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

CASE NO: 53238/16
(1) REPORTABLE: NO
(2) OF INTREST TO OTHER JUDGES: NO
(3) REVISED
26 August 2024

IN THE MATTER BETWEEN:

R[…] M[…] M[…] obo
L[…] N[…] M[…] PLAINTIFF

AND

ROAD ACCIDENT FUND DEFENDANT

JUDGMENT

CEYLON AJ

[A] INTRODUCTION:

[1] This is a delictual claim in which the Plaintiff, in her representative capacity as mother and natural guardian of L[…] N[…] M[…] ("the minor child"), seeks relief against the Defendant as a result of bodily injuries sustained by the minor child in a collision that occurred on 02 November 2014 on the R25, Bronkhorspruit, Gauteng Province. The collision happened between vehicle with

registration letters and numbers PLX537GP, driven by ME Manyisi, in which the minor child was a passenger and an unknown vehicle with unknown details.

[2] The Plaintiff allege that the collision was caused by the sole negligence of the driver of the said unknown motor vehicle, who was negligent in one or more ways alleged in paragraph 5 of the Particulars of the Plaintiffs claim. The Plaintiff further alleged that, as a result of the collision, the minor child sustained, *inter alia,* left femur fracture, pain and suffering, had to undergo medical treatment and suffered loss of income.

[3] As a result of the said negligence and injuries, the Plaintiff claims damages, as per the amended Particulars of claim, as follows:

(a)	future medical expenses	section17(4)(a) undertaking
(b)	future loss of income/earnings	R6 000 000-00
(c)	general damages	R1 500 00-00
Total		R7 500 000-00

[4] In addition, the Plaintiff claimed for interest on the said amount, costs of suit and further and/or alternative relief.

[5] The Defendant filed a special plea and pleaded that the Plaintiff did not comply with the requirements of section 17 and Regulation 3 of the Road Accident Fund Act 36 of 1996 ("RAF Act"), in that the Plaintiff failed to submit the prescribed Serious Injury Assessment Report, and, that the Plaintiffs claim for general damages is premature for failure to exhaust the remedies and processes available to him in terms of Regulation 3 of the RAF Act and submit the said Assessment Report.

[6] On 01 August 2019, by agreement between the parties, it was ordered that the Defendant would be liable for 100% of the Plaintiff's agreed or proven damages and to furnish the Plaintiff with a section 17(4)(a) undertaking in terms of the RAF Act. The quantum was postponed *sine die* [see paragraph 1.3 of the Plaintiff's Heads of Argument ("HOA") dated 26 May 2004; Court order 01 August

2019 (per Raulinga, DJP)].

[7] On the date of the hearing of the matter (30 May 2024), the Defendant and its legal representatives were absent from Court and the Plaintiff proceeded on a default basis in terms of the Uniform Rules of Court.

[8] The Plaintiff proceeded to lead evidence by way of expert reports upon the application in terms of Rule 38(2) having been granted by this Court. No witnesses were called to testify in this matter on the hearing date hereof.

B. THE PLAINTIFF:

[9] As indicated above, the Plaintiff is R[…] M[…] M[…] [ID no: 7[…]], an adult female nurse, resident at 2[…] S[…] street, Extension 4, M[…] E[…], Pretoria, Gauteng Province and suing in her representative capacity of said minor child.

[10] The minor's father passed away during the accident and was employed as a semi- skilled electrician and passed grade 12. His mother was employed as a nurse and obtained a diploma in nursing. He is the youngest of four siblings. His sister, D[…], has qualified as a food specialist, his brother, M[…], passed grade 12 and was studying towards a diploma in Policing and his other brother was a grade 10 learner at the time of the accident.

[11] As indicated above, the minor child was involved in the said collision as a passenger in the vehicle with letters and numbers: P[…] and suffered abrasions and lacerations to the left arm and fracture of the left femur.

[12] After the accident, the child was admitted to the Mamelodi Hospital where the abrasions and lacerations were sutured in the trauma unit and the left femur and fracture was treated by way of open reduction internal fixation.

