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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 18275/2015

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

...24/11/2016.....
DATE

.....
SIGNATURE

In the matter between:

**NGUBENI L obo
S V NGUBENI**

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

J U D G M E N T

MAHALELO, AJ:

[1] On 3 September 2014 at approximately 07:30 am an accident occurred along Elias Motswaledi Road and Corner Nxumalo Street, Soweto, between a motor vehicle bearing registration letters [...] GP, hereinafter referred to as the insured motor vehicle and driven by Mr Raymond More, hereinafter referred to as the insured driver and the minor child who was 13 years old and riding a bicycle at that time.

[2] The plaintiff in her representative capacity as the natural mother and guardian of the aforesaid minor child instituted action against the defendant as a statutory insurer in terms of the Road Accident Fund Act 56 of 1996 for damages arising from the injuries suffered by the minor as a result of the accident.

[3] The defendant has conceded liability for 90% of the plaintiff's proven damages. The court was left with the task of *inter alia*, finding whether the minor child's scholastic performance pre and post-accident is the same and whether the injuries sustained in the accident directly influenced his intellectual ability to learn. Consequently the court was required to make a finding on the minor child's future loss of income, general damages and contingencies to be applied.

COMMON CAUSE FACTORS

[4] It is common cause, or at least not disputed that:

- 4.1 The motor vehicle accident occurred on 3 September 2014.
- 4.2 The minor sustained the following injuries in the accident:
 - 4.2.1 A brain injury of a mild degree, with loss of consciousness of approximately 15 minutes.
 - 4.2.2 Right shoulder/elbow injury.
 - 4.2.3 Right knee/lower leg injury (proximal tibia fracture).
- 4.3 The *sequelae* of the injuries the minor child suffered in the accident has been admitted.
- 4.4 There is no reported developmental history or psychiatric condition that would affect neuropsychological functioning or neurological insult prior to the accident.
- 4.5 The minor child did his Grade 1 to Grade 3 during 2008 to 2010 at Vuvyo Primary School. From 2011 to 2013 he attended Grade 4 to 6 at Makola Primary School. The minor child passed Grade 1 to 6. As a result of the injuries and the *sequelae* thereof he failed Grade 7 in 2014 and repeated it in 2015 and failed, but was promoted and is currently in Grade 8.
- 4.6 The school reports of the minor child were admitted.

THE JOINT MINUTES

[5] In their joint minutes, the Orthopaedic Surgeons, Professor Scheepers and Dr Dybala are agreed that the minor sustained a minor head injury, right shoulder/elbow injury and right knee/lower leg injury (proximal tibia fracture). Both doctors are further agreed that the minor should be treated conservatively for his aches and pains and attend physiotherapy sessions. They agree that the tibia fracture has united. Professor Scheepers opined that surgery was not indicated for the patient whereas Dr Dybala's view was that due to the rotator cuff and tendon injury surgery might be necessary. They deferred to the relevant experts with regard to the non-orthopaedic injuries.

[6] With regard to productivity and working ability Professor Scheepers opined that those have not been affected by the injuries the minor child sustained in the accident whereas Dr Dybala was of the view that they were affected. In this regard Dr Dybala deferred to the Educational Psychologist and Occupational Therapist. Both doctors are agreed that the minor child did not reach a Whole Person Impairment of 30% from an orthopaedic point of view.

[7] According to B Mosadi and J W Earle, the Neurosurgeons, the minor child had fractured his right tibia and the right elbow and the injuries were

treated conservatively by plaster cast and bandaging. As to the effects of these injuries they deferred to the Orthopaedic Surgeon. Both doctors are agreed that although the injury the minor child sustained on the head is regarded as a mild brain injury, he has been having difficulty in school especially with his memory and must accordingly be assessed by an educational psychologist.

[8] They further agreed that this injury is unlikely to lead to post-manic epilepsy but provision should be made for a slight risk of it occurring nevertheless. They expressed the view that the minor child's funds need to be protected until he comes of age.

[9] The Clinical Psychologists, Mr Sampson and Ms Healy are agreed that pre-accident there was no reported developmental history of or psychiatric condition that could affect neuropsychological functioning or neurological insult as a result the minor's pre-morbid intellectual potential was estimated to have been in the average range based on his scores on the language subtests, which provided an estimate of his pre-morbid intellectual functioning.

