

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Date: 24/3/2017

Case Number: 28224/2014

In the matter between

ADV SONJA CILLIERS obo K. S.

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

BAM J

1. The plaintiff, a minor child, presently aged 9 years, to whom I will refer as "K", is assisted by a curator *ad litem*, as indicated in the citation.
2. On 29 June 2012, at Nelspruit, a collision occurred between four motor vehicles. K was a passenger in one of the vehicles. She sustained several physical injuries, neck trauma, an injury to her abdomen and various abrasions and bruises. She also suffered emotional trauma. She was hospitalised for 3 days.
3. A claim was then instituted against the defendant. Liability was conceded by the Defendant and an order in that regard was made on 12 August 2016. Subsequently the issues in respect of the merits, and future medical treatment were disposed of and the issue of general damages was separated in terms of the provisions of Rule 33(4) and postponed *sine die*. The only issue remaining is future loss of income.
4. No *viva voce* evidence was adduced and the parties relied on the reports and opinions of their respective experts.
5. It is common cause that K is presently suffering from severe psychological problems.

6. In argument, Mr Myburgh, representing the plaintiff, submitted that the emotional trauma K is suffering from is pro morbid, in that the accident is the sole cause of K's present neuropsychological problems. Mr Ngwana, appearing on behalf of the defendant, on the other hand, argued that K, pre morbidly, already suffered from certain psychological problems which have to be taken into account.

7. It is clear that K's situation, pre-morbid, left much to be desired. At the time of the accident, K was 5 years old. At the age of about 1 year she was abandoned by her biological parents and other people had to care for her. It is improbable that a child, at the age of 1 year, would experience psychological problems in circumstances where the child is properly taken care of.

8. It seems that K, up to the age of 5, subjectively, lead a normal life, taken into account that she was in some kind of foster care, but properly cared for.

9. Accordingly, in my view, it is highly improbable that any possible objective pre-morbid circumstances could have had a noticeable influence on her present situation.

10. What apparently had a most severe impact on K was that her primary caretaker, whom she regarded as her mother, passed away as a result of injuries sustained during the accident.

11. In an overview of the expert reports it seems unavoidable to find that K's psychological problems started from the time of the accident.

12. Mr Myburgh, during argument, handed up an Addendum Psychological Report by the plaintiff's Clinical Psychologist, Marina Bosman. This report refers to a very recent report, dated 6 March 2017, by Ms D Liebenberg, a social worker at L. Nelspruit, where K is a learner. What was brought to the attention of Ms Bosman concerns certain recent in appropriate sexual behaviour of K in the presence of other learners.

13. This information caused Ms Bosman to believe that there is deterioration in K's behaviour patterns.

14. In respect of the calculation of K's loss of future earnings, Mr Myburgh referred to, and relied upon, the calculation by Mr JJC Sauer, an actuarial consultant (Bundle A Volume 2), (save for the issue of contingencies.)

15. It appeared that the only issue Mr Ngwana really had with the calculation of Mr Sauer, was contingencies. However, both Mr Myburgh and Mr Ngwana was ad idem that a spread of 20% should be fair.

16. In respect of a case manager for K, Mr Myburgh referred to a court order made on 12 August 2016 in which the defendant was ordered to appoint a case manager within 14 days. There was no compliance with that order and no explanation for the defendant's failure to do so was advanced. The only point Mr Ngwana made was that the defendant has personnel at its disposal to appoint as case managers.

17. Mr Myburgh applied for an order appointing a case manager, Ms Irma Schutte, an independent person, who consented to be appointed in that capacity. In view thereof that there was no explanation by the defendant for its failure to comply with the said order, the application was granted.

18. Adv S Cilliers, curator ad litem, who was present in court, presented her supplementary report in which all relevant issues are addressed in the report.

19. After having considered all relevant information and counsel's arguments, the draft order marked X is made an order of court.

AJ BAM

JUDGE

24 March 2017

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

DATE: 22/3/17

CASE NO: 28224/2014

Before the Honourable Justice BAM

16 April 2017

In the matter between:

ADV. SONJA CILLIERS N.O. ON BEHALF OF

K. M. S.

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

DRAFT COURT ORDER

AFTER HEARING COUNSEL, the following order is made:

1. The Defendant is to pay the Plaintiff a capital amount of R 1,769,317.00 (ONE MILLION SEVEN HUNDRED AND SIXTY NINE THOUSAND THREE HUNDRED AND SEVENTEEN RAND) in respect of the loss of support suffered by the minor child which amount shall be paid into the trust account of Messrs. Pieter Nel Attorneys, Nedbank, Nelspruit, Code 198765, Account [1...], reference SMI22/0002/S432/CO;
2. The issue of general damages is separated in terms of the provisions of Rule 33(4) and postponed *sine die*.
3. Should the Defendant fail to pay the aforesaid capital amount on or before 28 April 2017, the Defendant shall be liable to pay interest on such amount at a rate of 10.5% per annum, from date of the order to date of final payment thereof, both days included.
4. The Plaintiffs attorney is ordered to pay the abovementioned amount into an interest-bearing account, pending the appointment of a *curator bonis* for and on behalf of the minor child. The Plaintiffs attorney has the right to invest the capital amount and/or utilize the capital amount to pay the necessary expenses and costs on behalf of the patient, which include but is not limited to school and boarding costs as well as all required and/or necessary medical expenses.

