IN THE HIGH COURT OF SOUTH AFRICA /ES
(GAUTENG DIVISION. PRETORIA)

DATE: **4/6/2015**
Not reportable
Not of interest to other judges
Revised
CASE NO: 54243/2010

IN THE MATTER BETWEEN
N G M PLAINTIFF

AND

ROAD ACCIDENT FUND DEFENDANT

JUDGMENT

JORDAAN J

[1] On 23 December 2005 the plaintiff was a passenger in a motor vehicle which was involved in a collision with another vehicle on the road between Volksrust and New Castle. As a result of this collision the plaintiff sustained serious brain damage.

[2] The plaintiff instituted an action against the defendant for:

(1) future medical expenses;

(2) general damages; and
(3) future loss of income.

[3] The merits were settled between the parties 100% in favour of the plaintiff. Before and during the trial the future and medical expenses and general damages were settled between the parties. What remained in issue was future loss of income.

[4] On behalf of the plaintiff a number of expert reports were obtained. On behalf of the defendant no expert reports were obtained.

[5] Dr Mokabane is a neurologist. He filed reports and also gave evidence before me. According to his report the plaintiff suffered the following injuries:

(1) loss of consciousness;
(2) a laceration over the right parietal area extending to the superior part of the occiput about 12cm;
(3) scalp haematoma.

[6] According to his report the plaintiff passed matric in 1993. She enrolled for nursing in 2002/3 but only became a professional nurse in 2010. The plaintiff reported to him mat she started experiencing difficulties with her studies after the accident.

[7] He reports that at the time of the accident she was a staff nurse (enrolled nurse) at Ermelo hospital. She had been employed from 2005 to 2011. In 2012 she took a transfer to Volksrust provincial hospital. Currently she works at Ladysmith provincial hospital as a professional nurse. He describes the main complaints of the plaintiff as follows:

(1) Headache. She gets about three headache episodes a week. It is pressing in nature, intermittent and of moderate to severe intensity.

(2) Backache. She reports that she has been experiencing backache since the accident. The backache is aggravated by sitting or standing for a prolonged period.

(3) Memory impairment. She reports that she has been forgetful since the accident. She forgets to order things and carry orders. She has to diarise things in order to remind herself.

(4) Fatigue. She reports that she gets tired easily. This is associated generalised body pain.

(5) Emotional disturbance. She reports that she 1s irritable since the accident.

(6) She reports that her libido has markedly declined.

[8] He further reports that the plaintiff has a right UMN facial nerve palsy. He explained that that means a dysfunction of the facial nerves as a result of the injury to the brain. He further reported that there is a suggestion of a cortical thumb on the right. This is also an indication of a brain injury.

[9] He further reported that it took her five years instead of two years to become a professional nurse.

[10] In a subsequent report he makes the following remarks:

"1. The claimant suffered significant traumatic brain injury resulting in cognitive decline. She will not attain to her potential and she may struggle to keep her job.

2. At the moment the claimant is a professional nurse working in the Department of Radiology. In the Department of Radiology there will be minimal nursing intervention. With the support of other nurses she has survived as a nurse, but should the claimant be exposed to core nursing, as in medical nursing like in her previous post, she would most probably experience extreme difficulties coping with the demands of her work.

3. The claimant's capacity to earn has declined, firstly, because she will not be able to function within her scope of practice, secondly, she will not be able to get promoted or assume higher responsibility with her present challenges.

4. The writer defers to the Industrial Psychologist.

5. I therefore recommend that the claimant be appropriately compensated for the loss of capacity that has been caused by the injury."

[11] In his evidence he qualified these remarks as follows. He said that in the radiology department nurses sometimes have to deal with patients who have been involved in an accident. He said that the plaintiff can be a danger and cause harm to such a patient. The nurses have to think on their feet. He testified that she cannot continue to be a nurse unless she is under direct supervision. He said that in our system there is not such a person who can always supervise the plaintiff.

