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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED

28 April 2026 _____

DATE SIGNATURE

CASE NO.: A140/2025

COURT A QUO CASE NO.: 32952/2018

In the matter between:-

ADV YVETTE ISAACS obo N[...] E[...] Appellant

v

ROAD ACCIDENT FUND Respondent

Heard on: 28 January 2026

Delivered: 28 April 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 14:00 on 28 April 2026.

Summary:

1. An appeal court would only interfere if there is a misdirection in law or on the facts on the part of the court *a quo*. If a trial court's assumption is within a reasonable range a court on appeal will not interfere **(Bee v Road Accident Fund 2018(4) SA 368).**

2. A court is not bound to the opinion of an expert. An expert's reasoning must be underpinned by proper reasoning in order for a court to assess the cogency of the opinion. For an opinion to be underpinned by proper reasoning, it must be based on correct facts.

ORDER

It is ordered:-

1. The appeal pertaining to the refusal by the court *a quo*, for loss of earning capacity and future loss of income, is dismissed.

2. The issue of general damages is postponed *sine dies*.

3. The appellant is liable for the costs of this appeal.

JUDGMENT

KOOVERJIE J (Mngqibisa-Thusi J and Bam J concurring)

THE APPEAL

[1] This appeal lies against certain portions on the court *a quo's* judgment delivered on 25 February 2025, in particular, the court's refusal of the appellant's claim for future loss of earning capacity and future loss of income on behalf of the minor child, N[...] E[...]. Although the respondent conceded 100% on the merits, it has not participated in any court proceedings. The court *a quo* in its judgment referred to N[...] as Mr E[...].

BACKGROUND

[2] Adv Yvette Isaacs represented the minor in her capacity as curator ad litem. He was born on 29 April 2008 and when the accident occurred, he was 7 ½ years old. It was relayed that whilst riding his bicycle on the road he was struck by the insured driver. The details of the insured driver are unknown. At the time of the accident N[...] was in Grade 1 at the Strand Moslem Primary School.

[3] Of significance is the recordal of the injuries sustained by N[...] as per the hospital records of the Helderberg Hospital, namely that N[...] suffered: 2cm laceration on the chin and multiple abrasions on his forehead, hands, and right knee. His Glasgow Coma Scale (GCS) was recorded as 15/15. He lost consciousness for around 5 minutes and complained of a headache. He was treated with paracetamol and ibuprofen. He was kept overnight in hospital for neurological observation and discharged from the hospital the day after. It was however pleaded in the particulars of claim that N[...] sustained a traumatic brain injury resulting in neurocognitive and psychological deficits.

THE COURT A QUO'S FINDING

[4] The court *a quo*, in essence:

4.1 was not convinced that the accident caused the minor child's neurological and psychological deficits. It held the view that the non-serious injuries that the minor sustained were incapable of attracting an earning capacity which would have translated into loss of income. The court stated:

"This court does not profess to be an expert in the field, but it seems illogical for a bruise or laceration on the head to have severe long-term neuropsychological disturbances or disorders";

4.2 pointed out that a Glasgow Coma Scale reading between 13 to 15, would indicate that the injury was mild. In this case the reading was 15/15. The court explained that:

"Where the GCS is 13 to 15, the injury is mild, and if it is 9 to 12, the injury is moderate and if it is 8 and below the injury is severe." The court was of

the view that since N[...] was unconscious for a few minutes, the injury was mild;

4.3 was not satisfied with the experts' reports, particularly Dr. Domingo who opined that N[...] suffered from a traumatic brain injury whereas the hospital records did not reflect such injury;

4.4 was of the view that "other factors" such as the effect of the gangsterism in the school environment could have triggered his bad performance. At paragraph 27 the court expressed:

"Observedly, intensity of curriculum requirements, increased disparity between the abilities and academic expectations, socio-economic factors; as well as social pressures, and safety concerns all contributed to premature exiting his education….";

4.5 further criticized the inaccurate information relayed to the experts by Mr. E[...] (father of N[...]) who mainly consulted with the experts. For instance, he informed Ms. Bekker that N[...] lost consciousness and was in the ICU unit for a period of one week whereas the hospital records noted an overnight stay for observation, and further that N[...] was standing on the sidewalk when he was hit by the car. This caused the court *a quo* to further question the veracity of the information presented to the experts, particularly in respect of the minor's neurocognitive and neuropsychological shortcomings.

