

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

CASE NUMBER: **2024/124843**

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

In the matter between: -

M[...] M[...] I[...] N[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be 10h00 on 29 May 2026.

D J COMBRINK AJ:

INTRODUCTION

- [1] On 21 February 2017, the plaintiff – then a 13-year-old Grade 9 learner at M[...] M[...] Secondary School – was struck by a motor vehicle while crossing a road at Orange Farm on her way to school. She sustained a head injury with intracranial haemorrhage, facial lacerations, and a soft tissue injury to her right knee. She was admitted to Chris Hani Baragwaneth Academic Hospital from 21 to 23 February 2017.
- [2] On 18 November 2025, Kilian AJ granted default judgment holding the defendant 100% liable for the plaintiff's proven or agreed damages and the quantum was postponed *sine die*. The plaintiff is before the court on an unopposed basis, the defendant having failed to defend the matter. At the outset the plaintiff moved an application that the evidence be received in terms of rule 38(2) of the Uniform rules of court. This judgment only deals with the plaintiff's claim for loss of earnings, as the defendant has to date not conceded the seriousness of the plaintiff's injuries.
- [3] The plaintiff was born on 12 November 2003. She holds a BA degree that she obtained at the University of Johannesburg, in 2023 and an Honours degree obtained at the same institution in 2024, both in Public Management and Governance. She is currently employed as an Administrator/Accounts Clerk at DNR Auto and Roadside at R6 500 per month gross (R78 000 per annum).

EXPERT EVIDENCE

- [4] Dr Okoli, a Neurosurgeon, classified the head injury as a moderate traumatic brain injury (TBI), based on a GCS of from 12/15 to 14/15, and a CT Brain confirmed subarachnoid haemorrhage. He assigned a whole-person impairment of 24% to the plaintiff.

- [5] On clinical examination Dr Okoli found the plaintiff well-orientated in all spheres; general knowledge and mentation normal; no speech disorder; mood stable and appropriate. He noted that she completed matric (2020) and her BA and Honours degrees without failing any grade or year. He noted that the plaintiff's employer's finance manager independently confirmed in writing that the plaintiff struggles to retain instructions and processes
- [6] Ms Bokaba, a clinical psychologist, states that the plaintiff's neuropsychological performance ranged between above average and below average with verbal memory, visual memory and motor speed testing on the low average while only composite memory fell on the below average range, suggestive of moderate deficits in this area. The DASS-21 self-report scores placed depression (38), anxiety (32) and stress (30) all in the 'extremely severe' category; the PCL-5 score (74) indicated severe PTSD symptomatology. Ms Bokaba diagnosed mood dysregulation, PTSD, depression and anxiety and recommended 20 psychotherapy sessions. Ms Bokaba expressed the opinion that the plaintiff's involvement with accident has resulted in her psychological functioning, which is considered to be related to emotional trauma of the event, physical and cognitive concerns, as well as regular pain.
- [7] The Court attributes limited weight to the self-report severity scores as direct measures of functional capacity, noting that the plaintiff has completed two tertiary qualifications post-accident, manages her daily life independently, and is in full-time employment. The Court accepts, however, that the accident has left the plaintiff with residual cognitive vulnerability, particularly in composite memory and attention, corroborated by the employer.
- [8] Mr Mthimkhulu, an Educational Psychologist, further assessed the plaintiff. His assessment placed her Full Scale IQ in the Low Average range, Verbal Comprehension in the Average range, and Perceptual Reasoning, Working Memory and Processing Speed in the Low Average range. He attributed

these results to the TBI which has disrupted key cognitive functions essential to academic functioning.

[9] Mr Mthimkhulu opined that Ms M[...] currently has an Honours degree and wishes to study further; her Honours average of 64% falls 1% below the 65% Masters entry threshold; this shortfall is attributable to the effects of the accident; and if admitted and funded, the plaintiff is likely to complete a two-year Masters programme with a one-year delay due to the accident. He opines that the overall delay is likely to be two years.

[10] The Court accepts the substance of this evidence. The plaintiff has already demonstrated remarkable academic resilience post-accident: passing matric, a BA degree and an Honours degree without failure. The Court finds that, on a balance of probabilities, the plaintiff would in any event have proceeded to obtain a Masters degree (NQF 9), both in the pre-morbid and post-morbid scenarios. The material consequence of the accident is not the prevention of that qualification, but a one-year delay in obtaining it, and a modestly heightened risk of career disruption throughout her working life.

