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**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 47126/2018

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 11 JUNE 2026

SIGNATURE

In the matter between:

N[...] A[...] M[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Summary: *Attorney – duty towards a client in respect of a claim against the Road Accident Fund (the RAF) which has become settled discussed. The settlement amount was R 1 650 000.00. At the time this was agreed on, the plaintiff was still a minor. Despite the matter having*

been settled on 31 March 2022 and despite payment having been made by the RAF on 31 July 2023 already, by the time the matter featured on the Settlement Roll in February 2026, only R 50 000.00 had been paid to the client. The client had by then attained the age of majority. Lack of proper attention to the needs of clients and the protection of proceeds of settled claims in respect of vulnerable persons discussed. Attorneys denied fees for unnecessary proceedings and undue delays.

ORDER

1. It is noted that the defendant has agreed to pay 90% (Ninety percent) of the plaintiff's damages in the amount of R 1 650,000.00 (One Million Six Hundred and Fifty Thousand Rand and Zero Cents) after apportionment and that this agreed amount has already been paid on 31 July 2023.
2. Since the payment was made later than the 180 days after settlement had been reached, the defendant is ordered to pay interest on the amount mentioned in par 1 above at the prescribed rate from 1 September 2022 until 31 July 2023.
3. The defendant is ordered to furnish the trustee appointed in respect of a trust to be created for the benefit of the plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, *limited to 90%* for the costs of the future accommodation of the plaintiff in a hospital or nursing home or the treatment of or the

rendering of a service or the supplying of goods (of a medical and non-medical nature) to the plaintiff arising out of injuries sustained by her in a motor vehicle collision on 12 March 2017, in terms of which undertaking the defendant will be obliged to compensate the trustee in respect of the said costs after the costs have been incurred by either the plaintiff or by the trustee or by any party on behalf of the plaintiff and on proof thereof. The defendant is ordered to pay the reasonable travelling costs and accommodation for the plaintiff and any caretaker for her to and from the location where she is to receive treatment covered under the undertaking.

4. By agreement and without derogating from the generality of the foregoing, the Undertaking shall include the reasonable costs of the formation of the trust contemplated in this order for the benefit of the plaintiff and the costs of administration of the said trust, including the costs attendant upon the provision of security by the trustee, and auditing and/or accounting services as set out in the Trust Deed.
5. By agreement the defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on the High Court scale, for the instructing and correspondent attorneys, which costs may include, but not be limited to the following:
 - 5.1 The fees of counsel on scale B, including a day fee in respect of appearance at the settlement roll.
 - 5.2 The cost of obtaining all expert medico legal reports and any other reports of an expert nature which were furnished to the defendant;

- 5.3 The cost of obtaining documentation/evidence, scans, considered by the expert(s) to finalise their reports;
- 5.4 The reasonable taxable reservation, qualifying and preparation fees of all experts whose report(s) were provided to the defendant;
- 5.5 The reasonable cost of consultation fees between the plaintiff's experts and the plaintiff's legal teams regarding the matter;
- 5.6 The reasonable cost of one consultation between the plaintiff and the plaintiff's legal team to consider the offer to settle;
- 5.7 The reasonable taxable accommodation and transportation costs (including toll and e-toll charges) incurred on behalf of or by the plaintiff (including one person having to accompany her) in attending medico legal consultations with all experts and consultations with the legal representatives;
- 5.8 The reasonable cost for an interpreter's at the medico legal appointments for translation of information;
- 5.9 The above-mentioned payment with regard to costs shall be subject to the following conditions:
 - 5.9.1 The plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the defendant's attorney of record; and
 - 5.9.2 The plaintiff shall allow the defendant 180 calendar days to make payment of the taxed costs;

5.9.3 The defendant is to request and load payment within 14 (fourteen) calendar days from date of settlement/taxation of the bill of cost, with proof of same to be sent to the plaintiff's attorneys;

5.10 For purposes of the payment of interest and costs, the plaintiff's Attorney's Trust account details are as follows:

ACCOUNT HOLDER:	VZLR INC
BRANCH:	ABSA BUSINESS BANK HILLCREST
BRANCH CODE:	632005
TYPE OF ACCOUNT:	TRUST ACCOUNT
ACCOUNT NUMBER:	3[...]

5.11 In the event of default on the above payment, interest shall accrue on such outstanding amounts at the prescribed rate calculated from the 15th day of the date of this order in respect of interest and from the 15th day of settlement/taxation of the bill of costs until the date of payment.

6. After deduction of the legal costs consultant's fee for drawing the bill of costs and attending to its settlement or taxation, the balance of the costs referred to in paragraph 5 above shall be paid to the trustee of the trust contemplated below. In the event that the trust has not yet been created, such balance shall be invested in terms of Section 86(4) of the Legal Practice Act, 28 of 2014, with the relevant financial institution, for the benefit of the plaintiff, until the trust is created.

