



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

**CASE NO: 92141/2015**

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|-----|---------------------------------|
| (1) | REPORTABLE: NO                  |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED.                        |

**20 APRIL 2022**

**Date**

\_\_\_\_\_  
**K. La M Manamela**

In the matter between:

**L[....] Y[....] P[....]**

**Plaintiff**

**obo R[....] P[....]**

and

**ROAD ACCIDENT FUND**

**Defendant**

**DATE OF JUDGMENT:** This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be 10h00 on **20 APRIL 2022**.

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**JUDGMENT**

***Introduction***

[1] On 13 March 2013 the minor child of the Plaintiff, Ms L[...] Y[...] P[...] , was crossing - on foot - the R25 Road (next to entrance to the Moutse Mall) in Denilton, Limpopo Province, when she was hit by motor vehicle driven by a certain Mr Andries Bester (the insured driver). The minor child, R[...] P[...] , was born on 23 August 2007 and, therefore, was about six years old at the time of the accident. She sustained a head injury with deep laceration occiput. The Plaintiff blames the accident on the sole negligence of the insured driver. In terms of the provisions of the Road Accident Fund Act 56 of 1996 (the RAF Act) the Plaintiff caused summons to be issued against the Road Accident Fund (RAF) on 16 November 2015 to recover the damages suffered by her or the minor. RAF defended the action and pleaded that the accident was solely caused by the minor, alternatively that the minor's negligence contributed to the cause of the accident. In the course of time the merits were settled in favour of the minor or the Plaintiff.

[2] On 14 October 2021, Bokako AJ granted an order in terms of which the defence of RAF was struck out and the matter thenceforth proceeded as default judgment proceedings. On 25 November 2021, the matter came virtually before me on trial. Mr BR Matlhape appeared as counsel for the Plaintiff. There was no appearance for the RAF. The RAF appears to have withdrawn the mandate of its attorneys and participated in the matter without legal representation, even before the order by Bokako, AJ, referred to above. I reserved this judgment after listening to brief oral submissions by counsel for the Plaintiff. The judgment also benefits from the written submissions by counsel, for which I am grateful.

[3] Counsel confirmed that the issues relating to the merits were fully settled and that what remained for determination by the Court is the *quantum* of the general damages and future loss of income or earning capacity of the minor. Also, that RAF ought to be compelled to furnish the Plaintiff or the minor with an undertaking for future medical treatment and expenses in terms of section 17(4)(a)<sup>1</sup> of RAF Act.

***Evidence and submissions on behalf of the Plaintiff***

[4] The evidence in the trial is by way of the reports or medico-legal reports furnished by the experts employed on behalf of the Plaintiff. The experts had confirmed under oath the contents of their reports or their opinions therein. This was in terms of the affidavits filed before the trial. Next, I deal with the pertinent parts of the reports, guided by counsel's submissions.

**Dr B Mosadi (specialist neurosurgeon)**

[5] Dr B Mosadi, the specialist neurosurgeon, examined the minor on 1 June 2016. This was just over three years since the minor was involved in the accident. The neurosurgeon only had the benefit of the hospital records, as well as the RAF1 form regarding the injuries and treatment of the minor.

[6] Dr Mosadi noted that the minor was in grade R at the time of the accident in 2013 and in grade 3 when she was assessed by Dr Mosadi in 2016. Dr Mosadi further noted that the minor reportedly lost consciousness immediately after she was hit by the insured vehicle and

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<sup>1</sup> Section 17(4)(a) of the RAF Act reads as follows: "(4) Where a claim for compensation under subsection (1)(a) includes a claim for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her, the Fund or an agent shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the Fund or the agent to furnish such undertaking, to compensate (i) the third party in respect of the said costs after the costs have been incurred and on proof thereof; or (ii) the provider of such service or treatment directly, notwithstanding section 19 (c) or (d), in accordance with the tariff contemplated in subsection (4B)".

was taken to Philadelphia hospital. She sustained injuries on her head and right arm. At the hospital the minor was sutured on the back of her head and discharged on the same day or the following morning. Dr Mosadi noted the recorded injuries of the minor as a 4 cm bleeding laceration on occiput and her treatment as comprising analgesia for pain management; suturing of the wound and dressing; radiological examination and x-rays, and neurological observation. The minor's Glasgow Coma Scale or GCS was noted at 15/15.

