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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

CASE NO: 2007/25658

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: NO
_____	_____
DATE	SIGNATURE

In the matter between:

S[...] P[...] K[...]

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Before: The Honourable Madam Justice N. Nkoenyane AJ.

Heard: 30 January 2026

Delivered: 21 May 2026

JUDGMENT

1. INTRODUCTION

1.1. This matter came before me on the unopposed default judgment roll. The Defendant, the Road Accident Fund, had its defence struck out by order of this Court on an unspecified date, with the result that liability was settled at 100% in favour of the Plaintiff. What remains for determination is the

quantum of damages, specifically: (i) past and future loss of earnings or earning capacity; (ii) past and future medical expenses; and (iv) costs.

- 1.2. The Plaintiff was represented by counsel. The Defendant, having been barred, did not appear.
- 1.3. The Plaintiff's Heads of Argument sought a total award of Fifteen Million Five Hundred and Forty-Seven Thousand Four Hundred and Thirty-Nine Rand (R15,547,439.00), comprised of Thirteen Million Six Hundred and Forty-Seven Thousand Four Hundred and Thirty-Nine Rand (R13,647,439.00) for loss of income, One Million Nine Hundred Thousand Rand (R1,900,000.00) for general damages, and Five Thousand Rand (R5,000.00) for past medical expenses. In addition, the Plaintiff sought an undertaking for future medical expenses in terms of section 17(4)(a) of the Road Accident Fund Act¹.
- 1.4. Having carefully scrutinised the expert reports, the objective documentary evidence, and the concessions properly made by Plaintiff's counsel during argument, I am constrained to conclude that the claimed amounts are grossly exaggerated and bear no reasonable relationship to the Plaintiff's actual proven losses or the prevailing legal principles governing such awards.
- 1.5. This judgment sets out the reasons for the order that follows.

2. FACTUAL BACKGROUND

- 2.1. The Plaintiff was born on the 10th of February 2000. At the time of the accident on the 15th of March 2007, she was 7 years old and a pedestrian. She was struck by a motor vehicle with registration H[...], driven by one N Law.

¹ section 17(4)(a) of the Road Accident Fund Act 56 of 1996 ("the Act")

- 2.2. According to the medical records, the injuries sustained were objectively serious. The Plaintiff suffered a severe traumatic brain injury with subarachnoid and subdural haemorrhages, multiple abrasions, and a left knee anterior cruciate ligament injury that was originally missed. Upon admission to Chris Hani Baragwanath Hospital, she had a Glasgow Coma Scale of 3/15, was intubated, and spent time in the intensive care unit.
- 2.3. However, the outcome is what matters for purposes of quantifying damages. The Plaintiff has made a remarkable recovery. She completed Grade 12 in 2017 with a degree endorsement. Between 2019 and 2021, she completed a Bachelor of Commerce in Accounting at Damelin College, achieving distinctions in numerous modules, including Taxation (92%), Managerial Accounting (90%), and Auditing (91%).
- 2.4. Since November 2022, the Plaintiff has been employed by First National Bank as a Universal Advisor. Her payslips for 2024 reflect net monthly earnings ranging between approximately Thirteen Thousand Four Hundred Rand (R13,400.00) and Thirty-Eight Thousand Six Hundred Rand (R38,600.00), inclusive of performance bonuses and overtime remuneration. The Plaintiff consistently achieves her Key Performance Indicators and remains in good standing with her employer.
- 2.5. Critically, during oral argument, counsel for the Plaintiff conceded that the Plaintiff “is doing well” and “is able to achieve her KPIs at work.” This concession is significant insofar as it demonstrates that the Plaintiff remains functionally employable and capable of meeting the performance standards required in her current occupation.

3. THE PLAINTIFF'S EXPERT EVIDENCE

- 3.1. The Plaintiff filed expert reports and these are not the exhaustive list from a neurosurgeon (Dr H.J. Edeling), an orthopaedic surgeon (Dr P.T. Kumbirai), a psychiatrist (Dr D.A. Shevel), a neuropsychologist (M.J.

Adan), an educational psychologist (Dr D. Mawila-Chauke), an occupational therapist (T.L. Mahlangu), and an industrial psychologist (C du Toit). An actuarial certificate compiled by J.J.C. Sauer quantified the Plaintiff's alleged loss of earnings at Thirteen Million Six Hundred and Forty-Seven Thousand Four Hundred and Thirty-Seven Rand (R13,647,437.00).

