

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, PRETORIA

CASE NO: 12728/22

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

SIGNATURE

DATE 22-05-2026

In the matter between:

M[...] J obo Minor

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

*This judgment was prepared and authored by the Judge whose name is reflected and is electronically circulated to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be **22 May 2026***

JUDGMENT

MASHAMBA AJ

INTRODUCTION

- [1] The plaintiff is M[...] J[...], an adult female person born on the 07th April 1991, who act in her representative capacity on behalf of her biological daughter namely; M[...], E[...] N[...], who was born on the 12th October 2015. The plaintiff instituted an action against the Road Accident Fund (“the defendant”) for damages resulting from the accident which occurred on the 07th July 2017, as a result of the accident, B[...] K[...] J[...] (the deceased) the minor child’s biological father, untimely demised in a hospital a day after the accident.
- [2] The plaintiff issued summons on 2 March 2022, which was served on the defendant on 3 March 2022. Thereafter, the defendant entered an appearance to defend but failed to deliver its plea within the twenty (20) days prescribed by Rule 22(1) of the Uniform Rules of Court (the rules). The plaintiff served a Notice of Bar on the defendant, requiring the defendant to deliver its plea within five (5) days, failing which the defendant would automatically be barred from doing so. The defendant failed to deliver its plea within the prescribed period and was accordingly barred.
- [3] The plaintiff proceeded to issue an application for default judgment against

the defendant, which application was not opposed. The matter was duly enrolled for hearing on 8 April 2026, and the notice of set-down was properly served on the defendant. Despite proper service, the defendant did not attend court.

ISSUE BEFORE THIS COURT

- [4] The court was required to determine both the merits and the quantum. The only head of damages claimed under quantum was the loss of support suffered by the minor child.

MERITS

- [5] The plaintiff submitted that the deceased was driving in his lane when the insured motor vehicle lost control and collided with the deceased, head-on. The deceased sustained severe injuries and was transported to hospital for medical treatment. Despite these efforts, he succumbed to his injuries.
- [6] The plaintiff applied, in terms of Rule 38(2) of the rules, for the expert evidence in this matter to be admitted on affidavit rather than *viva voce*.
- [7] In order to substantiate the minor child's claim for loss of support, the plaintiff instructed several medical experts to compile their respective reports. The plaintiff placed reliance on the following expert reports:

7.1 Alet Mattheus (Educational Psychologist)

7.2 Oscar Sechudi (Industrial Psychologist)

7.3 WIM Loots (Actuaries)

[8] The plaintiff's submissions were advanced on the strength of the conclusions set out in the medical experts' reports properly placed before this court. The court evaluated the probabilities arising from the opinions expressed by the experts in their respective reports. The court considered the case of **Prince v Road Accident Fund**¹, where the court held at paragraphs 55, 56 and 59 in the evaluation of the probabilities in respect of expert evidence.

"Sufficient proof is established when an inference can be drawn about the fact in issue, providing that the inference is consistent with all the proven facts. In civil matters, it suffices if the inference is the most probable inference. Further, once prima facie proof or evidence has been provided, that is proof calling for an answer. This becomes conclusive proof on the point in issue usually if no evidence is produced to rebut it.

The fact of the matter is, however, that the Court must at the end of the case reviews all the evidence and evaluate this according to the applicable primary criterion. It must be accepted, of course, that where, for example, a Defendant fails to produce evidence, this does not mean necessarily that the opponent's version in the case, falls to be accepted. The acceptance of Plaintiff's case depends on the probative strength of Plaintiff's case, being whether it is sufficient to cast, an evidential burden on the Defendant to present evidence."

LOSS OF SUPPORT

[9] The educational psychologist conducted an assessment of the plaintiff and the

¹ (CA 143/2017) [\[2018\] ZAECGHC 20](#) (20 March 2018). Par 55, 56 & 59

minor child on 8 September 2021. Having regard to the assessment outcomes

and the identified learning challenges, the expert concluded that the minor child

is likely to complete Grade 12 and secure an endorsement enabling access to a Higher Certificate (NQF Level 5).

[10] The Industrial Psychologist was instructed to evaluate the deceased's likely career trajectory. The expert recorded that the deceased, aged 29 at the time of the collision, was employed as an electrician at Demco Technologies, earning R13 256.03 per month (R159 072.36 per annum). By reference to the 2017 Quantum Yearbook, the expert concluded that these earnings aligned with those of a semi-skilled worker at Paterson level B1, positioned between the lower quartile of R151 000 and the median of R175 000 per annum.

[11] The Industrial Psychologist expressed the view that the deceased's career trajectory would likely have advanced to a supervisory or managerial role prior to plateauing. In such a position, his earnings would have aligned with the median of Paterson level B4 (R259 000 per annum). The expert anticipated that the deceased would have reached his career ceiling at around 45 years of age, thereafter remaining at that level with annual inflationary adjustments, and would ordinarily have retired at 65, subject to health and employer policy.

[12] **WIM Loots** Actuaries were instructed to quantify the minor child's loss of

support, utilising the career and earnings assumptions advanced by the Industrial Psychologist. The actuarial computation incorporated contingencies of 5% for past loss, 15% for pre-morbid future earnings, and 25% for post-morbid future earnings.

