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IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No: **143/2017**
Reportable: YES/NO
Of Interest to other Judges: YES/NO
Circulate to Magistrates: YES/NO

In the matter between:

K L M[...] N.O. obo T[…] M[…] Plaintiff

And

THE ROAD ACCIDENT FUND Defendant

CORAM: HEFER AJ

HEARD ON: 24 OCTOBER 2023

DELIVERED ON: 18 JANUARY 2024

[1] The Plaintiff is before Court in her representative capacity as *curator ad litem* for T[…] M[…] (herein later referred to as **"the minor"**).

[2] On 7 November 2017, Molemela JP (as she then was), made an order in terms whereof *inter alia*:

(i) The issues of merits and quantum were separated in terms of Rule 33(4) and the issue of quantum was postponed to a later date; and

(ii) The Defendant is liable to pay 100% of the Plaintiff's proven or agreed damages.

[3] The matter served before me in regards to the adjudication of the quantum.

[4] During the hearing Adv *BJ Marx* appeared on behalf of the Plaintiff whilst there was no appearance on behalf of the Defendant. Mr *Marx* also filed comprehensive Heads of Argument in regards to the quantum which Heads were dated 14 October 2023.

[5] At the onset of the trial the Plaintiff applied that the Plaintiff's affidavit and the confirmatory affidavits of the experts obtained and filed on behalf of the Plaintiff be accepted as evidence in terms of Rule 38(2).

[6] The Plaintiff further applied at the onset of the trial that the aforementioned expert reports and collateral information contained therein be allowed as constituting admissible hearsay evidence both in terms of Section 3(1)(c) of the Law of Evidence Amendment Act and Part VI of the Civil Proceedings Evidence Act 25 of 1965.

[7] Both these applications have been granted at the onset of the hearing.

[8] The injuries of the minor, with reference to the loss of an ability to work as well as the general damages, were discussed by the various experts who have evaluated the minor as will appear from a discussion of the relevant expert reports in this regard.

Lida Möller (Educational Psychologist):

[9] Lida Möller assessed the minor during August 2017. According to her, in respect of his psycho-educational assessment, the minor presents as a child whose incapacity falls within the below average range. His non-verbal abilities are adequately developed whilst his verbal skills are however underdeveloped. From the assessment results he is a learner with a verbal learning disability.

[10] According to Me Möller, the minor struggles with the auditory perception of verbal stimuli. He will thus find it difficult to interpret information presented verbally and to recall information. He struggles significantly with his ability to draw logical conclusions or apply known principles. He further struggles to think in the abstract and his innate ability to do both calculations and understand number concepts is poor.

[11] According to Me Möller, the minor's performance on tests to assess his underlying scholastic skills raises concern and reflect the deficits noted in his profile. In addition, he demonstrates considerable gaps in his skills matrix in

terms of language and literacy, as well as numeracy. The minor is essentially illiterate, he cannot read or write. According to her, the minor is not able to cope with the demands of mainstream schooling as is confirmed by his limited academic progress. He is better suited to be placed in a special school with the focus on the development of vocational skills. Non-verbal skills is an area of strength and he is more practically inclined.

[12] According the RAF1 form, considered by Mr Möller, the minor was involved in a pedestrian vehicle accident on 16 May 2009 at approximately 15h30 in Bloemfontein. It was specified that the minor was run over by a speeding vehicle. He was transported to the Pelonomi Hospital in an unconscious condition where he was hospitalised for approximately two months. He suffered a serious head injury and only regained consciousness after approximately a week. The minor further sustained a left femur fracture for which he underwent an open reduction with internal fixation. He also sustained bilateral tibia / fibula fractures and underwent several debridement and later open reductions with internal fixations and skin grafts.

[13] The CT scan of the brain and cervical spine had no abnormalities and it was confirmed that swelling to the left side of the face and his left eye was due to soft tissue injuries.

[14] At the time of the accident the minor was 2 years and 9 months and he was not enrolled in an educational institution.

