

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

CASE NO: 30703/18

**REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED**

In the matter between:

ALENOURE CLAUDETTE APRIL obo a MINOR

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

Date of hearing: 30 August 2021- In a 'virtual hearing' during a videoconference on Microsoft Teams digital platform.

Date of Judgment: 29 September 2021

This judgment is deemed to have been handed down electronically by circulation to the parties representatives via email and uploaded to caselines.

JUDGMENT

GRAF AJ

INTRODUCTION

[1] The plaintiff's claim for damages is on behalf of a minor male child who was involved in a motor vehicle collision on the 19th of October 2016 and on Gordon Road, Bergbron, Roodepoort. The minor child was 8 years, 8 months old at the time of the collision. He is currently 13 years old.

[2] The plaintiff pleaded that a motor vehicle with an unknown registration number, driven by an unknown driver ('the insured driver') collided with the minor child, who was a pedestrian at the time. The minor child sustained serious injuries as a result of the collision, which was caused by the sole negligence of the insured driver.

[3] According to the plaintiff the defendant is liable to compensate the plaintiff in the amount of R3 588 560-00, which includes general damages, future loss of earnings and future hospital and medical expenses.

[4] The defendant entered an appearance to defend and filed a plea, but at some stage the attorneys of record for the defendant withdrew and no new attorneys were appointed. On 22 July 2021 the defendant's defence was struck out. It is on that basis that the plaintiff proceeded with an application for default judgment.

[5] The plaintiff did not present any *viva voce* evidence, but relied on an affidavit from the minor's father and numerous affidavits, accompanied by reports, compiled by expert witnesses.

[6] The court is now called upon to determine the following issues:

[6.1] Was the collision caused as a result of the negligence of the insured driver?

[6.2] If so, did the minor child sustain any injuries as a result of the collision?

[6.3] If so, how should the child be compensated for these injuries? This question should be decided with reference to the following heads of damages:

- Future loss of earnings.
- General damages.

- Future hospital and medical expenses.

[7] I will proceed to deal with these issues *seriatim*.

NEGLIGENCE OF THE INSURED DRIVER

[8] In regards to the merits of the matter the plaintiff relied on the sworn statement of A[....] E[....] ('E[....]'), the minor's father. E[....] was informed that his son was knocked over by a 4x4 with a trailer. Upon his arrival at the scene he found that the driver of the 4x4 had left after the collision. The minor was unconscious and emergency medical personnel assisted him. The minor was rushed to hospital.

[9] E[....] provided a sketch plan of the scene. The defendant admitted the accident report that was compiled at the scene. The insured driver did not provide any version, as he failed to stop at the accident scene.

[10] It was argued on behalf of the plaintiff that there was a rebuttable presumption that the minor child was *doli* and *culpa* *incapax*, and that, due to the failure of the defendant to rebut the presumption, the defendant should be held 100% liable for the plaintiff's proven damages. Counsel referred me to the following passage in Cooper Delictual Liability in Motor Law¹:

'Jansen JA at 399G-H held that there is a rebuttable presumption that an *infantia maior* (a child between the age of 7 years and puberty) is *doli* and *culpa* *incapax*; accordingly, that a claimant who seeks to hold an *infantia maior* liable in delict must prove the child's accountability'.

[11] The above principle was confirmed by the SCA in *Eskom Holdings Ltd v Hendricks*² where the following was stated:

'It was established in the evidence that at the time of the incident Jacques was at primary school in grade five and that he must have been taught the dangers of electricity. But there was little, if any cross-examination of Jacques himself or his parents to determine his intellectual and emotional maturity at the time, nor was any evidence led to rebut the inference of

¹ 1996 at 66

² 2005 (5) SA 503 (SCA) at [513 G-I]

childish impulsive behaviour that arose from the conduct or, for that matter, to assist in the determination of the issue of maturity. In all the circumstances, I am unpersuaded that Eskom succeeded in rebutting the presumption that Jacques was culpa in capax at the time of the incident’.

