IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case number: 24698/2014
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED:
Date: 22/02/2023

In the matter between:

S[....]: E[....] OBO B[....] S[....] Plaintiff

and

ROAD ACCIDENT FUND Defendant

JUDGMENT

MAHOMED AJ

INTRODUCTION

1. This is a claim for compensation for personal injuries arising out of an accident which occurred on 16 September 2013. The plaintiff acts in a

representative capacity on behalf of her minor child who was seven years old on the date of the accident. The minor child was a pedestrian on her way to school when it is alleged the insured vehicle knocked into her whilst she was standing on the pavement with her brother, in Palm Ridge Gauteng.

2. Advocate Grobelaar appeared for the plaintiff and submitted that the accident occurred because of the negligent driving of the insured driver.

3. On the morning of trial, the defendant conceded the merits for 100% liability.

4. Mr Grobbelaar advised the court that the matter is to proceed by way of default as the defendant's defence is struck for non-compliance with the practise directives and he therefore objected to the appearance by the defendant's counsel. I allowed counsel some time to discuss the claim further.

5. Advocate Klaas who appeared for the defendant was not permitted to continue in the matter.

6. Mr Grobelaar advised the court that the claimant is a student and has no claim for past loss nor for past medical expenses because she was treated at a state hospital.

GENERAL DAMAGES

7. noted that the appeal tribunal of the HPCSA rejected the plaintiff's submissions pertaining to the seriousness of the injury.

7.1. In its correspondence dated 12 July 2021, the appeal tribunal stated, "after *considering all available evidence presented to the committee, it was found that the injuries sustained by the patient may be classified as non-serious in terms of the narrative test.*"[1]

[1] Caselines (022-1)

7.2. Accordingly, the minor child did not qualify for general damages.

THE PLEADINGS/ INJURIES

8. The particulars of claim at paragraph 7 provide as follows:

'as a result of the aforementioned accident, plaintiff sustained severe bodily injuries consisting of:

7.1 severe head injuries characterised by:

7.1.1 traumatic brain injury.

7.1.2 superficial facial lacerations.

7.2 resultant neurocognitive deficits involving:

7.2.1 impaired memory and concentration.

7.2.2 for mental efficiency.

7.2.3 persistent dilapidated (?) in headaches.

7.3 resultant neuro behavioural deficits involving.

7.3.1 a change of personality.

7.3.2 aggressive behaviour.

7.3.3 short temperedness.

7.3.4 irritability

8. As a result of the aforesaid injuries, plaintiff minor child underwent hospitalisation and received medical treatment, was disabled and disfigured and suffered pain and loss of amenities of life.[2]"

THE EVIDENCE

9. Counsel submitted that two issues remain for this court to determine, the compensation for loss of future earnings/earning capacity and compensation for future medical expenses.

[2] Caselines 001-27 to 28

9.1. He furthermore referred the court to the judgment in **De Bruyn v RAF [in 24],** which confirmed "*that the determination of qualification for general damages is separate from the determination for loss of earnings and earning capacity*" and therefore this court ought not to be guided by the rejection of the claim for general damages.

10. In regard to the injuries, counsel submitted that the court ought not to pay attention to what the injury is categorised as, but rather to the sequelae of the injury.

11. Mr Grobelaar proffered that the minor child suffered severe effects from a mild head injury and her orthopaedic injuries to her hip.

12. He submitted that she was treated and discharged on the same day due to a shortage of beds, but her injuries have impacted significantly on her future earning capacity. She is unlikely to be employed in an open labour market or if she worked in the future she is limited to only light sedentary work.

13. The minor child is likely to retire early.

14. Counsel proffered that in terms of the actuarial calculations she suffered a loss of earnings, after normal contingency deductions, in the amount of R5 490 245.[3]

15. The plaintiff relied on opinions of medical experts to prove her claim.

HOSPITAL RECORDS

16. These record that the minor child was discharged on the day. Counsel advised that she attended follow-up consultations at the hospital as an outpatient.

