

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

Case No: 31425/2022

Reportable: No

Of interest to other Judges: No Revised: No

SIGNATURE

Date: 19 May 2026

In the matter between:

NM M[...] obo KRN M[...], a Minor

Plaintiff

and

The Road Accident Fund

Defendant

JUDGEMENT

MOOKI J

- 1 The plaintiff sues on behalf of K[...] R[...] M[...] (K[...]). The plaintiff is K[...]'s mother and legal guardian. K[...] was 3 years and 2 months old when she was struck by a car on 8 December 2021, whilst a pedestrian. The plaintiff pleaded the following injuries: "head injury", "scalp abrasion", and "multiple abrasions." The sequelae is pleaded per the MMF-1 claim form completed by Dr M Manganyi. The plaintiff sought compensation in the amount of R 2 353 000.00, which included future loss of income stated as R1 500 000.00.

- 2 The plaintiff served a Rule 28 notice on the State Attorney on 11 November 2025, notifying the plaintiff's intention to amend the pleadings. The plaintiff now seeks damages for loss of earnings in the amount of R8 315 089.00 and claims total compensation in the amount of R10 315 089.00.
- 3 The trial took place for 22 January 2026. The Fund pleaded but had its plea struck out, for failing to respond to the Rule 41A order by the court. The matter was heard as default proceedings. The plaintiff sought leave, which was granted, to lead evidence by way of paper, with the court making an order in terms of Rule 38(2).
- 4 Dr J A Ntimbani, a neurosurgeon, examined K[...] on 13 June 2024. K[...] was 6 years old at the time. Dr Ntimbani took the history from the plaintiff. The plaintiff stated, among others, that K[...] lost consciousness on being knocked by the car. Dr Ntimbani also considered medical records. He noted that K[...] was in Grade R at school and she had epilepsy which was treated with Epilim. K[...] was said to be aggressive towards other children on assessment of "higher function." There were no complications before the accident. Dr Ntimbani noted that skull x-rays were done on K[...]’s admission to hospital and that the GCS was recorded as 15/15. K[...] had multiple abrasions on the forehead. She complained of headaches and poor concentration. Dr Ntimbani diagnosed K[...] as having a mild concussive brain injury.
- 5 Mr Sewpershad, a clinical psychologist and neuropsychologist, assessed K[...] on 8 October 2025, when she was 7 years old. He obtained most of the information from the plaintiff. K[...] commenced Grade R in 2024. She was in Grade 1 at the time of assessment. The plaintiff reported that teachers did not raise concerns about K[...]’s concentration and attention at school. K[...] did not present with reading, spelling, or handwriting difficulties. The plaintiff reported that K[...] tended to be "moody" and had emotional outbursts at home. The plaintiff did not know whether K[...] had the same behaviour at school. K[...] denied any difficulties at school.

The plaintiff reported that the accident occurred after 17:00 on 8 December 2021.

- 6 K[...] was returning home from aftercare, accompanied by her sister, when she was struck by a car. The sister reported to the plaintiff that a taxi was trying to avoid a speed bump when the taxi collided with K[...]. K[...] is said to have been flung into the air; that she fell and was immediately rendered unconscious. The plaintiff reported to Mr Sewpershad that teachers complained that K[...] has a short temper and did not get along with other children. She had no friends at school. The teachers are reported also to say that K[...] was withdrawn in class and did not participate in class activities. The plaintiff reported that K[...] subsequently had an epileptic episode and that she was eventually referred to the Dr George Mukhari hospital.
- 7 Mr Sewpershad opined that the diagnosis of epilepsy occurred in the presence of a concussive brain injury in the relatively vulnerable brain of a 3-year-old child and that the diagnosis is expected to cause significant and persisting neuropsychological deficits and psycho-organic and neuro- behavioural sequelae.
- 8 Ms Marumo C N Milame (occupational therapist), assessed K[...] on 9 October 2024, when K[...] was 6-years old and in Grade R. K[...] had no functional limitations from a physical perspective. She showed difficulties coordinating visual input with motor output and has deficits like visual form constancy, which may affect her performance at school. Ms Marumo opined that K[...] would face difficulties in the future when seeking employment due to her chronic headaches, epilepsy, visual perceptual problems, and current cognition function. The accident compromised her functional ability.
- 9 Ms Sunette van den Heever (educational psychologist), assessed K[...] on 10 October 2025. K[...] was 7 years and in Grade 1. The current complaints included that K[...] did not communicate in class and did not

