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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 80010/17

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED:

SIGNATURE:

DATE: 11 September 2023

In the matter between:

N[...], T[...] N[...]

(OBO N[...] A[...] N[...])

Plaintiff

and

MEC FOR HEALTH, GAUTENG

Defendant

JUDGMENT

**THIS JUDGEMENT HAS BEEN HANDED DOWN REMOTELY AND SHALL BE
CIRCULATED TO THE PARTIES BY WAY OF E-MAIL/ UPLOADING ON
CASELINES. ITS DATE OF HAND DOWN SHALL BE DEEMED TO BE 11
SEPTEMBER 2023**

COWEN J

1. In this action, the plaintiff, Mrs N[...] N[...] has instituted a claim against the MEC for Health, Gauteng, the defendant. She does so in her capacity as the mother and guardian of her daughter, N[...] A[...] N [...], a girl born on 19 August 2009.

2. Alice is now 14 years old. She is legally blind as a result of a condition called retinopathy of prematurity. She has navigational vision in her right eye which she will probably lose in time. She is completely blind in her left eye.

3. On 24 February 2020, Collis J granted an order declaring the defendant 100% liable for the damage suffered by Alice as a result of her blindness. What remained to be determined is the quantum of damages, which is the issue that came before me as a special trial on 7 August 2023.

4. The plaintiff's claim has the following components:

4.1. Past expenditure and fair compensation by Alice to the plaintiff for her caregiving to date;

4.2. Future hospital, medical and related expenditure;

4.3. Loss of income and earning capacity;

4.4. General damages;

4.5. Costs of protection of the award.

5. Shortly before the trial was due to commence, the parties approached me and requested that the matter stand down to enable the parties to engage further with each other to limit the issues for trial. In circumstances where the joint minutes reflected material agreement, the parties were committed to limiting any issues for evidence and the plaintiff did not appear at fault in delaying pre-trial engagement, I stood the matter down for this purpose. I was informed at the outset that even if the parties' representatives could achieve consensus on a reasonable quantum, it was unlikely that the defendant would provide a mandate to settle the action.

6. On 14 August 2023, the matter was argued before me on MS Teams in circumstances where the parties had agreed that the expert reports and joint minutes could serve as evidence and there was no need to call any witnesses to testify. To facilitate consideration of the matter, the plaintiffs' counsel had prepared a detailed schedule of loss with reference to the expert reports and joint minutes and the parties had prepared detailed minutes of the pre-trial conferences that ensued while the matter stood down. Both parties' counsel had, moreover, prepared detailed heads of argument dealing with their submissions on what amounts they contend were reasonable in respect of each item of loss and the basis therefore. Where necessary, counsel referred to relevant legal authority.

7. In summary, the plaintiffs submit that a fair and reasonable award would be **R12 777 819** made up as follows:

7.1. Past expenditure:	R47 000
7.2. Fair compensation for caregiving to date:	R274 388
7.3. Future hospital, medical and related expenditure:	R8 170 455
7.4. Loss of income and earning capacity:	R1 366 923
7.5. General damages:	R2 050 000
7.6. Costs of protection of the award:	R 869 053

8. I have considered the papers filed of record, and I am satisfied that the order proposed by the plaintiffs should be granted. While the defendant's counsel had no mandate to settle the action, she unequivocally informed the Court that she is constrained to agree that the order proposed represents a fair and reasonable award. I am satisfied that the Trust arrangements in place for post award protection

of funds, which is required, are appropriate¹ and that the costs order sought should be granted in the terms sought.² Moreover, the defendant's counsel accepts the reasonableness of the draft order. I have considered the contingency fee agreement in place between the plaintiff and the plaintiffs' representatives and am satisfied that it conforms with the prescribed requirements.

9. In my view it is not necessary for me to detail in this judgment the content of the pleadings, the expert reports and joint minutes, the actuarial calculations, the pre-trial minutes, the schedule of loss (and its detailed appendices) and the detailed submissions advanced on behalf of the parties. The manner in which the documents have been presented to the Court explains precisely how each amount is arrived at, the contingencies used, the reasons for the approach to contingencies and what compromises were made and the reasons therefore. In making the award as proposed, I endorse the parties' approach as recorded.

10. Finally, I must record my appreciation for the conduct of the parties' representatives in this matter. The manner in which the legal representatives approached the matter is in keeping with the expected high standards of the profession and is to be applauded. I consider it prudent, moreover, to record that - from the Court's perspective, certain work done by the plaintiff's legal representatives - in liaison with the defendant's representatives, where necessary, was of particular assistance to the Court in dealing with the matter. This work also ultimately served significantly to reduce the incurrence of unnecessary costs and time during what would otherwise have become an extended trial. This included the work preparing the schedule of loss with its appendices, engagements in respect thereof, the minutes supplied and the preparation of detailed heads of argument.

11. I make an order in terms of the draft attached as X, which incorporates a Deed of Trust marked Y.

¹ *In re Protection of Certain Personal Injury Awards (Pretoria Society of Advocates and others amici curiae)* 2022(6) SA 446 (GP). I addressed certain queries to counsel after the hearing and the parties thereafter amended the proposed Trust deed to accommodate the concerns raised.

² The Court addressed queries to the parties in light of *Letsoale and other v RAF* [2023] ZAGPPHC 456 whereafter the parties amended the draft order satisfactorily.

SJ Cowen
Judge, High Court Pretoria

Date heard: 14 August 2023

Further submissions: 30 August 2023

Date of decision: 11 September 2023

Appearances:

Plaintiff: JF Mullins SC & LA East instructed by Paul du Plessis Attorneys

Defendant: LA Pretorius instructed by the State Attorney, Pretoria.