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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

REPORTABLE: YES

OF INTEREST TO OTHER JUDGES: YES

DATE: 8/7/2015

CASE NUMBER: 37019/2014

In the matter between:

N. S. obo S.

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

LEPHOKO AJ

[1] The plaintiff sues the defendant for loss of support resulting from a motor collision that occurred on 23 February 2013 in Kraaifontein, Cape Town. The plaintiff sues in her personal capacity as well as in her representative capacity as the mother and guardian of her minor son, S. Sigwebo (S.).

[2] The defendant conceded that it is liable to pay the plaintiff/minor son 100% of the proven or agreed damages arising out of the collision. It was agreed between the parties that

the defendant shall: Indemnify the plaintiff against any outstanding supplier claims in respect of past medical and related expenses; Provide the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996; Pay the plaintiff an amount of R1 200 000-00 in respect of general damages.

[3] The only issue in dispute is the claim for future loss of earnings. The plaintiff placed the following expert reports before the court: Dr Johan Reid (neurologist); Dr Dale Ogilvy (speech and language pathologist); EH Truter (occupational therapist); Elspeth Burke (psychologist); Petra Coetsee (architect); Esther Auret-Besselaar (industrial psychologist); Alex Munro (actuary). The plaintiff led the oral expert evidence of Dr Dale Ogilvy, Esther Auret-Besselaar and Alex Munro.

[4] The defendant did not file any expert reports and did not present any evidence. The plaintiff submitted that by virtue of paragraph 10 of the rule 37 pre-trial minute dated 06 May 2015 the defendant is deemed to have admitted the expert reports filed of record by the plaintiff. The defendant contended that the alleged admission was not unequivocal and was therefore of no effect. Paragraph 10 reads as follows: "The Plaintiff requests the Defendant to indicate, by no later than 3 (three) court days before the hearing, which of the expert reports delivered by the Plaintiff it admits. Should the defendant fail to indicate by the said date that it does not admit any of the reports, it shall be deemed that such report has been admitted."

[5] The pre-trial minute is a consensual document and, in effect, constitutes a contract between the parties.¹ To allow a party, without special circumstances, to resile from an agreement deliberately reached at a pretrial conference would be to negate the object of Rule 37 which is to limit issues and curtail the scope of litigation.² The agreement to deem the expert reports to be admitted under the circumstances set out in the pre-trial minute is unequivocal. Consequently the defendant's contention is without merit. The plaintiff's expert

reports are therefore admitted as evidence.

INJURIES AND SEQUELAE

[6] According to Dr Reid's report dated 12 November 2013 S. was admitted for medical treatment at Tygerberg hospital on 23 February 2013. He was diagnosed with severe closed head injury with worst Glasgow Coma Scale 5/15 (E1V1M3). The CT scan of the brain showed a cerebral oedema and bifrontal, left temporal and basal ganglia contusion. Hospital management included intubation, ventilation, sedation, analgesics, neuro observation, physiotherapy, speech therapy, occupational therapy and rehabilitation.

[7] It is recorded that he experiences the following ongoing symptoms, among others: weakness of right side limbs with a gait disorder and a useless right hand (unable to write with his right hand or to use it to assist activities of daily living), headaches, poor concentration, forgetfulness, unprovoked aggression, poor motivation, emotional and behavioural change and disobedience. Post traumatic seizure or incontinence is denied.

[8] The examination by Dr Reid revealed a right hemiparesis, a useless right hand with significant contracture, hemiparetic gait with strength 4-/5 in the right leg, severe neurocognitive compromise, including dyslexia, dyscalculia and a suggestion of dysphasia. The presence of frontal lobe signs, reciprocal incoordination, primitive reflexes and perseveration could be elicited. The presence of scars over the right flank and back, left supra auricular area, left knee and right elbow.

[9] Dr Reid diagnosed S. with a severe closed head injury with cerebral contusions and diffuse axonal shearing; permanent neurocognitive compromise and right hemiparesis with useless right hand. S. used to be right handed, but cannot write with his right hand after the accident.