participate in class activities; that she has a foul temper, has headaches, and took Epilim to control seizures.

- 10 K[...] passed Grade R (2024) with averages of 67%, 75%, 77%, and 75% and was promoted to Grade 1. Her results for the second term in Grade 1 are 70% (Setswana), 85% (English), 83% (mathematics) and 71% for life skills. Her teacher perceived her as an intelligent child, although she needs support to achieve results. The educational psychologist reckoned that, pre-morbid, K[...] could complete Grade 12/NQF 4 in a mainstream school environment and that she could have completed a bachelor's degree of her choice at a NQF 7 level; that is because the assessment results yielded the highest scores in the high average range, reflecting her retained cognitive potential and the detail included in her drawings.
- 11 Ms van den Heever opined that K[...], following the accident, will best be placed in a school for children with special educational needs. Her current teacher stated that the possibility of K[...] attending an LSEN school had not been considered. Ms van den Heever concluded that K[...] was likely to remain in a mainstream school and that she would likely be progressed/condoned from one phase to the next. K[...] will probably leave school on completing a condoned Grade 9/NQF 1 qualification with limited academic skills and being emotionally and socially compromised. She will rely on her physical capabilities to obtain employment, but will remain vulnerable because she suffers from epilepsy.
- 12 Ms Moipone Kheswa, industrial psychologist, assessed K[...] on 21 July 2022. The report is dated 31 October 2025. The only collateral information was obtained from the mother. K[...] was found likely, after finishing matric, to enrol for a degree. This would be followed by a learnership or internship for 12 months, at Paterson B1. It would take her 6 to 12 months to secure employment and that she was likely to start earning at Paterson B5, progressing to Paterson D2 at age 45.

- 13 The industrial psychologist reckoned that the accident influenced K[...]’s earning capacity. She found that the reported headaches will affect her concentration. K[...] was likely to be more error prone or to make negligent mistakes which might affect her school and work quality experience. Her cognitive impairment will impact her negatively at work, such as forgetting important information. K[...] is also said to be likely to have quarrels with colleagues, supervisors and managers and will find it difficult to sustain employment. Her emotional disturbances would mean that she might have difficulties maintaining sound interpersonal relationships in a work environment.
- 14 Ms Kheswa reckoned that the accident resulted in significant cognitive and psychological deficits and that K[...] will be restricted in terms of choice of employment and employer. The accident was said to have narrowed her career choice considerably and that the recommended treatment would not necessarily imply that K[...] will recover fully and be able to function on par with an uninjured person. Epilepsy could be a barrier to employment and K[...] would be excluded from hazardous work, such as working on heights or operating machinery.
- 15 The actuary prepared a report based on the recommendations by the industrial psychologist. The pre-morbid career projection allowed for a total loss of income from the date of the accident, until the pre-morbid retirement age of 65. The assumption is based on the opinion of the industrial psychologist that K[...] had been rendered wholly unemployable. The actuary arrived at a pre-morbid income in the amount of R11 878 698, and in the amount of R11 309 667.00 with the loss adjusted according to the statutory limit on compensation. The figures are without applying contingencies.
- 16 I accept that K[...] was injured in circumstances as contemplated in the Act. The Fund admitted liability for 100% of such damages as may be proven.