THE GROUNDS OF APPEAL

[5] In the grounds of appeal it was contended that the court *a quo* had misdirected itself on the facts and in law in that:

5.1 It erroneously applied the test for general damages to the claim for loss of earnings when the court held *inter alia* the view that *"non-serious injuries are incapable of effecting an incapacity which will translate in a loss of income…".* The appellant pointed out that the court disregarded the fact that a claim for loss of earning capacity can exist even when injuries are not severe or serious.

5.2 It was pointed out that since the court was dissatisfied with the findings and conclusions of the experts, particularly, the neurosurgeon, Dr. Domingo, the appellant should have been afforded an opportunity to address the concerns of the court and not merely dismiss the expert's version.

5.3 The court relied on articles outlined by authors, in this case Steinman and Fleming, without confirming if they were authoritative texts relied upon by the medical profession. Furthermore, these texts were not placed before the court nor addressed in evidence.

5.4 The court could not have relied on Dr. Reid's opinion when such report was not advanced to the court.

5.5 It failed to consider N[...]'s declining academic performance in context, in particular with regard to his school results up to Grade 7, as analyzed by Ms. Clerk, the educational psychologist.

5.6 It erred in concluding that Ms. Clerk failed to postulate what the academic achievements of N[...] would have been if the accident did not occur. To the contrary, Ms. Clerk had sketched this scenario in her report.

5.7 It erred in concluding that N[...] left school in Grade 8 due to the gangsterism issue at school;

5.8 It further erred in finding the HPCSA's response that the injuries were not serious were not challenged. It was pointed out that reasons were requested from the HPCSA and the appellant intends to challenge such decision.

5.9 It erred in not holistically considering the reports of the experts;

5.10 It erred in concluding that the appellant had no claim for general damages. The general damages issue constitutes a separate head of damages and accordingly should have been postponed.

5.11 The wording for the undertaking pertaining to the future medical expenses was not in accordance with the prescripts Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 (the Act).

ANALYSIS

[6] The salient principle enunciated by our authorities is that an appeal court may only interfere if there was a misdirection on the part of the trial court in arriving at the assumption or if such assumption was substantially different from the outcome of the appeal court would arrive at. Simply put. in the absence of misdirection if the trial court's assumption are within a reasonable range, the appellate court should not interfere just because it would have adopted other reasonable assumptions. In Bee[1] the Supreme Court of Appeal cogently set out the principles to be observed by an appeal court. It expressed:

"… the trial court's factual findings are presumed to be correct in the absence of demonstrable error. To overcome the presumption an appellant must convince

[1] Bee v Road Accident Fund 2018 (4) SA 368 SCA at paragraphs 46-48 ("Bee")

the appellate court on adequate grounds that the trial court's factual finding were plainly wrong."

[7] The appellant is therefore required to convince this court that the trial court's factual findings were plainly wrong, bearing in mind the advantages enjoyed by the trial court of seeing, hearing and appraising the witnesses. Therefore, it is only in exceptional cases that an appeal court would interfere with the trial court's evaluation.[2]

[8] It is further settled law that courts are not bound by the view of an expert. An expert is required to assist the court by laying out a factual basis for his/her conclusions explaining his/her reasoning to the court. A court is required to satisfy itself as to the expert's correct reasoning. An expert's opinion must be underpinned by proper reasoning in order for a court to assess the cogency thereof. Absent any reasoning the opinion becomes inadmissible.[3]

[9] In order to determine if the court *a quo*'s misdirected itself, this appeal court would have to consider the evidence of the experts against the backdrop of the injuries sustained by N[...].[4] On my perusal of the experts reports, I have noted that the father, Mr. E[...], was present at all of the consultations and had in the main relayed N[...]'s condition with the experts. The experts commenced their

[2] Roux v Hattingh 2012 (6) SA (4) 28 SCA [2012] ZASCA 132 at paragraph 12
[3] In Bee at paragraphs 22 to 23, the court cited various authorities with approval which illustrated how expert evidence should be dealt with
[4] N C obo N Z v Road Accident Fund (26302/15) [2018] ZAGPJHC 63

assessment from 2018 (three years after the accident) until 2025. Certain of the experts later filed their respective addendums.

[10] The core issue for determination, in my view, is whether the court *a quo* erred in concluding that there was no causal connection between the injuries sustained in the accident and his future loss of earning capacity.

[11] At this juncture, I have noted that the court *a quo* had in fact accepted that in certain instances the non-serious injuries may affect the earning ability of a claimant. This is aligned to our authorities where a claim for loss of earnings may arise in cases of non-serious injuries.[5] Consequently the ground of appeal raised on this aspect has no merit.