[12] Of importance is his evidence that he would not allow the plaintiff to continue to be a registered nurse.

[13] The next witness called by the plaintiff is Ms De Ridder. She is a clinical psychologist. In her initial report she described the brain injury of the plaintiff as "ligte traumatiese breinbesering". However, in her subsequent report she describes the brain injury as "traumatiese breinbesering". She testified that she came to a different conclusion after studying the other expert reports especially the report by Dr Mokabane.

[14] She testified that the early development of the plaintiff was normal. She never failed a standard at school. At the time of the accident she was still busy studying to become a nurse. It took her five years to complete her studies. The normal period to complete the course is two years.

[15] She reports that the plaintiff after the accident was unconscious for about 25 minutes or longer. She only regained consciousness after the ambulance arrived. She was confused and disorientated. She also consulted the plaintiff's partner Mr Ndebele who was also a passenger in the vehicle. He confirms that she lost her consciousness and that after she regained consciousness she was confused.

[16] Regarding the plaintiff's psycho-social functioning she remarked in her report and in her evidence as follows:

> "Me M verklaar dat sy 'n normale sosiale lewe voor die betrokke ongeluk geniet het. Sy het graag tyd saam met haar vriende spandeer oar naweke

en het daarvan gehou om inkopies te doen. Me M ervaar sedert die ongeluk 'n verandering in haar persoonlikheid en probleme met interpersoonlike gedrag. Sy meld dat sy hoogs gerrriteerd en liggeraak voel en gereelde woedebuie ervaar. Haar lewensmaat mnr B Ndebele bevestig in 'n onderhoud dat me M vinnig aggressief en gerrriteerd word, wat veroorsaak dat hulle dikwels rusie maak. Hy verklaar dat die gedrag in sterk teenstelling met haar funksionering en optrede voor die ongeluk staan en se: 'She *was perfect (easy going) before the accident.'* Suster Lily Masebo, huidige kollega en toesighouer van me M (2013) by die spesialiste kliniek in Ladysmith bevestig die aanwesigheid van haar buie en aggressiewe gedrag: 'She *gets angry and often wants to be violent, but I'm always with her to help her.'*

[17] She further remarks as follows:

"Me M verklaar dat sy sedert die betrokke ongeluk mense so ver moontlik vermy. Sy is nie meer by sosiale geleenthede betrokke nie en het haarself heeltemal van ander onttrek."

[18] Regarding her cognitive functioning Ms De Ridder made the following remarks:

"Me M verklaar dat sy voor die ongeluk 'n baie intelligente persoon was en geen probleme met haar studies ondervind het nie. Sy is van mening dat sy op verstandelike gebied baie na die ongeluk verander het en nie meer op dieselfde kognitiewe vlak as voorheen funksioneer nie."

She further remarks:

"Die aanwesigheid van kognitiewe probleme word tydens kollaterale onderhoude met beide haar lewensmaat mnr Bonyani Ndebele en suster Lily Masebo, haar huidige kollega by die spesialiste kliniek in Ladysmith bevestig."

[19] She further remarks as follows:

"Me M ondervind probleme met aandagspan en konsentrasie, wat deur die chroniese hoofpyne vererger word. Sy meld ook dat sy tans baie

sensitief is vir harde klanke, wat haar konsentrasie benadeel. Sy meld dat sy na die ongeluk probleme met haar studies ervaar, en sukkel om langer as twee periodes lank te konsentreer. Me M ervaar ook konsentrasie problem wanneer sy studeer: Haar lewensmaat, Mnr B N kla oor me M. se swak konsentrasie en meld: *'When we talk, her mind wanders and she cannot concentrate, even when I'm telling her interesting things. She can only concentrate on one thing (at* a *time).'* Suster Masebo meld dat me M in haar werksituasie by die kliniek oenskynlik na opdragte luister, maar die opdrag nie kan herhaal wanneer sy daaroor uitgevra word nie."