7. The fees contemplated in paragraph 5 above, shall be subject to the limitation set out in par [63] of the judgment.
 8. The plaintiff's attorneys are directed to, within 10 (ten) days from date of this order, deliver to the court, the plaintiff and the proposed trustee a full reconciliation in respect of the payment received from the defendant on 31 July 2023, the interest accrued thereon, the fees already debited and the fees to be debited in terms of the attorneys' mandate to date of this order.
 9. The plaintiff's attorneys are directed to pay one half of the balance due to the plaintiff in respect of the aforesaid reconciliation within 10 (ten) days from date of this order to her and to pay the other half, together with the interest referred to in paragraph 2 above, once received, to the trustee of the trust to be created for the benefit of the plaintiff.
 10. It is directed that a trust be created for the benefit of the plaintiff, which shall be in terms of the draft trust deed annexed hereto as Annexure "A" and the proposed trustee's consent annexed as Annexure "B" and initialled for identification purposes.
 11. The proposed trustee is ordered to furnish security to the satisfaction of the Master of the High Court.
 12. It is noted that the plaintiff's mother has entered into a contingency fee agreement on behalf of the plaintiff and plaintiff's attorneys in terms of the Contingency Fees Act.
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J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 10 June 2026.

DAVIS, J

Introduction

[1] The plaintiff is Ms M[...]. Her mother, when the plaintiff was still a minor, had instituted action on her behalf against the Road Accident Fund (the RAF) for the recovery of damages suffered by her as a result of injuries sustained in a motor vehicle accident which had occurred on 12 March 2017. The plaintiff was a pedestrian and was 10 years old at the time.

[2] The reason for this judgment is the concern of the court in the delay of payment to the plaintiff by her attorneys. The matter was initially settled on 31 March 2022, but apparently “finally” settled on 26 January 2023. The settlement amount was subsequently paid to and received by the plaintiff's attorneys on 31 July 2023.

[3] The plaintiff attained the age of majority on 23 January 2025.

[4] By the time the matter came before me as then Acting Deputy Judge President, on that part of the daily trial roll allocated to settled matters on 25 February 2026, the plaintiff had only been paid R 50 000.00. This was despite

the fact that her correspondent attorneys had even already debited and collected their fees from the amount paid by the RAF.

The settlement

[5] Action was instituted against the RAF on 5 July 2018 by the plaintiff's mother, acting at the time as aforesaid. The attorneys in Pretoria were VZLR Inc. They were acting as correspondent attorneys on instructions of Moss & Associates Inc t/a J Visser Attorneys. The total amount of damages claimed was R 1 850 000.00

[6] The RAF defended the action and after the exchange of pleadings and expert notices on behalf of the plaintiff, two pre-trial conferences were held. At the first pre-trial conference on 12 September 2018 very little was resolved but at the second pre-trial conference held on 29 March 2019 it was recorded that the RAF had made a settlement offer on 30 January 2019. At this conference a certain attorney Ms M Dixon from VZLR Inc appeared for the plaintiff.

[7] On 14 June 2021, the RAF made a further settlement offer. This was in the amount of R 1 610 993.88, after a 10% apportionment.

[8] On 10 March 2022, the RAF increased its offer to R 1 650 000.00 (also after 10% apportionment). Ms Dixon accepted this offer on 31 March 2022 by responding as follows: *“Thank you for the offer below. Please find attached hereto the following: 1. Draft order – makes provision for a trust as suggested by the experts; 2 Consent; 3. Deed of trust.... you are welcome to forward a discharge form for signature”*.

[9] It appears that the consent referred to was one obtained by an attorney, Mr Van der Merwe. The attorney stated in his affidavit deposed to on 27 October 2021 in Hartswater, which affidavit was included in the plaintiff's “settlement bundle” presented to court, that he was practising at J Visser

Attorneys in Hartswater and that he had perused an offer made by the RAF on 27 October 2021. He had evaluated the offer and considered it fair and reasonable and corresponding to the medico-legal reports obtained.

[10] Mr Van der Merwe had advised the plaintiff's mother (who was then the representative plaintiff) of the reasonableness of the offer which would be contained in a draft order. She, in turn, by way of a separate affidavit deposed to by her also on 27 October 2021 in Hartswater, consented to the offer. Neither the offer nor the draft order referred to by Van der Merwe in his affidavit were presented to the court.

[11] The RAF subsequently made a formal offer of settlement on one of its pre-printed standard forms on 24 January 2023, repeating the offer of R 1 650 000.00 (after a 10% apportionment) which had already been accepted the previous year. This repeated offer was again accepted on behalf of "the claimant" by Ms M Dixon of VZLR Inc on 26 January 2023 by the completion of the acceptance part of the form. The form also contains the wording: "*I understand the meaning and extent of this offer and acceptance and confirm that it records the full and final agreement between the RAF and me. The RAF is discharged from liability pertaining to the loss suffered in the abovementioned accident...*" The offer included payment of the taxed or agreed party and party costs, on the appropriate scale.

