REPUBLIC OF SOUTH AFRICA

NORTH GAUTENG HIGH COURT, PRETORIA

CASE NO: 26620/11

DATE: 11 NOVEMBER 2013

In the matter between:

BHEKISENZA ELLIOT NGCAMA Plaintiff

and

ROAD ACCIDENT FUND Defendant

J U D G M E N T

MNGQIBISA-THUSI J:

1. The plaintiff, acting on behalf of his daughter, B…… F…….N…… ("B……"), has instituted a claim for damages against the respondent as a result of injuries B….. sustained in a motor vehicle collision which occurred on 29 June 2008. At the time of the collision, B…… was 11 months old.

2. In the amended particulars of claim theplaintiff states that his daughter suffered the following damages:

2.1	General damages	R 600 000.00
2.2	Future medical treatment	R 95 000.00
2.3	Future loss of earnings	R 2 000 000.00
2.4	Total	R2 695 000.00

3. The parties have reached agreement on the merits in terms of which the defendant has admitted liability and that it will compensate Plaintiff for 100% of her proven damages.

4. On 28 January 2013 Judge JW Louw granted an order, by agreement between the parties, inter alia, on the following terms:

4.1 The defendant shall make an interim payment of R280 000.00 to the plaintiff on or before 28 February 2013 (paragraph 2);

4.2 The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the **Road Accident Fund,** No 56 of 1996, for 100% of the costs of the plaintiff's future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the plaintiff arising out of the injuries sustained by the plaintiff in the motor vehicle collision as detailed in the plaintiff's

medico-legal reports, after such costs have been incurred and upon proof thereof(paragraph 3).

5. The only issue to be determined is the quantum of damages, in particular, the court has to determine whether:

5.1 B…. suffered any injury to her brain, and if so, whether the injury caused B…. to suffer loss of future income or future earning capacity.

5.2 If the court finds in favour of the plaintiff:

5.2.1 the prepared actuarial report should be admitted; and

5.2.2 the agreed upon award for general damages should be R 450000.00.

6. It is common cause that on 29 June 2008 at about 23h00 a collision occurred between a motor vehicle, bearing registration number NUR 24301 and driven by the plaintiff, and an unidentified white LDV motor vehicle driven by an unknown driver, along the R612 Ixopo Road. After the accident B….. was admitted to the JG Crookes hospital and was discharged after a day or two

7. At the time of collision, B…. and others, were passengers in the motor vehicle driven by the plaintiff.

8. The hospital record that B…. has an uncomplicated head injury.

9. The first witness for the plaintiff is Mrs Linda De Rooster ("Mrs De Rooster"), an educational psychologist. Her evidence is that at the time she assessed B…, she came to the conclusion that B…. sustained a brain injury and that due to the injury and the *sequelae* thereof, B… would not be able to complete Grade 12 in a mainstream school. She was also of the opinion that pre-morbid B… was of average intelligence. She recommends that B…. should be placed in a remedial school because of development difficulties which have arisen as a result of the injuries she sustained, which difficulties could lead to her struggling in a mainstream school. Mrs De Rooster indicates that she came to this conclusion, based on Dr Du Troveau's (the neurosurgeon) report and after conducting certain relevant tests. She also indicated that although she was provided with B….'s school report, which indicates that she was in Grade R, she disregarded the report in her assessment as the report was not reflective of a foundation phase report. It is Mrs De Rooster's opinion that B….. has developmental difficulties in that she is at a lower level, in terms of abilities, than children her age. She testified that B… could, for instance, not write her name or draw, remember her birthday or where she stays, as expected from a child her age.

10. In cross-examination Mrs De Rooster indicated that B…. had deficits in certain areas of her innate abilities, indicative of developmental delay.

11. In their joint minute, Mrs De Rooster and Ms Masindi Nethavhani, a research psychologist for the defendant, agree that:

11.1 before the accident, B….'s developmental milestones appear to have been

normal and that she would, but for the accident, have passed Grade 12 in a mainstream school.