[12] In as far as the duty that rests on a driver when children are near the road is concerned, counsel referred me to *Jones N.O v Santam Bpk*³ where it was said that:

‘In the present case the driver’s negligence was substantial. His conduct deviated substantially from the norm of the bonus paterfamilias. He was aware of the presence of children yet he did not keep them properly under observation. The law requires a high standard of alertness and care from a driver of a vehicle who sees children upon or near the roadway’.

[13] In the matter presently before me the minor was 8 years, 8 months old at the time of the collision. The insured driver did not stop at the scene and no version whatsoever was obtained from him. The defendant failed to place any facts before this court to rebut the presumption that the minor was culpa in capax. Taking into account the duty of care expected of a reasonable driver and the defendant’s failure to lead any evidence to the contrary, it is accepted that the collision was caused as a result of the insured driver’s negligence. The defendant is accordingly 100% liable for such damages as may be proved by the plaintiff.

INJURIES SUSTAINED BY THE CHILD

[14] The plaintiff submitted the reports, confirmed by way of affidavit, from Dr HET van den Bout (orthopaedic surgeon), Dr PH Kritzinger (neurologist), Dr Jonathan Levin (ophthalmologist), Rosalind Macnab (educational psychologist), Marina Genis (clinical psychologist) and Desiree Olivier (occupational therapist) to prove the injuries sustained by the minor as a result of the collision.

[15] The plaintiff’s orthopaedic surgeon, Dr HET van den Bout, recorded that the minor sustained serious injuries, which included evidence of a head injury with abrasions on the face and loss of consciousness, neck pain, a right distal radius and ulna fracture, an injury of the right ulnar nerve, a left clavicle fracture, a pelvis

³ 1965 (2) SA 542 (A) at 544 G-H

fracture and multiple abrasions. As result of the injuries the minor was taken to theatre for a closed reduction and internal fixation of the right distal fracture. His right arm was splinted and he was given a sling for the left arm. Plaster of paris was applied. The plaster of paris and k-wires were later removed and the minor was given analgesia. The pelvic fracture was treated with bed rest and he received physiotherapy. In February 2017 an EMG was done which revealed an injury of the right ulnar nerve, with prolonged latency and decreased amplitude and an unstimulatable sensory nerve conduction study. On examination the minor presented with faint scarring of the forehead, two scars on the right wrist, two scars on the right forearm, a scar on the left forearm. The minor still experienced tenderness, discomfort and pain at the time of examination. Dr van den Bout concluded that the minor passed the narrative test and that he qualified for general damages under a serious long-term impairment or loss of body function due to the injury of his dominant right upper limb, with residual pain, weakness and the functional impairment, as well as for the pelvic fracture, with possible involvement of the left SI joint.

[16] According to Dr PH Kritzinger, the plaintiff's neurologist, the minor sustained a mild closed head injury as a result of the collision. He has a decrease in cognitive functioning and general concentration ability and a decrease in his reading ability. In addition, the minor suffers from chronic daily headaches. Dr Kritzinger opined that the head injury should not give rise to any long-term complications, but that about 5% to 10% of young children show attention deficits and other learning disabilities after a mild closed heard injury and loss of consciousness. He could not exclude the possibility that the minor suffered some intellectual deterioration because of the head injury and the white matter lesions of the brain, not indicated on the CT scan of the brain.

[17] The essence of Dr Jonathan Levin, the ophthalmologist's report is that he could not find any evidence of injury to the minor's eyes, visual pathways and brain visual cortex. He detected astigmatism which had no direct relationship with the accident and was most likely pre-existing.

