

SOUTH AFRICA / JUDGMENT

Mjiako NO obo T.S v Road Accident Fund (23172/2018) [2025] ZAGPPHC 515 (20 May 2025) [2025] ZAGPPHC 515

COURT

North Gauteng High Court, Pretoria

BEFORE

Mabuse

CASE / FILE NUMBER

23172/2018

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****CASE****NUMBER: 23172/2018****DATE:**

20 May 2025

July

2020

(1) REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED.

DATE:

2025.05.20

SIGNATURE: ADV
NTOKOZO MJIAKO NO obo T[...] S[...]
Plaintiff
V
THE
ROAD ACCIDENT FUND
Defendant

JUDGMENT

MABUSE J

[1] This is a claim for payment of money arising from an incident that took place on 11 January 2016. On the said date a blue Toyota motor vehicle with registration letters and numbers C[...] (the insured motor vehicle), driven at the time by a certain E Bhokolo (the Insured driver) collided with, a certain T[...] S[...], at the time a pedestrian. As a consequence of the said collision the said T[...] S[...] sustained certain bodily injuries. For purposes of this

judgment

, I will refer to T[...] S[...] as the "Patient".

- [2] According to the pleadings, on 4 April 2018, the Plaintiff, L[...] S[...], who at the time was acting for the Patient, issued summons against the Defendant, the Road Accident Fund(RAF), a juristic person created as such in terms of the provisions of section 2 of the Road Accident Fund Act 56 of 1996 (the Act) and claimed from the said Defendant payment of money, together with certain ancillary relief. The office of the Defendant as is now, and as it was then, located at 32 The Glades Office Park, 420 Witch-Hazel Street, Centurion, Pretoria.
- [3] Now a certain a certain Ntokozo Miyako, an adult male advocate, was appointed by court order as a curator ad litem. He is now the Plaintiff in this matter.
- [4] The Patient's cause of action originated from these facts: On January 11, 2016, the Patient was a pedestrian when he was hit by the said insured motor vehicle. In that collision, he sustained certain bodily injuries. The expert reports submitted in this case have accurately documented and recorded his injuries. Their sequelae have also been set out in those various reports.
- [5] According to the particulars of claim, the Defendant has conceded the merits at 100%. Therefore, when the matter came before court, it was only for quantum or loss of income or loss of earning capacity. The Patient has incurred medical costs in the past and would continue, in the future, incur medical costs for life.

- [6] When this matter came before court, the Plaintiff brought an application in terms of Rule 38(2) of the Uniform Rules of Court (the Rules). In terms of this rule, the court was at large to permit the requisite evidence to be adduced by way of affidavits. The application had been served on the Defendant and the Defendant did not have any problem with it. The placing of evidence before court by way of affidavit was in accordance with the proposition initially made by Van Dijkhorst J in *Havenga v Parker* 1993(3) SA 724 (T), which proposition has now crystalized into the said Rule 38(2).
- [7] The nature of the injuries suffered by the Patient, their seriousness, treatment and the duration of their treatment, were fully set out in the clinical records of Red Cross Children Hospital, Groote Schuur Hospital and furthermore in experts reports filed in this matter. From these clinical records and various experts reports, there is very little doubt that the Patient suffered serious injuries.
- [8] I now turn to the medical documents filed of record about the injuries sustained by the Patient as a result of the said collision.

[8.1] The Particulars of Claim

According to the particulars of claim, the Patient had suffered the following sequelae:

- [8.1.1] she has received medical treatment in the past and would continue in the future to receive permanent medical treatment for life.
- [8.1.2] she has incurred medical costs in the past and would continue in the future to incur permanent medical costs permanently for life.
- [8.1.3] will suffer loss of earning alternatively, a further loss of earning capacity, in the future on a permanent basis for life.
- [8.1.4] She has experienced loss of life's amenities, pain, suffering, disfigurement, and disabilities, and will continue to suffer these on a permanent basis.

I now turn to the Patient's injuries as recorded in the clinical records and experts' reports.

[8.2] The Clinical Records of Groote Schuur Hospital. According to these clinical records:

"The Patient was admitted to Groote Schuur Hospital from Red Cross Memorial Children's District Hospital on January 12, 2016, following a motor vehicle accident. As a result of the motor vehicle accident, the Patient had sustained the following injuries:

- [a] very severe traumatic brain injury.
- [b] loss of consciousness
- [c] GCS was 4T/B
- [d] his pupils were fixed and dilated.