[10] Dr Reid found S.'s whole person impairment to be 79%. He recommends that physiotherapy, occupational therapy and remedial training should be continued at a special school. He is of the opinion that S. would not succeed at mainstream schooling. The risk for epilepsy is very high, approximately four times that of the general population, with highest spike during adolescence. He states that twice annual follow up by neurologist is indicated and that provision should be made for alterations to the family dwelling to accommodate S.'s severe neurological deficits.

[11] Dr Reid states that the injuries sustained by S. are severe and will result in serious long term impairment with respect to his work and personal life. He will be unemployable in the open labour market and will be dependent upon relatives for care, supervision, support and decision making for the rest of his life. He recommends that a curator *bonis* should be appointed for S. once he has reached majority age.

[12] Dr Dale Ogilvy, a speech and language pathologist, assessed S. on 07 March 2014. During her testimony she confirmed the results of the assessment set out in her report of 22 May 2014. According to the assessment S. presents with a mild residual motor speech disorder, which manifests in the odd mispronunciation of words and reduced clarity of speech with increased rate of production and the following marked cognitive-communicative deficits, among others: a significant word retrieval deficit; limitation in verbal reasoning; severely reduced auditory verbal information processing capacity, both for length and complexity of information; poor verbal selective attention; significantly reduced communicative performance for his age, both as a listener and as a speaker; and disturbance of the acquisition of written decoding skills, more specifically involving his phonetic spelling rules.

[13] Dr Ogilvy also consulted Ms Boysen who was S.'s grade 1 teacher, Ms Goddard the school principal as well as S.'s mother. Ms Boysen and Ms Goddard did not teach S. in Grade

4. Dr Ogilvy believes that S. will not be able to cope in a mainstream education due to his condition although she did not see his school report for the period after the accident. She testified that although she is not an educational expert her expertise involved, among others, assessing the impact of speech development on educational development. She concludes that based on his physical limitations; his future restricted education; and his cognitive-communicative deficits, it is highly probable that S. will be unemployable in the future and will need life-long guidance and supervision. In reaching her conclusion she also took into account the expert reports of Dr Reid (neurologist) and Ms E Burke (clinical psychologist).

[14] Mrs E H Truter (occupational therapist) is of the opinion that S. is suited to a school which caters for children with disabilities. He demonstrates significant neurocognitive deficits affecting occupational performance. His physical disability is such that he will have to choose a job type where standing, working and bilateral hand function are not a prerequisite. He would have to perform work where intellectual prowess is not mandatory. She deferred to the opinions of Dr Reid, Dr Ogilvy and Ms Burke. She consulted Mr Makondo who taught S. in grades 3 and 4. Her opinion is that S. is probably unemployable other than in a protective workshop environment.

[15] Elspeth Burke (clinical psychologist) assessed S. on 14 March 2014. She concluded that as a result of the severe head injury S. sustained diffuse neuropsychological sequelae. These are serious and little improvement can be expected. He is unlikely to cope at a mainstream school and will be best placed in a LSEN (Learners with Special Educational Needs) school due to his compromised scholastic ceiling. She predicts a bleak future regarding his employment. She deferred to the opinion of Dr Reid, and considered other relevant medical records.

[16] Ms Esther Auret-Besselaar (industrial psychologist) assessed S. on 13 March 2014. The results of the assessment are set out in her report of 17 April 2014. She confirmed the contents of her report. In reaching her conclusion she also took into account the reports and conclusions of plaintiff's other experts, namely, Dr Reid, Dr Ogilvy, Ms Burke and Ms Truter. She also consulted with S.'s mother. Her several attempts to speak to Mr Makondo who was S.'s grade 3 and grade 4 teacher were unsuccessful. She considered S.'s grade 1 report but did not see his later reports. Her evidence is to the general effect that post morbid S. has no residual earning capacity whatsoever.