[15] According to Me Möller:

> "*Based on narrative, the Plaintiff was a vulnerable child prior to the accident. He is mileu deprived, being raised in very poor socio-economic circumstances and having been exposed to substance abuse and violence in his environment. Based on the present information, the Plaintiff does not appear to have sustained a significant head injury which would result in cognitive deficits. The deficits identified in his past are probably indicative of his pre-morbid functioning. <u>In a child with pre-existing problems however, even a mild head injury can result in more significant cognitive sequelae</u>* (my emphasis). *The Plaintiff needs to be assessed by a neurologist, neuropsychologist and psychiatrist to determine the severity of the head injury and the impact thereof on his various spheres of functioning*".

[16] Me Möller then further reports as follows:

> *"Pre-accident: Taking the family history, development and other background information into account, the Plaintiff would have struggled to complete Grade 12 pre-accident. He needed educational support and probably would have repeated two school years. He would have entered the open labour market 2 – 3 years later than his peers. He was suited for a practical type of employment.*

Post-accident: With the identified learning difficulties present and injuries obtained (sic) in the accident, it seems as if his post-accident performance and learning is exaggerated due to the accident. … The writer is of the opinion that the accident under discussion exaggerated pre-existing learning vulnerabilities. His general functioning and skills would have been better if it was not for the injuries. His level of education and career options are limited post-accident."

[17] Me Möller further opines:

"*The funds generated by this matter need to be protected and managed by a trust to be available for the Plaintiff during his lifespan, in order to address issues as they arrive during the different developmental stages. The latter is recommended as T[…] does not have the mathematical and emotional ability to manage money on his own. T[…]'s functioning indicates that is vulnerable to exploitation by others*."

<u>Joenita Friedrichs (Occupational Therapist)</u>:

[18] Me Friedrichs assessed the minor during October 2017. She reports that it appears that the minor sustained a head injury, strabismus to the left eye, left femur fracture and bilateral tibia and fibula fractures. He received surgical and

conservative treatment. She further confirms that the minor still presents with a left eye strabismus, since the accident occurred his hearing has decreased, he experiences pain bilaterally in his ankles and he experiences academic and psychosocial difficulties. As far as loss of amenities are concerned, she reported on the day of the evaluation no physical difficulties were identified which should limit the minor from independently performing his activities of daily living or pursuing any leisure activities.

[19] As far as the impact of the accident on the minor's further education is concerned, she reports that the minor presented with low muscle tone in his hands, arms, trunk and legs and with immature nervous system. It is likely that these difficulties were present prior to the accident in question and that it could have been exaggerated by the accident as the minor was at a developmentally vulnerable age when the accident occurred. Due to the low muscle tone, it is likely that the minor fatigues from sitting up right against gravity and from holding and writing with a pencil. As he fatigues, it is likely that his already decreased work speed will decrease even more making it more challenging to stay focused in class and to keep up with the work pace.

[20] As far as the impact of the accident on future work capacity and the resultant residual physical capacity is concerned, Me Friedrichs reported that the minor's future employment opportunities are related to the level of education he is able to obtain. She further reports that the minor's future employment opportunities appear to be restricted to more labour types of employment

based on the report of Me Möller who indicated that the minor "*would need sympathetic employment under supervision*". This of course would limit his employment opportunities. Due to the difficulties, Me Möller identified in her report the minor is not considered to be an equal competitor in the open labour market. Should he be able to secure employment, the difficulties Me Möller identified would make him a vulnerable employee. She deferred to the industrial psychologist for comment on the potential future loss of income the Plaintiff could suffer as his work opportunities are restricted and he is considered to be a vulnerable employee.