[e] he had bilateral CSF"

GT brain scan done on 12 January 2016 showed bifrontal contusions, left cerebellar contusion, small subarachnoid haemorrhage. He had bilateral base of skull fractures, involving left mastoid and right sphenoid wing.

GT abdomen showed grade 2 liver laceration and also pelvic fracture (diastatic right sacroiliac joint and fracture of right inferior pubic ramus). The pelvic fracture was managed conservatively."

Quiet clearly, the Patient had sustained extremely serious injuries, according to the above hospital records.

[9] According to the particulars of claim, the Patient had, because of the said collision, sustained the following bodily injuries:

[9.1] Severe head injuries with fractures and permanent neurocognitive compromise.

[9.2] Blunt trauma to the abdomen with liver lacerations.

The full extent and further details of the nature, effects and duration of the injuries, the pain and suffering, disability, infringements of the Patient's enjoyment of the amenities of life, as well as the disfigurement, all caused by the injuries, appear from the experts' reports. The defendant has admitted that the injuries sustained by the Patients were of a serious nature.

[10] According to the Plaintiffs particulars of claim, the Patient had suffered the following sequelae:

[10.1] he has received medical treatment in the past and would continue in the future to receive permanent medical treatment in his life.

incur medical costs permanently for life.

[10.3] he will suffer loss of earnings alternatively, the future loss of earning capacity on a permanent basis and for life.

[10.4] The Patient has experienced a reduction in life amenities, pain, suffering, disfigurement, and disability, and is expected to continue experiencing these issues on a permanent basis.

RED CROSS HOSPITAL

At the first medical institution that admitted him after the collision in question, the Patient was diagnosed with the following injuries:

[1] Severe closed head trauma with Glasgow coma scale of 40 stroke 50 [M3E1 Vt] on arrival at the hospital.

[2] bilateral frontal contusion.

[3] left cerebellar contusion.

- [4] diffuse axonal shearing
- [5] intra ventricular hemorrhage.
- [6] bilateral base of skull fracture involving left mastoid and sphenoid wing on the right.
- [7] secondary hydrocephalus and meningitis.
- [8] blunt abdominal trauma with grade 11 liver laceration.
- [9] pelvic fracture: diastasis of the right sacroiliac joint and fracture of the right inferior pubic ramus.
- [11] Dr J Reid is a specialist. He is a neurologist. His expert report is contained in the bundle of papers submitted to court in terms of Rule 38(2). According to him, the Patient suffered the following injuries:

Ongoing problems:

- [11.1] inability to stand or walk.
- [11.2] Drooping leads on both sides, worse left.
- [11.3] impaired vision.
- [11.4] Unprovoked aggression.
- [11.5] Emotional behaviour and personality change.
- [11.6] altered speech.
- [11.7] he is wearing nappies.

DIAGNOSIS

Very severe brain trauma with diffuse axonal shearing.

Hydrocephalus.

Profound neurocognitive and neurological deficit.

According to him. neurological diseases are irreversible. No further surgical intervention will change the outcomes.

Neurosurgeons should assess annually and pronounce on the need for revision of VP shunt.

He is at increased risk for epilepsy, probably at least 4 times the statistical risk of the general population. Annual follow up by a neurologist is indicated. He is of increased risk for meningitis while shunt is in situ.

T[...] cannot be educated.

He will arrive in adult life unemployable.

He will require round the clock physical care from a responsible adult, for the rest of his days.

Life expectancy is probably restricted to approximately age 57. (His deficits are akin to those of a cerebral palsy child). International literature addressing life expectancy in CP was used.

He will never enjoy the pleasures of schooling, sport, relationships and independent career.

Injuries are classified as very serious.

[12] Dr. JS Sagor is an orthopaedic surgeon. He provided the Patient with his expert report. In his possession at the time he assessed the Patient and prepared his report were the following documents:

[12.1] RAF Form.

[12.2] copy of the hospital notes.

[12.3] a copy of medical legal report by Doctor J Reid, a neurologist dated 23/02/2017.