[17] Ms Auret-Besselaar is of the opinion that given S.'s background history and profile, if the accident had not happened, he would have continued schooling, achieving above-average scholastic performance and would have completed his schooling at Grade 12 level at a mainstream school by age 18. He would have secured an unskilled job about 8 months after leaving school, earning between R2 500 - R4 000 per month with no benefits.

[18] After 12 - 18 months he would probably have secured formal employment at Level A3 on the Paterson scale receiving basic earnings with benefits. He would probably have remained on this level for 3 - 5 years before progressing to job level B1 on the Paterson scale (Median basic earnings). Thereafter he would probably have progressed to level B2 through to BS every 4 - 7 years on each grade level earnings as per the basic salary on the median level plus certain benefits. His overall employability and career advancement would probably have increased and would probably have retired at age 65. She is of the opinion that S. will be unemployable in the open labour market and will be dependent upon relatives for care, supervision, support and decision making for the rest of his life.

[19] S.'s mother, Nelisa Sigwebo, testified that her son was 9 years old at the time of the accident. He went to creche and pre-school. He did grade 1 in 2011 and grade 2 in 2012

and the accident occurred in February 2013 when he was in grade 3. He never went back to school in 2013. He went back to repeat grade 3 in 2014. Before the accident S. was a clever child and excelled in his school work and his teachers were pleased with his performance. Before the accident he assisted his sibling with school work. After the accident he struggled with his school work. He did not pass his grade 3 but was condoned to grade 4 because of his age. He failed the first term of grade 4 in 2015. His current school has recommended that he be taken to a special school. She has completed the necessary application forms to move him to a special school.

LOSS OF EARNINGS AND CONTINGENCIES

[20] Mr Alex Munro (actuary) testified that he relied on Ms Aurret-Besselaar's opinion for the computation of his actuarial calculations. He confirmed the contents of his report and the basis of his assumptions. The calculations assume, among others, that S. has not suffered a past loss of income due to the accident, that he will not earn any income in the future and that he would have retired at age 65. It is also assumed that his income would have increased in line with inflation until his retirement.

[21] Before the application of contingencies, the actuarial calculations estimated the capital loss at R2 843 000-00. A contingency deduction of 25% was then applied leaving an estimated future loss of income of R2 132 250-00. The plaintiff submitted that a 20% contingency deduction would be appropriate whilst the defendant contended that a contingency deduction of 50% would be fair and equitable.

[22] Contingencies could be defined as uncertain circumstances of a positive or negative nature which, independent of the defendant's conduct and if they should realise, would probably influence a person's health, income, earning capacity, quality of life, life expectancy or dependency on support in future or could have done so in the past. These "uncertain"

circumstances must consequently be taken into account in a fair and realistic manner by increasing or decreasing the plaintiff's damages during the quantification process. If the relevance of a positive contingency is proved it will increase the amount of damages to be awarded, and if the relevance of a negative contingency is proved, it will decrease the amount of damages to be awarded.³ Contingencies are the normal consequences and circumstances of life, which beset every human being and which directly affect the amount that the plaintiff would have earned.⁴

[23] According to Koch, when assessing damages for loss of earnings or support, it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is in the prerogative of the courts. General contingencies cover a wide range of considerations which may vary from case to case and may include early death, loss of employment, promotion prospects, and divorce. He states that the following are some of the guidelines as regards general contingencies: "Normal contingencies" as deductions of 5% for past loss and 15% for future loss; Sliding scale: 1/2% per year to retirement age, i.e. 25% for a child, 20% for a youth and 10% in middle age.⁵

[24] Contingencies are used as method of adjusting the loss suffered by a plaintiff according to the circumstances of each case. The purpose of the deduction is to arrive at the most appropriate estimate of a plaintiff's loss whilst ensuring that the award is fair and equitable to both parties. To this end actuarial calculations are a useful guide for establishing the quantum and assist the court in the exercises of its discretion.