---

[3] Caselines 001-31

17. It was recorded that she had abrasions to her head, identified as superficial, and was treated with panado and 7 drops of Valaron.

18. An abrasion below the nose and on the left side of her face is recorded.

19. It was further noted that there was no loss of consciousness and that the minor child was fully alert. Her GCS was found to be normal at 15/15. It was noted that she was alert.

20. The RAF 1 form reflects the treatment plan, as "soft tissue injuries, panado 5ml, mvt (?) 5ml."[4]

ORTHOPAEDIC SURGEON – DR SCHNAID

21. The minor child consulted him on three occasions.

22. In his report dated 28 January 2016 [5] he noted that the minor sustained an abrasion to her forehead, nostril and soft tissue injury to her left hip.

23. It was reported to him that "she suffered pain in the lumbar spine and left hip. Although she can walk long distances and stand for long periods, she tires easily." Furthermore, she experienced headaches, fatigue, slow concertation, epistaxis, blurred vision, she is aggressive at school, and she has a bad temperament.

24. Dr Schnaid agreed with a X ray report by Dr Scott.[6] It is recorded that there was a 4mm lengthening of the left leg, and no fracture is noted in the lumbar spine.

---

[4] Caselines 009-11

[5] Caselines 008-2

[6] Caselines 008-112

25. An X-ray report dated 26 November 2018[7], under the subheading lumbar spine reads:

> *"the lateral view demonstrates a normal alignment. The lumbar vertebral bodies are normal. There is no intervertebral disk space narrowing. The facet joints are normal. The spinous and transverse processes are normal. No intervertebral disk space narrowing."*

26. In an addendum report dated 7 February 2019, Dr Schnaid recorded,

> *" restriction of lumbar spine movements the rest of the regions are normal."*

27. In a further addendum report dated 12 October 2020, he recorded complaints[8]

> *"pain in the lumbar spine and pelvis 50% loss of lumbar movements cannot walk long distances and stand for long periods… the lumbar back sprain persists. The right transverse process of the L2 vertebra is broadened as demonstrated in the x rays and is different to the other transverse process. This is in keeping with a healed fracture of the L2 transverse process, with some remodelling and step deformity. "*

28. A x ray report, dated 26 August 2020[9], 6 years after the accident records, under the heading "lumbar spine" :

> *"the vertebral body outlines are normal and disc spaces are preserved. The alignment is normal. On the frontal view the contour of the right transverse process of L3 vertebra is broadened and distinctly different to all of the other*

---

[7] Caselines 008-247

[8] Caselines 011-1

[9] Caselines 011-3

transverse processes in the lumbar spine. This is suggestive of a healed fracture of the right transverse process of L3 with a mild to moderate step deformity.

29. Under the heading pelvis and left hip of the same report:

"a localised lateral view of the left hip also reveals no sign of any obvious body trauma."

OCCUPATIONAL THERAPIST

30. The minor child consulted with an occupational therapist Ms Brenda Pillay on 7 November 2018, five years after the accident.

31. On that date the minor child was in grade 6 and she reported that she suffered a head injury and soft tissue injury to the left hip.

32. She recorded signs and symptoms of pain in the left hip low back pain, memory difficulties, concentration difficulties, frequent headaches, fatigue, nosebleeds, gets aggressive and is lazy.

33. This expert found that the child's drawing was not age appropriate, the drawings were suggestive of mental immaturity. She found that her mental age score was below average performance. Her handwriting was slow below average performance although legible. Her gross motor skills and fine motor skills were normal she found no difficulties in this area.

34. It was reported to her that the client is very moody and frequently gets angry and frustrated. Her emotional status was deferred to a psychologist. She was reported to be argumentative.

35. She reported headaches twice a week and pain in the left hip and lower back. She does not participate in any sporting activities.

36. This expert recorded that given her cognitive issues such as slowed processing of information and poor concentration the client is not expected to be a safe driver.[10]

37. The expert also recorded that given her hip pain and lumbar pain, the client in the future is expected to be limited to sedentary to light work and even in those positions she would still need to be accommodated.

