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**IN THE HIGH COURT OF SOUTH AFRICA
(PRETORIA DIVISION)**

CASE NO: 43583/2015

DOH: 10-17 March 2022

REPORTABLE: YES / NO

OF INTEREST TO OTHER JUDGES: YES/NO

REVISED

In the matter between:

Z[....] T[....] P[....]

ON BEHALF OF THE MINOR CHILD

PLAINTIFF

and

**THE MEMBER OF THE EXECUTIVE COUNCIL
FOR HEALTH MPUMALANGA**

DEFENDANT

JUDGMENT

THIS JUDGMENT HAS BEEN HANDED DOWN REMOTELY AND SHALL BE CIRCULATED TO THE PARTIES BY WAY OF EMAIL. ITS DATE AND TIME OF HAND DOWN SHALL BE DEEMED TO BE 30 SEPTEMBER 2022

MALIJ

1. The plaintiff claims damages against the defendant. On 22 September 2012 the plaintiff gave birth to a baby girl named K[....] S[....] P[....] at Amajuba Memorial Hospital (*"the Hospital"*) in the province of Mpumalanga. Little did she know that her precious gift would be born with brain damage and cerebral palsy as a consequence of the negligence of the Hospital. When the plaintiff later discovered the unfortunate situation she instituted action for damages against the defendant. The defendant is responsible for all the hospitals in the Mpumalanga Province, hence also obligated to pay for damages. On 6 February 2018 the court granted an order for compensation of the minor child for her damages suffered as a consequence of the hospital's negligence.

2. It is common cause that out of the initial amount claimed of **R14 280 000.00** (fourteen million two hundred and eighty thousand rand) in total, the defendant had made an interim payment in the amount of **R1 315 047.93** (one million three-hundred and fifteen thousand and forty-seven rand ninety-three cents) during April 2021. The amount of claim for damages was later amended to **R25 155 000.00** (twenty-five million one hundred and fifty-five thousand rand). On 25 February 2022 a Rule 37 pre-trial conference was conducted between the legal representatives and an agreement to dispense with leading of oral evidence in respect of the plaintiff and certain experts.

3. According to the joint minutes of the experts K[....] suffered permanent brain damage due to severe cerebral hypoxia. She is sighted, she would need to see dieticians and that she has total body involvement pattern of spastic

cerebral palsy, with more involvement in the left arm. Also educational psychologists agreed that she has development delay impacting her speech and her psychological and cognitive deficits rendered her unemployable and will be need of constant care and will never be independent of function amongst others. This is where the dispute arises, as to how much should be the sufficient award in order to take care of K[...].

4. The court is enjoined to determine future medical expenses, future loss of earnings, general damages and the contingency deduction applicable thereto. To arrive at a fair amount of the award the court must analyse the evidence of expert witnesses. It is trite law that expert evidence is opinion evidence or, the opinion of the expert. The primary function of an expert witness is to assist the court in reaching its decision by providing independent expert/technical analysis and opinion based on the facts pertaining to the case. In the case of *Eis v MEG: Department of Health, Northern Cape (1744/2010) [2017] ZANCHC 7 (10 February 2017)* the following was stated:

"The opinion of an expert should also be based on the accepted facts otherwise it would amount to no more than unsubstantiated speculation."

5. Furthermore, the well-established principle of calculating loss of income is found in *Southern Insurance Association Ltd v Bailey NO 1984 (1) SA 98 (A) at 113F- 114 A*, wherein the following is stated:

"Any enquiry into the 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, augurs 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 the loss."

It has open to it two possible approaches.

One is for the Judge to make a round estimate of 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 to 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 "

FUTURE MEDICAL EXPENSES

6. I now turn to look at the evidence of the speech therapists and occupational therapists in order to arrive at the amount for future medical expenses. Ms. Thanjan who was engaged by the plaintiff and Ms. Dikobe who was engaged by the defendant both testified. The actuarial calculations based on Ms. Thanjan recommendations is the amount of **R994,600** (nine hundred and ninety-four thousand six hundred rand). The actuarial calculations based on Ms Dikobe's recommendations amount to **R134 000.00** (one hundred and thirty-four thousand rand).

