IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable
Case no: 668/2014

In the matter between:

ADVOCATE GS JANSE VAN RENSBURG NO **PLAINTIFF**

obo K[...] M[...]

and

MEMBER OF THE EXECUTIVE COUNCIL
FOR HEALTH, FREE STATE PROVINCE **DEFENDANT**

Neutral citation: *Advocate GS Janse Van Rensburg NO obo* K[...] M[...] *v Member of the Executive Council for Health, Free State Province* (688/2014) [2025] ZAFSHC 265 (29 August 2025)

Coram: Ntanga AJ

Heard: 4 June 2025

Delivered: 29 August 2025

Summary: Civil procedure – claim for special and general damages – breach of duty of care and negligence of employees.

ORDER

1.1 Judgment is entered in favour of the plaintiff against the defendant for payment of the sum of R2 000 000, such being in respect of general damages.

1.2 The payment recorded in paragraph 1.1 hereof shall be made to the under-mentioned trust account of the plaintiff's attorneys:

Account Name: Justice Reichlin Ramsamy Attorneys Inc.

Bank: ABSA

Account No: 4[.....]

Branch Code: 5[.....]

To be held in Trust until a Trust is created to manage the funds on behalf of K[...] M[...]

1.3 The plaintiff's attorney is directed:

(a) To do all things necessary, within three months of the payment of the amount referred to in paragraph 1.1 above, to cause a trust to be formed with a registered financial banking institute for the purpose of administering the said funds so paid by the defendant, for the sole benefit of the new born child; and

(b) To receipt of the funds from the defendant to it as aforesaid, after deduction of fees and disbursements, to hold such funds in trust pending the formation of the trust, and after deduction of fees and disbursements to make payment of the balance of such funds to the trust to be established as set out in paragraph 2 above.

1.4 The defendant shall pay the plaintiff reasonable and necessary, taxed or agreed, party and party costs on the High Court scale, such costs to include:

(a) The costs of counsel where engaged, on the scales as prescribed in rule 67(A)(3), read with rule 69, of the Uniform Rules of Court (scale B for junior counsel), such costs to include the reasonable and necessary costs of their preparation for trial and preparation of heads of argument, and reasonable travelling costs and accommodation.

(b) The fair and reasonable costs of travelling and accommodation for Mr Mmapaseka Casia Mofokeng for the 3rd of June 2025.

(c) Costs of the *curator ad litem*, perusal preparation of documentation and attendance at trial, to be taxed on scale B.

(d) Upon receipt of the amount paid by the defendant towards the taxed costs, such costs to be paid to the trust as set out in paragraph 1.2 above.

1.5 The defendant shall pay interest, calculated at the applicable legal interest rate in force at the time calculated from 30 days from the date of judgment.

1.6 The parties are directed to file any further and updated reports on or before October 30, 2025.

JUDGMENT

Ntanga AJ

Introduction

[1] The plaintiff, in her capacity as the mother and natural guardian of the minor child (the child), instituted an action against the defendant for damages suffered as a result of the defendant's employees of the hospital and clinic's breach of duty of care towards the plaintiff and her child. Advocate GS Janse Van Rensburg was appointed as a curator *ad litem* to the child as per Reinders J's order dated March 3, 2025. In the particulars of claim, the plaintiff avers that the employees of the hospital and clinic were negligent after November 17, 2024 and during the stay of the child at the said institutions in one or more of the following ways:

'1.1 they administered an inappropriately high concentration of oxygen to the child, and thereby caused his blindness;

1.2 alternatively, they failed to monitor and appropriately adjust the levels of oxygen administered to the child;

1.3 they failed to refer the plaintiff and the child to an ophthalmologist or otherwise cause his eyes to be examined given the risk of defective vision in view of the child's premature birth, prolonged oxygen dependence, neo-natal complications and sepsis.