Synopsis of injuries suffered

[12.4] severe head injury with initial GCS at 4T/15. He had a base of skull fracture as well as an axonal injury to the brain.

[12.5] Fracture of the pelvis involving the right inferior pubic ramus and right sacro-iliac joint.

[12.6] Blunt trauma to the abdomen with a laceration to the liver.

PRESENT COMPLAINT

[12.7] He has severe cognitive symptoms. He appears to react to his mother and possibly understands certain commands.

[12.8] he is wheelchair bound.

[12.9] He has a squint, and it appears that his eye might have been affected. [12.10] he is still incontinent and requires nappies.

CLINICAL EXAMINATION CONDUCTED ON 28.09.2017

On examination on the Patients on the 20th of September 2017 she made the following discoveries:

[12.11] Bilateral squint.

[12.12] 1.5cm tracheostomy scar cosmetically acceptable. [12.13] No suitable response to inquiries.

[12.14] The Patient's lower limbs flaccid. He has absent reflexes. There are no spasms in the hip joints, knees or feet. He is unable to stand or walk.

COMMENT ON DISABILITY

[12.15] The claimant suffered from polytrauma.

[12.16] A severe head injury was suffered. In this regard he referred to the neurologist's report. The abdominal injury has healed and needs no further care. The claimant has permanently lost both amenities of life and is disabled and functionally impaired as a result of the head injury suffered.

He is permanently unemployable in future and will require care for the rest of his life. Referred to the neurological assessment.

The claimant has been permanently disabled and functionally impaired by the head injury suffered. He will need constant care for the rest of his life. In this respect, he relied on the neurological assessment.

[13] YOLANDE BEKKER

Yolanda Becker is an educational psychologist. The purpose of referring the Patient to this specialist was to assess the impact of the accident on his educational potential.

In her report, she reiterates the background information provided by the other experts.

Documents in her possession at the time of the assessment.

[13.1] The Patient's ID.

[13.2] Hospital records from Red Cross Hospital.

[13.3] Hospital records from Groote Schuur Hospital.

[13.4] Narrative report by R de Wit.

[13.5] Narrative report by Dr D Ogilvy.

[13.6] Narrative report by M Bester.

The purpose of the documents in her possession was to ensure that at the time of the assessment she had all the necessary documents in her hand. The assessment in such a case would be based on a proper foundation.

According to her assessment, the Patient was severely disabled, cognitively as well as physically. He was unable to write, read or speak. No assessment could be completed. In this regard, she was echoing the findings of Rennee de Wit, the clinical psychologist.

Based on her assessment, the information obtained from other experts reports and by her own experience, she was of opinion that had the accident not taken place, the Patient would have been able to complete his great Grade 12(NQF level 4). He would have been able to apply for an act NSFAS bursary and continued to complete an NFQ level 6 (Diploma), if he applied himself.

She believes that, after the accident, the Patient will not be able to complete schooling and will remain illiterate.

[14] RENNEE DE WIT

[14.1] Renne De Wit is a Clinical Psychologist. The Patient was referred to him for the purpose of assessing whether there were any accident-related psychological deficits. At the time of the assessment, he had all the relevant documents in his possession. He also made inquiries with the teachers of the Patient. Accordingly, his assessment was based on the documents before him and the telephone conversations he had with the Patient's teachers. And the situation about the Patient can be gleaned from what Ms Arendse of Saint Joseph's School informed Renee DE Wit during a telephone conversation they had. During the said conversation, Ms. Arendse told the clinical psychologist that the Patient was restless. Sometimes he did not want to sit in the wheelchair; he unfastened himself and tried to slip out of the chair. When he is placed on the ground, he's all over the floor and attempts to leave the classroom. He's unable to complete the work on his own. He needs one-on-one assistance, which unfortunately is not always

available. He is unable to write any words and cannot draw pictures. He simply scribbles. He does not seem to learn and shows very little progress. His home language is Xhosa and his ability to communicate in English is limited, which furthermore hampers his ability to learn. He is very disruptive in class. He will tear up papers, and when given blocks to play with, he will throw them at the other learners. He often has "outbursts" and will scream very loudly for no apparent reason. When his nappy is changed, he often cries for no apparent reason.

[14.2] It is to be noted that Mr de Wit repeats in his report most of the findings made by other experts with regard to the Patient's condition.

