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

Not reportable
Case no: 5422/2023

In the matter between:

ADV ETTIENNE ERNEST BARLOW N O **PLAINTIFF**
(In his capacity as *Curator ad Litem* on behalf of
L[...] K[...] L[...] L[...])

and

THE ROAD ACCIDENT FUND **DEFENDANT**

Neutral citation: *Adv Ettienne Ernest Barlow N O v The Road Accident Fund* (5422/2023) [2026] ZAFSHC 102 (19 March 2026)

Coram: LOUBSER J

Heard: 14 November 2025

Delivered: 19 March 2026

Summary: Claim against RAF for further loss of earnings on behalf of young man who had struggled academically before the accident which occurred when he was eleven years old – higher contingency applied.

ORDER

The draft order is made an order of court, as amended.

1 The defendant shall pay an amount of R2 279 422 in respect of future loss of earnings of the plaintiff's claim, payable within 180 days from the date of this order.

2 The defendant shall pay the amount referred to in paragraph 1 above into the trust account of the plaintiff’s attorneys being as follows:

ACCOUNT HOLDER:	RAMAKGWAKGWA ATTORNEYS
ACCOUNT NUMBER:	0[…]
BANK:	STANDARD BANK
BRANCH:	JOHANNESBURG
BRANCH CODE:	0020500

3 The defendant is ordered to pay the plaintiffs taxed or agreed party and party costs on the High Court scale, which costs within the discretion of the taxing master shall include, but not be limited to the following:

(a) The costs of counsel on scale B which includes the costs of the 04th 05th and 07th of November 2025 (including preparations for trial);

(b) The costs of curator *ad litem*;

(c) The costs of the following experts’ witnesses employed by the plaintiff to quantify his claim:

(i) Neurosurgeon — Dr Akhona Mazwi

(ii) Clinical Psychologist— Lufuno Modipa

(iii) Educational Psychologist — Andile Moyo

(iv) Occupational therapist — Lawrence Makananisa

(v) Industrial Psychologist — Clement Bell

(vi) Actuary — David Mureriwa

(d) The costs for instructing correspondent attorneys;

(e) The costs of preparing all the trial bundles; if any

(f) The costs of obtaining the medico-legal reports that were served on or provided to the defendant including addendum reports;

(g) The reasonable costs of necessary consultations with the said experts and reasonable taxable travelling and accommodation costs of plaintiff for attending medico-legal experts;

(h) The reasonable costs of establishing and administering the Trust referred to in paragraph 5 below;

(i) The reasonable costs for furnishing security to the satisfaction of the Master of the High Court in respect of the Trust referred to in paragraph 5 below.

4 The net amount which is due to the plaintiff after the necessary deductions which are due to the plaintiff's attorneys, shall be payable to a trust account, which shall be established for the sole benefit of "L[...] K[...] L[...] L[...]" and which trust shall be established within 6 months of the date of this order, and which shall have the main objective, of controlling and administering the capital amount on behalf of "L[...] K[...] L[...] L[...]".

5 The trust to be formed on behalf of L[…] K[…] L[…] L[…] shall not be resolved otherwise than with an order made by this Honourable court.

6 Should the aforementioned Trust not be established within the six-month (6) month period, the plaintiff is directed to approach this Court within one (1) month thereafter, in order to obtain further directives in respect of the manner in which the capital amount is to be utilised in favour of the plaintiff.

7 Until such time that the trust has not been established, the plaintiff's attorneys are authorised to withhold the capital amount in the attorneys' trust account until a trust for the plaintiff is formed.

8 In the event the plaintiff's costs are not agreed, the plaintiff shall serve a notice of taxation on the defendant's attorneys. The plaintiff shall allow the defendant one hundred and eight (180) court days to make payment of taxed costs.

9 The plaintiff's claim on general damages and past and future medical and hospital expenses is postponed to the pre-trial roll on a date to be arranged between the parties.

