

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

CASE NO: 3237/2013

DATE: 22 APRIL 2015

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

DE KOCK, MAXIE HELENA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

N F KGOMO. J:

INTRODUCTION

[1] The plaintiff instituted an action against the defendant for damages arising out of injuries she sustained when she was involved in a motor vehicle accident or collision on 26 October 2011 at approximately 23h00 along the Mabopane Highway in Pretoria. She was a passenger in a motor vehicle with registration letters and numbers CWH 474 MP (*“the insured vehicle”*) then and there driven by one M Lubbe.

[2] The parties have settled and agreed on the merits, i.e. that the defendant are 100% liable for the proven or agreed damages that the plaintiff may have suffered.

[3] During the previous court appearance herein, the defendant made an interim payment of R1 000 000,00 (one million rand) to the defendant.

[4] This amount will have to be deducted from the figure this Court arrives at at the end.

[5] Past hospital expenses were agreed at the amount of R301 643,39.

[6] Issues to be decided in this judgment are general damages and future loss of earnings.

[7] The plaintiff is claiming R1 200 000,00 (one million two hundred thousand rand) in general damages. The defendant is offering R1 000 000,00 (one million rand).

[8] On loss of earnings the parties differ on whether the plaintiff would have attained a degree or diploma post-accident, as well as on the contingencies to be applied.

[9] The plaintiff sustained serious orthopaedic and severe brain Injury. Both the plaintiff's and defendant's neuro-surgeons, Drs C M Lewer-Allan and B A Okolie as well as the two neuro-psychologists, Ms M Gibson and Mr J Redelinghuys are agreed that the plaintiff suffered serious brain Injuries from which neuro-psychological *sequelae* would be expected. The two neurosurgeons, to whom the neuro-psychologists deferred, agreed that the plaintiff suffered a severe diffuse brain injury with a risk of developing epilepsy estimated at 3-5%. The two psychiatrists are agreed that as a result of the serious orthopaedic and brain injury she has an Organic Brain Syndrome with depressed mood. The two occupational therapists are agreed that the plaintiff, when evaluated post-accident, showed competitive performance in activities falling within light to light-medium physical parameters. They also agreed that from a physical perspective, although she is an equal competitor in the open labour market, her residual physical capacity qualifies her to work in jobs falling within light physical parameters. They further opined that her prognosis regarding her head injury leading to an inability to study further, poor memory, poor social skills leads to an opinion that when considering her cognitive limitations as set out by various relevant experts in their reports, her ability to function optimally and adequately in the workplace may have been compromised negatively, such that she would need employment where the environment is supportive and non-stressful.

[10] The two industrial psychologists are agreed that:

10.1 The plaintiff's earnings and income level was R2 600,00 per month at the time of the accident;

10.2 But for the accident, she would probably not have suffered from neuro-psychological difficulties that would have precluded her from studying further, i.e. beyond her Grade 12 or matric as at the moment and/or that that would have impacted on her preaccident competitiveness for and

productivity and sustainability in future potential employment.

10.3 Considering her socio-economic background as well as the neuro-psychologist, Dr Gibson, it is anticipated that she would have been able to further her education at a tertiary level, completing diploma level studies at the least.

10.4 In any case, the plaintiff would have lost her job because the firm she worked for closed down in December 2011. However, the experts agreed that the period she would have been unemployed was estimated at about three months after which she would have secured work of a semi-skilled nature. Her initial earnings would have fallen between middle and upper range for semi-skilled workers in the non-corporate sector in the range of about R5 000,00 per month. They also agreed that after two years or so she would have on all probabilities secured employment in the formal labour market. Her salary would then have fallen at the median of A3 Paterson level of around R6 500,00 per month.

10.5 The industrial psychologists also agreed that the plaintiff would on all probabilities have studied part-time while working from 2012 until around 2016 and obtained her tertiary qualification. Her salary would have correspondingly increased to around R12 282,00 upon completion of her diploma studies at NQF level 6. From 2017 she would then have secured employment at a large company in the formal labour market.

10.6 They further agreed that she would have probably reached her earning ceiling on Paterson C level at the median of C4 Paterson level at age 42,5 years in a straight line progression to Paterson level C3/C4 total package. The accompanying income level is around R38 257,00 per month.

10.7 She would probably have continued working until age 65 with the option of retiring at age 60.

10.8 Several unpredictables including preferences and workplace policies would have affected or influenced the way forward.