[13] According to the orthopaedic surgeon, the internal fixation was removed from the left femur in July 2015, and, when he was seen by the said surgeon in 2017, the minor's final treatment was completed, and no formal treatment was given

since. This expert reported that the minor child occasionally requires analgesics over the counter.

[14] The minor child was in good health prior to the accident and had no surgical interventions or comorbidities and this current accident was the first and only one he has been involved in.

[15] The minor child lives in Mamelodi, Pretoria with his family and siblings. The said minor attended creche at the time of the accident. Although he did not formally participate in sports activities, he normally played soccer with his peer group friends and family members.

[16] During grade 1 in 2015, the minor child had some psychological problems due to the loss of his father in the accident and he failed grade 1. His scholastic performance has improved over time and his progress is satisfactory. He also partakes in soccer for his local club and run, but not at a fast pace. It seems that he has come to terms with the loss of his father.

[17] The abrasions and lacerations have healed well but the minor child experience occasional pain in his left leg, also during inclement weather and when performing certain activities. No swelling, symptoms or complaints of the left knee and hip have been reported.

[18] Certain scars and disfigurement has been identified and reported by the orthopaedic surgeon. The minor child also consulted several other experts, including a neurosurgeon, neuropsychologist, clinical psychologist, psychiatrist, educational psychologist and occupational psychologist. The injuries sustained by the minor child, their sequelae, treatment and future treatment will be discussed herein-below.

C. <u>THE INJURIES AND ITS SEQUELAE:</u>

[19] The Plaintiff enlisted the services of numerous medical and other experts, who recorded the injuries sustained, treatment received as well as future

treatment required. These experts reported as follows:

- Orthopaedic surgeon (Dr P Engelbrecht):

(a) This expert reported a normal general appearance and intellectual function in respect of the minor child, as well as normal gait. Further, scars of the left forearm dorsum (4cm) and of the left upper arm, longitudinal scar (14cm) of the lumbar spine and 16 cm scar of the left thigh was reported. The scars have healed, and no sign of infection were present.

(b) With regards to the head and neck of the minor, the movement of the neck was normal and the upper limbs neurovascularly intact, also no localising signs of the cervical spine. The chest and abdomen was normal. The lower back movements were normal, with no muscle atrophy and the pelvis also normal.

(c) The expert reported that the upper limbs and joints are stable with a normal range of motion and no localising signs. No muscle atrophy of the lower limbs with no leg length discrepancy was reported. Both hips are clinical stable with normal range of motion and mild tenderness of the proximal left femur, but no swelling have been noted.

(d) The minor child's knees are bilaterally stable with no localising signs and both feet are normal. This expert also opined that the life expectancy of the minor child is not affected by the injuries and their sequelae. The minor child suffered acute pain for a period of eight weeks, moderate pain for two weeks and chronic pain for up to eight weeks of the accident. The child also plays soccer for his local football club.

(e) According to this expert the minor child's whole person impairment is between 3-5% at medical improvement, and he will be able to enter the labour market normally and retire at age 65 years old. The minor child will not require surgery but still require analgesics once per week and allowance should be made for follow-up doctor's visits and pain control. The expert advised that R5000-00 be set said to cover future conservative treatment.

- Neurosurgeon (Dr TP Moja):

(a) This expert reported that the minor child have taken X-rays at Mamelodi hospital. He confirmed those injuries as reported by the

orthopaedic surgeon but also reported head injury and neck pain sustained, a neck collar and physiotherapy was applied in respect of the minor child. The minor child visited the hospital again for the removal of the left femoral implant.

(b) The expert confirmed that the minor child, since the accident in grade R, made good progress at school and is now in grade 9, having only failed in grade 1. The expert confirmed further that the minor child lives with his mother and siblings.

(c) At the time of the examination, the minor child complained about occasional headaches and left thigh pains (especially during physical exercises) but does not suffer from epileptic seizures or other complaints systematically. A large scar of 21cm on his left thigh, 5cm over on his left upper and forearm and 3cm one on his left wrist was reported. No deformities were reported.