[18] The plaintiff's educational psychologist, Rosalind Macnab, recorded that the minor was found to have difficulties consistent with a mild head injury. The minor

presented with significant neurocognitive deficits which will inevitably impact on his ability to learn and his academic progress. She recommended that the minor be placed in a special needs school. She opined that he will be unable to actualize his pre-morbid potential due to his apparent neurocognitive and scholastic weaknesses, in combination with his impaired post-accident IQ. The IQ test results suggested that the minor's pre-accident intellectual ability was within the below average range. However, Macnab was of the opinion that the minor would pre-accident have been able to attain a Grade 12, albeit a low-level practical matric, but that due to his current neurocognitive difficulties he will not matriculate.

[19] According to Marina Genis, the plaintiff's clinical psychologist, the minor was experiencing depressive symptoms, symptoms of Major depressive Disorder and that he suffered from Post-Traumatic Stress Disorder. The minor's cognitive deficits and psychological symptoms were likely to lead to a decrease in his academic performance, when compared to his premorbid level of academic potential. She was of the view that the minor's psychological symptoms could improve with recommended treatment but that the ongoing physical limitations and pain could undermine such improvement.

[20] Desiree Oliver, the plaintiff's occupational therapist, recorded that the minor was using his non-dominant left hand; he had difficulty with bilateral upper limb task; difficulty to stand long or walk far due to the pain in his left lower limb; and he had difficulty in finding a comfortable position to sleep in due to the pain. The minor presented with some cognitive, psychological and visual-perceptual fallout. Olivier opined that as a result of the injuries sustained, and considering the involvement of the minor's dominant hand, he might require suitable workplace accommodations.

[21] I have carefully scrutinised the abovementioned reports and I am satisfied with the cogency and veracity of these reports. It is clear that the minor sustained injuries as a result of the collision and what remains to be considered is the issue of how he should be compensated as a result of these injuries.

QUANTUM OF DAMAGES

[22] As previously alluded to the determination of the quantum of damages will be dealt with under the headings of future loss of earnings, general damages and future hospital and medical expenses.

Future loss of earnings

[23] The plaintiff relied on the report, as confirmed via affidavit, of an industrial psychologist, Nicola Vermooten ('Vermooten'), and an actuarial report compiled by R. Immerman ('Immerman') from Gerard Jacobson Consulting Actuaries in support of the claim for future loss of earnings.

[24] Vermooten had regard to the reports compiled by the plaintiff's other experts, including the educational psychologist, in her assessment of the minor's vocational potential. She concluded that based on the minor's young age two pre-morbid career progression scenarios were probable. Both scenarios are based on the assumption that, but for the accident, the minor would have completed Grade 12. In scenario 1 the minor would have entered into and progressed within the formal labour market. In scenario 2 the minor would have entered into and progressed within the informal labour market. In considering the minor's post-morbid career progression Vermooten opined that his pre-morbid educational and career scenarios would not prevail. It is unlikely that the minor will matriculate. He will no longer be suited to semi-skilled positions in the formal sector, only to unskilled and lower semi-skilled positions in the informal sector.

[25] Immerman based his actuarial calculations of the minor's loss of future earnings on Vermooten's postulations. He determined the value of the minor's projected future income, but for the accident, on the basis of scenario 1, as R 3 771 849-00. The value of the projected future income, but for the accident, on the basis of scenario 2 is R 2 473 040-00. The value of the minor's projected future income, having regard to the accident, was determined as R1 305 155-00. After applying a 20% contingency deduction to the pre-morbid income and a 30% contingency deduction to the post-morbid income Immerman calculated the net future loss of income on the basis of scenario 1 at R 2 103 871-00. Applying the same contingency deductions in respect of scenario 2 the net future loss of income amounts to R 1 064 824-00.

[26] Counsel for the plaintiff submitted that a contingency deduction of 25% in respect of the pre-morbid income and 50% in respect of the post-morbid income would be more suitable under the circumstances of this matter. In view of the fact that both scenarios catered for are probable, counsel proposed that the median between the two scenarios be awarded.

