



**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST HIGH COURT MAHIKENG**

CASE NO: RAF 154/2017

Reportable: YES / **NO**

Circulate to Judges: YES / **NO**

Circulate to Magistrates: YES / **NO**

Circulate to Regional Magistrates: YES / **NO**

In the matter between:

K[...] D[...] M[...]

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

Coram: TSAUTSE AJ

Date considered: 2 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for the hand-down of the judgment is deemed to be 10h00 on 11 May 2026.

JUDGEMENT

TSAUTSE AJ

Introduction

[1] This is a claim arising from injuries sustained by the plaintiff, who was a minor at the time of the incident. The plaintiff, then eleven (11) years old, was injured in a motor vehicle collision in 2016. The action is instituted against the Road Accident Fund (“RAF”) for general damages and loss of earning capacity.

[2] The defendant conceded liability on the merits in full, that is, 100% in favour of the plaintiff.

[3] At the outset, the plaintiff brought a preliminary application in terms of Rule 38(2) of the Uniform Rules of Court, read with section 34(2) of the Civil Proceedings Evidence Act 25 of 1965, seeking that all evidence in this matter be adduced by way of affidavit.

[4] During the argument, the defendant’s counsel opposed the claim for loss of earnings, submitting that the educational psychologist’s report only commenced its assessment from Grade 3 due to the absence of school reports for Grades 1 to 3. Counsel accordingly requested that the matter be referred back to the educational psychologist once the plaintiff has produced the reports from Grade R to Grade 2.

[5] The Court ruled that the claim for loss of earnings be separated and excluded from the present adjudication, and directed the plaintiff to furnish the Grade R to Grade 2 reports to the educational psychologist, who is to revise the report once those documents are available.

[6] The only issue presently requiring determination of this Court is therefore the quantum of general damages. The loss of earnings claim stands over for further process once the outstanding documentation has been provided.

[7] This judgment is thus concerned with the assessment of general damages, that is, appropriate compensation for the plaintiff's pain, suffering, emotional distress and loss of amenities of life occasioned by the injuries sustained in the collision.

Background Facts

[8] At the time of the collision, the plaintiff was an eleven (11) years old minor in Grade 4 of his primary school. The plaintiff has now reached the age of majority and is currently twenty years old.

[9] On 19 May 2016, at approximately 18:10, a collision occurred along Mokareng Road in Taung, North West Province, when the plaintiff was riding his bicycle and was struck by the insured vehicle.

[10] As a result of the collision, the plaintiff was hospitalised for seven days and received orthopaedic care for the following injuries:

10.1 A fracture of the femur that required surgical intervention, involving the insertion of titanium elastic nails. The fracture was successfully stabilised, and the nails were removed approximately twenty months later.

10.2 A mild traumatic brain injury, which was assessed with an initial Glasgow Coma Scale (GCS) score of 14 out of 15.

10.3 Abrasions on the face and a left cranial nerve VI (CN VI) palsy.

10.4 According to the orthopaedic report, the plaintiff has permanent disfigurement, including an 8 cm x 1 cm surgical scar on the lateral aspect of the knee and an 8 cm x 2 cm surgical scar on the medial aspect of the knee.

[11] Following the accident, the Plaintiff has identified several significant medical complaints:

11.1. Recurrent severe headaches that occur weekly, for which he self-medicates using over-the-counter analgesics.

11.2. Persistent leg pain that is aggravated by cold weather.

11.3. Difficulty standing or walking for extended periods.

11.4. Reduced endurance and impaired gross motor coordination.

11.5. Psychological effects, including irritability, anger, forgetfulness, concentration difficulties, nightmares, and flashbacks.

11.6. Academically, the Plaintiff experienced repeated failures starting from Grade 6 and ultimately left mainstream schooling at Grade 8 to pursue vocational training.

This pattern is consistent with post-traumatic cognitive and psychosocial difficulties.

[12] The plaintiff is now claiming R120000 million for the general damages

Applicable Legal Principles

[13] In determining non-patrimonial damages, the court is guided by established principles. In *Senyasamore obo KOS v Road Accident Fund* (RAF 583/2023) ZANWHC 81, Djadje DJP (as she was then) dealt with a matter involving a minor child who sustained a serious head injury, with a GCS score of 11/15, and multiple facial abrasions. The child developed ongoing headaches, memory problems and poor scholastic performance. The Court reiterated that general damages are compensatory rather than punitive; they are intended to provide relief for pain, suffering, and loss of amenities of life. Relying on *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194, the Court emphasised that previous awards in comparable cases serve only as guidelines, and that each case must be determined on its own facts. Having regard to the severity of the injury and its impact on the minor's life, an amount of R1,8 million was awarded for general damages.

