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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 3595/2023

In the matter between

E[...] H[...] B[...] D[...] J[...]

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *EHB D[...] J[...] v Road Accident Fund* (3595/2023) [2026] ZAFSHC 404 (25 August 2026)

Coram: NAIDOO J

Heard: 18 August 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 25 August 2026.

Summary: Personal injury claim – only outstanding issues for adjudication – general damages and past medical expenses – past medical expenses separated and postponed – only general damages adjudicated.

ORDER

1 The plaintiff's application in terms of Uniform Rule 38(2) is granted, to enable the plaintiff to proceed to adduce evidence by way of affidavit in respect of the experts listed in paragraphs 1.1 to 1.7 of the notice of motion.

2 The plaintiff's claim for past medical and hospital-related expenses is separated in terms of Uniform Rule 33(4) and is postponed *sine die*.

3 The defendant shall make payment in the sum of R1 100 000 (One Million One Hundred Thousand Rand) (hereinafter referred to as the 'capital amount') to the Plaintiff's attorneys, Edeling van Niekerk Inc, in respect of the Plaintiff's claim for General Damages, which amount shall be payable by direct transfer into the Plaintiff's Attorneys trust account, details of which are as follows:

Account Name	:	Edeling Van Niekerk Inc
Bank	:	Nedbank
Branch	:	Business Westrand
Account number	:	1[...]
Branch code	:	128605
Ref	:	MAT3174

4 The defendant shall pay interest *a tempore morae* on the capital amount aforesaid at a rate of 10.25% per annum from 180 (One Hundred and Eighty) days after date of this order to date of final payment.

5 The defendant is ordered to pay the plaintiff's party and party costs as taxed or agreed inclusive of Counsel's fees on Scale 'B', such costs to include, at the discretion of the Taxing Master, the costs, attendant upon the employment by the plaintiff of the following expert witnesses:

- | | | | |
|------|-------------------|---|---|
| 5.1. | Dr Hoffmann | - | Plastic and Reconstruction Surgeon
(Report and RAF4) |
| 5.2. | Dr S Bugwandin | - | Orthopaedic Surgeon |
| 5.3. | Dr D Mutyaba | - | Neurosurgeon (Report & RAF4) |
| 5.4. | Dr N Rughoo | - | Clinical Psychologist |
| 5.5. | Nina Du Plessis | - | Educational Psychologist |
| 5.6. | Mari Lize Nel | - | Industrial Psychologist |
| 5.7. | Liezel Gildenhuys | - | Occupational Therapist |

JUDGMENT

Naidoo J

[1] This is a claim for damages in respect of personal injury arising from a motor vehicle accident that occurred on 14 April 2022 on the road between Ficksburg and Rosendal in the Free State Province. The plaintiff, E[...] H[...] B[...] D[...] J[...], was a 17-year-old matric pupil at the time and was seated at the back of a light delivery vehicle, known as a 'bakkie' in South Africa, when the accident occurred. The driver swerved to avoid a pothole in the road, as a result of which the plaintiff was thrown from the bakkie and suffered serious injuries. The records and medico-legal reports indicate that the plaintiff suffered moderate traumatic brain injury as well as facial, scalp and other bodily injuries, the *sequelae* of which were serious and impacted negatively on the plaintiff.

[2] The defendant, the Road Accident Fund (RAF) accepted and conceded 100% liability for the plaintiff's proven or agreed damages arising from the accident. The issues of loss of income and future medical and hospital expenses were also settled between the parties, which agreement was made an order of court on 5 May 2026. The issues for this court to adjudicate were therefore, general damages and past medical and hospital expenses. When the trial commenced, the court was informed that the plaintiff did not intend to proceed with the issue of past medical expenses at this stage and applied for a separation of that head of damages and postponement of same, *sine die*. The defendant did not oppose the application for separation, which was granted, and the matter proceeded only in respect of general damages.