[12] As aforementioned, hereafter the RAF paid the agreed amount to VZLR Inc on 31 July 2023. The obligations of the RAF in terms of the settlement, save for costs, were thereby discharged.

The delay

[13] It is immediately apparent that there is a substantial delay between the date of payment of the settlement amount and when this matter came before

court for purposes of consideration of the protection of the proceeds of that payment. This delay commenced during a period of time when the plaintiff was still a minor and this court her upper guardian. To the prejudice of the plaintiff, the delay denied the court the opportunity to exercise its upper guardianship.

[14] After the initial hearing of the matter by me on 25 February 2026, I stood the matter down twice, first to 10 March 2026 and then to 19 March 2026. I also issued the following directive: *“Both the instructing and the correspondent attorneys are directed to furnish evidence to this court on 19 March 2026 concerning the delay in the matter since the action has settled in 2022 and the payment of fees on 31 July 2023 and why: 1)the attorneys should not be deprived of fees; 2) the attorneys not be directed to pay de bonis propriis some of the disbursements of the action and 3)why a trust is necessary for a major and on what basis the attorneys obtained instructions to create a trust. “*

[15] As part of the responses to the directive, attorney Ms Sebonka from VZLR Inc deposed to an affidavit wherein she stated that she only became involved with the plaintiff’s file from August 2025. She therefore had no part in the preceding steps which gave rise to this court’s concerns. Apart from other detail in her affidavit, Ms Sebonka confirmed the following in respect of the payment by the RAF: *“Around July 2023 capital payment was received from the Road Accident Fund, statements with payment breakdown (interim fees to be deducted and disbursements to be paid) was sent to Moss Inc and upon their instructions and approval thereof, we proceeded to make payment to them”*.

[16] Ms Sebonka in her affidavit referred to above, with reference to email correspondence between her predecessor and various officials at the RAF, stated that since the date of the settlement in March 2022 the attorneys have been struggling to obtain a confirmation letter from the RAF. In addition, a very convoluted exchange of opinions ensued between the predecessor and the RAF

as to whether a curator should replace the plaintiff's mother and, if so whether a separate application would be necessary, alternatively whether the proceeds of the claim should be protected by the creation of trust.

[17] The attorneys blame the RAF for the impasse, labelling the reason for the delay in their affidavits the RAF's "*procedural fork (Trust v Rule 57)*" but they could not explain, neither in their affidavits nor by argument addressed on their behalf what role the RAF still had to play in this regard after the payment of the agreed capital amount and the accepted offer of costs. The RAF, while it had engaged with the attorneys by way of email exchanges, never made the payment of the claim dependent on the protection of the funds or an agreement as to the nature of such protection. Even if it had, such condition was overtaken by the actual payment.

[18] It was explained to the court that on 25 April 2022 the instructing attorneys instructed Ms Sebonka's predecessor to proceed with a curatorship application. Such an application was served on the RAF on 10 November 2022. Ms Sebonka stated in her affidavit that "*...between November 2022 – 19 February 2025: Various follow-ups were made at court for a hearing date*", allegedly to no avail. Apparently the application was eventually set down for hearing on 26 May 2025 but removed from the roll by the attorneys. The reason given in Ms Sebonka's affidavit was that the plaintiff had since attained the age of majority. Despite this having happened on 23 January 2025, a notice of substitution was only filed on 9 March 2026, that is a day before the first standing down by this court of the matter to 10 March 2026.

[19] In her affidavit Ms Sebonka submitted that the further delay in the matter was that the attorneys could not agree with the RAF what the terms of the trust exactly should be and that they sought to resolve this before sanctioning the trust by way of a court order.

[20] In a separate affidavit, attorney Ms Small from Moss & Associates Inc t/a J Visser Attorneys in Randburg, Johannesburg, described the “phases of litigation” to the court. She confirmed that the matter was settled on 31 March 2022 and that she had then instructed VZLR Inc to “*proceed with a draft order including a trust to be established*”. After some email interaction with the RAF, she instructed VZLR Inc during April 2022 to proceed with an application for a curator ad litem, which she stated “*was not standard practice*”. She stated that thereafter, the attorneys could only obtain a date on the unopposed motion court in May 2025. She had thereafter been advised by VZLR Inc that such an application would no longer be necessary due to the plaintiff having attained the age of majority.

[21] The attorney then proceeded in her affidavit to jump ahead to the end of December 2025, when the plaintiff contacted their offices “*... to inform me that the plaintiff’s mother (previously the representative of the plaintiff...) had lost her employment and required financial assistance.*”. The attorney explained what she then did as follows: “*I reached out to the trustee, informing them (in anticipation of their appointment) to advise that the family requiring this assistance and ultimately a lump sum was made to assist in the interim and the family had been updated on the proceedings and attempts to obtain a confirmation letter from the Road Accident Fund*”.

