589 800	88 800	
Minus contingency	(5%)		
Past loss of earnings	**560 310**	**88 800**	**471 510**
Future earnings	4 105 900		
Minus contingency	(20%)		
Future loss of earnings	**3 284 720**		
Total loss of earnings			**3 756 230**

[27]. The loss of earnings after the above-stated contingency deductions amount to **R 3 756 230 (Three Million Seven hundred and Fifty Six thousand Two hundred and Thirty Rand)**. The calculations were on the basis that the plaintiff is not expected to reach the suggested pre-accident career potential and that she might suffer losses that are directly quantifiable and should be address via contingencies. The retirement age is at 65 years.

[28]. It is trite that in considering what damages to award in damages claims, the court exercises discretion. In doing so, the court has to ensure that the award for damages made is fair and reasonable. This is usually achieved through judicial precedent. The actuaries recommend the so called normal contingencies apply as discussed above.

[29]. When considering the contingency deductions to be applied on actuarial calculations of loss of earnings, allowance for contingencies involves, by its very nature, a process of subjective impressions or estimations rather than objective calculations. The so-called normal contingencies referred to takes into account that a plaintiff might ordinarily sustain some loss in his future income by virtue of: falling sick from time to time; the prospect of unemployment and an inability to secure alternate employment immediately; the prospect of being injured in circumstances where the plaintiff would receive no compensation from any source; the saved costs of unemployment.

I applied my mind to the plaintiff's circumstances. I have considered the plaintiff's background and family history.

[30]. <u>ACTUARIAL CALCULATIONS IN RESPECT OF LOSS OF EARNINGS:</u>

30.1. The calculations are submitted to be fair and reasonable in the circumstances, and the Court is satisfied to grant the total nett loss of income in the amount of **Three Million Seven Hundred and Fifty Six Thousand Two Hundred and Thirty Rand** (**<u>R 3 756 230)</u>** as set out in the 15% contingency spread scenario above.

30.2. The plaintiff's present work role as a cashier is considered to be Light physical work .

30.3 The plaintiff is not suited to her work role and is not expected to be able to sustain such indefinitely over the long run.

30.4. She would also not be able to perform cognitively demanding work as is required in cashier work roles. Her promotional prospects and career progression is therefore significantly curtailed.

[my own emphasis]

30.5. She suffers from significant cognitive fallouts for immediate memory and verbal learning, making it difficult for her to learn and retain new work skills and work as a cashier.

30.6. In addition, she could be expected to struggle with optimal attention and concentration which may lead to poor work performance and result in conflicts with customers, supervisors / managers for work not adequately completed.

30.7. When she experiences pain her memory and concentration would further be negatively affected. Moreover, she could also be more error prone and less attentive to detail, negatively affecting the quality of work output as a cashier.

[my own emphasis]

30.8. She is unlikely to reach his pre-MVA occupational potential.

30.9. Her occupational functioning has been negatively impacted by the sequelae of the injuries sustained in the MVA and resulted in a loss of productivity and efficiency. As a result, she has been dismissed.

[my own emphasis]

30.10. She has been compromised from a physical, neurocognitive and psychological perspective by his MVA-related injuries and their sequelae.

30.11. In general, it is acknowledged that employees with impairments would be disadvantaged, to a greater extent or lesser extent, in respect of her competitiveness in the open labour market, especially in comparison with uninjured peers.

[my own emphasis].

30.12. The plaintiff has been rendered significantly occupationally unemployable.

30.13. Her ability to seek and secure other suitable sympathetic accommodative employment has been significantly curtailed by her physical neurocognitive and psychological sequelae. She would find it very difficult to secure alternative similar employment. She is unsuited to work as a cashier.

30.14. Should the recommended treatment be unsuccessful, and the current MVA –related symptoms remain unchanged, or even exacerbated, she would, in all probability, remain unemployable.

[my own emphasis]

Having regard to the aforementioned cases, it is the courts view that special damages in the amount of **Three Million Seven Hundred and Fifty Six Thousand Two Hundred and Thirty Rand (R 3 756 230)** is fair and reasonable under the circumstances.

[31] <u>CONCLUSION:</u>

In the premises I make the following order:

1. The Defendant is liable hundred percent (100%) in respect of the plaintiff's agreed and or proven damages;

2. Future hospital and medical expenses: Section 17(4)(a) Undertaking;

3. General damages R 2 200 000;

4. Loss of earnings R 3 756 230;

5. Costs of counsel on scale C

Total **R 5 956 230**

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J. ZITHA AJ

Judge of the High Court

Gauteng Division, Pretoria

Date of Hearing: 02nd December 2025

Judgment delivered: 02 March 2026

APPEARANCES:

For the Plaintiff: Advocate Anton Loubser

Attorney for the Plaintiff: Adendorff Attorneys

For the Defendant: None

Attorney for the Defendant: None