[3] The plaintiff brought a further application, in terms of rule 38(2), in which he sought the admission of the medic-legal reports filed by the experts who had examined him. The defendant also had no objection to this application. After the court considered that most of the matter had become settled by the time the trial had commenced, and that the only issue for adjudication was that of general damages, the application was granted. All the plaintiff's expert reports were admitted into evidence.

[4] The plaintiff called the evidence of his mother, M[...] L[...] D[...] J[...] (Mrs D[...] J[...]) and he also testified. Mrs D[...] J[...] confirmed that the plaintiff was a matric pupil at the time of the accident and that he resided with her in the family home. She

accordingly had daily contact with him. She further testified that prior to the accident he had a passion for aviation, which he acquired from his father, who was an avid aviation enthusiast, and who took the plaintiff with him to various aviation events from the time the plaintiff was a young child. The plaintiff's passion for aviation was such that, from a very young age, he was intent on becoming a pilot. Before the accident, he was, according to her, a very determined young man who knew what he wanted for his future. He was dyslexic and therefore relied on his memory a great deal. He would memorise his school subjects in order to perform well at school. His memory was therefore very good. He was a mild-tempered and patient child and was a keen chess player. He sometimes did some boxing, and although he played rugby at a stage, he was not very interested in sports.

[5] Mrs D[...] J[...] testified that she saw the plaintiff at the scene of the accident about 30 minutes after the accident; he was bleeding from his eyes, cheeks, nose, hands and knees. He was taken to the Ficksburg Hospital and thereafter transferred to the Netcare Alberton Hospital, where he spent 22 days in the Intensive Care Unit (ICU) before being transferred to a general ward. He spent a total of 32 days in hospital. Whilst he was in the ICU, he was in an induced coma and was unconscious for approximately 21 days. After he regained consciousness, he was unable to do anything for himself and had to be washed, cleaned and fed. He had to wear diapers for a while. When the plaintiff returned home, she noticed that his short-term memory had been affected. He forgot things easily. He had become impatient, irritable and lost his temper easily. He also suffered from headaches and dizziness, and at times he would be frustrated and depressed. These are behaviours she observed after the accident; he did not behave in this way before the accident.

[6] The plaintiff returned to school towards the end of July 2022, being the third school term of the year. He had to catch up with work he had missed in the second term. He used to be frustrated because he would forget what he had learned. He was unable to write normally, and the Department of Education allowed him to be assisted by a scribe to write his examinations. Due to becoming very tired, he was allowed to rest for 15 minutes at hourly intervals and was given extra time to finish the examination. He passed matric at the end of that year. Mrs D[...] J[...] testified that he manages the challenges with his memory by keeping notes in a notepad of the things

he is required to do, so he does not forget.

[7] The plaintiff has also withdrawn from social life and does not go out or participate in social activities such as attending church or functions, citing the demands of his job as the reason. His social interactions with family and some friends are normal. She testified that he was deeply disappointed that he was unable to fulfil his ambition of becoming a pilot. The neurologist advised against it due to the risk of his developing epilepsy in the future. A further problem that the plaintiff has had since the accident was constant pain in his lower back. She feels that a person of his age should not have such problems.

[8] The plaintiff testified that he has very little recollection of the accident and sketchy awareness of his stay in hospital. He confirmed that when he was transferred to a general ward from the ICU, he was not able to perform most of his personal care functions himself. He had to be cleaned and washed, was obliged to use a bedpan and also had to wear diapers for a while in hospital. He was able to sit up and feed himself. The plaintiff also confirmed his mother's testimony about his impaired short-term memory and that he uses a notepad and a whiteboard to record his tasks for the day (especially at work), which he ticks off as the tasks are completed. With regard to his schooling, he confirmed that he returned to school in the third term (of 2022). He had to catch up with the work he missed in the second term and had to have a scribe to assist him with writing the examinations, as his wrist injury prevented him from writing. He also suffered from extreme fatigue, and confirmed that he was given rest periods during the course of writing examination papers and extra time to complete the examinations. He also repeated that his main ambition was to become a pilot, specifically a helicopter pilot. He was very disappointed to learn that he could not be a pilot due to his head injury

