IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO.: 2017/9252

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: NO
26 January 2023

In the matter between:

M[....]: C[....] N[....] obo Plaintiff

M[....]: B[....] M[....]2

and

MEC FOR HEALTH, GAUTENG PROVINCE Defendant

Heard: **17 January 2023**

Delivered: **26 January 2023**

FORD AJ

Introduction

[1] The plaintiff instituted a claim for damages in her personal and representative capacity as mother and legal guardian of B[....] M[....]2 M[....]3 ("the minor"), against the defendant for a brain injury sustained by the minor during birth on 24 June 2008 at the Pholosong Hospital, as a result of the negligence of the defendant's nursing staff.

[2] The issue of liability was previously determined[1] and this court ordered the defendant to compensate the plaintiff in her personal and representative capacity for 70% of her proven or agreed damages suffered as a result of the brain injury sustained by the minor on 24 June 2008.

[3] The parties have each appointed experts and filed joint-minutes of the overlapping experts.

The issue to be determined

[4] The issue to be determined is the quantum of damages that the plaintiff is to be compensated for, in her personal and representative capacity. Corollary thereto, whether a postponement of the public healthcare defence is warranted.

The evidence and analysis

[5] The representatives of the parties, whose conduct this court finds most commendable, narrowed the issues and distilled the critical facts in this matter as set out below. This exercise obviated the need to call the experts to testify and sought to

[1] 11 August 2020

ensure that this judgment is not burdened with copious regurgitation of the expert reports rendering it unnecessarily prolixious.

[6] The parties have also agreed, in keeping with the *ratio* in *Bee v Road Accident Fund*[2], to have agreements reached by the experts in their joint minutes admitted. The experts agree in their joint minutes on the clinical condition and *sequalae* suffered by the minor as well as the nature and extent of future medical treatment and modalities reasonably required by the minor to treat and/or ameliorate the condition and the costing and frequency thereof.

[7] In so far as the biographical information pertaining to the minor is concerned, it is agreed amongst the experts that:

(a) the minor was born on 24 June 2008;
(b) the minor is resident with both his parents, his three older brothers, two aunts and uncle;
(c) the minor resides in a 3-bedroomed (6-roomed) suburban home with all the amenities in K[....], S[....], Gauteng;
(d) the house where the minor resides has running water inside and a flushing toilet on the outside;
(e) the minor's family does not have a motor vehicle and is reliant on public transport.

[8] In so far as the family background of the minor is concerned, it is agreed that:

(a) the minor's father completed Grade 11 and is employed full time as an O[....] at S[....]2 in Brakpan;
(b) the plaintiff completed Grade 10, was employed at I[....] for 15 years as an O[....] and P[....] before being retrenched in 2000. She was subsequently employed for 3 months at a S[....]3 garage as a General Worker and has since 2016 been employed as a C[....]2 at T[....] T[....]2;

[2] 2018 (4) SA 366.

(c) the minor's first sibling, T[....]3, completed an N3 qualification in Chemical Engineering at the S[....] College and is employed as a C[....]3 at the M[....]4 factory;

(d) the minor's second sibling, Z[....], completed Grade 11 and remains unemployed but does volunteering work;

(e) the minor's third sibling, B[....]2, completed Grade 11 and is employed as a Pastor at his church.

[9] The minor is fully dependent on full time care and support of the plaintiff, his father, and his brother B[....]2. He currently attends the T[....] T[....]2 (since 2016) at a cost of R300.00 per month (care) and R450.00 per month (transportation). It is recorded that the plaintiff travels with the minor to and from the institution as she is employed at the institution.

[10] The minor initially received intermittent and fluctuating individual speech therapy, physiotherapy and occupational therapy at the Pholosong Hospital once a month, until he commenced attendance of the T[....] T[....]2 where physiotherapy and occupational therapy is afforded once a month, however no speech therapy is provided. The minor was also provided with a buggy by T[....] T[....]2.

[11] As a result of the brain injury sustained at birth, the minor suffers from: a mixed type of cerebral palsy, predominantly dystonic[3] with a super imposed hemiplegia (paralysis of one side of the body) and is classified on the Gross Motor Functional Classification Scale (GMFCS) on the highest level (Level V), Manual Ability Classification Scale (MACS) on the highest level (Level V), Visual function classification scale (VFCS) (Level IV), Communication function classification scale (CFCS) on the highest level (level V), and on the Eating and Drinking Ability Classification System (EDACS) feeding and swallowing scale (Level VI).