Dr H E T van den Bout (Orthopaedic Surgeon):

[21] Dr Van den Bout assessed the minor during August 2017. According to him the minor complains of squinting and decreased vision of his left eye since the accident. According to the minor's uncle he struggles to concentrate and he is forgetful. He often forgets what he was supposed to do, he often forgets what he has been told before and forgets instructions given to him as well. He is not doing well at school. The minor complains of discomfort over both legs when walking far and when he is active. He is able to walk far, run and jump but he tires quickly. As far as problems which were experienced at the date of the assessment by Mr Van den Bout, he referred to the scarring of the minor on the left side of his face, on the right cheek, on the left distal thigh, on the left distal lower leg and ancle, on the right knee as well as on the lower legs. He further referred to the strabismus of the left eye which is still present. He

commented that the minor has a normal gait and is able to run and jump. The examination of both lower limbs, except for the scars, was normal. The left hip and both knee and ankle joints appear normal. From an orthopaedic point of view there is no impairment anymore due to the orthopaedic injuries sustained. Dr Van den Bout also commented that as far as the head injuries are concerned, a whole person impairment should be obtained from a neurologist or neurosurgeon.

[22] From an orthopaedic point of view, the minor does not pass the 30% rule of point of the RAF1 report. In his opinion however, the minor passes the narrative test for permanent serious disfigurement due to the disfiguring scars sustained due to the accident. He further opines that the minor will possibly also pass the narrative test for the head injuries sustained which should be assessed by the relevant experts.

[23] As far as general damages are concerned, Dr Van den Bout further referred to the pain and suffering which the minor already has endured due to the injuries that he has sustained. Those injuries sustained would have caused pain and suffering of at least one week severe and four weeks moderate. The operations done would have increased his pain and suffering for a few days. He went to theatre three times. He further opined that the minor needs plastic surgery to improve the appearance of the scars. Pain and suffering associated with such surgical procedure should be determined from a plastic surgeon.

Dr D Hoffmann (Plastic and Reconstructive Surgeon):

[24] In his report Dr Hoffmann dealt with the disfigurement of the minor and in particular the scarring already referred to. According to Dr Hoffmann at the stage when he evaluated the minor, he was 12 years old and multiple scars were troublesome as it were very visible and unsightly. According to the prognoses by Dr Hoffmann, the minor's scarring will always be visible and is therefore permanent. Such scarring cannot be improved by surgery as expressed by Dr Hoffmann.

Dr I Hasrod (Ophthalmologist):

[25] Dr Hasrod examined the minor during December 2021. According to his report, the minor complains of a squint in both eyes since the accident. The minor has no evidence of extra-ocular muscle paralysis or cranial nerves from the accident. The minor does have a mild alternating esotropia which cannot be attributed to the accident.

Dr D K Mutyaba (Neurosurgeon):

[26] Dr Mutyaba evaluated the minor during September 2018. As far as the minor's cognitive functions are concerned, the following observations were made during the assessment: Cognitive functions – it was difficult to assess

the minor's intelligence whereas he did not speak much during the assessment (overall he came across as below average intelligence for a 12 year old), the minor's attention was not sustained for more than 5 minutes, he lost interest towards the end and he had a poor short-term memory.

[27] The assessment by Dr Mutyaba shows that, in his opinion, in addition to the minor's multiple fractures, the minor suffered "*in the least a concussive brain injury*". He further commented that an MRI scan of the brain is required to assess the minor fully, especially as the CT scan he had with the accident was normal. Looking at the mechanism of the injury, head trauma cannot be ruled out.

Lindie Grootboom (Neuropsychologist):

[28] Me Grootboom evaluated the minor during September 2018 as well. In her report she refers to the reports and assessments by Dr Van den Bout, Me J Friedrichs, Me K Kotze (the Industrial Psychologist) and Me L Möller.