- 3.2. Dr. Edeling diagnosed a "Post-Traumatic Organic Neuropsychological Disorder" and opined that the sequelae arising from the brain injury are permanent in nature. He further noted that the Plaintiff carries an increased lifetime risk of developing late post-traumatic epilepsy, estimated at between 5% and 10%. Dr. Shevel confirmed the presence of Organic Brain Syndrome, with co-morbid dysthymia.
- 3.3. The occupational therapist, Ms. Mahlangu, expressed the view that the Plaintiff's physical work capacity is limited to "light to low-medium tasks" and recommended 40 hours of occupational therapy, domestic assistance, and various assistive devices. She administered the Beck Depression Inventory, on which the Plaintiff scored 33, indicating "severe depression."
- 3.4. The industrial psychologist, Ms du Toit, projected a pre-accident career ceiling of Paterson level D3/D4 with a total package of One Million Six Hundred and Fifty-Three Thousand Rand (R1,653,000) per annum by age 45-50. She concluded that the Plaintiff's post-accident career ceiling is Paterson A3 Two Hundred and Seventeen Thousand Nine Hundred and Eight Rand (R217,908 per annum), resulting in a massive loss.

4. EVALUATION OF THE EXPERT EVIDENCE

4.1. General Principles

- 4.1.1. It is trite that expert opinion evidence must be evaluated against the objective facts of the matter and not considered in isolation. In *Michael and*

*Another v Linksfeld Park Clinic (Pty) Ltd*², the Supreme Court of Appeal emphasised that expert evidence cannot be blindly accepted where it is inconsistent with the proven facts, and that the Court must exercise its own independent judgment in assessing such evidence.

4.1.2. More recently, in *Road Accident Fund v Mothupi*³, the Court reiterated that actuarial calculations are only as reliable as the factual assumptions upon which they are based. Where those underlying assumptions are shown to be inconsistent with the Plaintiff's proven post-accident employment history and actual earnings capacity, such assumptions must be carefully scrutinised and, where appropriate, rejected.

4.2. The Fallacy of the Pre-Accident Projection

4.2.1. The industrial psychologist's projection that the Plaintiff would, but for the accident, have attained a Paterson D3/D4 career ceiling (senior management level) is, with respect, speculative and not borne out by the objective evidence. At the time of the accident, the Plaintiff was a seven-year-old child in Grade 2. Her socio-economic and educational background reflects that her mother has a Grade 10 education and is employed as a school cleaner. Her two sisters have attained Grade 11 and Grade 12 respectively, with one currently pursuing a BCom degree. There is no established family history of tertiary education or professional or managerial attainment which objectively supports a projection of progression to senior management level. Whilst such history is not present, it does not necessarily precludes the Plaintiff reaching such heights.

4.2.2. In ***Southern Insurance Association Ltd v Bailey NO***⁴, the Appellate Division held that the assessment of damages for loss of earning capacity

² Michael and Another v Linksfeld Park Clinic (Pty) Ltd and Another 2001 (3) SA 118 (SCA)

³ Road Accident Fund v Mothupi 2024 ZASCA 12

⁴ Southern Insurance Association Ltd v Bailey NO [1984] 1 All SA 360 (A); 1984 (1) SA 98 (A) at 113G–114E

must be approached on a realistic and balanced basis, having regard to all relevant contingencies, including the imponderables and uncertainties inherent in future career progression. A projection which assumes, without sufficient evidential foundation, “Any enquiry into damages for loss of earning capacity is of its nature speculative...”. future earnings projections depend on assumptions that may range “from the strongly probable to the speculative.” With respect, such an assumption is aspirational rather than evidentially justified.

4.2.3. I therefore reject the pre-accident earnings projection. The Plaintiff has not established a proven loss of earnings, particularly in circumstances where she is already employed in a skilled occupation commensurate with her actual qualifications and socio-economic background, and where her current earnings demonstrate functional and stable employment post-accident.

4.3. The Post-Accident Contingency is Unjustified:

4.3.1. The actuary applied a contingency deduction of 35% to the Plaintiff's future post-morbid earnings. This contingency is, with respect, grossly excessive and not justified on the evidence before Court. In **Road Accident Fund v Guedes**⁵, the Supreme Court of Appeal held that contingency deductions must be fair, reasonable, and tailored to the specific circumstances of the particular claimant.

4.3.2. A contingency of 35% is generally reserved for claimants who present with demonstrable risks such as an elevated likelihood of unemployment, unstable employment history, significant residual disability impacting employability, or other adverse vocational factors. None of these features are present in the Plaintiff's case.