[25] It was contended by the defendant that the evidence of Dr Ogilvy and Ms Aurret-Besselaar regarding S.'s current performance at school should be ignored as inadmissible hearsay evidence as neither Ms Boysen nor Ms Goddard taught him in grade 4. I will ignore

that evidence for the purpose of this judgment. However, both Dr Ogilvy and Ms Aure-Besselaar conducted independent assessments of S. and deferred to the opinions of other experts which were accepted by this court.

[26] The defendant contended that the evidence of Aurret-Besselaar was not reliable as she is an industrial psychologist and a person best suited to give the opinion was an educational psychologist. The defendant also took issue of the fact that Aurret-Besselaar had not considered S.'s latest school report. Her response was that she did not have to be an educational expert in order to give the opinion as she was also a counselling psychologist and her expertise also involved career guidance.

[27] She stated that an educational psychologist is not the only person who is qualified to give an opinion on education. She was of the view that educational psychologist expertise was limited to schooling issues whilst neuropsychologist and neurologist opinions were holistic and concerned broader issues inclusive of education. Their opinion is superior to that of an educational psychologist as their scope of practice include aspects dealt with by educational psychologist. Ms Aurret-besselaar deferred to the opinion of Dr Reid who is a neurologist. She stated that the school report is not the only factor to be considered but issues such as family background, the school system and numerous other factors were important considerations.

[28] In *M enday v Protea Assurance Co Ltd* ⁶ it was stated that: "In essence the function of an expert is to assist the Court to reach a conclusion on matters on which the Court itself does not have the necessary knowledge to decide. It is not the mere opinion of the witness which is decisive but his ability to satisfy the Court that, because of his special skill, training or experience, the reasons for the opinion which he expresses are acceptable... Nonetheless the Court, while exercising due caution, must be guided by the views of an

expert when it is satisfied of his qualification to speak with authority and with the reasons given for his opinion The expert must either himself have knowledge or experience in the special field on which he testifies (whatever general knowledge he may also have in pure theory) or he must rely on the knowledge or experience of others who themselves are shown to be acceptable experts in that field."

[29] The defendant deemed it not necessary to call its own experts. What the defendant seeks to do is to criticise the evidence of the plaintiff's experts without presenting its own expert evidence. Counsel for the defendant tried his best to discredit the expert evidence presented on behalf of the plaintiff. His argument was not supported by any expert evidence or opinion. Good argument without factual basis may amount to mere conjecture and does not assist the court in unravelling the disputed issues. Good argument alone has its own limitations and cannot ordinarily be used to dispense with sound expert knowledge or opinion.

[30] The defendant contended for a 50% contingency deduction. One must always bear in mind that even though contingencies are only applied after the income that the plaintiff will lose in the future has been determined, actuarial assumptions and contingencies are based on available evidence, in particular the experts' evidence regarding the consequences of the accident on the life of the plaintiff and can thus not be properly determined in isolation thereof. In *Union and National Insurance Co. Ltd v Coetzee*⁷ the court held that it must be established that the disability gives rise to a patrimonial loss, which in turn will depend on the occupation or nature of the work which the Plaintiff did before the accident, or would probably have done if he had not been injured. In the absence of appropriate supportive evidence the submissions made by the defendant are of little help to the court.

[31] In *Coopers (SA) (Pty) Ltd v Deutsche Gesellschaft Fur Schadlingkämpfung Mbh*⁸ it was held that an expert's opinion represents his reasoned conclusion based on certain facts on *data*, which are either common cause, or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert's bald statement of his opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert.

[32] Ms Auret-Bessellar's testimony does not amount to a mere bald statement or conjecture. It is based on her assessment of S. and the input of other experts. She has 27 years of experience in which she has completed approximately 5000 assessments pertaining to employment issues, job analysis, selection, promotions, career development, job suitability, remuneration and incentive design. For the past twelve years she has specialized in medico legal employment assessments and expert witness testimony in the High Courts of South Africa. She has given expert evidence pertaining to loss of earnings in personal damages claims, loss of support and employability assessments in maintenance claims.