[20] She further remarks:

"Me M beskryf haarself as vergeetagtig en ondervind probleme met haar geheue wat haar studies bemoeilik: *'I can't remember things without going over it again and again. Before the accident I would remember everything, just being in class.'* Sy sal ook soms haar selfoon soek terwyl dit reeds in haar hand is. Sy het ook geheueprobleme in die hospitaalsaal ervaar en het gereeld aan pasiente gese dat sy spoedig sal terugkom, waarna sy heeltemal daarvan vergeet het. Me M het dikwels eers daarvan onthou wanneer sy terug in haar eie kamer is, en was dan verplig om die betrokke saal te bel en die inligting deur te gee, of vir 'n kollega te vra om die taak namens haar uit te voer. Sy meld dat sy nie in Ermelo hospitaal ernstige foute in die saal begaan het nie, maar wel bekommer is dat dit in die toekoms mag gebeur."

[21] She further remarks:

"Suster Lily Masebo, wat tans saam met me M by die spesialiste kliniek in Ladysmith werksaam is, bevestig dat ernstige geheue probleme deur me M ondervind word. Me M vergeet gereeld om opdragte deur spesialiste gegee, aan te teken of uit te voer. Suster Masebo meld dat sy voile verantwoordelikheid vir me M se werkfunksionering ervaar en deurgaans by me M probeer wees om haar aan opdragte en take te herinner en seker maak dat sy nie foute begaan nie. Me M het blykbaar by geleentheid in die moeilikheid gekom oor haar gebrekkige geheue, waarna suster Masebo self die verantwoordelikheid vir die fout op haarself

geneem het."

[22] This is an indication that on at least this occasion problems occurred.

[23] She further remarks:

"Wanneer sy lees, kan me M dikwels nie verstaan wat sy lees nie en moet dit dan meermale herhaal. Sy ervaar woordvindprobleme en vergeet dikwels hoe om woorde te spel wat sy voorheen goed geken het."

[24] She further remarks:

"Sy meld dat haar verstand nie so helder as voorheen is nie. Me M ervaar probleme met begrip, ook van geskrewe materiaal en sukkel om die werk te verstaan,wat voorheen geensins die geval wss nie. Haar voorbereiding vir haar lesse neem baie langer as voorheen. Sy is stadiger in die beplanning en uitvoering van take en pligte, ook in die saal en kliniek."

[25] Ms De Ridder performed a number of tests on the plaintiff. Regarding her clinical impressions she *inter alia* remarks as follows:

"Me M se gedagteprosesse was helder en sy was ten voile georienteerd ten opsigte van tyd, plek en persoon. Sy het klinies geheue- en konsentrasie probleme tydens die onderhoud g.etoon en was nie in staat om al die biologiese agtergrondsinligting te onthou en korrek weer te gee nie. Haar psigomotoriese spoed was baie stadig op sekere toetse en sy toon lae energievlakke en lae dryfkrag. Me M het goeie samewerking gegee ten opsigte van die afneem van die psigometriese toetse en die onderhoud, alhoewel sy by tye moeg geword het. Die toetsresultate behoort 'n betroubare aanduiding van haar ware vermoens en probleemareas te wees. Sy is Engels goed magtig en daar is nie van 'n tolk gebruik gemaak nie."

[26] Regarding the PTSD Symptom Scale Interview Ms De Ridder testified that the plaintiff shows signs of post-traumatic stress.

[27] She also performed an Intelligence Test on the plaintiff. These tests indicated that before the accident the plaintiff was of superior intelligence but after the accident she was of average intelligence.

[28] She also makes the following remarks:

> 'Daar is 'n betekenisvolle verskil tussen haar verbale IK- en nie-verbale IK-tellings teenwoordig ... Hierdie verskil is abnormaal groot 'n Verdere betekenisvolle verskil is ook tussen die Verbale Begrip lndeks en Perseptuele Organisering lndeks teenwoordig ... Ook hierdie verskil is abnormaal groot. Hierdie betekenisvolle verskille is 'n indikasie van 'n oneweredige manifestasie van die verbale en nie-verbale vermoens van me M, wat nie normaalweg van 'n persoon verwag sou word nie."