[7] When being assessed by the neurosurgeon after the accident, the minor complained of headaches and memory problem. These complaints reportedly started after the accident. The occipital headache is reportedly intermittent in nature. And the minor's recent memory is more affected than her long-term memory since the accident. The neurosurgeon observed a 7 cm left shaped accidental wound scarring on the minor.

[8] According to Dr Mosadi, the minor's head injury may be classified as a grade 3 concussion, a subset of mild head injury. The neurosurgeon said this classification is derived or evidenced by the minor's history of loss of consciousness and chronic headache. The head injury could result in the minor suffering prolonged neurocognitive impairments. The neurosurgeon rated the minor's whole person impairment or WPI at 22% and qualified the minor for general damages on the basis of the narrative test under paragraph 5.3 of the RAF 4 Form (i.e. severe long-term mental or severe long-term behavioural disturbance or disorder).

*Ms Naledi N Mqhayi (clinical psychologist)*

[9] Ms Naledi N Mqhayi, a clinical psychologist, assessed the minor on 1 June 2016. This was the same date as the assessment by Dr Mosadi, the neurosurgeon, referred to above. Obviously, this means that the clinical psychologist, as with the neurosurgeon, only had the

benefit of the hospital medical records and the RAF 1 lodgement documents, at the time of her assessment of the minor. The purpose of her report was to evaluate the clinical and psychological *sequelae* of the injuries of the minor, as well as her mental state and emotional impact of the injuries or their *sequelae* on her. Further, the assessment was aimed at determining the impact of the accident on the minor's future, work prospects, psychological and social functioning.

[10] According to the notes of the clinical psychologist, the minor's health was very good prior to the accident. She was in grade R and presented as a moderate learner at the time of the accident. After the accident the minor's teacher, reportedly, complained that the minor sleeps in class and complains of headaches. According to the Plaintiff or the minor, the headache experiences are particularly during cloudy weather. The minor now also sleeps with a hat on and wears a hat at school through winter. According to the minor's mother, since the accident the minor is forgetful, wets her bed during the night (i.e. nocturnal incontinence) and has frequent micturition when awake. The psychological trauma that the accident had on the minor may also be at play, as bedwetting in the absence of a medical problem, the clinical psychologist opined.

[11] Upon a neuropsychological testing the following was revealed, among others, significant difficulties with attention, concentration, short-term memory for non-meaning information, as well as double tracking and poor working memory. The verbal memory of the minor was rated in the impaired range, as well as her verbal and abstract reasoning. The same goes for her executive functioning where her performance suggests impaired executive planning abilities. Her neurocognitive impairments that were observed on her results suggest that she may no longer find it easy to cope with some academic material when studying or

even on her day-to-day activities. She demonstrated serious impairments in her working memory, which is the memory that is used every day to remember. The current cognitive impairments are serious impediment as she may not be able to progress academically as she would have if the accident in question did not happen. The symptoms she is presented with suggest a serious impairment in her intellectual abilities as well as significant impairment in her memory functions.

[12] The minor, Ms Mqhayi further opined, has been experiencing symptoms which depict a picture of an individual who has post-concussive syndrome. When an individual is said to have post-concussive syndrome, it means that the complaints and symptoms which they are typically exhibiting include a range of the following: somatic (headaches, fatigue); cognitive (inattention, forgetfulness, slow processing); affective symptoms (irritability, disinhibition). The abovementioned symptoms would have repercussions on the minor's scholastics, as her slow information processing speed will have to be a hindrance when it comes to her syllabus material.

[13] Ms Mqhayi's recommendations included the following. She said that long-term psycho-therapeutic intervention would benefit the minor in dealing with the anxiety and post-traumatic stress disorder (PTSD) she suffers from. She further recommended an assessment of her functioning across scholastic areas by an educational psychologist.

Mr Matome W Kumalo (educational psychologist and remedial therapist)

[14] Mr Matome W Kumalo, the educational psychologist and remedial therapist, assessed the minor on 6 October 2016. The purpose or objective of the report furnished by Mr Kumalo is stated, among others, as for determining (a) whether there are any psycho-educational

problems resulting from the injuries the minor sustained in the accident; (b) the minor's cognitive and academic potential; (c) how these functions have been affected or influenced by the accident, and (d) the level of education the minor would attain. Overall, the minor's pre-accident cognitive potential and post-accident level of academic potential were assessed by this expert. This expert had access to the reports by Dr Mosadi, the neurosurgeon, and Ms Mqhayi, the clinical psychologist, apart from the hospital and clinical records, RAF lodged forms and the minor's personal and school documents.