[10] Mr Sampson opined that, based on the available information which indicated loss of consciousness and a short period of anterograde amnesia, the minor child appeared to have sustained at least a mild traumatic brain injury. Ms Healy believes that he sustained a mild to moderate brain injury. However, deference is given to the Neurosurgeon to confirm the presence and severity of the head injury.

[11] According to Mr Sampson, the minor has mild deficits in attention for complex tasks, unstructured auditory-verbal information and poor post-accident adjustment with significant depressive symptoms. In addition Ms Healy found psychomotor slowing, difficulties with visual attention, impaired verbal reasoning and mild executive dysfunction. Ms Healy was of the opinion that these results were subject to the combined impact of the brain injury, as well as the experience of pain and anxiety on the day of assessment which contributed to the minor's performance. Ms Healy and Mr Sampson are agreed that in light of the neuropsychological findings, the minor's future scholastic, psychological and interpersonal functioning have been negatively impacted. Both are further agreed that the minor has suffered a temporary loss of amenities whilst hospitalised and continues to have a reduced quality and enjoyment of life. They deferred to the Industrial Psychologist for further comment on the impact of the injuries on the minor's future workplace functioning, employability and loss of earnings.

[12] The Occupational Therapists, Ms Siweya and Ms Molemi are agreed that the minor will benefit from 50-80 hours of occupational therapy as well as 4 hours of physical therapy. With regard to other intervention, they recommended physiotherapy, biokinetics as well as remedial intervention. They are further agreed that the minor child demonstrated shortfalls in his cognitive perceptual skills and these are expected to have a negative effect on his academic progression, for this he will benefit from occupational therapy intervention. They noted that he is more likely to continue to fail to meet the

demands of the higher grades as the complexity and volumes of learning increases. According to Ms Siweya the minor has poor frustration tolerance, is easily irritable and withdrawn.

[13] They further agreed that the minor has remaining neurocognitive impairments which may influence his future employment prospects and that he will benefit from remedial inputs to address his current developmental delays. With regard to securing gainful employment, they are agreed that that would depend on his academic achievement following recommended intervention. However, they are agreed that the accident has curtailed his residual ability with reduction in his scope and choice of employment as an adult.

[14] The Industrial Psychologists Mrs Roets and Mrs Du Toit, are in agreement that the minor child started his Grade 1 in 2008 and progressed through to higher grades without any repeats. Mrs Roets was of the view that the fact that the minor had positive role models in his family would probably have influenced him to carve a career for himself in the corporate sector of the formal labour market. Both are agreed that the minor was still young at the time of the accident, making it difficult to postulate a clear career path for him, as a result they are agreed that a “*broad brush*” approach should be utilised in determining his pre-accident potential. They deferred the minor’s pre-morbid scholastic ability to the Educational Psychologists. Based on the disagreement between the Educational Psychologists, they have postulated two scenarios: They are agreed that in the first pre-accident scenario and

following the opinion of Ms Sepenyane, the minor would have entered the open labour market with a university degree. This entails that he would have completed matric and studied towards a university degree on a full time basis. As a result he would have entered the open labour market in a position on B4 Paterson level (Median Annual Guaranteed Package). He may have progressed to a Paterson D1 level.

[15] In the second pre-accident scenario, following the opinion of Ms Moller, they are agreed that the minor would have entered the open labour market with a Grade 12 qualification only. He would have completed matric with educational and remedial support. Further tertiary education would have been an unrealistic option. He would have entered the labour market on the Paterson A3-level (Median Basic Salary) and progressing to the B3/B4-levels where after the usual inflationary increases until retirement would apply. They are agreed that the minor would probably have been able to work until the retirement age of 65 years.

[16] With regard to the minor child's post-accident ability, Mrs Roets and Mrs Du Toit are agreed that two scenarios can also be postulated. With the first post-accident scenario, following the opinions of Ms Sepenyane, Ms Hofmeyr, Dr Wynand Ndlovu, Mr Sampson, Ms Healy, Dr Visser, Dr Dybala, Ms Simeya and Ms Molemi, the minor would probably be able to work in temporary or contract positions for a period of two to three years, earning on Paterson A1- level (lower quartile – Basic Salary). Thereafter he will be able to secure permanent employment in the formal labour market earning within

the B3 Paterson level. He would be able to progress to the C1/C2 Paterson level by the age 45. This will represent his career ceiling. From this point onwards he will earn inflationary increases until retirement.