[14] A similar approach was adopted in *Viller NO obo TP Ganenang v Road Accident Fund* (RAF 524/2022), where Djadje DJP (as she was then) again stressed that while comparable awards are useful, the primary focus must remain on the particular circumstances of the injured person, the seriousness and consequences of the injuries, and their effect on the claimant's life trajectory. These authorities collectively emphasize that general damages must be fair and just, guided (but not dictated) by past awards and grounded in the concrete impact of the injuries on the individual.

[15] From these and related decisions, the following guiding principles emerge in matters involving injured children and young persons:

15.1. The injury must be understood comprehensively, taking into account all aspects of the child's experience and circumstances.

15.2. Central to this assessment is the child's developmental trajectory, which highlights the importance of considering how the injury affects their growth and progress at various stages of life.

15.3. Finally, any awards or compensations must reflect a deep respect for the child's dignity, acknowledge the suffering endured, and consider the long-term implications of the injury on their future.

Comparative Awards

[16] Counsel for the plaintiff referred the Court to several comparable decisions. I mention two that are particularly instructive.:-

16.1. In *Smit v Road Accident Fund* (24883/2008) ZAGPPHC 294, Makgoka J awarded R650 000 in general damages to a 27-year-old cyclist who sustained a femoral fracture and a severe head injury. The plaintiff suffered significant pain, frequent headaches and physical limitations that prevented a return to his previous employment. In assessing the award, the Court considered the seriousness and combined effect of the orthopaedic and head injuries, their lasting impact on daily functioning, the erosion of the value of money over time, and comparable cases such as *Mgudlwa v Road Accident Fund* (818/2002) ZAECMHC 13 and *Venter NO and Another v Road Accident Fund* (859/2007) ZAWCHC 208.

16.2. In *Brouwer NO v Road Accident Fund* (22517/2012) ZAGPPHC 21, Miller AJ awarded R1 600 000 in general damages to a minor aged five at the time of a 2010 collision. The award reflected the grave and enduring consequences of multiple injuries, including devastating urological damage with permanent incontinence, severe orthopaedic trauma, a mild traumatic brain injury with chronic subdural haematoma and profound psychosocial sequelae characterised by depression, disability-related stigma and social isolation.

[17] Counsel for the defendant submitted that, on a proper reading of the orthopaedic report in the present matter, the plaintiff has essentially recovered from his injuries and there is no indication that further surgical intervention is anticipated. The thrust of the argument was that, in light of the relatively "mild" head injury and the apparent orthopaedic recovery, a comparatively modest award would be appropriate. In support of this, she referred the Court to *Sithole v Road Accident Fund* (35916/18) [2023] ZAGPPHC 252, where the court awarded R750,000.00 for general damages to a plaintiff who had sustained a brain injury

with a GCS of 13/15, permanent hearing loss, and significant scarring. Counsel argued that since the injuries in the present matter are less debilitating than those in *Sithole*, the award should be scaled down accordingly.

ANALYSIS

[18] The plaintiff sustained a serious femoral fracture requiring operative fixation with titanium elastic nails, followed by a second procedure to remove the implants after about twenty months. He also suffered a mild traumatic brain injury, with a GCS of 14/15, and was hospitalised for seven days. There were additional soft-tissue and neurological injuries, including facial abrasions and a CN VI palsy. The orthopaedic evidence confirms permanent scarring of the knee, which constitutes a disfiguring feature relevant to general damages.

[19] The uncontested evidence further demonstrates that the plaintiff continues to suffer significant residual sequelae: persistent weekly headaches, ongoing leg pain, limitations in standing and walking, reduced stamina, and psychological difficulties, including irritability, anger, concentration problems, nightmares and intrusive recollections. His educational history is characterised by repeated failures from Grade 6 onwards, culminating in the abandonment of mainstream schooling in favour of vocational training. While it would be simplistic to attribute every academic setback solely to the accident, the expert evidence and the timing of the decline support a conclusion that the traumatic brain injury and its sequelae materially contributed to his scholastic difficulties.

[20] Importantly, the medical records have shown that the label “mild” in “mild traumatic brain injury” is a clinical shorthand and does not necessarily correlate with the seriousness of the functional impact on a particular individual. This accords with the observation in *TDT obo TGS v Road Accident Fund* (RAF17/2019) [2024] ZANWHC 270 (31 October 2024), that courts must look beyond the technical classification to the concrete effect on the claimant’s life.

[21] On any realistic view, the plaintiff’s life trajectory has been altered. His childhood and adolescence have been marked by pain, repeated medical interventions, academic frustration and psychological distress. He faces the prospect of living with chronic headaches, residual physical limitations and the enduring consequences of interrupted education.

[22] The law does not compensate for misfortune as such; it compensates proven harm. In this case, the plaintiff's physical, psychological and educational harm has been clearly established on the evidence before the Court.

Award

[23] In determining a just and equitable award for general damages, I take into account:

23.1 The nature and extent of the orthopaedic injury and its surgical management, including permanent scarring.

23.2 The mild traumatic brain injury and its ongoing sequelae.

23.3 The plaintiff's persistent headaches, functional limitations and emotional difficulties.

23.4 His young age at the time of the collision and the disruption to his schooling and development.

23.5 The guidance afforded by comparable awards such as *Smit*, *Brouwer*, and more recent decisions in this Division and elsewhere, appropriately adjusted for inflation and differences in factual matrices.

