IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 1532/2018

In the matter between:

ADV MC LOUW NO BJ J[…] **PLAINTIFF**

And

ROAD ACCIDENT FUND **RESPONDENT**

Neutral citation: *Adv Louw NO obo J[…] v Road Accident Fund* (1532/2018) [2026] ZAFSHC 268 (29 April 2026)

Coram: MOLITSOANE J

Heard: 19 September 2025

Delivered: 29 April 2026.

Summary: Loss of future earning capacity – principles restated.

ORDER

1.1 The defendant shall pay the plaintiff's attorneys the sum of R3 839 809.00 (Three Million, Eight Hundred and thirty-Nine Thousand, Eight Hundred and Nine rand and Zero Cents) in respect of the future loss of income made up as follows:

Future Loss of Income:	R6 339 809.00
Less interim payment:	R2 500 000.00
Award due:	R3 839 809.00

1.2 Plaintiff's attorneys trust account, details are as follows:

ACCOUNT HOLDER:	VZLR INC
BRANCH:	ABSA BUSINESS BANK HILLCREST
BRANCH CODE:	632005
TYPE OF ACCOUNT:	TRUST ACCOUNT
ACCOUNT NUMBER:	3[…]
REFERENCE:	MAT110156

1.3 Interest shall accrue on such outstanding amount at 10.25% as per the Prescribe Rate of Interest Act 55 of 1975, as amended per annum calculated from due date, as per the Road Accident Fund Act 56 of 1996, until the date of payment.

2 The defendant is ordered to furnish the *trustee* appointed in respect of **B[…] J[…] J[…]** (the minor / plaintiff) an undertaking in terms of s 17(4)*(a)* of the Road Accident Fund Act, for the costs of the future accommodation of the minor plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods (of a medical and non-medical nature) to the minor plaintiff arising

out of injuries sustained by him in a motor vehicle collision on **9 August 2017**, in terms of which undertaking the defendant will be obliged to compensate the *trustee* in respect of the said costs after the costs have been incurred by either the minor plaintiff or by the *trustee* or by any party on behalf of the minor plaintiff and on proof thereof. The defendant is ordered to pay the reasonable travelling costs and accommodation for the minor plaintiff and his/her caretaker to and from the location where he/she is to receive treatment covered under the undertaking.

2.1 Without derogating from the generality of the foregoing, the undertaking shall include the reasonable costs of the formation of an *inter vivos* trust for the benefit of the minor plaintiff and the costs of administration of the said trust by the *trustee*, including the costs attendant upon the provision of security by the *trustee*, and auditing and / or accounting services.

2.2 A case manager be appointed, as per the discretion of the *trustee,* of which the cost of such appointment (if necessary) is covered under the s 17(4)*(a)* undertaking.

3 The defendant to pay the plaintiff's taxed or agreed party and party cost, up to and including the trial dates of 16, 17 and 19 September 2025 and the date when this order is made an order of court, which cost shall include, but not be limited to the following:

3.1 The fees of Counsel for the abovementioned dates in paragraph 3 above on Scale C;

3.2 The reasonable taxable reservation fees for 16 September 2025, of the following experts:

Ms L Roos	Educational Psychologist
Dr AC Strydom	Industrial Psychologist

Johan Sauer Actuary

3.3 Interest shall accrue on such outstanding amount at 10.25% from the date of taxation / settlement of the bill of cost, as per the Prescribe Rate of Interest Act as amended, per annum, calculated from due date until the date of payment.

4 The award to the Plaintiff shall be protected by means of it being entrusted to a trust to be formed for the benefit of the Minor Plaintiff.