[17] They are further agreed that, whilst accepting the opinions of Ms Moller and Dr Earle, post-accident, the minor will enter the open labour market with a Grade 12 qualification only. According to them, in this scenario the minor child retains his pre-morbid scholastic potential and thus will, with support, obtain a Grade 12 qualification. However, he may be a more vulnerable and less competitive employee on the open labour market. His career ceiling may be at a lower level. He may find himself stagnating in his career. Both are agreed that a higher than usual pre- and post-accident contingency deduction should be applied.

THE PLAINTIFF'S CASE

[18] The defendant admitted the following unopposed reports of the plaintiff's experts:

18.1 Dr Visser (Psychiatrist).

18.2 Dr Wynand Ndlovu (Neurologist).

18.3 Dr Koning (Ophthalmologist).

[19] According to Dr Visser's report the minor child sustained a mild traumatic brain injury with concussion and resultant neurocognitive impairments, post-traumatic vascular headaches and symptomatic epilepsy. He diagnosed him to be suffering from Adjustment Disorder with Emotional, Behavioural and Intellectual Disturbances, compounded by concussion. According to him, the minor child's future scholastic performance and employability have been greatly affected by the injury. Dr Koning, in his report, stated that the minor suffered no ophthalmological injury due to the accident.

[20] The plaintiff also led the evidence of L Ngubeni, the minor child's mother and of the following experts: Ms Sepenyane (Educational Psychologist) and Dr Visser (Psychiatrist).

[21] L Ngubeni ("*Ms Ngubeni*") testified that:

The biological father of her minor child was a pharmacist. He passed ON in 2001. Her own brother is a health inspector, he obtained a degree and an honours. Prior to the accident the minor child actively participated in school activities such as chess and soccer. After the accident the school which the minor child attended contacted her to inform her that he could no longer participate in chess as he was thinking slower and could no longer play fast. According to her, the minor child could also no longer participate in soccer as a result of the pain in his right knee. She testified further that after the accident, the minor child became forgetful, prior to the accident he was talkative, would play with his siblings and was neat. After the accident he

became withdrawn, no longer had many friends and was unhappy most of the time. He played less frequently with his siblings and did so only when he wanted to. Ms Ngubeni testified furthermore that ever since the accident the minor suffered nightmares, daily headaches, frequent nose bleeding and wetted his bed.

[22] She testified further that from Grade 4 to mid-Grade 6 the minor child resided with his step-aunt. He was unhappy as the children of the step-aunt were not treating him well, he did not perform well in Grade 6 and as a result he had to return home to stay with her again. In term 3 of Grade 6 his scholastic performance started to improve and he received an award in mathematics. In 2014, during term 1 and 2 of Grade 7 there was a remarkable improvement in his school performance. After the accident which occurred on 3 September 2014 he failed Grade 7 and repeated it in 2015. He was condoned and promoted to Grade 8 in 2016.

[23] Ms Sepenyane testified that the minor child's school performance was pre-morbidly above average. Post-morbid, he tested at an average level. She acknowledged a significant difference between his Grade 6 report and the report for the first and second terms in Grade 7. According to her the problems experienced by the minor child in Grade 6 could not have been cognitive. She explained that they could have been as a result of emotional challenges.

[24] Ms Sepenyane testified further that from the school reports, the minor child's scholastic performance drastically declined after the accident. She attributed this directly to the accident. She concurred with the findings of the defendant's Neuropsychologist that the minor child's tests results revealed mainly moderate to severe neurocognitive difficulties as set out in paragraph 11.12 on page 39 of Exhibit "B". She testified further that but for the accident, the minor child would have completed matric and studied towards a University degree. Her opinion was based on the following: pre-accident the minor child was of high average intellect, the minor's mother obtained a Grade 12 and further training, his father was a pharmacist, his uncle has an honours degree and is a role model.

[25] She furthermore testified that post-accident, with intensive remedial action the minor child will only obtain a low level Grade 12. She disagreed with the defendant's Educational Psychologist that the minor child had pre-existing learning difficulties. According to her any problem which might have included emotional challenges was overcome as evidenced in the minor's school report of the first and second terms of Grade 7. She agreed with Ms Moller on the post-morbid scenario in that, the minor would have obtained a Grade 12 having regard to the accident.