[15] Apart from the personal information supplied to the neurosurgeon, Mr Kumalo recorded the following about the minor. The minor's mother, the Plaintiff, had attained a grade 12 level of education, whereas the minor's father had only attained grade 6 level of education. Both parents were, at the time of the assessment by this expert, unemployed. The minor has two sisters: (1) a 24 year old (then) sister with a B Com degree and then employed as an intern, and (2) another 18 year old (then) sister who was in grade 12. The minor was in grade R at the time of the accident and progressed without repeating a grade and, therefore, was in grade 4 at the time of the furnishing of the report by this expert (i.e. 13 March 2017). The minor's teacher completed a questionnaire by this expert and reported, among others, that the minor was performing well in all subjects; conformed to authority and took orders in appropriate manner; was hard-working, clever and very responsible child, as well as "acting and behaving just like any other child her age".

[16] During the assessment by Mr Kumalo, the complaints reported to Dr Mosadi, the neurosurgeon, were significantly repeated. Further, the minor complained of anxiety when travelling by car or crossing a road, lack of concentration or being easily distracted, sweats during the night, tiredness and hyperactivity, post-accident. The educational psychologist

commented that it appeared that the minor had undergone changes in functioning since the accident. He further opined that this suggests alteration in personality or its manifestation in social interaction, cognitive losses related to memory, and therefore ability to learn.

[17] Mr Kumalo's summarised conclusions included the following. The minor has difficulties with concentration, which would have a negative influence on his school performance. Further, that the minor

“is highly unlikely... to cope in a mainstream setting. She would therefore be better placed in a remedial school. Placement within a remedial school setting will provide [the minor] with a structured environment with minimum disruptions. She will be able to concentrate more effectively as fewer distractions are found within a small classroom environment. This will also provide the necessary assistance she needs with reading and processing problems.”<sup>2</sup>

[18] The above means that the educational psychologist recommended that the minor be placed on a full-time basis in a remedial school with remedial intervention. According to him the minor is most likely to achieve a low level pass in grade 12, but without support she would most likely obtain a grade 11 level of education. Further, according to Mr Kumalo, as the Plaintiff, the mother of the minor, attained grade 12 education, it seems likely that the minor would have also passed grade 12 and then being eligible for tertiary education, either in a college or university. The minor's intellectual potential or intellectual functioning is estimated to fall in the average range. Mild neurocognitive deficits were revealed by psycho-educational testing in the areas of attention, concentration, memory and processing speed. Mr Kumalo concluded that there is a significant impairment in the minor's memory functions.

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<sup>2</sup> CaseLines: 051-404, Mr Kumalo's report.

Further, that the deficits would impact negatively on the minor's school performance and her day-to-day activities.

Ms Sagwati Pearl Sebapu (occupational therapist)

[19] Ms Sagwati Pearl Sebapu, the occupational therapist, assessed the minor on 16 March 2016 and furnished a report, a year later, dated 25 April 2017. The occupational therapist had the benefit of the reports of expert mentioned above, as well as the report of the industrial psychologist, to be dealt with below. The purpose of her report was stated to be to furnish comments "on the effects of the injuries [the minor] sustained with regard to functional abilities and to discuss the need for any assistance, special equipment or adaptations needed as a result of these injuries". Further the report was aimed at commenting on the minor's present and future loss of life amenities and the impact of her injuries on her present and future work ability.

[20] Ms Sebapu reported that Plaintiff, the mother of the minor child, attained grade 11 as her highest educational qualification. Further, Ms Sebapu noted that the minor started her informal schooling in 2012 at Serame Combined School when she was 4 years old. She proceeded her formal schooling (i.e. grade R) at the same school in 2013. This was the same year she met the accident. She was able to return to school after two weeks of recuperation at home, following the accident. She progressed with her schooling until her grade 3 (i.e. the same year of her assessment) without repeating a grade.

[21] She also reported that the minor was in good health pre-accident. Post-accident the occupational therapist noted the same problems as those reflected above in respect of the other expert witnesses, including the headaches and forgetfulness or poor memory. According to the occupational therapist the minor reported problems and limitations relating

to headaches on the occipital area during inclement weather. Further, that the minor does not comb her hair in winter due to the headaches. The minor's bed-wetting (enuresis) started after the accident in a frequency of 2 to 3 times per week.

