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REPUBLIC OF SOUTH AFRICA



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

Case No: 58628/10

Reportable: No

Of interest to other Judges: No

Revised: No

SIGNATURE

Date: 30 April 2026

In the matter between:

S P M[...]

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

JUDGEMENT

MOOKI J

- 1 The plaintiff, together with her mother and other relatives, was involved in a car accident on 1 July 2007. Her mother and a relative died following the accident. The plaintiff, who was born on 10 February 2005, was 2 years and four months old at the time of the accident. The Road Accident Fund conceded negligence. The claims for loss of support and for general damages were settled. The matter is before court on a claim for future loss of income.
- 2 The Fund did not participate in the trial. Its defence was struck because of the Fund's failure to comply with the Court's Practice Directives, including failing to participate in mediation.
- 3 The plaintiff sought leave to lead evidence by way of Rule 38(2). This application was limited to evidence by K Polden, clinical psychologist; W van der Walt, occupational therapist; L Rudenberg, educational psychologist; Dr J A Smuts, neurologist; Dr J H Kruger, neurosurgeon; L van Gass, industrial psychologist, Prof Du Plessis, actuary; and the section 19(f) affidavit by the plaintiff. Each expert witness filed an affidavit confirming the content of their respective reports.
- 4 The plaintiff pleaded the following injuries: head injury, bruising and soft tissue injuries to the head, treated with the necessary pain and anti-inflammatory medication; chest injury, bruising and soft tissue injuries to the chest, treated with the necessary pain, anti-inflammatory medication, and general body bruises treated with the necessary pain, anti-inflammatory medication.
- 5 The plaintiff contended, in her written submissions, that she sustained

the following injuries: severe head injury, abrasions and lacerations to the face on the left parietal side of the scalp, nose bleeds, post traumatic epilepsy, soft tissue injury to the left arm, post-traumatic stress disorder, and cognitive difficulties.

- 6 The plaintiff discovered two sets of documents, namely school reports over several years and a document in the name of Dr A C Botha, styled 'medical report' (Dr AC Botha document). The claim for future loss of income is based on evidence as detailed below.
- 7 Dr J A Smuts, a neurologist, examined the plaintiff on 24 July 2025. The plaintiff was 18 years old at the time. This assessment was in relation to the accident that occurred on 1 July 2007, when the plaintiff was 2 years and four months old.
- 8 Dr Smuts recorded the injuries suffered at the time of the accident as being a head injury and multiple cuts and abrasions over the face, scalp and the plaintiff's body. Dr Smuts referenced the Dr AC Botha document as the source of this information. Dr Smuts recorded too that the plaintiff was allegedly thrown out of the car, and that she was seemingly taken to a hospital and was discharged a week later. Dr Smuts noted that there were no hospital records pertaining to the plaintiff.
- 9 The plaintiff, on being examined by Dr Smuts, complained about her eyes, her hearing, headaches, and neck pain. Dr Smuts conducted a neurological examination. He assessed the plaintiff as normal. Dr Smuts concluded that the plaintiff's headaches started after the accident and that it was reasonable to classify those headaches as post-traumatic headaches. He observed that the plaintiff had no history of epilepsy. Dr Smuts opined that the plaintiff suffered a more significant head injury than what was initially appreciated and that she was left with a possible mild to moderate brain damage.
- 10 Dr J H Kruger, a neurosurgeon, prepared three reports pertaining to the

plaintiff. He first assessed the plaintiff on 17 July 2013, when the plaintiff was 8 years and 5 months old and in Grade 2 at school. Dr Kruger considered reports by other experts, the Dr AC Botha document, and 'incomplete hospital notes from Volksrust hospital' for his report. The plaintiff was accompanied by her grandmother, who is said to have acted as the interpreter.