[9] With regard to work, the plaintiff testified that he is currently employed as an avionics technician, which requires him to service and take care of the electronic systems of aircraft. He has been an apprentice and is currently at the stage where he is about to qualify. He gave no further details of his employment. From a perusal of the expert reports which were admitted in terms of rule 38(2), I gleaned that he is employed by a company called Air Tec Global which is based in the Free State town of

Bethlehem. The plaintiff confirmed that the work he performs is fine and sensitive, which I interpret to mean that the job requires a high degree of skill. The plaintiff indicated that he does experience lower back pain in the course of his work, depending on his position he is working in, and, at times, dizziness if he stands up too quickly. His wrist becomes painful if he uses the wrist in the course of his work. He also experiences back pain if he picks up heavy objects. He occasionally also suffers from headaches and pain in his jaw, which makes eating difficult.

[10] With regard to his social life, the plaintiff said that he does not socialise with friends because of the demands of his work. He explained that he works long hours and he is sometimes required, at short notice, to travel to other airports in Africa to service or maintain aircraft there. The Occupational Therapist, Ms Liezel Geldenhuys, expanded on this in her report, which I will mention later. It appears from his evidence that the main bar to his socialising or even having a girlfriend is the demands of his job. That was, in sum, the evidence for the plaintiff. RAF led no evidence, and confirmed that, in essence, the evidence led by the plaintiff was not in dispute. With regard to the amount of the award to be made, Ms Lephoto advised that while she confirms discussions between her and Mr Van Dyk for the plaintiff, she makes no submissions in that regard and leaves the amount of the award in the court's hands. She advised the court that RAF had previously made an offer, but it seems that it was based on a mild brain injury, and her view was that such an offer was low, considering the plaintiff's injuries. She did not disclose the amount of the offer.

[11] That the plaintiff suffered serious injuries is not in dispute. For completeness, I repeat the injuries listed in the report of Dr S Bugwandin, the orthopaedic surgeon. He stated that the injuries to the plaintiff's head were 'swollen lips, bilateral raccoon eyes, an open wound on the left side of the head, the open wound left occipital, subarachnoid haemorrhage, traumatic brain injury, temporomandibular joint injury and skull fractures'. In the lumbar spine area, he noted 'lower back tenderness, L5/S1 intervertebral disc injury'. With regard to the upper limb, he noted 'wrist injury involving the triangular fibrocartilage'. He recorded as multiple soft tissue injuries 'abrasions on upper and lower extremities and back'.

[12] These notes and observations about the injuries appear to be consistent with

the evidence for the plaintiff regarding his injuries and the *sequelae* thereof. The court was, in addition, able to observe the scar above his left eye, which was estimated to be about 4 or 5 centimetres in length. This is the wound that required skin grafts. The scar is visible and is a permanent disfigurement. The injury to the back of his head has resulted in an unsightly bald patch at the back of his head, just to the left of the crown. This too constitutes permanent disfigurement. The plaintiff indicated that there is a scar on his throat from where a tracheotomy was done on him in the ICU, as well as on his side where the skin was taken for the skin graft to his forehead, both of which the court was unable to observe. It is accepted that the disfigurement suffered by the plaintiff would have affected him emotionally and would have impacted his self-confidence. Similarly, the injury to his jaw, which causes difficulty in eating, is a condition he will have to live with, albeit that it occurs occasionally.

[13] It is trite that the assessment of and an award in respect of general damages calls for the exercise of judicial discretion. Based on the documentary and *viva voce* evidence before it, the court must strive to make an award that is fair to both sides and addresses the *sequelae* of the injuries in the specific case before it. This was succinctly stated in *Mahlangu v Road Accident Fund (Mahlangu)*,¹ where the court said:

- '1. The award for general damages remains a compensation, it ameliorates the damage (pain and suffering) resulting from injuries sustained in an accident. It is not intended to be full compensation, if that is possible, and it is not intended to wipe out, if that is possible, the damage.
2. The statutory compensation scheme is in essence compensation by the public at large through the state therefore it cannot have a punitive element in it.
3. The statutory compensation scheme is meant to benefit a broad spectrum of the public. Money in a country like South Africa remains a scarce resource with huge demands on the fiscus. Compensation awards must be considered carefully in a responsible manner.'

