IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA MAIN SEAT

Case No. 1807/2019

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED **NO**

28 JULY 2026

[redacted]

In the matter between:

ADVOCATE JEANNE-MARIE LIEBEL N.O. OBO BRIGHT MASEKO **PLAINTIFF**

(Curator ad litem for Bright Maseko)

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

KEKANA AJ

INTRODUCTION

[1] The plaintiff is Advocate Jean-Marie Liebel, a practising advocate of this Honourable Court, who acts in her representative capacity as the duly appointed *Curator ad Litem* to Bright Maseko ("the patient"), a 36-year-old male.

[2] The plaintiff claims damages arising from injuries sustained by the patient whilst travelling as a passenger in a motor vehicle collision that occurred on 1 March 2021**.**

[3] The merits of the action have been settled on the basis of 100% liability in favour of the plaintiff**.** Accordingly, the only issues remaining for determination is the quantum of damages, namely the patient's claims for general damages and loss of earning capacity (or earnings, as applicable)**.**

[4] The plaintiff brought an application in terms of Rule 38(2) for the admission of expert evidence by way of affidavit. The application was granted in respect of all the plaintiff's experts, save for the neurosurgeon, Dr Miller.

[5] The defendant did not file any expert reports of its own but merely indicated an intention to cross-examine the plaintiff's expert, Dr Miller.

QUANTUM

Injuries Sustained

[6] The patient sustained the following injuries in the collision: (a) Fracture of the left clavicle; (b) Left supracondylar fracture with a dysfunctional elbow; and (c) Fracture of the left patella.

Present Complaints

[7] The patient reported the following complaints to the experts: (a) Persistent throat pain affecting his ability to eat; (b) Difficulty lifting heavy objects; (c) Pain in the left knee affecting his ability to stand for prolonged periods and to walk long distances; (d) Constant pain in his arms and legs; (e) Headaches; (f) Increased fatigue; and (g) Scarring to his neck.

[8] The patient further reported low energy levels, suicidal ideation, heightened stress levels and recurrent flashbacks of the accident.

Expert evidence

Orthopaedic surgeon Dr Oelofse

[9] The orthopaedic surgeon recorded the following injuries: Head injury, cervical spine injury, left shoulder injury, left elbow injury and left knee injury. Further that the patient was treated with pain medication and anti-inflammatory drugs, a bandage was applied to the arm. The patient used a wheelchair for two months and two crutches for 8 months and was still using one crutch at the time of the assessment.

[10] The orthopaedic surgeon's diagnosis was (a) a fracture of the clavicle which has fully united; (b) shortening of the shaft, which will cause his clothes to fall off his shoulder; (c) residual soft tissue pain; and full range of motion but with mild pain. Treatment in the form of pain medication, anti-inflammatory drugs and physiotherapy.

[11] For the elbow injury the diagnosis was a nonunited fracture of the patella with 11cm displacement and a narrowed patellofemoral joint space. Knee injury: Comminuted fracture patella. Future treatment for the knee a total knee replacement. Cervical spine injury: acceleration-deceleration injury.

[12] The orthopaedic surgeon concluded that the orthopaedic injuries met the requirements for a serious injury under the narrative test as the patient has a fracture of the patella with non-union as well as a dysfunctional elbow after the supracondylar fracture. Further that the patient was no longer suited to do his pre-accident work but would need to secure sedentary work. The patient's WPI was put at 18%.

Plastic surgeon – NG Irsigler

[13] The plastic surgeon reported that the patient has various scars:

(a) on his throat over an area of 12cm x 2cm. The description is variable shapes and pigmentation and keloidal scaring.

b) on his left knee he has a scar over an area of 5cm x 5mm which is described as linear, horizontal, flat, homogeneous and defuse.

(c) on his lower leg he has 10 cm x 1cm scar which is described as a flat, interrupted linear scar, variable pigmentation. Another circular hyperpigmented scar measuring 1cm on the left leg and a 3cm x 5mm scar described as linear, diagonal running, homogenous and diffuse.

(d) on the right side of forehead he has a 2cm x 5mm scar described as linear vertical and homogeneous.