[22] Ms Sebapu's opinion is that the minor presents with negative emotional/psychological *sequelae* following her involvement in the accident. It is reported that the minor was distracted and impulsive during the assessment. The expert is of the opinion that once the minor has reached full maturity she will retain the residual capacity for sedentary, light and medium occupations, and would need to avoid heavy occupations and working in direct sunlight due to the reported headaches. Her cognitive and psychological functioning would limit her regarding career paths and work choices. Further, her injuries, residual functioning and educational opportunities (when considering her origin from low-middle socio-economic class) are likely to make it difficult for the main to find and secure employment in the open labour market. In the event of employment in the future, the minor's physical and cognitive limitations, and pain would compromise her ability to function at the same level as her uninjured peers. This would be the case even if her physical abilities are able to match the physical demands of her job.

Ms L Coetzer (industrial psychologist)

[23] Ms L Coetzer, the industrial psychologist, evaluated the minor on 25 January 2017 and delivered an *addendum* report dated 27 April 2017. She had evaluated the minor previously on 25 January 2017 and furnished a report dated 22 March 2017. For purposes of her *addendum* report, Ms Coetzer had the benefit of access to the reports by the clinical psychologist, occupational therapist and educational psychologist, referred to above, apart from the other medical and personal records of the minor. Ms Coetzer expressed the

following opinions postulated in terms of scenarios as a guideline for calculation of the minor's future loss of earnings or earning capacity.

[24] Regarding the minor's pre-morbid situation the industrial psychologist stated the following based on the information available to her, including the opinions of the other expert witnesses:

[24.1] scenario one (in which the minor would have acquired a diploma), which the industrial psychologist considers the most likely given the minor's background, entails the following. It is postulated, under this scenario, that the minor would have completed a certificate diploma (NQF 6) level of education at a college or university; would probably have found herself unemployed for approximately six months, and would probably have initially functioned on a temporary basis upon her entry into the labour market, before securing permanent employment in the general sector of the open labour market. Her earnings, as a temporary employee, would probably have been comparable to a Paterson B2 job grade and, as a permanent employee her earnings would probably be comparable to a Paterson B3 job grade. In the permanent employment capacity, the minor's earnings would probably have grown in a straight line to reach the pinnacle of her earnings on a level comparable to that of a Paterson C3/C4 job grade around the age of 45 years. Thereafter, the minor's earnings would have grown with annual inflation until retirement age of 65.

[24.2] in terms of scenario two, the minor would have acquired a degree, but this is considered by the industrial psychologist to be least likely given her background. She would probably have found herself unemployed for approximately six months. Upon

her entry into the labour market she would have initially secured employment on a temporary basis for a period of one year, before securing permanent employment. In the temporary capacity, her earnings would have been comparable to a Paterson B/B5 job grade. As a permanent employee, her earnings would have been comparable to a Paterson B5 job grade. The minor's earnings would have grown in a straight line to reach the pinnacle of her earnings on a level comparable to that of a Paterson D1/D2 job grade around the age of 45 years. Thereafter, the minor's earnings would probably have increased annually with inflation until retirement at the age of 65.

[25] Ms Coetzer's opinion, now that the accident has occurred, regarding the minor's employability and work capacity entailed the following. Given the minor's post-accident cognitive, psychological functioning and the opinion expressed by the educational psychologist, the minor would no longer be able to reach her pre-accident educational potential and would have to be placed in the remedial school. This would directly impact the minor's choice of work in the future than her potential earnings level. She is likely to pass grade 12 or possibly only grade 11 in a remedial school and would only be able to compete for skilled/semi-skilled work in the informal sector. She would best be suited for sedentary, light to medium type of occupations. Considering the opinion of the occupational therapist regarding her physical and cognitive limitations, it seems the minor would still be vulnerable even if she secures employment which is suitable to her educational level and physical capabilities. The minor would struggle to compete for suitable employment.

[26] Regarding the minor's future loss of earnings, Ms Coetzer expressed opinions including the following. In the event the minor is able to obtain a low level grade 12 in a remedial school she would likely not be able to earn similar earnings to individuals with a

low level grade 12 from a normal or conventional school. This suggests that the minor would obtain a compromised education, Ms Coetzer further opined. The minor's reduced physical abilities and cognitive and psychological symptoms would reduce her choice of work. The minor would likely be limited to sedentary to medium natured work which requires little responsibility but regular supervision. Ms Coetzer, further, made recommendations for purposes of calculating the minor's loss of earnings. Her suggestions are utilised by the actuary and will therefore be dealt with below in as far as they are relevant to determining the minor's loss of earnings or earning capacity.

