

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

Case number: 4873/2019

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

**M J M obo L J M**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

**[Claim Number: 560/12349145/1091/1 and Link Number: 4338222]**

**CORAM:** SNELLENBURG, AJ

**HEARD ON:** 18 MAY 2022

**DELIVERED ON:** 15 JUNE 2022

This judgment was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII. The date and time for hand-down is deemed to be **15 June 2022 at 12h30**

[1] On 22 August 2015 at or near Du Plessis Street, Odendaalsrus, Free State Province, the plaintiff's minor daughter, who will be referred to in this judgment as L, was injured in a vehicle pedestrian collision. The minor was 4 years and 11 months of age at the time of this fateful incident. The plaintiff acts in her capacity as natural mother and guardian of L. To protect the identity of the minor, the plaintiff is referred to in the heading to this judgment as M J M.

[2] The defendant conceded the merits of the plaintiff's claim and is liable to compensate the plaintiff for 100% of any agreed or proven damages arising from the collision. The defendant also tendered an undertaking in terms of s 17(4)(a) of the Road Accident Fund Act 56 of 1996 [the Act] in respect of L's past medical and hospital expenses.

[3] The remaining disputes between the plaintiff and defendant are limited to the contingency to be applied to the premorbid (uninjured) future loss of income and the amount to be awarded for general damages. The values calculated by the actuary for both uninjured and injured earnings are not in dispute and the parties are *ad idem* that a 30% contingency deduction on the postmorbidity earnings is appropriate in the circumstances.

[4] The defendant accepted the reports of the following expert witnesses which were duly delivered by the plaintiff in terms of the provisions of Uniform rule 36(9)(b):

4.1 Dr. A Van Aswegen – Neurosurgeon;

4.2 Mr. L Roper – Clinical and Neuropsychologist;

4.3 Dr. PB White – Plastic Surgeon;

4.4 Mrs. L Liebenberg – Occupational Therapist;

4.5 Mrs. L Swart – Educational Psychologist;

4.6 Dr. EJ Jacobs – Industrial Psychologist;

4.7 Messrs Munro Forensic Actuaries (Mr. C du Plessis, Mr. W Boshoff and Ms. J Valentini).

[5] By agreement between the parties, with the Court's leave, the aforesaid experts confirmed the content of their reports [expert conclusions and reasons therefor] and their curriculum vitae on oath by means of affidavit, in terms of the provisions of Uniform rule 38(2). Both parties rely on the plaintiff's expert reports.

[6] The Court is still called upon to evaluate the expert evidence to satisfy itself that the evidence satisfies the required criteria regardless of the agreement between the parties. I have considered the expert reports containing their conclusions and the reasons therefor and have no hesitation in accepting their evidence.

[7] Relevant to the issues that serve for determination are the following findings and conclusions by the experts:

7.1 The neurosurgeon, Dr. Anton Van Aswegen, concludes that L suffered at least a mild to moderate traumatic brain injury in the accident. There exists at least between 2-10 percent chance that L may develop early onset dementia as result of the single episode of mild traumatic brain injury. The neurocognitive symptoms that are present can be ascribed to the aforesaid head injury and extended hospital stay (L remained in hospital for a period of a month). L will on probabilities never reach her full potential and if she does not pass her exams, she is at high risk of developing "so-called 'burn-out'".

7.2 Plastic and Reconstructive Surgeon, Dr. P Bruce White confirms that L sustained a de-gloving injury of the right fronto-temporal region of the scalp. The photographs presented as part of the report depict a very prominent unsightly scar and hair loss of hair bearing skin. L will need major surgical

intervention to replace the scarring with normal hair-bearing skin. Even after surgery L will retain permanent serious disfigurement.

7.3 The neuropsychologist, Mr. Leon Roper, undertook a neuropsychological assessment to establish the nature and severity of any cognitive impairment and how this may have impacted L's ability to function interpersonally and scholastically. The following neuropsychological deficits were identified:

7.3.1 Attention and concentration difficulties. L is vulnerable to stimulus overload and exhibits fluctuating attention abilities;

7.3.2 Poor rote verbal learning abilities and narrative memory difficulties;

7.3.3 Slowed mental response speed abilities;

7.3.4 Poor verbal fluency abilities.

7.4 According to Mr. Roper the following factors are considered potential contributing factors towards the cognitive difficulties which were indicated during the assessment:

7.4.1 Pertaining to L's premorbid cognitive functioning there is no substantial indication that L suffered from significant premorbid deficits, however the presence of a subtle vulnerability in this regard cannot be excluded given the reported educational history of her parents and brother. L's parents reportedly obtained Grade 8 and Grade 10, respectively, while her brother failed Grade 01 and Grade 04.

