

SOUTH AFRICA / JUDGMENT

P.E.M obo P.C.M v Road Accident Fund (4545/2019) [2025] ZAMPMBHC 49 (6 June 2025) [2025] ZAMPMBHC 49

COURT

Mbombela High Court, Mpumalanga

BEFORE

Moleleki AJ

CASE / FILE NUMBER

4545/2019

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**IN THE HIGH COURT OF
SOUTH AFRICA**

**MPUMALANGA DIVISION,
MBOMBELA**

CASE NO:4545/2019

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER

JUDGES: NO

(3) REVISED YES/NO

DATE: 06 June 2025

SIGNATURE

In the matter between: P[...]
E[...] M[...] obo
P[...]
C[...]
M[...]
PLAINTIFF
and
ROAD
ACCIDENT
FUND
DEFENDANT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 10:00 on 06 June 2025.

JUDGMENT

Moleleki AJ

- [1] The plaintiff claims damages in her representative capacity as mother and natural guardian of her minor child. On 8 July 2019, along the R40 Road, Casteel, Acornhoek in Bushbuckridge, Mpumalanga, the minor child was involved in an accident. The minor child, who at the time was a pedestrian, was knocked down by a motor vehicle (insured vehicle) whilst crossing the road.
- [2] The following was agreed upon:
- 2.1 The defendant is liable for 100% of the plaintiff's agreed or proven damages in accordance with the offer and acceptance dated 16 September 2022.
- 2.2 The defendant shall furnish an undertaking for future medical expenses in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996.
- 2.3 The general damages be postponed sine die.
- 2.4 The plaintiff's expert reports to be admitted into evidence by way of affidavit.
- [3] The expert reports filed on behalf of the plaintiff and admitted as evidence are of the following experts: The Neurosurgeon, Dr Mkhonza; the Clinical Psychologist, Dr Modiba; the Educational Therapist, Dr Monyela; the Occupational Therapist, Dr Molemi; the Industrial Psychologist, Dr Baloyi as well as actuarial calculations by Tsebo Actuaries.
- [4] The only dispute between the parties that still requires determination is the issue of future loss of income/income capacity.

Background

- [5] The minor child was born on 21 June 2013. On 8 July 2019 he was involved in a pedestrian-vehicle accident whilst crossing the road. He was taken by a private vehicle to Mapulaneng hospital. He was 6 years old and in grade 1 at the time of the accident. The hospital records indicate that he was fully conscious and alert upon his admission at the hospital. His initial Glasgow Coma Scale (GCS) was 15/15. The injuries noted were abrasions on the forehead, nose and right shoulder. The injuries were described as superficial abrasions on the face, dorsal, wrist, upper lip and right infraorbital region. X-rays were conducted and no fractures were noted. He was treated and discharged the same day. He is currently 11 years old.
- [6] From a Neurological view, Dr Mkhonza indicated that the minor child lacks concentration and has short-term memory problems. He experiences post-concussive headaches, neurocognitive deficits and personality changes. He is aggressive and fights with his peers. Dr Mkhonza's opinion is that the child suffered mild-traumatic brain injury (concussion) during the accident.
- [7] The Clinical Psychologist, Dr Modiba, conducted a psychological assessment, the objective of which was to establish the nature, if any, of cognitive, psychological, personality/behavioural changes, and the possible impact of the accident, if any, on the child's psychological, cognitive and/or personality/behavioural functioning. The child's intellectual functioning was assessed post-accident, and it places him within the average intellectual functioning range. His adaptive behaviour and social maturity level were found to be age appropriate to his chronological age. His long-term memory seemed adequate, evidenced by his ability to recall remote events, and his adequate processing speed. He has intact planning, organisation, problem solving and multitasking abilities. The clinical psychologist noted moderate behavioural related problems. He meets the diagnostic criteria for attention deficit hyperactivity disorder (ADHD). He also is afraid of the accident reoccurring when he is a pedestrian and has mild anxiety.
- [8] The educational psychologist, Dr Monyela assessed the minor child to establish his pre- and post-accident educational potential. In 2018 he passed grade R with an average of 67%, with the grade average of 69%. The 2019 pre-accident term 1 report showed that he passed with an average of 65%. Post-accident, he passed grade 2 with an average of 63%. He repeated grade 3, having obtained an average of 47%. Thereafter, he passed grade 3 with an average of 66%. The total average pass in grade 4 was 66%.
- [9] The Clinical Psychologist acknowledged that the child was coping in his academic performance post-accident but noted that his performance may drop as he moves up the grades where more critical thinking and independent work is expected in line with more abstract and increased workload. The clinical psychologist opined that had the accident not occurred, the minor child would most likely have achieved an NQF level 7 qualification. Now that the accident has occurred, he is most likely to achieve an NQF level 6 qualification.