[14.3] In his second report the following is what the clinical psychologist has reported. This comes from the child's mother.

COGNITIVE

[14.3.1] His mother reported that T[...] is a very slow learner and does not seem to retain information that is taught, and he lacks in terms of basic, school taught knowledge. He cannot read or write, including his own name.

[14.3.2] His memory remains very poor.

[14.3.3] he continues to experience expressive language difficulties, including unclear speech, slow rate of speech, limited vocabulary, he speaks at a loud volume, he cannot stream together more than two to three words in a sentence, and his speech often does not make sense.

[14.3.4] he is slow to understand, can only take in very short pieces of auditory verbal information, and often requires repetition.

[14.3.5] he is sensitive to noise.

CLINICAL OBSERVATIONS AND NEUROPSYCHOLOGICAL ASSESSMENT

These observations were made by the clinical psychologist when the Patient was 14 years 2 months of age. The first assessment was made on 9 November 2017 when the Patient was 5 years 8 months of age.

[14.4.1] formal testing of the Patient was not possible.

[14.4.2] he was very childlike and often laughed and was silly, like a young preschool child would do.

[14.4.3] he seemed to understand very little English and preferred to communicate in isiXhosa. (This is not surprising because he is not an English person. He did not grow up speaking English. Naturally he speaks isiXhosa. He had to be taught English. He had not reached that stage where he could be taught English). His speech was dysarthric, and he could not string together more than two to three words, the volume of his speech was poorly controlled, and he spoke very loudly, and his pronunciation was often indistinct. He tended to perseverate certain phrases.

[14.4.4] he did not know his date of birth but knew that he is 14 years old. [14.4.5] He did not know his mother's name.

[14.4.6] He did not know the name of his teacher or the school that he attends.

[14.4.7] he could not name any of the characters in the cartoons he enjoys watching on television.

[14.4.8] he could not write his own name. He was able to recognize his name, but not his surname, when this was written down for him.

[14.4.9] His drawing of a man was very basic, like that of a toddler [only a head, eyes, body and legs protruding from the body- no nose, mouth, ears, hair, arms, feet or hands). He perseverated drawing a few figures next to each other. Some of these figures did not have a body and eyes, only a head and legs.

[14.4.10] he could not consistently identify single digit numbers and guessed impulsively.

[14.4.11] He counted from 1 to 8 correctly before he skipped to the number 10. He was able to count from 1 to 25 on the second trial with some repetitions.

[14.4.12] he could not solve simple addition problems; at times he guessed correctly but got it wrong when he was asked again a few minutes later.

[14.4.13] he could not recite the days of the week without omissions.

15. MITCHEL BESTER

[15.1] Michelle Bester is an Occupational Therapist. In that capacity she is an expert. She consulted with the Patient and compiled her report on 2 November

2017. The purpose of the consultation was to establish the nature and extent of the Patient's injuries and the effect thereof and the Patient's ability to participate in everyday activities, including personal maintenance, leisure, recreation and schooling; to discuss the Patient's future treatment, assistive devices, adaptations and/or assistance and the costs thereof.

[15.2] In her report Ms. Bester echoes the remarks of the other experts. She opined that the Patient's physical and neurocognitive limitations are of a permanent nature. T[...] will be in a dependent position and unemployable for the rest of his life.

16 ZAYNE DOMINGO.

Dr Zayne Domingo is a neurosurgeon who practises at Westlake Square, Westlake Drive, Westlake. He had consultation with the Patient and reported this assessment of the Patient on 9 July 2024. During consultation with the Patient, he discovered, during the Central

Nervous System examination, that the Patient:

[16.1] was disorientated.

[16.2] was cognitively slow and had difficulty understanding instructions.

[16.3] the Patient's behaviour was childlike with inappropriate laughter.

[16.4] had poor speech with dysarthria and dysphasia.

[16.5] had bilateral third nerve palsies with divergent squint on the right.

[16.6] was unable to open the left eyelid(complete ptosis).

[16.7] had poor upper limb coordination with past pointing and intention tremor.

[16.8] had poor leg coordination.

In his opinion, there was a significant blow to the head as evidenced by the extensive skull base fracture.

Based on his initial level of consciousness and prolonged period of post-traumatic amnesia, the Patient has sustained a severe traumatic brain injury.