[29] She reports that the minor's uncle described him as a well-adjusted child that was playful and quick to warm to others prior to the accident. Cognitively, his pre-morbid functioning is difficult to ascertain as he was only 2 years and 9 months old at the time of the accident. "*Considering factors such as his family's socio-economic status and the fact that none of them completed their secondary schooling, it is likely that his pre-morbid cognitive functioning was*

compromised". Post-accident, according to the minor's uncle, he is naughty and defiant following the accident, he is physically aggressive and fights with his peers and younger siblings and he displays rapid mood changes. Cognitively, concentration-, memory- and problem-solving difficulties were reported. Physically, he seems to be suffering from pain and occasional swollenness in both legs and feet, dizziness, numbness in his feet and painful and teary eyes. Me Grootboom agrees with the opinion of Me Möller in particular that: "*In a child with pre-existing problems, even a mild head injury can result in more significant cognitive sequelae".*

[30] Me Grootboom's prognosis is the following:

> *"In conclusion, there are significantly emotional and neurocognitive sequelae. Prognosis is guarded, as more than two years have passed since the accident and pre-morbid factors likely play a role in the suggested sequelae"*.

Evaluation of medical evidence:

[31] As stated, there was no appearance on behalf of the Defendant during the hearing. It needs to be mentioned that Defendant has also filed a number of notices in terms of Rule 36(1) and (2) in regards to certain medical expert reports and opinions. However, whereas none of these reports had been

presented to me in evidence, the evidence as presented by the Plaintiff therefore presently stands uncontested.

[32] The first aspect which needs to be considered is the fact at the time the accident occurred, the minor was a mere approximately 2½ years old. As pointed out by some of the experts, because the minor was not attending school at that stage, it is difficult to compare the minor's pre-accident performance with his post-accident performance. It is basically impossible to do so.

[33] In the absence of such comparison, the Court therefore needs to consider the opinions of the various experts in particular in regards to the head injury which relates to the minor's educational performance as well as his future potential employment. In this respect the evidence as per his report presented before Court, by the neurosurgeon, Dr Mutyaba needs to be considered. According to him the CT scan of the brain at the time of the accident, did not show any evidence of intracranially injury. There was mere evidence of extracranial soft tissue swelling. In his assessment, Dr Mutyaba concluded that the minor suffered in the least a concussive brain injury. As indicated, he also recommended that an MRI scan of the brain is required to assess the minor fully especially, as he had stated, the CT scan he had with the accident, was normal. It is unfortunate that no evidence has been placed before Court in regards to such further MRI scan of the brain. It is therefore necessary that

the opinions of some of the other experts need to be considered in conjunction with the opinion of Dr Mutyaba.

[34] According to the report of Me Möller, the minor does not appear to have sustained a significant head injury which would result in cognitive deficits. The deficits, according to her, identified in his profile, is probably indicative of his pre-morbid functioning. She however goes further by saying that in a child with pre-existing problems, even a mild head injury can result in more significant cognitive *sequelae*. She then also went further to recommend that the minor needed to be assessed by a neurologist, a neuropsychologist and psychiatrist to determine the severity of the head injury and the impact thereof on his various spheres of functioning. Thereafter as discussed, the minor was indeed assessed by a neurosurgeon, Dr Mutyaba. As indicated, Dr Mutyaba only concluded that the minor at least suffered a concussive brain injury during the accident.

[35] Furthermore, the opinion of Me Möller is supported in the finding by the neuropsychological assessment by Lindie Grootboom, the Clinical Psychologist, to the effect that she is in agreement with the opinion of Me Möller in this regard.

[36] Me Grootboom in her report also in effect came to the conclusion that the pre-accident cognitive limitations and educational potential of the minor were

exacerbated by the injuries and in particular the head injury which the minor sustained during the accident.

[37] Mr *Marx* referred me to the matter of **Prins v Road Accident Fund**[1] where Lowe, J in the evaluation of the probabilities in respect of certain expert evidence held as follows:

> *"It is useful to be reminded, again at the first principal level, that the party at a civil trial whose version of the facts appears to be the more probable is entitled to judgment, the proof being on a balance – preponderance – of probabilities.*
>
> *Sufficient proof is established when an inference can be drawn about fact in issue, providing that the inference is consistent with all the proven facts. In civil matters, it suffices if the inference is the most probable inference.*
>
> *Further, once prime facie proof of all evidence has been provided, that is proof calling for an answer. This becomes conclusive proof on the point in issue usually if no evidence is produced to rebut. The fact of the matter is, however, that the court must at the end of the case review all evidence and evaluate this according to the applicable primary criterium.*

[1] CA 143/2017 [2018] ZAECGHC 20 (20 March 2018)

It must be accepted, of course, that where for example, a defendant fails to produce evidence, this does not mean necessarily that the opponent's version in the case, falls to be accepted. The acceptance of plaintiff's case depends on the strength of plaintiff's case, being whether or not it is sufficient to cast an evidential burden on the defendant to present evidence."