5. The Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act No 56 of 1996, as referred to in the order dated 12 August 2016, is to include the fees of a *curator bonis* and curator *ad personam* (if necessary), as per Government Gazette as well as the costs of setting security by such *curator bonis*.

6. Prayer 3 of the order dated 12 August 2016 is hereby recalled and replaced with the following:

6.1. Irma Schutte, a registered social worker with place of business at 180 Lenchen Avenue, Centurion, is hereby appointed as case manager for the minor child, and is hereby granted the powers and authority to take all steps necessary to facilitate, provide and ensure that the minor child receives the medical and/or social interventions recommended by the experts in this matter as urgently as possible, which include but are not limited to:

- a. Therapy to improve the minor child's fine and gross motor skills and her visual perception;
- b. The appropriate extra lessons and classes to be attended by the minor child and in particular referral to a remedial therapist to assist in the minor child's performance regarding reading, writing and mathematics;
- c. Physiotherapy to manage the minor child's pain and improve on her strength and mobility;
- d. Consultation with a dietician;
- e. Counselling by a clinical psychologist for individual and family therapy including bereavement counselling and parental guidance
- f. Psychotherapy for the minor child for post-traumatic stress disorder and depressive symptoms;
- g. Conducting an investigation into and formalise a custody placement in order to ensure stabilisation of the minor child's psychosocial context;

h. Any further intervention and treatment as may be required by the minor child and as envisaged by the medico-legal experts who have assessed the minor child.

6.2. The costs associated with the appointment of Irma Schutte and the performance of her duties in terms hereof, inclusive of the costs of treatment of the minor child and other ancillary costs is to be paid by the Defendant as if it is an expense incurred in terms of the Section 17(4)-undertaking referred to in paragraph 5 *supra*;

6.3. In so far as Irma Schutte is unable or unwilling or becomes unable or unwilling to perform the functions and duties referred to herein the curator *ad litem* may approach the Court on application for such other person as may be willing. Able and qualified to be appointed.

7. The Defendant is ordered to pay all the Plaintiff's costs of suit on the Court scale up to date hereof, which costs include (but not limited to):

7.1. In so far as not paid in terms of the order dated 12 August 2017, the costs of attending to the examinations and obtaining all the medico legal-, and actuarial reports, addendum reports, letters and any joint reports, as well as the qualifying- and reservation fees and court attendances (if any), of specifically (but not limited to) the following experts:

- a) Dr. JJ Hugo;
- b) Dr. C Ackermann;
- c) Dr. J.J. du Plessis;
- d) Dr. G. Capitani;
- e) Ms. M Vorster;
- f) Ms. Bosman;
- g) Lesley Taylor;

- h) Ms. M Mills;
- i) Dr. F Greeff;
- j) Ms. Marina Grove;
- k) Johan Sauer;
- l) The costs of any radiologists used by the aforementioned experts.

7.2. The costs of the preparation of 6 **(SIX)** trial bundles as per the Directive issued by DJP W van der Merwe;

7.3. The costs of senior-junior counsel (18 years and more experience) inclusive of his full day fee for 15 and 16 March 2017 and preparation;

7.4. The costs of attorney and correspondent attorneys, which includes travelling costs, attendance to court on 15 and 16 March 2017, all costs for preparing for Pre-Trial Conferences, formulation of Pre-Trial Minutes and costs for actual attendances to Pre-Trial Conferences;

7.5. The costs for preparation for trial for attorney;

7.6. The reasonable costs and / or disbursements of the minor child in attendance as she is declared necessary witnesses;

7.7. The reasonable costs of consultation with counsel and experts for trial purposes;

7.8. The costs and fees of and consequent to the appointment of the curator *ad item*, which costs and fees shall include, but not be limited to, perusal, preparation of her report and for trial, consultation(s) and her full day fee for 15 and 16 March 2017;

7.9. The reasonable taxed or agreed costs in respect of the appointment of the curator *bonis* and/or curator *personae*.

8. Should the Defendant fail to pay the Plaintiff's party & party costs as taxed or agreed with 14 (FOURTEEN) days from the date of taxation, alternatively date of settlement of

such costs, the Defendant shall be liable to pay interest at a rate of 10.5% per annum, such costs as from and including the date of taxation, alternatively the date of settlement of such costs up to and including the date of final payment thereof.

9. The Plaintiffs shall, in the event that the parties are not in agreement as to the costs referred to in paragraph 7 *supra*, serve the notice of taxation on the Defendant's attorneys and shall allow the Defendant 14 (FOURTEEN) days to make payment of the taxed costs.

10. The Defendant shall pay the agreed or taxed party & party costs, within the period of 14 (FOURTEEN) days from taxation along with all interest incurred, into the trust account of the Plaintiff's Attorneys of Record, Messrs. Pieter Nel Attorneys, Nedbank, Nelspruit, Code 198765, Account [1...], reference SMI22/0002/S432/CO, failing which the Defendant shall be liable to pay interest on such amount at a rate of 10.5% per annum, from date of agreement or taxation to date of final payment thereof, both days included.

BY ORDER

REGISTRAR

For Plaintiff: For Defendant:

Adv. SJ Myburgh 082 921 9240

Adv. UB Makuya 012 303 7400