- 17 The accident, on the evidence, has had life changing effects on K[...]. I accept that K[...] was very young at the time of the accident. There was nothing remarkable about her circumstances before the accident. The pregnancy and her birth were unremarkable and nothing untoward was shown before the accident. K[...] suffered a head injury which the experts say resulted in neuro-cognitive changes. These are shown by, among others, a behavioural change as noted by the various experts. K[...] eventually became epileptic. There appears to be no history of epilepsy in her family. There is nothing to suggest that the epilepsy is unrelated to the accident.
- 18 K[...] has just started schooling. The evidence suggests that her behavioural changes are likely to impact negatively on her schooling. The behavioural changes are to be seen together with the organic deficits as related by the various experts. The educational psychologist opines that K[...] is now unlikely to complete formal schooling and that K[...] is a candidate for attending a school for children with learning disabilities. This evidence must, however, be contrasted with the collateral information by K[...]’s teacher, who considered K[...] as bright but reserved and not an active participant in class. The evidence is also not borne by the admittedly limited academic reports. It must be recalled that K[...] was 7 years when the matter came to trial. It is impossible to say whether her reserved behaviour is indicative of a complete change to her personality, as opposed to an instance of a child thought reserved and who, as she grows and develops confidence, blossoms onto the centre of her social and school setting.
- 19 The court must therefore do its best in ascertaining the loss contended for on her behalf. The industrial psychologist has marked K[...] as wholly unemployable. I do not accept that K[...] has been rendered wholly unemployable. Counsel for the plaintiff, rightly so, did not advance a claim based on K[...] having been rendered totally unemployable. This is sound advocacy.

- 20 A reading of the opinions by the clinical psychologist and that by the occupational therapist does not support K[...] having been wholly rendered unemployable. The following bears mentioning regarding the opinion by the industrial psychologist. She assessed K[...] in 2022. Her report was prepared in 2025, with no further assessment of K[...].
- 21 Counsel for the plaintiff submitted that the plaintiff's loss be computed based on the same amount for both pre and post injury, and that a spread of 30% be applied on the actuarial calculation of R11 876 698.00. I agree with the approach, which I have adopted. This results in a loss in the amount of R 3 563 009.40.
- 22 The plaintiff seeks R800,000.00 in general damages. The Fund offered to settle this claim, which offer was rejected. It follows that the Fund accepts that K[...] suffered a serious injury.¹ No particular case was advanced to motivate for this head of damages. The written submissions do not set out what, being specific to K[...], merit compensation in the amount of R800,000.00. The written submissions merely recite various decided cases and amounts awarded in those cases. Nothing is detailed as to why those cases are equivalent to the circumstances of K[...].
- 23 The various authorities referred to in support of the claim for general damages detail instances that are wholly different to the circumstances of this case. For example, reference is made to the case of a plaintiff who is a 41-year-old man. The injuries to this plaintiff resulted in a shortened limb, with the plaintiff being obliged to use an assistive device. The plaintiff also had pre-existing generalised anxiety.
- 24 It is not helpful to merely recite cases and then seek to have the award in those cases be considered for purposes of a claim for general damages. It bears repeating that each case must be scrutinised carefully and a court must make its own independent assessment.² A

¹ *Masemola v Road Accident Fund* (43613/2021) [2025] ZAGPPHC 68 (21 January 2025), para 49

² *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) paras 17–19

case must be made out, with reference to a plaintiff who is before court, as to why a particular award is warranted.

25 The court will consider pain and suffering sustained at the time of the injuries and the pain and suffering which a plaintiff is likely to endure in the future, as part of the calculus of determining an appropriate award for general damages. Hospital records show that K[...] sustained small abrasions on the forehead. She had no obvious scars when the neurosurgeon assessed her at age 6.

