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

CASE NO: 19018/2015

Not Reportable

Not of interest to other judges

2/3/2018

In the matter between:

ADV MM TROMP N.O.
obo PH WEYERS

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

PETERSEN AJ

Introduction

[1] The plaintiff Pieter Harold Wessels was 36 years and seven months old at the time of a collision on 19 August 2013 at the premises of Laerskool Meiringspark, Klerksdorp on Mahogany Road, Klerksdorp as a passenger in the back of a Nissan 1400 LDV with registration number [...]. He initially instituted action against the defendant in his personal capacity in terms of the provisions of the Road Accident Fund Act, Act 56 of 1996 ("the Road Accident Fund Act"). He suffered damages as a result of injuries sustained in a collision that occurred.

Adv MM Tromp was subsequently appointed as curator *ad litem* for the plaintiff and substituted as plaintiff.

Issues of common cause and issues in dispute

[2] The issue of liability (merits) was conceded 100% in favour of the plaintiff. The defendant further gave a statutory undertaking in terms of section 17(4)(a) of the Road Accident Fund Act for the future medical and related expenses of Mr Weyers. An amendment was sought in respect of the amount in respect of past medical expenses, to reflect an amount of R3003.75, which is not in dispute. Pursuant to a second Joint Minute received from the parties Industrial Psychologists on 2 February 2018, the parties agree that the appropriate retirement age to be utilised as a basis for actuarial calculations is 65 years. The said age of 65 years finds reflection in scenario 2 of the actuarial calculations which was subsequently obtained after the industrial psychologists agreed that the injured parties' income for calculation purposes be calculated at R118 800.00 per annum as at 2014 increasing yearly in accordance with the Consumer Price Index. The parties agree that a 10% contingency deduction be applied to past loss of income. There is no consensus however on the contingency deduction to be applied to loss of earnings. The issue of an appropriate contingency deduction applicable to loss of earnings; and general damages which should be awarded remains in dispute.

[3] The plaintiff and defendant filed several medico-legal reports of various experts inclusive of joint minutes. The content of the reports is not in dispute and was received as evidence by the court.

[4] The seriousness of the plaintiff's injuries are not in dispute and the parties agree that he is entitled to general damages and further that he is unemployable in the open labour market.

The injuries

[5] According to the neurosurgeons the plaintiff sustained a moderate to severe traumatic brain injury in the motor vehicle collision which has resulted in

significant long-term neurophysical, neurocognitive and neuropsychiatric sequelae. He had further sustained damage to both frontal lobes of his brain which has further aggravated the sequelae of the diffuse brain injury which makes it a very significant brain injury. They further describe the accident as having been a life changing event. The plaintiff suffers from post-traumatic epilepsy, balance and co-ordination difficulties, he is unable to smell and has the appearance of a person with brain damage. A curator bonis is accordingly recommended.

[6] The clinical neuropsychologists agree that significant cognitive and behavioural disturbances are present due to the traumatic brain injury sustained. They further agree that his neuropsychological status is permanent and his prognosis for depression is poor. As a consequence the plaintiff is regarded as unemployable in the open labour market and meets the narrative test of significant and long-term mental disturbance. The plaintiff will require protection of any award made.

Loss of Earnings and Earning Capacity

Pre-Morbid

[7] The plaintiff is currently 41 years old. He completed Grade 10 at the Hoer Tegniese Skool Klerksdorp at the age of 15 or 16, having failed grade twice. He had enrolled himself at the said school following a school career manifest with regular moves from one school to another. His subjects included, English, Afrikaans, Mathematics, Science, Technical Drawing and Motor Maintenance. Upon leaving school he did a security grade E course from 3 to 8 June 1995 and a grade D from 10 to 15 June 1995 at De Bruyn Training Centre. He followed this with a course in motor maintenance and repairs at the Speciss College, starting on 31 January 1996 and completed 230 hours. During August and September 1997 he did a security grade C and mining security course. The plaintiff could not provide the industrial psychologist for the plaintiff a curriculum vitae of his early work career. He reported to have worked at a Supermarket called Schoonspruit Supermarket as a security officer and attending to cleaning duties. He moved to Johannesburg in search of his mother and worked as a security officer at a

building In Hillbrow where his uncle was employed as caretaker, for three to four years. He did a trade test in Zimbabwe after 240 hours of work and qualified as a welder. He returned to South Africa and did contract welding for Bond Industries in Klerksdorp for a certain Pieter Rossouw of Dynamic Machinery. At some stage he did cellphone repairs with two other persons for about six to seven years to generate a better income. When the building where he did cellphone repairs was sold he returned to welding and worked for Consulmet Construction in Klerksdorp. His employment with Consulmet took him to Kenya, Ghana and Sierra Leone where he did arc-welding, tick-welding and argon welding at diamond plants. He left this employment after three years as a result of physical abuse from his employer. His work career was manifest with periods of unemployment. At the time of the collision he was unemployed for at least six months. He remains unemployed after the accident.

