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

Reportable: NO  
Of interest to other Judges: NO  
Revised: NO  
Date: 15 June 2026 S.S Tebeile AJ  
Signature: \_\_\_\_\_

Case No: 2016-28724

In the matter between:

N[...] M[...] K[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Heard on : 17 March 2026

Decided on : 15 June 2026

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JUDGMENT

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TEBEILE AJ:

## **Introduction**

- [1] This is a default judgment application in terms of Rule 31(5) of the Uniform Rules of Court against the Road Accident Fund (“the defendant”). The plaintiff, N[...] M[...] K[...], a 19-year-old male (born 24 August 2006), was struck by a motor vehicle on 26 October 2015 while crossing Adam Street in Orlando East, Soweto, Gauteng Province. At the time of the accident, he was 9 years old and a Grade 3 learner. The driver of the unknown vehicle fled the scene without stopping.
- [2] The plaintiff sustained bodily injuries, including a head injury with loss of consciousness, an open fracture of the left tibia and fibula, and a left lower leg laceration. He was admitted to Chris Hani Baragwanath Hospital, where he underwent debridement and external fixation of the left tibia/fibula.
- [3] The defendant was served with the combined summons on 26 August 2016 and filed its notice of intention to defend on 6 September 2016. The defendant thereafter failed to file a plea within the prescribed period. The plaintiff served a notice of bar on 9 October 2016. The defendant remained in default. A further notice of bar was served on 24 October 2024. To date, the defendant has filed no plea. The plaintiff now seeks default judgment against the defendant.

## **Liability**

- [4] The merits of the claim are settled in the plaintiff’s favour. The driver of the motor vehicle was wholly negligent, and the plaintiff, a minor at the time, bears no contributory negligence.
- [5] The defendant is 100% liable for the plaintiff’s agreed or proven damages.

## **Application in terms of Rule 38(2)**

[6] The plaintiff brought an application in terms of Rule 38(2) for evidence to be led by way of affidavits. The matter proceeds by way of affidavit evidence, for which leave is granted in terms of Rule 38(2).

### **Plaintiff's expert evidence**

[7] The plaintiff has filed expert reports from a neurosurgeon, orthopaedic surgeon, clinical psychologist, educational psychologist, occupational therapist, industrial psychologist, and an actuary. The defendant has filed no opposing expert reports.

[8] According to the report by Dr A Mazwi, a neurosurgeon, the plaintiff sustained a mild head injury with brief loss of consciousness and amnesia. He suffers from post injury recurrent headaches, difficulty with concentration, poor memory, aggressive behaviour, and has a left lower leg scar. The combined whole person impairment is rated at 17%. He qualifies under the narrative test for serious injury.

[9] The report by orthopaedic surgeon, Dr E Schnaid reveals that the plaintiff sustained an open fracture of the left tibia/fibula. He experiences pain in the left leg and lumbar spine, cannot walk long distances, cannot run or climb stairs, and cannot lift heavy objects. He suffers cramps in the left leg.

[10] Ms R Mthembu, the clinical psychologist has reported that the plaintiff presents with cognitive deficits, including difficulties with auditory memory, cognitive flexibility, and information processing. The plaintiff self-isolates, experiences random sadness, emotional detachment, and is short-tempered.

[11] Ms MP Ndlovu, an educational psychologist's report reveals that prior to the accident, the plaintiff was functioning well academically. Since the accident, he has failed Grade 10 four times and is currently making his fifth attempt in the current academic year 2026. His neuropsychological deficits are permanent. He will likely exit the mainstream system in favour of vocational training, with Grade 9 as his highest probable educational attainment.

[12] According to the occupational therapist, Ms NR Baartman, the plaintiff's physical capacity is limited. He cannot engage in prolonged standing, walking, climbing, or lifting heavy objects. He demonstrates physical abilities only in the low to mid-ranges of medium work.

[13] The report by Ms V Samkange, industrial psychologist, records that, but for the accident, the plaintiff would likely have passed Grade 12 with a bachelor's degree endorsement, enrolled for a degree in 2026, completed it in 2027, secured an internship in 2028/2029, reached his career ceiling at age 45, and worked until age 65. Post-accident, he will struggle to compete in the open labour market due to his cognitive and physical impairments. He will likely be confined to unskilled work with prolonged periods of unemployment.

### **The actuarial report**

[14] Mr R Oketch, actuary, has calculated the plaintiff's loss of earnings as follows:

#### ***Pre-morbid (but for the accident) scenario:***

Past loss: Nil (the plaintiff was a child with no pre-accident income)

#### ***Pre-morbid future loss calculation:***

Future earnings but for the accident:	Approximately R12 500 000.00
Contingency deduction (standard 15%):	R1 875 000.00

**Net pre-morbid value: R10 625 000.00**

#### ***Post-morbid future loss calculation (present value):***

Future earnings having regard to the accident:	Approximately R2 000 000.00
Contingency deduction (standard 25%):	R500 000.00
<b>Net post-morbid value:</b>	<b>R1 500 000.00</b>

**Net loss of earnings (pre-morbid minus post-morbid):**

$R10\,625\,000.00 - R1\,500\,000.00 = R9\,125\,000.00$

[15] The actuarial report then applies further specific contingencies and arrives at a recommended amount of **R8 094 827.00** for loss of earnings/earning capacity. The plaintiff claims this amount.