[11] Post-accident the plaintiff was unemployed for 10 months, receiving a full salary for October and November 2011 and 50% thereof for December 2011. She was thus entitled to compensation for partial past loss of Income.

[12] During September 2012 and December 2013 the plaintiff worked as a counter clerk or assistant at Las Vegas Costumes, earning R3 500,00 per month. She resigned in January 2014 and started work at Plastics R Us, still earning R3 500,00 per month as at the time of her assessment by the industrial psychologists.

[13] From August 2014 she resigned her previous post and started her own business, which has not been very

successful.

[14] The experts agreed further, that the plaintiff was still going to be absent from work so as to attend to treatment and therapies recommended by applicable experts. She ought to be compensated for such leave of absence. The entire process would then be subjected to contingencies.

[15] Generally and in conclusion, the industrial psychologists were agreed that the plaintiff has been rendered less competitive in the open labour market due to the *sequelae* of the brain injury she sustained as a result of the accident. Her employment prospects have consequently reduced significantly relative to what they were, but for the accident.

[16] Dr Fine concluded that the plaintiff may even lose her current employment if she displays demotivation and less emotional control. Ms Gibson opined that she may do so if her relationship with work colleagues is poor and her job loyalty is low. They suggested that this can be cured or balanced by the application of appropriate contingencies.

ACTUARIAL CALCULATIONS VS BLIND PLUNGE INTO ESTIMATION BY COURTS

[17] In this matter the two sides are almost *ad idem* as to the kind of losses the plaintiff may have suffered. Each side then instructed its actuary to quantify the loss of earnings. They (actuaries) adopted slightly different methodologies resulting in substantially different awards.

[18] To resolve this impasse, this Court is presented with extensive actuarial evidence by Ivan Kramer CC on behalf of the plaintiff and Alexander Forbes on behalf of the defendant.

[19] Before dealing with the respective reports and their conclusions it is necessary that a foundation is laid by referring to the traditional method of calculating future loss of income in order to determine the extent to which the provisions of the amendment to the Road Accident Fund Act, 56 of 1996 (*“the Act”*) have affected this traditional method.

[20] Section 17(4)(c) of the Act as amended is of application here.

[21] The court’s task of quantifying claims where the putative future loss of income or loss of earning capacity of young persons is to be quantified, is notoriously difficult and the judicial dilemma has been highlighted on many occasions,

• ... *sometimes in very colourful language ..*”¹

[22] In approaching claims of this nature, the courts have always had open to it two possible approaches,

namely:

22.1 either that the Judge makes a round estimate of an amount which seems to him to be fair and reasonable. That process is entirely a matter of guesswork - a blind plunge into the unknown;

or

22.2 that the Judge tries 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.

[23] It is manifest that either approach involves guesswork to a greater or lesser extent. However, the court cannot for this reason adopt a *non possumus* attitude and make no award.

[24] The inherent difficulties and uncertainties therein manifest, it has generally been accepted that it is preferable to make an assessment based on actuarial calculations rather than to take a blind plunge into the unknown.

[25] I prefer this approach.

[26] Where the actuarial approach is adopted, the traditional method entails a four-stage process as follows:

26.1 Calculate the present value of the future income which the plaintiff would have earned but for the injuries and the consequent disability.

26.2 Calculate the present value of the plaintiffs future income, if any, having regard to the disability.

26.3 Subtract the figure obtained under 26.2 from that obtained under 26.1.

26.4 Adjust the figure obtained as a result of this subtraction in the light of all relevant factors and contingencies.

[27] Applying the above *criteria*, in calculating the plaintiffs estimated future income, the traditional method entails the following steps:

27.1 Ascertain the likely career path that the plaintiff would have followed had she not been injured. This requires assessment of elements such as academic and vocational qualification; promotion; chosen profession or job; likely rate of remuneration including fringe benefits; working lifespan; and retirement.

27.2 The raw data obtained in step 27.1 above is then fed to an actuary who calculates the present value of the plaintiff's future income stream by taking into account the net capitalisation rate which, in turn, takes into account the expected rate of investment return less the expected fixed rate of inflation; the relevant life tables i.e. the claimant's mortality index; and the applicable rate of income tax.

27.3 Ascertain the same facts as in 27.1 above relating to the plaintiff, now that she is injured and repeat the exercise in 27.2 above with regard to the plaintiff's future income stream in her injured position or condition.