Post-Morbid

[8] The plaintiff can no longer engage in welding as a career and it is common cause that he is totally unemployable in the open labour market. According to Mr Bobby Stopforth, a friend of the plaintiff for some 15 years, he took the plaintiff from Potchefstroom where he was living with family members who were not taking care of him. Mr Stopforth and his wife have become the primary caregivers of the plaintiff whom he describes as a child who is incapable of taking care of himself.

Quantification of the heads of damage: Loss of earnings and earning capacity and general damages

[9] As stated above the dispute between the parties is predominantly premised on the contingency deduction that should be applied to loss of earnings (future loss) with the plaintiff submitting that a 25% contingency deduction be applied whilst the defendant maintains a 30% contingency deduction should be applied. Ms Ferguson for the plaintiff submits that the 25% deduction should be applied based on the plaintiff's working career where he had on the job training, security and welding experience, his intermittent periods of unemployment and

the fact that he was unemployed at the time of the accident. The submission is made in the plaintiff's heads of argument, that "It follows that contingency deductions (or additions, although in practice these are usually the former) are adjusted upward or downward depending on the nature of the underlying assumptions. In other words, the more liberal the underlying assumptions the higher the contingency deductions will be, and the more conservative the underlying assumptions, the lower."

Mr Mhlanga submits that a 30% deduction premised predominantly on the periods of unemployment and uncertainty as to the plaintiffs income.

[10] In *Shield Insurance Co Ltd v Booysen* 1979 (3) SA 953 (A) at 965 G-H, Trollip JA stated:

'... the determination of allowances for such contingencies involves, by its very nature, a process of subjective impression or estimation rather than objective calculation, in other words, allowances on which judicial opinions may vary appreciably,...'.

[11] In *Southern Insurance Association v Bailey NO* 1984 (1) 98 AD at 113 to 114C- D, two approaches to determine future loss of earnings is identified by Nicholas JA:

"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 guess work, a blind plunge into the unknown. The other is to try to make an assessment by way of mathematical calculations, on the 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.

In a case where the Court has before it material on which an actuarial calculation can usefully be made, I do not think that the first approach offers any advantage over the second. On the contrary, while the result of an actuarial computation may be no more than an "informal guess" it has the advantage of a logical basis".

[12] In his book "The Quantum Yearbook" Robert J Koch notes the following guidelines to contingency deductions:

"Sliding Scale: % per year to retirement age, i.e 25% for a child, 20% for youth and 10%

in middle age (See Goodall v President Insurance 1978 (1) SA 389 (W)... ".

The unemployed victim: The actuarial calculations will usually be based on the earnings of the last known occupation. Deductions can be as high as 50% (see AA Mutual v Maqula 1978 (1) SA 805 (A)), but even less, can be justified depending on the employment history and occupation. In Gwaxula v RAF 2013 (SGH unreported 25.09.2013 case number 41896/2009) 30% was deducted.

[13] No two cases ever present with the same facts. The salutary practice is that each case must be assessed on its own peculiar facts. The employment history supplied by the plaintiff was very erratic and had to be pieced together by the industrial psychologist of the plaintiff. The plaintiff's employment history included periods of unemployment. He was, however, a qualified welder whose skills would always be in demand. He could in my view have secured employment with relative ease as a welder. At times, however, he consciously chose not to engage in employment with this particular skill set. At the time of the collision he reported that he was unemployed for about six months .

[14] Having regard to the peculiar facts of this matter and in view of what has been said above, I am satisfied that the contingency deduction of 30% in respect of future loss of earnings as proposed by the defendant is not unreasonable. I am accordingly satisfied that a 10% contingency deduction in respect of past loss of earnings as agreed and a 30% contingency deduction in respect of future loss of earnings and earning capacity would be fair and just. An amount of R1 926 974.00 is accordingly awarded in respect of loss of earning capacity.