7. Ms. Thanjan testified she first examined K[...] on 10 July 2018. At the time she found a lot of challenges with regards to feeding, under development, speech and communication challenges, movement and mobility. She further stated that she again re-examined K[...] in October 2021 when she found that there was an improvement in her communication resulting from the continued therapy. She further testified about the recommendations in the joint minute she concluded with Ms Dikobe. Ms. Dikobe is an audiologist speech language therapist with Master's Degree in Augmentative and Alternate Communication ("AAC") and postgraduate Speech Language pathology who testified for the defendant.

8. Ms. Thanjan explained the need for speech and language therapy to improve K[...]s ability to receive and process food. The therapy should be of not a short term duration as it will be needed throughout her life to cater for

changes in her situation and needs. She explained that various items of equipment recommended by her were to improve safety of feeding K[....], such as suitable cups and spoons, and the devices needed to improve K[....]'s ability to chew and ingest food. The devices such as tongue mobilisation tools, a drooling remediation program and tongue and cheek stimulation devices were currently being utilised in her therapy. She opined further that because of K[....]'s improvements consequent upon the therapy she had received subsequent to her initial assessment of her, she was a suitable candidate for the use of high-tech AAC devices and would benefit from the use thereof. The AAC intervention would help expand her knowledge and to give her more control of the environment.

9. Ms. Thanjan concluded that the minor child would benefit from AAC devices in particular high technology empowered equipment in order to improve her communication skills, expand her knowledge and to give her more control of the environment. On the other hand, Ms Dikobe, opines that AAC devices cannot assist. The same benefit can be achieved by the use of symbols and paper pictures, cards in order for K[....] to identify her needs. For example, the choice of food and general communication with her mother and caregivers. Ms. Dikobe is of the view that K[....] has improved a lot and can easily be a self-feeder. Under cross examination Ms. Dikobe's findings pertaining to feeding and communication were based on what she was told by the plaintiff. Amongst others, that K[....] once ate a piece of KFC chicken meat and mash potatoes with a plastic spoon.

10. Ms. Dikobe last assessed K[....] 3 years before the trial. Secondly by her own admission she relied on the plaintiff's account. The plaintiff, K[....]'s mother is not an expert although she has been hailed by Ms. Thanjan as a very loving and caring mother who goes extra mile to care and cater for her child. This is commended, however it does not take away that K[....] needs assistance and her mother is not professionally trained to attend to her.

11. In my view, Ms Dikobe's recommendations against AAC devices in

favour of her methods as discussed above defies the purpose of

providing K[....] a quality life. The use of modern technology, an invaluable intervention in today's world even for persons who are not challenged and or fully functional is no longer a luxury. There is no reason for K[....] to be deprived life time opportunity aimed at augmenting her communication skills.

12. The highlight of Ms. Thanjan's evidence is the rapid improvement of K[....]'s feeding and speech functions, albeit her condition is irreversible. Placing her in a special school as recommended by other experts will have positive developments that might assist her towards a form of relative dependence. The special school would provide suitable equipment which will not compromise K[....]'s quality of life. I find it appropriate that K[....] must be provided with MC devices. Nevertheless, taking into account the level of improvement as also evidenced by the Occupational Therapist, Dr Tshitake; other utensils recommended by Ms. Thanjan are not considered essential. Dr. Tshitake evidence will be dealt with in detail below.

13. For the foregoing an amount of **R 273 560.00** (two hundred and seventy-three thousand, five hundred and sixty rand) allocated for MC devices plus the amount recommended by Ms. Dikobe for normal feeding utensils is fair for future medical expenses amounting to **R 134 229.00** (one hundred and thirty-four thousand and two hundred twenty-nine rand). In total the amount of **R 407 789.00** (four hundred and seven thousand, seven hundred and eighty-nine rand) is found to be fair in respect of speech therapy.