[28] Only after the above exercises had been performed will the final adjustment be made in order to provide for contingencies in respect of both income streams separately, after which the plaintiffs net loss can be determined.

[29] Where the above method is followed, a lot of guesswork is removed from the process of quantification while at the same time, easing the cash flow of the Road Accident Fund (*"the Fund"*). The disadvantage of this method is that it undoubtedly adds immeasurably to the administrative workload of the Fund. Furthermore, it requires the co-operation and substantial agreement of both parties.

IMPACT OF S 17(4)(c) OF AMENDMENT ACT ON THE TRADITIONAL

METHOD

[30] Before its amendment s 17 of the Act obliged the Fund to compensate a third party, without limitation, for any loss or damage suffered by such third party as a result of, e.g. bodily injury to him or her, caused by or arising from the driving of a motor vehicle by another person. This was in line with the avowed purpose of this class of social security legislation which is among others to provide, as judicial precedent suggests, the fullest possible protection to victims of road accidents.²

[31] The amended s 17 limits the obligation of the Fund to compensate third parties in a number of respects. The limitation relevant or material to our present case is that placed on claims for loss of income, which now falls to be calculated, irrespective of actual loss, on the basis of a maximum annual loss. It introduced a so-called "cap" on the claim.

[32] The material provision i.e. s 17(4)(c) reads as follows:

"... (c) includes a claim for loss of income or support, the annual loss, irrespective of the actual loss, shall be proportionately calculated to an amount not exceeding -

(i) R160 000 per year in the case of a claim for loss of income ...”³

[33] After several challenges to this amendment, the Constitutional Court endorsed the cap of R160 000,00 per year.⁴

[34] It is my view and finding that it is not necessary for this Court, in determining the amount of loss of earnings by the plaintiff, indulge in sophisticated and intelligent arguments and expositions. The issue of the cap should not be over-stated. As Sutherland J held in *Sil and Others v RAF*:⁵

“... the purpose of the cap is to limit merely the sum to be paid, and its purpose is not to interfere with or in the calculation of the loss ...”

[35] It is my considered view also that, as Sutherland J also found, that the practice of calculating contingencies as it has existed for decades need not be disturbed. It boils down to the following: In our present matter, the contingencies are to be applied to the calculation of actual future loss of earnings before applying the capped limitation.⁶

[36] In the vast majority of cases people, like the plaintiff herein, earn less than the annual cap. Consequently, the calculation of their claims for loss of income will not be affected by the cap. Their claims for loss of earnings or income will accordingly continue to be calculated in accordance with the traditional method.

[37] The parties are agreed that there was nothing meaningful that would have stood in the way of the plaintiff attaining a degree qualification post-accident. When asked to comment on this aspect, the defendant’s counsel could not come forth with anything to gainsay the above. In any event, the plaintiff had always submitted that she would attain a degree level qualification.

[38] After listening to very persuasive argument and submissions from the plaintiffs counsel, this Court agrees and rules that the calculations of the amount payable to the plaintiff in respect of loss of earnings should be made up of a median between the amounts calculated in respect of a diploma and a degree. The plaintiffs actuaries have done such an exercise which can be found as a last page of their actuarial report. Although the defendant’s counsel did not differ much with the above submission, he suggested a contingency of 15% on accrued value of income and 25% to 35% on prospective income. The plaintiffs submission was a 5% on accrued value and 20% on prospective income, up to 25% in respect of a degree.

[39] After weighing the probabilities against the proven facts this Court finds that the plaintiff could have easily attained a degree-level tertiary qualification. In the circumstances, the method of calculation to be adopted is that which was suggested by the plaintiffs counsel and documented in their actuarial report. The

defendant's suggestion of 15% and 25% to 35% contingencies on the amount so arrived at is not supported by the facts and circumstances on the ground.

[40] It is my considered that a tendency has developed among practitioners of the law in cases involving contingencies to assume that their application to the amount found to be appropriate for or to be awarded to a claimant, is a given. That they must at all times be applied.

[41] It is my further view that this perception or understanding is misplaced.

[42] I agree with the findings of the court in *Road Accident Fund v Reynolds*⁷ as read together with the authorities therein quoted. In reviewing the approach our courts adopt when dealing with the question of contingencies the learned judge therein stated the following:

“Thus, allowing for contingencies is one of the elements in exercising the discretion to award damages. (CF Southern Insurance Association Ltd v Bailey NO 1984 (1) SA 98 (A) 116H.)