[27] It is trite that the determination of a suitable contingency deduction falls within the discretion of the court. In *Southern Insurance Association Ltd v Bailey*⁴ the advantage of applying actuarial calculations to assist in this task was emphasised. It was stated that:

‘Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future without the benefit of crystal balls, soothsayers, augers or oracles. All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of a loss. It has open to it, two possible approaches. One is for the Judge to make a round estimate on an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown. The other is to try and make an assessment, by way of mathematical calculations on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser extent. But the court cannot for this reason adopt a *non-possumus* attitude and make no award’.

[28] It was highlighted, however, that the trial judge is not ‘tied down by inexorable actuarial calculations’ and that he (or she) has a ‘large discretion to award what he considers right’. In exercising that discretion, a discount should be made for ‘contingencies’ or the ‘vicissitudes of life’. These include possibilities such as the plaintiff experiencing periods of unemployment or having less than a ‘normal

⁴ 1984 (1) SA 98 (A) at 113H- 114E

expectation of life'. The amount of discount may vary, depending on the facts of the case⁵.

[29] The learned author Koch⁶ has suggested that as a general guideline, a sliding scale of 0,5% per year over which the applicable income must be calculated, be applied. For example, 25% for a child, 20% for a youth and 10% in middle age.

[30] The child is currently 13 years old. Having regard to his specific capabilities, coupled with his below average scholastic performance, even before the accident, I am of the view that a 25% pre-morbid contingency deduction will be fair and reasonable.

[31] I cannot find any reason for the suggested post-morbid contingency deduction of 50%. I believe that a 35% post-morbid contingency deduction is justified in the circumstances of this matter.

[32] The resultant calculation will therefore be as follows:

- Scenario 1: Pre-morbid income at R 3 771 849-00 less 25% = R 2 828 886-75.

- Post-morbid income at R1 305 155-00 less 35% = R 848 350-75.

- Loss of income (R 2 828 886-75 less R 848 350-75) = R 1 980 536-00.

- Scenario 2: Pre-morbid income at R 2 473 040-00 less 25% = R 1 854 780-00.

- Post-morbid income at R1 305 155-00 less 35% = R 848 350-75.

⁵ Sothorn Insurance Association Ltd (note 4) at 116G-H.

⁶ Robert J Koch, The Quantum Yearbook, 2009, p.100

- Loss of income (R 1 854 780-00 less R 848 350-75 = R 1 006 429-25).

[33] As both scenarios are equally probable, I am of the view that the average of R 1 980 536-00 and R 1 006 429-25, which amounts to R 1 493 483-00 is fair and reasonable compensation for the plaintiff in respect of loss of income.

General damages

[34] The injuries sustained by the minor and the *sequelae* thereof have been discussed above. The veracity of Dr van den Bout's serious injury assessment has already been accepted, in the absence of any evidence to the contrary. The minor experienced, not only physical pain and functional impairment as a result of the orthopaedic injuries, but developed cognitive difficulties and psychological symptoms, which negatively affect his interpersonal relationships and general quality of life.

[35] The plaintiff has claimed the amount of R500 000-00 for general damages. Counsel referred me to past awards that were made in comparative cases. For example, in the matter of *D v Road Accident Fund* ⁷ the plaintiff, who had sustained a mild concussive brain injury and had been left with relative deficits in certain areas of cognitive functioning and was suffering from situational anxiety and residual emotional symptoms, was awarded an amount of R600 000-00 (which translate to a current value of R688 557-00).

[36] In *Aeschliman v Road Accident Fund* ⁸ a female student, who had sustained a compound injury to the right knee, laceration of the upper lip, mild concussion and blunt trauma to the right shoulder, was awarded an amount of R300 000-00 (which translates to a current value of R534 000-00).

[37] In *Kgopane v Road Accident Fund* ⁹ the plaintiff sustained a pelvic fracture, fracture of the right superior rami, left interior ramus fracture, chest contusion, injury to her right foot and soft tissue injury to her neck and shoulder. In addition to the physical injuries, she suffered from moderate depression and post-traumatic stress

⁷ (15/24390) [2017] ZAGPJHC 61 (3 March 2017)

⁸ 2009 (6) QOD E7-1 (ECP)

⁹ (43235/2014) [2016] ZAGPPHC 872 (22 September 2016)

disorder after the accident. An award of R600 00-00 (which currently translates to R696 147-00) was made.