1.4 they failed to diagnose ROP;

1.5 in consequence, they failed to adequately treat the child for the said condition;

1.6 they failed to inform the plaintiff:

i. that the child suffered from ROP, alternatively, of the risk that the ROP may occur;

ii. of the necessity for monitoring of his condition by *inter alia* regular medical examinations to allow prompt laser and other treatment to cure, alternatively, improve his condition;

1.7 had they so informed the plaintiff, she would have ensured that the child was timeously monitored for complications of the retina in his eyes, which examinations had to occur within days of his birth to allow for effective treatment; and

1.8 since the plaintiff was not aware of the necessity for monitoring as aforesaid, she only became aware of the child's retinal detachment in both eyes on February 23, 2005 when she was so informed, at which stage treatment was no longer possible.

1.9 They failed:

i. To have the child examined by an Ophthalmologist between five and seven weeks after birth as provided for in the National Guidelines for the Prevention of Blindness in South Africa, published in December 2002; and

ii. to have the child examined by an Ophthalmologist during his admission at the Phakolong Clinic and the Dihlabeng Regional Hospital.'

[2] At commencement of the proceedings, counsels for the parties advised the court that merits have been conceded and that the defendant has accepted negligence on behalf of its employees. The court was further advised that parties have agreed to separate issues. I then issued the following order:

'1.1 Separation of damages is granted; general damages will be dealt with separately.

1.2 The issue of medical expenses and future loss of income and other costs ancillary thereto, is postponed for determination on a date to be arranged with the Registrar responsible for allocation of dates.'

Issues for determination

[3] This court is enjoined to determine quantum of general damages to be awarded to the plaintiff in her representative capacity.

Background

[4] In the particulars of claim, the plaintiff avers that, in direct consequence of the aforesaid acts of negligence of the said employees of the said hospital and clinic, the child:

(a) has suffered a total retinal detachment of the right eye and a grade 4 ROP of the left eye;

(b) is in consequence totally blind, a condition which cannot be reversed or improved;

(c) will be permanently impaired and disabled in that he will not be able to participate in any leisure or physical or recreational activities;

(d) is incapable of being educated;

(e) will be unable to work or pursue any career throughout his life; and

(f) will not be able to conduct his personal and business affairs without assistance.

[5] The parties agreed to proceed on the stated case in terms of rule 33 of the Uniform Rules. The court was provided with a stated case signed by the legal representatives of both the plaintiff and the defendant. This was also signed by Adv Janse Van Rensburg, a curator *ad litem* appointed in terms of the court order dated February 27, 2025. The approach adopted by the parties is appreciated by this court, this assisted in shortening the proceedings to obviate oral evidence which would have led to long trial proceedings and enormous legal costs to both parties.

[6] The stated case, as submitted by the parties, provides a summary of birth history of the child, the post-morbid medical history and treatment. This also included the presentation on physical and cognition condition of the child as well as a summary of the ophthalmologist's report, followed by a summary of the agreed facts.

[7] It is averred in the statement of case that the child is blind bilaterally and epiphora (watery eyes) were noted. He required guidance from his parents to navigate the office where he was examined, and he was notably unsteady on his feet. Idiopathic toe walking on the left foot was observed. He was overweight and microcephalic. His hearing was seemingly intact. While he was able to throw a ball, he struggled to grasp a crayon when placed in his hand.

[8] It is also stated that global cognitive was clearly apparent. He was, however, able to understand basic instructions and questions from his parents, responding at times with one or two-word answers. He was orientated to person (and was able to recite his name) but not to time or place.

[9] Parties filed medico-legal reports in respect of the child. The plaintiff filed reports from:

(a) Dr Rozanne Hardy – psychologist;
(b) Ms Sue Anderson - nursing sister;
(c) Ms Sonia Hill – industrial psychologist;
(d) Ms Glenda Karow – educational psychologist;
(e) Dr Allen Sarah – ophthalmologist;
(f) Ms Jane Bainbridge – occupational therapist;

(g) Ms Surekha Somaroo – physiotherapist.

[10] The defendant filed reports from:
(a) Ms Letita Delport – occupational therapist.
(b) Mr Ben Moodie – industrial psychologist.
(c) Prof. Marais – ophthalmologist.
(d) Dr T Mweli – diagnostic radiologist.
(e) Dr Freda P Janse van Rensburg – paediatric neurologist.