General Damages

[15] Both counsel for the plaintiff and the defendant referred to various comparative authorities or case law in making submissions on the amount that should be awarded as general damages. The result is that counsel for the plaintiff submits that an amount of R1,6 million rand should be awarded for general damages whilst counsel for the defendant submits that an amount of R1 million should be awarded. The submission in the present matter regarding the said amount was that there has been a tendency since 2003 for courts to award higher amounts in general damages as opposed to previously decided cases.

[16] In considering a fair award for general damages in the present matter, it would be appropriate to restate the approach to be adopted by the court. In *De Jongh v Du Pisani* 2004 (2) All SA 565 (SCA); 2005 (5) SA 457 (SCA), the court said the following (loosely translated from Afrikaans to English):

'56 Rabe is entitled to fair compensation for this loss. The amount of such compensation must, however, also be fair towards the defendant. It is particularly so in a matter such as this, that the Court must avoid the human tendency to over compensate. Or, as Innes CJ stated it in *Hulley v Cox* 1923 AD 234 op 246, 'we cannot allow our sympathy for the claimants in this very distressing case to influence our judgment'.

58 The problem is of course that compensation can only be paid in money and the Court's dilemma is the award of monetary value for loss that money cannot buy. One of the accepted guidelines utilised by the Courts as a solution to this dilemma is to look at previous awards in comparative cases.

60 The tendency of rising awards in general damages in the recent past is clearly noticeable... The following statement of Holmes J in *Pitt v Economic Insurance Co Ltd* 1957

(3) SA 284 (D) op 287E - F is equally applicable to the present matter:

'(T)he Court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense.'

Conservatism in the award of general damages has its origin in the need that fairness should also be extended to the defendant and not as result of the miserliness of the community towards the plaintiff.

....

64 ... In the exercise of the Court's discretion comparisons with awards in previous cases is a valuable aid since it indicates to the Court the broad parameters or pattern within which the Court's award should resort. It is also so that uniformity in awards is a requirement of fairness. Nonetheless it remains a guideline. It does not replace the Court's discretion by being slavishly bound to the letter of adjusted values of previous awards.'

I wish to highlight the following at paragraph 21 of the judgment, where the court

endorsed the view of the experts in the context of that matter in respect of brain damaged persons:

'As a result the experts were in agreement that the determination of a brain injured person , like Rabe, the actual cognitive abilities does not necessarily depend on the results of psychometric tests, but how he copes with daily life'

[17] In the unreported decision of *Minister of Police v Dlwathi* (20604/14) [2016] ZASCA 6 (2 March 2016), Majiedt JA said:

"8 It is well established that an assessment of an appropriate award of general damages (sometimes also referred to as non-pecuniary damages) is a discretionary matter and has as its objective to fairly and adequately compensate an injured party (see *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 534H-535A and *Road Accident Fund v Marunga* ZASCA (144/2002) [2003] ZASCA 19; 2003 (5) SA 164 (SCA) para 23)..."

[18] In a recent matter, *Minister of Safety and Security v Augustine and Others* 2017 (2) SACR 332 (SCA), Gorven AJA restated the approach:

'28 ... Both counsel pointed to a number of previously decided matters which, they submitted, should guide this exercise. It is worth remembering the part played by previous awards in comparable cases. This was clearly expressed by Potgieter JA (*Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 535H - 5368):

'It should be emphasised... that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix 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 substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their

sequelae may have been either more serious or less than those in the case under consideration.'

And, while a court should also take into account a significant reduction in the value of

money, the mechanical application of the increase in the Consumer Price Index between the date of the award and the present case should likewise be guarded against. Some effect should, however, be given to it.'

[19] I refer to the more apposite cases referred to by counsel for the plaintiff and defendant by way of comparative analysis. In *Seme v Road Accident Fund* 2008 5 QOD A4-33 (D) the plaintiff, a 36 year old male AIDS facilitator/counsellor, sustained a severe head and brain injury, fractures of the maxilla with multiple loss of teeth, bilateral pulmonary contusion, fractures of the right tibia and fibula, compound fracture of the left knee, multiple scalp and facial lacerations, dislocation of the right elbow as well as the lumbar spine and pelvis. The plaintiff was awarded general damages of R1 million on 9 September 2008, which equates to R1 731 000.00 in 2018 (The Quantum Yearbook, 2018 p36)

