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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Not Reportable

Case No: 15613/2021

In the matter between:

CLAIRE CAWOOD N.O. obo
O[...] M[...]

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

Coram: **MGENGWANA, AJ**
Heard on: **19 August 2026**
Delivered on: **9 September 2026**

Summary: Delict - Quantum of damages - Future medical and hospital expenses - Past and future loss of earnings - Applicable contingencies - Road Accident Fund Act 56 of 1996 as amended.

ORDER

1. The Plaintiff is ordered to file with this Court a fresh actuary's report with calculations based on the first report of Ms. Tryfonso-Naidoo, dated 14 December 2022, within five days of the date of this order.
2. Both parties are required to file their respective notes dealing with the appropriate contingencies that should be applied to the actuary's calculations within two days of the filing of the actuary's report.
3. Costs are to stand over for later determination.

JUDGMENT

MGENGWANA, AJ

Introduction

[1] The Plaintiff instituted an action against the Defendant for delictual damages emanating from a motor vehicle accident that took place on 12 May 2016 at 17th Street, Strand, Western Cape. The Defendant has already conceded 80% of the merits in favour of the Plaintiff.

[2] The Plaintiff's claim for general damages has been settled. The only heads of damage that this Court has been called upon to adjudicate are future hospital and medical expenses together with future loss of earnings.

[3] Before the leading of evidence, the Plaintiff, through her counsel, made an application in terms of Rule 38(2) of the Uniform Rules of Court, wherein she applied for leave to have the evidence of her expert witnesses given on affidavit. This application was not opposed by the attorney for Defendant (Ms. Thomas).

[4] As it would save costs and court time, the Court exercised its discretion in favour of granting the Rule 38(2) application, permitting the evidence of the following expert witnesses, whose reports are relevant to the determination of future loss of earnings, to be led by way of affidavits:

4.1 Professor Anthony Figaji, a Neurosurgeon.

4.2 Ms. Elspeth Burke, a Clinical Psychologist.

4.3 Ms. Cornelia Liebentritt, an Occupational Therapist.

4.4 Dr. Larissa Panieri-Peter, a Psychiatrist.

Their affidavits have been filed, and they have confirmed the contents of their respective reports.

[5] Having dealt with the preliminary issues, the Court then proceeds to deal with issues relating to the determination of the appropriate amount to be awarded to the Plaintiff for future loss of earnings. This exercise will also encapsulate the determination of the contingencies to be applied therein.

Injuries sustained

[6] As a result of the accident, O[...] M[...], who is currently 22 years old but was 12 years old at the time of the accident, sustained the following injuries:

- (a) Haematoma to the forehead;
- (b) An injury to the right hip;
- (c) Abrasions to the right and left knee;
- (d) Abrasions over the right flank and hip region;
- (e) Swelling in both eyes;
- (f) Had a headache and was drowsy;
- (g) Had a Glasgow Coma Scale (GCS) score of 15/15; and
- (h) Had nausea and was vomiting.

[7] A CT scan of the head done more than six months after the date of the accident revealed the following:

- (a) Linear fracture of the right frontal bone, crossing the midline, traversing the roof of the left orbit, extending into the zygomatic bone;
- (b) Extradural haemorrhage in the right frontal area with maximal depth 1.35cm;
- (c) Subdural blood on the falx and tentorium;
- (d) Mild midline shift to the left, less than 5mm.

In a nutshell, O[...] M[...] sustained a serious traumatic brain injury with long term consequences from the accident in question.

Sequelae of the injuries

[8] The *sequelae* of the injuries sustained by O[...] are as follows:

- (a) He developed post traumatic epilepsy approximately two years after the accident.
- (b) He dropped out of school as a result of the epilepsy.
- (c) He suffers from regular headaches.
- (d) He has no recollection of the accident.
- (e) He is forgetful.
- (f) He has personality and behavioral changes, that is, he is easily irritable and short tempered.
- (g) He also suffers from depression.

Evidence led in court

[9] The only witness to give evidence in court was Ms. Tryfonos-Naidoo, an Industrial Psychologist. She testified that she finalized an addendum report on 15 June 2026 after having read an Educational Psychologist's report submitted on behalf of the Defendant. The author of that report was Ms. M. Ndlovu (Ms. Ndlovu), who opined that O[...] was most likely functioning within the average range of intellectual capacity pre-morbidly. Ms. Ndlovu further opined that O[...] would have been able to qualify for NQF level 4 with a diploma endorsement and this would have

allowed him to pursue post matric training at an institution of his choice had the accident not occurred.