[29] She also performed the Rey Fifteen Item Test on the plaintiff. This test is an instrument that evaluates malignancy. There was no indication of any malingering.

[30] She also performed the Comprehensive Trail Making Test on the plaintiff. She remarked:

> "Hierdie toets bestaan uit 'n stel visuele opsoek- en opeenvolgingstake. Elke taak (of spoor) bestaan uit 'n aantal kolle met nommers en/of letters van die alfabet wat met mekaar verbind moet word. Daar is eenvoudiger, sowel as meer komplekse take."

[31] It is of significance that the plaintiff was only able to complete one of the easier tasks. Ms De Ridder remarks:

> "Sy toon ernstige tekorte aangaande uitvoerende funksie en sal in alle waarskynlikheid probleme ervaar met die uitvoering van haar take as verpleegster."

[32] With reference to authorities she says that overall this test “is believed to be highly sensitive to higher cortical damage or disease".

[33] She also performed the Clock Drawing Test on the plaintiff. She remarks

as follows:

> "'n Eenvoudige opdrag word gegee, naamlik om 'n horlosie met al sy nommers te teken. Die handwysers moet die tyd 11:10 aanwys."

[34] She then remarks as follows:

> "In me M se tekening is sommige van die syfers effens uit pas ten opsigte van plasing. Een van die syfers (5) is heeltemal weggelaat en die derde kwadrant vertoon redelik leeg met slegs een syfer daarin. Die handwysers dui die regte tyd aan en is ook korrek ten opsigte van die aanduiding van uur en minute. Me M se prestasie op hierdie toets dui op inperking van haar algemene kognitiewe vermoens, hoer-orde en uitvoerende funksies, asook visueel-ruimteli ke vermoens. Haar prestasie is nie in ooreenstemming met haar skoolopleiding en beroepskwalifikasie nie. Hierdie tellings dui op moontlike teenwoordigheid van 'n organiese kondisie."

[35] She also performed the Rey Auditory Verbal Learning Test on the plaintiff. She remarked that this test "word as 'n neuropsigologiese evalueringsinstrument gebruik, wat veral ouditiewe korttermyn verbale geheue evalueer". She then remarked:

> "Me Maziuko se telling op die totale aantal woorde wat sy kon onthou, lê uiters laag in die kategorie Kognitief Gestrem ... Me M se huidige vermoë om nuwe ouditiewe materiaal aan te leer, is dus uitermatig onder die norm geleë."

[36] She also remarked:

> "Die funksionering van me M se langtermyn geheue ... is onder die norm gelee en minder effektief as dié van haar korttermyn geheue…"

[37] She also remarked:

> "Navorsing het bevind dat daar 'n oorsaaklike verband tussen retroaktiewe stoornisse en 'n traumatiese breinbesering bestaan:"

[38] She also remarked:

"Me M se tellings op al die take dui op belemmering van haar visueel-ruimtelike konstruksievermoens en visuele geheue, enloon dat daar moontlike neurokognitiewe belemmering by haar aanwesig is."

[39] She also testified that the impairment experienced by the plaintiff 1s permanent. It is going to remain the same.

[40] She also remarks:

"Tydens 'n telefoniese onderhoud met suster Lily Masebo, ... bevestig daagiikse pligte by die kliniek ondervind. Volgens suster Masebo ervaar me M ernstige problem met haar geheue en vergeet sy dikwels opdragte wat deur spesialiste aan haar gegee word. Gevolglik word hierdie take nie uitgevoer nie, behalwe wanneer sy deur suster Masebo daaraan herinner word. Suster Masebo meld ook dat me M baie sensitief vir geraas en harde geluide is en dat sy meermale haar konsentrasie verloor as gevolg daarvan."