5 Until such time as the *trustee*, **JEANNE HELEN RABIE**, still to be appointed and the trust to be erected, is able to take control of the capital sum and to deal with same in terms of this order, the plaintiff's attorney of record:

5.1 shall be prohibited from dealing with the capital in any other manner unless specifically authorised thereto by the court, subject to paragraphs 6.2-6.5 hereunder;

5.2 is authorised to invest the capital amount in an interest-bearing account with a registered banking institution in terms of s 86(4) of the Legal Practice Act 28 of 2014, to the benefit of the minor plaintiff and will only be allowed to pay such monies over to the *trustee* of the trust to be created in terms of paragraph 5 of this order, once the Master of the High Court has issued the *trustee* with the necessary letters of authority;

5.3 is further authorized to pay the costs to set security of the funds held in trust, from the capital received, to the relevant insurer by the *trustee* of the trust to be created, which costs in turn must be refunded by the defendant to the plaintiff in terms of paragraph 3;

5.4 from date of receiving the capital and up and till the Master of the High Court has issued the *trustee* with the necessary letters of authority, is authorised and ordered to make payment in the amount of R5 000.00 per month as, as well as such other amount(s) that may reasonably be indicated and/or required for the wellbeing of the plaintiff and/or in his/her interest which a diligent *trustee* would have paid had such *trustee* been appointed;

5.5 is authorised to make payment of the attorney and own client costs, being fees, disbursements and interest on paid disbursements, of the Plaintiff's attorneys.

6 The nominated *trustee* is ordered to furnish security to the satisfaction of the Master of the High Court.

7 The nominated *trustee* shall attend to the creation of an *inter vivos* trust in order to protect the awarded funds to the exclusive benefit of the plaintiff.

8 That the trust to be erected for the benefit of the minor plaintiff on these papers, with powers which shall include (but not be limited to) the powers as referred to in the trust deed attached hereto as **Annexure** '**A**' and are regarded as incorporated into this order.

9 The defendant is ordered to pay the costs in respect of the creation and future administration of the said trust, to be formed in order to manage and administer the compensation payable to the minor plaintiff as referred to in paragraph 2, 3, 4 and 6 of this order, which costs will include the fees of the *trustee*.

10 The reasonable remuneration to which the *trustee* will be entitled in respect of the execution of the *trustee*'s official duties is as follows:

10.1 An acceptance/establishment fee of 1% (excl. VAT) on all capital introduced into the trust.

10.2 An annual administration fee based on a percentage of the value of the assets under administration, which percentage will be subject to the following sliding scale:

10.2.1 R0.00 – R500 000.00 – 1.5% (excl. VAT)

10.2.2 R500 000.00 – R1 000 000.00 – 1.25% (excl. VAT)

10.2.3 R1 000 000.00 – 1% (excl. VAT)

10.3 The undertaking contemplated by s 17(4)*(a)* of the Road Accident Fund Act will be administered by the *trustee*, and the *trustee* or his/her agent/attorney will be entitled to an administration fee of 10% on all successful claims.

10.4 Travel expenses for purposes of attending to trust-related matters.

10.5 A termination fee of 2% (excl. VAT) on the assets of the trust at the time of termination/dissolution of the Trust.

10.6 The parties recognise that the *trustee*, an attorney, is a professional *trustee* and agree that the trust shall pay to the *trustee* the *trustee's* usual charges for any work performed by the *trustee* beyond the ambit of the *trustee's* official duties, in her capacity as attorney acting on behalf of the trust.

JUDGMENT

Molitsoane J

[1] This is a claim for loss of future earnings or earning capacity. The defendant had previously admitted liability for 100% of the proven or agreed damages. On 24 April 2025, this court admitted into evidence the reports of the experts of the plaintiff together with collateral evidence obtained by such experts in terms of s 3(1)*(c)* of the Law of Evidence Amendment Act 45 of 1988 following a successful application in terms of Uniform rule 38(2).

[2] The court also ordered the issue of general damages and loss of future earnings to be separated in terms of rule 33(4) from the adjudication of loss of earnings. General

damages were settled. The defendant further agreed to pay the plaintiff, an interim payment of R2.5 million towards the claim of loss of earnings. This court is thus seized with the adjudication of the balance, if any, of the loss of earnings. I must indicate that, although the defendant filed a number of its expert reports none of the experts testified and no application was made on behalf of the defendant to admit their reports in terms of rule 38(2).

