REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No. 56096 / 2021

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **YES**
DATE 17/6/**2026**
SIGNATURE

In the matter between:

M[...] M[...] obo UL P[...]	Plaintiff
and	
ROAD ACCIDENT FUND	Defendant

JUDGMENT

TOLMAY J:

[1] Plaintiff is M[...] M[...], a major male born on 17January 1980 and who instituted a claim in his representative capacity as the father and natural guardian of U[...] L[...] P[...] (the minor), born on the 11th of February 2013, and who was 8 years old at the time of the accident. It is common cause that the minor was involved in a motor vehicle accident on the 28th of February 2021 while he was a pedestrian. The

merits and the quantum have been settled, and this court is seized with the determination of loss of earnings only.

[2] The minor sustained the following injuries: multiple fractures of the pelvis; a head injury; blunt abdominal trauma; left hip abrasion and a left wrist laceration. There was mention of teeth factures too, but it was conceded that the medical records do not indicate any such injury. The plaintiff filed seven medico-legal reports. The experts include an Orthopaedic Surgeon, Neurosurgeon, Clinical Psychologist, Occupational Therapist, Industrial Psychologist, and Actuary. The defendant only filed expert reports of an Educational Psychologist, Occupational Therapist and an Industrial Psychologist. Joint minutes were filed by these experts of the defendant and their counterparts appointed on behalf of the plaintiff.

[3] At the onset of the trial certain preliminary issues were raised on behalf of the defendant. These were that the expert reports were stale and that the defendant repudiated the joint minutes of the Educational Psychologists.

[4] An application in terms of Rule 38(2) was filed on behalf of the plaintiff to admit evidence by their experts by way of affidavit. On 22 April 2026, a notice opposing this application was filed, but no answering affidavit was submitted to state the grounds for opposition, the inference that can be drawn is that the basis for the opposition is the alleged stale expert reports.

[5] On 20 April 2026, the defendant filed a notice repudiating the joint minutes of the Educational Psychologists. The defendant in this notice states that: no expert acting fairly and as required by the rules of court and applying themselves to the facts, would have arrived at the conclusion and simply agree to position which is detrimental to the defendant’s case. The notice criticises the Educational Psychologists' agreements and conclusions. No factual basis for the assertions were set out, nor was the report of another expert obtained that could have given substance to the submissions.

[6] In *Bee v Road Accident Fund*[1] the SCA considered the effect of an agreement recorded by experts in a joint minute. Where certain facts are agreed between the parties in civil litigation, the court is bound by such agreement, even if it is sceptical about those facts. A joint minute's purpose is to limit the issues on which evidence is needed. If a litigant for any reason does not wish to be bound by the limitation, fair warning must be given. In the absence of repudiation (ie fair warning), the other litigant is entitled to run the case on the basis that the matters agreed between the experts are not in issue.

[7] To repudiate a joint minute, a party must clearly identify the specific agreements sought to be repudiated and the facts to which they relate. A substantive explanation of the new facts or circumstances that justify the repudiation must be set out and it must be demonstrated that the new facts are material to the trial issues and outweigh any prejudice caused to the opposing party.[2]

[8] In this instance there was no fair warning as the joint minutes, which the defendant belatedly wants to repudiate is more than a year old. The defendant cannot be supine for more than a year and then at the very last minute seek to repudiate the joint minute. One cannot but infer from this that the true motive for the late notice of repudiation is to obtain a postponement of the matter.

[9] The notice itself is in broad terms and does not assist the court. It is not based on factual information but seems to depart from the erroneous view that the Educational Phycologist's duty was to protect the defendant and not to assist the court. In the matter of *Datacolor International (Pty) Ltd v Intamarket (Pty) Ltd*[3] the court held that "Repudiation is a serious matter… requiring anxious consideration…and because parties must be assumed to be predisposed to respect rather than to disregard their contractual commitments." The defendant's Educational Psychologist's report was not substituted with that of another that could have formed a basis for the repudiation of the joint minutes. The notice seems to merely reflect the view of the defendant and that can never be a basis for a repudiation.