- 11 Dr Kruger recorded the history as related to him by the plaintiff's grandmother. The grandmother reported that the plaintiff was rendered unconscious after the accident and that paramedics stabilised the plaintiff at the scene. The plaintiff was then admitted to Volksrust hospital. Dr Kruger wrote in his report that the plaintiff was found to have the following injuries on admission at the hospital: a head injury and multiple cuts and abrasions over the face, scalp and body.
- 12 Dr Kruger concluded that the plaintiff sustained a concussion and a soft-tissue injury to the right shoulder. He recommended an evaluation of the radiological extent of the concussion with a CT scan of the brain.
- 13 Dr Kruger prepared a further report on 28 March 2018. The plaintiff was 13 years and 1 month on this date. Dr Kruger reported that a CT scan of the plaintiff's brain was done on 28 March 2018 and that the scan was "normal". Dr Kruger recorded that the plaintiff had no new complaints. He confirmed his clinical findings from the assessment made on 17 July 2013.
- 14 Dr Kruger prepared a third report, when the plaintiff was 20 years and 3 months. This was 17 years and 10 months after the accident. The plaintiff complained of a loss of hearing on both ears. She also complained of blurry vision. Dr Kruger concluded that those complaints were unrelated to the accident. Dr Kruger opined that the plaintiff sustained a mild traumatic brain injury, "as evidenced by the fact that the patient had a loss of consciousness after the accident."

- 15 Ms S L Rudenberg, an educational psychologist, assessed the plaintiff for the first time on 13 June 2013, when the plaintiff was 7 years and 3 months old. Her history of the plaintiff's circumstances noted that the plaintiff resided with her grandmother in a three-roomed shack made from zinc. They used a coal stove. The family included the plaintiff's brother and sister. The grandmother told Ms Rudenberg that the plaintiff was forgetful and that the plaintiff couldn't always see the board at school.
- 16 Ms Rudenberg had a further consultation with the plaintiff on 8 March 2018. The plaintiff was 13 years on this date and in Grade 7 at school. The grandmother is said to have raised the following concern: that the plaintiff was forgetful, had a fear of cars, and had a temper. The plaintiff in turn said she could not see well and had to sit at the front of the class. She also had nosebleeds.
- 17 Ms Rudenberg reported as follows in connection with the post-accident period concerning the plaintiff: the plaintiff's intellectual functioning fell within the average range; that she had memory difficulties when studying; that there was no need for remedial assistance in relation to basic scholastic abilities, and that the plaintiff had apparent concentration lapses.
- 18 Ms Rudenberg next assessed the plaintiff on 25 May 2020. The plaintiff was aged 15 years and 3 months and was in Grade 8 at school. Ms Rudenberg concluded that the plaintiff's Grade 8 report showed that the plaintiff was beginning to struggle with mathematics and that the plaintiff was struggling with social sciences, a subject which Ms Rudenberg said involved "a lot of memorising of facts." Ms Rudenberg opined that the Grade 8 report suggested that the plaintiff would not progress higher than Grade 11.
- 19 Ms Rudenberg prepared a further report. She reported that the plaintiff's half sister had finished Grade 12, enrolled at a college, but then dropped

out. The half sister worked as a domestic. The plaintiff's brother was 20 years old and had dropped out of school in Grade 11. The plaintiff's aunt was aged 51 years and worked as a domestic. Ms Rudenberg wrote that the plaintiff was given a condoned pass to Grade 9.

20 The plaintiff had dropped out of school when Ms Rudenberg was preparing her last report. Ms Rudenberg contacted the plaintiff by telephone on 11 December 2025. The plaintiff told Ms Rudenberg that the plaintiff would like to return to school when the plaintiff's living circumstances had changed.

21 Ms Wilma van der Walt, an occupational therapist, assessed the plaintiff on 26 August 2013. The plaintiff was 8 years and six months and in Grade 2 at school. The purpose of the assessment was listed as "...to comment on the effect of the injuries on functional ability and to discuss assistance, equipment and adapters needed."

Analysis

22 The plaintiff discovered two sets of documents in support of her claim, namely school reports and the Dr AC Botha document. The school reports were incomplete. Not all school terms are reflected. In addition, not all reports show the comparative performance of the whole class.

23 The Dr AC Botha document states that the plaintiff was first seen on 19 April 2010. This would be 2 years and 9 months from the date of the accident. The plaintiff was 5 years and 2 months on that date. This document records the head as the only part of the plaintiff's body that was injured in the accident, with the injury stated to be "severe".