[26] Dr Visser testified that according to his assessment, the minor child's functioning was impaired to a modern degree affecting domains of scholastic, social, interpersonal and leisure functioning. His quality of life has eroded substantially and that was accident-related. Dr Visser explained that where a

child enters into puberty at a disadvantage as in the present case (as a result of the accident) the child will be more prone to temper outbursts, irritability, defiance by authority, depression and deviant behaviour. The transition through puberty would be more traumatic than in an ordinary person. According to Dr Visser the most appropriate time to start remedial treatment is immediately after the accident. In the present case, if the minor had immediately received psychological remedial treatment, given the fact that he has an above average intellect, he would have negotiated school and his prognosis would have been good. However, due to the lapse of time, the prognosis is not too good, but with very aggressive and intensive therapy the minor would be able to obtain a Grade 12 qualification.

[27] Dr Visser testified further that the minor suffered from anxiety and that resulted in variable erratic responses. According to him, the minor was well adapted before the accident, the accident resulted in significant emotional trauma which occurred at a critical phase of his neuro-development and if he could have been treated immediately, there would have been a more favourable outcome. As a result the delay in administering treatment made the prognosis worse as it resulted in scholastic failure and made it more difficult for the minor to catch up. According to Dr Visser there was no improvement on the minor's scholastic performance.

THE DEFENDANT'S CASE

[28] The plaintiff admitted the report of the defendant's Neurosurgeon (Dr B Mosadi). According to the report the minor developed memory problems after the accident. His recent memory appears to be impaired.

[29] The defendant called only one witness to testify.

[30] Ms Erika Alida Moller, the Educational Psychologist testified that, during the compilation of her report on 12 April 2016 she was not in possession of all of the minor child's school reports. She only had a Grade 8 report. She was asked to comment on the minor's scholastic performance from Grade 1 to 3. Her comment was that the minor's performance was "*very very average*" and the child was barely making it. She was of the view that the minor child's scholastic performance pre- and post-accident was the same. She testified that it was improbable that the minor's injuries sustained in the accident would have directly influenced his intellectual potential or his ability to learn. She however conceded that he was now a vulnerable learner and his post-accident performance and learning was exaggerated due to the accident.

[31] According to Ms Moller the minor's pre-accident scholastic performance was moderate and he still needed support even pre-accident to complete matric. She was of the view that with high demand in university entrance and the requirement for matric exemption, the minor child would not have achieved university entrance. This is so, according to her, when regard is had to the fact that the minor child still had unresolved emotional problems during assessment.

[32] Ms Moller testified further that the minor still needed remedial therapy to complete matric even though it was going to be at late stages. According to her, with extensive remedial assistance, it was possible to get the minor to university.

EVALUATION OF THE EVIDENCE

[33] The injuries sustained by the minor child in the accident are common cause. The physical injuries have all healed although it was indicated by the experts that still complained of pains from some of the injuries he sustained in the accident. The *sequelae* of his injuries is set out in the joint minutes of the Industrial Psychologists is that the minor sustained a traumatic head injury with resultant neurocognitive impairment, post-traumatic vascular headaches and symptomatic epilepsy.

[34] Dr Mosadi and Dr Earle stated in their joint minute that the *sequelae* of the injuries from a neuropsychological view was that the minor was having difficulty with his memory at school post-accident. According to Dr Mosadi the minor suffered severe long term mental and behavioural disturbance disorder as a result of the injuries he sustained in the accident.

[35] Almost all the experts are agreed that although the injury on the brain was of a mild degree, the *sequelae* thereof negatively impacted on the minor child's scholastic, interpersonal and psychological functioning.

[36] The crucial issue in quantifying the minor child's damages for future loss of earnings is to consider the effects of his physical as well as psychological deficits on his scholastic performance and therefore future earning capacity. His pre and post scholastic performance has been described in the joint minute of the Educational Psychologists and their reports. A contentious issue arising concerned the fact whether the minor had pre-existing learning problems and whether the pre and post morbid scholastic performance was the same. Ms Sepenyane was of the view that whatever problems the minor had pre- accident, were not cognitive. She opined that the minor's performance from all his school reports demonstrated an above average performance. According to her the minor would have been able to complete matric and attain a University Degree.

