

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: A66/2025

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: NO

DATE: 27 March 2026

SIGNATURE:

In the matter between:

ADV SAYED obo M[...] **Appellant**

and

THE ROAD ACCIDENT FUND **Respondent**

JUDGMENT

MOKOSE J (LEDWABA AJP and NEL AJ concurring)

[1] The appellant, Advocate Sayed, brings an appeal as the curator *ad litem* on behalf of S[...] M[...] who was involved in a motor vehicle accident on 10 January 2019 when he was 12 years old. He is presently 20 years old. The appellant appeals against the award for loss of earnings in the sum of R3 000 000,00 made by the court *a quo* on 24 February 2024. The appellant is of the view that on a conspectus of the evidence before the court, the award which should have been granted was the sum of R5 774 802,00.

[2] It is noted that the respondent's defence was struck out by the court on the date of the trial. No cross appeal has been brought by the respondent for the striking of the defence by the respondent.

[3] The brief facts are as follows: S[...] M[...] was injured as a result of a motor vehicle accident that occurred on 10 January 2018, when he was 12 years old. At the trial, it was confirmed that the merits had been conceded 100% in favour of the appellant. Furthermore, it was confirmed that general damages would be postponed *sine die* for a determination by the Health Professions Council of South Africa as to the seriousness of the injuries suffered by S[...] M[...]. The remaining item to be determined was that of future loss of earnings and future medical expenses.

[4] The court *a quo* granted an application in terms of Rule 38(2) of the Uniform Rules of Court allowing for the expert evidence of the appellant (plaintiff) to be heard on the basis of their reports as confirmed by way of affidavit. No expert evidence had been filed on behalf of the respondent.

[5] Following argument and engagement between the court and counsel for the appellant an award of R3 000 000,00 in respect of loss of earnings was made together with an undertaking in terms of Section 17(4) in respect of future medical expenses. No reasons were provided but were subsequently formally requested and furnished by Bam J. On petition to the Supreme Court of Appeal, leave to appeal was granted to this court which leave was sought against the amount awarded in respect of loss of earnings only.

[6] Having regard to the accident sustained by S[...] who was 12 years at the time of the accident, the consensus between the experts was that he had sustained a mild concussive head injury and that as a result thereof, he suffers from cognitive psychological and physical deficits. He was found to suffer from post concussive headaches and symptoms of depression and post-traumatic stress disorder. The educational psychologist concluded that based on the available information, the patient's highest level of education will in all likelihood be a Higher Certificate (NQF

Level 5), with support. The expert further noted that there had been a substantial loss of potential.

[7] The Industrial Psychologist postulated that S[...] would in future suffer loss. She postulated that had the accident not occurred, S[...] would have completed Grade 12 by 2024, whereafter it would have taken him 1 to 3 years to secure formal employment. Upon securing employment, he would have earned remuneration commensurate with the basic salary at the Paterson A2 median level. While working, he would have completed a part-time NQF level 7 qualification in line with his chosen career within 5 to 6 years of securing formal employment. He would thereafter compete for work in the Paterson B band. Upon completion of his qualification, his earnings would have increased with a guaranteed annual package at the Paterson B3 median level. Upon reaching his career ceiling, he would have been remunerated commensurate with the guaranteed annual package at the Paterson D2 median level, whereafter he would receive inflationary increases until retirement at the age of 65.

[8] On the basis of the Industrial Psychologist's postulation, the actuary calculated that the appellant's future loss of earnings would be the sum of R5 774 802,00.

[9] The appellant appeals on the ground *inter alia*, that the court erred by not accepting the findings and conclusions of the experts of the appellant in total, specifically the Industrial Psychologist's findings and conclusions notwithstanding the fact that there was no contradictory evidence adduced by the respondent. Furthermore, the court erred in substituting its own interpretation of the importance of the Glasgow Coma Scale with that of the relevant experts in finding that there was no brain injury. This was in view of the uncontested evidence of the neurologist, neuropsychologist and educational psychologist who agreed that S[...] had sustained at least a mild concussive brain injury. There was no scientific evidence before the court that could have justified such a conclusion, nor does the determination of a brain injury fall within the expert knowledge of the court.

