IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 10374/21

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

3 March 2026 _____

DATE SIGNATURE

In the matter between:

GABOUTLOELOE, OFENTSE 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 and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of his matter on Caselines. The date for handing down is deemed to be 3 March 2026.

ORDER

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1. The draft order, as amended, marked "X" is made an order of the court.

JUDGMENT

CARELSE AJ

Introduction

[1] In this matter, the plaintiff has instituted an action against the defendant for damages arising from personal injuries sustained in a motor vehicle accident that occurred on 9 August 2019.

[2] The matter came before me on the special default judgment roll on 2 March 2026.

[3] When the matter was called, counsel for both parties confirmed that the dispute had been settled in all respects, as reflected in a draft order handed up to the Court, save for the issue of general damages.

[4] I allowed both counsel to address me on the issue in dispute and, in the absence of any objection, granted the plaintiff's applications to amend his particulars of claim and for relief in terms of Rule 38(2). I thereafter reserved judgment on the issue of general damages to consider the parties' submissions.

[5] As the matter proceeded on the basis that liability and the remaining heads of damages had been settled, and the defendant's defence had previously been struck out, the only issue requiring determination is the appropriate award for general damages. What follows are my brief reasons for that determination.

[6] The defendant has made a formal offer in respect of general damages. Although not accepted, the offer constitutes an implicit acceptance that the plaintiff's injuries meet the statutory threshold of seriousness and warrant an award of non-patrimonial damages.[1]

The injuries and the sequelae thereof

[1] *Chetty v Road Accident Fund* (A91/2021) [2021] ZAGPPHC 848 (7 December 2021) at para 19.

[7] The following medical-legal and expert reports form part of the Plaintiff's expert bundle:

(a) Orthopaedic Surgeon, Dr. VM Close, dated 7 February 2023 and addendum report dated 26 November 2025;
(b) Neurosurgeon, Dr. JH Krüger, dated 14 April 2023 and addendum report dated 14 November 2025;
(c) Plastic & Reconstructive Surgeon, Dr. L Berkowitz, dated 16 March 2023;
(d) Clinical Psychologist, Monique Kok, dated 5 June 2023 and addendum report dated 27 November 2025;
(e) Occupational Therapist, H van Rooyen, dated 10 July 2023;
(f) Industrial Psychologist, HT Kraehmer, dated 25 July 2023 and addendum report dated 27 January 2026; and
(g) Actuary, GA Whittaker, dated 4 February 2026.

[8] The defendant did not file any expert reports and, apart from what will be discussed hereunder, did not object to the contents of any of the plaintiff's expert reports.

[9] The plaintiff's heads of argument contain a comprehensive summary of the injuries and sequelae as reflected in the expert reports. That summary accords with the contents of the medico-legal evidence admitted without objection. The medico-legal reports collectively establish the following position.

(a) The plaintiff sustained multiple serious injuries in the motor vehicle accident of 9 August 2019.

(b) Orthopaedically, he suffered bilateral radius fractures, including a right ulna fracture which progressed to a hypertrophic non-union with malalignment, and a suspected right scaphoid fracture. As a consequence, he has severe loss of pronation, reduced wrist mobility, persistent pain and a visible deformity of the right wrist. He also sustained a left distal radius fracture, which healed satisfactorily, and a

soft-tissue cervical spine injury associated with chronic cervicogenic headaches.

(c) Neurologically, the plaintiff sustained a moderate traumatic brain injury, evidenced by loss of consciousness and post-traumatic amnesia. He further suffered a lung contusion with pneumothorax requiring intubation and ventilation. He has been left with multiple scars on the forehead, thorax, forearms, wrists and hands, some of which constitute permanent disfigurement and have been identified as requiring surgical revision.

(d) The most significant long-term neurological sequela is the development of chronic epilepsy, first manifesting in 2022 and attributed by the neurosurgical expert to the traumatic brain injury. The seizures are described as involving blackouts, confusion and post-ictal fatigue, and resulted in a further motor vehicle accident in June 2023, after which his driving licence was revoked. He continues to experience cognitive deficits, including impaired short-term memory, reduced concentration, slowed mental tracking, word-finding difficulties and executive dysfunction. These deficits affect his reliability, organisation and ability to manage his business. Psychologically, he presents with irritability, emotional lability, anxiety and adjustment difficulties associated with the epilepsy, although no major psychiatric disorder has been diagnosed.

(e) Functionally, he experiences ongoing bilateral arm pain, reduced grip strength and difficulty lifting or carrying equipment. These limitations impair his ability to perform the physical demands of sound engineering and affect certain domestic tasks requiring strength. His epilepsy restricts him from working at heights, around strobe lighting, or in environments that may precipitate seizures. The loss of his driving

ability has materially reduced his independence and increased operational constraints.