[38] In view of the opinion of Dr Mutyaba coupled with that of Me Möller and Me Grootboom, I hold that the Plaintiff indeed provided *prima facie* evidence which called for an answer from the Defendant. In absence of such rebuttal evidence presented by the Defendant, I therefore hold that the present "cognitive sequelae" are indeed as a result of the injuries and more in particular the head injury which the minor sustained during the accident. The Plaintiff has succeeded in proving on a balance of probabilities that the minor had incurred a mild head injury in the form of a concussive brain injury which exaggerated the minor's pre-accident cognitive limitations and educational potential.

[39] The next step is to determine which damages should be awarded to the Plaintiff.

<u>Future medical expenses</u>:

[40] In his Heads of Argument, Mr *Marx* made the submission that there is no dispute to the fact that the Plaintiff is entitled to an undertaking in terms of section 17(4)(a) of the Road Accident Fund, 56 of 1996 ("**the Act**"), in respect of future medical, hospital and related expenses relating to goods, services and accommodation required. Mr *Marx*'s contention in this regard is correct. However, mention must be made to the matter of **K obo M v RAF**[2] where the Full Bench of the Gauteng High Court held as follows:

> *"The result is that, once a plaintiff proves his claim as contemplated in section 17(4)(a), it is entitled to claim an order catering for a direction to the fund to furnish such an undertaking and the court is entitled to grant such an order. This will also apply in instances where orders by default, are sought."*

[41] The Plaintiff has indeed shown that there are certain potential future medical expenses which needs to be covered by an undertaking in terms of Section 17(4)(a) of the Act.

<u>Loss of earning capacity</u>:

[42] According to the actuarial reports by Johan Sauer Actuarial Consulting, the actuarial calculations took into account contingencies differential of 40% and 60% on the future pre-morbid income.

[2] 2023 (3) SA 125 (GP)

[43] The legal principles applicable to the assessment of contingencies have been set out on numerous occasions in the past in various case law. It is by now accepted that in assessment of these kind of damages, which cannot be assessed with any amount of mathematical accuracy, the Court has a wide discretion. In regards to the Plaintiff's claim for loss of earnings and earning capacity as well as the legal principles applicable thereto, the latter were succinctly set out in **Southern Insurance Association Ltd v Bailey NO**[3] where Nicholas JA said as follows:

> *"On the contrary, while the result of an actuarial computation may be no more than an 'informed guess', it has the advantage of an attempt to ascertain the value of what was lost on a logical basis; whereas the trial judges' 'gut feeling' (to use the words of appellant's counsel) as to what is fair and reasonable is nothing more than a blind guess."*

[44] As stated, the contingencies differentials already applied by the actuaries in the present matter, are 40% and 60% whereas the Defendant made no submissions on loss or contingencies to the future loss, I agree with the submission made by Mr *Marx* in this regard that given the uncertainties of the Plaintiff's income, this is fair and reasonable in the circumstances. The amount to which the Plaintiff is entitled in regards to loss of income and income capacity therefore amounts to R1,050,917.00.