[22] The attorney then contended that the RAF had “*softened its stance*” after the plaintiff had attained the age of majority, which enabled the attorneys to agree on the terms of the trust deed. Thereafter a “confirmation letter” was obtained and the matter was enrolled on the settlement roll. Ms Small contended that “*the reason for not applying for a settlement roll date prior is owing to the previous directive requiring a draft order, accompanying practice note and a confirmation letter from the defendant confirming the draft order can be made an order of court*”.

[23] In December 2026 VZLR indeed confirmed to the RAF that payment had already been made and requested a confirmation letter “*in order to finalize the matter.*”

[24] Further email correspondence resulted in a first “confirmation letter” from the RAF. It was contained in the “settlement bundle” which was placed before court and was dated 28 January 2026. It was from the litigation officer with whom the plaintiff’s attorneys had corresponded during 2022 already. The letter reads, in its totality, as follows; “*We refer to the above-mentioned matter. The Defendant is to pay the plaintiff’s attorneys the sum of R 1 650,00.00 (ONE MILLION SIX HUNDRED FIFTY THOUSAND) in respect of the Plaintiff’s claim for damages and loss of earnings. Your sincerely...*”. This letter was uploaded on 12 February 2026.

[25] During the course of the hearing of the matter, no less than three draft orders were presented to the court, including a second version of the abovementioned confirmation letter, still dated 28 January 2026. This letter was uploaded on 9 March 2026 and its contents now read as follows: “*The Defendant is to pay the Plaintiff’s attorneys the sum of R 1 650,000.00 (ONE MILLION SIX HUNDRED AND FIFTY THOUSAND), post apportionment, in respect of the Plaintiff’s claim for general damages and loss of earnings as per the amended draft order. We have perused the contents of the court order and confirm that same is in order and an order of court can be made (sic)*”.

[26] On 19 March 2026 Ms Small deposed to a supplementary affidavit from which more of the chronology of the matter, including the involvement of the instructing attorneys, could be pieced together. The first consultation with the plaintiff’s mother regarding settlement of the matter took place on 8 October 2021. This was with Mr Van der Merwe. It was apparently pursuant to this consultation that the plaintiff’s mother deposed to the consent affidavit referred

to in paragraph 10 above. No particularity of the date of the offer discussed, nor the amount thereof is reflected in the affidavit.

[27] On 2 February 2022, when the plaintiff's mother visited the instructing attorneys' Kimberley offices however, she was advised that the attorneys were awaiting a revised offer.

[28] On 16 March 2022 the plaintiff's mother was contacted by the instructing attorney's Kimberley office "*...and the revised offer was explained as well as the pending curator appointment and incorporation of a trust along with reasons laid out by the experts. Further to this the anticipated delay was explained...*".

[29] On 7 July 2022 the plaintiff's mother was contacted to sign an affidavit in support of an application for the appointment of a curator ad litem, which she subsequently did. I shall refer to the contents of that affidavit later.

[30] Hereafter the attorney got confused and alleged that the plaintiff's mother was contacted on 18 August 2022 "*...when payment was received...*". This could only have been in August 2023, but nevertheless, the plaintiff was apparently contacted by "*...a separate department [of the attorney's firm] who makes contact with clients...*" to inform them of payments. She was allegedly also informed that a trust still needs to be created and it was recommended that "*... she allow for a few months for discussion between the parties...*".

[31] In January 2023 the plaintiff's mother called for an update and "*...it was explained that we now await for a date from Court for the application and that ultimately we would not be able to obtain a confirmation letter...which is needed to obtain a court order should we not follow these steps first...*".

[32] The attorney in her affidavit, ignoring the confusion referred to above and the conversations which would have taken after receipt of the funds, stated in her affidavit that “[B]etween July and August 2023 we tried calling Ms M[...] [the plaintiff’s mother] and could not get a hold of her. Eventually on 4 September 2023 we were able to reach Ms R M[...] and she confirmed having phone trouble ...”. It was alleged that the family reported doing well and that they would be patient.

[33] The patience must have run out as the plaintiff’s mother visited the attorney’s Kimberley offices on 7 February 2024 and gave a new cellphone number. The attorney stated that on 16 February 2024 she telephoned the plaintiff’s mother to explain that the delays were “very frustrating” but that she seems “to be making some progress” with the RAF.

[34] After attempts by the attorney on 24 June 2024, the plaintiff’s mother contacted the attorney on 13 August 2024. The attorney says that she then explained that she needed to speak with the plaintiff herself regarding the creation of a trust, for which purpose the attorney was amending the draft order.