[3] The plaintiff is Mr MC Louw, a member of the Free State Society of Advocates, appointed as curator *ad litem* for B[…] J[…] J[…], (the minor child). The defendant is the Road Accident Fund (RAF), a juristic person established in terms of s 2(1) of the Road Accident Fund Act 56 of 1996 (the RAF Act).

[4] The collision out of which this dispute arose occurred on 9 August 2017. The minor child was about four years and five months old at the time. The contemporaneous and expert records establish major injuries which include severe traumatic pain with cerebral oedema, a frontal skull fracture, a Glasgow Coma Scale 5 on admission; The minor experiences residual headaches and has a possibility of post traumatic epilepsy. He also has a persistent left lower limb pain and limitation as well as permanent scarring and disfigurement. It is against this background that this dispute should be determined.

[5] Dr Preddy confirms the severity of the trauma the minor sustained. He indicated that the minor would need operative fixation of the femur. He opines that the minor would endure ongoing pain on the left leg which would be aggravated by exertion and cold. He also noted scarring and opines that the residual symptoms would impact on the minor’s productivity and amenities of life. He deferred to neurological and psychological medical specialists for examination of full vocational impact.

[6] Dr Naidoo, a neurologist diagnosed the minor with a severe traumatic brain injury based on loss of consciousness GCS 5 / 15 requiring intubation and radiological evidence with residual headaches: post traumatic epilepsy and neuropsychological and

neurocognitive symptoms. He recorded ongoing neurological morbidity including infrequent but significant headaches, symptoms suggestive of post traumatic temporal lobe epilepsy and neurocognitive complaints. He recommended comprehensive neurological investigation, routine and overnight video, EEG and possible long-term anti-epileptic treatment. He assesses more than 30% whole person impairment under the AMA guidelines underscoring the magnitude of the neurological insult.

[7] Ms Roos, an educational psychologist also assessed the minor child. She concluded that the minor child's profile is consistent with severe traumatic brain injury and shows prominent deterioration over time. The psychometric results indicate overall average intellectual functioning with a marked verbal/non-verbal discrepancy, preserved non-verbal reasoning but impaired verbal skills, and deficits in comprehension, working memory, auditory processing, visual discrimination, reading, writing and mathematics. She opined that the minor at grade 6 was performing at roughly grade 2 to grade 3 levels. Ms Roos attributes a permanent cognitive and learning disadvantage to the accident, despite the vulnerabilities and prior medical history of the family of the minor child. She concludes that the minor child is a learner at risk who will likely struggle in mainstream education without urgent remedial support. She predicts a limited post morbid educational and vocational trajectory, probably not exceeding grade 10 and likely resulting in dropout, thereby forming foundational basis for the contention of substantial collapse in scholastic and occupational potential for the minor child.

[8] Ms Liebenberg, an occupational therapist also assessed the child. She links the child's medical and educational impairments to practical work limitations, reporting low trunk muscle tone, limited sitting tolerance, poor endurance for tabletop tasks, impaired manual dexterity, variable sustained attention, distractibility, visual perceptual deficits and low motivation. She concludes, that absent a pass in grade 12 or diversion into further education, the child is unlikely to access higher sedentary executive work and would instead be confined to manual, repetitive routine roles dependent on physical ability. According to her, such roles would leave him less competitive in the open labour market and more vulnerable to job loss. Miss Liebenberg considered the possibility of

epilepsy and its impact on the job market and noted that epilepsy confirmed would bar work at heights, near water, driving vehicles and such similar hazards, thereby substantially narrowing the job opportunities for the minor child. She recommends that a coordinated multidisciplinary support structure, being education, family occupational therapy, psychology and paediatric neurology/psychiatry be implemented.