- [10] The Occupational Therapist, Dr Molemi indicated that there were no signs of physical disability noted. He was able to transfer himself between different positions with no limitations. He was able to perform all mobility/agility skills. From the information received from the mother and the child, there was no report of cognitive limitations. During the evaluation he was able to follow global instructions given to him with no limitations. He used the right hand to write with no limitations. He would benefit from occupational therapy with regards to cognitive or perceptual problems and behavioural modifications.
- [11] The minor child continues to experience headaches, cognitive deficits, psychological and personality dysfunction. He will benefit from intervention from the multidisciplinary team. His future occupation performance will be directly linked to the level of education he manages to achieve. He should be able to perform skilled types of occupations. Should the headaches not be resolved, they may have a negative effect on his performance. His performance in the labour market will only be limited if the headaches are not resolved.
- [12] According to the industrial psychologist, Dr Baloyi, the child should be compensated for medical expenses, as well as pain and suffering. The injuries affected his physical, psychological and cognitive capacity. He will not be able to attain his pre-accident postulated degree qualification, but rather a diploma. His qualification will determine his level of entry into the open labour market, which will now be lower than his postulated pre-accident level of entry into the labour market. His career development and his income will also be determined by his qualification.

Application of the Law

- [13] It is trite that the plaintiff must prove the extent of her loss and damages on a balance of probabilities. Regarding loss of earning/earning capacity, the plaintiff is required to provide and prove the factual basis that allows for an actuarial calculation, which the court would use as the basis to determine the plaintiff's loss.
- [14] The court in *Dippenaar v Shield Insurance Co Ltd*[1] stated the following:

"In our law, under the lex Aquilia, the defendant must make good the difference between the value of the plaintiff's estate after the commission of the delict and the value it would have had if the delict had not been committed. The capacity to earn money is considered to be part of a person's estate and the loss or impairment of that capacity constitutes a loss, if such loss diminishes the estate."

- [15] However, the court in *Mlotshwa v Road Accident Fund*[2] stated the following:

"... a judicial officer should then be required to grope at large in order to come to the assistance of a litigant, especially one whose case has been presented in such a vague way. It seems to me that the judicial officer must be placed in such a position that he is not called upon to make an arbitrary or merely speculative assessment, a state of affairs which would result in injustice to one of the parties."

- [16] It is accepted that the court must calculate the monetary value of all that the plaintiff would have earned had the accident not occurred, on the one hand. On the other, it must calculate the monetary value of all that the plaintiff would be able to earn and bring to his or her estate after the injury. The two hypothetical totals would be compared. The shortfall, if any, is the extent of the patrimonial loss. However, evidence may establish that the injury has had no appreciable effect on the earning capacity of the plaintiff. In that event, the damage under this head will be nil.[3]
- [17] The plaintiff relies on the evidence of expert witnesses. The approach to be adopted by the courts when dealing with expert evidence was succinctly set out in *Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another*[4] as follows:
- “...what is required in the evaluation of such evidence is to determine whether and to what extent their opinions advanced are founded on logical reasoning.”*
- [18] It is a long-established principle that the primary purpose of experts is to assist the court in matters that the court does not possess the necessary knowledge to decide the issue. These are people who possess above average skill and experience.[5] Before a court can assess the value of an opinion it must know the facts on which it was based. If the expert has been misinformed, about the facts, or has taken irrelevant facts into consideration or has omitted to consider relevant ones the opinion is likely to be valueless.[6]
- [19] As previously stated, the plaintiff relies on the evidence of the various experts. The Educational Psychologist, Dr Monyela assessed the minor child on 20 June 2023, the minor was ten years old and in grade 4. Nothing was placed before the court in respect of his performance in grade 5. The purpose of his assessment was to determine the minor child’s intellectual and cognitive functioning, emotional status and academic potential. Dr Monyela also had to establish the extent to which the minor child had been personally compromised due to the injuries sustained in the accident. The report was compiled from the information obtained from, among others, the minor child’s mother (the plaintiff), medico-legal reports as well as school reports.
- [20] According to Dr Monyela, pre-accident, the minor child passed grade R with an average of 67%. The year thereafter, he passed term 1 of 2019 with an average of 65%. She opined that the minor child was probably of an average intelligence pre-morbidly.
- [21] Post-accident and based on the school reports, the minor child repeated grade 3 with an average of 47%. On his second attempt in 2022 he passed. In 2023 when he was in grade 4 the final year report reflected that he obtained the following results: 84% in Natural Science and Technology; 75% in Life Skills; 63% in Social Science; 61% in Sepedi Home Language; 59% in English First Additional Language; and 52% in Mathematics. He passed grade 4 with an average of 66%.