[38] I have considered the cases that counsel referred me to, while bearing in mind that the facts of those matters differed from the facts of the matter presently before me. I have endeavoured to determine an amount that will be fair and adequate compensation for the injuries sustained by the minor.

[39] In my view the amount of R500 000-00 for general damages is justified under the circumstances.

Future hospital and medical expenses

[40] The plaintiff has claimed an amount of R884 689-00 for the minor's future hospital and medical expenses. The amount is based on actuarial calculations. The court noticed that this amount included ophthalmologist expenses, even though the minor's problems with eyesight was according to the experts most likely pre-existing and not caused by the accident. In supplementary heads of arguments counsel suggested that the amount of R 198 698-00 be awarded, which amount excludes the ophthalmologist expenses.

[41] Counsel for the plaintiff contended that the court should make a lump sum award, as the court was unable to direct the defendant to furnish an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act¹⁰, if such undertaking was not tendered. Counsel substantiated this argument with reference to the matters of *Marine & Trade Insurance Co Ltd v Katz NO*¹¹ and *Coetzee v Guardian National Insurance Co Ltd*¹² where undertakings in terms of section 21(1C) of the Compulsory Motor Vehicle Insurance Act¹³ were at issue.

[42] Section 17(4)(a) of the Road Accident Fund Act¹⁴, which repealed the previous legislation, reads as follows:

¹⁰ Act 56 of 1996 as amended

¹¹ 1979 (4) SA 961 (A)

¹² 1993 (3) SA 388 (W)

¹³ Act 56 of 1972

¹⁴ Act 56 of 1996 as amended

‘Where a claim for compensation under subsection (1) includes a claim for the- costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her, the Fund or an agent shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the Fund or the agent to furnish such undertaking, to compensate the third party in respect of the said costs after the costs have been incurred and on proof thereof ; or the provider of such service or treatment directly, notwithstanding section 19(c) or (d),in accordance with the tariff contemplated in subsection (4B);...’.(my emphasis).

[43] From a plain reading of the wording of the section it would appear that the Fund can furnish a third party with such an undertaking, alternatively the court can direct the furnishing of the undertaking. The court’s power to direct the furnishing of the undertaking is not necessarily dependent on the Fund’s willingness to tender the undertaking.

[44] I have also considered numerous decisions of this division where the furnishing of undertakings were ordered, despite the fact that the matters proceeded on a default basis and without the input of the Road Accident Fund.¹⁵

[45] As upper guardian of all minors the court has to make a decision that will be in the best interest of the minor. In my view the minor will benefit more from the furnishing of an undertaking, than from the allocation of a lump sum, which may prove to be wholly inadequate to cover his future medical and hospital expenses.

ORDER

[46] The following order is made:

1.1 The defendant is directed to pay to the plaintiff the sum of **R1 993 483-00 (ONE MILLION NINE HUNDRED AND NINETY-THREE THOUSAND**

¹⁵ See for example *Storm v Road Accident Fund* (17949/2018) [2021] ZAGPJHC 12 (29 January 2021); *Sayed NO v Road Accident Fund*; *Olyn v Road Accident Fund*; *Mosia v Road Accident Fund*; *Tsotetsi v Road Accident Fund*; *Matholo v Road Accident Fund*; *Shongwe v Road Accident Fund*; *Harmse v Road Accident Fund* (50887/18; 38403/17; 33821/17; 35970/18; 49128/18; 2316/14; 447/16) [2021] ZAGPPHC 76; [2021] 2 All SA 613 (GP); 2021 (3) SA 538 (GP) (4 March 2021) and *Samkelisiwe Ngenge n Road Accident Fund case no 70707/2018*, Gauteng Division Pretoria (29 April 2021).