JUDGMENT

Loubser J

[1] In this matter the court has to decide the future loss of earnings of Mr. L. K. L. L[...] following the injuries he sustained on 20 December 2016 in a motor

vehicle accident which occured in Seeiso Street, Phahameng, Bloemfontein. He was only 11 years old at the time, and was hit by a vehicle that was driving on the wrong side of the road when he was in the process of crossing the road as a pedestrian.

[2] Mr. L[...] is represented by a duly appointed curator ad litem since he is unable to pursue his own claim by reason of the injuries he sustained. When the matter came before this Court on 7 November 2025, it was ordered that, in terms of Rule 33 (4) of the Uniform Rules of Court, the claim for general damages, future medical and hospital expenses and past medical and hospital expenses be separated from the claim for loss of income, and that the court would only proceed to decide the claim for loss of income. The remainder of the issues stood over for later adjudication. On a prior occasion, the court made an order that the defendant is 100 % liable for the damages suffered by Mr. L[...]. In the order of 7 November 2025, the court also granted an application in terms of Rule 38(2) by agreement between the parties, and after the court heard the evidence of Mr. L[...]'s father.

[3] In the accident, Mr. L[...] suffered serious injuries, to wit a moderate head injury, a fracture of the skull and brain haemorrages, leading to cognitive and emotional deficits. According to the expert reports presented by the plaintiff, in terms of Rule 38(2), Mr. L[...] is now considered to be unemployable. This is so because his injuries have significantly impacted on his cognitive functioning, making it difficult for him to cope academically. He was in grade 3 when the accident happened, but he returned to school afterwards. However, he was unable to cope academically with the result that he failed grade 7 on more than one occasion. He made no further progress at school and is currently not schooling and is unemployed. Since the accident, Mr. L[...] has difficulty with focusing, he has recurrent headaches, he easily forgets, and he experiences epileptic fits.

[4] It further transpires from the expert reports that Mr. L[...] is unable to do work using heavy machinery or requires him to go up onto heights. His inability to reach educational progression renders him an unequal contender in the labour market, and it is therefore unlikely that he would secure any gainful employment. He is in need of constant support and supervision. On the other hand, the educational psychologist assessed that, before the accident, his baseline functioning was already below average,

evidenced by his documented academic struggles in grade 1 and 3. The psychologist added that Mr. L[...]'s realistic ceiling might have been a matric pass (NFQ level 4). It was postulated in this respect that he would have entered the job marked at age 23 – 25 and would have seen earning progression to the age of 45 with his highest income at that age. He would remain in the labour market until normal retirement age of 65, depending on various factors.

[5] The industrial psychologist determined that despite Mr. L[...]'s cognitive difficulties before the accident, he would still have been able to pursue a career of his choice depending on his motivation and support.

[6] These findings of the experts presented by the plaintiff remain undisputed since they were placed before the court by agreement in terms of Rule 38(2). The defendant itself did not present any expert reports to the court.

[7] It needs mentioning that the industrial psychologist rendered an addendum report on 29 October 2025 in which he indicated that Mr. L[...] has already reached maximal medical improvement. Notwithstanding, the accident has left him incompetent at school and unemployable in most physical activities because he suffers from epileptic seizures. He is most likely to only secure sympathetic employment, which means that he is generally unemployable, the industrial psychologist opined.

[8] The educational psychologist also presented an addendum report on 28 October 2025. The academic records of Mr. L[...] showed that he was promoted to grade 4 due to his age rather than academic merit. Prior to the accident, he had to repeat grade 1. His early difficulties indicate challenges with reading, writing or attention. The fundamental implication hereof is that the accident is not the sole cause of his academic struggles, but rather an event that exacerbated a pre-existing learning difficulty. This distinction is crucial for understanding his current needs, long-term prognosis, and for any legal or educational claims, particularly when determining which deficits were caused by the accident versus those that were already present, the educational psychologist found.

[9] Having regard to the additional information, the actuary recalculated his figures

and presented an amended report on 30 October 2025. In this report, the actuary assumed nil earnings for Mr. L[...] for the rest of his career, but he also assumed that he would have completed grade 12 in 2025 if it was not for the accident. At the age of 24, he would then have entered the open labour market at an earning level of R88 000.00 per annum, increasing to R258 000.00 per annum at age 45, until his retirement at age 65. He then calculated the net future loss to be R3 799 036.00, and after applying a contingency of 15% for illustrative purpose, he arrived at a sum of R3 229 181.00 for Mr. L[...]'s total loss of earnings.