[3] 1984 (1) SA 98 (A) at 144C - D

General damages:

[45] The amount in regards to general damages still remains in dispute. In a letter dated 28 September 2022 from the claims officer on behalf of the Road Accident Fund addressed to the Plaintiff's attorneys, it appears that the Defendant formally accepts the claim for general damages for the following reasons:

> *"The claimant sustained the following injuries: Left femur fracture, left open tibia fracture, right open tibia fracture, and abrasions and swelling left side and head.*
>
> *The RAF4 forms by Dr D K Mtyaba, neurosurgeon and Dr H E T van den Bout, orthopaedic surgeon are therefore accepted in terms of Regulation 3(3)(c) and (d) of the Road Accident Fund Amendment Act 90 of 2005."*

[46] It is trite law that in assessing general damages to be awarded, a court may pay regard to comparable cases. In **Protea Assurance Co Ltd v Lamb**[4], Potgieter JA said as follows:

> *"It should be emphasized however that this process of comparison does not take the form of meticulous examination of awards made in*

[4] 1971 (1) SA 530 (A) at 535H – 536B

other cases in order to reflects the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the court in arriving at an award which is not sustained out of general accord with previous accords in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages."

[47] I had been referred to numerous comparable authorities by Mr *Marx* in this regard. In determining the appropriate amount to be awarded as general damages, I will only refer to those in which the circumstances are the most similar as to those of the minor in the present action.

[48] In the matter of **Nsele v Road Accident Fund**[5], a 34 year old male was involved as a pedestrian in a motor vehicle accident. Nsele suffered a moderate to severe traumatic brain injury that was diffuse in nature. Nsele also suffered a femur fracture and several lacerations on his legs and face facial area. Nsele was determined to suffer a WEI of 20%. Nsele suffered severe headaches, has difficulty speaking properly or understanding, has retrograde amnesia, has withdrawn socially and suffers from speech dysphasia. He remained unemployed subsequent to the accident. Nsele suffered a similar moderate traumatic brain injury to the minor in the present

[5] (70447/2019) [2021] ZAGPPHC 455 (13 July 2021)

matter and the cognitive and emotional *sequalae* from the injuries appear largely similar to the Plaintiff in this matter. Both Nsele and the minor suffered an additional femur fracture and visible lacerations. The minor was considerably younger than Nsele at the time of the accident. While Nsele has been deemed unemployable in the open labour market, the Plaintiff's future career opportunities have been truncated by the injuries sustained. The Court found a fear and reasonable equitable amount for general damages to be R1,100,000.00 which is equivalent to R1,197,000.00 in 2023.

[49] In the matter of **Kaduku v Road Accident Fund**[6], an adult male was involved as cyclist in a motor vehicle accident. He lost consciousness at the accident scene and only regained his consciousness five days later. Kaduku sustained a left tibia and fibula fracture and head injury with laceration of the scalp. Kaduku suffered a mild brain oedema and based on the evidence it appears that he suffered a moderate severe diffuse brain injury. Kaduku experienced a loss of amenities of life and now is unable to walk long distances and no longer runs. Kaduku further suffered a similar tibia / fibula injury as the minor in this matter. The minor's tibia / fibula injury was a bilateral fracture. Kaduku also suffered a similar additional head injury in the accident. The minor and Kaduku experience a similar *sequelae* as a result of the injuries. The Court found a fair and reasonable award for general damages to be R650,000.00 which is equivalent to R859,000.00 in 2023.

[6] (83408/2014) [2017] ZAGPPHC 432 (22 March 2017)

[50] Mr *Marx* also referred me to the matter of **M Louw NO obo NL Oliphant v The Road Accident Fund**[7], where an amount of R2,100,000.00 was held to be a reasonable award for general damages. If one compares the circumstances and in particular the injuries which the Plaintiff sustained in that matter, it is distinguishable from the present that the Plaintiff sustained a serious spine injury and the patient had a very high probability to have pain for the remainder of his life. Furthermore, the patient has the probability of more than 50% for surgery. The injuries do however correspond with the injuries of the minor in the present matter, in that there was also a certain degree of permanent disfigurement due to his scarring.