38. In her opinion the minor will struggle with low back pain throughout her working life and there is a high probability that she may need to retire early.[11]

39. The reported leg length discrepancy is expected to cause abnormal loading on the client lumbar spine and may thus further impact her lumbar pain and discomfort.

40. The expert records further, that "*given her learning barriers she is expected to struggle to cope academically thus the client is likely to fare better in a school with a supportive environment that provides remedial lessons and therapeutic intervention."*[12]

41. Ms Pillay was of the opinion that the client " *should be placed ideally in a prevocational training centre and she should remain in such a program as she is not considered a candidate for mainstream schooling given his (sic) physical and cognitive barriers*."

42. The occupational therapist recommended "*therapy to build self-esteem confidence and self-care skills.*" Furthermore, she recommends that the minor

---

[10] case lines 008-71

[11] case lines 008-72 at 4.5.1.8

[12] case lines 008-73 at 4.5.2

child would need "*a caregiver to ensure that she gets to school safely and daily.*" She further recommends extra lessons at a rate of R250 to R350.

CLINICAL PSYCHOLOGIST

43. The minor child consulted a clinical psychologist on 9 November 2018 four years after the accident. She was in grade 6 at the time it is recorded that she had not repeated any grades and her mother reported that her performances were average. She is reported to struggle with mathematics and is forgetful.

44. The expert recorded a report of pain on her left hip her mother reported that she needs to be reminded and supervised to engage in most of tasks.

45. Ms Modipa found that the minor child had the capacity for sustained and direct attention adequately. She demonstrated an adequate capacity to sustain concentration and engage in two tasks simultaneously.[13]

46. The expert reported the minor child's immediate learning on trial A1 demonstrated adequate concentration skills, her capacity to learn new information on trial B was also average, although her short-term memory and retrieval of previously learnt information after 30 minutes of distraction on trial A7 was below average.

47. Her processing speed and executive functioning was found to be average although her memory for digits backwards was below average.[14]

48. This expert concluded that the minor child's,

> *"neurocognitive profile revealed mild cognitive deficits on the following areas: sustaining concentration and visual motor perceptual and nonvisual problem solving skills. From her presenting difficulties it appears that the*

[13] case lines 011-11 at 5.1.2

[14] case lines 011-13 at 5.4

head injury was not significant. She still presents with behavioural difficulties which can be attributed to the motor vehicle accident."[15]

49. The expert recommended that the minor child and her family should be given an opportunity to consult with a clinical psychologist for management of emotional difficulties related to the motor vehicle accident. She recommended 20 sessions psychotherapy.

50. The expert's assessment findings are reported as follows.

"she was well dressed and oriented in all spheres. She spoke well and answered questions relevantly. Her mood was euthymic and affect appropriate. She was able to comprehend test instructions and completed all assessment tasks presented to her."

EDUCATIONAL PSYCHOLOGIST

51. The minor child was assessed by an educational psychologist on 26 January 2023, 10 years after the accident and currently in grade 11 at school.

52. This expert relied on the direct measurement of deficit, that compares her premorbid and current cognitive and scholastic performance and observational data. The minor child was born in Mozambique without complications or birth defects or disorders. She enjoyed good health prior to her injury.

Pre morbid scholastic ability

53. It was reported that her parents separated when she was fairly young. Not much is known of her father, but it was reported that he completed matric. Her mother did not attend school. Her older brother obtained a matric pass.

[15] case lines 011-14 at 6.2

54. Her grade R marks ranged from 3 achieved (50 – 69%) to 4 Outstanding (70 -100%). She did not present with any learning difficulties she was able to cope with the demands of grade R.

55. The expert opined that without having the sequelae of the head, emotional and orthopaedic injuries she is likely to have progressed steadily through school. She is likely to have obtained matric, of average intelligence and could have obtained a diploma or an NQF level 6 qualification.