(d) Normal speech, cranial nerves and motor system were reported, as well as coordination and balance. The sensation in all the minor's dermatomes was normal. On the minor's left leg was the 21cm scar but with normal range of motion on his left hip and knee joints and normal gait. The minor's spine was reported as non-tender, with normal range of motion. He further had normal respirations and clear lung fields. No abnormalities were detected regarding the cardiovascular system and abdomen of the minor.

(e) This expert indicated that the minor experience pain and suffering as indicated by the orthopaedic surgeon, scars and disfigurements, as set out above, mental and physical impairment (including soft tissue haematoma on the occipital region of his head and mild traumatic brain injury). The minor presented no residual focal neurological defects. There is also no loss due to the pain on the left thigh of the minor and his life expectancy is not affected. He has a less than 3% risk of developing late post-traumatic epilepsy. He would require conservative treatment in respect of his left thigh pain, including pain medication, consultations with the general practitioner and orthopaedic surgeon, and which will cost approximately R10 000-00.

- Neuropsychologist (Ingrid Jonker):

(a) This expert confirmed the injuries and treatment of the minor child as

indicated by the orthopaedic and neurosurgeons.

(b) The expert reported that the minor had not experienced any emotional or behavioural problems, surgery, hospitalisation or head injuries prior to the accident, and nor was he diagnosed with any chronic illnesses pre-accident. He takes one or two pain tablets per week for headaches and left leg pain.

(c) According to this expert, the minor had and still has good and positive relationships with his mother, siblings and his friends. He enjoys playing soccer before and after the accident. The minor became more irritable and withdrawn after the accident, displayed low energy levels and tires easily. He displayed mood swings, short temper and anxiety when travelling in a car.

(d) The minor presented with symptoms of post-traumatic stress disorder, including psychological discomfort, nightmares about his father and avoid speaking about the accident and the death of his late father, which is upsetting to him. He also suffers insomnia, irritation and hypervigilant behaviour when travelling in a vehicle, sadness at the loss of his father, decreased energy levels and dislikes the scars on his leg. As a result of these aforementioned factors, the experts recommended psychiatric intervention.

(e) With regards to the test findings in relation to attention, concentration and mental tracking abilities, the expert reported low average attention abilities and working memory and double tracking, severely impaired psychomotor speed abilities and visuo-double tracking abilities, average visual shifting and clerical shifting abilities, low average mental response speed. He further reported, with regards to perceptual-motor and construction abilities, average visuo-spatial planning and perceptual organisation abilities and below average short-term retention of verbal material in respect of memory and learning abilities, whilst forward planning and problem solving difficulties were found during his testing.

(f) The expert concluded that the minor may have sustained a minor or mild concussion head injury at most and such injuries are not expected to result in long term cognitive or behavioural difficulties. It was also reported by this expert that the minor suffered symptoms of depressive

disorder and physical difficulties (including headaches and leg pain), self-esteem, interpersonal functioning, scholastic ability of life has been negatively affected by the injuries and its sequelae. The expert recommended 60 sessions of psychotherapy at R1200-00 per session to address the post-traumatic stress systematology, a curator *ad /item* to assist the minor in any litigation and an industrial psychologist to advise on the minor's future employability and earning capacity.

- Clinical psychologist (Michael Sissison):

(a) The clinical psychologist also confirmed the injuries sustained by the minor child in the accident, the sequelae and the treatment received as outlined by the orthopaedic surgeon and other medical experts consulted.

(b) This expert reported that due to the accident, injuries and the death of his father in the same accident, the minor experienced significant loss and acknowledges that his father's death continues to affect him. He did not attend counselling after the accident and could not psychologically work through this tragedy. The death of his father is a significant, functional stressor and the head injury he sustained may also affect his cognitive functioning, which may also have affected his academic performance and caused him to fail grade 1 at school. Although he progressed well further at school, this expert recommended that the minor child consults an educational psychologist regarding his pre- and post- trauma intellectual and academic functioning and future academic functioning.

(c) The expert reported further that the minor remains anxious when travelling and fears a repeat of his trauma. He is self-conscious about his scarring and prefers long sleeve shirts to cover it up. He had developed specific skills around soccer playing pre-trauma but has retained skills since returning to soccer after being on crutches for three months after the accident, as a result of which he integrated with his team mates and friends and thereby reinforcing some sense of mastery and competence.

