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

Not reportable
Case no: 2861/2025

In the matter between:

T[…] S[…] **PLAINTIFF**

and

ROAD ACCIDENT FUND **DEFENDANT**

Neutral citation: *S[…] v Road Accident Fund* (2861/2025) ZAFSHC 492 (29 October 2026)
Coram: CHESIWE J
Heard: 10-11 February 2026 and 12-15 May 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 09h30 on 29 October 2026.
Summary: Road Accident Fund – damages – quantum – personal injury – loss of past and future earning capacity – minor pedestrian – mild traumatic brain injury – cognitive and behavioural sequelae – future employability – applicable contingency deductions – actuarial calculations – uncontested expert evidence – rule 38(2) – past loss of income.

ORDER

The draft order marked 'X' dated 29 October 2026 as amended and signed, is made an order of court.

JUDGMENT

Chesiwe J

Introduction

[1] The plaintiff has instituted a claim against the defendant for damages he suffered from a motor vehicle collision on 1 April 2012. The accident occurred near S Macholo Way, Thabong, Welkom, Free State Province. The plaintiff was six years old at the time of the accident and was a pedestrian playing on the side of the road. The collision occurred when the insured driver, Nkoale Boy Thateng, who was driving a motor vehicle with registration letters and numbers DMN[…], which was pulling a trailer with registration BXD[…], hit the plaintiff and dragged him for a short distance.

[2] The plaintiff avers that the accident was caused by the sole negligence of the insured driver, who failed to keep a proper lookout; keep the vehicle under control; failed to pay due regard to the safety of other road users particularly the plaintiff and failed to apply the brakes. After the collision, the plaintiff sustained severe bodily injuries as follows: mild traumatic brain injury and multiple bodily injuries. The defendant denied the allegations in its plea and pleaded that the plaintiff was negligent and that such negligence was the cause of the collision.

[3] The matter was set down for 10, 11 and 13 February 2026. It was stood down to 11 February 2026 on 10 February 2026. On 11 February, it was postponed to 12, 13 and 15 May 2026 for the amendment of the particulars of claim. Before commencement of trial on 10 February 2026, counsel on behalf of the plaintiff submitted that merits and quantum be

separated and the matter proceed on merits only. Further that the plaintiff intended to call three witnesses. The defendant had no witnesses.

Plaintiff's oral evidence

[4] The plaintiff testified that: at the time of the accident, he was six (6) years old. The date of the accident was 1 April 2012 and that he was playing soccer in the street with some of his friends. The soccer ball rolled onto the tar road, and he wanted to go and fetch the ball. As he was about to take hold of the soccer ball, he saw a vehicle approaching pulling a trailer but was driving very slowly. He realised that he won't be able to run back to the sidewalk. He laid down in the middle of the road and positioned himself in such a way that the vehicle will drive over him without injuring him. While he was under the vehicle, he felt something pulling him. He cannot recall if it was the vehicle or the trailer that pulled him. He could not remember what happened thereafter.

[5] Under cross examination, the plaintiff explained that he cannot recall what happened to his friends whom he was playing soccer with nor does he know what happened between the time of the accident and when he was taken to hospital. He could also not recall his admission in hospital. At the hospital, he was only sutured and bandages were put over the wound. After ten days, he went back to the hospital to remove the sutures. Plaintiff stated that he is does not have much recollection post the accident.

[6] The plaintiff stated that he reported the accident after nine (9) years as his mother explained to him that she was pregnant at the time of the accident and could not go to the police to report the accident. Regarding the insured driver, plaintiff explained that he knew the insured driver but did not know his name. The plaintiff further stated his attempts to get information regarding the accident. He was assisted by someone, who gave him a contact numbers of the insured driver. He called the insured driver, who gave him his details, including the registration numbers of the vehicle. That was the plaintiff evidence.

[7] At the close of the plaintiff's evidence, counsel on behalf of the plaintiff, submitted to court that considering the plaintiff having the details of the insured driver, it was submitted that the particulars of claim ought to be amended. The matter was postponed to 12, 13 and 15 May 2026 for purposes of amending the particulars of claim.