[33] Ms Auret-Besselaar's undisputed opinion is that S. would have probably started work at age 19 and retired at age 65. This estimates a working life of 46 years. I am of the view that applying a contingency deduction on the sliding scale would be most appropriate given the age of S.. In the circumstances I am of the view that a contingency deduction of 23% calculated at 1 / 2 % of what would probably have been his estimated working life of 46 years would be fair and equitable to the both parties. Consequently an amount R2 189 110-00 awarded as damages for his loss of earnings or loss of earning capacity.

In the circumstances the following is ordered:

THE UNDERTAKING

1. The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Act 56 of 1996 in respect of 100% of the costs relating to the future accommodation of the plaintiff/the minor in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the plaintiff/the minor after the costs have been incurred and on proof thereof and arising from the collision which occurred on 23 February 2013.

PAST HOSPITAL AND MEDICAL EXPENSES BY STATE SERVICE PROVIDERS

2 The defendant indemnifies the plaintiff against any claims by suppliers in respect hereof.

THE CAPITAL

3. The defendant is ordered to pay the plaintiff the sum of R3 389 110-00 (the capital) by way of a lump sum payment within 14 days from this order, by way of electronic transfer to the trust account, details of which are set out hereunder (the capital payment).

4. The capital is made up as follows;

4.1 Loss of earnings / earning capacity: R 2 189 110-00, as determined by the court.

4.2 General damages: R 1 200 000-00, as settled by the parties on 09 June 2015.

COSTS

5. The defendant shall pay the plaintiff's taxed or agreed High Court Scale party and party costs, including for the sake of clarity, but not limited to, the costs of plaintiff's instructing attorneys, Adendorff Incorporated in Cape Town and correspondent attorneys, Savage Jooste and Adams in Pretoria, as well as the costs set out hereunder:

6. The plaintiff shall, in the event that the costs are not agreed, serve the notice of taxation on the defendant's attorney of record.

7. The plaintiff shall allow the defendant 14 (fourteen) calendar days to make payment of the taxed costs.

GENERAL COSTS

8. Any taxed costs or agreed costs incurred after the date of this order in obtaining payment of any of the amounts referred to herein.

EXPERT WITNESSES

9. The taxed or agreed qualifying expenses and reservation fees of the experts listed in this paragraph 9, the taxed or agreed costs attached to the procurement of the medico legal and other reports as well as joint expert minutes of the experts, including x-rays, MIR scans and Pathology reports, as well as home and work visits.

9.1 Dr Johan Reid (neurologist);

9.2 Dr Dale Ogilvy (speech and language pathologist);

9.3 M Truter (occupational therapist);

9.4 Elspeth Burke (psychologist);

9.5 Petra Coetsee (architect);

9.6 Esther Auret-Besselaar (industrial psychologist);

9.7 Alex Munro (actuary).

TRAVELLING, ACCOMMODATION AND RELATED COSTS

10. The defendant shall be liable to pay the actual travelling, accommodation and related costs incurred as follows:

10.1 In respect of the plaintiff attending medico legal examinations with expert witnesses in Cape Town.

10.2 In respect of the plaintiff's legal representative travelling from Cape Town to Pretoria and back to conduct the hearing on 9 June 2015 and on 17 June 2015.

10.3 In respect of the plaintiff and her husband travelling from Cape Town to Pretoria to attend and testify at the hearing on 9 June 2015 and on 17 June 2015.

10.14 In respect of Dr J Reid travelling from Cape Town to Pretoria to attend and testify at the hearing on 9 June 2015.

10.15 In respect of Dr O Ogilvy, E Auret-Besselaar and Alex Munro travelling from Cape Town to Pretoria to attend and testify at the hearing on 9 June 2015 and on 17 June 2015

COUNSEL'S FEES

11. The full fees of the plaintiff's counsel Adv. A Laubscher (senior junior) and Adv C Cawood (junior).

FEES OF THE INTERPRETER

12. The full fees of the plaintiff's Xhosa interpreter.

PAYMENT PROVISIONS

13. Payment of the capital amount as reflected above shall be effected within 14 days from this order (the capital due date) by way of electronic transfer into the plaintiff's attorneys trust banking account, details of which are listed herein below.