(f) Occupationally, he has shifted from event-based work to less physically demanding studio-based production. The experts are in agreement that he has sustained a material and permanent reduction in earning capacity, that he is now a vulnerable worker, and that his working life expectancy is likely to be reduced by approximately 18 months to two years.

[10] Following the accident, the plaintiff required a month-long hospital admission during which he was intubated, ventilated and treated for bilateral forearm fractures, a pneumothorax and head lacerations.

[11] The Court was also referred to photographs in the trial bundle that depict the severe, unsightly and permanent post-surgical scarring on the plaintiff's body, and in particular on his right forearm. It is clear that the plaintiff has been left with serious permanent disfigurement. Dr. Berkowitz opines that the most serious 6 scars will require surgical revision, which would be performed under general anaesthesia with an overnight hospital stay for elevation of both upper limbs.

[12] In terms of pain and suffering, Dr Berkowitz states that the plaintiff will experience moderately severe pain for 6–12 hours after the revision surgery, followed by moderate pain for 5–7 days. He anticipates that the plaintiff will be temporarily totally disabled for approximately one week following the procedure.

[13] The experts also agreed that the defendant will require further surgery to his right wrist to correct the malalignment and address the persistent non-union of the ulna. Up to six months of sick leave is anticipated following that procedure. On his left side, the locking plate which was inserted, may require removal in future.

[14] The plaintiff was self-employed as a sound and lighting technician prior to the accident, a role requiring lifting, carrying, climbing, and manual dexterity. Upon returning to work, he became more reliant on assistants due to his inability to carry heavy equipment. Following the onset of epilepsy, he ceased controlling sound

during events and now focuses on lighting, further reducing his earning capacity. He was 34 years old at the time of the accident and is currently 40 years old and still self-employed as a sound engineer, but with reduced earnings.

[15] Following the accident, the plaintiff developed significant neurological sequelae directly attributed by Dr Krüger to the moderate traumatic brain injury (TBI). In 2022, the plaintiff experienced his first epileptic seizure, and he has since been diagnosed with chronic epilepsy, which Dr Krüger states is probably the result of a focal brain injury complicating the original TBI. He describes typical generalised tonic-clonic seizures involving loss of consciousness, falling, fitting, tongue-biting, incontinence, and post-ictal confusion. Despite treatment with Epilim, the plaintiff continues to experience approximately two seizures per month. Dr Krüger emphasises that each seizure constitutes a secondary brain insult, increasing metabolic demand on the brain and compounding the long-term effects of the TBI.

[16] Cognitively, the plaintiff reports persistent short-term memory loss, poor concentration, forgetfulness, and difficulty sustaining attention, all of which Dr Krüger attributes to the TBI. He also reports executive dysfunction, including personality change, described as becoming more calm and reserved, and reduced emotional resilience. Psychological symptoms include anxiety about his financial and occupational future, travel anxiety, and features consistent with post-traumatic stress disorder.

[17] Aside from the issue concerning the plaintiff's epilepsy, counsel for the defendant did not challenge any of the other findings or conclusions in the experts' reports or the photographs to which the Court referred.

[18] Counsel for the defendant contended that there is no proper factual basis for the plaintiff's claim of chronic post traumatic epilepsy, particularly given that the first recorded seizure occurred in 2022, approximately five years after the accident, and that there is no record of any subsequent seizures. That contention cannot be sustained on the evidence properly before this Court.

[19] In the absence of contrary expert evidence, the Court is entitled to accept the unchallenged expert opinion where it is founded upon a logical and reasoned basis. Dr Krüger records that the plaintiff sustained a traumatic brain injury characterised by

loss of consciousness and post-traumatic amnesia. He further records the subsequent development of seizures with classic generalised features — loss of consciousness, tonic-clonic activity, tongue biting, urinary incontinence and post-ictal confusion — and ongoing treatment with Epilim. The diagnosis of epilepsy is thus not a bare conclusion but is grounded in clinical history and subsequent treatment. It is trite that epilepsy is primarily a clinical diagnosis; a normal CT scan does not exclude it.

[20] The plaintiff had no prior history of seizures and no alternative cause for the epilepsy was suggested. In these circumstances, the Court is required to determine whether the expert's reasoning is logical and whether, on a balance of probabilities, the inference drawn is justified. The inference that the epilepsy is causally related to the traumatic brain injury is medically plausible and remains uncontradicted.

[21] Delayed onset post-traumatic epilepsy is medically recognised. The mere lapse of time between injury and manifestation does not, without more, negate causation. In the absence of any competing hypothesis or evidence of an intervening cause, the causal nexus remains the most probable inference on the totality of the evidence.