[8] On 12 May 2026, counsel on behalf of the plaintiff submitted that the merits had been conceded at 100% in favour of the plaintiff's proven damages. The general damages were rejected by the defendant as the injuries were regarded as non-serious. Further that, the general damages had been referred to the Health Professionals Council of South Africa (HPCSA). The only outstanding issue outstanding was the loss of past and future income.

[9] An application was filed in terms of rule 38(2) of the Uniform Rules of Court. The application was not opposed by the defendant. The plaintiff sought for the admission of the experts' reports by way of affidavits pertaining to the quantum of loss of earnings. The application was granted with costs in the cause. With the merits having been settled, the matter was rolled over to 15 May 2026. Both counsels agreed to file their written heads of argument on or before the 15 May 2026. For determination by this Court is only the loss of past and future income.

Submissions

[10] Counsel on behalf of the plaintiff, submitted in the written heads of argument that the plaintiff still attending school at the time of the accident; that he failed Grade 2 and repeated Grade 10. He has been unemployed as he is still a student. Regarding the contingencies, counsel submitted that the plaintiff injuries allowed for contingency of 0% for past loss and 25% for future loss of income taking into consideration the plaintiff age. Several authorities were referred to regarding contingencies for a child at 25% and youth 20% and middle age at 10%.

[11] Counsel on behalf of the defendant submitted in the written heads of argument that the calculations of the actuary and the experts' reports are highly exaggerated as the plaintiff was still able to earn an income post-accident. Further that, the plaintiff was at the beginning of his school career when the accident occurred and that moreover, there is very little evidence on the plaintiff's school performance prior to the accident. Counsel proposes that for uninjured earnings, the appropriate contingency be 25% and injured be 27%. She also referred to case law in which the court addressed the reports of experts' witnesses where the evidence of the expert is not objective.

Plaintiff's experts' reports

[12] Dr Seroto, a specialist neurosurgeon, opines in his report that the plaintiff suffered a mild traumatic brain injury and that the injury suffered will not affect his life expectancy unless he suffers from late post traumatic epilepsy. Further that, the plaintiff he has memory impairment. Loss of income was deferred to the industrial psychologist and academic performance deferred to the educational psychologist.

[13] Me Lindelwa Grootboom, clinical psychologist, stated in her report that, based on perused school reports, scholastic difficulties were indicated for grade 1 and 2 prior to the accident, suggesting a possible premorbid learning vulnerability. Further that the plaintiff's performance on picture completion, which is regarded as 'hold the test', was also a low average. A low average premorbid functioning was postulated, and the final opinion was deferred to the educational expert.

[14] Mr Zenzele Kubheka, educational psychologist in his report stated the importance of noting the plaintiff's failure of grade 10 and having to repeat the grade, this being indicative of the effects of the accident. The accident altered his academic and career milestones by a year so far. This factor the expert opines, should be seriously considered when reimbursing him. From an academic perspective and within the context of his cognitive, and neuropsychological challenges, the expert further opines that the plaintiff's future academic progression and career prospects would be curtailed. In considering the plaintiff's latest school results (2024) and the lenient education system, the plaintiff would probably manage to pass grade 12 and will probably reach his academic ceiling at an equivalent of NQF level 5.

[15] Mr Talent Mature, industrial psychologist, stated in his report as follows:

'… in his injured state, Mr S[…]'s career prospects have been significantly compromised, with the current unemployment rate of approximately 32,1%, the accident has significantly narrowed Mr S[…]'s employability in the open labour market. Employers will prefer able-bodied and competent employees; they are unlikely to be accommodative as there are many unemployed able-bodied and educated individuals in the labour market. He is likely to experience difficulties securing and sustaining employment in his injured.'

Regarding loss of income, Mr Mature reports that the plaintiff was six years old at the time of the accident and doing Grade 2 hence there would not be any past loss of earning.

