

SOUTH AFRICA / JUDGMENT

## SPM obo SM v Road Accident Fund (2226/2021) [2025] ZAFSHC 185 (26 June 2025) [2025] ZAFSHC 185

COURT

Free State High Court, Bloemfontein

BEFORE

Pienaar AJ

CASE / FILE NUMBER

2226/2021

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Not

reportable

Case

no: 2226/2021

In

the matter between

S[...]

P[...] M[...] OBO

S[...]

M[...]

PLAINTIFF

And

ROAD

ACCIDENT FUND

## DEFENDANT

## Neutral

citation: SPM obo SM v Road Accident Fund (2226/2021)

[2025] ZAFSHC 185 (26 June 2025)

Coram: PIENAAR AJ

Heard: 20 May 2025

Delivered: This judgment was handed down and released to SAFLII. The date for hand-down is deemed to be 26 June 2025

Summary: Claim against the Road Accident Fund for damages in terms of s 17(1) of the Road Accident Fund Act 56 of 1996 – determination of quantum for non-pecuniary (general) damages.

## ORDER

1

The defendant is liable for payment to the plaintiff in the amount of R500 000 (the capital amount) in respect of the plaintiff's claim for general damages resulting from a motor vehicle collision that occurred on 15 February 2019.

2

Payment of the capital amount shall be made without set-off or deduction by the defendant within 180 calendar days from the date of the granting of this order, directly into the trust account of the plaintiff's attorneys of record by means of electronic

transfer, the details of which are the following:

Honey Attorneys –  
Trust account  
Bank – Nedbank,  
Maitland Street, Bloemfontein  
Branch code –  
11023400  
Account no. –  
1[...]  
Reference – HL  
Buchner/vch/J04018

3

The capital amount is to be administered in the S[...] M[...] Trust, which trust was established in terms of paragraph 6 of the order granted in this matter by the Honourable Deputy Judge President NM Mbhele on 5 June 2024.

4

The defendant shall pay the plaintiff's taxed or agreed party and party costs in respect of the determination of the quantum of the general damages on the High Court Scale, including counsel fees on

Scale C.

5

Payment of the taxed or agreed costs shall be made by the defendant within 180 calendar days from the date of taxation, and shall likewise be effected into the trust account of the plaintiff's attorneys of record.

6

In the event that the defendant fails to pay the capital amount and the taxed or agreed costs on due date, interest shall accrue and be payable by the defendant at the rate of interest prescribed in terms

of the Prescribed Rate of Interest Act 55 of 1975 in respect of:

6.1

the capital amount, calculated from 14 days from the date of this order; and

6.2

the taxed or agreed costs, calculated from 14 days from date of taxation; alternatively, from 14 days from the date of reaching agreement on such costs.

## JUDGMENT

Pienaar AJ

## Introduction

- [1] On 15 February 2019, at the age of five, the plaintiff was injured in a motor vehicle accident at Phumlamqashi, Bohlokong, Free State Province.
- [2] The plaintiff's biological mother and natural guardian subsequently instituted this action on behalf of the plaintiff against the Road Accident Fund (the RAF) to recover the plaintiff's pecuniary and non-pecuniary (general) losses suffered as a result of the injuries sustained by the plaintiff from the RAF in terms of the provisions of s 17 of the Road Accident Fund Act 56 of 1996 (the Act). The RAF conceded liability for 100% of the plaintiff's proven or agreed damages.
- [3] The determination of the plaintiff's claim for general damages was separated from the determination of the plaintiff's claim for his pecuniary losses. On 5 June 2024, judgment was granted in favour of the plaintiff in respect of the plaintiff's claim for pecuniary losses under s 17(1), read with s 17(4) of the Act, namely
- in respect of his future hospital, medical and related expenses and future loss of income.
- [4] Although the RAF initially took issue with the seriousness of the plaintiff's injuries, as contemplated in s 17(1) and 17(1A) of the Act and as required for the RAF's liability for such general damages, it was conceded by the RAF, at the commencement of the proceedings for

the determination of the general damages, that the plaintiff's injuries qualify as serious injuries as contemplated in ss 17(1) and 17(1A) of the Act and that the plaintiff is entitled to compensation in respect of his general damages. Consequently, the only remaining issue for determination in this matter is the quantum of the plaintiff's general damages.

- [5] The plaintiff contends that general damages in the amount of R600 000 would be appropriate, while it is contended by the RAF that general damages in the amount of R400 000 would be more appropriate.