11.2 B….would benefit by being placed in a remedial school.

12. The second witness was Dr Michael Dennis Du Trevou ("Dr Du Trevou"), a neurosurgeon. He consulted with B… on 13 April 2011. Dr Du Trevou testified that in his opinion B… has sustained a severe brain injury as a result of the accident. He testified that, although the hospital's clinical notes reflected that B… had a head injury and appeared normal, he was, however, concerned about another note in the hospital records indicating that after the accident, B… had been unresponsive. In his opinion this indicates a significant impact to the brain and that cognitive problems could be anticipated. As a result, he recommended that B… be referred to an educational psychologist. He opined that even if it was diagnosed that B… had a mild concussion, as concluded by Dr Segwapa, the defendant's neurosurgeon, this would also have long term sequelae. Dr Du Trevou discounted the Glaxo-Coma score of 14/15, done by the hospital staff when B…. was admitted. In his opinion the Glaxo-coma score does not work with children under the age of 5 years in that you cannot assess their orientation and awareness as they cannot verbally respond to questions.

13. In cross-examination Dr Du Trevou explained that the Glaxo-coma score tests a patient's eye-openings; motor function and orientation; and speech. He further indicated that a Glaxo-coma score of 15/15 indicates that the patient is fully conscious. Furthermore, that if the score is 8/15 or less, this is an indication that the patient is in a coma. According to Dr Du Trevou, a score of 14/15 in an adult indicates that the patient is either disorientated or confused.

14. The next witness was Mrs Marylyn Jane Adan ("Mrs Adan"), a neuropsychologist, who also consulted with B…. Mrs Adan testified that children who sustained brain injury experience delayed development compared to normal children at that age. She was of the opinion that the age at which B… was at the time of the collision (11 months), is a critical stage at which children's motor, speech and language skills kick in. She further testified that if a child sustains a brain injury at that stage, the *sequalae* of such an injury is delayed development in that their brain is not fully developed. She was of the opinion that a child who sustains an injury to the right hemisphere, which relates to vision, perceptual and construction areas, such injury would impact on the child's schooling, for instance, her ability to learn to write and read. It is Mrs Adan's evidence that the sequelae of an injury to the brain include motor functioning, cognitive functions and social skills deficits. In the case of B…., she found that she had delays in fine motor skills development in that there was in-coordination, she struggled to draw shapes, was easily distracted and inattentive, and her literacy and numeracy skills were not well developed. She was further of the opinion that B…. suffered from residual trauma in that she still wets her bed. Furthermore, she corroborated Dr Trvou's evidence that the Glaxo-coma score done on B… at the hospital was not appropriate. In her view it should have been done by a paediatrician.

15. In cross-examination Mrs Adan denied that she used Dr Du Trevou's report as her starting point. She testified that B… displayed signs indicative of a brain injury. With regard to a comment made in Dr Trevou's report that B… shows "uneventful progress", Mrs Adan testified that in her opinion that indicates that B… had further complications (like medical consequences) but that does not mean that there were no further neuropsychological consequences. With regard to B….'s Glaxo-coma score, Mrs Adan was of the opinion that as there is evidence that she was comatose at some stage after the collision and the fact that she was only admitted to hospital 4 (four) hours after the collision, the fact that her eyes were open indicates that her level of unconsciousness had

reduced. She reiterated that the Glaxo-coma score of 14/15 was an indication that B… was not fully conscious. Further she reiterated that at the time she assessed B… she was showing areas of deficit in that she could not draw, colour or assemble puzzles properly.

16. At the end of Mrs Adan's evidence, Mr Oosthuizen, counsel for the plaintiff, intimated an agreement reached between the parties. The parties agreed that in the event of the court accepting the evidence of Mrs De Rooster and Ms. Adan in respect of the injuries sustained by B…. and the sequelae thereof, the report of Mr Bernard Oosthuizen, the industrial psychologist for the plaintiff, is accepted by the defendant. Further, that the joint minute of the occupational therapists, M Makgato and S De Freitas, would not be in dispute. Furthermore, that the court could have regard to the agreements parties have in the available joint minutes.