7.4.2 Increased irritability and fatigue can be partly related to the head injury but could also stem from decreased frustration tolerance or emotional regulation difficulties that often arise from such an injury.

7.4.3 Additional factors that may also play a role are posttraumatic stress symptoms which present as result of her involvement in the accident, headaches, and the fact that she has been teased by her friends over the scarring from the injury. The scarring and headaches are constant reminders of the accident. The difficulties may impact negatively on her interactions with others and peers and may have long term consequences with regards to social and interpersonal development. L is anxious and hyper-vigilant when walking close to roads and even when travelling by vehicle. This is partly the result of an unresolved trauma response.

7.4.4 L suffers from depressed mood and mood disturbances. L's involvement in the accident has brought about symptoms of Posttraumatic Stress Disorder and mild symptoms of Major Depressive Disorder rendering L psychologically vulnerable. The teasing she endures as result of the scarring resulted in decrease of self-esteem that contribute further to the overall reduction in L's psychological resilience.

7.4.5 The sequelae from the head injury contribute to a diminished quality and enjoyment of life. This includes, amongst others, the loss of her sense of security, appearance and sense of physical integrity (as result of the scarring), loss of self-esteem, as well as peer relationships (the teasing L endures as result of the scarring has a negative impact on her relationship with her friends and makes her sad) and the depressed mood and self-esteem difficulties could contribute to social withdrawal in the long term.

7.4.6 Moderate head injuries have the potential to bring about psychological symptoms such as depression, irritability, and increased arousal. The symptoms could be part of organic origin (psychological issues caused by issues/changes in the brain) which would be expected to impact negatively on her prognosis.

7.4.7 Decreased peer relationships and difficulty regulating her emotions have the potential to disrupt L's normal social and interpersonal development which can lead to long term effects in this regard. Decreased interpersonal functioning and social dysfunction is likely to render L more psychologically vulnerable.

7.4.8 Regular headaches, irritability and memory difficulties impact negatively on several spheres of L's functioning which negatively impact on her quality and enjoyment of life. Her depressed mood, anxiety and feelings of rejection contribute to a diminished quality and enjoyment of life.

7.4.9 The cognitive difficulties are expected to render L more prone to decreased scholastic performance and even grade failures as she progresses to higher grades with more complex material. Her premorbid scholastic potential may have been hampered by the head injury to some extent.

7.4.10 As result of the abovementioned considerations it is probable that L will have decreased motivation.

7.4.11 L's psychological prognosis is expected to be somewhat guarded and dependent to a large extent on the resolution or management of her headaches and scarring as well as her future scholastic performance and her ability to maintain adequate interpersonal relationships.

7.5 The Occupational Therapist, Mrs. Liebenberg states with regards to the impact of the accident and injuries on L's education, amongst other matters:

7.5.1 Regarding birth and early childhood developments, the plaintiff admits using alcohol during the pregnancy. There were no birth or

antenatal complications and L reached her developmental milestones within the expected norm.

7.5.2 If L should not complete Grade 12 or complete her schooling at a vocational school, she will likely not be able to obtain access to further education. Under these circumstances she is not likely to obtain employment involving demands of higher executive.

7.5.3 L will not be an equal competitor within the open labour market. She will have difficulty to obtain suitable employment and will be more vulnerable to successfully retain employment. The reasoning regarding this is as follows: considering cognitive difficulties, L would likely only be employable at a lower level of the open labour market where the job will need to be structured, well supervised and where a high level of productivity is not expected.

7.5.4 The continuous headaches will negatively affect L's participation in work tasks due to negatively affected attention and concentration. This could negatively influence her work speed and quality of work. For as long as psychological difficulties persist this could have a negative effect on her interpersonal relationships at work, her work speed and her motivation and drive to work.

7.5.5 Cognitive and psychological difficulties, as well as headaches and the need for accommodation regarding this, will make her a less favourable employee, compared to peers with no such difficulties.