[41] Under the heading "lnvloed op Beroepsfunksionering" Ms De Ridder remarks as follows:

"Me M was ten lye van die onderhoud werksaam as stafverpleegster by Ermelo Hospitaal en woonagtig in die verpleegsterstehuis. Sy was ook hier werksaam tydens die betrokke ongeluk in 2005. Sy het op daardie stadium as gekwalifiseerde verpleegster gewerk en was besig met 'n diploma kursus van twee jaar, om haarself as professionele verpleegsuster te bekwaam. Sy het verwag om die opleiding in November 2010 te voltooi.

Op grond van die inligting aangaande haar skool- en tersiere opleiding, asook haar stabiele werksrekord tot en met die betrokke ongeluk in 2005, kon daar verwag word dat me M 'n positiewe en produktiewe bydrae tot die arbeidsmag sou lewer. Sy sou in staat gewees het om suksesvol in haar beroep te vorder en om haarse!f en die persone afhanklik van haar oor die langtermyn te versorg en te onderhou.

Tydens 'n opvolgonderhoud op 15 Augustus 2013 meld me M dat sy wel die betrokke kursus voltooi het. Sy meld egter dat sy haar studies as veel moeiliker beleef het as voor die betrokke ongeluk en dat sy baie harder as voorheen moes werk om 'n slaagsyfer te behaal. (It has been referred to above that she took five years to complete a two year course.) Alhoewel haar premorbiede intellektuele funksionering in alle waarskynlikheid bó die norm gelee was, is haar algemene vlak van intellektuele funksionering IK tans in ooreenstemming met die norm en dit mag verduidelik waarom sy steeds in staat was om haar studies te voltooi, alhoewel sy die werk slegs met uiterse inspanning kon baasraak. ...

Dit blyk dat me M steeds gereelde en erge hoofpyne ervaar, en dat sy 'n toename in hoofpyn ervaar, veral wanneer sy baie besig is en in die saal of kliniek werksaam is. Sy vermeld dat sy soms dubbelvisie en pyn in die regteroor ervaar, en hipersensitiwiteit vir klanke wat haar werkprestasie en funksionering inperk. Suster Lily Masebo, kollega van me M ... bevestig dat me M baie sensitief vir geraas en harde geluide is en dat sy meermale haar konsentrasie as gevolg hiervan verloor.

Me M se huidige kognitiewe funksionering is op die vlak van Gemiddeld. Haar premorbied intellektuele funksionering was hoër, waarskynlik ten minste op die vlak Bo-Gemiddeld gelee. … Neuropsigoiogiese toetsresultate bevestig die aanwesigheid van kognitiewe belemmering en uitvalle wat haar funksionering en werkvermoe inperk. Hierdie kognitiewe uitvalle kan in alle waarskynlikheid aan die traumatiese breinbesering wat sy tydens die ongeluk opgedoen het, toegeskryf word. Me M meld dat haar verstand nie so helder as voorheen is nie en dat haar algemene kognitiewe funksionering sedert die betrokke ongeluk aangetas is. Sy ondervind tans probleme met konsentrasie en vind dit baie moeilik om te studeer, veral in die klaskamer."

[42] Ms De Ridder then testified that the plaintiff has to function as a nurse. She will not be able to do so. She cannot learn new tasks. She cannot repeat instructions. Something bad may happen. She will not be able to learn new

information.

[43] She further testified that there are serious fall-outs for example memory loss. She was not coping as a nurse. Her superior had to look after her as a result of her dysfunctionality. She cannot remember or organise. She has to be reminded of instructions by her superior. Without such a person she cannot do her job. She cannot work independently. Her executive functioning is not there at all. She needs that as a nurse.