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[1] [2018] JOL 40197 (SCA).

[2] *M on behalf of L*, a child v Member of the Executive Council for Health: Gauteng Provincial Government, [2021] JOL 51389 (GJ)

[3] [2000] ZASCA 82; 2001(2) SA 284

[10] The next issue was that the expert reports were stale. The expert reports were filed during 2022. The matter was on the roll on 11 October 2024 but was postponed because the defendant wanted to obtain joint minutes. The joint minutes of the Educational Psychologists were filed during October 2024. The joint minutes of the Industrial Psychologists were filed during May 2025.

[11] It transpired during argument that the defendant's main objection was against the report of the Neurosurgeon, which was obtained in 2022. However, the defendant did not appoint a Neurosurgeon of its own or raised the issue timeously. Only on 21 April 2026, just before the trial, was this complaint raised for the first time. During argument it also transpired that during February 2024 the general damages were settled based on inter alia this report, in an amount of R950 000. Furthermore the RAF 4 form completed by the Neurosurgeon advised that the minor had obtained Maximum Medical Improvement. There is therefore no merit in the preliminary issues raised on behalf of the defendant.

[12] This brings the court to the merits of the claim for loss of earnings. The Orthopaedic Surgeon confirms that the minor sustained multiple pelvic fractures, a head injury, blunt abdominal trauma and a left-sided laceration. He walks with an antalgic gait and uses crutches. He has tenderness in the left hip, reduced range of motion and pain. The Orthopaedic Surgeon also refers to scarring and X-rays showing a deformity in the pelvic cavity. He states that the child has difficulty performing heavier and more physically demanding activities. He cannot run, has considerable difficulty sitting for prolonged periods, and struggles with prolonged standing and walking. He also experiences difficulty bending and lying on his back and is unlikely to cope with work requiring physical exertion or prolonged standing and walking.

[13] According to Dr. Mazwi, the Neurosurgeon, the minor sustained a mild traumatic brain injury resulting in recurrent headaches, memory and concentration difficulties, and behavioural changes such as increased irritability. These symptoms are ongoing and have negatively impacted his academic and daily functioning. Prior to the accident, the minor was healthy with no neurological or psychological issues.

Although he reported that the minor suffered loss of consciousness this was relayed to him by the mother and there is no record of it in the hospital records.

[14] In their joint minute, the Educational Psychologists agree that, before the accident, the minor child was likely to pass Grade 12, qualify for admission to a bachelor's degree, and complete an NQF Level 7 qualification in a field of his choice. After the accident, they agree that he is more likely to benefit from vocational training at a Further Education and Training College (FETC) after completing Grade 10, where he may obtain a two-year certificate over an extended period. They further note that his reported physical difficulties, including headaches and an inability to stand or walk for long periods, are likely to negatively affect any practical training, and defer to the relevant expert on the extent of those limitations.

[15] The occupational therapists agree that he is left with residual challenges that will impact his academic and vocational capacity, including physical, neurocognitive, personality and behavioural deficits. They furthermore agree that physically, he is expected to be able to perform sedentary, light and to some extent medium physically demanding work in future. However, he will always require the implementation of pain alleviating strategies, joint protection principles and spinal hygiene principles. They state that he will consistently face disadvantages in the workplace because of his pain. He is not expected to cope with heavy or strenuous jobs. They state that secure sedentary or office-based types of employment will depend on his academic achievements. They agree that physically, he is expected to be able to perform sedentary, light and to some extent medium physically demanding employment. They also observe that post-morbidly, his vocational difficulties indicate that he is now suitable only for low semi-skilled jobs, and it is anticipated that he will struggle to advance beyond this level.

[16] The Industrial Psychologists agree that, pre-morbidly, and having regard to unemployment conditions in South Africa, the minor would likely have secured a one-year internship during 2034/2035. He would thereafter have entered formal employment in the open labour market around February/March 2035/2036, earning intermittently at the lower quartile of Paterson level A3 in the corporate sector until approximately February/March 2036/2037. He would then have progressed to

permanent earnings at the lower quartile of Paterson levels B3/B4/B5 until about March/April 2037/2038, reaching his occupational ceiling at the median quartile of Paterson levels D1/D2, on a total package, by approximately 45 years of age. Thereafter, he would have received inflation-related annual increases until retirement at age 65.