[12] In this instance, the court was not convinced that there was a causal link between the injuries sustained in the motor vehicle accident and N[...]'s academic performance. N[...] apparently left school in 2022 in Grade 8 when a group of gangsters attacked a child on school grounds.

N[...]'s injuries

[13] The court was not persuaded by Dr. Domingo's findings that N[...] suffered from a traumatic brain injury which left him with cognitive and behavioural sequelae that are permanent. Dr. Domingo was criticized for exaggerating N[...]'s condition by stating that at the time of discharge "he experienced headaches, photophobia, was intermittently confused, and had difficulties in sleeping". This was clearly not

[5] Botha v Road Accident Fund 2015 (2) SA 108 GP at paragraph 40

in accordance with the hospital records. The court accepted that N[...] suffered from a mild concussive head injury.

[14] It is further noted that prior to Dr. Domingo's assessment, N[...] was examined by other experts. The first, being Ms. Schoeman, the neuropsychologist, who in fact opined that N[...] suffered from a mild brain injury. Furthermore Ms. De Wit, the neuropsychologist, Ms. Bester the occupational therapist, Ms. Kotze, the industrial psychologist, Dr. Fevre, psychiatrist and Dr. Ogilvy all examined N[...] independently and did so prior to N[...]'s visits to Dr. Domingo.

[15] For the sake of convenience, the experts with whom N[...] consulted are listed in chronological date sequence namely:

15.1 Ms. Bester (occupational therapist)- on 29 April 2018;

15.2 Dr. Le Fevre (psychiatrist)- on 23 May 2018;

15.3 Ms. De Wit (clinical psychologist)- on 21 September 2018;

15.4 Ms. Schoeman (neuropsychologist)- on 21 September 2018, 27 August 2021 and 22 November 2024;

15.5 Dr. Domingo (neurosurgeon)- on 27 November 2018;

15.6 Ms. Bekker (educational psychologist)- on 22 January 2019 ;

15.7 Dr. Ogilvy (speech and language therapist)-on 10 April 2019;

15.8 Kotze Blake and Associates (industrial psychologist)- on 3 December 2019;

15.9 Dr Sutherland (psychologist)- on 6 November 2024

15.10 Ms. Clerk (educational psychologist)- on 22 January 2025

[16] Dr Domingo, the neurosurgeon, examined N[...] on 26 July 2023 and later submitted an addendum report on 24 November 2024. His initial examination was conducted approximately 16 years after the accident. Dr Domingo recorded that he had considered the hospital records as well as the reports of Ms. Bester, Dr Le Fevre, Dr Ogilvy, Ms De Wit and Ms Bekker.

[17] In his assessment of N[...] his findings were unremarkable. He opined as follows:

17.1 when conducting a physical examination he opined that:

"There was cosmetically obvious scaring on the forehead and chin";

17.2 when conducting a central nervous system examination, he found that N[...] was orientated, he had some difficulty expressing himself, the cranial nerve examination was normal, and there was no focal neurological limb deficit. He however opined that N[...] suffered a "traumatic brain injury with facial lacerations";

17.3 overall he opined that N[...] had made a good physical recovery and the current physical neurological examination is normal*;*

17.4 his findings in his addendum report, is similar to his first report. In the addendum report Dr Domingo further concludes that the WPI is 35% in total. The mental and behavioural disorder was calculated to be 15%. In this regard, he relied on Dr Sutherland's opinion.

[18] The court *a quo* understandably had difficulty in accepting the reasoning set out in Dr Domingo's report and identified the inaccuracies, namely that:

18.1 he recorded that the hospital had performed x-rays and assessed N[...] as having sustained a traumatic brain injury with associated facial lacerations

and forehead hematoma. This was not the case. No mention was made of any brain injury in the hospital records. The x-rays was there to establish whether there was any fracture on the bruised hands and the leg. No such fractures were identified. Furthermore no CT scan was ever performed on N[...];

18.2 His further recordal was that at the time of the discharge from hospital, "N[...] experienced headaches, photophobia and was intermittently confused and had difficulties in sleeping". Again this was not the case. The records showed that N[...]'s condition was unremarkable. He spent a night in hospital and slept throughout. There were no complaints except for the pain in his face and body. In the morning, he was found awake and comfortable on the bed. When he was discharged, he received no medication;

18.3 the only medication administered during his admission was paracetamol on four different occasions and ibuprofen on three different occasions. He was clearly treated for the physical pain. The court correctly emphasized that the hospital records are the primary source with regard to the determination of a clinical injury sustained by N[...] and justifiably expressed that:

"It is difficult for this court to accept the evidence of Dr Domingo to the effect that Mr E[...] experienced headaches, photophobia, was intimately confused, and had difficulties in sleeping.";[6]

[6] Paragraph 12 of the judgment

18.4 the court also questioned Dr Domingo's recordal that N[...] complained of poor memory and concentration, zoning out, being in his own world, and his difficulty in understanding and following instructions;

18.5 his opinion pertaining to the setting in of seizures was questioned. He suggested that provision will be made for the investigation and treatment of post-traumatic seizures. This court, in fact, noted that N[...] never suffered from seizures;

18.6 more significantly at paragraph 19 of the judgment, the court highlighted the inconclusiveness of Dr Domingo's opinion. It expressed:

"Proper examination of the conclusions reached by Dr Domingo reveals some measure of ambivalence as to the cause of the cognitive difficulties which is the edifice of this alleged loss of earning capacity. The ambivalence is more pronounced when the following opinion is carefully considered:

'8.3 He has residual cognitive, cognitive-communicative and behavioural problems that have had a negative impact on his school performance.

8.4 He has been affected psychologically by the accident and has problems with anxiety.

8.5 <u>Although cognitive and behavioural deficits would not be expected considering the nature and the severity of the brain injury sustained, it is noted that not all mild traumatic brain injuries are associated with a good outcome. In addition, as no CT scan was performed, a more focal brain injury cannot be excluded</u>. His psychological

problems will also have a negative impact on his cognitive functioning'." (my emphasis)

[19] Against these observations, I am of the view that the court *a quo* cannot be faulted in its findings. It was not convinced that N[...] suffered from severe long-term behavioural disturbance and consequently found that the plaintiff has failed to prove on a balance of probabilities that N[...] sustained severe head injuries which would have the consequence of a severe long-term behavioural disturbance and which impacted on his earning capacity.

[20] Demonstrably Dr Domingo's report lacked cogency. He failed to independently make a conclusive finding. It is common cause that a CT scan was never performed. A neurosurgeon plays a critical role by providing his expertise on brain injury. Dr Domingo was required to evaluate the severity of the trauma, determine the long-term progress, and establish if it can be linked to the accident. He not only relied on incorrect facts, but on the opinions of the experts who already examined him. These experts established that N[...] suffered a mild brain injury.

[21] The court *a quo* further took issue with the information that was relayed to the various experts. It correctly highlighted the inaccurate information that N[...]'s father relayed to the experts. It is not in dispute that he was present at all the consultations with the experts. An expert cannot merely rely on the patient or his family's *ipse dixit*. The self-reported symptoms relayed by the father was not clinically tested.

[22] It is settled law that for an opinion to be underpinned by proper reasoning, it must be based on correct facts. In ***Bee***, at paragraph 23, the court expressed:

"The facts on which the expert witness expresses an opinion must be capable of being reconciled with tall the other evidence in the case. For an opinion to be underpinned by proper reasoning, it must be based on correct facts. Incorrect facts militate against proper reasoning and the correct analysis of the facts is paramount for proper reasoning, failing which the court will not be able to properly assess the cogency of that opinion. An expert opinion which lacks proper reasoning is not helpful to the court."

N[...]'s academic performance

[23] With regard to the minor's academic performance, the court considered the reports of the educational psychologist. Ms Clerk examined the minor 9 years after the accident when he was 17 years of age. The court notably highlighted the inaccuracy of the information recorded in Ms Clerk's opinion concerning his absence from school. The truth was that N[...] was only absent from school for seven days and not for the entire third term as the father advised.

[24] The court *a quo* highlighted that N[...]'s performance was par excellence in Grade 1 after the accident. He performed excellently for months after the accident. The criticism was that to merely state his academic performance deteriorated later in his schooling career was inadequate. There was no explanation as to how and when N[...]'s deficits started becoming apparent. It cannot be gainsaid that the

experts failed to address this aspect. Even in Grade 2, the minor achieved 80 to 100% in his lifeskill subject (that was about 6 months after the accident).

[25] Even if I were to accept the evidence of Dr Domingo, that N[...] was "experiencing headaches, photophobia, confusion, and struggling to sleep" after the accident, it does not explain how N[...] managed to perform so well after the accident. His academic performance seemed to decline during Grade 4. His performance was then gaged to be better in Grade 7.