17. Thereafter plaintiff closed its case.

18. The defendant closed its case without leading any evidence as its expert witnesses were not available.

19. The following facts are common cause:

19.1 that collision occurred on 29 June 2008.

19.2 that B…. was admitted to the GJ Crookes hospital and that the hospital records indicate the following:

19.2.1 that at some stage after the accident, B….. was said to be unresponsive;

19.2.2 that her Glaxo-coma score was 14/15;

19.2.3 that B… had a head injury though uncomplicated;

19.2.4 that she was discharged from hospital after a day or two.

20. According to the evidence of Dr Du Trevou the head injury recorded in the hospital records resulted in B…. sustaining a severe brain injury leading him to refer B…. to an educational psychologist. From the findings of Mrs De Rooster and Mrs Adan, there is confirmation that B… is sustained a brain injury which resulted in some form of developmental deficits which have compromised her cognitive abilities. It is the opinion of both experts that as a result of the brain injury, B… will be more compatible in a remedial school than in a normal school. The evidence of the three experts remains uncontroverted. I am satisfied that there is sufficient evidence to show that B…. has suffered some brain injury whose sequelae has affected her educational development and negatively impacted on her potential earning capacity.

21. According to Mr Oosthuizen's report, the industrial psychologist, as a result of the injuries, it is anticipated that B…. will enter the open labour market at a Peromnes Level 19 or Paterson Level A1 (median basic package per annum), reaching a career plateau and earning potential at Peromnes Level 17 or Paterson Level A2 (median basic package per annum). She may advance in her career in intervals of between three and five years before reaching a career plateau and earning potential and that she will work until she reaches the normal retirement age.

22. The occupational therapists (Makgato and De Freitas) are agreed that B….is

likely to be able to perform work of an unskilled or semi-skilled nature once she leaves school.

23. With regard to future loss of income I accept the report of the industrial psychologist, Mr Oosthuizen.

24. An actuarial report of Wim Loots has been handed in by agreement and the calculations therein, with regard to loss of income is accepted by both parties. In this report Mr Loots has calculated the plaintiff's future income, having regard to the collision, to be R1 699 354.00.

25. There is no doubt that the plaintiff has suffered loss of amenities of life and needs to be compensated for such. As the parties have reached an agreement, the amount to be awarded to the plaintiff as general damages is R450 000.00.

26. With regard to costs, the plaintiff is entitled to his costs. The plaintiff is also entitled to recover the costs attendant to the reports of:

26.1 Mr S De Freitas (occupational therapist);

26.2 Mrs L De Rooster (educational psychologist);

26.3 Dr MD Du Trevou (neurosurgeon);

26.4 Mr B Oosthuizen (industrial psychologist);

26.5 Mrs A Adan (neuro-psychologist).

27. Accordingly the following order is made:

1. That the defendant to pay the plaintiff the amount of R1 699 354.00 for future loss of income;
2. That the defendant to pay the plaintiff the amount of R 450 000.00 as general damages;
3. That the defendant to pay the plaintiff's costs as well as costs incurred to obtain the report and preparation and attendance in court (where indicated) of the following experts:
    - 3.1 Mr S De Freitas;
    - 3.2 Mrs L De Rooster (including attendance in court);
    - 3.3 Dr MD Du Trevou (including attendance in court);
    - 3.4 Mr B Oosthuizen;
    - 3.5 Mrs A Adan (including attendance in court).

NP MNGQIBISA-THUSI
Judge of the High Court

Appearances:

For the Plaintiff	: Adv B Roux SC
Instructed by	: Du Toit Attorneys
For the Defendant	: Adv Combrink
Instructed by	: Tsebane Molaba Inc