14 I turn to evaluate the evidence of occupational therapists. Ms. Du Toit as engaged by the plaintiff and Dr. Tshitake who consulted on the instructions of the defendant testified. Ms. Du Tait examined K[....] on 18th February 2020 for 2 hours and later assessed her on 20th January 2022 for 4 hours. Some of her evidence was based on the photographs she had taken during assessment of K[....]. She opines that feeding takes 30-60 minutes and she cannot bath and dress herself.

At home she sleeps in a room with someone else but in a house with 11 people. At the time of trial, she needed a change of 5 nappies a day. when asleep she needs to be assisted to turn around. She agreed with Ms Thanjan's conclusion that she can engage with basic instructions.

15. According to Ms. Du Toit, upon initial assessment, K[....] presented with stiff muscles meaning that the actual bones had stopped movement. She had become more mobile after second assessment although she could walk in shuffling gait and her sitting balance had also improved. She would walk 2 to 3 metres and start holding on floors. She recommended a walker. She further opined to the risky harmful environment, for example when she assessed her, K[....] had a difficulty to differentiate between hot and cold substance. It took her 10 seconds to react to boiling water. As a result, that K[....] cannot perceive dangers, a 24-hour caregiving is of necessity.

16. Ms. Du Toit further testified that her movements had improved due to natural growth. Although natural growth assists in her development levels she would stay as a level 3 Cerebral Palsy. She made use of her right arm as her active hand and did not use her left hand. Ms. Du Toit testified that there is a need for a suitable motor vehicle to provide for K[....]. She would need a sedan type vehicle, suggesting a Toyota until she reached the age of 35.

17. In their joint minute, amongst others they agree that K[....] presents with severe developmental delay and is maximally dependent on all her needs to be met. She is completely dependent on full assistance in all respects of daily living, does not facilitate in any of her care and is fully dependent on others at all times. Both experts also agreed on the need for a suitable motor vehicle. They further agreed that she is currently living in an environment that is not conducive for her development and urgently requires relocation to an area where she has access to schools and medical institutions that cater for the recommendations of the various medical experts. As a result, both experts agreed on suitable accommodation.

18. There is also a need for ongoing occupational therapy for the rest of her lifespan and that an intervention plan should be formulated by an occupational therapist who specialises in children with special needs, specifically children with neurological disorders. The extent of occupational therapy required by K[....] for the first 24 months of therapy; until the age of 18. Further that she must be provided with maintenance therapy after the age of 18 until age 25; the provision of therapy from age 25 for the rest of her life; the range of occupational therapy rates.

19. The divergence between Ms. Du Toit and Dr. Tshikate is whether there is a need for services of a care giver and the period of availability thereof. Ms. Du Toit testified that K[....] requires intensive and demanding care. She requires constant supervision and assistance in all her activities of daily living as well as facilitation to participate in tasks throughout a day. It is therefore of the utmost importance that K[....] has appropriately trained and skilled individuals to care for her for the remainder of her life. K[....] requires professional care. At present she has caregivers on duty 7 days a week, 12 hours' day shift. K[....] currently does not have night care. At present, there is no night caregiving assistance due to space and social dynamics related to the family. However, due to her requiring adult supervision in general, this needs to be considered.

20. Industrial psychologists, Ms Sonia Hill and Mr Lance Marais submitted a joint minute on caregivers suitable for K[....] and the remuneration of caregivers thereof. According to Ms Hill the information is based on national rates caregivers should commence at the amount of **R7 527.88** (seven thousand five hundred and twenty-seven rand eighty-eight cents) per month and a total income of **R8 590.35** (eight thousand five hundred and ninety rand thirty-five cents) per month. Ms Hill also testified that based on occupational Therapists more than one caregiver may be necessary as they work on 12-hour shift. She also opined on specialists' caregivers who may be trained and also the need for motor vehicle drivers earning **R12 553.29** (twelve thousand five hundred and fifty-three rand twenty-nine cents) per month. Her report is

based on research with regard to the earning pay by nursing agencies and various other institutions and extensive consultations. The rates she suggested are effective from 2020. Mr Marais recommended earnings commencing from **R4 952.00** (four thousand nine hundred and fifty-two rand) to **R9 000.00** (nine thousand rand) per month in severe cases. Mr Marais based his opinion on general practice.