[12] The minor also suffers from physical impairments which restrict voluntary control of movement and the ability to maintain antigravity head and trunk postures

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[3] Dystonia is a movement disorder that causes the muscles to contract involuntarily. This can cause repetitive or twisting movements. The condition can affect one part of your body (focal dystonia), two or more adjacent parts (segmental dystonia), or all parts of your body (general dystonia).

with all areas of motor function being limited. Functional limitations in sitting and standing are not fully compensated through the use of adaptive equipment and assistive technology.

[13] The minor's comorbidities (the simultaneous presence of two or more diseases or medical conditions in a patient) include:

(a) Profound intellectual disability;

(b) Microcephaly (a birth defect where a baby's head is smaller than expected when compared to babies of the same sex and age. Babies with microcephaly often have smaller brains that might not have developed properly);

(c) Strabismus (Strabismus can be categorized by the direction of the turned or misaligned eye: inward turning (esotropia), outward turning (exotropia) upward turning (hypertropia);

(d) Possible cortical visual impairment[4];

(e) Pseudobulbar[5] palsy with a serious feeding and swallowing impairment;

(f) Uncontrolled epilepsy;

(g) Scoliosis[6]; and

(h) Development delay

[14] The minor is incontinent of bowel and bladder requiring him to wear nappies all the time (24/7). He is completely dependent on others for activities of daily functioning.

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4 Cortical Visual Impairment (CVI) is diagnosed when children show abnormal visual responses that aren't caused by the eyes themselves. When CVI is suspected, fixation and following — even to intense stimulation — may be poor, and the child will not respond normally to people's faces

5 Pseudobulbar affect (PBA) is a condition that's characterized by episodes of sudden uncontrollable and inappropriate laughing or crying. Pseudobulbar affect typically occurs in people with certain neurological conditions or injuries, which might affect the way the brain controls emotion.

6 Scoliosis is a sideways curvature of the spine that most often is diagnosed in adolescents. While scoliosis can occur in people with conditions such as cerebral palsy and muscular dystrophy, the cause of most childhood scoliosis is unknown. Most cases of scoliosis are mild, but some curves worsen as children grow.

[15] On account of the minor's condition, the plaintiff has been burdened with an immense full time care load far exceeding that of normal parenting which will persist as long as she and/or the minor remain alive. This imposes significant restrictions on career choices, family dynamics and the like.

[16] In so far as the life expectancy of the minor is concerned, there is agreement between specialist physicians (Dr. Botha and Prof. Cooper) that the life expectancy of the minor has been severely curtailed. They confirm that:

> *"Given that certain assumptions have to be made when estimating life expectancy and that there is uncertainty with some of these, it is agreed that the midpoint of estimates is reasonable, i.e. survival to the age of 27.7 years.*"[7]

[17] According to Dr. K. Levin, Clinical Assessments: Speech and Language Therapist and Audiologist, the minor presents with:

(a) a central auditory processing impairment;
(b) seriously delayed listening skills;
(c) significant neurological[8] involvement of the control of the musculature for speaking and structure and skeletal problems that interfere with these functions;
(d) inability to speak and only being capable of producing vocalisations comprising mostly of vowel-like sounds, certain vowels and extremely small range of consonant-like sounds with no control over vocal intensity;
(e) inability to understand anything that is communicated to him or express himself using symbolic language;
(f) communication through non-verbal behaviours that are hardly intentional and extremely limited in both range and scope; and

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7 CaseLines CL0021A-47
8 Neurological disorders are medically defined as disorders that affect the brain as well as the nerves found throughout the human body and the spinal cord.

(g) impaired cognitive skills that probably play a large role in communication restriction.

[18] The minor is only able to eat soft pureed foods; is only able to swallow liquids but inefficiently and only when poured into his mouth. He presents with restricted ability to maintain antigravity head and trunk postures and postural control for feedings is seriously impaired. He has a total dependency on being fed with his postural impairments and inefficient oral control for feeding, placing him at risk of dehydration, nutritional compromises and aspiration. The minor would likely benefit in the long term from placement of percutaneous[9] and endoscopic gastrostomy[10].

[19] The speech and language therapists, Dr. Levin and Ms. Masoka agree[11] that the minor presents with:

(a) immature listening skills;
(b) adequate structures but severe neurological involvement of the control of the musculature required for speech and feeding;
(c) inability to speak, probably caused by cognitive impairment as well as neurological involvement of the control of speech musculature;
(d) undeveloped symbolic language, inability to understand anything that he said or express any words;
(e) undeveloped fundamental cognitive precursors to language;
(f) extremely limited range of communicative behaviours and skills;
(g) very significant dysphagia[12], being completely dependent at all times on others to source, prepare and feed food and drinks;
(h) severe risk of aspiration, nutritional compromise and dehydration;
(i) very significant curtailment of the enjoyment of life and communicative anticipation.

