



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

CASE:077365/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
DATE 14 May 2026
SIGNATURE

In matter between

O[...] T[...] P[...]

Plaintiff

And

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

RAIKANE, AJ

Introduction

1. This matter came before me as a default judgment in an action for damages arising from a motor vehicle collision.

2. The plaintiff, O[...] T[...] P[...], claims damages against the defendant, the Road Accident Fund, in terms of section 17 of the Road Accident Fund Act¹, arising from injuries allegedly sustained in a motor vehicle collision on 29 January 2023.

3. At the commencement of the proceedings, applications in terms of Rule 33(4) and Rule 38(2) were granted.

Factual background

4. The plaintiff was born on 19 April 2005. On 29 January 2023, she sustained injuries as a passenger in a motor collision. She was 17 years 9 months old at the time of the collision and doing Grade 12 which she passed with a Bachelor's admission and enrolled for BCom Law degree the subsequent year.

5. The delictual claim for damages against the defendant was initially instituted on her behalf by her mother whom she replaced after attaining the age of majority. All the heads of damages are outstanding.

6. The total amount claimed is R17 200 000 calculated as follows:

- 6.1 general damages: R1 000 000;
- 6.2 past medical expenses R120 000;
- 6.3 future medical expenses R1 200 000 and;
- 6.4 loss of earnings capacity/ earning R14 000 000.

7. The particulars of claim allege injuries as confirmed in the RAF 1 form, the plaintiff's section 19(f) of the Road Accident Fund Act affidavit and the hospital records are contusion of the forehead, swelling of the right eye, painful neck, sprained and strained cervical spine. The plaintiff further alleges a loss of consciousness at the scene which was regained in the ambulance.

¹ Act 56 Of 1996.

8. The plaintiff was evacuated to Midstream Med-Clinic and was discharged the same day. X-rays were done of the cervical spine, and no GCS reading was noted in the hospital record. According to the X-ray results, dated 1 February 2023, there was no structural damage nor preverbal soft tissue swelling, only the following was noted:

- 8.1 Cervical Lordosis replaced by a kyphotic curve
- 8.2 Vertebral body heights normal;
- 8.3 Th C1 interval cannot be really evaluated; and
- 8.4 Some minimal spasm induced scoliosis.

9. The plaintiff only received conservative treatment in the form of analgesics, neuro- observations and rehabilitation in the form of physiotherapy was recommended. The lacerations were also cleaned and dressed.

Merits

10. The plaintiff as indicated above, was a minor and in terms of the principle of *doli incapax* no contributory negligence can be attributed to the minor. The fund therefore held 100% liability for any proven damages.

The quantum

11. The fund has not made any election on the issue of general damages, and such is postponed *sine die*.

The loss of earnings / capacity

12. The plaintiff appointed a plethora of experts to quantify the loss namely:

- 12.1 Neurosurgeon;
- 12.2 Orthopedic surgeon;
- 12.3 Neuropsychologist;
- 12.4 Educational Psychologist;

- 12.5 Clinical Psychologist;
- 12.6 Physiotherapist;
- 12.6 Occupational Therapist;
- 12.7 Industrial Psychologist; and
- 12.8 An actuary.

13. In *Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another*², the Supreme Court of Appeal stated that the court must determine whether the opinion advanced is founded on logical reasoning.

"The court is not bound to absolve a defendant from liability for allegedly negligent medical treatment or diagnosis just because evidence of expert opinion, albeit genuinely held, is that the treatment or diagnosis in issue accorded with sound medical practice. The court must be satisfied that such opinion has a logical basis."

14. Generally in this matter, the quantifying of the loss / loss of earning capacity of the plaintiff will depend heavily on the unique personal circumstances of the plaintiff, the nature of the injuries sustained, the treatment given/or to be also given in the future and most of all the sequelae of the injuries on either the present or future work prosperity and earnings. In *Road Accident Fund v Guedes*³, the Court confirmed that loss of earning capacity is a matter of assessment based on the available evidence and the exercise of judicial discretion.

15. The plaintiff was treated conservatively by cleaning and dressing of the abrasions on the forehead, physiotherapy, analgesics and neuro observation and was discharged the same day with no follow up treatments ordered. Some of the experts appointed reports admissions of 3 days.

16. The primary clinicians noted that no GCS was noted on the hospital record upon admission and he nonetheless classified the contusion as a mild to moderate brain injury resulting in the neurological deficit/ impairment which has now been

² 2001 (3) SA 1188 (SCA) at para 37.

³ 2006 (5) SA 583 (SCA).

resolved a year after the accident. The WPI was said to be 44% and that the MMI has been reached.

17. The X-ray confirmed that there were no structural damages and an orthopedic surgeon was appointed who not only submitted a report in which he mentioned the treating medical facility was the Tembisa hospital instead of Midstream Mediclinic. The report also commented more on the neurological issues other than any orthopedic sequelae. He on his own also added an injury of a forearm which was not present to the list of injuries; The report is not taking this matter any further.

18. The neuropsychologist on behavioral and emotional fallouts opined that the plaintiff might have had premorbid fallouts and that the prognosis is guarded.

19. The educational psychologist opines that the plaintiff will be more suitable for a NQF level 5 at a TVET College qualifications despite the fact the plaintiff obtained a Bachelor's admission matric certificate post-morbid and is already first year BCom Law student at a private university and her academic progress is impressive.

20. The plaintiff is also adding fire to the basis for the quantification of her claim, as she raises additional different injuries not documented in the hospital records and the sequelae thereof to the different experts appointed, amongst others, painful leg when walking, painful arm when lifting objects, anxiety, depression, outburst, impaired cognitive difficulties and concentration when studying. In *Southern Insurance Association Ltd v Bailey NO*⁴, the Appellate Division explained that damages for loss of earning capacity are often incapable of exact calculation and may require a broad estimate, but such estimate must still be grounded in the evidence.

21. The actual postulation on the total amount for the loss of earnings marred by the inconsistency as alluded to above and to avert the miscarriage of justice a re-assessment cannot be ruled out.

⁴ 1984 (1) SA 98 (A) at page 368.

22. There was no vouchers and confirmation on an affidavit by the experts who rendered the services nor the service provider on the actual amount disbursed to cover the past medical costs.

Order

23. I, therefore, order the following:

1. The application in terms of Rule 38(2) is granted.
2. The Defendant is 100% liable for the plaintiff's proven damages,
3. The Defendant is liable to provide the plaintiff with an undertaking as provided for in section 17(4)(a) of the Road Accident Fund Act for 100% of such future hospital; medical and ancillary expenses as the plaintiff may require and arising from the injury sustained in the accident on 29 April 2023.
4. The issue of quantum is postponed *sine die* and the plaintiff to be re-assessed by the relevant experts as per the hospital records and the sequelae thereof on the impact it had on the issue of the loss of earnings/ earning capacity.
5. The plaintiff is awarded her party and party costs as taxed or agreed, Counsel's fees to be on Scale B.

RAIKANE AJ
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 14 May 2026

Heard: 10 December 2025

Date of Judgment: 14 May 2026

Appearances

For the Applicants:

Adv. S. Dlali
instructed by Modibedi Sebele Phetoe Attorneys

For the Respondent:

No appearance