14. Payment of the taxed or agreed costs reflected above shall be effected within 14 days of agreement or taxation (the costs due date) and shall be effected by way of electronic transfer into the plaintiff's attorneys trust banking account, details of which are listed herein below:

15. Should the capital and/or the costs not be paid by the relevant due date(s), the defendant will be liable for interest thereon at the prescribed statutory rate.

PLAINTIFF'S ATTORNEYS TRUST BANKING ACCOUNT

16. Bank: First National Bank Account

Name: Adendorff Inc Branch

Name: Adderley Street

Branch Code: 201-409

Account Number: [.....].

A L C M LEPHOKO

(ACTING JUDGE OF THE HIGH COURT)

Heard on: 17 June 2015.

Judgment delivered on: 07 July 2014

For the Plaintiff: Adv: A Laubscher, with him, Adv C Cawood

Instructed by: Adendorff Attorneys, Cape Town; Savage Jooste & Adams Attorneys, Pretoria.

For the Defendant: Adv F Makita Instructed by: Tau Phalane Inc, Pretoria.

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

AT PRETORIA ON WEDNESDAY 8 JULY 2015

BEFORE THE HONOURABLE JUSTICE Lephoko (AJ)

Case no: 37019 12014

In the matter between:

N. S. obo S.

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant

ORDER

HAVING HEARD COUNSEL AND EVIDENCE ON WEDNESDAY 17 JUNE 2015, IN RESPECT OF THE PLAINTIFF'S CLAIM FOR DAMAGES, AS SET DOWN FOR HEARING IN RESPECT OF THE QUANTUM AS FROM 9 JUNE 2015 AND THEN POSTPONED TO 17 JUNE 2015 DUE TO A SHORTAGE OF JUDGES, THE CLAIM FOR FUTURE LOSS OF EARNINGS AS DETERMINED BY THE COURT (THE OTHER QUANTUM ISSUES HAVING BEEN SETTLED BY THE PARTIES), IT IS ORDERED THAT:

THE UNDERTAKING

1. The Defendant shall provide an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996 ("the undertaking"), to compensate the Plaintiff/the minor for 100% (one hundred percent) of the costs relating to the future accommodation of the Plaintiff/the minor in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the Plaintiff/the minor after the costs have been incurred and on proof thereof and arising from the collision which occurred on 23 FEBRUARY 2013.

PAST HOSPITAL AND MEDICAL EXPENSES BY STATE SERVICE PROVIDERS

2. The Defendant indemnifies the Plaintiff against any claims by suppliers in respect hereof.

THE CAPITAL

3. The Defendant is ordered to pay to the Plaintiff the amount of R 3 389 110,00 ("the capital") by way of a lump sum payment within 14 calendar days from this Order, by way of electronic transfer to the trust account, details of which are set out hereunder ("the capital payment").

4. The capital is made up as follows:

4.1 Loss of earnings / earning capacity - as determined by the Court – R 2189 110,00.

4.2 General damages - R1 200 000,00 - as settled by the parties on 9 June 2015.

COSTS

5. The Defendant shall pay the Plaintiff's taxed or agreed High Court Scale party and party costs, including for the sake of clarity, but not limited, to the costs of the Plaintiff's instructing attorneys, Adendorff Incorporated in Cape Town and the correspondent attorneys, Savage Jooste and Adams in Pretoria, as well as the other costs set out hereunder.

6. The Plaintiff shall, in the event that the costs are not agreed, serve the Notice of Taxation on the Defendant's attorney of record.

7. The Plaintiff shall allow the Defendant 14 (fourteen) calendar days to make payment of the taxed costs.

GENERAL COSTS

8. Any taxed or agreed costs incurred after the date of this order in obtaining payment of any of the amounts referred to herein.