[14] According to the plastic surgeon the patient will need radiotherapy, followed by steroid injections in the scars to prevent further keloid formation. Further that, he will however retain scarring which will not lend itself to any further surgical improvement for which he should receive compensation.

Physician – DR L Hartley

[15] The physician's observation during the assessment was that the patient was not oriented as to place and time, he appeared lethargic and did not participate in the conversation. Further that his speech was slow and laboured at times with the impression of generalised decrease in cognitive abilities. The physician noted that the patient was unable to perform basic sequential activities and commands, further that he had a poor memory. The physician opined that a *curator ad litem* ought to be appointed for patient and deferred to the clinical psychologist.

Ear, Nose & Throat Specialist – DR PD Albertyn and Audiologist – C Avenant

[16] The ear, nose & throat specialist and the audiologist recorded that the patient had a hearing loss but the hearing loss does not have a major influence on his ability to communicate effectively.

Clinical Psychologist – A Cramer

[17] The clinical psychologist reported that from a neuropsychological perspective, the patient is considered unemployable as a result of the following factors: (a) his very severe brain injury has left him dependent on others for tasks of daily living; (b) his low level of education and neurocognitive profile further hinders his ability to work, even in a sympathetic role as he will

have difficulty completing even the most menial tasks; (c) his dysarthric speech would make it very difficult for him to be understood in a work context; (d) his significant depression, poor affect regulation and post-traumatic anxiety will significantly affect his ability to interact with colleagues.

Clinical Psychologist – B Westwood

[18] The clinical psychologist reported that the patient's neurocognitive impairments are likely to impact his productivity, efficiency and working ability due to his compromised simple attentional processing, basic mental tracking, incidental learning, impaired complex attentional processing, processing speed, visual scanning, learning curve, visual memory, executive functions, planning, sequencing and self-monitoring, visiomotor, visuospatial abilities and construction and severely impaired immediate memory span and verbal long term memory.

[19] Further that his emotional and psychological difficulties will also have an impact on his work performance, namely his motivation, drive, perseverance, energy levels, cognitive functioning and behaviour.

Speech Therapist – D Lourens

[20] Speech therapist recorded that the patient suffered trauma to his right-sided laryngeal and jaw areas during the accident. Further that the vocal quality of the patient was affected. Cognitive-linguistic evaluation of the patient indicated mild cognitive impairment in the sub-test areas of attention, language and visio-spatial functions. The patient's impaired speech rate and speech distortion impedes his intelligibility.

Neurosurgeon – Dr P Miller

[21] Dr Miller testified and was cross examined. He admitted that the patient was intoxicated upon his admission, further that intoxication can mask the seriousness of an injury. He however indicated that alcohol wears off in 6 to 12 hours but the patient was still restless, had slurred speech and suffered from incontinence long after that period. He stated that although it is correct that alcohol is a blood thinner, but denied that the loss of blood could account for his weakness.

[22] According to the neurosurgeon, the patient sustained a major traumatic brain injury. As there was no polytrauma or multisystem trauma to account for the slow and prolonged recovery, the neurosurgeon attributed the delayed recovery to the severity of the brain injury itself. He further noted that the patient experienced post-traumatic amnesia continuing until approximately 19 March 2021.

[23] In his opinion, the patient suffered an acute diffuse brain injury with evidence of focal neurological involvement. The neurological deficits identified included: (a) Dysarthria; (b) Left upper motor neurone facial weakness; and (d) Dysfunction affecting the right upper limb and possibly both lower limbs. 42% whole person impairment.

Occupational Therapist – M Smit

[24] The occupational therapist, recorded that: (a) The patient attained Grade 7 and has no formal qualifications; (b) Before the accident he had worked as a construction worker and gardener; (c) At the time of the collision he was self-employed as a cook selling food at a taxi rank while also working part-time as a gardener; and (d) He has never returned to work following the accident.

[25] The occupational therapist concluded that, although the patient may be capable of performing sedentary work under ideal circumstances, his pre-accident functional capacity has been significantly reduced and he is unlikely to regain his former level of functioning. Further that the combined effects of his physical, emotional and cognitive impairments render him functionally unemployable in the open labour market.