The evidence in respect of the general damages

- [6] The RAF accepted the contents of the respective expert reports filed on behalf of the plaintiff, and the parties agreed that the matter could be determined on the evidence and facts contained in the respective expert reports without the hearing of any oral evidence of the experts. These expert reports include reports by the following experts:

- (a) Dr A Van Aswegen (neurosurgeon);
- (b) Dr L Roper (clinical and neuropsychologist);
- (c) Mrs L Swart (educational psychologist);
- (d) Mrs A Stroebel (occupational therapist);
- (e) Dr EJ Jacobs (industrial psychologist); and
- (f) Munro Forensic Actuaries.

- [7] The expert reports were also accepted as evidence for purposes of the

### **determination**

of the plaintiff's claim for pecuniary losses under ss 17(1) and 17(4) of the Act, which was determined in accordance with the order granted in that regard on 5 June 2024.

- [8] Neither the plaintiff nor the RAF called any other witnesses. Both parties closed their cases on the issue of the general damages, after which the presented their arguments regarding the amount to be awarded for the plaintiff's general damages.

The nature and sequelae of the plaintiff's injuries

- [9] On 15 February 2019, when the accident occurred, the plaintiff was a pedestrian when a motor vehicle collided with him. The plaintiff has no memory of the accident.
- [10] Following the accident, the driver of the said motor vehicle took the plaintiff to Phekolong Hospital. After the plaintiff received medical treatment and was stabilised, he was transferred to Dihlabeng Regional Hospital for observation.

- [11] According to some of the experts, the clinical records show that, when the plaintiff was transferred to Dihlabeng Regional Hospital, the plaintiff had a Glasgow Coma Scale score of 15/15, the plaintiff was drowsy and the plaintiff sustained multiple abrasions over his body, especially over his face, his abdomen and his right leg.
- [12] Dr L Roper, the clinical and neuropsychologist who assessed the plaintiff on 3 November 2022, summarises the plaintiff's injuries as follows in his report:
- (a) A laceration to the occipital area of the cranium;
  - (b) A degloving laceration above the left eyebrow;
  - (c) An injury to the left eye;
  - (d) A laceration to the upper right leg; and
  - (e) Yellow excretion from both ears, about three weeks after the accident.
- [13] After having been admitted to hospital, wound dressings were applied and the plaintiff's lacerations were sutured. Various scans and x-rays were performed on the plaintiff, which did not reveal any abnormalities. The plaintiff did not undergo any surgery following the accident and was discharged from Dihlabeng Regional Hospital on 21 February 2019.
- [14] On 14 August 2020, the plaintiff was assessed by Dr van Aswegen, a neurosurgeon. At the time of the assessment, the plaintiff suffered from headaches and nose bleeds and complained about a painful right eye. The plaintiff did not suffer from any of these before the accident.
- [15] Based on his evaluation of the plaintiff, Dr van Aswegen determined that the plaintiff suffers from a mild traumatic head injury which he sustained during the accident. According to Dr van Aswegen, the consequences of traumatic brain injuries in children may only become evident years after the injury, and such an injury could potentially have long-term effects on the plaintiff's neurocognitive development.
- [16] On 1 February 2021, Mrs A Stroebel, an occupational therapist, evaluated the plaintiff to determine the extent of the consequences of his injuries on, amongst others, his functional and psychosocial skills and abilities. It is evident from her report that, since the accident, the plaintiff presented with impaired cognitive independence, an inability to follow instructions, signs of decreased attention and that the plaintiff required repetition of explanations and is forgetful. The plaintiff also displays social avoidance and occasional aggressive behaviour.
- [17] Mrs L Swart, an educational psychologist, assessed the plaintiff on 9 June 2022. At that stage, the plaintiff still suffered from frequent headaches. His verbal abilities were assessed to be in the low average range, his concentration levels were not optimal and his short-term auditory memory was underdeveloped. Mrs Swart concluded that the injuries sustained during the accident, along with the associated trauma of the accident and the effects of the

mild head injury, had collectively impaired the plaintiff's functioning across all spheres of life.

- [18] The plaintiff was furthermore assessed on 3 November 2022 by Dr L Roper, a clinical and neuropsychologist. At the time of this assessment, the plaintiff still experienced headaches, pain to the upper right leg and pain in his eyes accompanied by poor vision. He also complained of hearing difficulties, poor memory, reduced concentration and a diminished ability to socialise with his friends or participate in soccer. Additionally, the plaintiff reported high levels of anxiety when walking near roads or travelling in a vehicle.
- [19] The results of the various neuropsychological tests conducted by Dr Roper indicated that the plaintiff was suffering from post-traumatic stress disorder linked to the accident, showed symptoms of major depressive disorder, and had difficulties with attention and concentration. In summary, Dr Roper concluded that the accident had made the plaintiff psychologically more vulnerable, and that his injuries and related trauma had diminished the plaintiff's psychological functioning, which adversely impacts on his cognitive abilities, scholastic performance, social functioning, self-esteem, and his overall enjoyment and quality of life.