[51] The pain and suffering endured by the minor in the present matter, has been described by Dr Van den Bout as being severe for a week and then moderate for four weeks. One must also consider that the minor was hospitalised for approximately two months, post-operative plaster was applied to both legs after the debridement and the minor had to return to theatre to have the plaster and other screws removed from his legs. He also had to go to theatre three times. As far as the loss of amenities is concerned, it appears that although the minor is currently able to run and walk, he tires quickly. In the circumstances, I find the amount of R1,450,000.00 to be a fair and equitable amount in regards to general damages to be awarded.

[7] Unreported, case number 854/2017, Free State High Court, delivered on 9 May 2022

[52] According to the report by Me Möller, it appears that any funds to be awarded to the minor needs to be protected. A trust for the benefit of the minor is envisaged by the Plaintiff and her instructing attorney. For those purposes a Deed of Trust had already been signed for such trust to be established. Whereas it is undisputed that such protection of the funds are necessary for the benefit of the minor, I agree that such trust should be established for the benefit of the minor.

[53] A signed Deed of Trust apparently concluded between the donor being the attorney acting on behalf of the Plaintiff and the proposed trustee dated 27 October 2023 had been also been placed before me to be considered as part of the draft order which was also placed before me. Such Deed of Trust will be incorporated in the order of court.

[54] As far as costs is concerned, there is no reason why the Defendant should not be held liable for the costs of the action.

Order:

Therefore, I make the following order:

1. The Defendant is ordered to pay the Plaintiff's attorneys in the sum of **R3,100,917.00** in respect of earning capacity and general damages, set out as follows:

1.1	Loss of earning capacity	-	R1,050,917.00
1.2	General damages	-	R1,450,000.00
	Total		R3,100,917.00

2. Such amount to be paid into the trust account of Plaintiff's attorneys with the following details:

Account holder:	VZLR Incorporated
Branch:	Absa Business Bank Hillcrest
Branch code:	632005
Type of account:	Trust account
Account No:	3[…]
Ref:	MAT91567

3. In the event of default on the above payment, interest shall accrue on such outstanding amount at **11.75%** at the *mora* rate of 3.5% above the repo rate on the date of this order as per the Prescribed Rate of Interest Act 55 of 1975 as amended) per annum calculated from the due date as per the Road Accident Fund Act, until the date of payment.

4. Defendant is ordered to furnish the trustee appointed in respect of **T[…] M[...]** (the minor) an undertaking in terms of Section 17(4A) of the Road Accident Fund Act 56 of 1996 for the costs of the future accommodation of the minor in

a hospital or nursing home or the treatment of or rendering of a service or the supplying of goods (of a medical and non-medical nature) to the minor arising out of injuries sustained by him in the motor vehicle collision on 16 May 2009, in respect of which undertaking the Defendant will be obliged to compensate the trustee in respect of the said costs after the costs have been incurred by either the Plaintiff or by the trustee or by any party on behalf of the minor and on proof thereof. The Defendant is ordered to pay the reasonable traveling costs and accommodation for the minor and his caretaker to and from the location where he is to receive treatment covered under the undertaking.

5. Without derogating from the generality of the aforesaid, the undertaking shall include the reasonable costs of the formation of an *inter vivos* trust for the benefit of the minor and the costs of administration of the said trust by the trustee, including the costs attended upon the provision of security by the trustee, and auditing and/or accounting services.

6. A case manager be appointed as per the discretion of the trustee of which the costs of such appointment, if necessary, is covered under Section 17(4A) undertaking.

7. Defendant is to pay the Plaintiff's taxed or agreed party and party costs, as to and including the trial dates of 24, 25 and 27 October 2023 and the date when this order is made an order of court, for the instructing and corresponding attorneys, which costs shall include but not be limited to the following:

7.1 The fees of counsel, including but not limited to the preparation for trial, preparation, consideration and completion of the Heads of Argument accompanying this order and day fees in respect of trial dates of 24, 25 and 27 October 2023;

7.2 The reasonable taxed for qualifying and reservation fees for 24, 25 and 27 October 2023 of the following experts:

Dr H E T van den Bout,
Dr D K Mutyaba,
L Grootboom,
L Roos,
Dr I Hasrod,
Dr D Hoffmann,
Me J Friedrichs,
Ms K Kotze,
J Sauer.