[26] N[...] was injured whilst he was in Grade 1. Ms Clerk had recorded N[...]'s academic performance in her report, that is:

26.1 in Grade 1 his performance was excellent, he obtained 70 to 79% average;

26.2 in Grade 2 the marks achieved was 60 to 69% level of performance;

26.3 in Grade 3 he still maintained 60 to 69% level of performance;

26.4 in Grade 4 his level of performance declined to 50-59%;

26.5 in Grade 5 his average level of performance was between 30-39%;

26.6 in Grade 6 his overall marks was 30-39%;

26.7 in Grade 7 he attained an achievement of 50-59%, although he failed mathematics, economic business science and geography.

[27] The court further raised concern with the insufficient information pertaining to the social factors, in particular, to the effect that gangsterism had on N[...] when it was the very reason that caused N[...] to leave school. The court, in my view, correctly pointed out that the experts failed to address this issue. Only Ms Clerk had commented that the socio-emotional factors as well as the social pressures and

safety concerns due to the gang violence had contributed to him prematurely exiting his education.

[28] In my view, the court justifiably raised the questions: when did the gangsterism issue start affecting N[...] and what effect, if any, did it have on his school performance. These aspects were not addressed. Hence the court expressed:

"All the availed experts seem to be fixated to one trigger regarding the decline in school performance that is, the accident injuries and their sequelae. What about other possible triggers once having witnessed gangsterism. There is evidence that at Grade R, Mr E[...] was playful and was not sitting still. Would the playfulness have emerged at Grade 2, which may have impacted on his school performance."

[29] Due to the insufficient evidence, the court *a quo* was not convinced that N[...]'s injuries, arising from the accident, would impact on his earning capacity. Consequently, the court expressed that:

"Having accepted that Mr E[...] suffered mild concussive head injury, this court is unable to accept the opinion of Dr Domingo that Mr E[...] suffered severe long-term behavioural disturbance which is capable of causing him a loss of earning capacity."

[30] It is trite that an expert is required to assist the court, but the evaluation of expert opinion ultimately remains the responsibility of the court. In ***Michael and***

Another v Linksfield Park Clinic and Another[7] the Supreme Court of Appeal explained that an expert's opinion carries weight only to the extent it is grounded in facts that are common cause, established by evidence, or capable of being proved. The court cautioned that a court is not bound to accept an expert's conclusions and must be satisfied that the reasoning process leading to it is sound. Ultimately the plaintiff bears the onus to establish the causal link between the accident and the injuries relied upon.

[31] The expert opinion must amount to a logical and reasoned inference from proved facts and such proved facts should be scrutinized where the opinion rests on assumptions not supported by the evidence.

[32] It should be reiterated that the court was not seized with determining the cause of the educational outcomes complained of but with whether the plaintiff had discharged the onus of proving the claim of loss of earning capacity and loss of income, including causation.

[33] The neurosurgeon's conclusive evaluation would have put to bed the uncertainty of the minor's injuries. It was for this very reason that Ms de Wit deferred to the neurosurgeon or neurologist for an opinion. She in fact opined that N[...]'s performance was average and his IQ fell in the average range.

[34] It can further not be disputed that both Ms de Wit, the clinical psychologist, and Ms Schoeman, the neuropsychologist who examined N[...] before Dr Domingo,

[7] 2001 (3) SA 1188 (SCA), paragraphs 34 to 36

had relied on information the father relayed to them. It was Dr Domingo's role to establish the severity of the injury, if any, and the extent to which it impacted on N[...].

[35] In conclusion I find no misdirection on the part of the court *a quo*. Hence there is no reason for this court to interfere.

THE S17(4) UNDERTAKING

[36] The appellant directed this court to the fact that s17(4)(a) of the Act does not prescribe limitations to future treatment that a claimant may require. Accordingly N[...] would be entitled to the treatment as envisaged in Section 17(4)(a) of the Act. In my view, the court a quo correctly crafted the s17(4) undertaking order.

THE GENERAL DAMAGES

[37] The appellant correctly pointed out that the general damages constitute a separate head of damages. In this instance, the court was advised that it had requested reasons from the HPCSA for failing to find that his injuries are severe. Upon receipt of such reasons, it intends to appeal the decision. In the circumstances, the general damages should be postponed *sine dies*.

COSTS

[38] The appellant is substantially unsuccessful in this appeal and there is no reason why the general principle- that costs follow the result should not be applied. Consequently it should bear the costs of this appeal.

_____

H. KOOVERJIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the appellant:	*Adv. BP Geach SC*
	Adv. A Laubscher
Instructed by:	*Adendorff Attorneys Inc*
Counsel for the respondent:	*No appearance*
Date heard:	*28 January 2026*
Date of Judgment:	*28 April 2026*