24 The document is unsigned. It does not bear any stamp or signification that it was received or considered by the Road Accident Fund. There is no confirmatory affidavit in relation to this document. The source of information recorded on the document is unknown. This document does not speak for itself.

- 25 There are no documents that substantiate both the injuries as contended for in the pleadings and in the submissions. There is no evidence by a person with direct knowledge of what transpired during the accident. More particularly, there is no evidence on what happened to the plaintiff during the accident, including whether the plaintiff was injured, whether she was thrown out of the car, or whether she suffered any particular injury.
- 26 The plaintiff sought leave to introduce the evidence of K Polden, a clinical psychologist, in terms of Rule 38(2). K Polden was listed as one of the witnesses in that application. There is no report on record by K Polden. There is also no section 36(9)(a) notice that K Polden would be called as an expert. The effect is that there was no evidence by a clinical psychologist in relation to the claim by the plaintiff.
- 27 The plaintiff did not include Karin Vijoer (audiologist) and Dr M R Mokabane (neurologist) as witnesses whose evidence was to be admitted pursuant to the Rule 38(2) application.
- 28 I did not consider reports by experts who were not listed in the Rule 38(2) application. Similarly, I did not consider reports by experts listed in that application, but who did not file affidavits confirming their respective reports.
- 29 The plaintiff, in her written submissions, listed several experts whose reports the plaintiff relied on to justify the quantum for the claimed loss of income. There were no confirmatory affidavits by the following experts: Leon Roper (clinical psychologist), Dr P R Cronje (ophthalmologist), Dr D Le C Stolp (Ear, Nose, and Throat specialist), TC (a firm of occupational therapists), Ntombizivumile Hankwebe (occupational therapist), Sandra Crous (educational psychologist), Lance Marais (industrial psychologist), Talifahni Ntsieni (industrial psychologist), and Rosewood Technologies (a firm of actuaries). I did not consider the

reports by these persons and firms as constituting evidence in these proceedings.

- 30 The plaintiff, in the written submissions, referenced the opinion by Dr Makobane that the plaintiff suffered post-traumatic epilepsy and that the plaintiff sustained a severe post-traumatic brain injury. I reject this on two bases. Firstly, Dr Mokabane's reports were not introduced into evidence in terms of Rule 38(2). Secondly, the findings are speculative. There is no support for these findings. Dr Makobane's examination of the plaintiff revealed nothing untoward.
- 31 I mention Dr Mokabane because other experts rely on his findings in support of their own conclusions. This is illustrated by the educational psychologist, who speculated that the plaintiff's stated inattentiveness in school was related to the plaintiff having had seizures, thus affecting the plaintiff's memory. Similarly, the educational psychologist's view that the plaintiff's stated on-off pattern of concentration may be due to neurological underpinnings lacks foundation. Dr Smuts subjected the plaintiff to a neurological examination. He assessed the plaintiff as normal.
- 32 There is no evidence to support the pleaded injuries. The various experts engaged by the plaintiff speculated that the plaintiff was injured in the car accident. The plaintiff failed to establish that she was injured as alleged in her pleadings. I also find that the plaintiff failed to show that she suffered a loss of future earnings because of the accident.
- 33 Dr Kruger's evidence on the injuries said to have been sustained by the plaintiff was based on the hearsay accounting by the plaintiff's grandmother. There is no factual support that the plaintiff was rendered unconscious, or that she presented with the mentioned injuries on her admission to hospital. The plaintiff did not discover any hospital record. There is no support that the plaintiff suffered a head injury and multiple cuts and abrasions over the face, scalp and body. These stated injuries

are taken from the Dr AC Botha document, which is styled an MMF1 form.

