

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 56215/21

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date 24-08-2026

Signature

In the matter between:

K[...] T[...] M[...] obo

L[...] P[...] M[...]

Plaintiff

AND

ROAD ACCIDENT FUND

Defendant

JUDGMENT

**THIS JUDGEMENT HAS BEEN HANDED DOWN REMOTELY/ELECTRONICALLY
AND SHALL BE CIRCULATED TO THE PARTIES BY WAY OF E- MAIL/
UPLOADING ON CASELINES AND/OR COURT ONLINE. ITS DATE OF HAND
DOWN SHALL BE DEEMED TO BE AUGUST 24, 2026**

Introduction

1. The plaintiff instituted an action against the Road Accident Fund (the “defendant”) for damages suffered as a result of injuries to which her child sustained in a motor vehicle accident which occurred on January 5, 2021, on a road at or near TLC Location, Standerton, Mpumalanga Province involving a motor vehicle with unknown number (:insured vehicle”), driven by an unknown driver, wherein the insured vehicle collided with the plaintiff’s child who was a pedestrian at the time of the accident.
2. The matter was heard in the default trial roll as there was no defence entered on behalf of the defendant. The merits of the matter were settled in terms of the defendant’s settlement offer dispatched by the defendant to the plaintiff’s attorneys on November 27, 2025, and this was accepted on behalf of the plaintiff. In the foregoing offer for settlement, the defendant conceded to the issue of negligence regarding occurrence of the motor vehicle collision on the basis that the insured driver was solely negligent in causing the motor vehicle collision.
3. The matter proceeded for general damages and loss of earnings. Regarding the loss of earnings, the Court granted an order in terms of the draft order presented during the proceedings, which draft order was made an order of the Court and marked “X”.
4. Judgment was reserved for general damages to afford Court opportunity to apply its mind on the submissions made, expert reports and applicable legal authority. The defendant had accepted general damages sustained regarding

the left Tib/Fib Fracture in terms of the defendant's letter dated February 2, 2026.

Issues for determination

5. This court is called upon to determine quantum on: (a) general damages.

Background

6. In the particulars of claim, the plaintiff avers that as a result of the collision the child suffered *inter alia* the following injuries:

- (a) left midshaft tibia/fibula fracture (displaced comminuted fibula fracture);
- (b) 0.5 cm abrasion on the left leg;
- (c) 2 cm abrasion on the left knee (laterally);
- (d) Abrasion on the upper left eye;
- (e) 2 cm x 2 cm bruise on the left of the forehead; and
- (f) 0.5 cm abrasion on the right medial malleolus.

The plaintiff's case

7. Dr Khanyile, the Orthopaedic Surgeon reported that the injured child sustained a left tib/fib fracture and that he complained of the left leg pain, with reported effects on the activities of daily living. It is reported that the pain can be managed with pain medication and muscle relaxants, but further operative procedures are warranted. The injured child might have difficulties in engaging normally in activities which require standing for prolonged periods, as he used to prior to the accident.
8. Dr Mpanza, the Neurosurgeon reported that the injured child sustained a mild head injury with no loss of consciousness. The recorded admission, Glasgow coma scale is 15/15 with a documented head injury (Swollen left upper eye – 2 cm x 2 cm bruise) which was managed conservatively. The injured child also suffered a left midshaft left tib-fib fracture and displaced fibula fracture,

and was managed conservatively. Dr Mpanza concluded that the injuries sustained by the injured child from the accident will not affect life expectancy.

9. Dr Fako, the Clinical Psychologist reported that the injured child was found to have significant changes in his physical health and psychological functioning which seem to negatively impact his self image. The noted emotional distress is associated with the impact and change of full physical control future which has resulted in significant psychological trauma (mild to moderate depression and anxiety related symptoms was attributed to impact of injury), limited his ability to work for himself – resulting in him being uncertain about his future employment opportunities and growth and that exacerbates his emotional distress. The noted symptoms do meet the criteria for a DSM V diagnosis for depression and anxiety related symptoms and was observed to have some personality vulnerabilities. Dr Fako concluded that the injured child has sustained significant injuries (injury to left leg) as the result of the accident. The noted difficulties attributed primarily to the accident in the form of physical changes seem to impact negatively on his daily existence in social and occupational platforms.
10. Ms Segabutle, the Educational Psychologist's examination was conducted to establish the injured child's cognitive potential and to ascertain his potential to reach a certain level of education. She concluded that the injured child performed at the average level with regard to visual motor integration, his performance proved that he has adequate ability to perceive, analyse and synthesise visual stimuli, and reason with information as well as his ability to retrieve information from memory was adequate. It is reported that physical limitations, cognitive difficulties and his emotional problems have somehow compromised his abilities due to the accident. He has also dropped out of school post-assessment and this leaves him with grade 9 at NQF 1 as the highest schooling level.
11. Ms Sagwati, the Occupational Therapist reported that the accident has resulted in disruption to the injured child's life. He will never regain his pre-accident levels of functioning even with the recommended treatment and

rehabilitation. He has limited job options and he has suffered a reduction to his functional abilities due to the sustained injuries and concomitant limitations.