⁵ Road Accident Fund v Guedes [2006] ZASCA 18; 2006 (5) SA 583 (SCA)

4.3.3. On the contrary, the Plaintiff has been in continuous employment since November 2022. She receives performance bonuses, which indicates not only continued employment but also satisfactory performance and value within her workplace. She has not been dismissed, nor has she experienced any period of unemployment. The concessions made by her own counsel further confirm that she meets her Key Performance Indicators and performs adequately in her role.

4.3.4. The correct approach was articulated in *Road Accident Fund v Forword*⁶, where the Court held that where a plaintiff is already employed and performing satisfactorily, a high contingency deduction based on speculative future unemployment is not justified.

4.3.5. Similarly, in **Mokobodi v Road Accident Fund**⁷, the Court rejected an inflated loss of earnings claim in circumstances where the plaintiff had achieved skilled post-accident employment, holding that a claimant's actual proven achievements constitute a reliable indicator of future earning capacity.

4.4. The Plaintiff's Educational Achievements Contradict the Experts

4.4.1. The educational psychologist, Dr Mawila-Chauke, expressed the view that NQF Level 7 would "probably remain her highest attained educational level." However, the Plaintiff has already achieved an NQF Level 7 qualification, namely a bachelor's degree. Properly construed, the expert's opinion is therefore not predictive of future limitation, but rather descriptive of the Plaintiff's current educational status. On that basis, it does not, in itself, support any demonstrable loss of educational achievement.

4.4.2. More significantly, the pleaded case advanced in the Particulars of Claim filed in 2007 is materially inconsistent with the objective evidence now before Court. At paragraph 8.3 thereof, it was alleged that "S[...] can no

⁶ Road Accident Fund v Forword 2011 ZAGPJHC 96

⁷ Mokobodi v Road Accident Fund [2016] ZAGPPHC

longer continue in mainstream education and shall have to be placed in a remedial school.” That allegation is demonstrably incorrect in light of the Plaintiff’s subsequent academic trajectory.

4.4.3. Contrary to the pleaded contention, the Plaintiff continued in mainstream education and ultimately excelled. She successfully obtained a university degree, including distinctions. The stark divergence between the pleaded case and the established factual matrix is, with respect, a matter of serious concern, as it reflects a material overstatement of the Plaintiff’s alleged educational limitations.

4.4.4. In *Road Accident Fund v Mzobe*⁸, the Court emphasised that exaggerated or unsubstantiated claims undermine the integrity of the compensation system. While a claimant is unquestionably entitled to fair and just compensation, such entitlement does not extend to losses that have not in fact materialised.

4.5. The Occupational Therapy Report Overstates Disability

4.5.1. The occupational therapist’s recommendation for approximately 40 hours of therapy, together with domestic assistance of 16 hours per month and the provision of various assistive devices, is, with respect, not supported by the objective evidence of the Plaintiff’s actual day-to-day functioning. The Plaintiff is in full-time employment, commutes independently using public transport and e-hailing services such as taxis and Uber and is fully capable of managing all essential activities of daily living. This includes cooking, cleaning, personal care, and the management of her own financial affairs. These demonstrated abilities are fundamentally inconsistent with the level of dependency and functional limitation suggested in the occupational therapy report.

⁸ Road Accident Fund v Mzobe 2023 ZAKZPHC 45

4.5.2. Similarly, the reliance placed on the Beck Depression Inventory score of 33, indicating “severe depression”, is not borne out when considered against the Plaintiff’s observed presentation and functional capacity. In ***Smit v Abrahams***⁹, the Supreme Court of Appeal cautioned that standardised psychometric test results must not be accepted in isolation or uncritically where they are contradicted by objective facts, including the plaintiff’s actual behaviour, functioning, and demonstrated achievements.

4.5.3. In the present matter, the Plaintiff’s daily functioning is plainly inconsistent with the presence of severe, debilitating clinical depression. She maintains stable full-time employment in a customer-facing role requiring sustained cognitive, emotional, and interpersonal engagement. She is able to interact appropriately with clients and colleagues, maintain structured work performance, and meet occupational demands. In her personal life, she sustains relationships, engages socially, and demonstrates clear forward-planning and life orientation. In particular, her stated goals of acquiring residential property and establishing a property-related business are indicative of motivation, organisation, and future-directed thinking, rather than the marked functional impairment associated with severe depressive disorder.

4.5.4. Viewed holistically, the Plaintiff’s objective functioning contradicts the extent of psychological and functional impairment suggested in the expert assessments. The recommendations for extensive therapeutic intervention, domestic assistance, and the classification of “severe depression” are therefore not supported by the totality of the evidence and are accordingly overstated.