Industrial Psychologist – M Rautenbach

[26] According to the Industrial Psychologist: Before the accident the patient earned approximately R250 per week as a gardener. As a self-employed food vendor he earned an additional profit of approximately R700 per week. Further that given the patient's limited education and work history, his employment opportunities would, even absent the accident, have been confined to unskilled employment.

[27] The industrial psychologist postulated that the patient's earnings would probably have progressed along a straight-line career path until reaching the Koch upper unskilled earnings ceiling (approximately R115 000 per annum) by the age of 50 years, allowing for intermittent

periods of unemployment. Thereafter, annual inflationary increases would have applied until the normal retirement age of 65 years.

Undisputed Expert Opinion

[28] The uncontested expert evidence establishes that the patient is unemployable and is likely to remain unemployable for the remainder of his working life. Consequently, he has sustained a total loss of earning capacity, resulting in a total loss of income for the balance of his expected working life.The actuarial calculations relied on by the plaintiff as prepared by J Potgieter are as follows:

Past loss	
Pre-Morbid	R258 276
Post-Morbid	Nil
	_____
	R258 276

Future Loss	
Pre-Morbid	R1 705 874
Post-Morbid	Nil
	_____
	R1 705 874

[29] It is trite that the assessment of damages for future loss of earning capacity is not capable of precise mathematical calculation. By its very nature, the enquiry is speculative, requiring the court to estimate the present value of a future loss based on the available evidence. Such an assessment often involves a broad estimation rather than exact computation. In determining the appropriate award, the court exercises a wide judicial discretion to arrive at an amount that is fair and equitable in the circumstances. While actuarial calculations provide a useful and

objective foundation for quantifying the loss, they do not bind the court. Rather, they serve as a guide, to be considered together with all the relevant evidence, including the contingencies and uncertainties inherent in predicting future events. See Southern Insurance Association Ltd v Bailey NO 1984 (1) SA 98 (A) and Road Accident Fund v Guedes 2006 (5) SA 583 (SCA).

[30] The plaintiff submitted that the following contingencies should be applied: 5% on the pre-morbid past income and 15% on the pre-morbid future income. The defendant submitted that a 35% contingency should be applied to the pre-morbid past income and 40% on the pre-morbid future income.

[31] Although the defendant through cross examination sought to disprove the evidence of the neurosurgeon regarding the severity of the head injury, the evidence shows that the patient suffered a severe to very severe head injury resulting in him being significantly compromised cognitively with slurred speech, slowing of movement and thought process. The neurosurgeon's opinion that the patient was likely to never return to work is supported by the occupational therapist noting his impaired cognitive functioning, concentration and memory amongst others.

[32] I accept the calculation by J Potgieter, the actuary, to be fair compensation. In my view having regard to all relevant factors, a contingency deduction of 5% on the pre-morbid past income and 15% deduction on the pre-morbid future income. The actuary also calculated the disability grant received by the patient from April 2021 to October 2023 to be R 61 070. The final compensation taking into account the above will be as follows:

PAST LOSS

Pre-morbid 5% = R245 360.20

Post-morbid 0% = Nil

Total = R245 360.20

FUTURE LOSS

Pre-morbid 15% = R1 449 992.90

Post-morbid 0% = Nil

Total = R1 449 992.90

TOTAL PAST AND FUTURE LOSS:	R1 695 353.10
Less: Disability grant	R61 070
	R1 634 283.10

[33] In my view a fair compensation in this regard is R1 634 283.10.

GENERAL DAMAGES

[34] The patient sustained the following injuries in the collision: (a) Fracture of the left clavicle; (b) Left supracondylar fracture with a dysfunctional elbow; and (c) Fracture of the left patella.