[14] While comparisons with similar cases are useful as a guide, that is the only purpose they serve, as no two cases are alike. One can perhaps refer to cases which are as closely similar to the current case as possible. In this regard, it is useful to refer to cases where the plaintiff suffered a head injury and multiple other injuries, as did the plaintiff in this matter. There are two matters which bear mention. The first is *April obo a*

¹ *Mahlangu v RAF* (2013/46374) [2015] ZAGPJHC 342 (9 June 2015) (*Mahlangu*) para 23.

Minor v Road Accident Fund,² where the court awarded R500 000 for general damages in 2021 to the plaintiff who suffered the following injuries: (a) a head injury and facial abrasions; (b) loss of consciousness; (c) neck pain; (d) right distal radius and ulna fracture; (e) an injury to the right ulna nerve; (f) left clavicle fracture; and (g) a pelvis fracture and multiple abrasions.

[15] The second matter is that of *Tshongolo v Road Accident Fund (Tshongolo)*,³ where the court awarded R500 000 to a teenager who suffered a very mild brain injury, was not rendered unconscious after the accident, and also sustained abrasions to her face and a fracture of her right clavicle. She was hospitalised for approximately three days and attended follow up examinations which included a procedure to drain excess fluids from a haematoma of her head. She experienced occipital headaches almost on a daily basis as well as right shoulder pains induced by lifting heavy objects. She suffered lower back pain induced by inclement weather or prolonged sitting and a soft tissue injury to her thoracolumbar spine. She experienced neurocognitive deficits in respect of concentration, attention and working memory.

[16] The Consumer Price Index for July 2026 was published on 19 August 2026, and the headline index for July 2026 is 107.7. Based on that figure, the award made on 29 September 2021 in the matter of *April* would translate today to R633 529.41, and in *Tshongolo* made on 2 November 2021, would translate today to R629 088.79. The plaintiff referred me to the case of *R.S v Road Accident Fund (R.S)*,⁴ emanating from this Division where judgment was handed down on 20 February 2025. The plaintiff in that matter suffered severe injuries in a motor vehicle accident that occurred when she was 12 years old. She sustained injuries to her head, left leg, left arm, her kidney and her hip. She was admitted to the ICU and spent two months there and a further four months in the general ward. Thereafter, she was admitted to another hospital and spent a further eight months in hospital. When she was transferred to the general ward at the first hospital, she was unable to walk or speak and spent approximately one year in a wheelchair. Her injuries resulted in severe bodily and facial scars. Her cognitive functioning was impaired, causing her to fail her grades at school repeatedly. She eventually left school after failing Grade 10 twice. There were other serious and

² *April obo a Minor v Road Accident Fund* (30703/18) [2021] ZAGPJHC 478 (29 September 2021)

³ *Tshongolo v Road Accident Fund* (19958/14) [2021] ZAGPJHC 29 (2 November 2021).

⁴ *R.S v Road Accident Fund* (5233/2023) [2025] ZAFSHC 68 (20 February 2025).

debilitating *sequelae* which she had to endure. The court awarded her general damages of R1 800 000.

[17] The matter of *MS Pitso obo M Pitso v Road Accident Fund (Pitso)*⁵ came before me in July 2026 for trial in respect of a claim for loss of earnings arising from a motor vehicle accident on 27 October 2014, in which the plaintiff sustained severe to moderate brain injury after being knocked down by a motor vehicle, while she was a pedestrian. The plaintiff was six years old at the time. The traumatic brain injury she sustained resulted in the plaintiff suffering moderate residual long-term neurocognitive deficits in the form of memory and concentration impairments, with learning difficulties. The neurosurgeon opined that such traumatic injury to the immature brain leads to progressive neurodegeneration, hyperactivity and sustained cognitive impairments. The plaintiff also suffers from frequent headaches, and her cognitive functioning was severely impaired.