7.3 In event of default on the above payments, interest shall accrue on such outstanding amount at the *mora* rate of 3.5% above the repo rate on the date of taxation / settlement of the bill of costs, as per the Prescribed Rate of Interest Act 55 of 1975, as amended, per annum calculated from due date until date of payment.

8. The award to the Plaintiff shall be protected by means of it being entrusted to a trust to be formed for the benefit of the minor.

9. Until such time as the trustee (Jeanne Hellen Rabie), still to be appointed and the trust to be erected, is able to take control of the capital sum and to deal with same in terms of this order, the Plaintiff's attorney of record:

9.1 Shall be prohibited from dealing with the capital in any other manner unless specifically authorised thereto by the Court subject to paragraphs 9.2 to 9.5 hereunder;

9.2 Is authorised to invest the capital amount in an interest-bearing account with a registered banking institution in terms of Section 86(4) of the Legal Practice Act, Act 28 of 2014 to the benefit of the minor and will only be allowed to pay such monies over to the trustee of the trust to be created in terms of paragraph 5 of this order, once the Master of the High Court has issued the trustee with the necessary letters of authority;

9.3 Is further authorised to pay the costs to set the security of this funds held in the trust, from the capital received, to the relevant insurer by the trustee of the trust to be created, with costs, in turn must be refunded by the Defendant to the Plaintiff;

9.4 From the date of receiving the capital until the Master of the High Court has issued the trustee with the necessary letters of authority, is authorised an order to make payment in the amount of R5000.00 per month, as well as such other amounts that may be reasonably indicated and/or required for the well-being of the minor and in his

interest which a diligent trustee would have paid had such trustee been appointed;

9.5 Is authorised to make payment of the attorney and own client cost, being fees, disbursements and interest on paid disbursements of the Plaintiff's attorneys.

10. The nominated trustee is ordered to furnish security to the satisfaction of the Master of the High Court.

11. The nominated trustee shall attend to the creation of an *inter vivos* trust in order to protect the awarded funds to the exclusive benefit of the minor.

12. That the trust to be erected for the benefit of the minor on these papers, with powers which shall include (but not limited to) the powers as referred to in the Deed of Trust dated 27 October 2023.

13. The Defendant is ordered to pay the costs in respect of the creation and fees of the administration of the said trust, to be formed in order to manage and administer the compensation payable to the minor as referred to in paragraph 1 above of this order, which costs will include the fees of the trustee.

14. The reasonable remuneration to which the trustee will be entitled in respect of the execution of the trustee's official duties is as follows:

14.1 An acceptance / establishment fee of 1% (excluding VAT) on all capital introduced into the Trust;

14.2 An annual administration fee based on a percentage of the value of the assets and administration, which percentage will be subject to the following sliding scale:

14.2.1 R0.00 – R500,000.00: 1.5% (excluding VAT);

14.2.2 R500,000.00 – R1,000,000.00: 1.25% (excluding VAT);

14.2.3 R1,000,000.00 and more: 1% (excluding VAT).

14.3 The undertaking contemplated by Section 17(4)(a) of Act 56 of 1996 will be administered by the trustee and the trustee or his/her agent/attorney will be entitled to an administration fee of 10% on all successful claims;

14.4 Travel expenses for purposes of attending trust-related matters;

14.5 A termination fee of 2% (excluding VAT) on the assets of the Trust at the time of termination / dissolution of the Trust;

14.6 The parties recognise that the trustee, an attorney, is a professional trustee and agree that the Trust shall pay to the trustee the trustee's legal charges for only work performed by the trustee beyond the ambit of the trustee's official duties, in her capacity as an attorney acting on behalf of the Trust.

J J F HEFER, AJ

Appearances on behalf of the Plaintiff:	Adv D J Marx
	Instructed by: VZLR Incorporated c/o Du Plooy Attorneys Bloemfontein
On behalf of the Defendant:	No appearance.