[6] Contingencies may consist of a wide variety of factors. They include matters such as the possibility of error in the estimation of a person's life expectancy, the likelihood of illness, accident or unemployment which in any event would have occurred and therefore affects a person's earning capacity (Minister of Defence and Another v Jackson, supra, at 34F-H. Boberg “Deductions from Gross Damages in Actions for Wrongful Death” (1964) 81 SALJ 194 at 198). Contingencies may be positive or negative. Not all contingencies are negative involving a reduction of the award. In Bresatz v Przibilla [1962] HCA 54; (1962) 36 ALJR 212 (HCA) at 213 (cited with approval in Minister of Defence and Another v Jackson supra at 34H-J and in Southern Insurance Association Ltd v Bailey NO 1984 (1) SA 98 (A) at 117B-D the following was said:

‘It is a mistake to suppose that it necessarily involves a “scaling down”. What it involves depends, not on considering what the future might have held for the particular concerned. He might have fallen sick from time to time, been away from work and unpaid. He might have become unemployed and unable to get work. He might have been injured in circumstances in which he would receive no compensation from any source. He might have met an untimely death. Allowance must be made for these contingencies or vicissitudes of life as they are glibly called. But this ought not to be done by ignoring the individual case and making some arbitrary subtraction ... Moreover, the generalisation that there must be a “scaling down” for contingencies seems mistaken. AH “contingencies” are not adverse; all vicissitudes are not harmful.

A particular plaintiff might have had prospects or chances of advancement and increasingly remunerative employment. Why count the possible buffets, and ignore the rewards of fortune. Each case depends on its own facts. '

[43] Consequently, after listening to submissions from counsel on both sides and considering the matters raised and argued, it is my view and finding that an appropriate contingency deduction to be applied to the “*uninjured*” earnings would be 5% bearing in mind the following positive and negative factors:

43.1 The plaintiffs career path would have reached a ceiling at the level of Paterson C3/C4 on the basis that she would have obtained a national diploma at worst and a university degree at best, both of which are conservative predictions since it is premised on her having been expected to definitely attain a diploma qualification and possibly obtaining a university degree.

43.2 The possibility of the plaintiff actually attaining a university degree which would push her up to the Paterson D band with commensurate higher earnings looms bright on the horizon when the facts and circumstances herein are anything to go by.

43.3 Environmental factors such as family background and backing, circumstances of the extended family and work ethic of the family points to there having been encouragement to a motivated and carrier-hungry individual.

43.4 The evidence do not exclude the fact that it would have been within the plaintiffs ability to have obtained a tertiary education qualification and embark upon a successful career in his chosen field.

[44] In the final analysis, a contingency percentage on the accrued capital in respect of both the diploma and degree basis should be 5%. On prospective earnings it should be 20% in respect of a diploma and 25% in respect of a degree. A median of the two scenarios should then lead us to an appropriate loss of earnings.

[45] When applying the above contingencies to the calculated amounts about which both sides do not have serious differences, the following evolves:

45.1 But for the accident, gross accrued value of income in respect of the diploma basis is R244 882,00. In respect of a degree it is R248 404,00. Having regard to the accident the loss amount should be R79 862,00. When the 5% contingency is applied the deductions amount to R12 244,00 for a diploma and R12 420,00 for a degree. There is no value having regard to the accident. The net accrued value of income is R232 638,00 for diploma and R235 984,00 for a degree.

45.2 Gross prospective value of income but for the accident is R6 830 289,00 for a diploma and R8

361 182,00 for a degree. Contingency will be R1 366 058,00 for a diploma and R2 090 296,00 for a degree. The net prospective value of income would thus be R5 464 231,00 for a diploma and R6 270 886,00 for a degree.

45.3 The total value of income arrived at will be R5 696 869,00 for a diploma and R6 506 870,00 for a degree. The total value having regard to the accident is R79 862,00.

[46] When calculating the value of income using the median route, taking into account the contingency deductions as used in the above scenario, the situation pans out as follows:

46.1 But for the accident for diploma and degree scenario, the net accrued loss for the diploma scenario will be R152 776,00. For a degree it will be R156 122,00. The average of the two becomes R154 449,00.