12. The plaintiff argued that in claims for general damages, compensation is awarded to for pain, suffering, discomfort, disablement, loss of amenities of life and disfigurement, resulting from injuries sustained from the accident. The plaintiff argued that an award of the sum of R2 500 000.00 will be just and equitable for general damages.
13. I have set out the nature of injuries sustained by the injured child as a result of the accident. When determining what would be just and equitable compensation for pain and suffering, disfigurement, permanent disability and loss of amenities, the court is enjoined to consider relevant factors and circumstances.¹ In *Pitt v Economic Insurance Co. Ltd*,² the Court stated that:

“The Court’s task in estimating damages is always a difficult one. Basically, one has evidence as to the Plaintiff’s affairs, but when, in addition, the future has to be scanned, the Court is virtually called upon to ponder the imponderable . . . the Court must take care to see that its award is fair to both sides – it must give just compensation to the plaintiff, but must not pour our largesse from the horn of plenty at the defendant’s expense.”

14. The Court considered the purpose of an award for general damages in *In Mahlangu v Road Accident Fund*,³ and stated that:

“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.

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.

¹ *Protea Assurance Company Ltd v Lamb* [1971] 2 All SA 100 (A).

² *Pitt v Economic Insurance Co. Ltd* 1957 (3) SA 284 (N) at 287D-E; see also *Yani and Others v Minister of Police and Others* [2003] ZAGPJHC 968.

³ *Mahlangu v Road Accident Fund* [2015] ZAGPJHC 342.

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.”

15. In *Road Accident Fund v Marunga (Marunga)*,⁴ the claimant had suffered a fracture of the left femur, a soft tissue injury in the chest area and bruises on the forehead, left arm and left knee. On appeal, the awarded amount was reduced to R175 000. The current value of this amount is approximately R635 187.

16. The Supreme Court of Appeal in dealing with the court’s discretion on determining general damages stated that:

“Even though the courts have a wide discretion to determine general damages and even though it cannot be described as an exercise in exactitude, or be arrived at according to known formulae, a trial court should at the very least state the factors and circumstances it considers important in the assessment of damages. It should provide a reasoned basis for arriving at its conclusions.”

17. In *Ngomane v Road Accident Fund*,⁵ the claimant had severe fracture of right humerus and right radius and ulna. The claimant was left with a dysfunctional left arm. He had a weak grip on the right side and he cannot lift and carry heavy things and experienced headaches at times. The Court awarded R450 000 in respect of general damages, the current value of which is approximately R624 000.

18. In *Nkala v RAF*⁶ the claimant sustained injuries of the right tibia and fibula, fracture of the left tibia and fibula and fractured right humerus. The Court awarded R500 000 in respect of general damages.

⁴ *Road Accident Fund v Marunga* [2003] ZASCA 19; [2003] 2 All SA 148 (SCA); 2003 (5) SA 164 (SCA) para 33.

⁵ *Ngomane v Road Accident Fund* [2017] ZAGPPHC 401.

⁶ *Nkala v RAF* (16158/2018) [2025] ZAGPJHC 255 (10 March 2025).

19. In *Tshikila v Road Accident Fund*⁷ the claimant sustained head injuries, tibia fracture and elbow injury. The Court awarded R850 000 in respect of general damages.
20. In addition to the relevant factors and circumstances that must be considered in determining an award for general damages, the Court must also consider the nature of injuries including the impact of the injuries on the future lifestyle of the claimant as well as the rising costs of living.
21. In *Tshikila v Road Accident Fund*⁸, in following the decision of *De Jongh v Dupisani* the Court stated that:

“In *De Jongh v Du Pisani* No, *supra*, it was held that it is generally accepted that claims in respect of damages as a result of bodily injuries are quantified based upon comparable cases. The trial court has a wide discretion in considering all the facts and circumstances of the case in awarding what is considered to be fair and adequate compensation to the injured party. Our courts have acknowledged the existence of a tendency for awards to be higher than they in the past. This is a natural reflection of the changes in society, the recognition of greater individual freedom and opportunity, rising standards of living and the recognition that our awards in the past have been significantly lower than in most other countries [*Masoti v RAF* (314/2015) ZANWHC at para 11 (unreported)]. It was further held that it is preferable not to consider each injury in isolation, but to consider all injuries sustained cumulatively (*Masoti, supra*, at para [11]).”