[37] This brings me to the evidence of Ms Möller, the Defendant's Educational Psychologist. She disagreed with the views expressed by Ms Sepenyane. She was of the view that the minor child's underlying scholastic skills raised concerns pre-accident already. According to her, from the reports made available, the minor already presented with problems in terms of his progress prior to the accident and his performance was below average. She was of the view that he would have been able to complete grade 12 with educational and remedial support to bridge the gaps in his learning. According to her, tertiary studies would have been unrealistic if one considers his below average pre-accident performance and significant learning problems. I am inclined to accept the evidence of Ms Sepenyane in preference to that of Ms

Moller., as it is in all respects in accordance with the evidence and the views expressed by other experts. Ms Moller conceded that at the time of compiling her report she did not have all the school reports of the minor child, she was in possession of his grade 8 report only. This is so despite the school reports being furnished to the defendant long before trial. Furthermore the report of Ms Moller contained patent errors on scoring and determining whether the minor child was average or above average as can be seen from pages 86 to 87 of her report. No less than three patent errors were pointed to her during cross examination which errors were conceded. No explanation was given as to why according to her those errors would not affect the net result of the tests.

[38] The defendant admitted the assumptions used by the plaintiff's actuary, Munro Forensics in their report dated 11 August 2016. The defendant further admitted that the calculations in this report were correct.

[39] Based on the calculations of the actuary and the previous finding that the minor would have studied towards a University degree, regard must be had to the second scenario referred to in Exhibit "B1". With respect to the post-morbid scenario it seems to be the overall opinion that with intense remedial action the minor would be able to obtain a Grade 12. I have accepted these opinions.

[40] On this scenario the minor child's future uninjured earnings amounts to R8 478 400,00 and his injured earnings to R3 626 900,00. This is before any contingencies are applied.

[41] As far as appropriate contingency deduction to be applied, I was referred to the following comparable cases:

41.1 *De Jongh v Du Pisane* 2004 5 QOD J2-103 (SCA). The plaintiff was 35 years old at the time of collision. The Supreme Court of Appeal found that contingency factors cannot be determined with mathematical precision. The court found further that contingency deductions are discretionary. The court confirmed the 10% contingency deduction applied by the trial court.

41.2 *Van der Plaats v South African Mutual Fire and General Insurance Company Limited* 1980 (3) SA 105 (A). The plaintiff was 33 years old at the time of collision. 10% contingency deduction was applied.

41.3 *Southern Insurance Association Limited v Bailey NO* 1984 (1) SA 98 (A). The injured person had been 2 years old at the time of collision. 25% contingency deduction was applied.

[42] Having regard to these and other authorities and the fact that the minor child is at present 15 years old I consider a contingency deduction of 30% to be appropriate in respect of the “*But for*” scenario .

[43] Having regard to the accident I have taken into consideration the following: That it would only be with intensive therapy and remedial actions that the minor child will achieve matric, he will deteriorate in future, he has already failed Grade 7 twice, the neurocognitive *sequelae* suffered by the minor is of a moderate to severe nature and that he is more likely to continue to fail to meet the demands of higher grades as the complexity and volume of learning increases. I am of the view that 50% contingency deduction should be allowed.

[44] With regard to general damages, the uncontested evidence is that he suffered a mild to moderate brain injury and orthopaedic injuries.

[45] Although described as mild, the *sequelae* of the brain injury is of a moderate to severe nature. The orthopaedic injuries have resulted in the minor child not being able to play soccer or ride his bicycle anymore. The medico-legal reports and joint minutes clearly spells out the problems and difficulties the minor child will experience in future and what he had been through since the accident. I believe that an award of R600 000,00 for general damages will be fair and reasonable.

[46] In the result I believe that the plaintiff's claim for loss of earnings should be computed as follows:

Future loss (uninjured)	R8 478 400,00
Less 30%	<u>R2 543 520,00</u>
	R5 934 880,00
 Future loss (injured)	 R3 626 900,00
Less 50%	<u>R1 813 450,00</u>
Sub-total	R1 813 450,00
 Uninjured earnings	 R5 934 880,00
Less injured earnings	R1 813 450,00
Sub-total	R4 121 430,00
Less 10%	<u>R3 709 287,00</u>
TOTAL LOSS	<u>R3 709 287,00</u>

ORDER

[47] In the result I make the following order:

47.1 The defendant shall pay to the plaintiff the amount of R4 309 287,00 in full and final settlement of the claim.

47.2 The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, No 56 of 1996, for 90% of the costs of S. Ngubeni's ("*the minor*") future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the minor, arising out of the injuries sustained by him in the motor vehicle collision, after such costs have been incurred and upon proof thereof and as set out in the Plaintiff's medico-legal reports. Such undertaking shall include:

47.2.1 the reasonable costs incurred in the establishment of a trust as contemplated herein below and the appointment of trustee(s);

47.2.2 the reasonable costs incurred in the administration of the award;

47.2.3 the reasonable costs incurred in providing security to the satisfaction of the Master of the High Court of South Africa for the administration of the award and the annual retention of such security to meet the requirements of the Master in terms of section 77 of the Administration of Estates Act, provided that the costs contemplated hereinabove shall be

limited to the costs equivalent to those incidental to that which could be claimed by a *curator bonis*.