46.2 For the net prospective loss it is R5 484 231,00 for a diploma and R 270 886,00 for a degree. The average or median scenario is thus R5 867 559,00.

46.3 The total loss of income in respect of a diploma comes to R5 617 007,00 and for a degree it is R6 427 008,00. The average of the two scenarios is a total of R6 022 008,00.

[47] Consequently, the total loss of income payable to the plaintiff is R6 022 008,00.

CONCLUSION

[48] This Court has taken a median or average on the general damages by adding the plaintiffs demand of R1,2 million to the defendant's offer of R1 million. It comes to R1 100 000,00 (R1,1 million). In any case, the two parties were not far from each other.

MEDICAL AND HOSPITAL EXPENSES

[49] This aspect was partly dealt with by Ledwaba DJP on 27 May 2014 when issues like future medical expenses were finalised and a Draft Order to that effect was made an order of court. Past hospital and/or medical expenses were settled at the amount of R301 643,39 but are not included in that Draft. Future medical and/or hospital expenses were catered for in an Undertaking in terms of the Act.

INTERIM PAYMENT

[50] The interim payment in the amount of R1 000 000,00 paid out to the plaintiff needs to be deducted from the total amount payable to the plaintiff after the exercise we engaged in today.

[51] Total payment or entitlement for loss of earnings or impairment of earning capacity is R6 022 008,00. General damages is R1 100 000,00. The grand total of the above two heads of damages is thus R7 122 008,00. When the R1 000 000,00 interim payment is deducted from this amount, the total amount payable to the plaintiff and which should be made an Order of this Court is R6 122 008,00 plus past hospital expenses of R301 643,39 bringing up a total capital sum of R6 423 651,39.

[52] The plaintiffs counsel handed in a Draft Order with no opposition from the defendant's side, that fully sets out what the former believes the Court Order should look like. I have perused this Draft Order and there is nothing contentious in it. It caters for the setting out therein of the total capital amount payable by the defendant to the plaintiff. The aspect of the setting up of a Trust is also set out therein.

[53] This Draft Order is accepted, marked "X" and authenticated with my signature and date, and it fully depicts the capital amount payable.

ORDER

[54] Order is granted in terms of Draft Order "X" which is made Order of Court and the Draft Order is annexed to this judgment, form Trv^ an integral part hereof.

N F KGOMO

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, PRETORIA

FOR THE PLAINTIFF: ADV SIDDLE SC

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DATE OF HEARING: 11 FEBRUARY 2015

DATE OF JUDGMENT: 13 MARCH 2015

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION. PRETORIA)

Case No: 3237/2013

Pretoria, 11 February 2015

Before The Honourable Judge Ledwaba DJP:

In the matter between:

DE KOCK, MAXIE HELENA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DRAFT ORDER

HAVING heard counsel and having read the documents filed of record, and by agreement between the parties, it is ordered that:

1. Defendant shall pay to the Plaintiff a capital amount of R 6423 651-39 (six million four hundred and twenty three thousand six hundred and fifty rand thirty nine cents) as compensation for delictual damages to Maxie Helena De Kock ("the patient").
2. The capital amount shall be paid into the account of Plaintiffs' attorneys, De Broglia Inc Trust Account, Account number 1469 186 160, Nedbank, Business Northrand Branch, through means of a direct transfer on or before 28th March 2015.
3. The plaintiffs attorneys of record shall retain the aforesaid amount, net of the attorney's costs, in an interest-bearing account in terms of Section 78(2)(A) of the Attorneys Act, for the benefit of the

patient, pending the creation of the trust referred to in 4 below and the issuing of letters of authority.

4. The plaintiffs' attorney of record shall pay the amount set out in 3 above, together with any accrued interest, over to the trustee of a trust, which is to be created within four months from date of this order, and in respect of which trust, the following shall apply:

4.1 The trust shall be created in accordance with the trust deed which shall contain the provisions set out in annex A hereto and which is to be established in accordance with the provisions of the Trust Property Control Act, number 57 of 1988, in favour of the patient;

4.2 The trust shall have as its trustee, Standard Trust Limited, registration number 1880/000010/06, with those powers and duties as set out in annex A hereto;

4.3 The trustee shall:

4.3.1 be entitled, in the execution of its duties and fiduciary responsibilities towards the beneficiary of the trust, to have the attorney and own client costs and disbursements of the plaintiffs attorneys of record taxed, unless agreed;

4.3.2 be obliged to render security to the satisfaction of the Master of the High Court;

4.3.3 be entitled to administer on behalf of the patient, the undertaking referred to in 6 below and to recover the costs covered by such undertaking on behalf of the trust for the benefit of the trust.