23.6 The principles articulated in *Senyasamore obo KOS v RAF* and *Viller NO obo Ganenang v RAF*, as cited above, namely that general damages must be fair, grounded in the actual impact of the injuries and respectful of the claimant's dignity, are principles that must consistently be borne in mind when quantifying general damages. They serve as a constant check to ensure that any award is not mechanical or purely comparative, but is tailored to the claimant's lived experience and thus reflects a just and equitable assessment of the harm suffered.

[24] The defendant placed reliance on *Sithole v Road Accident Fund*, in which an amount of R750 000.00 was awarded in respect of a brain injury (GCS 13/15) coupled with hearing loss. That authority is, however, distinguishable. In the present matter, the plaintiff was an eleven-year-old minor who, in addition to a mild traumatic brain injury, sustained a fractured femur necessitating two separate surgical procedures, namely the insertion and subsequent removal of titanium elastic nails, and has been left with permanent surgical scarring measuring approximately 8 cm. The cumulative effect of these injuries on a vulnerable child is materially more severe than the sequelae in *Sithole*.

[25] In determining an appropriate award, this Court has carefully considered the authorities relied upon by both the plaintiff and the defendant. The defendant's reliance on *Sithole v Road Accident Fund* [2023] ZAGPPHC 355 (28 July 2023), where R750 000.00 was awarded for a concussive head injury (GCS 13/15) with associated hearing loss and psychological sequelae, provides a useful point of departure, but remains distinguishable for the reasons already stated above. By contrast, the plaintiff's reliance on *Smit v Road Accident Fund and Senyasamore obo KOS v Road Accident Fund* reflects an approach where higher awards are made in circumstances involving a combination of head injury and lasting functional impairment, particularly in respect of minor children whose developmental trajectory has been adversely affected.

[26] This approach finds further support in *C.D.S obo K.O.S v Road Accident Fund* (RAF583/2023) [2025] ZANWHC 81, where the Court awarded R1 800 000.00 in general damages to a young child who sustained a head injury (GCS 11/15) with associated neurocognitive and behavioural impairments, chronic pain, and post-traumatic stress. The Court recognised the profound and lasting impact of such injuries on a child's development and learning ability.

[27] In the present matter, the plaintiff's injuries must be viewed holistically. The combination of a mild traumatic brain injury, significant orthopaedic trauma requiring surgical intervention, ongoing pain, functional limitations, visible scarring, and persisting neurological sequelae distinguishes this case from the lower range of awards. At the same time, the Court remains mindful that comparable cases serve only as guidelines, and that the award must be fair to both parties. In the exercise of its discretion, and having regard to all relevant factors, this Court is satisfied that an award in the upper-middle range is justified.

Issues

[28] In the present matter, the plaintiff is a young child who sustained not only a mild traumatic brain injury, but also a fractured femur requiring surgical intervention, with ongoing pain, functional limitations, and visible scarring. In addition, the presence of a left cranial nerve VI palsy, together with a GCS score of 14/15, reflects a persisting neurological deficit which further affects the plaintiff's quality of life. These combined injuries, viewed in light of the plaintiff's developmental stage, justify an award higher than that in *Sithole*, while remaining within the bounds of fairness and consistency with comparable cases.

[29] Having regard to all the circumstances, including the passage of time since the award in *Sithole*, the guidance provided by comparable authorities, and the particular long-term sequelae in this matter, this Court is satisfied that an award of R1 100 000.00 (one million one hundred thousand rand) for general damages is fair and reasonable. Such an award avoids both extravagance and undue parsimony and reflects a balanced and equitable response to the harm suffered. No monetary award can restore the plaintiff's childhood or fully reverse the consequences of the collision; the law can only, in a limited way, acknowledge the suffering endured and provide a measure of restitution.

Order

I make the following order:

1. The defendant is ordered to pay to the plaintiff the sum of R1 100 000.00 in respect of general damages.
2. Interest on the aforesaid amount shall run at the prescribed legal rate from 14 days after the date of this order to the date of final payment.
3. The issues relating to loss of earning capacity are separated in terms of Rule 33(4) and stand over for later determination after the plaintiff has complied with the directive concerning the submission of school reports and the revised educational psychology report.
4. The defendant is ordered to pay the plaintiff's taxed or agreed party-and-party costs in respect of the general-damages portion of the claim, such costs to include the qualifying, reservation and, if applicable, attendance fees of the plaintiff's expert witnesses whose reports were admitted into evidence

T. TSAUTSE
ACTING JUDGE
NORTH WEST DIVISION, MAHIKENG

Appearances:

For the Plaintiff: Adv M. P Ramela

For the Defendant: Adv N. F. Mathebula