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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2014/18257

- | | |
|-----|--|
| (1) | <u>REPORTABLE: YES / NO</u> |
| (2) | <u>OF INTEREST TO OTHER JUDGES: YES/NO</u> |
| (3) | <u>REVISED.</u> |

.....
DATE

.....
SIGNATURE

In the matter between:

SISANDA SENDZELA obo [I.....] [S.....]

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

J U D G M E N T

WRIGHT J

1. Mr Godfrey Malumane was appointed curator ad litem to the minor child [I.....]. [I.....] was born on 8 August 2009. On 31 December 2012, at the age

of three, she was injured in a car accident. Her mother and aunt were killed in the accident. The facts in this case are common cause. The claim is for general damages and future loss of earnings. It is agreed, correctly, between the parties' legal representatives and their actuaries that the claim for general damages is not capped. [I.....] is now six years old.

2. Prior to the accident [I.....] was a normal child. [I.....] lost consciousness in the accident. Her GCS reading was 6/15 on admission. She was hospitalized for 15 days. She suffers from nose-bleeds, bed-wetting, headaches, some memory loss to the extent that she will probably not be able to earn when she grows older, scarring on her forehead, lumbar back-pain and cervical pain. It is unknown whether or not (apart from the memory loss) these problems will resolve themselves over time. She is in grade R at school. She plays normally with other children. There is a 15% chance that she will develop epilepsy. Ms Boikanyo for [I.....] suggested that R950 000 to R1 000 000 would be fair compensation for general damages. Mr Gama, for the Fund, argued for R500 000. In my view R800 000 meets the justice of the case.
3. Both sides filed actuaries' reports. Both actuaries moved from the premise that [I.....] will not earn in the future. This correct assumption is based on the reports of educational and industrial psychologists. Both sides assumed, correctly, that [I.....] would, but for the accident have obtained matric and entered the workplace as a semi-skilled person. The actuary for [I.....] assessed her claim at R3 112 294. He assumed a starting work age of 24 but for the accident. He assumed retirement at age 65. He assumed a starting salary of R314 000 per year. He did not provide for a deduction for contingencies. The Fund's actuary assumed a starting work age of 19. She assumed a retirement age of 65. She assumed that [I.....] would have started working at an annual salary of R18 600. The significant difference between the two actuaries is the starting salary. It is to be noted that the Fund's actuary, Ms Wiggill, relies on the well-known work by [I.....]'s actuary, Mr Koch. Neither side led any evidence. In my view, taking into account the facts before me, including a 25% deduction for contingencies, the sum of R2 025 000 is an accurate assessment of damages for future loss of earnings. It seems to me that [I.....]'s actuary may have been a little over-optimistic in

his assessment of the future starting salary. By the same token, Ms Wiggil, I think has underestimated the starting salary. Neither counsel could suggest any reason why my assessment is wrong.

4. I was seized with a similar case earlier this week. I gave an unreportable judgment in the matter of Maswawatla, Jeremiah obo Phindani, Thandazile, case number 13964/2013. The facts were similar although in the present case the injuries and sequelae are slightly more severe, justifying a higher award for general damages. In both cases a young girl suffered similar injuries in a car accident and lost a parent. Both would, but for the accidents have gone on to obtain matric. Both would have entered the labour market at the same level without a tertiary education. The sum I intend awarding in the present case for future loss of earnings is the same as that awarded in the other case.
5. The parties have provided me with a draft order catering for a certificate to be provided by the Fund to cover future medical costs, costs of suit and the formation of a trust.
6. I make an order in terms of a draft order marked X.

GC WRIGHT J
JUDGE OF THE HIGH COURT,
GAUTENG LOCAL DIVISION,
JOHANNESBURG

On behalf of the Plaintiff:

Adv M Boikanyo

Instructed by:

Mkhabela Inc

011 331 3147

On behalf of the Defendant:

Adv N Gama

Instructed by:

Mayat Nurick Langa Attorneys

011 442 4250

Date of Hearing: 30 October 2015

Date of Judgment: 30 October 2015