47.3 The defendant shall make payment of the Plaintiff's agreed or taxed High Court costs of the action to date of this order, such costs to include the cost of two counsel and the costs of the reports and the qualifying and reservation fees, if any, of the following experts:

- 47.3.1 Dr Lisa Roets (Industrial Psychologist);
- 47.3.2 T A Sepenyane (Educational Psychologist);
- 47.3.3 Dr J Earl (Neurosurgeon);
- 47.3.4 C M Siweya (Occupational Therapist);
- 47.3.5 Dr Wynand Ndlovu (Neurologist);
- 47.3.6 Dr H Konig (Ophthalmologist);
- 47.3.7 Dr C Visser (Psychiatrist);
- 47.3.8 Dr D E Mashigo (Medical Practitioner);
- 47.3.9 Dr A Dybala (Orthopaedic Surgeon);
- 47.3.10 C Sampson (Clinical Psychologist);
- 47.3.11 A Hofmeyr (Neuropsychologist);
- 47.3.12 A Munro (Actuary).

47.4 Cost for attending on trial from 12 to 17 August 2016.

47.5 The attorneys for the plaintiff are ordered to cause a trust (hereinafter referred to as "*the trust*") to be established in

accordance with the Trust Property Control Act, 57 of 1988, to pay all monies held in trust by them for the benefit of the minor to the trust.

47.6 The trust instrument contemplated in paragraph 5 above shall make provision for the following:

47.6.1 That Marisca de Beer of Enonix (Pty) Ltd be appointed as the trustee;

47.6.2 That the minor is to be the sole beneficiary of the trust;

47.6.3 That the trustee is to provide security to the satisfaction of the Master;

47.6.4 That the ownership of the trust property vests in the trustee of the trust in the capacity as trustee;

47.6.5 Procedures to resolve any potential disputes, subject to the review of any decision made in accordance therewith by this Honourable Court;

47.6.6 That the trustee be authorised to recover the remuneration of and costs incurred by the trustee

in administering the undertaking in terms of section 17(4)(a) of Act 56 of 1996 in accordance with the certificate of undertaking to be provided by the defendant;

47.6.7 The suspension of the minor's contingent rights in the event of cession, attachment or insolvency, prior to the distribution or payment thereof by the trustee to the minor;

47.6.8 That the amendment of this trust instrument be subject to the leave of the above Honourable Court;

47.6.9 The termination of the trust upon the death of the minor, in which event the trust assets shall pass to the assets of the minor;

47.6.10 That the trust property and the administration thereof be subject to an annual audit.

47.7 The Plaintiff's attorneys shall be entitled to make payment of expenses incurred in respect of accounts rendered by:

47.7.1 the expert witnesses set out *supra*; and

47.7.2 counsel employed on behalf of the Plaintiff;

from the aforesaid funds held by them for the benefit of the patient.

47.8 The Plaintiff's attorneys shall be entitled to payment from the aforesaid funds held by them for the benefit of the minor, of their fees in accordance with their fee agreement.

47.9 The trustee will ensure that the payment in terms of such agreement will be fair and reasonable and the Master of the High Court and/or the trustee may insist on the taxation of an attorney and client bill of costs.

47.10 The order must be served by the Plaintiff's attorney on the Master of the High Court within 30 (thirty) days of the making hereof.

47.11 The Plaintiff's attorney of record shall serve the notice of taxation on the Defendant's attorney of record and allow the Defendant 14 (fourteen) days to make payment of the taxed costs after service of the taxed bill.

**MB MAHALELO
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

APPEARANCES

For Plaintiff :	Adv Combrink
Instructed by:	S Twala Attorneys
For Defendant:	Adv L Nkosi
Instructed by :	Jassat Dhlamini Inc
Date of Hearing:	19 August 2016