[11] The parties submitted a joint minute prepared by the experts appointed by both the plaintiff and the defendant. It is trite that joint minutes assist the court for effective management and limitation of issues that need to be ventilated during trial proceedings. In *NSS (obo AS) v MEC for Health, Eastern Cape*,[1] when dealing with the approach to expert evidence the Court followed the decision of *S v M*,[2] where it is was stated that:
'A court's approach to expert evidence has been dealt with on many occasions. The court is not bound by expert evidence. It is the presiding officer's function ultimately to make up his own mind. He must evaluate the expertise of the witness. He must weigh the cogency of the witness's evidence in the contextual matrix of the case with which he is seized. He must gauge the quality of the expert qua witness; However, the wise judicial officer does not lightly reject expert evidence on matters falling within the purview of the expert witness's field'.

[12] Dr AM Sara and Professor Marais' report, who are the ophthalmologists, which state that the patient was born at Phekolong Hospital, Bethlehem on November 17, 2024. His birth weight was 1 900g and the gestational age was 32 weeks. The doctors are in agreement that the patient developed bilateral retinal detachments as a result of Grade 4 Retinopathy of Prematurity. They are in agreement that, from an ophthalmology point of view, both eyes are completely blind. The blindness is permanent and no further medical, surgical or devise intervention will improve the vision.

[13] Ms Delport and Ms Bainbridge, the occupational therapists' joint minute state that the child is presented with ROP (Grade IV) resulting in complete blindness; associated

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[1] *NSS (obo AS) v MEC for Health, Eastern Cape Province* [2023] ZASCA 41; 2023 (6) SA 408 (SCA) para 24.
[2] *S v M* [1991] 3 All SA 510 (T); 1991 (1) SACR 91 (T) at 99I-100A.

with motor, cognitive and functional developmental delays secondary to his prematurity and epilepsy. These delays are global and affect his motor function for gait and community mobility in general (matching a GMFCS level 2, compounded by his blindness) and reliant on a family member to walk in front of him as a guide; hand function matching a MACS level 2, characterised by gross motor action, marked communication dysfunction (CFCS level 4), speaking in rudimentary sentences. Much of his speech is unintelligible to familiar persons. He is not yet fully continent. Cognitive dysfunction is overtly evident and matches that of an infant younger than 18 months – he is inactive, loses focus quickly, is easily frustrated and acts out frustration in an aggressive manner. He is largely unmotivated to engage in any activity other than eating, for which he shows little self-regulation. He has few, if any, basic concepts. His self-regulation is generally poor, with him resorting to self-regulatory (harming) strategies such as biting his hands, pushing, shouting. His functional capacity is generally impaired, correlating with a creative level of ability of self-differentiation (destructive phase) typical of a 10-15-month-old infant, and highlights his need for care.

[14] The occupational therapists agreed that the child is anticipated to benefit from placement in a sensory rich specialised educational facility, such as Pathways in Bethlehem. Failing this, access to dedicated caregivers able to provide structure and stimulation within the day, in his home context, under the direction of an occupational therapist and case manager would be reasonable. The child's home needs to be adapted to allow for a 'wet room' addition, wheelchair accessible doorways, paved and level entrances and walkways around the house: appropriate security measures and provision of a bedsitter for caregivers.

[15] Regarding the child's transport arrangements, the occupational therapists agreed that, as the child cannot travel on public transport, he has to have access to his own private sedan type vehicle.

[16] The occupational therapists agreed that the child will require full-time care rendered by caregivers specifically trained in the care of children with complex disability such as that of the child. The child will require a number of mobility devices to optimise his mobility in his home and community.

[17] Ms Sonia Hill and Dr Moodie, the industrial psychologists reported that the child is unemployable in the open labour market on a permanent basis. The industrial psychologists reported that the child would progress best within an environment where he would receive special education for the mentally and physically disabled – where he would require basic skills of daily living.

[18] After consideration of the expert reports and joint minute submitted by the parties, I am satisfied with the opinion of the experts and confirm the agreements reached by the experts. I see no necessity to further probe and test the experts' opinion.