[44] A report by Dr Pretorius Inc Industrial Psychologists was handed in by consent. In this report the following recommendations are made:

> "Based on the information on hand, it was noted that although the claimant is still presently functioning as a Professional Nurse (albeit at a significantly decreased capacity), her future ability to maintain her employment and to grow her career has been significantly compromised by the *sequelae* of the accident. Due to the severity of the brain injury she had sustained in the accident, as well as the poor prognosis of her cognitive and personality functions, it seems that the claimant's continued employment could place her patients at high risk should she make mistakes with medication or treatment of patients, or not follow the doctor's instructions correctly. She is currently only 42 years old, and although her colleagues have been able to accommodate her by assisting in reducing the visibility of her restrictions to date, it seems highly unlikely that this would be sustainable until her anticipated retirement age of 65. <u>The doctors are not currently aware of her difficulties</u>;[1] should the extent to which her limitations compromise her ability to uphold safe and high standards required of a nurse become evident, she will likely be very vulnerable to losing her employment. She is no longer an equal competitor compared to her uninjured peers. If her current difficulties are taken into account it is evident that her effectiveness, efficiency, productivity, occupational choices, prospects for promotion and competitiveness has been significantly compromised by the injuries she had sustained in the

[1] My emphasis.

accident. Her chances for promotion or further career growth have been diminished, and it is regarded as highly unlikely that she will be able to remain employed in her current capacity in the foreseeable future.

From the information on hand it is clear that the claimant will not be able to obtain employment in nursing should she lose her current position. Her qualifications and training is only related to nursing, which significantly limits her chances of securing alternative employment within the open labour market, especially if her age as well as her significantly reduced physical, cognitive and emotional capacity is considered and her dependence on accommodative employment. In the event that she therefore loses her current position, she will most likely suffer a total future loss of earnings."[2]

[45] It is of significance that this report has not been placed in dispute at all.

[46] A further expert report by an occupational therapist was not disputed on behalf of the defendant. In this report it is *inter alia* remarked as follows:

"• Sr Nelly, she has been Ms M's direct supervisor since February 2014.

• She reports that her job requirements are to draw files and take bloods from patients.

• She reports that the client does not take instructions accurately and takes time to understand what is being asked of her.

• The client is forgetful.

• Ms M is required to work in the emergency department however .Sr Nelly reports that due to her inability to remember emergency protocols, she is unable to place her in that department.

• Currently, Ms M is in a department whereby she is supervised closely and required to follow simple step instructions from her supervisor or doctors.

• She reports that the client's concentration is poor and she often

[2] My emphasis.

does the opposite of her given instructions or it will take her time to respond to instructions. Additionally, Ms M will not be listening to the instructions given to her.

- She reported that the client is currently coping with the basic tasks in the outpatient department however will be closely supervised by Sr Nelly herself or a fellow colleague who will assist her in remembering tasks required of her.
- Sr Nelly reports that there has on occasion, been complaints from doctors regarding tasks that are incomplete. These include simple, daily tasks such as drawing files for patients the following day. She reports that these tasks would be the responsibility of Ms M.
- She reports that when being disciplined verbally, Ms M would often laugh inappropriately.
- She reports that 'time to time' she will complain of a headache however this is 'once in a while'."

[47] The report further reads as follows:

"The writer is of the opinion that the client has the residual physical capacity to do occasional light physical work. Considering the above collateral information as well as the outcome of the occupational therapy assessment, the client presents with a functional intermittent standing tolerance of approximately 1 hour 30 minutes however her static standing tolerance is considered reduced. The writer is of the opinion that several factors influence her inability to maintain a static standing position for a prolonged period of time."

[48] What has been stated above has been common cause during the trial. It is clear that the plaintiff is unable to function as a nurse. She has up to now only survived in her profession with the assistance of her superiors. She is clearly a danger to patients. Mr Marx who appeared on behalf of the plaintiff told me in argument that it is his duty to provide the reports referred to above and the other expert reports to the plaintiff's superiors. She is unable to function as a nurse. He has advised the plaintiff to resign from her job with immediate effect.