4.3.4 At all times administer the trust to the benefit of the patient.

4.4 Shall not be capable of being amended without leave of the court.

5. In the event of the trust not being created within four months from date of this order, plaintiff and her attorney are directed to approach this court within four months after the expiry of the first period of four months, to obtain further directions with regard to the manner in which the capital amount should be further administered on behalf of the patient.

6. The Defendant has previously furnished the patient and/or the trustee referred to in 4 above with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 ('the undertaking'), to reimburse the patient and/or the trustee for the cost of the patient for future accommodation in a hospital or nursing home, or treatment of, or the rendering of a service, or the supplying of goods to her, arising out of the injuries sustained by the patient in the motor vehicle

accident that occurred on 26 October 2011, after such costs have been incurred and upon proof thereof. In addition, the undertaking shall include the costs of creation of the trust referred to in 4 above, the costs of annually obtaining a security bond as required and the cost of the trustee in respect of the administration of the trust, limited to the costs recoverable by a curator bonis in accordance with the statutory tariffs published from time to time.

7. The defendant shall pay the cost of the cause of the plaintiff and the patient, including the following:

7.1 the costs of:

7.1.1 obtaining expert medico-legal reports delivered in terms of Rule 36(9)(a) and (b);

7.1.2 the qualification fees, including the costs of obtaining medico-legal reports in respect of the patient and the costs consequent upon the preparation of joint minute, if any;

7.1.3 The costs consequent upon the reports and calculations of Ivan Kramer, Actuary.

7.1.4 The taxed or agreed costs of Senior Counsel.

7.2 The plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant attorney of record.

7.3 The plaintiff shall allow the defendant seven court days to make payment of the taxed costs.

8. This order must be served by the plaintiffs attorneys on the Master of the High Court within 30 days from the date of receipt of this order from the registrar in typed form.

BY THE COURT

REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION. PRETORIA)

Case No: 3237/2013

ANNEXURE “A”

TO DRAFT ORDER OF COURT DATED 11 FEBRUARY 2015

DEED OF TRUST

MEMORANDUM OF AGREEMENT

ENTERED INTO BY AND BETWEEN

De Broglio Incorporated represented by Michael de Broglio (hereinafter referred to as the “Donor”)

And

Standard Trust Limited represented by _____ Registration number 1880/000010/06
(hereinafter referred to as the “Trustee”)

WHEREAS the Donor is obliged in terms of an order of the North Gauteng High Court, Johannesburg under case number 3237/2013 dated 11 February 2015 to create a Trust for the benefit of the Beneficiary upon the terms and conditions set out below.

AND WEREAS the Trustee is willing to act as Trustee and to accept the donation and to administer it on behalf of the beneficiary and to utilise it in accordance with the terms and condition in this Trust Deed.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1 In this Trust Deed, unless the contrary appears for the context, the following expressions shall have the following meanings:

TRUST : the Trust created in terms of this Trust Deed;

TRUSTEE: the original Trustee and any person succeeding the original trustee appointed in terms of this Trust Deed;

CAPITAL BENEFICIARY **MAXIE HELENA DE KOCK** (Identity number: [...])

INCOME BENEFICIARY the Capital Beneficiary;

BENEFICIARY: the Capital- and/or Income Beneficiary;

TRUST ASSETS: the donation made in terms of clause 4 below and all assets, property or monies subsequently acquired in any manner whatsoever and irrespective of the source thereof. The expression "trust assets" includes gross income, net income and capital.

VESTING DATE: means the date on which a Trust asset is being vested in and paid out or transferred by the trustee to a Beneficiary in terms of this Trust Deed.

1.2 Unless the contrary appears from the contest, words importing the singular shall include the plural and vice versa and words relating to ender shall include the other gender and bodies corporate and words relating to persons shall include bodies corporate and *vice versa*.

1.3 The heading of the clauses in this Trust Deed are for convenience and shall not be taken into account in interpreting this Trust Deed.

2. PURPOSE OF THE TRUST

The purpose of the Trust is the creation of a Trust of a Trust fund for the maintenance and benefit of the Income and Capital Beneficiary of the Trust.