[9] Dr Strydom is an industrial psychologist. She translated the medical and educational findings in respect of the minor child into two plausible pre accident vocational scenarios. The first scenario related to the possibility of the minor attaining grade 12 plus higher certificate or diploma. The second scenario being grade 12 and higher certificate only. She modelled likely labour market entry and made career progression under each of the two scenarios. In contrast, her post accident assessment, synthesizing severe paediatric brain injury, ongoing headaches and the possibility of epilepsy, marked educational derailment, attentional and executive deficits, emotional vulnerability and physical restrictions, she concluded that the child is unlikely to reach premorbid potential. She opines that the minor child will probably progress only to about grade 10 and then drop out. According to her the child would at best obtain structured, routine supervised work. Taking all this into account Dr Strydom concluded that the minor child was unlikely to be employed in the open labour market with a total loss of earning capacity suggested. The testimony of Dr Strydom is undisputed, and this court has no other uncontroverted evidence to gainsay her opinion. In the absence of any evidence disputing her conclusions, this court must accept her evidence.

[10] The clinical and neuropsychological reports, including an earlier assessment by Dr Rapapali and a later, detailed evaluation by Ms Grootboom, confirmed significant cognitive and emotional *sequelae* from the child's severe traumatic brain injury. Ms Grootboom identified slow learning, attention and executive dysfunction, visual perceptual impairments, emotional vulnerability, headaches and scarring. She emphasized the 'sleeper effect' whereby deficits become more pronounced as academic demands increase. These findings support two central vocational themes, namely, that the minor child's functioning will relatively worsen over time and

employability will be impaired not only by cognitive limitations but also by emotional symptoms, physical appearance and ongoing symptom pattern.

[11] The courts are not bound by the opinions and views of the experts. What is required of the experts is to assist the court by looking at the facts and based on those facts, to provide factual basis for their conclusions. In *Bee v Road Accident Fund*[1] (*Bee*) the court said the following:

'The facts on which the expert witness expresses an opinion must be capable of being reconciled with all 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. (See also *Jacobs v Transnet Ltd t/a Metrorail* [2014] ZASCA 113; 2015 (1) SA 139 (SCA) paras 15 and 16; see also *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft Für Schädlingsbekämpfung mbH* 1976 (3) SA 352 (A) at 371F.'[2]

[12] In my view, the probabilities indicate that premorbid, the minor child had a realistic prospect of completing Grade 12 and was likely to attain a higher certificate or according to Dr Roos, to obtain a diploma. The accident has shuttered that likelihood. He now has memory losses, attention deficits, deficient language processing. His scholastic profile has deteriorated compared to that of his peers. It has deteriorated to such an extent that the likely postmorbid educational ceiling is around grade 10 with a possibility that he may drop out of school. Even if one were to consider the limited structured work, the combined cognitive, emotional, physical and possible epilepsy related limitations may render competitive open market employability unlikely. He is effectively unemployable as opined by the experts and a total loss of earning capacity has thus endured.

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[1] *Bee v Road Accident Fund* [2018] ZASCA 52; 2018 (4) SA 366 (SCA).
[2] Ibid para 23.

[13] The court in *Dippenaar v Shield Insuranc Co Ltd*[3] said the following:

'In our law, under the *lex Aquilia*, the defendant must make good the difference between the value of the plaintiff's estate after the commission of the delict and the value it would have had if the delict had not been committed. The capacity to earn money is considered to be part of a person's estate and the loss or impairment of that capacity constitutes a loss, if such loss diminishes the estate.'[4]

[14] The court in *Southern Insurance Association Ltd v Bailey NO*[5] referred two possible approaches in the assessment of earning capacity in cases akin to the one before this court, namely, to make a round estimate of an amount which seem fair and reasonable or to make use of mathematical calculations on the basis of assumptions resting on evidence. The court went further to hold that engaging in either of the two approaches 'involves guesswork to a greater or lesser extent.'