- 34 The Dr AC Botha document is undated. The source of information recorded on the document is unknown. There is no evidence that the source of the information had personal knowledge of what is said to have been told to Dr Botha. It bears repeating that the plaintiff was still a child on the date recorded on the form. The plaintiff's grandmother is illiterate. There is no evidence that Dr Botha was able to communicate with the plaintiff's mother in an intelligible manner, on the assumption that the plaintiff's grandmother was the source of information recorded on the document. Several experts engaged by the plaintiff mention that the plaintiff's grandmother required an interpreter in meetings with those experts.
- 35 The educational psychologist made her conclusions on the premise that the plaintiff suffered a severe injury to the head and that the injury in turn negatively affected the plaintiff's schooling, resulting in the plaintiff not finishing school. The conclusion is unsound, absent demonstration that the plaintiff, in fact, suffered the injuries contended for.
- 36 The educational psychologist recorded in her latest report that the plaintiff had dropped out of school. The report does not say why the plaintiff dropped out of school. There is thus nothing in this report to suggest that the plaintiff dropped out of school because of the accident of 1 July 2007. The educational psychologist, in preparing the report, spoke to the plaintiff by telephone. It is puzzling that the educational psychologist did not ask the plaintiff why the plaintiff left school. This is more so because the educational psychologist last assessed the plaintiff on 25 May 2020.
- 37 The conclusions by the educational psychologist that the plaintiff was having difficulties at school because of the accident are unfounded. The plaintiff's performance at school over the years does not support these

conclusions. The plaintiff's performance at school is to be considered together with reference to her home circumstances. I mention this point because of the findings in several reports that the plaintiff underperformed her "peers", based on the testing by the experts.

- 38 The plaintiff stayed in three-roomed shack made from zinc, together with her two siblings, her grandmother and her aunt. There was no evidence that the plaintiff received help at home in relation to her schooling. There was also no evidence about the state of facilities available at her school for teaching and learning purposes. The various studies used and testing referred to by the experts to assess the plaintiff are not based on conditions that informed the plaintiff's lived experience. A conclusion that the plaintiff underperformed her "peers", based on those studies lacks foundation. Experts can't simply invoke testing developed in a particular environment, and then seek to make such testing as having universal outcomes; such that any child could be assessed with reference to such testing.
- 39 The various experts sought to suggest that the plaintiff's performance at school was informed by what happened to her because of the accident on 1 July 2007. I do not accept this to be the case. The plaintiff's performance at school, on available information, was essentially no different from the performance of her peers at the school. In fact, the plaintiff could be said to, more often than not, have performed slightly better than her peers. This conclusion is borne by examining the plaintiff's school reports.
- 40 I focus on the plaintiff's marks in the social sciences and in mathematics. These are the subjects which the educational psychologist sought to rely on as the bases for her opinion that the accident affected the plaintiff's performance at school.
- 41 The plaintiff's marks for social sciences in Grade 4 (2015) (relative to the marks for her peers) over the three terms were 53% (33% grade), 60%

(50% grade) and 83%.¹ The marks for mathematics were 59% (61), 90% (64), and 75%² over the three terms.

- 42 The plaintiff's performance in Grade 5 (2016) was as follows. The plaintiff's mark for social sciences for each of the three terms was as follows (39% for the grade), 50 (39), and 65.³ Performance in mathematics was as follows 68% (58), 67% (55), and 59 %.⁴
- 43 The plaintiff did not obtain mark lower than 50% over the three terms in Grade 6 (2017). The plaintiff's marks for social sciences over the three terms were as follows 59%, 68%, and 81 % respectively. The marks for mathematics were as follows 44%, 58%, and 58% respectively. The marks for the class are not stated.
- 44 The marks for social sciences in Grade 7 (2018) were as follows over two terms 30% and 51%. Her marks for mathematics were as follows over the same period 30% and 46%. There is no information on the marks for the third term. Also, there is no information on the marks for the class as a whole.
- 45 This is the plaintiff's performance in Grade 8 (2019). Her performance in the social sciences over the three years relative to her peers was as follows 24% (34%), 39% (35%), and 23% (24%). Her performance in mathematics was as follows 53% (36%), 13% (32%), and 54% (43%).
- 46 There are no reports for the plaintiff's performance in Grade 9 (2020). There is no explanation for the absence. The plaintiff discovered her report for Grade 10 (2022). She did not take social sciences as a subject. Her performance in mathematics (against the grade) was as follows over the three terms: 6% (against 9%), 5% (against 12%), and 12% (against 10%). The plaintiff's performance in Grade 10 can hardly

¹ The class mark is not stated

² The class mark is not stated

³ There is no class mark for term 3

⁴ There is no class mark for term 3

be said to be a function of the accident on 1 July 2007. The results in Grade 10 show the plaintiff to have performed equally badly as her classmates.