(d) The expert indicated that the minor presented with, *inter alia,* the following psychological and psychiatric sequelae: insomnia, fatigue and self-consciousness. A clinical psychologist was therefore recommended for future treatment of these symptoms and sequalae, namely 40 sessions of one hour each. He may also require the service of a plastic surgeon in

relation to the scaring and scar revision procedures.

(e) The expert recommended financial compensation for psychological trauma, ongoing medical expenses and impact on future career and earning possibilities.

- Psychiatrist (Dr M Naidoo):

(a) This expert reported that the minor child was a healthy, normal child and had no prior history of accidents, hospitalisation or medical treatment. The minor child had no prior contact with psychiatric services nor any other family history of mental illness. H had a good family relationship and was not using any alcohol, drugs or tobacco. The minor likes school and playing soccer with his family and friends.

(b) The minor complained about pain in his left leg and the scarring. This scarring affected his self-esteem and the pain causes depression. Due to the injuries sustained and its sequelae, this expert recommended that the minor consult a psychiatrist for at least 8 sessions at R1500-00 to R2000-00 per session, psychotropic medication (at a total of R24 000-00), at least one hospital admission, duration of 21 days at cost of R100 000- 00, inclusive of psychiatrist and psychologists costs, group therapy and medication. Provision should also be made for 6 sessions of play therapy and 6 sessions of individual therapy.

- Educational Psychologist (Dr J Seabi):

(a) This expert also confirmed the details of the accident, the injuries and treatment of the minor child as outlined by the Orthopaedic surgeon and other experts. The expert confirmed that the minor's general health was relatively good with no history of car accidents, and no overall concerns about his physical, emotional, social and cognitive development reported. Also, no learning, behavioral and psychiatric difficulties reported in this family.

(b) After the accident, the minor child reported physical and emotional difficulties. He reported pain in his hip and leg particularly during inclement weather, as well as anxiety and depression and social difficulties, including anger outbursts towards his peers.

(c) Cognitive difficulties reported include poor concentration, comprehension and following instructions in school. The expert indicated

that the cognitive deficits are of a permanent and ongoing nature. His scholastic functioning will deteriorate as he progress in school, due to the demands and complexity of learning materials and psychological vulnerabilities emanating from the injuries and its sequelae. The expert concluded that a higher certificate (NQF Level 5) would probably the minor child's highest educational qualification.

(d) This expert recommended play therapy (50 sessions at R1030-00 per session), placement in remedial school (R100 000-00 in costs), remedial therapy (60 sessions at R300-00 per session), extra maths and English lessons (at R14 400-00 per year), psychiatry for the ADHD and PTSD an industrial psychologist (to assess the minor's pre- and post-accident work potential and loss of earnings), psychotherapy for his emotional difficulties (50 sessions at R1300-00 per session), occupational therapy and a physician (in relation to the headaches of the minor).

- Occupational therapist (Kelly Cumming):

(a) Following assessment of the minor child, and having regard to the advices of certain other experts, the Occupational therapist ("OT") reported the following physical limitations: impaired bilateral integration skills, below average fine motor co-ordination, eye-hand coordination, occasional headaches, chronic fatigue and intermittent left thigh discomfort.

(b) The OT reported the following further limitations in relation to the minor child: multiple cognitive deficits, impaired visual perceptual skills, impulsive behaviour, irritability, withdrawn behaviour, short temperament, emotional difficulties (depressive disorder, PTSD, adjustment disorder mixed with anxiety), lack of self-confidence and poor motivation for challenging tasks.

(c) With regards to personal care, the OT opined that the minor child is physically capable of independent personal care activities but his forgetfulness and disorganised thoughts results in slow incomplete task performance. He therefore requires more reminders and supervision than other children of his age to complete the personal care tasks more properly. Occupational therapy intervention is therefore recommended for independent personal management by this OT. Occupational therapy is also recommended in respect of home management and household chores due

to the minor's poor attention and forgetfulness that may result in disorganised, untidy surroundings. The therapy will assist in the development of age-appropriate home management skills.