[19] In the summary of facts, it is recorded that the child was treated at the clinic and the hospital by personnel acting within the course and scope of their employment with the defendant. The treatment included the administration of oxygen. As a result of the aforesaid treatment, the child developed retinopathy of prematurity (ROP), resulting in permanent blindness in both eyes, which condition was diagnosed on February 23, 2005. The child is permanently blind in both eyes. The child was born breech and suffered respiratory distress syndrome.

[20] The child was born with brain damage and suffered:
(a) a disruption in brain development as a result of premature birth, respiratory distress and seizures;
(b) is suffering cognitive dysfunction; and
(c) is suffering epilepsy and seizures (collectively referred to as the co-morbidities).

[21] The child's co-morbidities are not related to the Defendant's treatment of the child at birth or thereafter. The defendant conceded liability per court order of Reinders J dated August 27, 2019 as follows:
'i. The defendant concedes liability.
ii. In consequence the defendant is to pay 100% of the plaintiff's damages as proved or agreed, arising from a total retinal detachment of the right eye and a Grade 4 ROP of the left eye of the child a boy born on November 17, 2004.'

[22] It is averred that the defendant is not liable for the causation, *sequelae* and symptoms emanating from the child's co-morbidities.

The plaintiff's submission

[23] The plaintiff argued that blindness at the age of 16 is substantially different to blindness at birth. The plaintiff argued that a 16-year-old had opportunity to use her sight for 16 years and she was able to create memories. The plaintiff argued that the correct amount to be awarded is R2 Million and not the amount of R1.5 million as argued by the defendant.

[24] The plaintiff argued that disabilities suffered by the child are exacerbated and intensified by his inability to receive visual stimuli. It was averred that the combination of cognitive deficits and blindness have rendered the child completely dependent on others. The plaintiff further argued that the denial of sight to compromised premature babies ensures that a difficult life is made exponentially worse.

The defendant's submission

[25] The defendant argued that the plaintiff's case is different from other cases in that the child has brain damage. The defendant argued that the duty of the court is not to penalise the defendant, instead, the court has a duty to award compensation fairly.[3] The defendant argued that the child is unemployable for the rest of his life, both eyes are completely blind and this is in addition to the fact that he was born with brain damage. The defendant further argued that the court does not have a privilege of expert report for the court to evaluate apportionment of the plaintiff's brain damage and eye damage. The defendant argued that the scenario of existence of co-morbidities must be considered by the court when determining compensation for the plaintiff. This was opposed by the plaintiff who argued that the Supreme Court of Appeal has rejected the argument that a child born with co-morbidities should be awarded lesser compensation.

Legal framework and analysis

[26] I have hereinabove referred to the defendant's concession to liability towards the plaintiff as well the Court order dated August 27, 2019, granted by Reinders J. There is therefore no need for this court to determine the defendant's liability as this is conceded by the defendant.

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[3] See *Collins v Administrator, Cape* 1995 (4) SA 73 CPD.

[27] The child suffered from ROP, an incurable condition resulting in blindness in both eyes, this condition has impaired the quality of his life. His capacity to enjoy life's ordinary activities is diminished due to the ROP condition and disability he sustained. He will not enjoy normal life of persons who have not lost vision and will leave a difficult life as a consequence of blindness. He will be restricted from competing for job opportunities. He will be restricted from participating in sporting activities of his choice. He will not able to walk freely and independently without assistance. As a child, he will be restricted from playing with other children, which may result in depression from an early stage. His social life will be restricted. His choice of education will be restricted as a result of some job functions which require a person with full vision. He will be prone to injuries should he not receive adequate assistance and guidance as a blind person. He will not appreciate the beauty of natural surroundings which are normally enjoyed by people with unimpaired vision. He will surely be restricted from enjoying the beauty of life with a naked eye. There is merit for the plaintiff to be compensated for general damages. This court has a duty to determine what is fair and reasonable compensation for the plaintiff. This includes calulating the amounts payable for general damages as claimed by the plaintiff.