56. Ms Naicker conducted a battery of tests, and her assessment results record the minor child's intellectual functioning as, verbal to be impaired, performance impaired and full-scale IQ impaired. She concluded post morbidly:

> *"that the minor child has been rendered vulnerable as a result of the accident. She has sustained injuries and sequalae that have undermined her overall functioning and quality of life. She has residual pains such as back pains, recurrent headaches, nosebleeds that impede her activities of daily living. The pain she experiences impacts on her affect and levels of functioning at school. She loathes school and is demotivated to achieve her full potential. She is reported to exhibit changes in her behaviour personality and emotional functioning that is uncharacteristic of her pre-morbidity"* [16]

57. The expert identified that she had memory and attention problems which impacts on her ability to integrate new information when learning. Her cognitive deficits have been undertreated and have incurred a cumulative impact on her scholastic performance as the learning content became more complex and abstract.[17]

---

[16] case lines 008-222 at 13.1.2.4

[17] case lines 008-223

Post Morbid scholastic performance

58. Her school results, after the accident which occurred in 2013, are included in the report.

58.1. In 2013 in grade 1 and grade 2 in 2014 she achieved full marks. In 2015 in grade 3 her performance ranged from 79% up to 92% across the terms. In 2016 in grade 4 her performance ranged from 51% to 100% across all terms. Her weakest course was in isiZulu. In 2017 in grade 5 her scores ranged from 56% to 90% she was strongest in English, weakest in mathematics. In 2018 in grade 6 her scores ranged between 59 to 85%. In 2022 she was in grade 10, her scores ranged from 14 to 81%, she was weak in religious studies, mathematics, and physical science.[18] No scores were available for 2019 to 2022, however the table records that she has passed those years, after she moved to the Greenfields Secondary School.[19]

59. Ms Naicker has noted that, "*her intellectual functioning is not commensurate with her scholastic performance. This may be attributed to varying standards of teaching and learning in schools in South Africa, the impact of the Covid19 lockdown as well as her distractibility and impulsivity."*

59.1. In her report she emphasised that varying standards at South African schools have resulted in poor grade 12 output.

59.2. In her view with the necessary support and interventions she is likely to obtain an NQF3 qualification enhancing her physical and practical competencies. She defers to an industrial psychologist regarding her occupational functioning.

[18] case lines 008-220 - 222

[19] Caselines 008-197-198

NEUROSURGEON

60. The minor child consulted this expert in 2016, three years after the accident. Her mother reported that she had immediate loss of consciousness from which she recovered in the ambulance on the way to the hospital. Dr Segwapa recorded a GCS of 15/15 when the paramedics arrived and abrasions on the forehead and upper lip. He recorded that she underwent follow-ups at the same hospital.

61. He recorded her mother reported that she had headaches twice a week on the frontal region, regularly fights with other children and is easily angered. He recorded that she would have a nosebleed once a month.

62. He noted a 1 cm scar on the upper lip and 2cm abrasions scar on the forehead. The doctor conducted a normal physical examination and found her speech fluent. She paid attention well during the interview and sustained it throughout. He found her affect as adequate and appropriate. Her gait was normal, and he recorded that she enjoyed a healthy physical life before the accident.

63. He reported her accident-related injuries as:

> *"she sustained direct trauma to the craniofacial structures. According to the mother she had loss of consciousness from which she recovered on the way to the hospital. When paramedics arrived at the scene her GCS was 15/15. These are features of a mild concussive brain injury."*

64. He noted that she suffered from post-concussion headaches and that 20% of patients remain with chronic symptoms.

65. Dr Segwapa completed a RAF 4 form in May 2021, five years after he diagnosed the head injury, in which he qualified her in terms of the narrative test to suffer

"*severe long-term mental or severe long-term behavioural disturbance or disorder".*

INDUSTRIAL PSYCHOLOGIST

66. A report dated 28 January 2019 and an addendum report in which she refers to a recent educational psychologist report was before the court.[20] This expert concluded that vocationally her difficulties will impact her ability to seek out employment opportunities. She will struggle to engage effectively with co-workers, customers, and prospective employers.