[49] I have been provided by Mr Marx on behalf of the plaintiff with a *Quantum* Actuarial Support report. In this report the current income of the plaintiff was taken into account. There was a deduction for contingency of 10%. This in my view is reasonable under the circumstances. According to this report the capitalised value of future earnings of the plaintiff is R5 010 775,00. That is the amount claimed by the plaintiff in respect of future loss of earnings.

[50] I can see no reason why this amount should not be awarded to the plaintiff. It has been suggested in argument on behalf of the defendant that she may for some time continue to work under her present circumstances. I do not agree. When her superiors see the expert reports that Mr Marx is going to forward to them she will most certainly not be retained.

[51] I have been urged by mr Marx, who appeared on behalf of the plaintiff, to award a punitive cost order. It is so that the defendant embarked on a fishing expedition. They had no expert reports and the case of the plaintiff was for all purposes unchallenged. I have, however, decided not to adhere to this request. The extent of the injuries to the plaintiff was only realised at a late stage.

[51] In the result the following order is made:

1. The Defendant is ordered to pay an amount of:

1.1.	General Damages	R 600 000,00
1.2.	Future Loss of Income	R5 010 775,00.
	Total	R 5 610 775.00

(Five million six thousand and ten seven hundred and seventy five Rand), which amount shall be paid within 14 days of this order to the credit of **N G M,** the Plaintiff in the trust account of the Plaintiff's Attorneys of record, **PAS ATTORNEYS,** Ermelo, whose trust account details are as follows:

Bank name : FNB
Account type : Trust account
Branch code : …

Account no. : […]

Ref : **DER606/6**

2. The Defendant is ordered to furnish the Trustee (to be appointed in terms of paragraph 8 below) with an Undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, No 56 of 1996, to compensate the patient for 100% of the cost of future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the patient resulting from injuries sustained by her as a result of an accident that occurred on the 23/12/2005.
3. The Defendant is ordered to pay the reasonable remuneration of and the reasonable costs incurred by the Trustee of the Trust to be formed in administering and managing the capital amount referred to in paragraph 1 above, which remuneration and costs shall not exceed the equivalent amount which the Curator Bonis would have been entitled in terms of and as determined by the **Administration of Estates Act, Nr 66 of 1965,** as amended, and the prescribed tariff applicable to Curators as contained in the **Government Gazette Notice R1602 of 151 of July 1991,** and, more specifically, paragraphs 3(a) and 3(b) of the schedule thereto; and;
4. The Defendant pays Plaintiff's taxed or agreed costs on the High Court scale, such costs will include (but not be limited to):
    4.1. The necessary traveling costs and expenses of the attorney of record, the reasonable cost on consulting with Plaintiff to consider this offer, the cost incurred to accept this offer and make the offer an order of court;
    4.2. Traveling cost and expenses for Plaintiff to attend all the medical legal specialist's appointments;
    4.3. Traveling cost and expenses for the Plaintiff to attend the court as necessary witness on 22/10/2014, 21/05/2015, 25/05/2015 and 26/05/2015;
    4.4. The cost of all medico-legal, radiological, actuarial, addendum and joint reports obtained by the plaintiff, as well as such reports furnished to the defendant and/or to the knowledge of the defendant and/or its attorneys, as well as all reports in their possession and all reports contained in the plaintiff's bundles;

4.5. The cost of holding all pre-trial conferences, as well as round table meetings between the legal representatives for both the plaintiff and the defendant, including counsel's charges in respect thereof;

4.6. The cost of preparation of 6 (SIX) trial bundles as agreed upon in the pre-trial minutes;

4.7. The reasonable cost associated with inspection in loco,

4.8. The cost of the qualifying and reservation fee of the specialists, Dr Enslin, F de Ridder, L Toerien, Dr Mokabane and L van Gass (Dr Willie Pretorius);

4.9. The cost of an interpreter for the trial date of 25/05/2015;

4.10. The cost of counsel, Mr D J Marx, in his capacity as senior attorney with right of appearance in the high court which cost also includes his day fee for 22/10/2014, 21/05/2015, 25/05/2015 and 26/05/2015.