[15] The plaintiff opted for mathematical calculations. Based on evidence and assessment of experts. Mr. Sauer, an actuary was commissioned to calculate the future loss of earnings of the minor. He applied a 20% premorbid contingency and 0% contingency. It is submitted on behalf of the minor child that due to the age of the child, premorbid vulnerabilities which includes prior medical issues as well as the expert opinion of the educational psychologist that premorbid issues might have limited tertiary potential, and thus an increase to 25 % in respect of contingencies was warranted. In applying my discretion, I hold the view that the contingencies proposed by Mr Sauer are fair and reasonable. Mr Sauer made his calculations on two scenarios. Scenario 1 grade 12 plus higher certificate or diploma yielded R6 695 796.00 and in scenario 2, grade 12 plus higher certificate only yielded R5 983 822.00. Both scenarios assume no post morbid income in line with Dr Strydom's, conclusion that the plaintiff would not be employable. The plaintiff proposes adopting the median of the two actuarial figures which comes to R6 339 809 as the fairest outcome. I agree with this calculation, but a

[3] *Dippenaar v Shield Insurance Co Ltd* 1979 (2) SA 904 (A).
[4] Ibid at 917B-C.
[5] *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A).

deduction of R2.5 million interim payment should be reckoned from the overall loss. The end result is that the minor child is entitled to a loss of R3 839 809.00.

[16] With regard to the costs, there is no reason to depart from the established principle that the costs follow the cause.

[17] Accordingly, I order as follows:

1.1 The defendant shall pay the plaintiff's attorneys the sum of R3 839 809.00 (Three Million, Eight Hundred and thirty-Nine Thousand, Eight Hundred and Nine rand and Zero Cents) in respect of the future loss of income made up as follows:

Future Loss of Income:	R6 339 809.00
Less interim payment:	<u>R2 500 000.00</u>
Award due:	R3 839 809.00

1.2 Plaintiff's attorneys trust account, details are as follows:

ACCOUNT HOLDER:	VZLR INC
BRANCH:	ABSA BUSINESS BANK HILLCREST
BRANCH CODE:	632005
TYPE OF ACCOUNT:	TRUST ACCOUNT
ACCOUNT NUMBER:	3[…]
REFERENCE:	MAT110156

1.3 Interest shall accrue on such outstanding amount at 10.25% as per the Prescribe Rate of Interest Act 55 of 1975, as amended per annum calculated from due date, as per the Road Accident Fund Act 56 of 1996, until the date of payment.

2 The defendant is ordered to furnish the *trustee* appointed in respect of **B[…] J[…] J[…]** (the minor / plaintiff) an undertaking in terms of s 17(4)*(a)* of the Road Accident Fund Act, for the costs of the future accommodation of the minor plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods (of a medical and non-medical nature) to the minor plaintiff arising out of injuries sustained by him in a motor vehicle collision on **9 August 2017**, in terms of which undertaking the defendant will be obliged to compensate the *trustee* in respect of the said costs after the costs have been incurred by either the minor plaintiff or by the *trustee* or by any party on behalf of the minor plaintiff and on proof thereof. The defendant is ordered to pay the reasonable travelling costs and accommodation for the minor plaintiff and his/her caretaker to and from the location where he/she is to receive treatment covered under the undertaking**.**

2.1 Without derogating from the generality of the foregoing, the undertaking shall include the reasonable costs of the formation of an *inter vivos* trust for the benefit of the minor plaintiff and the costs of administration of the said trust by the *trustee*, including the costs attendant upon the provision of security by the *trustee*, and auditing and / or accounting services.

2.2 A case manager be appointed, as per the discretion of the *trustee,* of which the cost of such appointment (if necessary) is covered under the s 17(4)*(a)* undertaking.

3 The defendant to pay the plaintiff's taxed or agreed party and party cost, up to and including the trial dates of 16, 17 and 19 September 2025 and the date when this order is made an order of court, which cost shall include, but not be limited to the following:

3.1 The fees of Counsel for the abovementioned dates in paragraph 3 above on Scale C;

3.2 The reasonable taxable reservation fees for 16 September 2025, of the following experts:

Ms L Roos	Educational Psychologist
Dr AC Strydom	Industrial Psychologist
Johan Sauer	Actuary

3.3 Interest shall accrue on such outstanding amount at 10.25% from the date of taxation / settlement of the bill of cost, as per the Prescribe Rate of Interest Act as amended, per annum, calculated from due date until the date of payment.