[18] The clinical psychologist performed extensive tests to assess her cognitive and differential aptitudes, and found that the plaintiff's functioning in many areas is significantly below average. The result is that post-accident, she experiences significant academic challenges. This was evident when she failed and repeated Grade 1, Grade 3, and Grade 8. Although she is currently in Grade 10, her academic results up to July 2026 indicated a high probability that she may fail Grade 10. The experts opine that she is unlikely to obtain a tertiary qualification, and that if she is able to work, it will be in the unskilled sector. The significance of this case to the present matter is that prior to the matter coming before me, the issue of general damages was settled when RAF agreed to pay an amount of R1 250 000 in respect thereof. This and other aspects that were settled were made an order of court on 24 July 2026, while the trial in respect of loss of earnings was postponed for later adjudication

[19] I have taken cognisance of these and other cases I came across in the preparation of this judgment. As I indicated, there is no dispute regarding the plaintiff's injuries, and that he has endured pain and suffering, permanent scarring and disfigurement, and that his short-term memory has been affected, which he has had to

⁵ *MS Pitso obo M Pitso v Road Accident Fund* (2026-077029). This matter was postponed to 21 August 2026. Currently, judgment is reserved.

accommodate. I also take account of the fact that he spent approximately 21 days in the ICU and a total period of 32 days in hospital, was in an induced coma in the ICU and was obliged to wear diapers for a while. I accept that he suffered deep disappointment because he was told that he could not become a pilot. Although this was highlighted during the plaintiff's and his mother's evidence, I do not propose to dwell on that, firstly because an award has already been made in respect of the loss of earnings, and secondly, while not discounting the emotional and psychological harm he may have suffered as a result, I note that he is currently gainfully and permanently employed as an avionics technician in Bethlehem. In this regard, the plaintiff has shown himself to be remarkably resilient and determined to pursue a career in the aviation space. He missed almost the entire second term in his matric year, returned full-time to school in the third term and was able to successfully pass matric, in spite of the challenges he faced as a result of his injuries. This is not something easily achieved. It also speaks of an above-average intellectual capacity.

[20] A high degree of skill and concentration is required to be an avionics technician. The plaintiff appears to cope remarkably well, which indicates that his cognitive function has not been impaired, save for the deficit in his short-term memory. He has accommodated this challenge by making use of various reminder methods, such as a notepad, a whiteboard, sticky notes and the like. The court is cognisant that his having to do this is an inconvenience and a challenge that is probably permanent. I have, in addition, noted from the reports of the experts that he lives on his own in Bethlehem, has a driver's licence and drives his own bakkie. He takes care of most of his domestic chores on his own. Neither the plaintiff nor his mother made mention of this when they testified. I accept that his brain injury was classified as moderate, which is more serious than the mild injury in *April* and *Tshongolo*, but considerably less severe than the injuries in *RS* and *Pitso*. In addition, the requirements of his work and the plaintiff's ability to successfully execute his assigned work also indicate an above average ability.

[21] I return to the report of the Occupational Therapist, Ms Liezel Gildenhuys, who set out in her report a short description of the plaintiff's workplace. I cite an extract from her exposition:

'He noted that he has his own toolbox with specialised tools as well. When working at the

workshop, he stands and works on the various parts at a workbench. When working on the planes themselves, he has to work everywhere, pending on the task at hand. He is also required to do a test flight at least once a month, or perform maintenance at other airports in Africa. He will then be flown there by the company. When doing test flights, it mostly includes observation of the controls and electronics while the pilot is flying' She then went on to describe the tools that the plaintiff uses on a daily basis thus: *'Spanners, screwdrivers, multi metre, pliers, soldering iron, etc. may also be required to handle parts which he estimates to be weighing around 15-20 kg'*

Ms Gildenhuys concluded that segment of her report with a short summary of the plaintiff's tasks at work:

'Servicing airplane electronics

Maintain airplane electronics

Repair airplane electronics

Primarily smaller airplanes (20 seaters)

Fleet of 48 airplanes that they have to service

There are many electronics engineers that are placed out in the field but in Bethlehem they are only three.'