[20] In *D'Hooghe v Road Accident Fund* 2010 (6J2) QOD 1 (ECP) the plaintiff, a 21 year old male, sustained a diffuse axonal brain injury, with fractures of the humerus, tibia, and tibial plateau, severe trauma to the lungs and chest and development of respiratory distress syndrome requiring intubation and ventilation for two months. The injuries left him unable to work and compete in the employment market. The plaintiff was awarded general damages of R650 000.00 which equates to R1 051 000.00 in 2018 (The Quantum Yearbook, 2018 p10)

[21] In *Anthony v Road Accident Fund* (27454/2013) [2017] ZAGPPHC 161 the plaintiff, a 22 year old female law student, sustained a traumatic brain injury described as significant. The plaintiff was awarded general damages of R1 600 000.00 in 2017.

[22] In *Smit v Road Accident Fund* 2013 (6A4) QOD 188 (GP) the plaintiff a 27 year old gardener suffered a moderate to severe organic brain syndrome with post- traumatic associated frontal lobe symptomatology and post-traumatic epilepsy; and a fractured femur. The plaintiff was awarded general damages of R650 000.00 on 16 November 2012, which equates to R908 000.00 in 2018.

[23] In *Van Zyl NO v Road Accident Fund* 2012 (6A4) QOD 138 (WCC) the plaintiff a 19 year old part-time law student suffered a severe diffuse axonal brain injury, multiple lacerations of the head and face, fractures of the right tibia and

fibula and injuries to the left arm. This resulted in neurophysical, neurocognitive and neuropsychological deficits with right hemiplegia, right upper limb weakness, ataxia, impaired balance, headaches, fatigue, cognitive and executive mental impairment and neuro-behavioural disorder. The plaintiff was rendered unemployable as a result of the accident.

[24] I further had regard to a number of other cases. In *Zarrabi v Road Accident Fund* 2006 5 QOD 84-231 (T) where the plaintiff, a 30 year old female trainee medical specialist, sustained severe diffuse axonal brain injury with severe neuro- physical , neuro -cognitive and neuro-psychiatric consequences. The cognitive and physical sequelae of her injuries left her totally unemployable as a medical doctor. The plaintiff was awarded general damages of R800 000.00 on 6 April 2006, which equates to R1 655 000.00 in 2018 (The Quantum Yearbook, 2018 p42).

[25] In *Nepgen NO v Road Accident Fund* 2012 JDR 0410 (ECP); 2012 (6) QOD A4- 129 (ECHC), a 40 year old manual worker, sustained a severe closed brain injury, fractures of the right tibia and fibula, fracture of the left clavicle and extensive soft tissue injuries. The plaintiff was awarded general damages of R900 000.00 on 15 March 2012, which equates to R1 258 000.00 in 2018 (The Quantum Yearbook, 2018 p25)

[26] The cases demonstrate the vastly different views held by various judicial officers in the context of the peculiar facts in those matters.

[27] In the final analysis this court is called upon to look at the peculiar facts of this matter. The experts agree that the plaintiff presents as a person who is brain damaged. The collateral information from his friend Mr Stopforth is that behaviour of the plaintiff is akin to that of a child who is unable to take care of himself. The collateral information accords with the expert opinion on the plaintiff. There is no better example of a brain damaged person who suffers the effects thereof in his daily life and has had his quality life significantly altered as a result of the accident.

[28] Having carefully considered the peculiar facts of the present matter and the comparable cases alluded to I am of the view that in exercising my discretion in ensuring fairness to both the plaintiff and the defendant, that an amount of R1

200 000.00 in general damages be awarded to the plaintiff. A *curator bonis* has been appointed by court order dated 8 February 2018.

[29] The defendant shall therefore pay to the plaintiff an amount of R3 129 977.75 in settlement of the Plaintiff's claim, comprised as follows:

29.1	Past medical and hospital expenses	R 3003.75
29.2	Future hospital, medical and related expenses:	Section 17(4)(a) undertaking
29.3	Past and Future Loss of income and earning capacity:	R1 926 974.00
29.4	General damages	<u>R1 200 000.00</u>
	Total:	<u>R3 129 977.75</u>

Order

[30] In the result I make the following order, as set out in the Draft Order marked "X", which is incorporated as part of this judgment.