22. I considered the following factors in determining the amount to be awarded to the plaintiff for general damages:

22.1 The injured child is currently 18 years old and was 12 years old at the time of the accident.

22.2 The injured child suffered: (i) left midshaft tibia/fibula fracture (displaced comminuted fibula fracture); (ii) 0.5 cm abrasion on the left leg; (iii) 2 cm abrasion on the left knee (laterally); (iv) abrasion on the

⁷ *Tshikila v Road Accident Fund* (46562/2026) [2022] ZAPPHC 485 (6 June 2022).

⁸ See note 7 *supra*. Also *De Jongh v Dupisane* [2004] ZASCA 43; [2004] 2 All SA 565 (SCA); 2005 (5) SA 457 (SCA).

upper left eye; (v) 2 cm x 2 cm bruise on the left of the forehead; and (vi) 0.5 cm abrasion on the right medial malleolus.

23. As a result of the accident the injured child is facing a life changing event with a permanent serious impairment on his body. The injured child will no longer be able to perform duties and participate in sport activities and amenities of life as he would have done, but for the injuries sustained as a result of the accident. I have noted the Clinical Psychologist's report that the difficulties attributed primarily to the accident in the form of physical changes seem to impact negatively on the injured child's daily existence in social and occupational platforms.
24. Case law considered has provided guidance in determining a fair and reasonable compensation to the plaintiff. Having considered all relevant factors, applicable legislative framework and the nature of injuries sustained by the injured child, I find that a fair and reasonable amount as stated in the order below is just and equitable.

Costs

25. The general rule is that the successful party is entitled to a costs order and that this should not be departed from unless there are good grounds for such a deviation. The Defendant should therefore pay the Plaintiff's costs.

Order

26. In the circumstances, I make the following order:
1. The defendant is ordered to pay an amount of R850 000.00 in respect of the plaintiff's claim against the defendant for general damages.
 2. The defendant shall pay the plaintiff's taxed or agreed part-and-party costs in respect of general damages claim on the High Court Scale B up to date hereof, subject to the date hereof, subject to the discretion of the Taxing Master and subject thereto that:

2.1 In the event that the costs are not agreed:

- 2.1.1 the plaintiff shall serve a Notice of Taxation on the defendant;
- 2.1.2 the plaintiff shall allow the defendant 14 (fourteen) court days from the date of the signed *allocatur* of the Taxing Master on the plaintiff's taxed bill of costs, to make payment of the taxed costs;
- 2.1.3 should payment not be effected timeously, the plaintiff will be entitled to recover interest at the rate of 10.50 on the taxed or agreed costs from the date of agreement, alternatively, the date of Taxing Master's *allocatur*, to date of final payment.

3. Such costs shall include:

- 3.1 the reasonable costs in obtaining payment of the amount referred to in paragraph 1 above, travelling to and spending time travelling; and telephonic consultations with attorneys, plaintiff and defendant;
- 3.2 preparation, drawing Heads of Argument and Court attendance on August 13, 2026;
- 3.3 the taxable costs of obtaining the medico-legal reports of all experts in respect of the quantum of the plaintiff's claim, including consultation and costs of interpreter, of which the plaintiff gave notice in terms of the provisions of the Court Rule 36(9)(a) and (b); and
- 3.4 the taxable qualifying reservation and preparation costs in respect of general damages for the experts hereunder, as allowed by the Taxing Master:
 - 3.4.1 Dr. S. Khanyile – Orthopaedic Surgeon;
 - 3.4.2 Dr. P.M. Mpanza – Neurosurgeon;
 - 3.4.3 Dr. I. Faku – Clinical Psychologist;
 - 3.4.4 Ms Y. Segabutle – Educational Psychologist;
 - 3.4.5 Ms Sagwati Sebapu – Occupational Therapist;
 - 3.4.6 Ms Rejoyce T. Ntsieni – Industrial Psychologist; and
 - 3.4.7 Munro Forensic Actuaries – Actuary.

4. The amount referred to in paragraph 1 above, shall be paid to the plaintiff's attorneys, Marisana Mashedi Incorporated, by direct transfer into their Trust Account details of which are the following:-

Account Holder: Marisana Mashedi

Bank: ABSA

Account Number: 4[...]

Branch: Montana

Type of Account: Trust Account

5. The Respondent shall furnish the plaintiff with an Undertaking in terms of Section 17(4)(a) of the RAF Act, 56 of 1956.
6. There is a valid Contingency Fee Agreement between the Attorneys and plaintiff.

M NTANGA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of Hearing: August 13, 2026

Date of Judgement: August 24, 2026

Appearances:

Plaintiff's Attorney: Ms LM Ledwaba

From : Marisana Mashedi Incorporated

For the Defendant: No appearance