In my view, this fortifies the point I made about a high degree of skill and concentration being required for one to be an avionics technician, which the plaintiff clearly possesses, and also the point that his cognitive function was not impaired.

[22] Some of the *sequelae* of the plaintiff's injuries will more than likely be with him for the rest of his life, namely the scarring I mentioned, the deficits in his short-term memory, the back pain, headaches and jaw pain he occasionally experiences. However, having regard to other similar cases, my view is that his injuries did affect his functioning for a while, but his functioning is still largely intact. That he has reduced enjoyment of some activities of his life is not disputed. The plaintiff's mother created the impression that he does not go out, socialise, or participate in social activities as a result of his injuries, and especially the scarring. She conceded that he functions normally when socialising with his family and friends. Neither she nor the plaintiff disclosed that he is no longer living in the same house as his parents and has not done so, presumably, since 2003, when he commenced his apprenticeship at Air Tec Global. His mother's testimony about the reasons for the plaintiff not socialising with friends or attending social functions must be viewed against this background and with some circumspection. The court pursued this with the plaintiff, and he indicated that the

reason he does not go out or even have a girlfriend is due to the demands of his job. He works long hours and is often required, at very short notice, to fly to other parts of Africa for maintenance, servicing or repairs of aircraft. This means he has to be available to leave as required, and this is what prevents him from going out. Apart from expressing frustration over not being able to become a pilot and having to constantly write notes to remember his tasks, the plaintiff gave no indication that any of the *sequelae* of his injuries had an impact on him to such an extent that he has withdrawn from social life. He, in fact, appeared to adopt the sensible attitude that he will continue his life and further his career while accommodating the challenges he has.

[23] I take cognisance of the remarks of the court in *Mahlangu*, which I mentioned earlier, and am in agreement therewith.⁶ The compensation for general damages is meant to be a *solatium* for the damages suffered and not a windfall which he may not be entitled to. It is not meant to be full compensation or remove the damage totally. The compensation award must be carefully considered and made responsibly, taking into account the relevant factors of the case and the impact on the fiscus, as such awards implicate state resources. I am of the view that the amount of R1 500 000 argued for is on the high side. I have considered the current values of awards made in *April*, *Tshongolo*, *RS* and particularly the amount offered in *Pitso*, as well as the injuries sustained by the plaintiffs in those matters. It must be borne in mind that the plaintiff in *Pitso* will not be able to fulfil her career ambitions or support herself to the extent she would have, had the accident not occurred. Yet the award made in *Pitso* is considerably lower than the amount claimed by the plaintiff in this matter. He is independent, self-supporting and the *sequelae* of his injuries are not as severe as in *Pitso*. I am, therefore, more inclined towards granting a lower amount than that argued for in this matter.

[24] In the circumstances, I make the following orders:

1 The plaintiff's application in terms of Uniform Rule 38(2) is granted, to enable the plaintiff to proceed to adduce evidence by way of affidavit in respect of the experts listed in paragraphs 1.1 to 1.7 of the notice of motion.

2 The plaintiff's claim for past medical and hospital-related expenses is separated in terms of Uniform Rule 33(4) and is postponed *sine die*.

⁶ *Mahlangu* fn 1.

3 The defendant shall make payment in the sum of R1 100 000 (One Million One Hundred Thousand Rand) (hereinafter referred to as the 'capital amount') to the Plaintiff's attorneys, Edeling van Niekerk Inc, in respect of the Plaintiff's claim for General Damages, which amount shall be payable by direct transfer into the Plaintiff's Attorneys trust account, details of which are as follows:

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5 The defendant is ordered to pay the plaintiff's party and party costs as taxed or agreed inclusive of Counsel's fees on Scale 'B', such costs to include, at the discretion of the Taxing Master, the costs, attendant upon the employment by the plaintiff of the following expert witnesses:

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S NAIDOO**JUDGE OF THE HIGH COURT****Appearances**

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