EXPERT WITNESSES

9. Regarding the expert witnesses listed hereinbelow ("the experts"), the taxed or agreed qualifying expenses and reservation fees of the experts listed in paragraph 10 below, the taxed or agreed costs attached to the procurement of the medico legal and other reports as well as joint expert minutes of the experts, including x-rays, MRI scans and Pathology reports, as well as home and work visits.

10. The experts are:

- 10.1 Dr J Reid (neurologist) (RAF4 and expert report).
- 10.2 Dr D Ogilvy (speech and language pathologist).
- 10.3 E Burke (psychologist).
- 10.4 M Truter (occupational therapist).
- 10.5 P Coetsee (architect).
- 10.6 E Auret-Besselaar (industrial psychologist).
- 10.7 Alex Munro of Munro Consulting (Actuary).

TRAVELLING, ACCOMMODATION AND RELATED COSTS

13. The Defendant shall be liable to pay the actual travelling, accommodation and related costs incurred as follows:

- 13.1 In respect of the Plaintiff attending medico legal examinations with expert witnesses in Cape Town.

13.2 In respect of the Plaintiff's legal representatives travelling from Cape Town to Pretoria and back to conduct the hearing on 9 June 2015 and on 17 June 2015.

13.3 Regarding the experts listed in paragraphs 11 and 12 above, in respect of them travelling from Cape Town to Pretoria to attend and testify at the hearing on 9 June 2015 and on 17 June 2015.

13.4 In respect of the Plaintiff and her husband travelling from Cape Town to Pretoria to attend and testify at the hearing on 9 June 2015 and on 17 June 2015.

COUNSEL'S FEES

14. The full fees of the Plaintiff's two counsel Adv. A Laubscher (senior junior) and Adv. C Cawood Uunior).

FEES OF THE INTERPRETER

15. The full fees of the Plaintiff's Xhosa interpreter.

PAYMENT PROVISIONS

16. Payment of the capital amount as reflected above shall be effected within 14 days from this Order ("the capital due date") by way of electronic transfer into the Plaintiff's attorneys trust banking account, details of which are listed herein below.

17. Payment of the taxed or agreed costs reflected above shall be effected within fourteen (14) fourteen days of agreement or taxation ("the costs due date") and shall likewise be effected by way of electronic transfer into the Plaintiff's attorneys trust banking account, details of which are listed herein below.

18. Should the capital and/or the costs not be paid by the relevant due date(s), the Defendant will be liable for interest thereon at the prescribed statutory rate.

TRUST BANKING DETAILS

19. The Plaintiff's attorneys' trust banking account details are as follows:

Bank: FIRST NATIONAL BANK

Account Name: ADENDORFF INC.

Branch Name : ADDERLEY STREET

Branch Code : 201-409

Account number: [.....]

BY ORDER OF THE COURT

COURT REGISTRAR

Box 71: Savage Jooste & Adams

Ref no: M Haasbroek / gk / MHA 209

Plaintiffs counsel: Adv A Laubscher (082 658 4112) & Adv C Cawood (083 887 6780).

Defendant's counsel: Adv F Matika (073 009 7867).

1 Chemical Energy Paper Printing Wood and Allied Workers Union and Others v CTP and Another (2013) 34 IU 1966 (LC) @ para 105.

2 Filta-Matix (Pty) Ltd v Freudenberg 1998 (1) SA 606 (SCA) at 614B-C; see also Price NO v Allied-JBS Building Society 1986 (3) SA 874 (A) at 8820-E.

3 L Steynberg: "Fair" Mathematics in Assessing Delictual Damages, PER/PELJ 2011(14) 2; see also Southern Insurance v Bailey 1984 (1) SA 98 (A).

4 Southern Insurance v Bailey 1984 (1) SA 98 (A).

5 The Quantum Yearbook, Robert Koch, 2015, at 120.

6 1976 (1) SA 565 (ECD) at 569B-F

7 1970 (1) SA 295 (A); see also Rudman v Road Accident Fund 2003 SA 234 (SCA) at paras 10 and 11.

8 1976 (3) SA 352 (A) at 371E-G.