[22] The overall scholastic assessment by Dr Monyela revealed that the minor child performed within an adequate level in English reading and spelling, considering the important role English as a subject, plays in his learning of all the other subjects which are taught in English. His overall performance in Mathematics was within moderate level and needs additional learning support. The result of the ISSB intelligence test showed that he fell within the average range of intellectual functioning. An MRI of the brain was

performed on 28 September 2023, and the result thereof was that it was within normal limits

[23] Dr Monyela stated that he sustained a head injury at a vulnerable age of development, when he was 6 years old. She went on to state as follows:

“Although his school report showed that he (sic) is coping in his academic performance, it is foreseen that his performance will drop as he moves up the grades where more critical thinking and independent work is expected in line with more abstract and increased workload due to the sequelae of the said accident.”

[24] With the above statement, the court was left to speculate as to the reason for the foreseen drop in performance. It remains unknown whether this foreseen drop in academic performance would be due to the fact that his brain would develop slower than that of his uninjured peers, thus leading to lowered performance compared to his peers. If that were the case, the report would have mentioned it. Therefore, I exclude that as a possibility. What may not be ignored is that higher grades typically introduce more complex and abstract material which may be challenging to grasp by any learner who is still developing their ability to think.

[25] Dr Monyela conducted a subtest which measures the ability to reason numerically and to do mental processing. This test also relates to abstract thought and mental alertness. The conclusion was that he possesses adequate basic computations in Mathematics. A memory test to measure his ability to push irrelevant information aside and complete the task at hand was also conducted. He had adequate functioning in this regard. The link between the accident and the foreseen drop in scholastic performance remains unexplained.

[26] According to Dr Monyela, had the accident not occurred, the minor child would most probably have been able to complete grade 12 with a degree qualification (NQF Level 7). Now that the accident has occurred, he would most probably pass grade 12 with admission for a diploma qualification (NQF Level 6).

[27] The Occupational Therapist, on the other hand, indicated that there were no signs of physical disability noted and that the minor was able to perform all mobility/agility skills. This should be looked into against the backdrop of the injuries sustained at the time of the collision, which were abrasions on forehead, nose and right shoulder. For the continued headaches, cognitive deficits, psychological and personality dysfunction, the experts stated that the minor would benefit from intervention from a multidisciplinary team. His future occupation is therefore, directly linked to the level of education he would manage to

achieve. The Occupational Therapist opined that the minor child should be able to perform skilled types of occupations.

[28] Dr Baloyi, the Industrial Psychologist opined that the minor child will not be able to attain his pre-accident postulated degree qualification.

[29] It is an established principle that the plaintiff bears the onus to prove on a balance of probabilities that the injuries he sustained

have reduced his earning capacity, which will result in actual loss.[7] The court in Road Accident Fund v Kerridge said the following:[8]

“Indeed, a physical disability which impacts on the capacity to earn an income does not, on its own, reduce the patrimony of an injured person.

There must be proof that the reduction in the income earning capacity will result in actual loss of income.”