21. Dr. Tshitake initially disagreed on the need for services of a case manager, ultimately both occupational therapists agreed that the amount as calculated by the plaintiff's experts was reasonable in the circumstances. Dr. Tshitake also did not agree on monthly monitoring because no crisis has been experienced in K[...]'s life. In her view two hours quarterly was sufficient for such monitoring. On behalf of the plaintiff the submission by Dr. Tshitake was not challenged. In the light of documented improvement in K[...]'s life I have no reason to not agree with Dr. Tshitake's contention. In the result the average of 30% of **R342,820.00** (three hundred and forty-two thousand eight hundred and twenty rand) claimed by plaintiff is found to be fair. The amount awarded for crisis management is **R102 846.00** (one hundred and two thousand eight hundred and forty-six rand).

22. The amount for therapeutic apparatus equipment and maintenance costs thereof totalling **R17 310.00** (seventeen thousand three hundred and ten rand) is in dispute. This is despite the defendant's experts not agreeing to the total amount, although they agree in principle. They have not brought a different figure. In the result, the amount of **R17 310.00** (seventeen thousand three hundred and ten rand) shall stand.

23. According to the plaintiff's experts there is a need for monthly monitoring with the total amount of **R822 760.00** (eight hundred and twenty-two thousand seven hundred and sixty rand). It transpired from evidence of the defendant's experts that there had never been an incident occasioning same. My view is that, K[...] will be provided with trained caregivers and attend a special school, there is no need for monthly monitoring. The amount

of **R822 760.00** (eight hundred and twenty-two thousand seven hundred and sixty rand) is disallowed in its entirety. As stated above the amount of a suitable motor vehicle is **R1 067 770.00** (one million sixty- seven thousand seven hundred and seventy rand). Motor Vehicle forms part of future medical expenses.

24 I am enjoined to apply contingencies in the above amount. Koch in *The Quantum Yearbook* (2011) at 104 said:

"General contingencies cover a wide range of considerations which may vary from case to case and may include: taxation, early death, saved travel costs, loss of employment, promotion prospects, divorce, etc. There are no fixed rules as regards general contingencies."

25 I take into account the improvement in communication and feeding abilities as agreed by all experts concerned. I further consider the possibility of saved travel costs, and all other possibilities based on K[....]'s overall improvement including natural growth and her imminent attendance in the special school. Consequentially it is prudent to apply 25% contingency is applicable.

26. The total for future medical expenses is **R17 427 822.12** (seventeen million four hundred and twenty-seven thousand eight hundred and twenty-two rand twelve cents), minus 25% contingency equals to **R13 070 866.51** (thirteen million seventy thousand eight hundred and sixty- six rand fifty-one cent) plus the amount of **R 668 345.71** (six hundred and sixty-eight thousand three hundred and forty-five rand) for architect.

27. In the result the award for future medical expenses is **R 13 739 212.30** (thirteen million seven hundred and thirty-nine thousand two hundred and twelve rand thirty cent)

FUTURE LOSS OF EARNINGS

28. Ms Sonia Hill and Mr Lance Marais opined as engaged by the plaintiff and the defendant respectively. Mr Marais did not testify. Evidence was adduced based on his report. Ms Hill testified.