67. Regarding the minor child's premorbid earnings this expert postulated that she would have completed grade 12 by the end of 2024 and it would have taken her 2 to 3 years to secure permanent employment in the formal sector. During that time she would have earned about R18,000 for a period of six months.

68. She postulated that on securing permanent employment the minor child would have earned a total annual package at Patterson A2 median level. She would have completed a diploma within 3 to 4 years on a part-time basis and would have furthered her studies to obtain a degree and earn an annual package at Patterson B2 median level. She would have reached her career ceiling at age 45 and progressed to earn a package of Patterson C4 median level. Thereafter would follow inflationary increases to a retirement age of 65 years old.[21]

69. On her future earnings, post the accident, the expert expressed the view that she would not follow the same pre morbid career path, because of the severity of the head injury, that has led to post concussive headaches and she noted that her neurocognitive difficulties are a result of psychological dysfunction and chronic pain.[22]

---

[20] Caselines 008-228

[21] case lines 008 – 234

[22] Caselines 008-234 at 4.2.4

70. It is postulated that she will join the labour market between the ages of 20 and 25 and earn in the lower quartile of unskilled workers in the informal sector. She is unlikely to increase her level of earnings and will receive only inflationary increases to retirement age of 65.[23]

71. The actuarial calculations considered, Mr Grobbelaar submitted that the minor child has not suffered past loss of earnings and submitted further that a contingency of 20% is fair when considering post morbid earnings, and arrived at a figure of R5 490 245, as the total future loss of earnings.

72. Accordingly, the plaintiff claims an undertaking for future medical expenses and payment of R5 490 245.00 as compensation for future loss of earnings and earning capacity.

JUDGMENT

73. This court is to determine and quantify only the loss of earnings that the minor child will suffer.

74. I must mention at this point that the appeal tribunal of the health professions Council of SA rejected the serious injuries reports of both the neurosurgeon and the orthopaedic surgeon. In my view this is one of the factors that a court must consider.

75. Advocate Grobelaar referred me to the judgment in **Y DE BRUYN v RAF [in** 24**]**, where my brother Sutherland J, held that the determination of an award for general damages is separate and different from a determination of an award for loss of earnings. In that case the court found that the fact that the appeal tribunal had not yet pronounced on the seriousness of the injury did not prevent the matter proceeding on the issue of loss of earnings.

---

[23] case lines 008-235

[24] Case no 29608/2014 dated 9/5/2017, caselines 026-99

76. The court in the judgment stated,

> "*the sole question for determination, on the facts, in a claim for loss of earnings is whether there is proof that the common cause injuries are causally connected to the alleged loss*.[25]

77. The plaintiff in casu relied on medical expert opinion. The experts relied on son the hospital records, the information from the minor child and her mother, together with test results and their interpretations, where tests were conducted between 3 and 10 years after the accident.

78. The judgment of the Supreme Court of appeals in **MICHAEL v LINKSFIELD PARK CLINIC (PTY) LTD[26]**, confirms our courts approach to expert evidence and stated:

> *"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."*

79. In **TWINE v SHARON NAIDOO AND OTHERS[27]**, Valley J, stated:

> *" 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."*

---

[25] [25]

[26] 2001(3) SA 1188 SCA

[27] (38940/14) ZAGPJHC 288

80. Obviously, a court must consider the conspectus of the evidence before it in making its judgment.

HEAD INJURY

81. Dr Segwapa the neurosurgeon diagnosed that the minor child suffered a mild concussive head injury as set out in paragraph 63 above.

82. He conducted a physical examination, noted a report from her mother a hospital report and qualified her for a serious injury in terms of the narrative test. He found she suffered "*severe long term mental or severe long term behavioural disturbance or disorder*." She had had chronic headaches and behavioural problems as reported by her mother.

83. The appeal tribunal rejected this qualification, as set out earlier. The decision of the tribunal is an opinion[28] as stated in the De Bruyn judgment mentioned earlier.