7.5.6 Should L develop epilepsy in the future, she will further be restricted in terms of the type of work that she can perform e.g., she will have to avoid working on heights, near open water, with high voltage or open circuit electricity, with dangerous tools, on or near moving vehicles and with unguarded fires, ovens, and hot plates. In such instance the

type of work L could perform would be even more limited and her work capacity could decrease if she does develop epilepsy.

7.5.7 L's ability to obtain suitable employment in the open labour market and to excel in a workplace as per her pre-accident potential, and as result also her earning capacity, have been compromised.

7.5.8 Mrs. Liebenberg defers to the opinion of an Industrial Psychologist regarding L's pre- and post-accident earning potential and employability considering current limitations.

7.6 The Educational Psychologist, Mrs. Linda Swart, prepared a Psycho-Educational medico-legal report. The most salient aspects of her report are as follows:

7.6.1 L's familial background, as at the date of the report, is as follows:

7.6.1.1 L's father, aged 45, completed Grade 8 and was last employed as farm worker during 2018.

7.6.1.2 L's mother, aged 35, dropped out of school during Grade 10 and has never been employed.

7.6.1.3 L has two siblings, a brother in Grade 6 who is reported to be a slow learner who has repeated both Grades 1 and 4, and a sister in Grade 1 who is also reportedly not doing well.

7.6.1.4 L's paternal grandfather has passed away. His highest educational level is not known and in life he was employed as mine/farm worker.



7.6.1.5 L's paternal grandmother has passed away. Her highest educational level is not known and in life she was unemployed.

7.6.1.6 The paternal grandmother and grandfather had three children, one daughter and two sons. As far as educational level achieved is concerned, the daughter (L's aunt) obtained Grade 11 and the sons respectively Grades 8 and 7. The son with Grade 7 (L's uncle) has part time employment, whilst his siblings were unemployed at date of the report.

7.6.1.7 L's maternal grandfather has passed away. His highest educational level is not known and in life he was employed as farm worker.

7.6.1.8 L's maternal grandmother has passed away. Her highest educational level is not known and in life she was employed as domestic worker.

7.6.1.9 L's maternal grandmother and grandfather had four daughters. Three of them (L's aunts) obtained Grade 8 as highest educational level and all three of them are unemployed, whilst L's mother obtained Grade 10 and has never been employed.

7.6.2 The expert draws a distinction between unemployment and the fact that a person has never been employed. The particulars of the unemployed persons' prior employment have not been recorded.

7.6.3 L was injured in her Grade R year which presents challenges in determining her probable premorbid scholastic performance. According to the plaintiff, prior to the accident the feedback from the

school was that she was making pleasing progress. The accident occurred on 22 August 2015 and L did not return to school that year. L was notwithstanding considered to be ready to proceed to Grade 1 due to her previous performance, prior to the accident. Postmorbidity L repeated Grade 1, passed Grades 2 and 3 and was disruptive in class during Grade 4.

7.6.4 L's pre-accident intellectual level was determined, by making use of the best-test method according to Lezak, as being at least in the average range. After evaluating the collateral information pertaining to L's birth, early childhood development and the opinions of the other experts, Mrs. Swart concludes that L would have obtained Grade 12 (matriculate (NQF4)) and depending on her final matriculation results could have proceeded to tertiary education at a TVET - College to study towards a higher certificate (NQF5), had the means and opportunity been available to her.

7.7 The Industrial Psychologist, Dr. Everd Jacobs, was instructed to consider L's most probable premorbid and post-morbid career paths. He had the benefit of the expert reports discussed above. The most salient findings are:

7.7.1 Whilst the experts agree that L will be able to work, her cognitive and psychological restrictions will prevent her from achieving her full potential. She will not reach the same level of schooling as she would have been able to do but for the sequelae of the injuries sustained in the accident.

7.7.2 L will not be an equal competitor in the open labour market.

7.7.3 Periods of unemployment will be more likely postmorbidity than it would have been in the pre-injured scenario.

7.7.4 Her mental capacity is diminished although the experts agree that her physical ability does not appear to be diminished as result of the injuries.

7.7.5 L's career opportunities will be considerably more limited as result of the sequelae of the injuries. She is destined for unskilled employment and even then, her opportunities will be limited as result of her mental restrictions. She will thus not be an equal competitor for unskilled labour.