29. As at the time of the hearing, the scenarios presented by the actuary based on the figures arising from the reports of the experts was in the amount of **R7 621 200.00** (seven million six hundred and twenty-one thousand two hundred rand) as per Ms Hill's recommendations and **R4 242 000.00** (four million two hundred and forty-two thousand rand) as per Mr Marais's recommendations. As it is apparent from the above Ms Hill's opinion is based on comprehensive research as opposed to Mr Marais.,

30. Regrettable calculations in the amount of **R7 621 200.00** (seven million six hundred and twenty-one thousand two hundred rand) based on Ms Hill's recommendations are not pleaded. When the pleadings of the plaintiff were amended the amount claimed for future loss of earnings was not amended therefore remains at **R4 300 000.00** (four million three hundred thousand rand); an amount close to the calculations based on Mr Marais' recommendations. The calculation of **R7 621 200.00** (seven million six hundred and twenty-one thousand two hundred rand) will without a doubt prejudice the defendant as they were not prepared to meet such a case. In the result, the amount of **R4 300 000.00** (four million three hundred thousand rand) is awarded. Defendant's counsel submitted that a contingency of 40% must be applied. Her submission is based on the postulation of the National Treasury that approximately 50% of all employable people could be unemployed. Plaintiff's counsel advocated for 20% contingency.

31. In applying contingencies, it is trite law that there are also unforeseen contingencies based on factors such as errors in the estimation of future earnings and life expectancy, loss of earnings due to unemployment and sickness, retirement at an earlier age and hazards of life. The list can never be exhaustive.

32. There is no doubt that chances of formal employment are decreasing fast. There is also a growing trend of self-employment albeit it seems informal. Youth have easy access to smart ways of doing things due to high technology, exposing them to global networks and new skills than their parents. Today's youth are likely to travel worldwide in order to explore employment opportunities, irrespective of background. K[...] having been born in 2012 by educated and enlightened parents would easily fall into this category, it is therefore difficult to conclude that she would have been affected by unemployment in a devastating manner. In balancing general hazards of life; I take into account that she would be sick like any other person and be befallen by other unknown factors I would apply 20% contingency deduction. In the result, an amount of **R3 440 000.00** (three million four hundred and forty thousand rand) is awarded for future loss of earnings.

GENERAL DAMAGES

33. The amount claimed for General Damages is **R2 200 000** (two million two hundred thousand rand). Submissions on behalf of the defendant supported with case law is that an amount of **R1 400 000.00** (one million four hundred thousand rand) is fair.

34. Applicable legal principle in awarding General damages are well established. The court is enjoined to benchmark based on comparable cases. In *Mashigo v Road Accident Fund (2120/2014) [2018] ZAGPPHC 539 (13 June 2018)*; Mr. Justice Davis summarises the well-known approach to general damages and the use of previous comparable awards as follows:

"[10] A claim for general or non-patrimonial damages requires an assessment of the plaintiff's pain and suffering, disfigurement, permanent disability, and loss of amenities of life and attaching a monetary value thereto. The exercise is, by its very nature; both difficult and discretionary with wide-ranging permutations. As will be illustrated herein later, it is very difficult if not impossible to find a case

on all four with the one to be decided. The oft-quoted case of Southern Insurance Association v Bailey NO 1984 (1) SA 98 AD confirmed that even the Supreme Court of Appeal had difficulties in laying down rules as to how the problem of an award for general damages should be approached. The accepted approach is the "flexible one" described in Sandler v Wholesale Coal Suppliers Ltd 1941 AD 194 at 199, namely: the submissions were

"The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending on the Judge's view of what is fair in all the circumstances of the case"."

[11] Of course, awards in cases that show at least some similarities or comparisons are useful guides, taking into account the current value of such awards to accommodate the decreasing value of money. See inter alia: SA Eagle Insurance Co v Hartley [1990] ZASCA 106; 1990 (4) SA 833 (A) at 841 D and the practical work of The Quantum Yearbook by Robert J Koch which includes tables of general damages awards annually updated to cater for inflation.

On behalf of the defendant, amongst others the court was referred to the case of Lim PooH Choo v Camden Health Authority 1979 QB 196 (CA) at 216 it is said, with reference to the claim of a plaintiff who has suffered irremediable brain damage which left her only intermittently, and then barely, sentient and wholly dependent on others-

".. fair compensation must mean that she is to be kept in as much comfort and tended with as much care as compassion for her so rightfully demands: and that she should not want for anything that money can buy: But I see no justification in law or in morals in awarding to her large sums of money in addition to those needed to

keep her in comfort."