[11] The Occupational Therapist opined that the plaintiff's neurocognitive challenges significantly reduced her competitiveness for promotion and managerial roles. The plaintiff retains the competency for light to low medium duties with reasonable accommodation. The physical demands of the plaintiff's job as an admin clerk fall within sedentary duties.

[12] Mrs Fakir, the Industrial Psychologist assessed the plaintiff and was of the opinion that the plaintiff will most likely continue to work with only an Honours qualification, based on Mr Mthimkhulu's findings. In the premorbid scenario he opines that the plaintiff, with a Masters degree, would have reached a career ceiling at the Paterson D3 level. With only an Honours degree her post morbid career ceiling would be the Patterson C3 earning level. Her revised

instructions, which form the basis of the new actuarial certificate, treat both the pre-morbid and post-morbid scenarios as reaching a Masters degree (NQF 9) and ultimately the same Paterson D3 career ceiling (R1 515 000 per annum at peak). [017-187/188/192] The single material difference between the two scenarios is a one-year delay in the post-morbid scenario: Masters completion in April 2029 rather than April 2028.

[13] Mrs Fakir concluded that while no past loss of earnings was suffered in the conventional sense (the plaintiff was a scholar at the time of the accident and commenced earning in December 2023 in both scenarios), she has suffered loss of her functional and educational abilities.

[14] Mr Sauer prepared an actuarial calculation based on the opinion of Mr Fakir and a revised actuarial certificate dated 27 February 2026 reflecting the equalised Masters scenario with a one-year delay. The latter calculation was obtained after debating the issues with counsel and at the request of the Court.

[15] The revised actuarial outputs are:-

Head	Pre-morbid	Post-morbid	Loss
Past earnings	R182 545	R182 545	–
Contingency deduction (past)	5% → -R9 127	25% → -R45 636	–
Past loss of earnings	R173 418	R136 909	R36 509
Future earnings (before contingency)	R18 247 753	R17 506 920	–
Contingency deduction (future)	30% → -R5 474 326	35% → -R6 127 422	–
Future loss of earnings	R12 773 427	R11 379 498	R1 393 929
Total loss of earnings			R1 430 438
Minus RAF cap effect			R0
Total after RAF cap			R1 430 438

APPLICABLE LEGAL PRINCIPLES

[16] Loss of earning capacity is a patrimonial head of damage. The court must determine the difference, properly capitalised, between what the plaintiff would have earned in her pre-morbid working life and what she will now earn. In *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA) paragraph [8] it was stated as follows:

“[8] It is trite that a person is entitled to be compensated to the extent that the person's patrimony has been diminished in consequence of another's negligence. Such damages include loss of future earning capacity (see for example President Insurance Co Ltd v Mathews). The calculation of the quantum of a future amount, such as loss of earning capacity, is not, as I have already indicated, a matter of exact mathematical calculation. By its nature, such an enquiry is speculative, and a court can therefore only make an estimate of the present value of the loss that is often a very rough estimate (see, for example, Southern Insurance Association Ltd v Bailey NO). The court necessarily exercises a wide discretion when it assesses the quantum of damages due to loss of earning capacity and has a large discretion to award what it considers right. Courts have adopted the approach that, in order to

assist in such a calculation, an actuarial computation is a useful basis for establishing the quantum of damages. Even then, the trial Court has a wide discretion to award what it believes is just (see, for example, the Bailey case and Van der Plaats v South African Mutual Fire and General Insurance Co Ltd)."

[17] Actuarial figures provide an important guide, but the court exercises a broad discretion to achieve a fair and reasonable result that is just (: *Southern Insurance Association v Bailey* NO 1984 (1) SA 98 (A))

[18] Where a pre-morbid scenario is sufficiently well-founded and the post-morbid scenario involves the same ultimate qualification and ceiling but with a measurable delay and increased vulnerability, the court may properly compensate for both the time-value of delayed earnings and the enhanced contingency of career disruption.

[19] Contingencies must be applied fairly and proportionately to both income streams. A higher post-morbid contingency is justified where the evidence establishes genuine increased employment vulnerability.

