IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 11404/2022

DATE: 13-05-2025

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO.
(3) REVISED.
DATE 13/05/2025
SIGNATURE

In the matter between

MAXWELL NDEBELE Applicant

and

ROAD ACCIDENT FUND Respondent

J U D G M E N T

WEIDEMAN, AJ: The collision from which this claim arose, occurred on 19 December 2019, at which stage the plaintiff, then a minor, was a pedestrian. The aspect of liability had previously been resolved through a concession by the defendant on 13 April 2022. The documentation in respect thereof appear on CaseLines 02-1.

In paragraph 7 of the particulars of claim the injuries are pleaded as follows:

1. fracture of the right clavicle;
2. multiple abrasions.

In paragraph 9 of the particulars of claim the claim is set out as follows:

Past medical expenses	R 5 000.
Future medical expenses	R 50 000.
Future loss of income	R1 590 400.
General damages	R 800 000.

At the commencement of the hearing of the matter, counsel indicated that the claim for past medical expenses had been abandoned and that the minor does not qualify for general damages. The remaining heads of damage of future medical expenses and future loss of income were before court.

The medico legal reports filed of record and which have been placed before court by way of a rule 38(2) application, moved from the bar, confirmed that future medical treatment may be required as a result of the sequelae of the injuries. An undertaking as is provided for in section 17(4)(a) of the Road Accident Fund Act follows.

The remaining question is that of potential future loss of income.

In this regard the caselaw in respect of the value of expert opinion is fairly well established, and the Supreme Court of Appeal, in many instances, indicated that an expert's opinion, or the value thereof, is directly linked to the factual foundation on which the opinion is based. Nevertheless, a court is never bound to the opinion of an expert. To the extent that the experts in this matter suggested that there may be a directly quantifiable future loss of income as a result of a fractured collarbone, the opinions are not accepted.

There is no factual basis to support such opinion, nor is there any reference to literature or any other research that might substantiate the position taken by the experts. Similarly, the calculation was done on the premise that the plaintiff would have worked until the age of 67.5. In enquiring from counsel as to whether there is any evidence to support this approach, the answer was in the negative.

Based on the evidence before this court, there is no quantifiable direct claim for future loss of income. Does

that automatically imply that there is no claim *per se*? No, it does not. It may well be possible that the sequelae of the injury will impede the plaintiff's ability to freely offer his services in the employment market, but the value of such an impediment cannot be actuarially quantified.

A court has the ability to award a lump sum when no quantifiable figure is possible. To that extent and considering the available evidence and counsel's very able submissions from the bar, I have decided to exercise my discretion and award an amount of R500 000 as impairment of future earning capacity.

ORDER

My order reads as follows:

1. The plaintiff's application in terms of rule 38(2), is granted.

2. The defendant shall pay the plaintiff the sum of R500 000 in respect of impairment of earning capacity.

3. The defendant shall provide the plaintiff with an undertaking, as is provided for in section 17(4)(a) of the Road Accident Fund Act, for such future hospital, medical or ancillary expenses as the minor may require as a result of injuries sustained in the accident that occurred on 19 December 2019.

4. The plaintiff, having been substantially successful, is entitled to his party and party costs as taxed or agreed, including the cost of the medical legal reports filed off record and counsel's fees on scale B.

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WEIDEMAN, AJ

JUDGE OF THE HIGH COURT

DATE: 13/05/2025