(d) With regards to sport, leisure and lifestyle, the OT advised continued participation in sport and exercise as well as pediatric biokinetics to promote symmetrical development of the lower limb musculature and this should aid in reducing the left thigh discomfort he is experiencing.

(e) The OT recommended psychosocial intervention in respect of the irritability and short temperament, which makes him an unfavorable friend and places him at risk of social isolation as social interaction during childhood is essential for the development of social skills, emotional growth, sense of belonging and emotional well-being.

(f) The OT opined that the minor child will be able to manage his own transport needs independently and will be capable to operate manual and automatic vehicles. He should further be able to manage his own finances upon completion at least the postulated post- accident NQF 5 education level. The OT concluded that the accident negatively impacted his physical and psychological well-being and his quality and enjoyment of life.

(g) The OT indicated, taken into account the views of other experts, in the absence of the accident, the minor would have been a candidate for skilled, professional, open labour market employment with access to multiple job opportunities with a diverse selection. As result of the injuries, the minor requires scholastic support, specifically upon reading higher grades and will not reach his pre-morbid academic potential. His said deficits (physical and psychological) will prevent him from reaching his pre-morbid physical capacity and he will, upon reaching adulthood, not be considered capable of coping with heavy or very heavy physical work. He will be limited to occupations ranging from sedentary to medium physical demand, which reduces his job selection. In addition, his psychological deficits (including low self-confidence, reduced endurance, poor motivation, fatigability and lack of resilience) will limit his career goals and aspirations and will render him a less valuable, reliable and productive employee.

(h) This expert recommended medical intervention, psychotherapy, psychiatric intervention with psychotropic medication, career assessment

and counseling and remedial/extra lessons. Assistive devices such as a suitcase on wheels (cost R850-00), educational books and games to aid learning (R2500-00) and a hot-cold pack (R140-00) are also recommended. No structural changes to the minor's accommodation and additional assistance regarding his personal and home management activities is recommended.

(i) The OT recommended that funds allocated to the minor child should be protected in the form of a trust fund and he should be capable to manage his own finances from age 20.

U) The OT opined further that the scarring and disfigurement resulting form the accident negatively impacted his post-accident physical and psychological well-being, occupational function and his quality and enjoyment of life.

- Industrial psychologist (Jacobson Talmud Consulting):

(a) This expert ("IP") had regard to the reports of the other experts and confirmed the pre- accident medical history, the accident and the injuries of the minor child.

(b) This expert opined that the minor is left with physical, functional, neurological/cognitive and emotional/psychological limitations and the relevant expert, as per expert reports available, be consulted, such as the neurologist/neurosurgeon in respect of possible brain injuries, plastic surgeons in relation to the scaring and relevant medical experts in connection with treatment and costs of future treatment.

(c) The expert advised that, since the minor child was attending creche at the time of the accident, no past loss of earnings was incurred as a result of the accident. The IP recommended that the relevant experts advices should be consulted in respect of the calculation of future loss of income of the minor, but indicated that contingencies applied is the prerogative of the court.

- Actuaries (GW Jacobson Consulting Actuaries):

The actuary report sets out the calculations and the basis upon which the loss of the Plaintiff's income/earnings have been calculated.

D. MERITS:

[20] As indicated above already, the merits have been settled between the parties, and, in terms of the said Court order of 01 August 2019, the Defendant is fully (100%) liable for the Plaintiff's proven or agreed damages.

E. QUANTUM:

[21] (i) future hospital. medical and related expenses:

This head of damages has already been dealt with by this Court. In terms of said Court order dated 01 August 2019, the Defendant was ordered to furnish the Plaintiff with an undertaking in terms of section 17(4)(a) of the RAF Act for the costs of future accommodation in a hospital or nursing home or treatment of or rendering a service or supplying of goods to the injured after such costs have been incurred and on proof thereof, relating to the injuries sustained by minor child on 02 November 2014.

