IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 58044/2019

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE 14/4/2026

SIGNATURE

In the matter between:

Z[...] N[...] H[...]	Plaintiff
and	
ROAD ACCIDENT FUND	Defendant

JUDGMENT

PIENAAR AJ

Introduction

1. The plaintiff filed an action against the Road Accident Fund claiming that he sustained injuries when he was a passenger in a motor vehicle with registration numbers and letters N[...], which was involved in an accident that occurred on 3 May 2018 at Emhubheni to Escourt, Kwa Zulu Natal.

2. This matter was on the default judgment roll for the 3rd of February 2026. When the matter was called, there was no appearance for the RAF, despite due notice of the trial date being given to it. The matter proceeded on a default basis.

3. The plaintiff lodged a claim with the defendant (“the RAF”) in terms of the provisions of the Road Accident Fund Act, No 56 of 1996 (“the Act”) claiming damages resulting from the injuries sustained in the collision.

4. The Defendant conceded the merits on 19 December 2018. Therefore, the Defendant is 100% liable for the plaintiff’s proven or agreed damaged arising from the collision. The Plaintiff served the notice of set down on the Defendant on 18 November 2025.

5. The Plaintiff served a Notice of Bar on the Defendant on 14 October 2024.

6. The Plaintiff served an amendment of the particulars of claim in terms of Rule 28 (2) on the defendant on 9 December 2025. As amended the plaintiff claims the following amounts:

6.1 General Damages	R2 000 000,00
6.2 Past and Future medical expenses	R1 200 000,00
6.3 Future loss of income	R5 000 000,00

7. Plaintiff's counsel submitted that they are before the court for the determination of future medical expenses and loss of earnings. The Court informed counsel that, according to the actuary's calculations, the amount for loss of earnings is R7,280,134. This amount exceeds the amended particulars of claim. Plaintiff's counsel submitted that they are proceeding with the amount of R5,000,000, as per the amended particulars of claim.

8. The Fund did not admit the RAF 4 serious injury assessment of the Plaintiff. Therefore, the issue of General Damages is postponed sine die.

9. The Plaintiff's brought an application in terms of Rule 38(2) of the Uniform Rules of Court for the expert reports and affidavits to be admitted into evidence. Havenga vs Parker **[1]**, confirmed by the Supreme Court of Appeal in Madibeng local Municipality vs Public Investment Corporation 2018 (6) the ("SCA"), found that it is permissible to place expert evidence before the court by way of affidavit in terms of Rule 38(2), accordingly that application was granted.

10. In the matter of **Bails v First Rand Bank Limited t/a Wesbank [2]**, the Constitutional Court outlined the law relating to the evaluation of evidence in cases of default judgment as follows:

"In terms of our civil procedure, a default judgment for a debt or liquidated demand is granted on an acceptance of the allegations as set out in the summons, without any evidence. Where the claim is not for a debt or liquidated demand, the court may, after hearing evidence, grant judgment. This typically provides evidence only on the amount of unliquidated damages. The reason for not hearing evidence on the other factual allegations made in the summons or particulars of claim is that, because the claim is not opposed, it may be accepted that those allegations are admitted or not disputed"

11. I reserved this judgment at the conclusion of the trial after listening to oral submissions by Plaintiff Counsel, Adv Masina.

Quantum

Old expert reports:

12. The Plaintiff appointed several experts to assess and evaluate the nature of his injuries and the sequalae of the injuries sustained. The Plaintiff served the following medico legal and addendum reports on the Defendant:

12.1 M S Mokgokong - Neurosurgeon - served on 29 October 2019
12.2 Gaongalelwe Bokaba - Clinical Psychologist - served on 29 October 2019
12.3 Tlhoriso Audrey Sepenyane - Educational Psychologist- served - unknown - no RAF stamp
12.4 Ms Phophi Jessica Mudau - Occupational Therapist - served on 5 November 2019
12.5 Masase Eve Magesa Mokhethi - served on 1 November 2024
12.6 Johan Sauer - Actuary served on 25 May 2025

Addendum reports:

12.7 Prof Patrick Lekgwara- Neurosurgeon served on 28 January 2026
12.8 Dr Sello Solly Selahle - Plastic & Reconstructive Surgeon - served on 28 January 2026
12.9 Ms Gaobokaba- Clinical Psychologist - served on 28 January 2026
12.10 Ms Phophi Jessica Mudau - Occupational Therapist- served on 28 January 2026
12.11 Ms Masase Eve Magera -Mokhethi - Industrial Psychologist- served on 29 January 2026
12.12 Tlhoriso Sepenyane- Educational Psychologist - served on 28 January 2026
12.13 Johan Sauer Actuaries - 29 January 2026

Future medical treatment

13. On page 012-9 on Caselines the report of Dr Lekgwara foresees that the minor child will incur the following future medical expenses:

13.1 “ An allowance of R15 000 per annum to treat epilepsy depending on the type of treatment given.

13.2 Treatment for headache will cost up to R3 000 per annum”

14. In paragraph 6.1 of Dr. Selahle’s report, he foresees that the minor child will need surgical treatment for all her scars to improve them through scar revision. The defendant will provide the plaintiff with an undertaking in terms of a Section 17(4)(a) undertaking.

Future Loss of earnings/earning capacity

Prof Patrick L. Lekwara - Neurosurgeon

15. According to Prof Lekwara, she had loss of consciousness of more than 5 minutes. She is suffering from post-concussion headaches and memory problems which will need assessment and treatment. Prof Lekwara reported that the plaintiff sustained a mild traumatic brain injury (Grade 3 concussion).