84. Therefore this court is faced with two diametrically opposed opinions, which is of no assistance, in determining the issue of loss due to the head injury arising out of the accident.

85. Dr Segwapa concluded that she suffered a mild concussive head injury given her reported headaches, behavioural problems and loss of consciousness at the scene. He noted her two scars of 1 and 2 cm in length. No collateral evidence as to her recurring headaches or behaviour is noted.

86. In the assessment of a minor child, often the expert looks to early development and scholastic performance as main indicators of the impact of the injury on the minor child.

---

[28] [17]

87. I considered, the minor child's scholastic performance in paragraphs 54 and 58 above. Her performance for several years after the accident was in line with her premorbid performance. She was a high performer at school, albeit that her grades varied, but they also varied in her pre morbid years. She did not fare well in some subjects, which is not unusual as the workload increases and the curriculum changes. I would venture to state that the workload increases incrementally and sometimes students supplement their studies with further tuition and careful selection of subjects, particularly in the final three grades of their school careers.

88. I noted a drop in performance in grade 10, when she likely chose specific subjects to follow through to the final year. This is not unusual, and her expert has noted that curriculum selection, can impact on performance. If the fall out is due to the head injury, as assessed by this expert some 10 years later, the minor's post-accident school performance does not tell the same story. From 2013 to 2018 her results are consistent with her grade 1 performance when she was involved in the accident.

89. Ms Naicker stated that her intellectual functioning was "*not commensurate with her performance at school, she explained it as "varying standards of teaching at schools,"* as set out in earlier in this judgment.

90. No collateral evidence was placed before this court, which in my view could have been easily obtainable, particularly from the school, in regard to her behaviour, her medical condition and her attendance at school.

90.1. Before this court is the evidence of a mother, which it is trite must be approached with caution, who complained on issues of discipline, when the minor child was 10 years old at the time she was examined by Dr Segwapa. If the behaviour problems persisted, the school where she spends much of her waking hours, would have been the best place to illicit the information.

91. It is trite that the plaintiff bears the onus to prove her claim on a balance of probabilities.

92. It is noteworthy that, in casu, the injuries were not considered serious by a panel of medical experts, therefore I would have expected the plaintiff to have done more than simply rely on the expert evidence to prove her loss.

93. Mr Grobelaar asked the court to ignore the description or category of the injury sustained but to rather focus on the sequalae. Collateral information on the sequelae is critical to discharge the onus, particularly when the main expert witnesses' reports have been rejected by other experts in the same field.

94. It is noteworthy that the minor child's clinical psychologist in 2018, she was 12 years old then, found her immediate learning and concentration skills average.

94.1. '*She could engage adequately to two tasks simultaneously.*[29] *Her neurocognitive profile revealed mild cognitive deficits on the following areas: sustaining concentration and visual motor perceptual and non-visual problem solving skills. From her presenting difficulties, it appears that the head injury was not significant. She still presents with behavioural difficulties which can be attributed to the motor vehicle accident."*[30]

94.2 This expert does not set out how her behavioural difficulties can be due to the motor vehicle accident. The report does not set out any logical reasoning to establish that causal connection. No collateral evidence is available in this instance.

95. I am not persuaded that the minor child's intellectual fallouts are due to the mild concussive head injury she sustained in the accident. She sustained a mild head injury, the evidence being an abrasion to the forehead and lip and

[29] Caselines 011-11

[30] case lines 011-14/ 008-254

headaches as report by her mother. She was never treated for a head injury at the hospital, the paramedics recorded a GCS of 15/15 at the scene, and there is no evidence before this court on the treatment she sought in her follow up visits to the hospital.

96. There is only the say so of a mother as proof and the medical experts in my view provide no logical reasons in linking the cognitive fallout outs to the accident. It is trite that an expert opinion is only a guide and that the opinion cannot usurp the task of a court in determining the matter on the facts before it. A court is to bring its own judgment to bear on the facts.

LUMBAR SPINE INJURY

97. It was reported that the minor child suffers severe pain that impacts on her performance and will impact on her earning capacity.