[22] I am therefore satisfied that the plaintiff has established, on a balance of probabilities, that he suffers from chronic epilepsy causally related to the injuries sustained in the accident.

Quantum

[23] A claim for general or non-patrimonial damages requires an assessment of the plaintiff's pain and suffering, disfigurement, permanent disability and loss of amenities of life and attaching a monetary value thereto. The exercise is, by its very nature, both difficult and discretionary with wide-ranging permutations.

[24] It is very difficult, if not impossible, to find a case on all four with the one to be decided. The oft-quoted case of *Southern Insurance Association v Bailey NO*[2] confirmed that even the Supreme Court of Appeal had difficulties in laying down rules as to the way in which the problem of an award for general damages should be

[2] *Southern Insurance Association v Bailey NO* 1984 (1) SA 98 AD.

approached. The accepted approach is the "flexible one" described in *Sandler v. Wholesale Coal Suppliers Ltd*,[3] namely:

> "The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending on the Judge's view of what is fair in all the circumstances of the case".

[25] In respect of the issue of comparable cases and the guidance provided thereby, the Supreme Court of Appeal has stated in *Protea Assurance Co Ltd v Lamb*:[4]

> "Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration".

[26] The comparative authorities relied upon by the parties illustrate the general pattern of awards in matters involving traumatic brain injury. They confirm that the assessment is driven not only by the initial classification of the injury but also by proven long-term sequelae, including cognitive impairment, functional limitation and the effect on independence and quality of life.

[27] Recently in *R.S v Road Accident Fund*,[5] the Free State Division recorded that the plaintiff sustained a severe traumatic brain injury together with multiple orthopaedic and internal injuries and awarded R1 800 000.00 in general damages. In *Van Tonder v Road Accident Fund*,[6] the Gauteng Division awarded R1 500 000.00 in general damages in a matter where the plaintiff sustained a severe head injury complicated by epilepsy, multiple rib fractures, lacerations to the left knee and foot, and a pelvic fracture involving the left pubic ramus extending into the

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[3] *Sandler v Wholesale Coal Suppliers Ltd 1941* AD 194 at 199.
[4] *Protea Assurance Co Ltd v Lamb* 1971 SA 530 at 536 A-B.
[5] *R. S v Road Accident Fund* (5233/2023) [2025] ZAFSHC 68 (20 February 2025).
[6] *Van Tonder v Road Accident Fund* (2023/013183) [2024] ZAGPJHC 1009 (7 October 2024).

symphysis. At the lower end of the spectrum, in *Vukeya* v *Road Accident Fund*,[7] the Gauteng Division awarded R330 000.00 (now around R600 368.00 according to counsel) in respect of a mild to moderate brain injury and some orthopaedic and soft tissue injuries, with residual sequelae, like chronic headaches and depression.[8]

[28] These decisions demonstrate a broad contemporary range. Matters involving significant brain injury with established epilepsy and substantial long-term neurological consequences attract awards in the region of R1.5 million to R1.8 million. Cases involving milder traumatic brain injury without comparable long-term complications fall materially below that level.

[29] The present matter involves a moderate traumatic brain injury complicated by chronic epilepsy with ongoing seizures, persistent cognitive dysfunction, bilateral upper limb orthopaedic impairment, permanent disfigurement and measurable loss of independence, including the inability to drive. While serious, the evidence does not place the plaintiff in the category of the most extreme cases reflected in the higher awards referred to above. At the same time, the presence of chronic epilepsy and enduring cognitive impairment distinguishes this matter from cases at the lower end of the range.

[30] Having regard to the totality of the plaintiff's injuries and their proven sequelae, and guided by the general pattern emerging from comparable authority, I am satisfied that an award of R1 100 000.00 constitutes fair and reasonable compensation for the plaintiff's pain and suffering, disability, disfigurement and loss of amenities of life.

[31] I will therefore insert this amount into the draft order provided, wherein the other aspects of the plaintiff's claims and costs have been catered for.

Order

[32] The draft order, as amended, marked "X" is made an order of the court.

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[7] *Vukeya v Road Accident Fund* 2014 [7B4] QOD 1 (GNP).
[8] Also see: *Stermis v Road Accident Fund* 2010 (6B4) QOD 26 (WCC).

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CARELSE AJ

ACTING JUDGE OF THE HIGH COURT

PRETORIA

Date of hearing:	2 March 2026
Judgment delivered:	3 March 2026
For the Plaintiff:	Adv A Ras instructed by Snyman Lotz Inc.
For the Defendant:	T Gaokgwathe (Ms) instructed by The State Attorney, Pretoria