[16] Me Catherine Motake, occupational therapists, concludes that the plaintiff has Post Traumatic Stress Disorder (PTSD) which will negatively affect his ability to form interpersonal relationship at work and may result in job loss. Moreover, he will require a sympathetic employer to accommodate the memory loss and the headaches.

[17] The plaintiff's appointed Munro Forensic Actuaries in its report calculated the loss of earnings as follows: past loss at R26 885 (twenty-six thousand eight hundred eighty-five rand) and future loss at R5 551 700 (five million five hundred fifty-one thousand seven hundred rand) with a total amount of R5 578 585 (five million five hundred seventy-eight thousand five hundred eighty-five rand) with a contingency at 5% and 15% respectively (uninjured) and 25% on future earnings (injured).

[18] The plaintiff's contention is that his evidence has proven on the balance of probabilities that he has established a claim for loss of earnings and that the actuarial calculations are acceptable and that the court ought to rely on these calculations. The defendant did not file any actuarial report for the court's consideration but contends that the plaintiff did not discharge the onus of proving on a balance of probabilities that he is vulnerable in the labour market and that the plaintiff's submitted calculations are highly exaggerated. The defendant did not file any expert reports nor were there any joint minutes. The reports of the plaintiff therefore stand uncontested, including the report of the actuary.

Loss of earnings

[19] In *South Insurance Association Ltd v Bailey N.O*[1] (*Bailey*), Nicholas JA said the following: 'Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles.'

[20] An enquiry into damages for earning capacity is of its nature speculative, because it involves a prediction as to the future. All that the Court can do, is to make an estimate,

[1] *South Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A) at 99 A.

which is often a very rough estimate of the present value of the loss.[2] Based on the above, as well as the views expressed by the experts which were largely common cause, the pertinent question is what award would be fair and adequate compensation for the plaintiff in respect of future loss of earnings or capacity to earn?

[21] In *Sandler v Wholesale Coal Suppliers Ltd*,[3] it was stated that it is no doubt exceedingly difficult to value damage in terms of money, but that does not relieve the court of the duty of doing so upon evidence placed before it. This is a principle which has been acted on in several cases in South African courts. In *Rudman v Road Accident Fund*,[4] the court said: '[t]here must be proof that the reduction in earning capacity indeed gives rise to pecuniary loss.' It is now accepted that in the assessment of these kinds of damages, which cannot be assessed with any amount of mathematical accuracy, and courts have a wide discretion.[5]

[22] In *Bailey*, Nicolas JA said:

'In a case where the court has before it material on which an actual calculation can usefully be made, I do not think that the first approach often any advantages over the second. On the contrary, while the result of an actuarial computation may be no more than an "informed guess", it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial judge's "gut feeling" . . . as to what is fair and reasonable is nothing more than a blind guess.'

[23] The court must in any event make an informed judgment on future losses, even if it is speculative.[6] In the present matter, the plaintiff's loss of income was calculated by Munro Forensic Actuaries. The submission places the loss of earning capacity at 5% and 15% contingencies respectively with inured at 25%. The report of industrial psychologist in respect of the loss of earnings states that the plaintiff reported the age six and in Grade 2 scholar at the time of the accident hence there are no past losses of earnings. The defendant also raised issue with past loss of earnings as the plaintiff was at the beginning of his school career and could therefore not have suffered any past loss of income.

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[2] Ibid at 113G.
[3] *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 at 198.
[4] *Rudman v Road Accident Fund* [2002] ZASCA 129; [2002] 4 All SA 422 (SCA); 2003 (2) SA 234 (SCA) para 11.
[5] See *AA Mutual Insurance Association Ltd v Maqula* 1978 (1) SA 805 (A) at 809A-B.
[6] *Anthony and Another v Cape Town Municipality* 1967 (4) SA 445 (A) at 446B.