[35] The next interaction was in February 2025 when the attorney said she “requested documents” and that the plaintiff advised the attorney to speak with her mother. On 11 March 2025, however the plaintiff herself requested an update. The attorney said that she informed the plaintiff “*that we await the confirmation letter from the Road Accident Fund to have the matter placed on the settlement roll and will reach out as soon as we received same and apply for the date*”.

[36] The chronology explained by the attorney is then silent regarding the lapse of the rest of 2025, save to state that during August 2025 a new attorney had been appointed in the correspondent attorney’s office (Ms Sebonka referred to earlier) and that “*we proceeded to follow up on the confirmation letter*”. It is

no wonder that on 9 December 2025 the plaintiff and her family started contacting the attorney, stating that they were in dire financial straits and still awaiting payment. This finally resulted in a meeting on 2 March 2026 with the plaintiff, her minor son, her mother, two family members, the attorney Ms Small and the proposed trustee. The attorney stated that this meeting was to “...update the family members on the recent happenings...”.

[37] At the meeting the attorney attempted to determine “the family’s needs”. The plaintiff wanted R 600 000.00 from the proceeds of the claim to meet with family needs and to fix the roof of their house. Based on the fact that some of the money would be spent paying of some of the mother’s debts, the attorney “ultimately agreed” with the family that only R 50 000.00 would be paid “in the interim”, while a trust would be created, to which the plaintiff and the family agreed.

[38] The principal cause for the delay therefore, apart from long periods of mere inactivity, appears principally the instructing attorney’s belief that, despite a final settlement having been reached and despite that settlement even having been fulfilled, she still needed a confirmation letter from the RAF and its consent as to how she needs to protect the proceeds of such payment in the interest of her client.

The protection of the proceeds of the claim (the “funds”)

[39] The position regarding the protection of funds arising from claims against the RAF in respect of minors and incapacitated persons have definitively been dealt with by a full court of the Division in *In re: Protection of Certain Personal Injury Awards (Pretoria Society of Advocates and Others as Amici*

Curiae)¹. Although only reported later in 2022, the judgment in this matter was handed down on 20 May 2022.

[40] The result was that the manner in which matters of this nature has to be approached, was well settled by the time the plaintiff's attorneys signed the formal settlement document on 26 January 2023. At the very latest, from that time, the attorneys should have taken steps to determine whether the proceeds of the settlement should be protected and, if so, in what fashion.

[41] The plaintiff suffered both orthopaedic and neurological injuries. The orthopaedic injuries were a C 7 transverse process fracture, resulting in some spinal asymmetry and neck pain as well as a tibia/fibula fracture which later healed but resulted in some range of motion restriction. Her head injury resulted in a decreased Glasgow-coma scale score (10/15) on admission to the hospital post-accident, which was later diagnosed as a severe traumatic brain injury, resulting in some cognitive impairment.

[42] The expert reports obtained on behalf of the plaintiff were not uniform in their opinions as to the extent of the brain injury or its sequelae. In heads of argument submitted to the court, reliance was placed on selective extracts of these reports. Reference was made to the report of the neurologist and the educational psychologist. The former opined that “...it would seem fair that...the funds be protected with the aid of a curator...”. The latter was of the opinion that “...the funds...be protected and managed by a trust to be available for N[...] during her lifespan, in order to address issues as they arise during different developmental stages. The latter is recommended as N[...] is a vulnerable minor child with permanent damage... N[...]’s functioning indicates that she is vulnerable to exploitation by others”. These opinions were expressed

¹ 2022 (6) SA 446 (GP).

in reports resulting from assessments done as long ago as on 16 April 2019 and 30 July 2019 respectively, when the plaintiff was 12 years old.

[43] In a similarly aged report, dated 29 March 2019, the neuropsychologist expressed her view that, as “*N[...] is a minor, funds to be awarded should be adequately protected*”.

[44] In the full court decision referred to above², legal practitioners acting for claimants in personal injury matters were reminded that protection of funds were necessary in respect of persons who were not capable of handling their own affairs and that such persons primarily fell into two categories, namely minors and those declared to be incapable by way of the process provided for in Rule 57³. The two manners of protection of funds are by way of the creation of a trust or by way of the appointment of a *curator bonis*.

[45] The full court also referred to a third category of persons⁴, being those with “partial incapacity”. The full court found, after consideration of submissions made by the Master, as follows: “*In reality, it is not a rarity, particularly in RAF matters, for medical experts to recommend protection of funds despite the fact that the plaintiff does not meet the threshold of ‘incapacity’ outlined in Rule 57. In cases like this, the requirement of a curator bonis under either subrules 57(10) or (13) are not met...the obvious mechanism for the protection of funds in these cases is through the mechanism of a trust. The trust mechanism also gives the court the flexibility to tailor make the powers of the trustee so as to avoid infringing on the rights of the plaintiff more than is necessary*”⁵.

² Full court judgment at paras 3, 136 and 161.