4.6. The Claimed General Damages Are Disproportionate

4.6.1. The Plaintiff sought general damages in the amount of One Million Nine Hundred Thousand Rand (R1,900,000.00), relying inter alia on *Moneuoa v*

⁹ *Smit v Abrahams* 1994 (4) SA 1 (A) [1]

Road Accident Fund and *Maribeng v Road Accident Fund*, in which awards in the region of One Million Nine Hundred Thousand Rand (R1,900,000.00) (in present-day value) were made in respect of child plaintiffs who sustained severe traumatic brain injuries.

4.6.2. However, those authorities are clearly distinguishable on their facts. In both *Moneuoa and Maribeng*¹⁰, the plaintiffs were left with profound and enduring neurocognitive deficits, required placement in special education environments, and had no realistic prospect of completing mainstream schooling, obtaining tertiary qualifications, or engaging in skilled employment. Their functional capacity was significantly and permanently compromised.

4.6.3. By stark contrast, the Plaintiff in the present matter has achieved outcomes fundamentally inconsistent with such levels of disability. She has successfully obtained a university degree, is gainfully employed within the banking sector, and earns a stable and substantial income. These objective facts demonstrate a level of cognitive, educational, and occupational functioning materially higher than that of the plaintiffs in the comparator cases relied upon.

4.6.4. In *De Jongh v Du Plessis*¹¹, the Supreme Court of Appeal emphasised that comparable awards must be applied with caution, and that each case ultimately turns on its own facts. The Court further confirmed that a plaintiff who has made a good functional recovery should not be placed on the same footing, for purposes of general damages, as a plaintiff who remains severely and permanently disabled.

4.6.5. In the circumstances, and having regard to the Plaintiff's actual recovery, functioning, and current quality of life, an award in the amount of Four Million Five Hundred Thousand Rand (R4,500,000.00) is fair, reasonable, and appropriate compensation for the Plaintiff's proven non-patrimonial

¹⁰ *Moneuoa v Road Accident Fund* (2021) & *Maribeng v Road Accident Fund* (2021)

¹¹ *De Jongh v Du Plessis* 2005 (5) SA 457 (SCA)

loss, including pain and suffering, residual headaches, photosensitivity, left knee discomfort, and minor scarring. This amount properly reflects the Plaintiff's residual sequelae without overcompensating for injuries that have not resulted in the profound limitations contemplated in the comparator authorities.

5. THE CONCESSION BY PLAINTIFF'S COUNSEL

- 5.1. It is appropriate to record that, during argument, Plaintiff's counsel was candid and professional in his approach. When questioned regarding the Plaintiff's current occupational functioning, he fairly conceded that the Plaintiff "is doing well" and "is able to achieve her KPIs at work."
- 5.2. This concession was appropriately made and accords with counsel's duty to the Court. In *Prince v President of the Law Society of the Cape of Good Hope*¹², the Constitutional Court affirmed that legal practitioners owe a duty of candour to the Court and must not mislead, whether by commission or omission. In making the above concession, counsel properly discharged that duty.
- 5.3. However, the concession is materially significant and, with respect, fundamentally undermines the Plaintiff's claim for substantial loss of earning capacity. A Plaintiff who is demonstrably performing well in her employment, achieving her Key Performance Indicators, and functioning effectively in a skilled occupational environment cannot, on the same facts, sustain a claim premised on a severe diminution of earning capacity resulting in multi-million rand losses. The two positions are, on any reasonable assessment, irreconcilable.

¹² Prince v President of the Law Society of the Cape of Good Hope 2002 (2) SA 794 (CC)

6. THE FUTURE MEDICAL EXPENSES UNDERTAKING

- 6.1. The Defendant is obliged in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 to furnish an undertaking in respect of reasonable future medical and related expenses arising from the injuries sustained in the collision.
- 6.2. However, such undertaking is not unqualified. It is limited to treatment that is both reasonably necessary and causally linked to the injuries sustained in the accident. In *Road Accident Fund v Mzobe*¹³, the Court reaffirmed that the Road Accident Fund is not required to provide undertakings for speculative, precautionary, or medically unsupported interventions.
- 6.3. In the present matter, the orthopaedic surgeon, Dr Kumbirai, recommended a left anterior cruciate ligament reconstruction at an estimated cost of One Hundred and Twenty Thousand Rand (R120,000.00). However, the objective radiological findings do not support such an invasive intervention. The MRI report of the left knee records only a small effusion, with no evidence of a tear. Clinically, the Plaintiff presents with Grade II ligamentous laxity.
- 6.4. Importantly, in standard orthopaedic practice, Grade II ACL laxity in the absence of functional instability is generally managed conservatively through physiotherapy, strengthening, and activity modification rather than surgical reconstruction. The Plaintiff, in any event, ambulates with a normal gait, maintains full-time employment, and does not report episodes of functional instability or mechanical symptoms. Her complaints are limited to intermittent pain, particularly in cold weather and after prolonged standing.
- 6.5. In these circumstances, the proposed surgical intervention is not medically indicated on the objective evidence and accordingly falls outside the scope

¹³ Road Accident Fund v Mzobe 2023 ZAKZPHC 45

of reasonable future medical treatment for which an undertaking should be furnished.

