



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE: 2404/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE 11 March 2026

SIGNATURE

In the matter between:

G[...] P[...] S[...] obo MINOR

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 11 March 2026 at 15h30.

JUDGMENT

MANGENA AJ:

[1] Plaintiff is a mother and natural guardian of S[...] W[...] M[...], a minor child born on 05 October 2016. The child was involved in a motor vehicle accident on 08 November 2021 when he was knocked down by a motor vehicle with letters H[...] there and then driven by one Mr Mogeni Zulu, the insured driver.

[2] The mother lodged a claim in her representative capacity and same was accepted by the defendant. In due course merits were settled and the only issue left for determination was quantum.

[3] Plaintiff obtained various expert reports to support the claim in respect of heads of damages. When the matter was called for allocation, defendant requested that four of the plaintiff's experts be available to give oral evidence so that they may be cross-examined. Plaintiff duly complied and arrangements were made to have them testify and be cross-examined. There was a further tentative agreement that the remainder of the evidence will be tendered by way of affidavits in terms of Rule 38(2) of the Uniform Rules.

[4] The first expert witness to testify for the plaintiff was Dr Mashayamombe, a specialist psychiatrist. His educational qualifications were not disputed. He testified that he conducted a clinical assessment and evaluation of the minor child on referral of the attorneys. The child was accompanied by his mother who also provided information on the medical history of the child including the motor vehicle accident and the injuries sustained as a result thereof. He was given copies of the reports by other experts as well as hospital records for consideration during his evaluation of the child. He made clinical findings and recorded them in his report which has been discovered and formed part of the record.

[5] Dr Mashayamombe was cross- examined on his method of assessment as well as the findings contained in the report. It was put to him that his findings regarding the injuries sustained by the child was inconsistent with hospital records in that the hospital records do not mention any head injury. He explained that it is so that the hospital records do not mention a head injury but that does not mean that he did not sustain it. He said he conducted his own clinical assessment and based on what he observed on the child, like the scars on his head, he concluded that the child has indeed sustained a head injury. This was also consistent with what the mother told him.

[6] It was also put to him that his findings on the depression cannot solely be attributed to the accident because the child was previously bitten by a dog and this also had a traumatic experience on him. He disputed this, though he was not aware of this history of the dog bite. Overall, he was an impressive witness who answered questions directly and without hesitation and appeared credible.

[7] The second witness was Mr Nethavhani, an educational psychologist who testified that he conducted an assessment on the injured child on the instructions of the lawyers. He was furnished with a grade R and grade 1 reports as part of the collateral information required for assessment. His findings were based on that assessment.

[8] It was put to him in cross-examination that his findings could not possibly be accurate given the fact that the child had only been in school for one year and therefore it was too early to determine his scholastic performance. He admitted to this and stated that he did acknowledge it in his report where he recommended further assessment when the child progresses with schooling. He however denied that his findings were inaccurate and the fact that the child is performing well in the foundation phase is not a true measure of his performance as he is already showing signs of poor concentration. He said that the report

looks good now because the schoolwork in the foundation phase is not as demanding as in the senior phase. He will definitely experience difficulties and be disadvantaged when it comes to skills acquisition.

[9] After the testimony of Mr Nethavhani, counsel informed me that they have agreed to limit oral evidence to the two expert witnesses. The other two witnesses were duly excused. Adv Mokoena brought an application for the admission of the expert evidence in relation to those who did not tender oral testimony but have filed affidavits in terms of the applicable Rules. The application was not opposed and was duly granted.

[10] Adv Mokoena submitted that the experts are agreed that the injured child is going to be challenged in the open labour market as a result of the injuries sustained. The evidence presented demonstrate unquestioningly that the post traumatic disorder as well as cerebral concussion have significantly contributed to the reduced earning capacity of the minor child. The educational psychologist highlighted that the child is likely to perform below average and based on the reports by the industrial psychologist and the actuary a fair and reasonable award will be R 6 093 400.00 after applying contingencies of 15% pre-accident and 25% post-accident.

[11] Ms Tsebane took issue with the reports of the experts and castigated them as agents of the plaintiff. She says that the experts were not objective and prepared their reports favourably for the plaintiff and against the basic tenets of expert testimony. She urged me to treat the reports with caution, more especially when regard is had to the fact that there was no sufficient collateral information to support the findings made regarding the earning capacity. She proposed that a higher-than-normal contingencies should be applied and, in her view, a fair and reasonable award is R 2 285 400.00 with pre-accident contingency at 15% and post-accident at 45%.

[12] In reply, Adv Mokoena countered with an argument that the injured was subjected to assessment by the defendant's experts who independently confirmed that indeed the child has developed serious intellectual impairment as a result of the accident. This attracted a challenge from Ms Tsebane who objected to the introduction of this evidence as according to her, it does not form part of the record. The experts have not testified, and she informed Mr Mokoena that she will not be calling them. She said that she told him that she is withdrawing their reports. I intimated to her that this cannot be done, at least not in the manner she wanted to do it. These are my reasons.

[13] A party wishing to withdraw a document containing an admission on a disputed fact is required to give a proper and detailed explanation regarding the circumstances under which the admission was made as well as the reason for the withdrawal. This is so because "an admission is an unequivocal agreement by one party with a statement of fact by the other, making it unnecessary for the latter to prove it. It is almost always prejudicial to this party because it saddles it with a burden to prove an averment it did not have to prove. It is for this reason that in the exercise of its discretion to allow the withdrawal of an admission, a full and proper explanation is required regarding why the admission was made and what necessitates its withdrawal. The request must be made in good faith". *Aguma v SABC and Another*, (17/49514) [2022] ZAGPJHC 31 (4 February 2022).

[14] The good faith requirement does not only apply to the litigant but also extends to the legal practitioner as an agent of a party to the proceedings, advancing a case on behalf of the client. The Code of Conduct for legal practitioners says that a legal practitioner should not present anything that he/she knows to be untrue. It also states that a legal practitioner may not mislead the court on any matter of fact or question of law and may not mislead the court on what is in papers before court. In the words attributed to Lord Denning "a

barrister has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously mistake the facts. He must not knowingly conceal the truth".

[15] The defendant plays a key role in the welfare of the vulnerable members of society who are victims of the road accidents. Its primary responsibility is to compensate them fairly for the injuries sustained. It is required to be objective in the assessment of the facts and only in cases of genuine dispute should the matter come to court for adjudication. This was clearly not one of them. The defendant's own experts acting without coercion agreed with plaintiff's experts. It was incumbent upon the defendant to bring this fact to the attention of the court. I have no doubt that it would have helped in the speedy resolution of this matter.

[16] With the above out of the way, what remains is the contingencies to apply, if any, on the loss of income postulated by the actuary.

[17] Contingencies are by nature speculative and a court enjoys a wide discretion in the determination of what is a fair and reasonable award for compensation. In this regard, I do not agree with Ms Tsebane that this case calls for higher contingencies. This is because the evidence on record shows that the child sustained severe injuries which resulted indisputably in a reduced earning capacity. He deserves adequate compensation for the loss as she will suffer immeasurably as a result of both the physical and intellectual decline in his earning capacity.

[18] Having taken into account all the relevant facts applicable in this case, a fair and reasonable amount of compensation after applying the contingencies is R 6 093 400.00 as proposed by the plaintiff.

[19] The following order is made

1. Plaintiff's claim for loss of income succeeds
2. Defendant is ordered to pay plaintiff an amount of R 6 093 400.00 together with costs on a party and party scale B of the High Court including all necessary cost of medico-legal experts for preparation and attendance where applicable

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MANGENA

**ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA**

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