Messrs C du Plessis and E Theron (actuaries)

[27] Messrs C du Plessis and E Theron, the actuaries, furnished an actuarial report dated 3 May 2017. The actuaries considered the scenarios postulated by Ms Coetzer in her *addendum* report dated 27 April 2017.

[28] The capital value of the loss of income (without contingencies and as impacted by the RAF cap) are as follows: the amount of R5 282 900, as scenario 1, and amount of R7 797 000, as scenario 2. The actuaries, based on the opinion of the industrial psychologist, made calculations on the assumption that the minor would retire at the age of 62.5 years. The actuaries provided calculations of loss of income based on scenario 1 in terms of which the minor would have acquired a post-grade 12 diploma qualification. The capital value of loss of income (excluding RAF cap) are as follows: the uninjured income in the amount of R5 949 400 and injured income in the amount of R667 500. Therefore, the minor's loss of earnings is estimated at the amount of R5 281 900. It is mentioned that the limitations or cap in terms of the amendment to the RAF Act does not have an impact on the value of the claim and, therefore, the figures illustrated in the report are applicable. The actuarial report also reflects

scenario 2 in terms of which the minor is postulated to have obtained a university degree, which was indicated by the educational psychologist as the “doubtful” of the two scenarios. The actuaries recommended the application of the contingencies on the basis of the particular facts and circumstances of this matter.

*Submissions on behalf of the Plaintiff*

[29] As stated in the introductory part above, this judgment benefited from the written submissions by Mr BR Matlhape on behalf of the Plaintiff, including with regard to the evidence in terms of the expert reports, above. Therefore, to the extent possible, any repetition of what already appears above would be avoided under this part.

*Applicable case law on loss of earnings*

[30] Counsel referred the Court to the principles applicable to the determination of a fair and equitable compensation, as stated in the decision in *Sandler v Wholesale Coal Supplies Ltd*<sup>3</sup> that the “[t]he amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending upon the judge's view of what is fair in all the circumstances of the case”.<sup>4</sup> The Court ought to do its best in making the best use of the evidence before it when determining the amount to be awarded for the damages suffered.<sup>5</sup>

[31] Counsel further referred to the relevant authorities against the particular circumstances of this matter, including the youthful age of the minor. Counsel submitted that a contingency deduction of 25% for the value of income but for the accident, and 35% for the value of income having regard to the accident as follows:

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<sup>3</sup> *Sandler v Wholesale Coal Supplies Ltd* 1941 AD 194.

<sup>4</sup> *Sandler v Wholesale Coal Supplies* at 199.

<sup>5</sup> *Hersman v Shapiro and Co* 1926 TPD 367 at 379.

[31.1] R5 949 400 (value of income, but for the accident)  
- R1 487 350 (25% contingency deduction)

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R4 462 050 (total loss of income)

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[31.2] R667 500 (value of income, having regard to the accident)  
- R233 625 (35% contingency deduction)

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R433 875.00 (total loss of income)

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[31.3] = R4 028 175 (R 4 462 050 - R433 875.00) (net loss).

[32] Therefore, counsel for the Plaintiff submitted that RAF be held liable for the minor's loss of future earnings or earning capacity in the estimated amount of R4 028 175. I will deal with these issues further below.

*Applicable case law on general damages*

[33] The cardinal principle in making an award for general damages is that the Court has a large and broad discretion to award what the judge, in the circumstances considers to be fair and adequate compensation to the injured party for the *sequelae* of the injuries.<sup>6</sup> The Court would generally have regard to the awards made in previous comparable cases, as a guide, whilst being mindful of the tendency for awards to be higher in recent years than it was the

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<sup>6</sup> *Protea Assurance Company Ltd v Lamb* 1971 (1) SA 530 (A) at 534H-535A and *Ambrose v Road Accident Fund* 2011 (6C4) QOD 13 (ECP) at par 48.

case, previously.<sup>7</sup> The corollary of this is that each case ought to be adjudicated upon the merits of its own peculiar facts.