7.7.6 L will on probabilities not be flexible as she will struggle to learn and adapt both scholastically and in the workplace.

7.7.7 Due to L's age and the fact that she is still a scholar, she has never earned an income and is still too young to know what her career intention would be.

7.7.8 The findings of the Educational Psychologist regarding L's probable scholastic performance in the uninjured state, is the most reliable marker in the circumstances, namely that L would have obtained Grade 12 (NQF 5) in uninjured state and NQF 2/3 in injured state.

7.7.9 In the circumstances, considering L's limitations in injured state, the unemployment statics are relevant. At the end of 2020 the unemployment figure in South Africa was 29.2%. The International Monetary Fund predicted a further rise in the unemployment rate in South Africa as result of the National State of Disaster and the effect of the lockdown regulations. Although this will affect both injured and uninjured persons, the impact for injured persons is much more devastating and more so, where the person's options are limited and he/she is not an equal competitor, even in the unskilled sector.

7.7.10 L would have also faced periods of unemployment in the uninjured scenario and may have been prone to unskilled / semi-skilled work.

7.7.11 L's neurocognitive and neuropsychological problems is a concern as it is well documented that employees with mental and specifically behavioural problems may struggle to keep their jobs.

7.8 The calculations of probable earnings need not be considered since the amounts determined by the actuaries before contingencies are applied, are not in dispute.

7.9 The actuarial report calculates the value of the future income (estimated future income) which L would have earned but for her injuries and consequent disability [uninjured future earnings] before contingencies are taken into consideration in the sum of R 2 808 100. The injured earnings are calculated in the sum of R 663 300.00 less a contingency of 30% totalling R 464 310.00.

[8] As stated, as far as loss of earnings is concerned, the dispute revolves solely around the contingency deduction to be applied to the pre-morbid earnings. The plaintiff contends that a contingency deduction of 25% is fair and reasonable considering the facts of this matter and the expert evidence, whilst the defendant in turn contends that a contingency of 35% would be appropriate.

[9] It is well established that the enquiry into damages for loss of earning capacity is by its nature speculative.<sup>1</sup> In *Phalane v Road Accident Fund*<sup>2</sup> the Court explained that contingencies, 'by their very nature, is a process of subjective impression or estimation rather than objective calculation'.

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<sup>1</sup> *Southern Insurance Association v Bailey N.O.* 1984(1) SA 98(A) on page 113G.

<sup>2</sup> 2014 JDR 0303 (ECP) at 19.

[10] I accept that 'the younger the victim, the longer the period over which the vicissitudes of life will operate and the greater the uncertainty in assessing the claimant's likely career path'.<sup>3</sup>

[11] The defendant's argument for the 35% contingency deduction is premised in the main on the following submissions:

11.1 L was 4 years 11 months of age and still attending crèche when the accident occurred. As result no school reports are available for comparison.

11.2 L's siblings' educational progress is at best not good.

11.3 Unemployment is rife in the family.

11.4 L's mother admitted to using alcohol whilst being pregnant with her.

11.5 The fact that L was very young when she was injured means that there is a long period over which the 'vicissitudes of life will operate' and the greater the uncertainty in assessing L's likely career path.

11.6 The facts of this case are similar to those that the Courts considered in:

11.6.1 *M Makupula v Road Accident Fund* (1635/07) [2010] ZAECHMC 17 (8 April 2010) [*M v RAF*]. The defendant quoted the following passage from para 11 of the judgment in the heads of argument in substantiation of the argument:

'Mr de Kock's assessment was premised on the impact of traumatic brain injury on educational progress of Mzuchumile without taking into account the total picture of the child's developmental history. The report shows that Mzuchumile

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<sup>3</sup> *Bee v RAF 2018 (4) SA 366 (SCA)* para 116.

was involved in the accident, had no sibling from whom to match his development and that his parents and maternal uncles and aunts had an educational path which did not go beyond standard 9 education. Those members of the family who were employed performed work which required semi-skill or no skill at all. Therefore, there will be adjustments to be applied as requested by *Mr Rugunanan* because Mzuchumile's profile, prior to and after the motor collision, reflected negatively on his educational and vocational success.'

11.6.2 *Manolele obo M v Road Accident Fund* (13758/13) [2017] ZAGPPHC 345 (1 March 2017) [*Manolele*] in which judgment the Court applied a 35% contingency where the child was still attending a crèche and no school reports were available to enable the educational psychologist to compare her education pre- and post-accident.