The quantum of the plaintiff's general damages

- [20] Assessing the plaintiff's general damages involves an evaluation of the plaintiff's pain and suffering, disability, discomfort and loss of enjoyment he suffers as a consequence of the accident.

- [21] The determination of general damages requires the court to exercise a broad discretion, taking into account the peculiar facts of the matter and determining what is fair and adequate in the circumstances. Ultimately, the award must strike a balance that is

just to both parties.[1]

- [22] In *MM v Road Accident Fund*,[2] Opperman J said the following about the determination of general damages:

'There is unfortunately no expert that can place an exact value to the abovementioned losses. The damages that are to be awarded should be assessed by taking into account the age, sex, status, culture, lifestyle and the nature of the injury suffered as well as having regard to previous awards made for similar injuries. Also, other factors which are often taken into account include the degree of pain suffered. The fact that pain is subjective is taken into account, whether further surgery can be expected, whether the plaintiff has debilitating scarring, is unable to fend for him/herself and has a decreased life expectancy are examples of factors that guide the court. This discretion is not restrained by an inexorable tariff drawn from previous similar awards.

It is not enough to compare the general nature of injuries. All factors affecting the assessment of damages must be taken into account. Once it is established that the circumstances are sufficiently comparable, then only are comparable cases to be used as a general yardstick to assist the court in arriving at an award.'

[23] Awards in previous cases of similar facts are a useful guide, however, each case must be determined on its own facts.[3]

[24] The plaintiff contends that general damages in the amount of R600 000 would be fair and reasonable in the circumstances and relied on the following cases, which also involved young children who sustained traumatic brain injuries.

[25] First, in MJM obo LJM (MJM) v Road Accident Fund,[4] the minor was 4 years and 11 months when she sustained a moderate traumatic brain injury in a vehicle pedestrian collision. She also experienced facial disfigurement, neuropsychological impairments, challenges with attention and concentration, poor verbal learning abilities, difficulties with narrative memory, slow mental response speed, and poor verbal fluency. On 15 June 2022, the court awarded R600 000 as general damages, which has a present value of R697 000.

[26] Second, in Makupula v Road Accident Fund (Makupula),[5] a five-year-old child suffered a mild to moderate diffuse axonal brain injury from a motor vehicle collision. The brain injury was associated with neurocognitive deficits, motoric hyperactivity, memory disfunction, uncooperative and aggressive behaviour and poor scholastic functioning and vocational potential. The court awarded R300 000 as general damages during 2010, which has a present value of R627 000.

[27] Third, in Dikeni v Road Accident Fund,[6] a five-year-old child sustained a mild diffuse shearing head injury during a motor vehicle collision, causing damage to the right

hemisphere of the brain which is responsible for various cognitive functions and is generally associated with non-verbal functions. The injury was accompanied by serious behavioural issues, hyperactivity, fluctuating motivation, impulsiveness, poor perseverance,

disruptiveness, and slow pace of work. The court awarded R120 000 as general damages during 2002, which has a present value of R429 000.

[28] The plaintiff argued that the facts in MJM[7] and Makupula[8] are similar to the facts and circumstances in this matter and emphasised that due consideration should be given to the plaintiff's age, as he was only five years old when the accident occurred.

[29] The RAF contends that general damages in the amount of R400 000 would be fair in the circumstances and relied on the following cases.

[30] First, in JHRP v Road Accident Fund (JHRP),[9] a two-year-old toddler sustained a minor head injury, which was associated with symptoms of major depressive disorder, personality

and mood disorders and neuropsychological difficulties. In addition, the toddler also sustained a laceration above the eye. The court awarded R318 000 as general damages during 2023, which has a present value of R351 938. The RAF also made reference to *M obo M v Road Accident Fund*,<sup>[10]</sup> which was considered by the court in JHRP above. In that matter, the court awarded general damages of R300 000 during 2022, with a present value of R351 586.

[31] Second, in *Mokone v Road Accident Fund*,<sup>[11]</sup> the plaintiff sustained a mild concussive traumatic brain injury as well as soft tissue injuries to the spine, wrist and leg, facial

lacerations and scarring of the right leg. The court awarded R400 000 as general damages during 2024.