26 K[...] is said to complain of headaches, which are treated with analgesia. I accept that K[...] suffered pain following the accident. I do not consider that she lost amenities of life in any material way. No case was made for this in any event. General damages in the amount of R800 000,00 is unjustified. An award of R200 000,00 is fair and reasonable in the circumstances of this case. It needs reminding that an award of general damages is to compensate a victim for all the pain, suffering, shock, and discomfort suffered because of a wrongful act.³

27 I should mention that the court was informed that the Fund had settled the claim for general damages in the amount of R800,000.00. I have two observations on this. First, there is no record that was put up that the Fund had settled as mentioned. Secondly, and more fundamentally: it is a court which in law determines the quantum in a claim for general damages. A court is not a rubberstamp to what parties may have agreed. There are sound reasons why a court is not a rubberstamp. One can conceive of an instance where there is collusion with the Fund offering an inflated amount for general damages. I do not suggest that this is the case in these proceedings. I mention this as an illustration. A court would otherwise be bound to make an award that is not justified by the evidence and only because the Fund made a particular offer which a plaintiff agreed to.

28 The plaintiff also seeks an undertaking pursuant to section 17(4)(a) of the

³ *Southern Insurance Association Ltd v Bailey* NO [1984 \(1\) SA 98](#) (A) at 119D-H.

Act. This is warranted.

29 It is submitted that a trust be established to protect funds which the court may grant. A protective trust is to protect the damages awards to ensure that “the award should be available as an ongoing source of financial support for the remainder of the plaintiff’s lifetime.”⁴ The appointment of a *curator bonis* is another mechanism to protecting the award of damages.

30 I have considered the proposed trust deed. It is unsatisfactory. The trust deed would give trustees untrammelled powers. For example, the powers of the trustees are proposed to include the following: trustees shall have unlimited and absolute power, in their sole and absolute discretion, to “pledge any trust assets, to encumber those assets with mortgage bonds or notarial bonds to utilise same as security in any manner whatsoever.” It has been remarked that protective trusts ought to be considered as a vehicle to protect funds where all boxes are ticked, and that “Greed, lack of expertise and experience, and a succession of trustees all pose ongoing underestimated real risks.”⁵

31 I agree with the approach in *P. G. M. obo M. M. v Road Accident Fund* that a curator *ad litem* be appointed, and for the *curator ad litem* to prepare a report as to, given the circumstances of this claimant, whether a protective trust be established or that a *curator bonis* be appointed. The *curator ad litem* will consider the issues that have been usefully summarised in *P. G. M. obo M. M.*⁶ in preparing their report for the court.

32 I make the following order:

- (1) The defendant is liable for 100% of the damages suffered by the plaintiff in her representative capacity as the mother and legal guardian of the minor child, K[...] R[...] M[...].

⁴ In re: Protection of Certain Personal Injury Awards (Pretoria Society of Advocates and Others, *Amici Curiae*) 2022 (6) SA 446 (GP)

⁵ *P. G. M. obo M. M. v Road Accident Fund* (22670/2018) [2025] ZAGPJHC 469 (8 May 2025), para 93

⁶ See para 100, 101, 102, and 103.

- (2) The defendant is ordered to furnish to the plaintiff's attorney an unlimited undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for the costs of the future accommodation of K[...] R[...] M[...] in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods to K[...] R[...] M[...] arising out of injuries sustained by K[...] R[...] M[...] in the motor vehicle collision that occurred on 08 December 2021, in terms of which undertaking the defendant will be obliged to compensate K[...] R[...] M[...] in respect of the said costs after the costs have been incurred and on proof thereof.
- (3) The Plaintiff in her representative capacity as the mother and legal guardian of the minor child, K[...] R[...] M[...], is awarded general damages in the amount of R200,000.00 (Two hundred thousand Rand).
- (4) The defendant, in full and final settlement of K[...] R[...] M[...]’s future loss of earning, is ordered to pay the amount of R3 563 009.40 (Three million five hundred and sixty-three thousand and nine Rand and forty cents) to the Plaintiff in her representative capacity as the mother and legal guardian of the minor child, K[...] R[...] M[...].
- (5) Pending the Court's decision regarding the mechanism for the protection of the damages award, as set out herein-below, the defendant is ordered to pay the full amount of the damages award referred to in paragraphs 3 and 4 herein-above into the plaintiff's attorney's trust account by means of an electronic transfer for the sole benefit of the minor child, K[...] R[...] M[...], within a period of 180 days from the date of this order. Trust Account as follows: NEDBANK TRUST ACCOUNT, ACCOUNT NUMBER: 1[...], BRANCH CODE: 1[...], reference: P735/TP.
- (6) The plaintiff's attorney of record shall invest and retain the full amount of the damages award referred to in paragraphs 3 and 4 herein-above, and the interest accrued thereon, in an interest-bearing trust account in