AH PETERSEN

ACTING JUDGE OF THE HIGH COURT

OF SOUTH AFRICA

Appearances

For the Plaintiff: Adv. R Ferguson SC

Instructed by: Adams & Adams

For the Defendant: Adv. K Mhlanga

Instructed by: Lekhu Pilson

Attorneys Date Heard: 15 February 2018

Date of Judgment: 02 March 2018

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

HELD AT PRETORIA ON THIS THE 15th DAY OF FERUARY 2018 AT COURT
8A BEFORE THE HONOURABLE JUSTICE PETERSEN (AJ)

CASE NO: 19018/15

In the matter between:-

ADV M M TROMP NO obo WEYERS, PIETER HAROLD ("the patient") Plaintiff

and

ROAD ACCIDENT FUND

Defendant

ORDER OF COURT

HAVING HEARD COUNSEL for the Plaintiff ;

THE COURT GRANTS JUDGEMENT in favour of the Plaintiff, in her representative capacity as *Curatrix ad Litem* for P H Weyers (hereinafter referred to as "the patient") against the Defendant in the following terms:-

1. The Defendant shall pay the sum of **R3 129 977.75 (Three Million, One Hundred and Twenty Thousand, Nine Hundred and Seventy Rand and Seventy Five Cents)** to the patient's attorneys , Adams & Adams attorneys, in settlement of the patient' s claim, which amount, and any costs payable in terms of this order, shall be payable by direct transfer into their trust account, details of which are as follows:

Account holder	: Adams & Adams Trust Account
Bank	: Nedbank
Branch	: Pretoria

Branch code : 198765
Account number : [....]
Reference : DBS/KW/P1369

The amount of **R3 129 977,75 (Three Million, One Hundred and Twenty Nine Thousand Nine Hundred and Seventy Seven Rand and seventy five cents)** to be apportioned as follows:

1. Past and Future Loss of earnings: **R 1 926 974.00 (One Million Nine Hundred and Twenty Six Thousand Nine Hundred and Seventy Four Rand).**
2. General damages: **R 1 200 000.00 (One Million, Two Hundred Thousand Rand).**
3. Past medical expenses: **R 3003,75 (Three Thousand and Three Rand, Seventy Five Cents).**

2.1 The Defendant shall furnish the Curator *bonis* appointed in terms of a court order dated 8 February 2018 with an undertaking in terms of Section 17(4)(a) of Act 56 of 1996, in respect of 100% of the costs of the future accommodation of the patient, in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him resulting from the injuries sustained in the accident that occurred on 19 August 2013, after the costs have been incurred and upon proof thereof.

2.2 It is declared that the undertaking in paragraph 2.1 above shall cover the full amount of:

2.2.1 The remuneration of the Curator *bonis*, calculated in accordance with the tariff prescribed by the Administration of Estates Act, Act 66 of 1965 (as amended from time to time), disbursements incurred and collection commission calculated at 6% on all amounts recovered from the defendant in respect of the Section 17(4)(a) undertaking;

- 2.2.2 The cost of providing security to the satisfaction of the Master of the High Court by the Curator bonis in respect of the insurance cover that he will have to take out in order to furnish such security as may be required by the Master of the High Court for the award herein.
- 2.2.3 The costs of and associated with the preparation and auditing of curatorship accounts and financial statements as required by the Master.
- 2.2.4 To the extent that the aforesaid costs are based on a percentage of the amount administered, they are not to be subjected to any apportionment and are to be met by the Defendant in terms of the Undertaking on a 100% basis;
- 2.2.5 The appointment and reasonable costs of a case manager.
3. This order should be read in conjunction with the order dated 8 February 2018 (confirming the appointment of Constant Wilsnach as curator *bonis*), as specifically included herein.
4. The powers of the *Curator bonis*, as set out in the court order dated 8 February 2018, are extended to include the power to make investment of the award and any other funds or monies of the patient by means of any reasonable investment vehicle other than only depositing such funds or monies in an interest bearing account with a bank or similar registered financial institution, subject to the following:
- 4.1 This order shall be suspended for a period of 30 calendar days from date of this order for the Master to consider the extension of this power provided for in paragraph 4 and to submit a motivated written objection thereto should the Master wish to do so, in which event the suspension shall be automatically extended until the matter has been reconsidered by this court or a judge in chambers (whichever is directed by the Deputy Judge President).