[20] Contingencies are the hazards of life that normally beset the lives and circumstances of ordinary people, and should therefore, by its very nature, be a process of subjective impression or estimation rather than objective calculation.

[21] In *Goodall v President Insurance Co Ltd* 1978(1) SA 389(W) at 392H-393A the court stated:

"In the assessment of a proper allowance for contingencies, arbitrary considerations must inevitably play a part, for the art or science of foretelling the future, so confidently practiced by ancient prophets and soothsayers, and by authors of a certain type of almanac, is not numbered among the qualifications for judicial office."

[22] The determination of appropriate contingencies remains the court's

prerogative.

EVALUATION

[23] The Court's threshold finding, which gives effect to the instruction underlying the revised actuarial certificate, is that the plaintiff would in all probability have obtained a Master's degree (NQF 9) whether or not the accident occurred. The reasons are:-

[23.1] The plaintiff has already demonstrated sustained academic resilience post-accident: she passed matric without failure (2020), completed a BA degree without failure (2023), and completed an Honours degree (2024), all without repeating a year. This trajectory is the most reliable indicator of her capacity for further study.

[23.2] The educational psychologist on who's finding the industrial psychologist relied, expressly opine that the plaintiff aspires to and is capable of completing a Masters degree.

[23.3] The Court accepts Mr Mthimkhulu's opinion that her failure to meet the 65% threshold for Masters entry (she achieved 64%) is probably attributable to the effects of the accident than to inherent academic ceiling. One percent is a narrow margin that could plausibly have been eliminated but for the cognitive and attentional sequelae of the TBI.

[24] In the pre-morbid scenario, the plaintiff would have completed her Masters in April 2028. In the post-morbid scenario she will most likely complete it one year later, in April 2029. The one-year delay reflects the cumulative effect of the accident on academic pace: the inability to meet the Masters entry threshold first time; and the two-year Masters programme with one year's additional delay as a consequence.

- [25] This delay is a concrete, quantifiable loss, which is calculated for the revised calculation.
- [26] The Court having considered the sequelae of the accident is of the view that that a 20-percentage differential between the pre-morbid and post-morbid future contingencies (25% and 45% respectively) is fair and appropriate. The factors supporting the higher post-morbid contingency include:
- [26.1] The employer's independent written confirmation of attention and retention difficulties, even after repeated exposure to tasks.
- [26.2] Below-average composite memory on objective neuropsychological testing.
- [26.3] Confirmed PTSD, depression and anxiety symptomatology that, if untreated, may affect work motivation and productivity.
- [26.4] Reasonable accommodation already in place at current employment which include reduced workload and verification process (works under supervision) and which has suppressed salary progression and which may not be readily available with a future employer if she moves to a Masters-level position.
- [26.5] The OT's finding that the plaintiff is a 'vulnerable candidate and unequal competitor' in the open labour market relative to her non-injured counterpart, notwithstanding that her physical work competency speed exceeds the 87.5% minimum.
- [27] The past earnings (pre and post) are identical (R182 545), because in both, the plaintiff commenced earning R78 000 per annum from December 2023 as an administrator while completing her Honours. The past loss of R36 509 arises entirely from the differential in past contingency rates: 5% pre-morbid

versus 25% post-morbid. The 25% post-morbid past contingency reflects the heightened possibility that, during the past period, the plaintiff may have experienced periods of reduced earnings, sick leave, or reduced productivity attributable to her injuries and their psychological sequelae. The Court accepts this differential as reasonable on the evidence.

CONTINGENCIES AND CALCULATION

[28] The Court adopts the actuarial certificate of Mr Sauer dated 27 February 2026 as the appropriate quantification vehicle, subject to the findings at paragraphs 21 to 26 above and the contingencies in paragraph 27. The figures are:-

Item	Amount (R)
Past loss of earning capacity	R36 509
Future loss of earning capacity	R3 321346.35
Total loss of earnings	R3 357 855.35
TOTAL AWARD – LOSS OF EARNING CAPACITY	R3 357 855.35

ORDER

[29] In the result the Court grants the order attached hereto.

D J COMBRINK
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

DATE OF HEARING: 27 February 2026

DATE OF JUDGMENT: 29 May 2026

APPEARANCES:

On behalf of plaintiff: Advocate I Nwakodo

On behalf of defendant: No appearance