That is, there must be proof that the disability gives rise to patrimonial loss. This of course is dependent on the nature of the work that the plaintiff had done prior to the accident or would have done had the accident not occurred.

[30] I have considered all the expert reports and compared the minor child’s scholastic performance pre- and post-accident. It is no doubt that the minor child remains within the average intellectual functioning capacity. His pre- and post-accident average percentage remains consistent. There was no deterioration that was established as a result of the accident. He will continue to

benefit from attending mainstream school. He was able to use the right hand to write with no limitations.

[31] With regards to cognitive or perceptual problems and behavioural modifications, the minor child would benefit from occupational therapy. The Neurosurgeon indicated that the minor had post-concussive headaches and neurocognitive deficits, that is, lack of concentration and short-term memory problems. No neurosurgical operation was anticipated regarding post-concussion symptoms. However, psychotherapy by a Clinical Psychologist is recommended for the post-concussive symptoms. It is worth mentioning that the Neurosurgeon consulted with the minor child on 27 August

2022. There was no follow-up, almost three years later.

[32] The Clinical Psychologist acknowledged that the minor child was coping in his academic performance post-accident. What is striking is that the Clinical Psychologist consulted with the minor child on 27 August 2022 as well. The Clinical Psychologist conducted memory and attention assessments. The digit span forward and backwards assessment was utilized to assess the minor child’s

attention and working memory. The shift from one-digit span to another requires cognitive flexibility and attention. The minor child was able to correctly repeat 03 digits forward and 02 digits backwards, suggestive of inadequate attention and working memory. He also presented with below average verbal short-term memory. However, his long-term memory seemed adequate evidenced by his ability to recall remote events, and he had adequate processing speed. He has intact planning, organization, problem solving and multi-tasking abilities.

- [33] The Clinical Psychologist further notes moderate behavioural related problems. The subjective complaints brought forward by the mother of the minor child were that he experiences persistent headaches at least once a month, he is forgetful when given instructions even in respect of his schoolwork. He was reported to be naughty both at home and at school. He is aggressive towards other children. The mother reported to the Clinical Psychologist that the minor repeated grade 3 twice. However, this is not correct when looking at the school reports and what the Educational Psychologist stated. The Cattell, a fair psychometric test, was used to test the minor child's intelligence quotient. The result placed him within the average intellectual functioning range.
- [34] The minor child's psychological functioning was assessed using Paediatric Symptoms Checklist-17 (PSC-17), which is a tool designed to assess presence of emotional and behavioural problems among children aged 4 years through to 16 years. The score he received was suggestive of mild ADHD. Symptoms of aggressive behaviour were also found to exist. The Disruptive Behavioural Disorder (DBD) scale was also used to assess symptoms of disruptive behaviour. The minor child meets the criteria of ADHD.
- [35] The Clinical Psychologist found the presence of personality and behavioural alteration, namely, moderate to severe irritability, moderate aggressive behaviour and mild ADHD. Although it has already been indicated that these could be resolved by multidisciplinary intervention, there has been no explanation what the link is, if any, between ADHD and the accident. It is clear from the report that ADHD could result in inattention, lack of focus and behavioural difficulties. Once again, the court is left to speculate whether this could have been a pre-morbid deficit as it was not excluded as such.
- [36] For the management of the ADHD and the aggressive behaviour, the Clinical Psychologist deferred to the Psychiatrist. There was no report by the Psychiatrist. It does not, therefore, seem like the minor child has received assessment nor therapy by the Psychiatrist since August 2022 after he was assessed by the Clinical Psychologist. In respect of the management of headaches, deferral was made to the Neurologist. No such report was made available.