³ Rule 57 provides that a high court may, on application to it and upon consideration of medical evidence, declare a person incapable of managing her or his own affairs and appoint someone else, a *curator bonis*, to do so.

⁴ Full court judgment at par 118.

⁵ Full court judgment at paras 119 and 120.

[46] I find that this is such a case. My reasons for this finding start with the opinion of the orthopaedic surgeon. He had already determined seven years ago that the plaintiff had, orthopaedically, made much progress since the accident.

[47] Similarly, although the head injury was traumatic, with grade 2 subarachnoid haemorrhage, it required no more than conservative treatment and analgesics and left the plaintiff cognitively intact. The neuropsychologist's opinion expressed in favour of protection, was based on the plaintiff's status of being a minor at the time. Similarly, even though the educational psychologist opined there was a decrease in the plaintiff's post-accident learning performance, her opinion regarding protection of funds was based on the plaintiff's circumstances at the time, being a minor learner. She found, for example the plaintiff to be "*Emotionally susceptible [and] at risk to cope with stress and anxiety related to second school studies...*".

[48] Currently, the plaintiff is no longer a minor and she now also has a child of her own. During the meeting with the attorney on 2 March 2026 she indicated that she previously wanted to study but she has been convinced by family members to start an own business. The instructing attorney interpreted this and the plaintiff's reference to her mother's debts and the family's leaking roof, as proof of impulsiveness and susceptibility to influence on the part of the plaintiff. The attorney however also indicated that, to the contrary, after having initially requested a large lump-sum payment, the plaintiff, after separate consultation with family members, reduced this request by more than 90%. This does not appear to me to evince impulsiveness or a total incapacity. Apart from the fact that the court is concerned about the fact that this appears to be the first comprehensive consultation with the plaintiff since the settlement of her matter or at least since she has become a major, her needs, prospects and vocalisation of her circumstances might have been completely different had she received funds which would have enabled her to study almost four years ago.

[49] In an attempt to update the expert reports, the attorney arranged a telephonic consultation between counsel and the educational psychologist who had produced a report almost seven years ago. The court was thereupon furnished with a single page email from the educational psychologist dated 9 March 2026, simply stating the following: “*The client sustained a severe traumatic brain injury. Cognitive functioning had various problems (sic). This client is a vulnerable individual and therefore lifelong management and protection is recommended*”. In the absence of any indication of a revision of documents, examination of the plaintiff or even a discussion with her or any other primary source of facts, this opinion is without factual foundation or proper reasoning and therefore discarded⁶.

[50] Having concluded that the plaintiff is “partially incapacitated” and based on the instructions and information obtained by the attorney from the plaintiff herself and her mother, whereby they had agreed to the creation of a trust, I find that at least part of the funds should be so protected. Having regard to the plaintiff’s obvious immediate need for funds, the use of which she has been denied for many years, I determine however that only half of the funds should be placed in the proposed trust and the rest be paid out to her immediately.

[51] I currently do not know the full extent of the remaining funds, nor has either the plaintiff or the court been favoured with any reconciliation of the funds received, fees debited, disbursements paid or accrued interest. In order not to prejudice the plaintiff by further delays, payment should be made immediately, but the attorneys will still have to answer to the court in this regard. I shall, in the order of this court, include a direction for the furnishing of such a reconciliation, which the court may direct in terms of its inherent oversight jurisdiction over its officers. A proper discharge of their obligations by the attorneys should not result in a need for any further steps being required.

⁶ See: *Masstores (Pty) Ltd v Pick 'n Pay Retailers (Pty) Ltd* 2016 (2) SA 586 (SCA) at par 15 and *Road Accident Appeal Board v Gouws* [2018] 1 All SA 701 (SCA).

Final evaluation and costs

[52] As already indicated above, the attorneys have, on 9 March 2026, secured a letter from the RAF confirming that the contents of a draft order submitted to it, may be made an order of court. The court is therefore bound to give effect to this agreement, but only insofar as it pertains to the terms relating to the furnishing of an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act⁷ and the permissible costs aspects included therein (which were rather extensive and partially extended the previous agreement relating to costs on a party and party scale to one partially on the scale as between attorney and client).

[53] Despite the agreement to the contents of the draft order, its contents were still incorrect insofar as it purports to order the RAF to pay what it has already paid, refers to the plaintiff as a patient and contains discrepancies between the terms of the proposed trust and the draft trust deed annexed thereto as well as further grammatical incongruities. I determine that the correction of these discrepancies fall within the ambit of what a court is entitled to do to make the order “proper and competent”, without derogating from the agreement otherwise reached with the RAF.⁸

[54] There is, however one further aspect which requires attention and that is the manner in which the plaintiff’s interests were served after the matter had become settled. Even in high volume legal practices such as those of the plaintiff’s attorneys, the services rendered by attorneys to vulnerable clients such as minors and those incapable of managing their own affairs, should receive individualised attention in order to serve the needs of those clients.