TABLE 1 Child's Dependency until Age 21

Past income	R 328 618
future loss	R 1 038 075
Net	1 366 693

TABLE 2 Child's Dependency until Age 25

Past income	R 328 618
future loss	R 1 239 229
Net	R 1 567 847

PLAINTIFF'S SUBMISSIONS

- [13] The plaintiff contended that the minor child's dependency on the deceased would, in the normal course, have continued until the completion of her tertiary qualification, justifying a dependency period up to the age of 25. On this basis, the plaintiff invited the court to adopt the actuarial calculations contained in Table 2. Counsel emphasised the established common-law principle that a parent's duty of support does not cease upon the attainment of majority, but persists for as long as the child remains in need and unable to be self-supporting. Several authorities were cited in support of this submission.

[14] The plaintiff drew the court's attention to the deceased's payslip and his vocational qualifications, contending that these indicators of earning potential supported the conclusion that the deceased would, in the ordinary course, have maintained the minor child until the age of 25.

[15] The plaintiff contended that the defendant bears full liability for the minor child's proven damages, asserting that the accident was exclusively caused by the insured driver's negligence.

COURT'S DISCUSSION AND THE FINDINGS

[16] It is trite that the merits must be determined before the court may consider quantum. In this matter, the deceased was the driver of one of the vehicles involved, and the collision is alleged to have been caused by the negligent driving of the insured motor vehicle. The established jurisprudence holds that any contributory negligence on the part of the deceased is not apportioned to the dependants, who are treated as *innocent third parties*.

Consequently, the deceased's negligence cannot diminish the dependants' entitlement to loss of support².

[17] Having considered the evidence, the court accepts the plaintiff's version that the deceased was travelling in his proper lane when the insured vehicle lost

² *Legal Insurance Co Ltd v Botes* 1963 (1) SA 608 (A), *Evins v Shield Insurance Co Ltd* 1980 (2) SA 814 (A), and *AA Mutual Insurance v Maqula* 1978 (1) SA 805 (A)

control and collided with him. Accordingly, the defendant is held fully liable, and the plaintiff is entitled to recover 100% of her proven damages.

[18] The court must now determine the appropriate order regarding the minor child's loss of support and the contingencies applicable thereto. The standard contingencies, as set out in the *Koch Quantum Yearbook* (2017), are 5% for past loss and 15% for future loss, subject to variation where justified by the deceased's employment profile, health, or other uncertainties. Having regard to the Industrial Psychologist's projections, I find no compelling reason to deviate from these norms.

[19] The court has taken into account counsel's argument that, based on the expert evidence, the minor child's dependency should be accepted as extending to 25 years. Although I accept that the dependency continues beyond majority, the evidentiary foundation does not, in my view, support an extension to 25.

Considering the child's age, educational level, and the career trajectory envisaged by the experts, a dependency period to age 21 is appropriate.

TABLE 1 Child's Dependency until Age 21

Past income	R 328 618
5% contingencies	
Net	312 187.10
future loss	R 1 038 075
15%	

Net	R 882 363.75
TOTAL	R 1 194 550.85

[20] In the result, I am satisfied that the just and equitable amount to be awarded to the plaintiff for the minor child's loss of support is **R1 194 550.85**.

COSTS

[21] Exercising its discretion judicially, the court finds no justification to depart from the principle that costs follow the result. The defendant is accordingly liable for the plaintiff's costs of suit.

ORDER

[22] In the circumstances, the court makes the following order;

1. The defendant is held liable to compensate the plaintiff **100%** for her proven Damages.
2. The defendant shall pay the plaintiff the sum of **R 1 194 550.85** (One Million, One Hundred and Nity-Four Thousand, Five hundred and Fifty Rand, Eighty-Five Cent) in respect of the minor child's loss of support claim.
3. The amount in paragraph 2 above shall be paid into following Bank

Accounts;

NAME OF BANK: STANDARD BANK

ACCOUNT HOLDER: TW MPHABLELE ATTORNEYS

TYPE OF ACCOUNT: TRUST CHEQUE ACCOUNT

ACCOUNT NO: 0[...]

BRANCH CODE: 0[...], MONTANA

REF NO: MVA 977/TM

4. The defendant shall be liable to pay interest on the aforesaid amounts *tempore morae* at the rate of 10.25% per annum from 14 days after the date of this order to date of the payment.
5. The defendant shall pay the plaintiff 's taxed or agreed party and party costs until the date of this order including costs of a counsel scale B.
6. The costs consequently in the preparation of and obtaining the medico legal and actuary reports that were served on or provided to the defendant.
7. The reasonable taxable preparation, qualifying and reservation fees, if any of the plaintiff's experts for trial of whom notice was given to the defendant.
8. The reasonable taxable costs of necessary consultations with the said experts and the reasonable taxable traveling, subsistence and accommodation costs of the plaintiff for attending the medico legal examination, subject to the discretion of the taxing master.
9. The reasonable taxable costs of traveling, subsistence, accommodation

costs of the plaintiff for attending court.

10. The defendant shall be liable to pay interest on the amount of the Plaintiff's

costs of suit, as taxed or agreed, at 10.25 % per annum from 14 (fourteen days) of the allocatur of the taxing master or the date of the agreement, whichever applies, to date of payment.

11. The amount set out in paragraph 2 shall be safeguarded by the establishment of a trust account to be opened in the name of the minor child, **M[...], E[...] N[...]**.

12. There is a valid contingency fee agreement between the parties.

E MASHAMBA

ACTING JUDGE OF THE HIGH COURT,

PRETORIA; GAUTENG DIVISION

APPEARANCES

FOR THE PLAINTIFF : ADV MJ MLANDU

INSTRUCTED BY : TW MPHAHLELE ATTORNEYS

FOR THE DEFENDANT : NO APPEARANCE

DATE OF HEARING : 08th April 2026

DATE OF JUDGEMENT : 22nd May 2026