[24] I am inclined to agree with the defendant that the plaintiff suffered no loss of past income and must therefore consider the plaintiff's future loss of income, also taking into consideration the plaintiff age up to retirement, including the applicable contingency. What must be borne in mind, is that contingencies are in the court's discretion. For purposes of easy mathematical calculations on the different expert reports as well as information received from the plaintiff, if actuarial calculations are impossible, the court nevertheless determines the plaintiff's loss of earning capacity arithmetically based on estimation but not proved earnings. Except for the one page submitted by the defendant's counsel that contingency on future loss be calculated at 27%, the court has no expert calculations from the defendant's side. On the other hand, counsel for the plaintiff proposed a 25% contingency, taking into consideration the plaintiff's age.

[25] According to the occupational therapists, the plaintiff has a memory problem that will affect his ability to learn new skills along with headaches that will affect his productivity at work. However, none of the experts reports specifically states that the plaintiff is totally unemployable, except that he will have to compete with able-bodied peers in the labour market. In spite of the injuries sustained by the plaintiff, he was able to complete grade 12, even though he repeated grade 2 and 10. His school reports, as attached to the experts' reports, indicate that he had average learning potential and his academic performance indicated a learning difficulty.

[26] The court takes cognisance of the fact that the plaintiff is severely compromised due to the accident. From the experts' reports, it is not stated unequivocally that he would not be capable to do any work in the future however, according to the educational psychologist, his aspiration to study towards a sound engineer career or related qualifications may not be realised. The plaintiff has had to redirect his aspirations to study towards a Bachelor of Education at NQF Level 7. Even though he will compete with able bodies persons, the careers path does not result in him being totally unemployable.

[27] Therefore, taking into consideration the experts' reports, in my view there is a possibility that plaintiff may post morbid find employment if he completes the Bachelor of Education Degree.

[28] It is now well settled that contingencies, whether negative or positive are an important control mechanism to adjust the loss suffered to the circumstances of the individual case to achieve equity and fairness to both parties. There is no hard and fast rule regarding contingency allowances. For purposes of easy mathematical calculations, the actuary based the calculations on the different experts' reports as well as information as received from the plaintiff. A contingency of 5% and 15% was applied respectively. Indeed, it is so that the court must make a calculation that is fair and just for both parties. Moreover, the defendant did not file an actuarial report to dispute the plaintiff's calculation. Thus, the plaintiff calculations stand uncontested.

[29] In aligning myself with finding of the court in the matter of *Road Accident Fund v Reynolds*,[7] the court said:

'Thus, allowing for contingencies is one of the elements in exercising the discretion to award damages'

[30] It was said in *Masemola v Road Accident Fund*,[8] that:

'It is now settled that contingencies, whether negative or positive, are an important control mechanism to adjust the loss suffered to the circumstances of the individual case in order to achieve equity and fairness to both parties. There is no hard and fast rule regarding contingency allowances.'

[31] Thus, the applicable and appropriate contingencies would be fair at 25% for the future loss of earning, based on the plaintiff's age as calculated by the actuaries. Regarding the past loss of income, it is unclear where the calculated R26 885 (twenty-six thousand eight hundred eighty-five rand) was derived from, as the plaintiff was a scholar and has suffered no loss of past income.

[32] Therefore, the plaintiff's filed draft of order with the calculations according to the actuary ought to be awarded, excluding the past loss of income.

Order

[33] Accordingly, it is ordered as follows:

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[7] *Road Accident Fund v Reynolds* (A5023/2004) 2006 JDR 0245 (W) 18 February 2005 para 5.
[8] *Masemola v Road Accident Fund* [2023] ZAGPPHC 553; 17336/2017 (2 July 2023) para 41.

The draft order marked ‘X’ dated 29 October 2026 as amended and signed, is made an order of court.

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JUDGE OF THE HIGH COURT

Appearances

On behalf of plaintiff:	L A Roux
Instructed by:	MM Hattingh Inc Attorneys, Bloemfontein
On behalf of the defendant:	M Lephoto
Instructed by:	Road Accident Fund, Bloemfontein.