7. PAST MEDICAL EXPENSES

- 7.1. The Plaintiff claims Five Thousand Rands (R5,000.000 for past medical expenses. This amount is modest, unchallenged, and clearly reasonable. It will be awarded in full.

8. COSTS

- 8.1. The general rule is that costs follow the result. The Plaintiff has achieved an award for general damages, past medical expenses, and a limited section 17(4)(a) undertaking.
- 8.2. The Plaintiff sought costs on scale C. However, Scale C is reserved for matters of exceptional complexity or importance. This matter, while significant to the Plaintiff, involved routine expert evidence and was ultimately resolved on the basis of concessions and objective contradictions. More importantly, the Plaintiff exaggerated her claim to a degree that required judicial intervention. In *Nel v Road Accident Fund*¹⁴, the court reduced the cost award where a plaintiff had exaggerated her claim, holding that "a plaintiff who succeeds on a fraction of her claimed amount cannot expect a full indemnity for all costs incurred in pursuing inflated claims."
- 8.3. In this matter, the Plaintiff claimed over Fifteen Million Five Hundred Thousand Rand (R15,500,000.00) and has been awarded approximately Four Million Five Hundred Thousand Rand (R4,500,000.00) plus a limited

¹⁴ Nel v Road Accident Fund [2020] ZAGPJHC 189

undertaking. She has succeeded on less than 3% of her claimed patrimonial loss. In these circumstances, costs on Scale B are appropriate.

9. CONCLUSION

- 9.1. This matter illustrates a recurring tension in personal injury litigation: the tendency to equate a severe mechanism of injury with an assumption of catastrophic long-term impairment. There is no dispute that the Plaintiff sustained a serious traumatic brain injury, evidenced by a Glasgow Coma Scale of 3/15. She was critically ill and endured a significant period of acute medical risk. She is, without question, entitled to fair and just compensation for that ordeal and for the residual sequelae that persist.
- 9.2. However, the objective evidence demonstrates that the Plaintiff has, in material respects, exceeded the pessimistic prognoses contained in certain expert assessments. She has successfully completed tertiary education, secured and maintained stable employment, and functions independently in her daily life. These achievements are not irrelevant to the assessment of damages; rather, they are central to the proper evaluation of her actual loss. The law does not compensate for hypothetical worst-case outcomes that did not materialise, but for proven, probable loss.
- 9.3. In *Road Accident Fund v Ndlovu*¹⁵, the Supreme Court of Appeal emphasised that the assessment of damages is not a mechanical exercise, but rather a flexible judicial evaluation based on all relevant facts, requiring fairness to both the claimant and the defendant. The Court reaffirmed that awards must reflect actual proven loss and not speculative or inflated assumptions of future impairment.
- 9.4. In the present matter, a claim in the region of Fifteen Million Five Hundred Thousand Rand (R15 500 000,00) is not borne out by the evidence. By

¹⁵ Road Accident Fund v Ndlovu 2024 ZASCA 85

contrast, an award of approximately Four Million Five Hundred Thousand Rand (R4,500,000.00), together with a properly tailored undertaking for reasonable future medical expenses, appropriately reflects the Plaintiff's proven residual impairment and actual circumstances.

9.5. Such an outcome strikes the necessary balance between fully compensating the Plaintiff for her actual loss while ensuring that the award remains fair, reasonable, and grounded in evidence, as required by the principles governing delictual damages.

9.6. The following order is therefore made.

10. ORDER

10.1. The Order granted on the 30th January 2026 stands.

ACTING JUDGE OF THE HIGH COURT

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/ Courtonline. The date for hand-down is deemed to be 21 May 2026.

APPEARANCES:

Counsel for Plaintiff: Adv. R Mthembu
Email: rmthembu1@gmail.com
Cell: 076 742 2532

Name of Firm: MN MKANSI INC ATTORNEYS
E-mail address: reception@mnmkansiinc.co.za
Tel: 011 766 3304

Name of Claims Handler: ELIAS MATALENI
CLAIM NO: 67/1012774/02
LINK NO: 1978304
E-mail address: Mendowm@raf.co.za