[10] Based on Ms. Ndlovu's opinion, Ms. Tryfonos-Naidoo postulated in her addendum report that O[...] would have entered the labour market as a newly qualified graduate in 2027, earning about R117 000 per annum (Lower Quartile earnings). She postulated further that O[...] would, with the acquisition of further skills and experience, have progressed to a skilled occupational level with greater earnings. His earnings would have increased in a straight line, peaking at R638 000 in 2049, at which stage his career would likely have plateaued between the ages of 45 to 50 years. At that point, he would have enjoyed annual earnings increases in line with normal inflation until his retirement at the age of 65 years.

[11] Ms. Tryfonos-Naidoo had previously stated that pre-morbidly, O[...] would have entered the labour market as a trainee or casual worker in 2023, earning an amount of R43 700 per annum (Median, Unskilled) which would increase in a straight line to R131 550 per annum (Midpoint between Median and Upper Quartile, Semi-Skilled) in 2049. She stated further that O[...]’s career would have plateaued between the ages of 45 and 50 years, where he would have continued to benefit from annual increases in line with normal inflationary increases until his retirement at the age of 65 years.

[12] There is, therefore, a huge gap between the two scenarios. Ms. Tryfonos-Naidoo explained that this gap was brought about by what was said in the Educational Psychologist's report commissioned by the Defendant. This report was made available to her by her instructing attorneys after they received it from the Defendant's attorneys.

[13] After leading their sole witness, the Plaintiff's counsel closed his case. Ms. Thomas did not lead any witnesses despite appointing three medico-legal experts.

Submissions made on behalf of the parties

[14] Despite the above, Ms. Thomas posited that the only reason Ms. Tryfonos-Naidoo changed her initial opinion was because of Ms. Ndlovu's report which did not form part of the evidence as no Rule 38(2) application was motioned in respect thereof. She submitted further that Ms. Ndlovu was not presented to this Court to give evidence. Therefore, based on the above, this Court was not bound by what appeared in Ms. Tryfonos-Naidoo's addendum report.

[15] In support of her submissions, Ms. Thomas referred this Court to the judgment of the Supreme Court of Appeal in *Price Waterhouse Coopers Inc v National Potato Co-operative Ltd*.¹ In that matter, Wallis JA stated that the facts on which expert witnesses base their opinions must be found to exist; the more an expert relies on facts that are not in evidence, the less weight their opinion will carry and the court will not be bound by their opinion.²

[16] In response to the above, counsel for the Plaintiff argued that the submissions of Ms. Thomas are devoid of any merit for two reasons:

- (a) The function of the Industrial Psychologist is to assist the court in the determination of reasonable compensation to be awarded for loss of earnings and, in this regard, she is obliged to take into account and defer to all relevant expert reports, including the Educational Psychologist.
- (b) The fact that the Educational Psychologist's report was not submitted into evidence did not prohibit the Industrial Psychologist, once it came to hand, from relying on it to revisit her original career and earnings postulation.

It has been noted that counsel for the Plaintiff does not rely on any authority for his submissions.

The law

¹ *Price Waterhouse Coopers Inc and others v National Potato Co-operative Ltd and another* [2015] 2 All SA 403 (SCA).

² *Ibid* para 99.

[17] In *Masstores (Pty) Ltd v Pick 'n Pay Retailers (Pty) Ltd*,³ Majiedt JA found as follows:

“Lastly, the expert evidence lacked any reasoning. An expert’s opinion must be underpinned by proper reasoning in order for a court to assess the cogency of that opinion. Absent any reasoning, the opinion is inadmissible since it cannot be said to be an expert opinion.” (Footnotes omitted)

[18] In *BEE v Road Accident Fund*,⁴ Seriti JA said that expert witnesses ‘must speak in detail to the facts upon which their opinions and conclusions are based.’

[19] Njokweni AJ, as he then was, found as follows in *Booi v Passenger Rail Agency of South Africa* in his unreported judgment that was delivered on 26 May 2026.⁵

[20] Expert witnesses are witnesses who are allowed to speak as to their opinion, but they are not the judges of the fact in relation to which they express an opinion; the Court... is the judge of the fact... In cases of this sort, it is of the greatest importance that the value of the opinion should be capable of being tested. Unless the expert witness states the grounds upon which he bases his opinion, it is not possible to test its correctness, to form a proper judgment upon it.