[35] The injuries left the patient with scarring as follows: (a) keloidal scarring on his throat over an area of 12cm x 2cm; (b) on his left knee he has a scar over an area of 5cm x 5mm; (c) on his lower leg he has 10 cm x 1cm scar; (d) a circular hyper pigmented scar measuring 1cm on the left leg and a 3cm x 5mm scar; and (e) on the right side of forehead he has a 2cm x 5mm scar described as linear vertical and homogeneous. The patient will retain scarring which will not lend itself to any further surgical improvement despite the radiotherapy and steroid injections.

[36] The patient had the following complaints: (a) Persistent throat pain affecting his ability to eat; (b) Difficulty lifting heavy objects; (c) Pain in the left knee affecting his ability to stand for prolonged periods and to walk long distances; (d) Constant pain in his arms and legs; (e) Headaches; and (f) Increased fatigue. The patient further reported low energy levels, suicidal ideation, heightened stress levels and recurrent flashbacks of the accident.

[37] In Protea Assurance Co. Limited v Lamb 1971 (1) SA 530 (A) at 535H-536B the Court held:

"... [T]he Court may have regard to comparable cases. It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time, it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration."

[38] In Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA) at 325-326 the Court held:

"The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that ..."

[39] The plaintiff and the defendant relied on various comparable cases. The awards in the cases relied on by the plaintiff ranged from R2895 209.00. to R3 500 000.00, with plaintiff contending that an amount of R3 000 000 would be reasonable. While those relied upon by the defendant ranged from R900 000 to R1 200 000. Contending that an amount of R1 500 000 is reasonable. The comparable cases are not decisive; each case has to be decided on its merits.

[40] I have further considered amongst others the following cases:

40.1 Setlhako v RAF (1597/2019) ZAGP JHC 1060 (13 October 2025) the court awarded R1 200 000 who was 32 years old at the time of the accident who sustained traumatic head injury with a GCS of 10/15 and a right tibia fracture. He presented with neurocognitive impairments.

40.2 In C.D.S obo K.O.S v Road Accident Fund (RAF583/2023) [2025] ZANWHC 81 (25 April 2025) the court awarded R1 800 000 in general damages to a minor child who sustained a head injury (GCS 11/15) with associated neurocognitive and behavioural impairments, chronic pain and post-traumatic stress.

[41] Having considered the above submissions, the patient's age, the injuries sustained by the patient and the sequelae thereof, I am of the view that a fair and reasonable compensation under the circumstances of this case is R 2 100 000.

In the result I make the following order:

1. The *Curator ad litem* is granted leave to accept the offer of 100% in respect of the issue of negligence.
2. The defendant is liable to pay the amount of R 3 734 283.10. The amount is made up as follows:

   2.1 R 1 634 283.10 in respect of loss earnings;

   2.2 R2 100 000 in respect of general damages
3. The defendant shall be liable for payment of the interest on the aforesaid sum at the prescribed legal rate *a tempore morae*, if the amount is not settled within 180 days, calculated from 15 days from the date of this order.
4. The defendant shall furnish the plaintiff with an Undertaking in terms of section 17(4)(a) of Act 56 of 1996 to pay the costs of the future accommodation of Mr Maseko in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him arising from the injuries sustained by him in the collision on the 1st March 2021 and shall include the costs of the *Curator Bonis* including costs of furnishing security.
5. The defendant shall pay the costs of Advocate Liebel on scale B for the 16th and 18th March 2026.
6. The defendant shall pay the plaintiff's taxed costs including but not limited to

   6.1 costs of counsel on scale B for the 16th and 18th March 2026;

6.2 the reasonable, taxable reservation, preparation and qualifying costs of the plaintiff's expert witnesses and travelling, reservation and attendance fees of Dr P Miller in respect of his testimony on the 18th March 2026.

7. The appointment of *Curator Bonis* is postponed sine die.

8. There is a valid contingency fee agreement.

P D KEKANA
ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING: 18TH MARCH 2026

DATE OF JUDGMENT: 28TH JULY 2026

FOR THE PLAINTIFF: ADV IEM DELPORT

INSTRUCTED BY: FRANS SCHUTTE & MATHEWS PHOSA INC.

FOR THE FIRST RESPONDENT: Ms M TSEBANE

INSTRUCTED BY: STATE ATTORNEY MBOMBELA