[32] Third, in *Ngwenyama v Road Accident Fund*,<sup>[12]</sup> a 41-year-old widow sustained a mild to moderate traumatic brain injury, an injury to the head and forehead, injuries to the cervical and lumbar vertebrae and soft tissue injuries. The court awarded R400 000 as general damages during 2024.

[33] The RAF further argued that the minors in *MJM* and *Makupula*, which the plaintiff relies upon, sustained additional injuries which were not sustained by the plaintiff in this matter. In *MJM*, the minor faced the possibility of early retirement and had an unsightly scar, while the minor in *Makupula* also suffered broken teeth. The plaintiff in this matter does not suffer from any scarring or disfigurement. The RAF therefore argued that the cases it referenced are more appropriately comparable to the plaintiff's position.

[34] While the plaintiffs in the cases referred to by the parties sustained additional injuries, they, nonetheless, offer a helpful guideline for the type of awards courts have made involving similar mild to moderate brain injuries than the injury which the plaintiff sustained.

[35] Taking all of the above into account, and having considered the specific facts and circumstances of this matter, particularly the nature and extent of the injuries which the plaintiff sustained and the fact that the plaintiff has had to endure the consequences of the injuries from a very young age, I am of the view that an award of R500 000 would be fair and reasonable for the plaintiff's general damages.

#### The costs

[36] On the issue of costs, the plaintiff seeks costs on a party and party scale, including counsel fees on scale C and the reasonable qualifying and reservation fees of the experts employed by the plaintiff, namely Dr A Van Aswegen (neurosurgeon); Dr L Roper (neuropsychologist); Mrs L Swart (educational psychologist); Mrs A Stroebel (occupational therapist); Dr EJ Jacobs (industrial psychologist); and Munro Forensic Actuaries.

[37] The plaintiff indicated that Dr Van Aswegen and Dr Roper were reserved for the trial regarding the determination of the quantum of the general damages.

- [38] In terms of the order granted on 5 June 2024 regarding the RAF's liability for the plaintiff's pecuniary losses, a costs order was already granted in terms of which the RAF is liable for the reasonable qualifying and reservation fees of the experts. The experts have not delivered any additional reports for purposes of the determination of the general damages.
- [39] The parties also confirmed that the content of the reports of the plaintiff's experts were already accepted as evidence by the RAF for purposes of the determination of the plaintiff's pecuniary losses. The general damages are also to be determined upon the content of those reports and not any additional reports or evidence.
- [40] The RAF therefore argues that it should not be held liable for any additional costs regarding the plaintiff's experts and that all the costs in respect of the experts are already included in the order of 5 June 2024. I agree.
- [41] Given that the RAF had previously accepted the contents of the expert reports as evidence for the determination of the matter, and the plaintiff has not delivered additional reports but relied on these reports to determine the quantum of the general damages, I am of the view that the costs order set out in paragraph 3 of the order granted on 5 June 2024, adequately covers the costs incurred by the plaintiff in respect of the experts, and that the RAF should not be burdened with additional costs in this regard, if any.

[42] Accordingly, it is ordered that:

6 In the event that the defendant fails to pay the capital amount and/or the taxed or agreed costs on due date, interest shall accrue and be payable by the defendant at the rate of interest prescribed in terms of the Prescribed Rate of Interest Act 55 of 1975 in respect of:

6.1 the capital amount, calculated from 14 days from the date of this order; and

6.2 the taxed or agreed costs, calculated from 14 days from date of taxation; alternatively, from 14 days from the date of reaching agreement on such costs.

PIENAAR AJ

Appearances For the plaintiff: L Pohl SC Instructed by: Honey Attorneys, Bloemfontein For the defendant: C Bornman Instructed by: State Attorney, Bloemfontein.

[1] De Jongh v Du Pisanie [2004] ZASCA 43; 2005 (5) SA 457 (SCA) (Du Pisanie) para 60.

[2] MM v Road Accident Fund [2019] ZAFSHC 5 para 7.4-7.5.

[3] Du Pisanie para 64.

[4] MJM obo LJM v Road Accident Fund

[2022] ZAFSHC 154.

[5] Makupula v Road Accident Fund [2010] ZAECMHC 17.

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- [6] Dikeni v Road Accident Fund 2002 C&B, (Vol 5).
- [7] Op cit fn 4.
- [8] Op cit fn 5.
- [9] JHRP v Road Accident Fund [2023] ZAFSHC 462.
- [10] M obo M v Road Accident Fund 2022 (8B4) QOD 36 (ML).
- [11] Mokone v Road Accident Fund [2024] ZAMPMBHC 62.
- [12] Ngwenyama v Road Accident Fund [2024] ZAMPMBHC 15.
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