### **The applicable legal principles on contingencies**

[16] The assessment of damages for loss of earnings or earning capacity is inherently uncertain. In *Southern Insurance Association Ltd v Bailey NO*<sup>1</sup> it was held:

“One of the elements in exercising that discretion is the making of a discount for ‘contingencies’ or the ‘vicissitudes of life’. These include such matters as the possibility that the plaintiff may in the result have less than a ‘normal’ expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case.”  
(Emphasis added)

[17] Contingency deductions are a flexible, discretionary adjustment made by the court. The standard contingencies are typically 5% to 15% for pre-morbid income and 15% to 35% for post-morbid income, depending on the facts of each case. However, where the plaintiff’s prospects are particularly speculative or the post-morbid scenario is fraught with uncertainties, higher contingencies may be applied.

[18] In *Road Accident Fund v Guedes*<sup>2</sup> the Supreme Court of Appeal reiterated that the assessment of future loss is not a mathematical exercise but a matter of judicial estimation, having regard to the evidence and the probabilities.<sup>3</sup> The Court stated:

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<sup>1</sup> 1984 (1) SA 98 (A).

<sup>2</sup> *Road Accident Fund v Guedes* 2006 (5) SA 583 (SCA).

<sup>3</sup> *Id* at para 8.

“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 which is often a very rough estimate”.<sup>4</sup>

[19] The Court in *Road Accident Fund v Guedes* went on and stated:

“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”.<sup>5</sup>

### **Analysis and reassessment of contingencies**

[20] The plaintiff’s actuary has applied a 15% pre-morbid contingency deduction and a 25% post-morbid contingency deduction. In my view, given the specific circumstances of this case such as, qualification, career path as unskilled worker with lower quartile, intermittent employment characterized by lengthy periods of unemployment, these contingencies are inadequate and do not sufficiently account for the numerous uncertainties inherent in the plaintiff’s pre-morbid and post-morbid scenarios.

#### *Pre-morbid contingencies*

[21] The plaintiff was a 9-year-old boy from a working-class family in Orlando East, Soweto. His mother is a general worker. While the educational psychologist opined that the plaintiff had the potential to obtain a bachelor’s degree and

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<sup>4</sup> Id, see also *President Insurance Co Ltd v Mathews* 1992 (1) SA 1 (A) at 5C-E.

<sup>5</sup> Id, see also *Van der Plaats v South African Mutual Fire and General Insurance Co Ltd* 1980 (3) SA 105 (A) 114F-115D.

pursue a professional career, this scenario is highly ambitious. In my view, given his socio-economic background, there is no guarantee that, but for the accident, the plaintiff would have successfully completed a degree, let alone pursued medical studies or a similarly high-income profession.

[22] Although the accident occurred at a very young age, the plaintiff's pre-academic record, while satisfactory, did not demonstrate exceptional aptitude. The plaintiff's socio-economic background must be considered because children from such backgrounds face significant systemic challenges in accessing higher education and professional careers.

[23] In my view, a higher contingency deduction rather than 15% as per recalculations below on the pre-morbid scenario is appropriate to account for the vicissitudes of life that would have confronted the plaintiff even absent the accident.

#### *Post-morbid contingencies*

[24] The plaintiff's post-morbid scenario is equally, if not more, uncertain. The industrial psychologist acknowledges that the plaintiff will experience prolonged periods of unemployment due to his residual impairments, low level of education, and the high rate of unemployment in South Africa. In my view, for a person with only a Grade 9 education and physical and cognitive impairments, the prospects of stable employment are doubtful. The plaintiff's own expert acknowledges that he will likely remain at Grade 9 level and be confined to unskilled work at the lower quartile.

[25] However, the possibility remains that the plaintiff may, through family support or vocational training, achieve a slightly better outcome than predicted. A higher contingency deduction as per recalculations below rather than 25% on the post-morbid scenario is appropriate.

[26] This approach aligns with recent jurisprudence. In *Viljoen v Road Accident Fund*<sup>6</sup>, the court per Mpama AJ approved a 15% pre-morbid and 30% post-morbid contingency deduction.

[27] In *Tlatsana v Road Accident Fund v Tlatsana*<sup>7</sup>, Wessels AJ applied a 15% pre-morbid and 20% post-morbid contingency deduction, noting that higher contingencies must be justified by evidence of unique risk factors.

[28] In the present case, I am of the view that the unique risk factors are manifest: the plaintiff's low socio-economic background, the speculative nature of the professional career assumed in the pre-morbid scenario, the severity of the plaintiff's cognitive and physical impairments, and the dire state of the South African labour market for low-skilled workers.