98. Mr Grobbelaar submitted the minor child suffered orthopaedic injuries to the lumbar spine and relied on three reports by the orthopaedic surgeon Dr Schnaid. This expert qualified the minor child as having a serious long-term impairment or loss of a body function in terms of the narrative test which was rejected as stated earlier.

99. I considered Dr Schnaid's reports, and the X ray reports, as set out earlier and find the reports are contradictory and therefor unreliable. I agree with my brother Vally J's words in the Twine judgment. In this matter the facts do not bear out each time a new report is presented as I set out fully, earlier in this judgment.

100. Moreover, I noted that the pleadings do not make any reference to orthopaedic injuries, as set out in paragraph 8 above.

100.1. It is trite that the pleadings define the issues and the case argued was not the one pleaded.

100.2. I am not persuaded that the minor child suffered from an orthopaedic injury arising out of the accident that will have any appreciable effect on her earning capacity.

100.3. The plaintiff has failed to discharge the onus and failed to prove the causal connection between these injuries and the accident.

101. I feel it necessary to state that when a matter proceeds on a default basis, the plaintiff's task in discharging the onus is somewhat more onerous, particularly in the absence of an opponent. Precision and accuracy of evidence is critical to a court hearing a matter.

102. The court has a duty to the public in the award of public funds.

103. The plaintiff in casu failed to discharge the onus on the pleaded case and failed even on the argued case if it were to be entertained.

104. I considered the evidence of the other experts. Their reports are premised on the diagnosis of the neurosurgeon and the orthopaedic surgeon, whose reports are unreliable. None of the experts sought collateral evidence.

105. Ms Pillay's recommendations that the child be placed in a special learning school and her references to learning barriers is illogical against the objective evidence of school reports and her overall performance.

105.1. Albeit, that the minor child encountered problems at a time when she moved to a secondary school and was to choose her curriculum for the three years to completion of her studies, I am not persuaded that she could not perform at a mainstream school when regard is had to her high scores for over 7 years at her primary school.

106. Ms Naicker found that she was rendered vulnerable as a result of the accident[31] as she assessed her intellectual functioning,

> "*her injuries and sequalae have undermined her overall functioning an quality of life. The pain she has to endure impacts on her affect and levels of functioning at school. She is demotivated to achieve her full potential."*

106.1. Ms Naicker relied on reports from only the child's mother, (a person who has an interest in the matter), the report of the orthopaedic surgeon, which is unreliable, and noted that her cognitive deficits have been left untreated. However, she provides no logical reasons, from test results, which established that the "accident was the cause of the minors intellectual and emotional state".

106.2. The minor child was 16 years old when she examined her, she was already into a different phase of her life from the date of the accident. Her emotional state cannot be ascribed only to the accident which she was involved in 4 years prior to the date of the accident. If it could have been only the accident, collateral evidence would have been valuable to a court.

107. On the facts before me, I am not persuaded that the mild head injury, had any appreciable effect on the minor child's earning capacity.

108. I am not persuaded that the minor child suffered any significant injury to the lumbar spine that impacted on her earning capacity to any appreciable degree. Besides, it was not the case that was pleaded.

109. Accordingly, the plaintiff has failed to discharge her onus on a balance of probabilities and therefor her claim must fail.

I make the following order:

---

[31] Caselines 008-222

1. The claim for loss of earnings is dismissed.

2. The Defendant is to furnish the plaintiff with an undertaking in terms of s17(4)(a) of the Road Accident Fund Act.

3. No order for costs.

AHOMED AJ
Acting Judge of the High Court

This judgment was prepared and authored by Acting Judge Mahomed. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 22 February 2023.

Date of Hearing: 2 February 2023
Date of Judgment: 22 February 2023

Appearances:

For the plaintiff:	Adv D Grobelaar
	076 278 3727
Instructed by:	Dudula Inc
	Ref Mr Y Dudula/ FM/S30
Tel:	011 331 1585
For defendant:	no appearance