[12] Regarding the defendant's reliance on the plaintiff's admission that she used alcohol during her pregnancy, the evidence on record establishes that there were no birth or antenatal complications, and L reached her developmental milestones within the expected norm. There is nothing to suggest that this would or had any impact on L's mental or educational abilities. The relevant experts certainly did not make such a finding.

[13] Whilst there are certain communalities between the facts in *M v RAF* and this matter, there are also material differences. The most prominent is the fact that the child in *M v RAF* had learning problems premorbid. In the words of Nhlangulela J, M's "educational development profile was affected by learning problems".<sup>4</sup> The learned Judge concluded that the expert assessment in that matter, where 25% deduction was

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<sup>4</sup> *M v RAF* above, para 11 to be read with para 9.

proposed, was premised on the impact of traumatic brain injury on educational progress of the child without considering the total picture of the child's developmental history.

[14] There is no evidence in *casu* that L had learning problems before the accident or that her premorbid educational profile was affected by learning problems. Prior to the accident the reports from the school, albeit L was in Grade R, stated / recorded that she was making pleasing progress. The accident occurred on 22 August 2015 and as result of her injuries L did not return to school that year. L was notwithstanding considered to be ready to proceed to Grade 1 based on her performance before the accident. Her premorbid intellectual level was determined to be *at least* average. According to the relevant experts L would have obtained Grade 12 (matriculate (NQF4)) and depending on her final matriculation results could have proceeded to tertiary education at a TVET-College to study towards a higher certificate (NQF5), had the means and opportunity been available to her.

[15] I am alive to the fact that L's father completed Grade 8 and was last employed as farm worker during 2018; that her mother dropped out of school during Grade 10 and has never been employed; that the highest familial secondary education is Grade 11, that unemployment is rife within the family; and that although there is no substantial indication that L suffered from significant premorbid deficits, that with regard to premorbid cognitive functioning, the presence of a subtle vulnerability in this regard cannot be excluded given the reported educational history of her parents and brother.

[16] The relevance of familial information regarding education and occupation in matters of this ilk is undeniable. It must however always be considered within context. The Industrial Psychologist accepts the findings of the Educational Psychologist regarding L's probable scholastic performance in the uninjured state as the most reliable marker in the circumstances, namely that L would have obtained Grade 12 (NQF 5) in uninjured state and NQF 2/3 in injured state. This evidence of the relevant experts is uncontested and is underpinned by proper reasoning. I also bear in mind that the Industrial Psychologist opines, whilst accepting the Educational Psychologist's

conclusions, L would have also faced periods of unemployment in the uninjured scenario and may have been prone to unskilled / semi-skilled work.

[17] In this matter L's grandparents, parents, aunts, and uncle were born and raised in a vastly different setting from what we live in today. The inequalities entrenched by apartheid are specifically relevant insofar as education and occupational history of the elder members of this family are considered when assessing L's possible career path and loss of earnings. In *Head of Department, Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another*<sup>5</sup> Moseneke DCJ explained:

'[45] Apartheid has left us with many scars. The worst of these must be the vast discrepancy in access to public and private resources. The cardinal fault line of our past oppression ran along race, class and gender. It authorised a hierarchy of privilege and disadvantage. Unequal access to opportunity prevailed in every domain. Access to private or public education was no exception. While much remedial work has been done since the advent of constitutional democracy, sadly, deep social disparities and resultant social inequity are still with us.

[46] It is so that white public schools were hugely better resourced than black schools. They were lavishly treated by the apartheid government. It is also true that they served and were shored up by relatively affluent white communities. On the other hand, formerly black public schools have been and by and large remain scantily resourced. They were deliberately funded stingily by the apartheid government. Also, they served in the main and were supported by relatively deprived black communities. That is why perhaps the most abiding and debilitating legacy of our past is an unequal distribution of skills and competencies acquired through education.'

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<sup>5</sup> 2010 (2) SA 415 (CC) (2010 (3) BCLR 177; [2009] ZACC 32).