(ii) general damages:

(a) It is apparent from the papers filed in this matter, that there is a definite dispute between the parties in respect of general damages in light of the Defendant's special plea, wherein the Defendant allege that the claim for general damages is premature given that the seriousness of the injuries sustained by the minor child has not been assessed and finalized by the Defendant as required in in terms of section 17(1)(b) and 1A(a) and

(b) as well as Regulation 3 to the RAF Act, as amended, and, in view of the Plaintiff's replication to the special plea.

(b) The decision to determine the seriousness or not of injuries for the purposes of the RAF Act is that of the Defendant and a court can only enter the fray after a party exhausted the procedure under PAJA [Mabasa v RAF (86350/2018)[2021] ZAGPPHC 778 (29 October 2021 and Mphaha v RAF (698/2016)[2017] ZASCA 76 at para 14). In light of the aforementioned, this Court is of the view that it is unable to adjudicate the issue of general damages, and it must therefore be postponed *sine die* in the circumstances. This was also conceded in his HOA by the Plaintiff.

(iii) past and future loss of earnings:

(a) The details regarding the minor's past and future loss of earnings is

set out in the actuary's report.

(b) For a Plaintiff to succeed on a claim for future loss of earnings, he must prove on a balance of probabilities, that he suffered significant impairment giving rise to a reduction in earning capacity. There must be proof that the reduction in earning capacity gives rise to pecuniary loss [Rudman v RAF 2003(2) SA 234 (SCA)]. In De Jongh v Du Pisani [2004 (5) QOD J2-103 (SCA)] it was held that contingency factors cannot be determined with mathematical precision and that contingency deductions are discretionary. This principle was acknowledged in Zondi v RAF [(2565/2015)[2021] ZAGPPHC 707 (26 October 2021) at para 14].

(c) In Herman v Shapiro and Co [1926 TPD 367 at 379], the Court stated as follows:

"Monetary damage having been suffered, it is necessary for the Court to assess the amount and make the best use of the evidence before it. There are cases where the assessment by the Court is very little more than an estimate, but even so, if it is certain that pecuniary damage has been suffered, the Court is bound to award damage."

(d) It is trite that the trial court has a wide discretion to award what it in the particular circumstances order to be fair and adequate compensation to the injured party for bodily injuries and their sequelae [AA Mutual Association Ltd v Magula 1978 (1) SA 805 (A) at 809]. There are no hard and fast rules to be applied in deciding what a fair and adequate compensation to an injured party should be. Arbitrary considerations must inevitably play a part. An enquiry into future loss of income is by nature speculative because it involves prediction into the future [Moeketsi v RAF (565/2016)[2021] ZAFSHC 214 (30 July 2021) at para 21; Southern Insurance Association v Baily NO 1984 (1) SA 98 (AD)].

(e) Regarding actuarial calculations, it was held in Baily NO, *supra,* that:

"... *while the result of an actuarial computation may be no more than "informed guess", it has the advantage of an attempt to ascertain the value of what was lost on* a *logical basis* [at 114E; Moeketsi, supra, at para 22]."

(f) The actuary placed a value of R10 215 334-00 for future loss but for the accident and applied a 20% contingency deduction thereto (R2 043 067-00), therefore a total of value of R8 172 267-00. An income value of

R3 157 962-00 having regard to the accident, with a 30% contingency deduction applied (R947 389-00), therefore a total of R2 210 573-00. In the HOA, it was submitted that, in view of the age of the minor and the inherent uncertainties when postulating uncertainties over such a long period of time, a deduction of 25% would be more in line with the authorities cited, namely, *inter a/ia,* Goliath v MEC for Health [2015 (2) 1997 at 107], Baily NO, *supra,* Mkhonta v RAF [(20703/2012)[2018] ZAGPPHC 471 (29 March 2018)] and Protea Assurance Co v Lamb [1977 (1) SA 530].

(g) The Plaintiff persisted with the 30% contingency deduction in relation to post morbid earnings. I am inclined to agree with these submissions of the Plaintiff and the reasons provided for same. Accordingly, I agree further with the loss of earnings calculated as follows:

(i) pre morbid income:

R10 215 334-00 less 25%	R7 661 500-50

(ii) post morbid income:

R3 157 962-00 less 30%	R2 210 537-00
total loss of income:	R5 450 963-50

F. CONCLUSION:

[22] Having had regard to the cumulative facts and circumstances of this matter, the evidence, case authorities and the decrease in the value of money, the awards made seems to be just, fair and adequate in the circumstances, and which are set out in the order below.