Dr Gaongalelwe Bokaba - Clinical Psychologist

16. O[...] was attending creche at the time of the accident, she was doing Grade 5 at the time of the assessment. She failed and repeated Grade 3 post accident due to lack of comprehending the learning content. O[...] has cognitive deficits which compromise

her scholastic performance. Amenities and enjoyment of life are negatively affected by chronic headache and lingering physical pain on the left ear.

T A Sepenyane - Educational Psychologist

Pre accident potential

17. Information obtained from Ms H[...]'s mother indicates that O[...] was born prematurely at five month's gestation and required hospitalization for two months and two weeks at Estcourt Hospital. Where she participated in the Kangaroo Care Program. Despite her prematurity, she developed well without complications.

18. Her developmental milestones were age-appropriate, and she was described as an active child who enjoyed play and maintained healthy peer relationships both at home and at creche. At the time of the accident, O[...] was 4 years and 3 months old and attending creche.

19. Based on her intact early development and family educational background-where an aunt holds a degree in Chemical Engineering and other family members attained up to a Grade 11. It is probable that, but for the accident, O[...] would have had the potential to complete Grade 12 (NQF 4) and possibly progress to post-school studies at Diploma (NQF 6) depending on career choice.

Post accident potential

20. At the time of the accident, S[...] was 4 years old Learner in Creche. Note is taken post accident, she repeated Grade R and Grade 3 respectively. She is currently 11 years old and a learner in Grade 5.

21. Post accident difficulties have negatively affected her ability to cope in a mainstream classroom, where curriculum demands exceed her current learning capacity. Placement in a special needs school is therefore recommended to provide individualized instruction, and reduced curriculum pace. She would reach National Vocational certificate (NQF 4).

Masase Eve Mageza-Mokhethi - Industrial Psychologist

Pre morbid (had the accident not occurred)

22. Dr Sepenyane, Educational Psychologist reported that based on O[...]'s intact early development and family educational background- where an aunt holds a degree in Chemical Engineering and other family members attained up to Grade 11. It is probable that, but for the accident, she would have had the potential to complete Grade 12 (NQF 4) and possibly progress to post school studies at Diploma (NQF 6) depending on career choice.

23. S[...] could have entered the labour market in a more permanent position at a Paterson B4 level. Overtime and after having gained experience, being provided with access to on-the-job training and deepening of skills and knowledge, she could have been capable of dealign with job content complexity at the Paterson Job Grade C3/C4 by age 45 years. Thereafter, increases would apply until she reaches retirement age at age 65 years.

Post morbid (situation after the accident)

24. At the time of the accident, S[...] was a 4 years old Learner in Creche. Note is taken post accident, she repeated Grade R and Grade 3 respectively. She is currently 11 years old and a Learner in Grade 5.

25. With regards to O[...]'s post accident potential, Dr Sepenyane, relayed that the post accident difficulties have negatively affected her ability to cope in a mainstream classroom, where curriculum demands exceed her current learning capacity. She would be in protected academic environment which would enable her to reach National Vocational certificate (NQF 4).

26. She will obtain NCV Level 4 at age 21/22 in the year 2035/2036. She may enter the open labour market earning within the Lower and Median Quartile of unskilled workers in the non-corporate sector in the year 2037/2038. As she obtains work experience, she will grow and will reach her career ceiling earning within the Median and the upper quartile earn gins of semi-skilled workers in the non-corporate sector by age 45 - 50 years with increases until retirement.

Johan Sauer - Actuaries

27. The actuarial report is based on the Industrial psychologist's report. Plaintiff's counsel submitted that he would only accept R5 000 000.00 for loss of earnings, based on the Rule 28 amendment.

28. Owan is still very young; therefore, the court is of the view that a 28% contingency should be applied to pre-morbid future earnings and 40% to post-morbid earnings. The amount arrived at is R6 430 926.92; however, because the plaintiff only claimed R5 000 000.00, the court cannot award more than the amount claimed.

29. The breakdown of the loss of earnings is as follows:

Pre morbid	R10 615 086 - 28% = R7 642 861,92
Post morbid	R2 019 892 - 40% = R1 211 935,00

Total = R6 430 926,92, amount claimed as per the particulars of claim is R5 000 000,00

Funds to be protected

30. Plaintiff's counsel argued that the funds must be protected, and a trustee's consent letter has been uploaded onto CaseLines under Section 022. Therefore, it would be in the best interests of the minor child for the funds to be protected.

31. Counsel argued that an amount of R300 000.00 should be excluded from the trustee's account, and that this amount should be transferred to the plaintiff's bank account to meet O[...]'s immediate financial needs.

PIENAAR M

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ACTING JUDGE OF THE HIGH COURT OF GAUTENG PRETORIA

Hearing date : 3 February 2026

Judgment delivered : 14 April 2026

This judgment was handed down electronically by circulation to the parties'representatives by email, by being uploaded to Case Lines. The date and time for hand-down is deemed to be 14 April 2026.

APPEARANCES:

Plaintiff Counsel	: Adv Masina S.S
Instructed by	: Magagula Attorneys email: info@magagulaattorneys.co.za
Respondent Legal representatives	: Road Accident Fund No appearance Link no: 4501703

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[1] Havenga vs Parker 1993 (3) SA 724 (T)

[2] Baliso v First Rand Bank Limited t/a Wesbank [2016]ZACC 236 par 12