[10] In the matter of *The Road Accident Fund v Guedes*¹ the court held as follows:

"The Appeal Court will interfere with the award of the trial court:

- i. where there has been an irregularity or misdirection (for example, the Court considered irrelevant facts or ignored relevant ones; the court was too generous in making a contingency allowance; the decision was based on totally inadequate facts).*
- ii. where the Appeal Court is of the opinion that no sound basis exists for the award made by the trial court.*
- iii. where there is a substantial variation or a striking disparity between the award made by the trial court and the award which the Appeal Court considers ought to have been made. In order to determine whether the award is excessive or inadequate, the Appeal Court must make its own assessment of the damages. If upon comparison with the award made by the trial court there appears to be a "substantial variation" or a "striking disparity", the Appeal Court will interfere."*

[11] The matter was argued based on the expert reports per Rule 38(2). The court *a quo* did not indicate that it was of the opinion that the expert evidence stood to be rejected. Furthermore, the determination of the existence, extent and sequelae of the brain injury sustained by S[...] does not fall within the purview of the specialist knowledge of the Judge. Accordingly, I am of the view that the Court *a quo* could not rely on its own conclusions to the contrary.

[12] The appellant further contends that the Judge erred in failing to properly examine evidence and in so doing, failed to take cognisance of the true extent of S[...]’s sequelae.

[13] It is evident from the record that from the inception of the hearing, the Judge formed an opinion that the basis for the calculation by the actuary was unsubstantiated. The comments and views that *"none of this is real"* and that *"... it is all up in the air...."* are indicative of same and certainly fly in the face of the expert

¹ 2006 (5) SA 583 (SCA) at para 8

evidence of the Educational Psychologist and Industrial Psychologist as to the probable academic and career path of S[...] had the accident not occurred. She further failed to take in account evidence that the minor child had been diagnosed as suffering from post-traumatic stress disorder (PTSD).

[14] Furthermore, the court reasoned that:

"10. In the court's view, the projections of the IP reflect more the present state of the South African economy. The court in this regard took into account the country's sluggish economy, with negligible growth and chronic unemployment, to the point that it is normal to hear of graduates sitting at home, including medically trained graduates of various kinds, lawyers and more. Thus, rather than being a reflection of the minor's injuries, the projections reflect the struggling economy of our country. These are matter that the court took judicial notice of in reflecting on the circumstances of the case."

[15] Although judges may, in arriving at decisions, use their general information and knowledge of common affairs, they may not act on their own private knowledge or belief regarding the facts of a particular case.² Furthermore, should a court intend to take judicial notice of a fact, it has a duty to forewarn the parties.³

[16] The appellant furthermore appeals on the ground that there was no sound basis for the award of R3 000 000,00 made by the Court. It was an arbitrary amount where no mathematical basis for the figure was provided.

[17] Whilst the court referred to several cases in providing the reasons that confirm the discretion of a Judge in making an award, they do so within the context of the discretion in determining contingencies to be applied to an actuarial calculation. The

² R v Tager 1944 A.D. 399

³ Invula Quality Protection (Pty) Ltd v Licinio Loureiro & Others [2013] ZASCA 12

court failed to assess all the evidence place before it properly. In so doing, it misdirected itself on the facts, thereby committing an irregularity.⁴

[18] For the reasons as set out above, I am of the view that the Judge erred and accordingly, the following order is granted:

1. The appeal is upheld;
2. The order contained in paragraph 4.1 of the order of the Court *a quo* dated 22 February 2024 is set aside and replaced with the following order:

The Defendant pay the Plaintiff an amount of R5 774 802,00 (FIVE MILLION SEVEN HUNDRED AND SEVENTY-FOUR THOUSAND EIGHT HUNDRED AND TWO RAND ONLY) in full and final settlement of the Plaintiff's claim for Loss of Earnings, payable into the Plaintiff's attorneys of record trust account with the following details:

Account Holder: Ehlers Attorneys
Bank Name: FNB
Branch Code: 261150
Account Number: 6[...]

3. The Respondent is ordered to pay the costs of the applications for leave to appeal in both the court *a quo* and the Supreme Court of Appeal.
4. The Respondent is ordered to pay the costs of this application on Scale "B".

SNI MOKOSE J
Judge of the High Court of

⁴ Tromp N.O. v Road Accident Fund [2024] ZAGPPHC 529 (5 June 2024)

**South Africa,
Gauteng Division, Pretoria**

I agree,

**AP LEDWABA AJP
Judge of the High Court of
South Africa,
Gauteng Division, Pretoria**

I agree,

**P NEL AJ
Acting Judge of the High Court of South Africa
Gauteng Division,
Pretoria**

For the Applicant: Adv Karin Strydom
Instructed by: Ehlers Attorneys

For the Respondent: No appearance

Date of hearing: 19 January 2026
Date of judgment: 27 March 2026