47 It appears that the plaintiff dropped out of school in the year when she was in Grade 10. There is documentation showing that she sought a transfer to a different school, for Grade 11. The transfer document bears a stamp by her current school, which is dated 20 May 2025. The educational psychologist did not comment on this development in her report.

48 The plaintiff's performance at school was on par or marginally better than that of her peers in her respective grades. The educational psychologist stated that the plaintiff, in the upper grades, was struggling with mathematics and that she was performing poorly in social sciences because of the effects of the accident. The educational psychologist referenced the plaintiff's mark in social sciences in Grade 8, saying her performance was indicative that the plaintiff would not be able to complete higher grades at school.

49 The statement that the plaintiff's performance in Grade 8 showed that she was now experiencing difficulties with schooling because of the accident is unfounded, as shown by the school reports. The plaintiff's performance in mathematics was continuously marginally better than the class average. Her performance in social science was essentially the same as the class average over the years. There is no substance to the conclusion by the educational psychologist that the plaintiff was experiencing difficulties at school because she could not memorise facts. The plaintiff, together with the rest of her classmates, performed equally poorly in social sciences. There is no basis for concluding that the accident affected her memory such that she was now performing poorly in a subject like social science.

50 The plaintiff's schooling ended up essentially reflecting that of the rest of

her family. Her brother dropped out of school in Grade 11. Her aunt passed matric but dropped out of college. There is no evidence on the aunt's performance in matric. The report by the educational psychologist is unhelpful. The educational psychologist didn't enquire from the plaintiff as to why the plaintiff dropped out of school. I say this because the final report by the educational psychologist does not address why the plaintiff left school.

51 The educational psychologist had no collateral information from the plaintiff's school (save the school reports). There is no collateral information to support the claim of the plaintiff that she had poor vision and poor hearing. There was, in any event, no evidence to support these two complaints. The Rule 38(2) application did not include a report by an audiologist. It also did not encompass a report in support of the plaintiff stated poor vision.

52 I conclude that there is no support for the pleaded injuries. The plaintiff did not produce a single document from a health facility showing that she was injured on 1 July 2007. She also did not present a document from a health facility that she presented with particular sequelae because of the incident on 1 July 2007. There was no sound evidence on what happened to the plaintiff on 1 July 2007. Accounts by the plaintiff's grandmother are hearsay, as she was not present during the incident. Medical testing conducted on the plaintiff showed the plaintiff not to present with any untoward afflictions. Evidence by the various experts on what happened on 1 July 2007, and the stated injuries said to have been suffered by the plaintiff, was speculative. These experts essentially based their views on the unsupported and undated 'medical report' by a Dr AC Botha.

53 The written submissions for the plaintiff relied on impermissible evidence. This is illustrated by reliance on the report by Leon Roper, a clinical psychologist and on the report by Dr Makopane, a neurologist. These reports were not introduced as evidence pursuant to Rule 38(2).

There was, in any event, no support for Dr Makopane's finding that the plaintiff sustained a severe post-traumatic brain injury because the plaintiff lost consciousness at the time of the accident. There is no support that the plaintiff lost consciousness on 1 July 2007.

54 The evidence by the industrial psychologist and that by the actuary do not add anything to change my overall view of the plaintiff's case.

55 The court must formulate an award of damages if the court is satisfied that there was a loss of earnings and/or earning capacity.⁵ I am not persuaded, on the case made for the plaintiff, that the plaintiff suffered a loss of earnings and/or earning capacity.

56 I order as follows:

The plaintiff's claim for future loss of income is dismissed.

O MOOKI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the plaintiff:

M Smit

Instructed by:

PAS Attorneys

No participation by the defendant

⁵ Road Accident Fund v Maasdorp [2004] 2 All SA 242 (NC)

Date heard:

22 January 2026

Date of judgment:

30 April 2026