The CT scan confirmed the presence of structural brain injury with multiple hemorrhage contusions, in addition to cerebral swelling.

The documented hypotension, hypoxia and raised intracranial pressure would have resulted in additional secondary brain damage. He required intubation, ventilation and prolonged rehabilitation. The Patient has been left with significant residual physical disabilities. He has poor hand coordination and is wheelchair bound. He has significant residual cognitive, cognitive-communicative and behavioral deficits in keeping with the nature and severity of the reported deficits have been confirmed on formal neuropsychological and speech and language assessment. As a consequence of his cognitive and cognitive-communicative deficits, he has been unable to attend

mainstream schooling and has been placed in a school for learners with special education needs. He remains illiterate. His physical and cognitive deficits are now permanent. The Patient remains at risk of developing late post- traumatic seizures. Provision will need to be made for the investigation and lifelong treatment of seizures. With regard to the RAF 4, he stated that the Patient has sustained a severe traumatic brain injury with associated intracranial haemorrhage that has resulted in significant residual physical, cognitive, communicative and behavioral problems. As a consequence of his deficits, he is unable to attend mainstream schooling and will remain illiterate. According to Dr Domingo, when one applies the Narrative Test, the Patient's injury can be considered to be severe and he will continue to suffer a permanent and serious long-term impairment in respect of his work and personal life.

As a consequence of his significant physical, cognitive, communicative and behavioral problems, the Patient will be unable to be educated and will remain illiterate. He is permanently disabled and is unemployable in the open labour market.

- [17] it is quite evident from the experts I have referred to here in the above and to those I have not referred to, but whose expert reports have been filed of record in this matter and to the clinical records of the hospitals referred to above that the Patient has, because of the accident in question, suffered massive serious head injuries. It is also quite evident that those brain injuries have changed his character quite materially and permanently. The Patient now has some material defects he was not born with, a consequence of the accident.
- [18] The Plaintiffs legal team have sought the assistance of some actuaries to determine the amount of compensation that should be awarded to the Patient. This is so because the Patient's legal team does not have the ability to work out such an award. The court too is not imbued with the ability to determine such an award or to calculate the present value of the future income that, but for the disability, should be awarded to the Patient. According to the Plaintiffs counsel's supplementary heads of argument, the relevant actuarial report is dated 23rd October 2024. The contents of this document were placed before court on 24 October 2024.
- [19] The actuaries were instructed to estimate the capital value of the potential loss of earnings suffered by the Patient due to an accident that occurred on 11 January 2016. The actuarial report is based on information supplied to the actuaries by the Patient's attorneys. Furthermore, it is based on generally accepted actuarial method employed by the actuaries in the field and on assumptions made. The basis of the calculation was that the Patient was expected to remain unemployed for the rest of his remaining life.
- [20] The actuaries were instructed to apply the uninjured contingency of 20% on future earnings. They established that the Patient total loss of earnings was R7, 713, 480, 00. They also found that the application of the RAF Amendment Act cap in this loss scenario did not have an impact on the Patient's claim.

[21] Therefore, in respect of future loss of earnings the Plaintiff claimed an amount of R7, 713, 480.00. It is of Paramount in importance to point out that the Defendant had confirmed that it was satisfied that the Patient qualified for general damages.

[22] The Plaintiffs legal representatives were satisfied with the actuarial calculation.

In support of such calculation, they have referred this court to various decisions. These are the cases of:

[22.1] *Bonesse v RAF* 2014(743) QOD 1 (ECP) of the Port Elizabeth High Court handed down on 20 February 2014. In this matter Pickering J, awarded general damages of R2, 500, 00 0.00 to a 19-year-old lady who was involved at 13 years of age in a collision in which suffered serious bodily injuries. WPI was 93%. This young lady had suffered a severe closed head injury; multiple rib fractures and haemopneumothorax; burst fracture of the thoracic spine; and injury to the spinal cord causing paraplegia. Burr-hole procedure, thoracotomy, spinal decompression

and spinal fusion procedures were carried out. The young lady was found to be wheel-chair dependent with limited ability to manage

bi-manual tasks and incontinent of urine and bowel. Post-traumatic dementia with severely compromised speech, vision, memory and

executive function. Dyscontrol syndrome typical of frontal dementia with an inclination to become aggressive, disinhibited and

emotionally isolated. A schoolgirl with a promising scholastic and vocational future. Rendered uneducable and unemployable. The current value of R2, 500,000.00 referred to herein above is now w R4,145,000, 00.