[17] Postmorbid, they note that the Educational Psychologists in their joint minutes indicated that they agree that he is likely to benefit better with vocational training at a Further Education and Training College (FETC) after completing grade 10 where he will obtain a 2-year certificate over a long period of time. However, his reported physical problems (headaches, and inability to stand and walk for a long time) will have a negative impact on any practical undertaking, deference is made to the relevant expert to comment on his limitations .They agree that with Grade 10 and a 2-year certificate he would probably start off as an unskilled labourer or semi-skilled worker depending on the position that he would acquire first. With reference to the non-corporate/informal sector, the following rates would be applicable starting from the lower quartile of the semiskilled worker's scale. They note as indicated by the Occupational Therapists in the joint minutes that post-morbidly, he is expected to battle to progress beyond that level. They agree that if he finds employment it is more likely that he will earn intermittently until such time that he will become a discouraged job seeker by the age of 45 years after which he will earn a negligible income. They therefore agree that he will suffer future loss of earnings being the difference between his pre and post-accident earning potential.

[18] It was forcefully argued on behalf of the defendant that the cognitive limitations and alleged negative impact on the minor's career path is exaggerated and when one considers his school reports there is not a persuasive case made out that his cognitive function has been significantly impacted as a result of the head injury. There is merit in this argument. However, the joint minutes by the experts supports the inference that on a balance of probabilities his career path will be negatively impacted on. In my view the injuries should be considered holistically and the combined effect results in the scenarios argued for in the joint minutes.

[19] The determination of loss of earning capacity in cases involving minors injured in motor vehicle accidents is a nuanced process requiring courts to balance speculative predictions about the minor's future earning potential with the evidence presented. Expert evidence, plays a critical role in determining loss of earning capacity. The experts assessed the minor's pre- and post-accident earning potential and the court will be guided by the reports, especially the joint minutes. Contingency deductions play a pivotal role in calculating an appropriate award. In cases involving minors it is appropriate to apply higher deductions. In cases involving minors there is a more pronounced uncertainty and the vicissitudes of life will play out over a longer period of time.[4]

[20] The evidence in this matter indicates that the minor will be able to obtain and stay in employment but his capacity to live up to his pre-morbid potential has been impacted by the injuries he sustained.

[21] The Actuary calculated the loss based on the joint minutes of the Industrial Psychologists as follows:

Value of Income uninjured R11 761 700.00 less 25%
= R8 821 275
Value of Income injured R681 600 less 35%
= R443 040
Loss of Earnings = R8 378 235.00
Total Loss of Earnings: R8 378 235.00.

[22] Considering the facts of this case I am of the view that a contingency of 35% should be applied pre-morbid, which amounts to R7 645 105.00 and a 40% contingency should be applied post- morbid, which amounts to R408 960.00. The total loss of earnings awarded R7 236 145.00.

<u>ORDER:</u>

1. The rule 38(2) application is granted.

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[4] *Bee v Road Accident Fund* supra, par 116, *Hefer N.O v Road Accident Fund* [2019] JOL 45827 (FB) par.13.

2. The Defendant shall pay the Plaintiff amount of R7 236 145.00 as compensation for loss of earnings hereinafter referred to as the capital amount.

3. The sum referred to in (2) above shall be payable within 180 (One Hundred and Eighty) days from the date hereof.

4. The defendant shall not be liable for interest on the aforesaid amount, if paid as per item number (3) above. Should the Defendant fail to make payment as aforesaid, then the Defendant shall be liable to pay interest at the prescribed rate.