[34] Counsel referred to the following comparable cases with regard to the general damages suffered by the minor:

[34.1] the decision in *Abrahams v Road Accident Fund*<sup>8</sup> in which the claimant (i.e. 41-year-old male spray painter) sustained, among others, multiple injuries including a fracture of right proximal femur, mild concussive traumatic head injury, and severe soft tissue injury to the left hand. Counsel submitted that these injuries are more similar to those of the minor in the current matter before the Court. In *Abrahams* the court awarded R500 000 for general damages to the claimant in 2012, which currently equates to R 754 000.

[34.2] in *Van Der Mescht v Road Accident Fund*<sup>9</sup> the claimant (i.e. a female cyclist employed in public relations and marketing field) had sustained, among others, a head injury or brain injury of moderate degree; compression of the 10th and 12th thoracic vertebrae; a fracture of pelvis; left ankle and left scapula, and soft tissue injuries. Subtle, but yet significant post-traumatic neuropsychological disorder and mild residual spinal soft tissue syndrome (resulting in psychological reactions, the most significant of which is depression) resulted from the psychological *sequelae* of the brain injury. The court awarded R400 000 in 2010, as general damages, which currently equates to R721 000.

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<sup>7</sup> *Ambrose v Road Accident Fund* at par 48.

<sup>8</sup> *Abrahams v Road Accident Fund* 2014 (7J2) QOD 1 (ECP).

<sup>9</sup> *Van Der Mescht v Road Accident Fund* 2010 (6J2) QOD 42 (GSJ).

[34.3] in *Vukeya v Road Accident Fund*<sup>10</sup> the claimant (i.e. 43-year-old female cleaner) had sustained mild to moderate frontal lobe brain injury; orthopaedic injuries; injury to the lower back, and soft tissue injuries to the leg. The *sequelae* of the head injury resulted in short term memory and chronic headaches. The court in 2013 awarded R330 000, currently equating to the amount of R514 000, for general damages.

[35] Counsel for the Plaintiff submitted that considering that the *sequelae* of the injuries sustained by the minor in the accident, resulted in the minor suffering loss of amenities of life due to both physical and neurocognitive deficits, a fair and equitable compensation for general damages is in the amount of R650 000. Counsel submitted that this figure is the median of the figures in the authorities quoted in 34 above.

### ***Conclusion***

[36] Starting with the issues relating to the loss of future earnings or earning capacity on the part of the minor, I cannot do anything but emphasise my agreement with the opinions of the various experts. More so, that the injuries from the accident or their *sequelae* had left the minor with long-term physical and neurocognitive impairments. But the minor appears to have consistently performed from an educational point of view when one considers that she had not repeated a grade, despite having met the accident while she was still in grade R. She seems to have progressed or managed through the grades up to grade 4 in 2017, when most of the reports by expert witnesses were prepared, including that of the educational psychologist and industrial psychologist. There is no information regarding her copying between 2018 and

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<sup>10</sup> *Vukeya v Road Accident Fund* 2014 (7B4) QOD 1 (GNP).

2021, but nothing would turn on this. I, therefore, find it difficult to accept the postulation that the value of her income having regard to the accident (i.e. R667 500) is almost a tenth of the value of her income but for the accident (i.e. R5 949 400). This to me suggests a completely debilitated claimant whose life has been almost completely turned around by the impairments. I should not be understood to be dismissive of the *sequelae* of the minor's injuries, especially her memory or psychological challenges.

[37] I will, therefore, apply even higher contingencies than suggested on both sets of income, although remaining within the spread of 10%, as follows: a contingency deduction of 30% for value of income but for the accident, and 40% for the value of income having regard to the accident, as follows:

[37.1]	R5 949 400 (value of income, but for the accident)
	- R1 784 820 (30% contingency deduction)
	R4 164 580 (total loss of income)

[37.2]	R667 500 (value of income, having regard to the accident)
	- R267 000 (40% contingency deduction)
	R400 500 (total loss of income)

[37.3] = R3 764 080 (R4 164 580 - R400 500) (net loss).

[38] Based on the above calculations, I will make an award in the amount of R3 764 080 in respect of the estimated loss of earnings or earning capacity of the minor. Should the contingencies applied or their application, for whatever reason, seem unscientific or unsound,

I consider the aforementioned figure, in and of itself, to constitute a fair and adequate compensation for the loss of earnings or earnings capacity to the minor, considering the peculiar facts of this matter.