[22.2] The second judgment upon which the Plaintiff's legal representatives relied was *Mertz v RAF* 2023 (8A2) QOD 6 (GNP), in which the Full Court of the Pretoria High Court, on 22 December 2022, awarded general damages of R3, 500, 000.00 with the current value of R4, 288, 000.00 (as per QOD 2024), to an adult woman rendered a tetraplegic as a consequence of serious injuries suffered in a motor vehicle collision.

See also *Adv AJ Du Toit N.O. obo Cee-Jay Lee Johnson v The Road Accident Fund* (20147/2021) Gauteng Division, Pretoria (13 April 2024) where the court stated that the Plaintiff has only one shot at obtaining due compensation from the Defendant and the Plaintiff's

whole life depends on obtaining a proper award. I agree with the Plaintiff's counsel that the injuries that the Patient suffered

include severe traumatic brain injury with significant neurocognitive and physical deficits; chest injuries with pulmonary consolidation/contuse; abdominal injuries with liver lacerations, multiple pelvic fractures and WPI - 83%.

- [23] As stated earlier the only issue that this quote has to do with was the child's loss of earnings and how to calculate such loss of earnings. The matter was postponed to 25 October 2024 for the purpose of enabling the Defendants to obtain its own actuarial report. According to the Plaintiffs' counsel, the Defendant's report has indeed been obtained, but a closer look at it shows that the Defendant's experts agree with the Plaintiffs experts. The difference lies in the calculations.
- [24] Counsel for the Plaintiff submitted that the correct way was to work on the qualification the experts have agreed upon. The Defendant wants to change the method of calculation by introducing the NQF4, NQF5 and NQF6 qualifications. According to the Plaintiff's counsel, you cannot do so, because it requires the court to take the average of three qualifications. According to him, you cannot introduce matriculation if you deal with a diploma. Ms Nelufuleni, counsel for the Defendant, was unhappy with the method of calculation of the award. She referred to two scenarios, scenario 1, in which the Actuaries had determined the amount of the award at R7,713,840.00 and scenario 2, in which the Actuaries had made the determination of the award at R4, 635,280.00 as prepared by Munro Forensic Actuaries. Ms Neluheni informed the court that the Defendant relied on the joint minutes of the Industrial Psychologists. In their report, the Actuaries had indicated that they had based their calculation of loss of earnings on information supplied to them by the Plaintiff's attorneys, on the joint minutes of the industrial psychologists,

Kotze K and T van Wyk, dated 16-22 October 2024. Ms Nelufeni did not complain about this statement. There was no argument from her that the actuaries did not take the joint minutes of the industrial psychologists into account. The actuaries were aware of the differences in opinion of the industrial psychologists. Furthermore, there was no complaint that the Actuaries did not take all the relevant factors into account or that the took irrelevant factors into account. No other expert actuarial report to contradict Munro Forensic Actuarial report was placed before the court. The duty lay on the Defendant to satisfy this court that the amount of R7,713,840.00, as determined by the actuaries and postulated by the Plaintiffs legal team, was grossly extravagant or unreasonable.

- [25] I have already pointed out somewhere supra that neither the court nor the Defendant is equipped with the ability to work out the amount of damages to be awarded to the Plaintiff. Counsel for the Plaintiff argued that the Defendant's method of calculation left a shortfall of R3 million. I acted on the basis of the first scenario because, taking all the circumstances in this case into consideration, the amount of R7,713,840.00 was, in my judgment, fair and reasonable.

This judgment contains the reasons for the order handed down on 25 OCTOBER 2024.

PM MABUSE

JUDGE OF THE HIGH COURT

Appearances.

Counsel for the Plaintiff: Adv F Ras SC Instructed by: Messrs Savage, Jooste & Adams Attorney for the Defendant: Attorney LE Nelufuleni Instructed by: The State Attorney, Pretoria Date of hearing: 24 October 2024 Date of Order: 24 October 2024

Reasons

furnished on: 20 May 2025

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