G. COSTS:

[23] In the view of this Court, there are no reasons or factors to suggest that costs should not follow the result.

H. ORDER:

[24] In the result, default judgment is granted in favour of the Defendant, as follows:

(a) The Defendant's defence is struck out, and the Application in terms of Rule 38(2) is granted as per the prayers in the Notice of Motion.

(b) The Defendant is liable for 100% of the Plaintiffs proven or agreed damages, as previously ordered.

(c) The Defendant pay the Plaintiff an amount of R5 450 963-50 for Loss of Income, payable into the Plaintiffs attorneys of record trust account with the following details, within 180 days of date of this order:

- Account Holder: E[…] A[…] T[…] A[…]
- Bank Name: FNB
- Branch Code: 2[…]
- Account Number: 6[…]
- Reference: RM M[…]

(d) In the event of default of payment of the amount mentioned in paragraph 24(c) hereof, interest shall accrue on such outstanding amount at the prescribed rate per annum, calculated from the date of default until date of payment, both days included.

(e) The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs on a High Court scale, in accordance with Rule 70 and subject to the discretion of the taxing master, including the costs of the Plaintiff's experts, including the qualifying costs of all experts whose notices have been served on the Defendant.

(f)The costs of counsel (on scale C in accordance with Rule 69 and Rule 70 of the High Court).

(g) In the event that costs are not agreed between the parties, the Plaintiff will be entitled to serve a notice of taxation on the Defendant. The taxed costs will be payable within fourteen (14) calendar days of date of taxation and shall likewise be paid into the trust account of the Plaintiff's said attorneys.

(h) The Plaintiff and her attorneys are ordered to establish a trust for the sole benefit of the minor child within six months of date this order.

(i)The powers of the trustees will be subject to the supervision of the Master of the High Court of South Africa. One of the trustees of the trust to be established must be an independent person.

U) The net proceeds of the payments made by the Defendant to the Plaintiff,

that ensued as a result of the accident and injuries sustained by the minor child and their sequelae, including the total taxed or agreed costs, after the deduction of the attorney's fees and disbursements, shall be paid into the bank account of the intended trust (mentioned herein-above) within 30 days of date of the establishment of the trust.

(k) The said trust shall have, as its main objective, the controlling and administration of the capital amount on behalf and to the sole benefit of the minor child.

(I) Each trustee will be obliged to furnish security to the satisfaction of the Master of the High Court for the assets of the trust and for due compliance of all his/her obligations towards the trust.

(m) The trustees are authorized to pay the attorney's costs out of the trust funds insofar as any payments in that regard are still outstanding after the establishment of the trust.

(n) Until such time as the trustees are able to take control of the capital sum and to deal with same in terms of the trust deed, the Plaintiff's attorneys (Ehlers Attorneys) are:

(i) authorized to invest the monies received in an interest-bearing account in terms of the provisions of the Legal Practice Act 28 of 2014 for the benefit of the minor child with a registered banking institution pending the finalization of the said trust.

(ii) authorized and ordered to make any reasonable payments to satisfy any of the needs of the minor child that may arise and that is required to satisfy any reasonable need for treatment, care, aids or equipment that may arise in the interim.

(iii) prohibited from dealing with said monies received in any other manner unless specifically authorized thereto by Court, subject to the provisions contained in this order.

(o) There is valid contingency fee agreement signed by the Plaintiff.

(p) The issue of general damages is postponed *sine die.* The Plaintiff is permitted to refer to issue of general damages to the HPCSA without the input or assistance of the Defendant.

B CEYLON

ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA GAUTENG PRETORIA

Hearing date:	30 May 2024
Judgment date:	26 August 2024

Appearances:

For Plaintiff:	Adv K Strydom
Instructed by:	Ehlers Attorneys
For Defendant:	No appearance
Instructed by:	Not applicable