35. On behalf of the plaintiff there had been a reference to various cases. One where the facts are almost similar is *N Mngomeni obo EN Zangwe v MEG for Health, Eastern Cape Province 2018 (7A4) QOO 94 (ECM)*. The claim is based upon the alleged negligence of defendant's employees stationed at Madzikane Hospital whilst under a legal duty of care to render medical services to the plaintiff prior to and during giving birth to her child. The plaintiff, a single mother residing in an informal settlement, was admitted to the hospital on 21 February 2011 whilst in labour. Her child was born on 22 February 2011. He was 6 years old when the matter was heard and his life expectancy was a further 30 years. Defendant eventually conceded liability. It was agreed between the parties that the child suffers from spastic quadriplegic cerebral palsy, is severely mentally and physically retarded and permanently disabled, has been rendered unemployable in the open market, suffers catastrophic loss of amenities of life and is dependent on assistance in all personal care and activities of daily living, requiring twenty-four-hour care and supervision. The child will need continuous medical care and treatment as well as specialised 68 equipment, devices, accommodation and services to accommodate his special needs for the remainder of his life. The Award in 2017 was **R2 000 000.00**. The Current Value of Award is R 2,368,000.00.

36. Another case is *MP obo SP v MEG for Health, Eastern Cape Province 2018 (7A4) QOO 87 (ECM)*. The plaintiff's claim was for recovery of damages sustained at the child's birth who was 13-years-old when the case was heard. The child suffers from cerebral palsy as a consequence of a hypoxic ischemic injury to his brain which affects him in a quadriplegic manner involving the trunk of his body. He is unable to stand without assistance and is able to only roll, scoot or crawl in order to move. He is unable to feed himself or perform his own personal hygiene. His speech is severely affected. However, his brain functions are at a much higher level than his body enables him to express which was found to be a factor

aggravating his suffering. There has been a devastating loss of enjoyment of ordinary amenities of life although he would be able to attend a school and operate an iPad; therefore, allowance was made for school fees, travelling costs and technical support systems. Full-time care is required. The Award in 2018 was **R2 000 000.00**. The Current Value of Award is **R 2 248 000.00**.

37. I have considered the above case law in comparison to the present case. Accordingly, the appropriate award for General Damages is **R2 200 000.00** (two million two hundred thousand rand).

TRUST

38. It is trite law that the award needs to be protected 7.5% of the capital amount is awarded as costs thereof. The determination of percentage has been decided with approval in *Singh and Another v Ebrahim (1) 2010 3 ALL SA 187 (0)* and *Mohlaphuli Nov The South African National Road Agency Ltd 2013 (6A4) QOD 146 (WCC)*

ORDER

39. In the result the following order is granted

1.

Judgment is hereby granted in favor of the Plaintiff, in her capacity as the mother and natural guardian of K[....] S[....] P[....], a girl born on the 22nd of September 2012, in the sum of **R16 890 723.37**, which amount is calculated as follows:

- (a) **R 13 739 212.30** in respect of future medical expenses;
- (b) **R 3 440 000.00** in respect of the loss of future earning potential;
- (c) **R 2 200 200.00** in respect of general damages;

(d) **R1 453 440.92** in respect of the formation and administration of a trust for the benefit of the minor child, calculated at 7.5% of the above sums awarded in respect of future medical expenses, loss of future earning potential and general damages;

(e) **R 280 000.00** in respect of past medical expenses; and

(f) the sum of **R1 315 047.93**, representing the amount of an interim payment made by the Defendant, being deducted.

2.

Interest will accrue on the sum awarded in terms of paragraph 1 hereof, at the rate of 7,5 % per annum, calculated from 30 days after the date of this order to date of payment thereof.

3.