4 The award to the Plaintiff shall be protected by means of it being entrusted to a trust to be formed for the benefit of the Minor Plaintiff.

5 Until such time as the *trustee*, **JEANNE HELEN RABIE**, still to be appointed and the trust to be erected, is able to take control of the capital sum and to deal with same in terms of this order, the plaintiff's attorney of record:

5.1 shall be prohibited from dealing with the capital in any other manner unless specifically authorised thereto by the court, subject to paragraphs 6.2-6.5 hereunder;

5.2 is authorised to invest the capital amount in an interest-bearing account with a registered banking institution in terms of s 86(4) of the Legal Practice Act 28 of 2014, to the benefit of the minor plaintiff and will only be allowed to pay such monies over to the *trustee* of the trust to be created in terms of paragraph 5 of this order, once the Master of the High Court has issued the *trustee* with the necessary letters of authority;

5.3 is further authorized to pay the costs to set security of the funds held in trust, from the capital received, to the relevant insurer by the *trustee* of the trust to be created, which costs in turn must be refunded by the defendant to the plaintiff in terms of paragraph 3;

5.4 from date of receiving the capital and up and till the Master of the High Court has issued the *trustee* with the necessary letters of authority, is authorised and ordered to make payment in the amount of R5 000.00 per month as, as well as such other amount(s) that may reasonably be indicated and/or required for the wellbeing of the plaintiff and/or in his/her interest which a diligent *trustee* would have paid had such *trustee* been appointed;

5.5 is authorised to make payment of the attorney and own client costs, being fees, disbursements and interest on paid disbursements, of the Plaintiff's attorneys.

6 The nominated *trustee* is ordered to furnish security to the satisfaction of the Master of the High Court.

7 The nominated *trustee* shall attend to the creation of an *inter vivos* trust in order to protect the awarded funds to the exclusive benefit of the plaintiff.

8 That the trust to be erected for the benefit of the minor plaintiff on these papers, with powers which shall include (but not be limited to) the powers as referred to in the trust deed attached hereto as **Annexure** '**A**' and are regarded as incorporated into this order.

9 The defendant is ordered to pay the costs in respect of the creation and future administration of the said trust, to be formed in order to manage and administer the compensation payable to the minor plaintiff as referred to in paragraph 2, 3, 4 and 6 of this order, which costs will include the fees of the *trustee*.

10 The reasonable remuneration to which the *trustee* will be entitled in respect of the execution of the *trustee*'s official duties is as follows:

10.1 An acceptance/establishment fee of 1% (excl. VAT) on all capital introduced into the trust.

10.2 An annual administration fee based on a percentage of the value of the assets under administration, which percentage will be subject to the following sliding scale:

10.2.1 R0.00 – R500 000.00 – 1.5% (excl. VAT)

10.2.2 R500 000.00 – R1 000 000.00 – 1.25% (excl. VAT)

10.2.3 R1 000 000.00 – 1% (excl. VAT)

10.3 The undertaking contemplated by s 17(4)*(a)* of the Road Accident Fund Act will be administered by the *trustee*, and the *trustee* or his/her agent/attorney will be entitled to an administration fee of 10% on all successful claims.

10.4 Travel expenses for purposes of attending to trust-related matters.

10.5 A termination fee of 2% (excl. VAT) on the assets of the trust at the time of termination/dissolution of the Trust.

10.6 The parties recognise that the *trustee*, an attorney, is a professional *trustee* and agree that the trust shall pay to the *trustee* the *trustee's* usual charges for any work performed by the *trustee* beyond the ambit of the *trustee's* official duties, in her capacity as attorney acting on behalf of the trust.

P E MOLITSOANE
JUDGE OF THE HIGH COURT

Appearances

For the Appellant: D Marx
Instructed by: VZLR Inc c/o Du Plooy Attorneys, Bloemfontein

For the Respondent:	P Banda
Instructed by:	Road Accident Fund, Bloemfontein.