[28] In *Pitt v Economic Insurance Co. Ltd*,[4] the Court stated that:

'The Court's task in estimating damages is always a difficult one. Basically, one has evidence as to the Plaintiff's affairs, but when, in addition, the future has to be scanned, the Court is virtually called upon to ponder the imponderable . . . the Court must take care to see that its award is fair to both sides – it must give just compensation to the plaintiff, but must not pour our largesse from the horn of plenty at the defendant's expense.'

[29] In *Mahlangu v Road Accident Fund*,[5] the court stated that:

'1. The award for general damages remains a compensation, it ameliorates the damage (pain and suffering) resulting from injuries sustained in an accident. It is not intended to be full compensation, if that is possible, and it is not intended to wipe out, if that is possible, the damage.

2. The statutory compensation scheme is in essence compensation by the public at large through the state therefore it cannot have a punitive element in it.

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[4] *Pitt v Economic Insurance Co. Ltd* 1957 (3) SA 284 (N) at 287D-E; see also *Yani and Others v Minister of Police and Others* [2003] ZAGPJHC 968.

[5] *Mahlangu v Road Accident Fund* [2015] ZAGPJHC 342 para 23.

3. The statutory compensation scheme is meant to benefit a broad spectrum of the public. Money in a country like South Africa remains a scarce resource with huge demands on the fiscus. Compensation awards must be considered carefully in a responsible manner.'

[30] In *Premier of the Western Cape Provincial Government N.O. v Rochelle Madalyn Kiewitz obo Jaydin Kiewitz* ,[6] the Court stated that:

'Delictual damages have been defined as the "monetary equivalent of damage awarded to a person with the object of eliminating as fully as possible his or her past as well as future damage". It is trite that the primary purpose of awarding delictual damages is to place the injured party in the same position as they would have been in, absent the wrongful conduct.'

[31] The defendant's submission that the purpose of the compensation regime is not to punish the defendants, but the court must award a fair compensation is in line with the authorities referred to herein. This is indeed the essence of the court's duty in determining the compensation award to a claimant. The court must consider all relevant factors, a just compensation for pain and suffering, disfigurement, permanent disability and loss of amenities.[7] This is the discretionary function of the court in assement of a just and fair compansation to be awarded to a claimant.

[32] In *Road Accident Fund v Marunga* (*Marunga*),[8] the court stated that:

'Even though the courts have a wide discretion to determine general damages and even though it cannot be described as an exercise in exactitude, or be arrived at according to known formulae, a trial court should at the very least state the factors and circumstances it considers important in the assessment of damages. It should provide a reasoned basis for arriving at its conclusions.'

[33] The parties referred the court to previous decisions which considered award of compensation to claimants who suffered ROP. The court is grateful for the assistance by the parties and the authorities submitted by them. In *T.D.N. v City of Johannesburg Metropolitan Municipality*,[9] the plaintiff instituted action against the defendant for delictual damages as a result of a revere head injury sustained when she fell into a manhole on August 24, 2019. She suffered from bilateral blindness, constant headaches, seizures

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[6] *Premier of the Western Cape Provincial Government NO v Rochelle Madalyn Kiewitz obo Jaydin Kiewitz* [2017] ZASCA 41; 2017 (4) SA 202 (SCA) para 4.
[7] *Protea Assurance Company Ltd v Lamb* [1971] 2 All SA 100 (A).
[8] *Road Accident Fund v Marunga* [2003] ZASCA 19; [2003] 2 All SA 148 (SCA); 2003 (5) SA 164 (SCA) para 33.
[9] *T.D.N. v City of Johannesburg Metropolitan Municipality* [2023] ZAGPJHC 727.

and injury related sequelae. The plaintiff was sixteen years old and in grade 10 at the time of the incident. The court awarded R1 000 000 for general damages and the current value is calculated at R1 077 167.02.

[34] In *T.N. N. obo N.A.N v MEC for Health Gauteng*,[10] the claimant was blind as a result of ROP. She was reported to have navigational vision in her right eye which with probability of losing vision in time and was reported to be completely blind in her left eye. The Court awarded R2 050 000 for general damages and the current value is calculated at R2 169 210.80.