5. The Defendant shall pay the sum referred to in (3) above into the Plaintiff's attorneys of record's trust account as follows: -

   Name of Bank : First National Bank
   Account Holder : Sotshintshi Attorneys
   Account Number : 6[...]
   Branch Number : 2[...]
   Type of Account : Trust Account
   Branch Name : Hatfield (PRETORIA)

6. Defendant is ordered to furnish the Plaintiff with undertaking certificate in terms of Section 17 (4) (a) of Act 56 of 1996, for the cost of future accommodation of ("the patient") in a hospital or nursing home, or the treatment of or rendering of a service or the supplying of goods to him arising out of injuries sustained by patient in a motor vehicle collision which occurred on the 28th February 2021.

7. The Defendant is liable for payment the reasonable costs of the Trustee appointed in respect of establishing a Trust and any other reasonable costs that the Trustee may incur in the administration thereof including its fees in this regard, which shall be recoverable in terms of Section 17(4)(a) Undertaking**,** and which shall also include and be subject to the following:

   7.1 Subject to approval by the Master of the High Court of South Africa, the Trustee's fees for the administration of the assets of the trust are to be calculated at the rate of 1% per annum of the trust assets under administration. Such administration fees shall furthermore be subject to the provisions of the Trust Property Control Act, 57 of 1988 (the Trust Act), as amended from time to time.

7.2 The costs associated with the yearly audit of the Trust by a chartered accountant as determined in the Trust Deed.

7.3 The costs incurred in administering the Undertaking in terms of Section 17(4)(a).

8. The balance of the capital amount shall be payable to a Trust in respect of U[...] L[...] P[...], to be established within 6 months from date of receipt of the balance of the capital amount.

9. Upon the establishment of the Trust by the plaintiff's attorneys and opening of a bank account for the Trust, the Plaintiff's attorneys shall pay the remainder of the capital amount including the accrued interest, into the said Trust's bank account.

10. The trust as mentioned *supra,* will:

10.1 Be created on the basis of the provisions as more fully set out in the draft Trust Deed attached hereto marked Annexure "A".

10.2 Have as its main objective, controlling and administering the capital amount on behalf of the minor child.

10.3 Be terminated when the minor child dies or when ordered otherwise by a competent Court (whichever event may happen first) and to accrue to the estate of the minor child.

11. Have, as its trustee, SANLAM Trust, with powers and abilities as set out in the draft Trust Deed referred to in par 10.1.

12. The dissolution of the trust instrument is, subject to the leave of this Honourable Court, effective upon the beneficiary attaining the age of 25 years.

13. The trustee will be obliged to furnish security to the satisfaction of the Master of the High Court of South Africa for the assets of the Trust and for the due compliance of all its obligations towards the trust.

14. Any amendment to the trust instrument is subject to the leave of this Honourable Court.

15. Until such time as the Trustee is able to take control of the capital sum and to deal with same in terms of the Trust Deed, the Plaintiff's attorneys:

    15.1 Are authorized and ordered to invest the capital amount in an interest-bearing account in terms of Section 86(4) of the Legal Practice Act, to the benefit of the minor child, with a registered banking institution, pending finalisation of the directives referred to *supra*.

    15.2 Are authorised and ordered to make any reasonable payments to satisfy any of the needs of the minor child that may arise and that are required in order to satisfy any reasonable need for treatment, care, aid or equipment that may arise in the interim.

16. Subject to the discretion of the taxing master, the Defendant shall pay Plaintiff's taxed or agreed costs on the High Court party and party scale up to 23 April 2026, which costs may include:

    16.1 The costs of Counsel up to and including the costs for 11 October 2024 and 23 April 2026 subject to scale B of sub-rule (3) of rule 67A.

    16.2 The costs of the expert reports, addendum reports (if any), RAF4 reports and expert affidavits including reasonable travelling, accommodation and subsistence costs.

    16.3 The costs of making bundles for caselines.

    16.4 The reasonable travelling costs including reasonable accommodation costs for the purpose of attending trial.

17. There is a valid contingency fee agreement entered into between the plaintiff and the attorney.

R TOLMAY

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be ____ June 2026.

APPEARANCES:

For the Plaintiff	:	Adv Mthembu
Instructed by	:	Sotshintshi Attorneys
For the Defendant	:	Mr T Mukasi
Instructed by	:	State Attorney
Matter heard on	:	23 April 2026
Judgment date	:	17 June 2026