[18] In similar vein the effects of apartheid on social and economic development were considered in *Madzodzo and Others v Minister of Basic Education and Others*<sup>6</sup> where the Court held as follows:

‘Our own history demonstrates the role that education plays in shaping social and economic development. Apartheid education has left a profound legacy, not only in the unequal and inadequate distribution of resources but in the appalling levels of literacy and numeracy still found in the general population as a consequence of decades of unequal and inadequate education. As noted in Juma Musjid (at para 42):

"The inadequacy of schooling facilities, particularly for many blacks was entrenched by the formal institution of apartheid, after 1948, when segregation, even in education and schools in South Africa was codified. Today, the lasting effects of the educational segregation of apartheid are discernible in the systemic problems of inadequate facilities and the discrepancy in the level of basic education for the majority of learners. '"

[19] Whilst it remains a valuable indicator which must be accorded sufficient weight when the familial history is considered, due consideration must also be accorded to the historical context in which L’s grandparents, parents, uncle and aunts underwent their schooling as well as the unequal distribution of skills and competencies and limited opportunities.

[20] In considering the totality of the evidence a contingency deduction of 25% from the premorbid earnings is appropriate in the circumstances.

[21] The capital value of loss of earnings suffered by L therefore amounts to the sum of R 1 641 765.00 which is calculated as follows:

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<sup>6</sup> 2004 (3) SA 441 (ECM) para 19.

Premorbid earnings: R 2 106 075.00 [R 2 808 100.00 less 25% contingencies], less

Postmorbidity earnings: R 464 310.00 [R 663 300.00 less 30% contingencies].

[22] Claims for general damages are not awarded as measure of retaliation and punishment for injury suffered as result of negligence. It has a salutary purpose. Moseneke DCJ explained in *Van Der Merwe v Road Accident Fund and Another (Women's Legal Centre Trust as Amicus Curiae)*<sup>7</sup> at para 56:

'What is crucial for the present purpose is that the law of damages recognises special and general damages to afford the fullest possible redress for delictual harm. Both classes of damages seek to redress the deterioration or reduction of the quality or usefulness of a legally protected interest. In both cases the injured party loses something and receives money as reparation. Stated differently, the principal object of damages, whatever the kind, is to 'neutralise loss through the addition of a new patrimonial element'.<sup>8</sup>

[23] Farlam, J, as he then was, held in *Van Wyk v SANTAM Bpk* 1998 (4) SA 731 (C) 735c-h:

'....., an award of money cannot really compensate a plaintiff for pain and suffering, loss of amenities, disfigurement, etc. There is indeed no norm for determining in monetary terms the extent of such general damages. As was said by Windeyer J in *Papanayioutou v Heath* (1970) ALR 105 at 112 (quoted by Luntz Assessment of Damages 2nd ed at 158 n 6):

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<sup>7</sup> 2006 (4) SA 230 (CC).

<sup>8</sup> Visser et al Visser en Potgieter's Law of Damages 2nd ed (Juta & Co Ltd, Lansdowne, 2003) at 165.

"What is a reasonable sum for general damages for personal injuries cannot be measured and tested as a reasonable price can be, by the experience of the market-place."

It follows that there may be even amongst lawyers a marked difference in their assessment of the monetary value to be placed on loss of a non-pecuniary nature. It is for this reason that a Court of appeal will not interfere with an award of general damages made by a trial court merely because it is considered to be too high or too low. And in making such an award a court does not have regard only to the interests of the plaintiff; it also bears in mind that too heavy a financial burden should not be placed upon the defendant.'

[24] In determining general damages the awards in previous cases of similar facts and law are a useful guide. Consistency guarantees fairness. This does not by any measure imply that the Court's discretion is replaced with a mechanical approach. Each case is determined on its own facts and the court exercises its discretion with due consideration to those facts.<sup>9</sup>

[25] The plaintiff contends that an award of R 650 000.00 for general damages is fair and reasonable considering the facts of the matter. The plaintiff referenced the following cases as being comparable in support of the argument. The gist of the factors taken in consideration, summarised, were as follows:

25.1 In *MTA obo MK v RAF*<sup>10</sup> where an 8-year-old child sustained a mild concussive brain injury, visible laceration on the forehead and hematoma of the forehead. He presented with symptoms of a depressive disorder and persistent post-traumatic stress disorder was present. The court considered the physical injuries and loss of amenities of life as a result of depression and awarded R 400 000.00 as general damages which has a present-day value of R 475 559.98.

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<sup>9</sup> *De Jongh v Du Pisani* 2005 5 SA 457 para 64.