The Defendant is directed to pay the Plaintiff's reasonable and necessary, taxed or agreed, party and party costs, on the High Court scale, such costs to include:

(a) the costs of the Plaintiff's attorney attending upon reasonable and necessary consultations with witnesses in preparation for trial, including the consultations with the under-mentioned expert witnesses;

(b) the costs of two counsel (Senior and Junior), including the reasonable and necessary costs of their preparation for trial, the preparation of heads of argument and for their attendance upon consultations with the under-mentioned expert witnesses and the Plaintiff;

(c) the costs of travel of the Plaintiff's legal representatives and necessary witnesses to attend upon and/or give evidence at the trial;

(c) the qualifying fees of the under-mentioned expert witnesses, including the costs of the preparation of their reports and joint minutes, and to qualify themselves to testify at the trial, and for any reasonable and necessary consultations with the Plaintiff's attorney and counsel:

- (i) Mr. Roger Kerr, the Architect;
- (ii) Dr Yuvraj Singh, the Dental Surgeon;
- (iii) Ms. Mandy Read, the Dietician;
- (iv) Ms. Glenda Karow, the Educational Psychologist;
- (v) Ms. Sonia Hill, the Industrial Psychologist;
- (vi) Ms. Sue Anderson, the Nursing Sister;
- (vii) Dr Gary Rose, the Ophthalmic Surgeon;
- (viii) Mr. Ugan Chetty, the Orthotist;
- (ix) Mr. Rob Fraser, the Orthopaedic Surgeon;
- (x) Ms. Kirsten Du Tait, the Occupational Therapist;
- (xi) Prof. Regan Solomons, the Paediatric Neurologist;
- (xii) Ms. Surekha Samaroo, the Physiotherapist;
- (xiii) Dr Barry Bloom, the Radiologist;
- (xiv) Dr Das Pillay, the Specialist Paediatrician;
- (xv) Ms. R Thanjan, the Speech and Language Therapist;

(xvi) Dr A M Grizic, the Urologist; and

(xvii) Ms. Nirmala Pather, the Obstetrician and Gynaecologist.

(d) the attendance fee of:

(i) Ms. Sonia Hill, the Industrial Psychologist;

(ii) Ms. Kirsten Du Toit, the Occupational Therapist; and

(iii) Ms. R Thanjan, the Speech and Language Therapist.

4.

The Defendant is directed to make the payment of the amount referred to in paragraph 1 above directly to the Trust Account of the Plaintiff's attorneys, **Justice Reichlin Ramsamy, at:**

Bank : ABSA

Branch Code : 500426

Account No. : [....]

5.

The Plaintiff, through her aforesaid attorney of record, is hereby directed to forthwith do all things necessary to cause a Trust to be formed for the benefit of the minor child, K[....] S[....] P[....].

6.

The Plaintiff's aforesaid attorney of record is hereby directed, upon receipt of the monies being paid to it by the Defendant as aforesaid, to:

(a) hold all monies in trust pending the formation of the Trust as aforesaid;

(b) pay the trustees remuneration (which shall include the costs of the formation thereof, the costs of administering the Trust, the costs of the trustees furnishing annual security, and obtaining an annual security bond to meet the requirement of the Master of the High Court in terms of Section 6(2)(a) of the Trust Property Act, **No.:** 57 of 1988), in the sum of reflected in subparagraph 1 (d) hereof, directly to the Trust upon it being formed; and

(c) pay the net balance of the moneys received pursuant to this Order to the Trust after all costs, fees, disbursements and expenses have been deducted therefrom.

7.

The costs include the costs of two counsel.

N P MALI
JUDGE OF THE HIGH COURT,
PRETORIA

APPEARANCES

On Behalf of the Plaintiff:

Adv. I L Topping SC

Adv. M Bahadur

Instructed by

Justice Reichlin Ramsamy Attorneys

On behalf of the Defendant:

Adv. N Cassim SC

Adv. V Mashele

Instructed by

State Attorney,
Pretoria.