[21] It is trite that an expert witness is required to assist the Court and not to usurp the Court’s function. Expert witnesses are required to lay a factual basis for their conclusions and explain their reasoning to the Court. The Court must satisfy itself as to the correctness of the expert’s reasoning. In *Masstores (Pty) Ltd v Pick 'n Pay Retailers (Pty) Ltd*, this Court said lastly that the expert evidence lacked any reasoning. An expert’s opinion must be underpinned by proper reasoning for a Court to assess the cogency of that opinion. Absent any reasoning, the opinion is inadmissible.

³ *Masstores (pty) Ltd v Pick 'n Pay Retailers (Pty) Ltd and Another* 2016 (2) SA 586 (SCA) para 15.

⁴ *BEE v Road Accident Fund* 2018 (4) SA 366 (SCA) para 28.

⁵ *Booi v Passenger Rail Agency of South Africa* (8855/2017) [2026] ZAWCHC (26 May 2026) (Unreported judgment) paras 23-25.

[22] The Defendant closed its case without calling any witnesses (lay or experts), and the Defendant's expert reports were not admitted under Rule 38(2). The Court did not have the opportunity to test the factual basis of the disagreements in the joint minutes by the Defendant's experts. So, the Defendant's opinions on the disputed issues are not before the Court. Accordingly, the Court will consider only the Plaintiff's evidence, his experts' evidence, and the areas of agreement in the joint expert minutes. Thus, the Defendant's experts' disagreements with the joint minutes are declared *pro non scripto*.' (Footnotes omitted)

Application of the facts to the law

[23] From this Court's reading of the submissions made by Ms. Thomas, her attack is two pronged. Firstly, she submits that Ms. Tryfonos-Naidoo's addendum report has no factual foundation and the only reason for its existence is the report of Ms. Ndlovu. Secondly, as no Rule 38(2) application was made in respect of Ms. Ndlovu's report and Ms. Ndlovu was not called to give evidence in court, Ms. Tryfonos-Naidoo's report should be rejected in so far as it relies on facts that are currently not before court. The Plaintiff's counsel's response to the above has already been stated.

[24] The question that this Court needs to answer is whether the addendum report of Ms. Tryfonos-Naidoo is underpinned by proper reasoning. This question can only be answered if one revisits her addendum report. At page 11 of her report, Ms. Tryfonos-Naidoo states the following under the subheading "Discussion and Opinion":

'In my initial report it was postulated that Mr. M[...] would have completed Grade 12 around the age of 18 years, have then eventually entered the labour market on a basic skilled level and over time have been able to progress to a semi-skilled occupational level within the non-corporate sector where his career and earnings were likely to plateau. Following consideration of the Educational Psychologist's findings, it is recommended that my initial pre-morbid career scenario be revised to reflect a more favourable educational and vocational outcome, as supported by available expert evidence.'

[25] It is clear from the above that the sole reason for the compilation of Ms. Tryfonos-Naidoo's addendum report was her receipt and perusal of a single report by Ms. Ndlovu. However, Ms. Tryfonos-Naidoo, who had compiled her first report while armed with the medico-legal reports of Ms. Burke and Ms. Coetzee, various school reports and collateral information from O[...]s teacher, omits to give substantive reasons for why she was persuaded to change the substantive part of her initial report by this particular report of Ms. Ndlovu. In my opinion, this omission is fatal as it leads the Court to conclude that her addendum report lacks the foundation of proper reasoning. Accordingly, the opinion contained in the addendum report falls to be disregarded by this Court.

[26] This Court also agree with Ms. Thomas' submission that Ms. Tryfonos-Naidoo's addendum report should be rejected because it relied heavily on Ms. Ndlovu's report, which has not been properly placed before this Court as no Uniform Rule 38(2) application was made in respect thereof. Moreover, Ms. Ndlovu was never called to give evidence in court.

ORDER

[27] In the result, I grant the following order:

[27.1] The Plaintiff is ordered to file with this Court a fresh actuary's report with calculations based on the first report of M.s Tryfonso-Naidoo, dated 14 December 2022, within five days of the date of this Order.

[27.2] Both parties are required to file their respective notes dealing with the appropriate contingencies that should be applied to the actuary's calculations within two days of the filing of the actuary's report.

[27.3] Costs are to stand over for later determination.

T.J Mgengwana
Acting Judge of the High Court

APPEARANCES

For the Plaintiff: H.G McLachlan

Instructed by: Kruger & Co.

For the Defendant: C. Thomas

Instructed by: State Attorney