[35] In *Van der Merwe v Premier Mpumalanga*,[11] the court awarded an amount of R700 000 in respect of ROP which was not diagnosed and caused blindness from birth. This amount is currently calculated at R1 998 039.22.

[36] In *Lochmer v MEC for Health and Social Development*,[12] the premature birth of a child resulted into the ROP which was not diagnosed and treated by the health officials and this caused blindness to the child. The Court awarded an amount of R1 200 000 which was agreed and settled by the partes. The current value of this amount is calculated at R2 090 256.45.

[37] In *DSS obo JKS and Another v MEC for Health, Gauteng*,[13] the court awarded an amount of R1 800 000 in respect of a claimant who suffered ROP and was blind in both eyes.

[38] I considered the injuries suffered by the child, experts' opinion, submission by both parties and comparable case law. Having considered all the factors and comparable authorities, I find that an amount of R2 000 000 will be fair and reasonable for general damages.

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[10] *T.N. N. obo N.A.N v MEC for Health Gauteng* [2023] ZAGPPHC 1117.
[11] *Van der Merwe v Premier van Mpumalanga* [2005] ZAGPHC 103.
[12] *Lochmer v MEC for Health and Social Development, Mpumalanga* [2013] ZAGPPHC 388.
[13] *DSS obo JKS and Another v MEC for Health, Gauteng* [2024] ZAGPPHC 1146.

Costs

[39] The general rule is that the successful party should be granted costs. This rule should not be departed from unless there are grounds for doing so. The defendant has conceded that should this Court award the plaintiff general damages, plaintiff is entitled to its costs. The court is grateful for the defendant's approach in this regard.

Order

[40] In the circumstances, I make the following order:

1.1 Judgment is entered in favour of the plaintiff against the defendant for payment of the sum of R2 000 000, such being in respect of general damages.

1.2 The payment recorded in paragraph 1.1 hereof shall be made to the under-mentioned trust account of the plaintiff's attorneys:

Account Name: JR Ramsamy

Bank: ABSA

Account No: 4[.....]

Branch Code: 5[.....]

To be held in Trust until a Trust is created to manage the funds on behalf of K[...] M[...].

1.3 The plaintiff's attorney is directed:

(a) To do all things necessary, within three months of the payment of the amount referred to in paragraph 1.1 above, to cause a trust to be formed with a registered financial banking institute for the purpose of administering the said funds so paid by the defendant, for the sole benefit of the child; and

(b) To receipt of the funds from the defendant to it as aforesaid, after deduction of fees and disbursements, to hold such funds in trust pending the formation of the trust, and after deduction of fees and disbursements to make payment of the balance of such funds to the trust to be established as set out in paragraph 1.1 above.

1.4 The defendant shall pay the plaintiff reasonable and necessary, taxed or agreed, party and party costs on the High Court scale, such costs to include:

(a) The costs of counsel where engaged, on the scales as prescribed in rule 67(A)(3), read with rule 69, of the Uniform Rules of Court (scale B for junior counsel), such costs to include the reasonable and necessary costs of their preparation for trial and preparation of heads of argument, and reasonable travelling costs and accommodation.

(b) The fair and reasonable costs of travelling and accommodation for Mr Mmapaseka Casia Mofokeng for the 3rd of June 2025.

(c) Costs of the curator *ad litem*, perusal preparation of documentation and attendance at trial, to be taxed on scale B.

(d) Upon receipt of the amount paid by the defendant towards the taxed costs, such costs to be paid to the trust as set out in paragraph 1.1 above.

1.5 The defendant shall pay interest, calculated at the applicable legal interest rate in force at the time calculated from 30 days from the date of judgment.

1.6 The parties are directed to file any further and updated reports on or before October 30, 2025.

M NTANGA

ACTING JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:	M A Oliff
Instructed by:	Justice Reichlin Ramsamy Attorneys Inc c/o Van der Berg VN Vuuren Attorneys, Bloemfontein
For the defendant:	HC Cilliers SC
Instructed by:	State Attorney, Bloemfontein.