[29] I now turn to applying the proposed contingencies. The actuarial report provided a pre-morbid net value of R10 625 000.00 (after applying a 15% contingency) and a post-morbid net value of R1 500 000.00 (after applying a 25% contingency). However, the actuary's underlying gross future earnings figures must be reassessed with the higher contingencies.

[30] From the actuary's papers<sup>8</sup>, the gross pre-morbid future earnings were calculated as approximately R12 500 000.00 when applying a 25% contingency (rather than 15%):

Gross pre-morbid future earnings: R12 500 000.00  
Less 25% contingency (R12 500 000.00 x 0.25): R3 125 000.00  
**Net pre-morbid value: R9 375 000.00**

[31] The gross post-morbid future earnings were calculated as approximately R2 000 000.00 when applying a 35% contingency as opposed to 25%:

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<sup>6</sup> (unreported) (3312/2018) [2025] ZAFSHC 144 (22 May 2025).

<sup>7</sup> (unreported) (3884/24) [2026] ZANWHC 25 (11 February 2026).

<sup>8</sup> See annexure "NK12".

Gross post-morbid future earnings: R2 000 000.00  
 Less 35% contingency (R2 000 000.00 x 0.35): R700 000.00  
**Net post-morbid value: R1 300 000.00**

[32] The net loss of earnings is therefore: R9 375 000.00 – R1 300 000.00 = **R8 075 000.00**. However, this figure remains based on the actuary’s optimistic assumption that the plaintiff would, but for the accident, have pursued a professional career of the highest order (medical specialist or equivalent). There is insufficient evidence to support this assumption. The plaintiff was a satisfactory but not exceptional student. His mother is a general worker. He had no special advantages. A more realistic pre-morbid career path would be a diploma or degree at a less ambitious level, with correspondingly lower earnings.

[33] In the absence of more granular actuarial evidence, I am of the view that I must adopt a conservative approach. The plaintiff is a young man who has suffered a devastating injury. He is entitled to fair compensation, but not to a windfall. Taking into account all the uncertainties, I am of the view that a fair and reasonable award for loss of earnings/earning capacity to be **R4 172 300.00** and which amount calculated as follows:

**Basis I (C1/C2 ceiling**

<b>Item</b>	<b>Gross</b>	<b>Contingency</b>	<b>Net</b>	
Uninjured future loss	R8 029 017.00	35% (R2 810 156.00)	R5	218
				861.00
Injured future loss	R1 902 838.00	45% (R856 277.00)	R1	046
				561.00
<b>Net future loss =</b>	<b>R5 218 861.00</b>	<b>– R1 046 561.00</b>		<b>R4 172</b>
				<b>300.00</b>

**General damages**

[34] At the hearing of this application, the plaintiff submitted that the claim for general damages has been settled between the parties and this has been set out in the plaintiff's heads of argument.<sup>9</sup> Accordingly, the claim for general damages is settled.

### **Future medical expenses**

[35] In light of the findings I made on the defendant's liability towards the plaintiff's agreed or proven damages relating to the accident that occurred on 26 October 2015, the plaintiff is entitled to an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 for future medical and hospital expenses. The defendant has not disputed this entitlement, and it is appropriate to grant it.

### **Costs**

[36] Costs should follow the result. The plaintiff has been substantially successful in establishing liability and his entitlement to compensation. However, in the exercise of my discretion, I award costs on Scale B on the party and party scale.

### **Order**

[37] Accordingly, I make the following order:

- (1) The defendant shall make payment to plaintiff in the amount of R4 172 300.00 (Four Million One Hundred Seventy Two Thousand Three Hundred Rand) in respect of future loss of earnings which amount represent 100% of the plaintiff's claim for loss of earnings.
- (2) The aforementioned capital amounts shall be paid within 180 days from date of this order failing which the defendant shall be liable for interests thereof calculated at 10.50% from date of this order to date of final payment.

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<sup>9</sup> See para 4 of the plaintiff's heads of argument, p 15-2 of Caselines.

- (3) The amount in paragraph 1 above must be paid the plaintiff's chosen trust account being the trust account for Mngqibisa Attorneys.
- (4) The defendant is ordered to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, to compensate the plaintiff for the costs of future accommodation in a hospital or nursing home, or the treatment of or rendering of a service or supplying of goods to the plaintiff arising from the injuries sustained in the motor vehicle accident on 26 October 2015, after such costs have been incurred and on proof thereof.
- (5) The defendant shall further pay the plaintiff's agreed or taxed party and party costs on the High Court Scale B, which costs shall include reasonable preparation, reservation, and qualifying fees (if any) of the plaintiff's experts, being the following:
  - 5.1. Orthopaedic Surgeon.
  - 5.2. Neurosurgeon.
  - 5.3. Clinical Psychologist.
  - 5.4. Educational Psychologist.
  - 5.5. Occupational Therapist.
  - 5.6. Industrial psychologist.
  - 5.7. Actuary.
  - 5.8. The costs of application in terms of Rule 38(2).

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**SHADRACK TEBEILE**

**Acting Judge of the High Court of South Africa**

**Gauteng Local Division, Johannesburg**

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