[39] With regard to the minor's general damages, I have considered, among others, the continuous impact of the headaches on the quality of life of the minor and the physical and psychological scarring left by the injuries from the accident. I have also considered the authorities I was referred to by counsel above. I will make an award in the amount of R500 000 in respect of general damages. Therefore, the total amount to be awarded for both composite heads of claim is R4 264 080.

[40] I will also direct that RAF furnish the Plaintiff or the minor with an undertaking for future medical treatment, care and expenses in terms of section 17(4)(a) the RAF Act.

[41] Costs would follow the result, as further expanded in the order appearing below.

[42] Ms Sebapu, the occupational therapist, had opined in as far as financial management is concerned, that curators should be appointed given the age of the minor. I have noted that the draft order proposed by the Plaintiff's legal representatives postulates this outcome. Therefore, I would include a term towards the protection of the income of the minor in the order made.

### ***Order***

[43] In the premises, I make the order, that:

- a) the Defendant pays to the Plaintiff, in her representative capacity as the biological mother and natural guardian to the minor, R[....] P[....] , born 23 August 2007, the sum of R 500 000.00 (five hundred thousand rand) in respect of general damages;
- b) the Defendant pays to the Plaintiff, in her representative capacity as the biological mother and natural guardian to the minor, R[....] P[....] (the minor), born 23 August 2007, the sum of R3 764 080.00 (three million seven hundred and sixty four thousand rand and eighty cents) in respect of the minor's loss of earnings or earning capacity;
- c) in the event of the amount(s) in a), b) and/or e) hereof not being paid timeously, the Defendant shall be liable for interest on the amount(s) at the rate, as prescribed by the government gazette, calculated from 180 calendar days after the date of the order;
- d) subject to g) and h) hereof, advance payment be made to the Plaintiff upon receipt of the amount(s) referred to in a) and/or b) hereof to cater for the immediate and continuous needs of the minor;
- e) the Defendant shall pay the Plaintiff's taxed or agreed party-and-party costs on the High Court scale, including:
  - i) the reasonable costs in obtaining payment of the amounts referred to in a) and b) hereof; traveling to and spending time travelling to pre-

trial conferences; video and telephonic consultations with counsel, client and the Defendant;

- ii) the reasonable fees of counsel, including for perusal, drafting heads of argument, preparations, court attendances, including on 11 May 2017, 05 March 2018, 04 February 2019, 10 August 2021, and 25 November 2021, if applicable;
- iii) the taxable costs of obtaining the medico-legal reports of all the experts in respect of the *quantum* of the Plaintiff's claim, including consultations of which the Plaintiff gave notice in terms of the provisions of the court rules 36(9)(a) and (b), and costs of an interpreter;
- iv) the taxable qualifying reservation and preparation costs of the experts hereunder, as allowed by the Taxing Master:
  - Dr B Mosadi, Neurosurgeon;
  - Dr Tladi, Orthopaedic Surgeon;
  - Mr W M Kumalo, Educational Psychologist;
  - Ms N Mqhayi, Clinical Psychologist;
  - Ms S Sebapu, Occupational Therapist;
  - Ms L Coetzer (Pretorius Industrial Psychologists), and
  - Messrs C du Plessis and E Theron (Alex Munro Actuaries).

- f) the amounts referred to in a) and b) hereof 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 Attorneys
Name of Bank	:	ABSA
Account Number	:	[...]
Branch Name	:	Montana
Type of Account	:	Trust Account

- g) subject to d) and h) hereof, the Plaintiff's attorneys shall within 3 (three) months from the date on which the capital amount(s) referred to in a) and/or b) hereof, whichever is earlier, are/is paid by the Defendant, take steps within the confines of the law towards the protection and/or the financial management of the funds of the minor, including through the creation of a trust, costs of the creation and administration of which are to be paid by the Defendant;
- h) subject to d) hereof, the amounts referred to in a) and b) hereof, shall after deductions of the attorneys' legal fees, as justified in terms of the law, be paid into a trust to be created in favour of the minor, as envisaged by g) hereof, and
- i) it is recorded that the Plaintiff's attorneys reported that there is no contingency fee agreement entered between them and the Plaintiff, as their client.

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**Khashane La M. Manamela**  
**Acting Judge of the High Court**

**Date of Hearing** : **25 November 2021**

**Date of Judgment** : **20 April 2022**

**Appearances:**

For the Plaintiff : Adv BR Matlhape

Instructed by : Marisana Mashedi Incorporated, Pretoria

For the Defendant : No appearance