FOUR HUNDRED AND EIGHTY-THREE RAND) in one interest free instalment within 180 (one hundred and eighty) days of date of service of this order on the defendant for:

- a) Future loss of income R1 493 483-00
- b) General damages R 500 000-00

1.2 The said payment must be made in the following bank account:

Name of account holder: SONYA MEISTRE ATTORNEYS

Bank name: STANDARD BANK

Branch name and code: ALBERTON (01234245)

Account number: [...]

Type of account: Trust Account

2. The Defendant is further ordered to furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996, wherein the Defendant undertakes to pay the costs of future accommodation of the minor in a hospital or a nursing home or treatment of or rendering of a service or supplying of goods to the minor to compensate the Plaintiff in respect of **100%** of the said costs after the costs have been incurred and on proof thereof, pursuant to injuries sustained by the minor in a motor vehicle collision which occurred on 19 October 2016.

3.1 The defendant pays the plaintiff's taxed or agreed party and party costs on the High Court scale up to the date hereof, including the costs incurred to obtain payment of same.

3.2 Such costs to include all travelling costs, including counsel's costs, on the prescribed AA tariffs.

3.3 The plaintiff will serve Notice of Taxation on the defendant.

3.4 The defendant will be allowed 14 (fourteen) days after date of service of the taxed bill on the defendant for payment of the taxed amount.

3.5 If no payment has been made within 14 (fourteen) days as mentioned above, the agreed amount of costs or allocatur will bear interest at the statutory rate of 7.00% per annum from the date of agreement or date of allocatur as the case may be up to the date of final payment.

4. The aforementioned costs, as far as experts and counsel are concerned, shall further include and be limited to the following:

4.1 The reasonable taxed or agreed reservation, consultation and preparation fees, if any, and cost of the reports of:

4.1.1 Dr HET van den Bout (Orthopaedic Surgeon);

4.1.2 Dr HET van den Bout (RAF 4 form);

4.1.3 Marina Genis (Clinical Psychologist);

4.1.4 Dr PH Kritzinger (Neurologist);

4.1.5 Dr J Levin (Ophthalmologist);

4.1.6 Rosalind Macnab (Educational Psychologist);

4.1.7 D Olivier (Occupational Therapist);

4.1.8 Jacobson Talmud Consulting (Industrial Psychologist);

4.1.9 Gerard Jacobson (Actuary).

4.2 The reasonable taxed or agreed fees of senior-junior counsel;

5. The attorneys for the plaintiffs (Sonya Meistre Attorneys) are ordered:

5.1 to cause a trust ("the Trust") to be established within three months of this order in accordance with the provisions of the Trust

Property Control Act, Act 57 of 1998 (as amended) in respect of the minor; and

5.2 to pay all monies held in trust by them for the benefit of the minor to the Trust.

6. The trust is to be created for the benefit of the minor, and must provide as follows:

6.1 that the minor is to be the sole beneficiary of the trust;

6.2 for the nomination of **LEANE EDWARDS**, an employee of Absa Trust Limited, and as such a nominee of Absa Trust, as the first trustee;

6.3 for the nomination of **JEAN VOSLOO** an executive of Liberty as the second trustee;

6.4 for the nomination of a third trustee in the discretion of the trustees as set out in paragraph 6.2 and 6.3, *supra*; provided that the trust shall consist of a minimum of three trustees at all relevant times;

6.5 that the ownership of the trust property vest in the trustee(s) of the trust in their capacity as trustees;

6.6 that the powers of the trustee(s) shall specifically include the power to make payment from the capital and income for the reasonable maintenance of the minor, or for any other purpose which the trustee(s) may decide to be in the minor's interest, and if the income is not sufficient for the aforesaid purpose, the trustees shall have the power, for the purposes of this trust, in their sole and absolute discretion, to:

6.6.1 acquire any shares, unit trusts, debentures, stocks, negotiable instruments, mortgage bonds, notarial bonds, securities, certificates and any moveable or immovable property or any incorporeal rights and to invest in such assets and to lend funds to any party or make a deposit or investment with any institution, such investment to be of

such nature and on such terms and conditions as the trustees may deem fit;

6.6.2 exchange, replace, re-invest, sell, let, insure, manage, modify, develop, improve, convert to cash or deal in any other manner with any asset which from time to time form part of the trust funds;

6.6.3 borrow money;

6.6.4 pledge any trust assets, to encumber such assets with mortgage bonds or notarial bonds to utilize same as security in any manner whatsoever;

6.6.5 institute or defend any legal proceedings or otherwise to take any other steps in any court of law or other tribunal and to subject controversies and disagreements to arbitration;

6.6.6 to call up and/or collect any amounts that may from time to time become due to the trust fund;

6.6.7 settle or waive any claim in favour of the trust;

6.6.8 exercise any option and to accept and exercise any rights;

6.6.9 exercise any rights or to incur any obligation in with any shares, stocks, debentures, mortgage bonds or other securities or investments held by this trust;

6.6.10 open accounts at any bank or other financial institution and to manage such accounts and if necessary to overdraw such account;

6.6.11 draw any cheque or promissory note, to execute or endorse same;

6.6.12 take advice from any attorney or advocate or any other expert for the account of the relevant trust account;

6.6.13 lodge and prove claims against companies in liquidation or under judicial management and against insolvent or deceased estates;

6.6.14 appoint professional or other persons on a temporary or permanent basis to conduct the whole or any portion of the business of the trust under the supervision of the Trustees or to manage the investment of part or the entirety of the funds of the trust and to remunerate such persons for their services out of the funds of the trust;

6.6.15 form any company and to hold any interest in any company and to form any other trusts, to hold an interest in any other trusts or partnership or undertaking for the purposes of this trust or in the interest of any beneficiary;

6.6.16 amalgamate with any other trust with the same or similar aims as this trust;

6.6.17 commence any business or continue such business or to acquire an interest therein and for such purpose to acquire assets or to incur expenses and to partake in the management, supervision and control of any business and to conclude any partnership or joint venture;

6.6.18 accept any disposal in favour of this trust and to comply with any conditions regarding such a disposal; and

6.6.19 in general do all things and to sign all documents required to give effect to the aims of this trust.

6.7 that the trustees shall determine procedures to resolve any potential disputes, subject to the review of any decision made in accordance therewith by this Honourable Court;

6.8 that in the event of the minor's marriage, his estate be excluded from any community of property;

6.9 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(s) to the minor;

6.10 that the amendment of the trust instrument be subject to the leave of this Honourable Court;

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

6.12 that the trust property and the administration thereof be subject to an annual audit; and

6.13 that the trust shall terminate when the minor reaches the age of 21, whereupon the trust property shall pass to the minor.

7. The powers of the *trustee(s)*, as set out in paragraphs 6.6.1 to 6.6.19 are to be exercised subject to the approval of the Master of the High Court;

8. The first *trustee* is required to furnish security to the satisfaction of the Master of the High Court.

9. The Master of the High Court has the discretion to be authorised to appoint an alternative person as *trustee(s)*, should the appointed *trustee(s)* refuse or be unable to fulfill his/her obligations as *trustee(s)*.

10. The defendant pays the costs of the appointment of the *trustee(s)* as well as the costs of the administration of the estate of the minor by the trustee(s) at each financial year end and subject to section 84 of the Administration of Estates Act, Act 66 of 1965.

A GRAF

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

Date of Hearing: 30 August 2021

Date of Judgment: 29 September 2021

Appearance for the Plaintiff: Adv L Swart
liezle.swart@vodamail.co.za
Instructed by Chante Wentzel
chante@smainc.co.za

Appearance for the Defendant: No appearance