terms of Section 86(2) of the Legal Practice Act No 28 of 2014, for the sole benefit of the minor child, K[...] R[...] M[...], pending the decision by the court in relation to the mechanism for the protection of the damages award.

- (7) The defendant is ordered to pay mora interest on the amount referred to in paragraphs 3 and 4 above after the expiry of a period of 180 (one hundred and eighty days) from the date of this order to payment in full.
- (8) The plaintiff is ordered to apply for the appointment of a *curator ad litem* to the minor child, K[...] R[...] M[...].
- (9) The *curator ad litem* is directed to perform an investigation and prepare a report with recommendations for the protection of the damages award referred to in paragraphs 3 and 4 herein-above.
- (10) The costs incurred in relation to appointment of the *curator ad litem* and the preparation of a report by that official shall be paid for from funds contemplated in paragraphs 3 and 4.
- (11) Leave is granted to the parties, if they are so minded, to produce further evidence and/or present arguments in relation to the mechanism for the protection of the damages award and arrange a date for this purpose.
- (12) The defendant is ordered to pay the plaintiff's taxed or agreed party and party costs, including counsel's fees on scale B, and including, but not limited to the fees relating to consultations, trial preparation, drafting of heads of argument, and the appearances on trial.
- (13) The costs referred to in the preceding paragraph shall include, but not be limited to costs in relation to the appointment of experts employed by the Plaintiff, including the costs of consultations, assessments, psychometric and other tests referred to in their respective medico-legal

reports, the preparation of their medico-legal reports and addendums, as well as the costs incidental to the preparation of joint minutes, and reservation, preparation and qualifying fees, if any, as follows:

- a. Dr J A Ntimbani, neurosurgeon.
- b. Narropi Sewpershad, clinical psychologist.
- c. Sunette van den Heveer, educational psychologist.
- d. Marumo Nze Milane, occupational therapist.
- e. Moipone Kheswa, industrial psychologist.
- f. Antonie Christoffel Strydom, actuary.

(14) The following will apply with regards to the determination of the aforementioned taxed or agreed costs:

- a. The plaintiff shall serve the notice of taxation on the defendant's attorneys of record;
- b. The plaintiff shall allow the defendant until the 28th day of the month following taxation to make payment of the taxed costs from the date of settlement or taxation thereof;
- c. Should the payment not be affected timeously, the plaintiff will be entitled to recover interest at the rate of 11.50 % on the taxed or agreed costs from the 29th day following the month that taxation or settlement took place to the date of final payment.

(15) The plaintiff's attorneys shall be entitled to pay the accounts rendered by the experts and counsel from the funds referred to in paragraphs 3 and 4 herein-above.

(16) The defendant shall pay the plaintiff's party and party costs on scale B, either as taxed or agreed to date hereof which costs will *inter alia* include (subject to the discretion of the taxing master):

- a. Counsel's fees on scale B;
- b. The costs consequently in the preparation of and obtaining all

- the medico legal reports; and
- c. The plaintiff's costs of travelling in attending the medico-legal assessments.

(17) There is a valid contingency fee agreement.

O MOOKI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the plaintiff:	H Singo
Instructed by:	Raleswinga Attorneys
Counsel for the defendant:	No appearance
Date heard:	22 January 2026
Date of judgment:	19 May 2026