⁷ 56 of 1996.

⁸ *Eke v Parsons* 2016 (3) SA 37 (CC) read with *RAF v Taylor and related matters* 2023 (5) SA 147 (SCA) and *Mafisa v RAF* 2024 (4) SA 426 (CC).

[55] Of particular concern in this matter was not only the delay in obtaining finality, but also the incurrence of fruitless expenditure and the recovery of costs in respect thereof. Once the plaintiff's claim had been paid, there existed no further *lis* between her and the RAF. The issue of whether the funds had to be protected and, if so, how, was a matter initially between her mother and the attorneys and subsequently between herself and the attorneys.

[56] An example of the lack of attention to the detail of the plaintiff's case and which caused some delay and certainly fruitless expenditure, was the aborted application for a curator ad litem. It was drafted and signed on 15 July 2022, that is after the settlement had been reached, but before payment by the RAF. It would have been supported by a founding affidavit deposed to by the plaintiff's mother, at the behest of the attorneys and even included a prayer in the notice of motion that the curator ad litem would be authorised to institute and prosecute an action against the RAF, which action had by then already been concluded.

[57] In the affidavit drafted by the attorneys for her, Mrs M[...] stated that the plaintiff would still be a minor when the matter went to trial and that it was "crucial" that a curator be appointed "*...as the minor cannot prosecute his claim against the defendant in his personal capacity*". Again, this statement was not correct, as the matter had already been settled.

[58] It was also submitted by Mrs M[...] in the affidavit that the proposed curator ad litem would advise on the available options for the creation of a trust or the appointment of a *curator bonis*. I find this to be a strange submission as the instructing attorney had in her affidavit to this court expressly confirmed that she had already taken instructions from Mrs M[...] to establish a trust. This was after receipt of the revised offer from the RAF on 16 March 2022 after having received instructions from Mrs M[...] to accept the offer.

[59] Although the initially proposed curator ad litem had furnished her consent on 22 June 2022, the correspondent attorney deposed to a supplementary affidavit to this effect for purposes of the appointment of the curator, on 20 March 2025 with a fresh consent, dated 5 March 2025. That was when the attorneys still intended to proceed with that application, then enrolled for hearing on 25 April 2025.

[60] It is now common cause that the application for the appointment for a curator ad litem was never proceeded with. The attorneys blame the RAF for this but, apart from the fact that the RAF had fallen out of the picture upon settlement, a proper scrutiny of the correspondence reveals that the RAF's only stance was that once there was an intention to remove any powers from the mother as the plaintiff's biological mother and then natural guardian and place it in the hands of another person, be it a trustee or a curator, the RAF could not simply agree thereto and that a court needed to be approached. The attorneys have failed to do so until the minor had reached the age of majority.

[61] In addition to the above and in yet another unnecessary procedure, the plaintiff's attorneys had launched an application late in 2021 to strike the RAF's defence on the basis that it had failed to attend a scheduled pre-trial conference. After two previous pre-trial conference, it is not clear why such a step may have been justified at the time, but what is more astounding is that the attorneys proceeded to request and obtain an order from this court, per Ndlovokhane AJ on 13 April 2022, compelling the RAF to comply with a Rule 37(2) notice and attend a pre-trial conference within 10 days after service of the order. By that time, the action had already been settled and no further trial proceedings were contemplated. Significantly, this unnecessary order did not feature in the affidavits supplied by the attorneys to this court.

[62] The whole struggle to obtain a “confirmation letter” after that which such a letter would have confirmed, namely a settlement of the matter, became an unnecessary and fruitless exercise after payment of the settlement amount had already taken place.

[63] In the exercise of this court’s inherent oversight role over officers of the court, I find that the attorneys are not entitled to recover any fees from either their clients or the RAF for the fruitless steps taken since 31 March 2022 until the eventual placing of this matter before court on the settlement roll, last-mentioned being the steps since the set down was served on 18 February 2026 and thereafter and which may include the costs of the drafting of the trust deed.

Order

[64] In the premises, it is ordered as follows:

1. It is noted that the defendant has agreed to pay 90% (Ninety percent) of the plaintiff’s damages in the amount of R 1 650,000.00 (One Million Six Hundred and Fifty Thousand Rand and Zero Cents) after apportionment and that this agreed amount has already been paid on 31 July 2023.
2. Since the payment was made later than the 180 days after settlement had been reached, the defendant is ordered to pay interest on the amount mentioned in par 1 above at the prescribed rate from 1 September 2022 until 31 July 2023.
3. The defendant is ordered to furnish the trustee appointed in respect of a trust to be created for the benefit of the plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, *limited to 90%* for the costs of the future accommodation of the

plaintiff in a hospital or nursing home or the treatment of or the rendering of a service or the supplying of goods (of a medical and non-medical nature) to the plaintiff arising out of injuries sustained by her in a motor vehicle collision on 12 March 2017, in terms of which undertaking the defendant will be obliged to compensate the trustee in respect of the said costs after the costs have been incurred by either the plaintiff or by the trustee or by any party on behalf of the plaintiff and on proof thereof. The defendant is ordered to pay the reasonable travelling costs and accommodation for the plaintiff and any caretaker for her to and from the location where she is to receive treatment covered under the undertaking.