<sup>10</sup> (4484/16) [2018] ZAGPJHC (18 June 2018).

25.2 Regarding L's facial disfigurement, in *Visser v Visser*<sup>11</sup> a minor male sustained severe bite wounds to the face involving large flap laceration involving the middle section of the forehead above the right eyebrow; a second laceration through the right eyebrow; a degloved wound of the right side of the cheek below the right lower eyelid with tissue loss; a full thickness laceration to the upper lip as well as lacerations in the neck which were down to the plasma level. The Court awarded R 70 000.00 as general damages which has a present-day value of R 109 000.00.

[26] The defendant argues that an amount of R 450 000.00 would be fair and reasonable when considering the facts of this case. The defendant referenced the following cases as being comparable in support of the argument. The gist of the factors taken in consideration, summarised, were as follows:

26.1 In *Nkosi v Road Accident Fund*<sup>12</sup> the plaintiff had lacerations on the head, a concussion, fractured ribs and hand fractures. The Court awarded R 250 000.00 as general damages which has a present-day value of R 470 195.58.

26.2 In *M Makupula v Road Accident Fund*<sup>13</sup> a 5-year-old boy sustained a mild to moderate brain injury with neurocognitive deficits, hyperactivity disorder, memory dysfunction, uncooperative and aggressive behaviour, poor concentration, poor executive functioning and school performance. He also suffered broken teeth and injuries to the inside of his mouth. The Court awarded R 300 000.00 as general damages which has a present-day value of R 542 065.68.

26.3 In *Bikawuli v Road Accident Fund*<sup>14</sup> a 16-year-old boy suffered a moderate brain injury with cognitive fallout, memory impairment, behavioural changes,

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<sup>11</sup> (2012), QOD VI, G4-1.

<sup>12</sup> (07/2195) [2009] ZAGPJHC 42 (24 April 2009).

<sup>13</sup> (1635/07) [2010] ZAECMHC 17 (8 April 2010).

<sup>14</sup> (6B4) QOD, decided in 2010.

fatigue, headaches and dizziness. The Court awarded R 135 000.00 as general damages which has a present-day value of R 243 929.55.

26.4 In *Sterris v Road Accident Fund*<sup>15</sup>, a 41-year-old male security officer, 37 years old at time of injury sustained a brain injury of moderate severity; fractures of the femur, scapular and clavicle and would require hip and knee replacement procedures in the future. The plaintiff was obliged to use a cane to aid mobility. He experienced headaches, dizziness, fatigue, concentration difficulties, and personality changes. The Court awarded R 250 000.00 as general damages which has a present-day value of R 470 195.58.

26.5 In the case of *M v Road Accident Fund*<sup>16</sup> a 4-year-old child sustained a mild concussive brain injury and a right femur fracture which left him with a scar on his right thigh approximately 20cm long. The Court awarded the amount of R 400 000.00 as general damages which has a present-day value of R 454 822.35.

[27] In considering the past awards with relation to the facts of this matter as detailed in the expert reports, which includes the physical injuries, the permanence of the disfigurement (regardless of successful major surgical intervention), the future surgical intervention, the nature and effect of the neuropsychological and cognitive deficits and difficulties coupled with expected duration and resultant loss of amenities an award of R 600 000.00 for general damages is fair and reasonable in the circumstances.

Accordingly, **IT IS ORDERED THAT:**

1. An order is granted in terms of the draft order, marked 'NS', dated and signed, as amended to reflect the following amounts in paragraph 1 thereof:

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<sup>15</sup> 2009 6 QOD B4-26 (WCC).

<sup>16</sup> [2019] ZAGPPHC 588 (GP).

“Payment by the defendant to the plaintiff in the sum of R 2 241 765.00 (TWO MILLION TWO HUNDRED AND TWENTY-SIX THOUSAND SEVEN HUNDRED AND SIXTY-FIVE RAND) which amount is compiled as follows:

1.1 Future loss of income R 1 641 765.00

1.2 General damages R 600 000.00,...

**N SNELLENBURG, AJ**

**APPEARANCES:**

On behalf of the plaintiff: Adv L. Le R Pohl SC

On instructions of: Mr. HL Buchner

Honey Attorneys

Bloemfontein

On behalf of the defendant: Mrs. C Bornman

State Attorney

Bloemfontein