3. NAME OF TRUST

This Trust shall be known as the **MAXIE HELENA DE KOCK TRUST**.

4. DONATION AND VESTING OF RIGHTS IN TRUST ASSETS

The donor hereby donates to the Trustee the sum of R 100-00 (One Hundred Rand) WHICH SHALL VEST

IN THE Trustee with immediate effect and is to be held in trust and administered in accordance with the provisions of this Trust Deed.

5. ADDITIONS TO THE TRUST ASSETS

5.1 The donor shall be entitled at any time to add to the Trust Assets by making a donation, or in any other manner.

5.2 Any person shall be entitled to contribute to the Trust Assets but the Trustees shall not be obliged to accept such contributions.

5.3 All additions to the Trust assets shall be subject to the provisions of this Trust Deed.

6. APPOINTMENT OF TRUSTEES

6.1 The Trustee named at the commencement of this Trust Deed and who agreed to accept such office, shall be the first Trustee of the Trust.

6.2 The Trustee shall at all times be a company institution or individual, which is a member of the Association of Trust Companies of South African or an entity (with members of management, staff, directors and shareholders) independent of (and not related to) the beneficiary. It shall be the sole Trustee.

6.3 If the Trustee wishes to resign, it shall prior to its resignation taking effect have nominated and appointed a successor, failing which the Master may appoint a trustee, as contemplated in clause 6.2 above.

7. POWERS OF TRUSTEE

The Trustee shall, in the exercise of its powers and duties in terms of this Trust Deed, have the power to deal with the Trust assets as it may reasonably deem to be in the best interest of the Capital Beneficiary, including the power:

7.1 To acquire or purchase right to or interests in movable or immovable property (irrespective of where it is situated), stocks, shares, participation bonds, debentures, policies, syndications, unit trusts, mortgage bonds over immovable property, and similar investments with life assurance or listed companies;

7.2 To realize or amend any investment forming part of the Trust Assets and reinvest the proceeds;

7.3 To recover in the name of the beneficiary or of the trustee, any costs from the Road Accident Fund for which the latter is liable in terms of Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996 for the account of the trust and for the ultimate benefit of the beneficiary.

7.4 PAYMENTS OF DEBTS

To settle trust obligations from the capital and/or income of the Trust

ALIENATION OF ASSETS

7.4.1 To exchange, sell or lease any Trust Assets.

7.4.2 When exercising the right to sell Trust Assets such sale may be by private treaty, by public auction, by public tender or in any other manner deemed fit provide a market related price is obtained.

7.5 IMMOVABLE PROPERTY

7.5.1 To purchase, exchange or sell immovable property in any other manner and upon such terms and conditions as may be deemed fit;

7.5.2 To erect buildings and/or other improvements on immovable property;

7.5.3 To maintain and, where necessary, repair buildings or improvements on immovable property of the Trust;

7.5.4 To sign and/or attest any document pertaining to the alienations, subdivision, exchange, or transfer and, to make applications, consent to any amendments, cancellations, exemptions, reductions, substitutions or other actions relating to any deed or documents in connection with immovable property.

7.6 LEGAL ACTIONS

To institute or defend any legal action and to sign any power of attorney and other documents required for such purpose.

7.7 BANK ACCOUNTS

To open and operate bank accounts in the name of the trust.

7.8 BUSINESS

To conduct any business in the name of the trust for profit.

7.10 LETTING AND HIRING

7.10.1 To let trust assets, movable or immovable, upon such terms and conditions as the trustee may deem fit, to collect the rentals and cancel agreements of leases;

7.10.2 To enter into agreements of lease to hire any assets for use by any of the trust beneficiary, upon such terms and conditions as may be agreed with the lessor.

7.11 INSOLVENCY

To attend any meetings of creditors of any person who may be a debtor of the trust, irrespective of whether such meeting relates to insolvency, liquidation or judicial management, to vote at such meeting and in general to exercise all such powers as may be exercised by a creditor.

7.12 PROFESSIONAL SERVICES

To employ the services of a professional advisor or artisan for purposes of the trust and, to pay the fees of such person.

7.13 OFFSHORE INVESTMENTS

If any beneficiary should emigrate from the Republic of South Africa, and if possible and allowed by law, to transfer the beneficiary's share of the trust assets to his or her country of adoption, and to appoint an agent at the trustees discretion or to establish a new trust to administer on behalf of the beneficiary such transferred assets in accordance with the terms and conditions of this trust deed.