5. The claimant is declared incapable of managing this award.
6. On receipt of payment from the defendant the plaintiff's attorney shall, after deducting the appropriate amount for fees and disbursements, immediately transfer the balance of such monies received, (excluding past medical expenses, which is to be paid to the medical fund), to the trustee for the benefit of the plaintiff, provided the trustee has received a letter of appointment from the Master.
7. In the event that the trust is not formed timeously, the plaintiff's attorney shall invest the nett capital amount so received in terms of Section 78(2) of the Attorneys Act No 53 of 1979, the interest accruing for the benefit of the plaintiff.
8. The formation of a Trust, of which the patient shall be the sole beneficiary is hereby authorised and Mr Gert Kruger of ABSA Trust Limited shall be appointed as Trustee.
9. The appointment of the Trustee is subject thereto that the Trustee furnishes security to the satisfaction of the Master of the High Court. It is in the Trustee's sole and absolute discretion to:

9.1. Acquire any shares, unit trusts, debentures, stocks, negotiable instruments, mortgage bonds, notarial bonds, securities, certificates and any moveable or immovable property or any incorporeal rights and to invest in such assets and to lend funds to any party or make a deposit or investment with any institution, such investment to be of such nature and

on such terms and conditions as the TRUSTEE may deem fit.

9.2. Exchange, replace, re-invest, sell, let, insure, manage, modify, develop, improve, convert to cash or deal in any other manner with any asset which from time to time form part of the TRUST FUNDS:

9.3. Borrow money.

9.4. Pledge any trust assets, to encumber such assets with mortgage bonds or notarial bonds to utilise same as security in any manner whatsoever.

9.5. Institute or defend any legal proceedings or otherwise to take any other steps in any court of law or other tribunal and to subject controversies and disagreements to arbitration.

9.6. To call up and/or collect any amounts that may from time to time become due to the TRUST FUND.

9.7. Settle or waive any claim in favour of the trust.

9.8. Exercise any option and to accept and exercise any rights.

9.9. Exercise any rights or to incur any obligation in connection with any shares, stocks, debentures, mortgage bonds or other securities or investments held by this trust.

9.10. Open accounts at any bank or other financial institution and to manage such accounts and if necessary to overdraw such account.

9.11. Draw any cheque or promissory note, to execute or endorse same.

9.12. Take advice from any attorney or advocate or any other expert for the account of the relevant trust account.

9.13. Lodge and proof claims against companies in liquidation or under judicial management and against insolvent or deceased estates.

9.14. Appoint professional or other persons on a temporary or permanent basis to conduct the whole or any portion of the business of the trust under supervision of the TRUSTEE or to manage the investment of part or the entirety of the funds of the trust and to remunerate such persons for their services out of the funds of the trust.

9.15. Form any company and to hold any interest in any company and to form any other trust to hold an interest in any other trust or partnership or undertaking for the purposes of this trust or in the interest of any beneficiary.

9.16. Amalgamate with any other trust with the same or similar aims as this trust.

9.17. Commence any business or continue such business or to acquire, an interest therein and for such purpose to acquire assets or to incur expenses and to partake in the management, supervision and control of any business and to conclude any partnership or joint venture.

9.18. Accept any disposal in favour of this trust and to comply with any conditions regarding such disposal.

9.19. In general do all things and to sign all documents required to give effect to the aims of this trust.

10. No interest will be payable on the capital sum, provided that payment is made within 14 days of this order. Should payment not be made timeously, the Defendant will pay interest at the rate of 9% per annum a *tempora morae* from date of this order to date of payment.

11. The costs are payable within 14 days after receipt by the Defendant's Attorneys of the stamped allocator, whereafter interest will be charged at 9% per annum from date of the stamped allocator to date of payment.

Counsel for Plaintiff: Mr Dirk Marx (082 828 0629)
Counsel for Defendant: Adv N D Mabaso

BY ORDER

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REGISTRAR