4. By agreement and without derogating from the generality of the foregoing, the undertaking shall include the reasonable costs of the formation of the trust contemplated in this order for the benefit of the plaintiff and the costs of administration of the said trust, including the costs attendant upon the provision of security by the trustee, and auditing and/or accounting services as set out in the Trust Deed.
5. By agreement the defendant is ordered to pay the plaintiff's taxed or agreed party and party costs on the High Court scale, for the instructing and correspondent attorneys, which costs may include, but not be limited to the following:
 - 5.1 The fees of counsel on scale B, including a day fee in respect of appearance at the settlement roll.
 - 5.2 The cost of obtaining all expert medico legal reports and any other reports of an expert nature which were furnished to the defendant;

- 5.3 The cost of obtaining documentation/evidence, scans, considered by the expert(s) to finalise their reports;
- 5.4 The reasonable taxable reservation, qualifying and preparation fees of all experts whose report(s) were provided to the defendant;
- 5.5 The reasonable cost of consultation fees between the plaintiff's experts and the plaintiff's legal teams regarding the matter;
- 5.6 The reasonable cost of one consultation between the plaintiff and the plaintiff's legal team to consider the offer to settle;
- 5.7 The reasonable taxable accommodation and transportation costs (including toll and e-toll charges) incurred on behalf of or by the plaintiff (including one person having to accompany her) in attending medico legal consultations with all experts and consultations with the legal representatives;
- 5.8 The reasonable cost for an interpreter's at the medico legal appointments for translation of information;
- 5.9 The above-mentioned payment with regard to costs shall be subject to the following conditions:
 - 5.9.1 The plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the defendant's attorney of record; and

5.9.2 The plaintiff shall allow the defendant 180 calendar days to make payment of the taxed costs;

5.9.3 The defendant is to request and load payment within 14 (fourteen) calendar days from date of settlement/taxation of the bill of cost, with proof of same to be sent to the plaintiff's attorneys;

5.10 For purposes of the payment of interest and costs, the plaintiff's Attorney's Trust account details are as follows:

ACCOUNT HOLDER:	VZLR INC
BRANCH:	ABSA BUSINESS BANK HILLCREST
BRANCH CODE:	632005
TYPE OF ACCOUNT:	TRUST ACCOUNT
ACCOUNT NUMBER:	3[...]

5.11 In the event of default on the above payment, interest shall accrue on such outstanding amounts at the prescribed rate calculated from the 15th day of the date of this order in respect of interest and from the 15th day of settlement/taxation of the bill of costs until the date of payment.

6. After deduction of the legal costs consultant's fee for drawing the bill of costs and attending to its settlement or taxation, the balance of the costs referred to in paragraph 5 above shall be paid to the trustee of the trust anticipated below. In the event that the trust has not yet been created, such balance shall be invested in terms of Section 86(4) of the Legal Practice Act, 28 of 2014, with the relevant financial institution, for the benefit of the plaintiff, until the trust is created.

7. The fees contemplated in paragraph 5 above, shall be subject to the limitation set out in par [63] of the judgment.
8. The plaintiff's attorneys are directed to, within 10 (ten) days from date of this order, deliver to the court, the plaintiff and the proposed trustee a full reconciliation in respect of the payment received from the defendant on 31 July 2023, the interest accrued thereon, the fees already debited and the fees to be debited in terms of the attorneys' mandate to date of this order.
9. The plaintiff's attorneys are directed to pay one half of the balance due to the plaintiff in respect of the aforesaid reconciliation within 10 (ten) days from date of this order and to pay the other half, together with the interest referred to in paragraph 2 above, once received, to the trustee of the trust to be created for the benefit of the plaintiff.
10. It is directed that a trust be created for the benefit of the plaintiff, which shall be in terms of the draft trust deed annexed hereto as Annexure "A" and the proposed trustee's consent annexed as Annexure "B" and initialled for identification purposes.
11. The proposed trustee is ordered to furnish security to the satisfaction of the Master of the High Court.
12. It is noted that the plaintiff's mother has entered into a contingency fee agreement on behalf of the plaintiff and plaintiff's attorneys in terms of the Contingency Fees Act.

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 19 March 2026

Judgment delivered: 11 June 2026

APPEARANCES:

For the Plaintiff:	Adv L Mastoroudes
Attorney for the Plaintiff:	VZLR Attorneys, Pretoria
For the Defendant:	No appearance