8 DUTY NOT TO CONTRACT WITH THE TRUST

The trustee shall not contract with the trust other than for the purpose of performing its function as trustee,

9 REMUNERATION OF TRUSTEE

The trustee for the time being, if a company empowered to undertake trust business, shall be entitled, in addition to reimbursement of its proper expenses, to remuneration in accordance with the statutory tariffs applicable from time to time to the services of a *curator bonis* in terms of the Administration of Estates Act.

10 APPROPRIATION AND VESTING OF THE TRUST ASSETS

10.1 Subject to the provisions of this trust deed and in particular the provisions of this clause, the trustees shall, in the administration of the trust assets, follow such procedures and take such administrative steps as it deems necessary from time to time, subjected to the final direction by the master of the High Court.

10.2 The trustee shall at least once a year decide on the application and/or appropriation of income and capital profits received by the trust.

10.3 The trustee shall keep an account of all assets of the trust and prepare annual statements and keep records of all transactions in the trust in terms of the general accounting practice in the Republic of South Africa and the provisions of the Trust Property Control Act or other legislation.

10.4 The trustee may administer this trust for the benefit of the Beneficiary in whatever manner it may determine and in that regard shall have the widest possible powers of managing and dealing with the Trust Assets in all respects subject thereto that the trustee shall at all times act in the best interest of the beneficiaries.

11 TERMINATION OF TRUST AND DISTRIBUTION OF ASSETS

11.1 The Trust is a discretionary Trust as far as the application, allocation and appropriation of Trust Assets are concerned, subject thereto that all decisions and actions taken shall be in the best interest of the beneficiaries. No payment or transfer of Trust Assets, or part thereof, will be made to a Beneficiary before the date vesting thereof in a Beneficiary.

11.2 The Trustee may decide whether any expenses incurred in respect of the Trust will be paid from the Trust Capital, or, from the net Trust Income.

11.3 Payment at any time of any portion of the Trust assets to the Beneficiary may be made in cash or in goods, or partially in cash and partially in goods, in the discretion of the Trustee. The value ascribed by the Trustee to goods awarded, shall be final and binding on all parties concerned. For the purpose of this clause, “goods” shall also include Assets of a capital nature, other than cash, forming part of the trust Assets.

11.4 The Trustee shall be entitled to capitalise any Trust Income in order to increase the Trust Capital.

11.5 No beneficiary shall be entitled to transfer, cede, pledge or otherwise deal with any interest in this Trust before the date of vesting and no Beneficiary shall have any claim to any trust assets before such date.

12 TERMINATION OF TRUST AND DISTRIBUTION OF ASSETS

The trust shall terminate upon the death of Maxie Helena De Kock and the remaining net assets be distributed upon termination in accordance with Maxie Helena De Kock's succession regime at the time of death.

13 EXCLUSION OF BENEFITS FROM COMMUNITY ESTATE

Any benefit, including the proceeds of any such benefit, which any Beneficiary may receive under this Trust, shall be excluded from any community of property or accrual system.

14 TAXES

The Trustee may pay any taxes, which may be levied on the donor in respect of any income received by or accrued to the Trustee, from the Trust's net income and in the event of payment of such taxes by the donor, such amount shall be refunded to the donor.

15 VARIATION OF TERMS OF THE TRUST DEED

The terms of this trust may only be varied in terms of an order of the High Court.

Signed at Johannesburg on this _day of _2015 in the presence of

the following witnesses:

AS WITNESS

DONOR

AS WITNESS

TRUSTEE

AS WITNESS

EXECUTED by the said

STANDARD TRUST LIMITED

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- 2 See *Law Society of South Africa v Minister of Transport* 2011 (1) SA 400 (CC) at para [40].
- 3 This was operative figure when Amendment Act came into operation on 1 August 2008. On 31 October 2013 it was adjusted to R213 675 (see BN 209 in Government Gazette 36951 of 25 October 2013) as allowed by s 17(4A)(a) of the Act as amended.
- 4 See *Law Society v Minister of Transport* paras [81]-[86].
- 5 2013 (3) SA 402 (GSJ) at para 113].
- 6 See also *Jonosky v RAF* 2013 (5) SA 356 (GSJ) at paras [12] and [13].
- 7 Unreported case 18.2.2005.