[10] After the actuarial calculations were done, it was established that Mr. L[...] now receives a permanent disability grant, with effect from October 2025 onwards. This grant appears to be in the sum of R2 320.00 per month, which equates to R27 840.00 per annum. The question whether this grant should be taken into consideration when a final award is made, will be addressed later herein.

[11] For the moment, however, it has to be pointed out that should it be assumed that Mr. L[...] would receive the grant until age 65, the total amount of the grant would equate to R1 222 860.00 over a period of 44 years and 5 months. Presently, this figure is not factored into any calculation before the court.

[12] The position is then that the court will now first proceed to consider the contingencies to be applied without any regard to the grant Mr. L[...] is receiving. As we have seen, the actuary's calculations are based on his assumption that Mr. L[...] would have completed grade 12 in 2025 if it was not for the accident. He would then have entered the labour market at age 24 earning certain income until age 65. In my view, this assumption is not supported by the expert evidence before the court. The reality is that Mr. L[...] made very little progress at school even at the lower grades before the accident occurred. The possibility that he would ever have reached the stage of grade 12 on merit, had the accident not occurred, is only a very slim possibility on the probabilities. The projected future loss of R3 799 036.00 will therefore have to be reduced by applying a higher contingency than the 15% applied by the actuary for illustrative purposes.

[13] This view finds further support in the remarks of Daffue, J in the matter of *Berry*

N.O. obo P v Road Accident Fund:[1] 'One must be realistic and experts in particular should be warned not to be subjective and try to be too generous when reporting on the pre-morbid career prospects of plaintiffs. Our country is in a financial crisis and our employment rate is in excess of 25%; even higher under the youth. Many people with grade 12 certificates, even university degrees, are unemployed. The future is bleak for the majority of our young people.'

[14] Further support in the application of a higher contingency is found in the sliding scale where higher contingencies are provided for a youth, as referred to by Koch in The Quantum Yearbook. In the present matter there are, in my view, no material basis to depart from this principle. A pre-morbid contingency deduction of 35% is therefore justified in the present case.[2]

[15] The question of the grant that Mr. L[...] is currently receiving, remains to be settled. This question has already received the attention of a court of this Division in the matter of *R.S. v Road Accident Fund*.[3] The court held that the disability grant which is currently being paid to the plaintiff, is not to be deducted from the damages in respect of loss of income to be awarded to her, for two reasons. The first is that a disability grant is paid to a person as a result of the Constitutional obligation of the state, and not as a result of a delict which caused the disability of the person. Secondly, it is probable that the plaintiff will not qualify for the grant any more after receipt of the award made against the Road Accident Fund.

[16] I agree with the judgment in *R.S. v Road Accident Fund*. Consequently, the amount of the grant will not be deducted from the damages in respect of loss of income to be awarded in the present case. However, I will increase the contingency deduction by 5% to cater for the potential of Mr. L[...] receiving double compensation in the future, or double compensation for certain periods only in the future. The total pre-morbid contingency deduction will therefore amount to 40% of the R3 799 036 future loss of income postulated by the actuary, which will amount to compensation of R2 279 422.00.

[17] The plaintiff has provided the court with a draft order, which stands to be

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[1] *Berry N.O. obo P v Road Accident Fund* [2018] ZAFSHC 117 at para 17.
[2] *See* for example *Khan v Road Accident Fund* [2025] ZAGPJHC 338.
[3] *R.S. v Road Accident Fund* [2025] ZAFSHC 68 paras 51, 132 and 136, per Van Zyl, J.

amended by the court in order to reflect the above figures.

[18] The following order is made:

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P.J. LOUBSER

JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:	L Tlelai
Instructed by:	Ramakgwakgwa Attorneys Inc., Johannesburg c/o M M Hattingh Attorneys, Bloemfontein
For the first defendant:	J Gouws
Instructed by:	State Attorney, Bloemfontein.