- [37] Throughout the proceedings, in respect of loss of earning/ earning capacity, I was guided by the expert evidence on the issues that fall within their expertise. It is however of great importance that the value of their expert opinion should be able to be tested. It ultimately remains the decision of the court and, although the court would pay high regard to the opinion of the expert, the court must, by considering all the evidence and circumstances in the particular case, still decide whether the expert opinion is correct and reliable.[9]
- [38] A person is entitled to be compensated to the extent that their patrimony has been diminished as a consequence of the delict. Based on the analysis of the reports and evidence as a whole, I am not in agreement that the minor child would not be able to attain his pre-accident postulated qualification.
- [39] It is my considered view that the minor child's earning/ earning capacity does not appear to have been affected. I am of the view that the minor child has recovered well in the circumstances. He is in a position to live a normal life and he remains in mainstream schooling. He is employable and will be able to work until retirement performing skilled types of occupations. I am unable to reconcile the aforesaid with the Occupational Therapist's opinion that the minor child has been rendered a vulnerable and unequal competitor in the open labour market compared to his peers, when she has indicated that he was able to perform all mobility and agility skills without any complaints after completion of all the tasks she had given to the minor.
- [40] The well-established position in our law is that courts need to be mindful of the current situation of the plaintiff and exercise a measure of common sense and judicious discretion in avoiding an award that would amount to a windfall to which the plaintiff would not be entitled. The onus is on the plaintiff to prove the loss.
- [41] The actuarial calculation is premised upon the information provided by the Industrial Psychologist to the effect that the minor child will not be able to attain his pre-accident postulated degree. The Industrial Psychologist's instructions to the Actuary are premised on the information furnished by the Educational Psychologist, which opinion is contrary to the opinion of the Clinical Psychologist who assessed the minor child's intelligence quotient, the result of which placed him within the average intellectual functioning range, which was the case even pre-morbid. The Industrial Psychologist's instruction is similarly contrary to that of the Occupational Therapist who indicated that there were no signs of physical disability noted and that the minor was able to perform all mobility/agility skills and would be able to perform skilled work. The mere fact that he experiences some degree of residual pain does not translate into the conclusion that he will not reach his pre-morbid earnings level.
- [42] The defendant should not be prejudiced merely because it did not furnish its own expert reports. There were obvious factual inconsistencies in the evidence of the Educational Psychologist. Her conclusion that the minor child's scholastic potential has been affected is not supported by objective evidence, school reports and there is no basis for going against what is contained in the school reports. The Grade 5 school report was also not made

available to provide a detailed scholastic history, more so that the minor child is now in higher grades than where he was when he was involved in the accident.

[43] Regard being had to the evidence presented before me, I am unable to conclude that the minor child's scholastic potential has been affected. In the result, the plaintiff has failed to prove damages for future loss of earning and earning capacity.

[44] There is no reason to deviate from the general principle that costs follow the result.

Order

[45] In the result, I make the following order:

1 The defendant is liable for 100% of the plaintiff's proven damages pertaining to the collision that occurred on 8 July 2019.

2 The plaintiff's claim for loss of earnings is dismissed.

3 The defendant is ordered to furnish the plaintiff with an undertaking as envisaged in section 17(4)(a) of the Road Accident Fund Act 56 of 1996, in respect of the costs of the future accommodation of the minor child in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him arising out of the injuries sustained by him in the motor vehicle collision which occurred on 8 July 2019, after such costs have been incurred and upon proof thereof.

4 The general damages are postponed sine die.

5 The plaintiff is ordered to pay the costs of suit.

M.R MOLELEKI AJ

ACTING JUDGE OF THE HIGH COURT

Appearances

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Matter heard on: 22 April 2025

Judgment

delivered on: 06 June 2025

- [1] Dippenaar v Shield Insurance Co Ltd 1979 (2) SA 904 (A) at 917A-B.
- [2] Mlotshwa v Road Accident Fund [2017] ZAGPPHC 109 para 19.
- [3] Prinsloo v Road Accident Fund 2009 (5) SA 406 (SE) para 6.
- [4] Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another 2001 (3) SA 1188 (SCA) para 36.
- [5] Semela v RAF [2021] ZAFSHC 209 para 9.
- [6] Twine and Another v Naidoo and Another [2017] ZAGPJHC 288 para 18.
- [7] See Rudman v Road Accident Fund 2003
- (2) SA 234 (SCA); Road Accident Fund v Kerridge 2019
- (2) SA 233 (SCA).
- [8] Road Accident Fund v Kerridge 2019
- (2) SA 233 (SCA) para 25.
- [9] S v Thomas 2016
- (4) NR 1154 (HC); [2016] NAHCMD 320 as quoted in Kriel NO obo Minor Child v Road Accident Fund
- [2024] ZAGPJHC 852 para 116.

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