- 4.2 If the Master does not object as provided for above, the extension of the powers of the *Curator bonis* shall become final after the lapse of the aforesaid period or on receipt of a written consent by the Master, whichever is the earlier.
5. The powers and obligations of the *Curator bonis*, as set out in the order dated 8 February 2018, are extended in that the *curator bonis* shall:
 - 5.1 furnish such security as may be required by the Master of the High Court as a result of the increase of the patient's estate by and as a result of this order; and
 - 5.2 exercise the aforesaid powers, subject to the control of the Master of the High Court; and
 - 5.3 administer or arrange for administering of the undertaking referred to in paragraph 2 above; and
 - 5.3 effect payment of the reasonable attorney and own client costs (fees, disbursements, interest on unpaid disbursements, any advance payments made to the patient and interest on same) in respect of the professional services rendered herein by the firm of attorneys that represented the patient in this matter, in so far as same have not been deducted from the award made on receipt thereof from the Defendant, prior to effecting payment of the available balance to the *Curator bonis*.
6. The patient's attorneys are authorised to invest the capital amount and taxed party and party costs in an interest bearing account in terms of Section 78(2A) of the Attorneys Act to the benefit of the patient's estate with a registered banking institution pending the finalization of the directives referred to in paragraph 5 above.
7. Pending written confirmation by the Master of the furnishing of sufficient security by the *curator bonis* and payment is able to be effected of the nett proceeds of the claim, the patient's attorneys of record are authorised and

ordered to pay from the capital amount:

- 7.1 any reasonable payments to satisfy any of the patient's needs that may arise and that are required in order to satisfy any reasonable need for treatment, care, aids or equipment that may arise in the interim;
 - 7.2 the attorney and own client costs (fees, disbursements, interest on unpaid disbursements any advance payments made to the patient and interest on same) of the patient's attorneys;
 - 7.3 such other amount(s) as may reasonably be indicated and/or required for the wellbeing of the patient and/or in his interest which a diligent *curator bonis* would have paid.
8. The Defendant shall make payment of the Plaintiff's taxed or agreed party and party costs on the High Court scale of the action, which costs shall include the following:-
- 8.1 The costs of Senior Junior Counsel, inclusive of but not limited to his reasonable, taxable full day fee for 15 February 2018 and fees for the preparation of Heads of Argument, if any;
 - 8.2 The fees of the Curatrix *ad Litem* on the High Court Scale, inclusive of her reasonable, taxable full day fee for 15 February 2018 and costs for preparation, attending consultations, preparation of her report etc, as well as for regarding the application her appointment as Curatrix *ad litem*;
 - 8.3 The legal fees incurred regarding the application for the appointment of the Curator *bonis*;
 - 8.4 The reasonable taxable costs of obtaining all expert, medico-legal, actuarial and other medical reports obtained from the Plaintiff's experts;
 - 8.5 The reasonable taxable preparation, qualification, reservation and travelling fees, if any, of the following experts of whom notice have been given, being:-

- 8.5.1 Dr M Mazabow;
- 8.5.2 Dr JJ du Plessis ;
- 8.5.3 Dr DA Shevel;
- 8.5.4 Ms Guy;
- 8.5.5 Ms Holshausen;
- 8.5.6 Ms Noble; and
- 8.5.7 Mr G Whittaker.

8.6 The reasonable taxable costs associated with joint meetings and minutes of the parties ' experts, and consultations with such experts in preparation for trial.

8.7 The reasonable taxable transportation costs incurred by the patient in attending medico-legal consultations with the parties ' experts, consultations with Plaintiffs legal representatives and the court proceedings, inclusive of Toll and E-Toll charges, subject to the discretion of the Taxing Master;

8.8 The reasonable, taxable costs incurred by the *curator bonis* in performing his duties and powers pertaining to this action;

8.9 The costs of all consultations between the Plaintiff and/or her attorney/s and/or the experts, and/or the patient and/or the witnesses in preparation for the hearing and to discuss the settlement offer received from the Defendant and the terms of this order;

8.10 The above costs shall also be paid into the aforementioned trust account.

11. The following provisions shall apply with regards to the determination of the aforementioned taxed or agreed costs:-

11.1 The Plaintiff shall serve the notice of taxation on the Defendant's

attorney of record;

11.2 The Plaintiff shall allow the Defendant 7 (SEVEN) court days to make payment of the taxed costs from date of settlement or taxation thereof;

11.3 Should payment not be effected timeously, plaintiff shall be entitled to recover interest at the rate of 10,5% on the taxed or agreed costs from date of allocator to date of final payment.

BY ORDER OF THE COURT