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9 In general, ***percutaneous*** refers to the access modality of a medical procedure, whereby a medical device is introduced into a patient's blood vessel via a needle.

10 A percutaneous endoscopic gastrostomy (PEG) is a surgery to insert a feeding tube in order to allow one to receive nutrition through one's stomach.

11 CaseLines CL 0021A-22

12 ***Dysphagia*** is the medical term for swallowing difficulties. Some people with dysphagia have problems swallowing certain foods or liquids, while others can't swallow at all. Other signs of dysphagia include coughing or choking when eating or drinking. bringing food back up, sometimes through the nose.

[20] The Physiotherapists (Ms. Jackson and Ms. Mkansi agree[13] that the minor has:

(a) has an increased risk of osteoporosis[14] and therefore an increased risk of fractures as a direct result of his inability to weight bare;
(b) has pain at the end range of most passive movements;
(c) demonstrated minimal active movement and would be expected to have profound motor weakness;
(d) had a scoliosis convex to the right (concave to the left) and below thoracic/lumber area;
(e) had minimal volitional and voluntary movement and no functional movement; and
(f) requires physiotherapy for the balance of his life to make him as able and comfortable as possible and to manage his current complications and avoid further complications.

[21] The Occupational Therapists, AC Inc and Ms. Sivhabo agree that the minor is maximally dependent on assistance for all his needs to be met in relation to all of his activities of daily living and is unable to perform any tasks independently[15].

[22] The Architects, Mr. Ceronio and Ms. Zondi agree that the minor's current accommodation is not appropriate to modify, as it is a lease property, and a new property needs to be acquired to accommodate the minor instead. Notably, that the plaintiff and the minor be accommodated in a new notional/RDP house[16].

[23] The Industrial Psychologists. Mr. Linde and Dr. Malaka agree that but for the brain injury, the minor would have:

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[13] CaseLines CL 0021A-52
[14] *Osteoporosis* is a health condition that weakens bones, making them fragile and more likely to break. It develops slowly over several years and is often only diagnosed when a fall or sudden impact causes a bone to break (fracture). The most common injuries in people with osteoporosis are: broken wrists.
[15] CaseLines CL 0021A-93
[16] CaseLines CL 0021A-3

(a) remained employed in the open labour market and worked until usual retirement age of 65;

(b) had the potential to work as a semi-skilled worker taking his father and older brothers' employment into consideration;

(c) after obtaining Grade 11 or 12 and a year attaining skills, entered the open labour market earning within the median of the salary estimations of R88 000 per annum and progressing to the upper range of R193 000 per annum by the age of 40 to 45 years and would have, like his extended family, been able to establish a successful career. Post-injury the minor will not be able to attain any form of academic qualification or employment, not even of a therapeutic value and will suffer a total loss of income for the remainder of his life.

[24] This court is called upon to determine the quantum of the plaintiff's claim: in her personal capacity for general damages and in her representative capacity, future medical and hospital expenses and modalities, general damages and loss of earnings.

The plaintiff's claim for general damages in her personal capacity

[25] The legal representatives agree that an amount of R300, 000.00 constitutes fair compensation and is legally justifiable. In *Mngomeni (obo EN Zangwe) v MEC for Health, Eastern Cape Province*[17], the court compensated the mother in the amount of R 300 000 for emotional shock and severe depression due to cerebral palsy of her minor, currently valued at R 349 000.

[26] The SCA in 2019 in *Komape v Minister of Basic Education Equal Education Amicus Curiae*[18], the parents were each awarded R350 000.00 as general damages for their emotional shock, trauma and grief. This award would be valued at more than R350 000.00 in 2022.

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[17] VII, A4-94; 2018 (7A4) QOD 94 (ECM)

[18] (754/2018 and 1051/2018) [2019] ZASCA 192 (18 December 2019) para 45

[27] I can find no reason why this court should depart from what the legal representatives had agreed to.

The Plaintiff's claim in her representative capacity for general damages

[28] The legal representatives agree that an amount R2 200 000.00 in respect of general damages constitutes fair compensation and is legally justifiable having regard of comparative awards.(See Unreported Judgment of *MSM obo KBM vs The Member of the Executive council for Health, Gauteng Provincial Government)*[19]. As stated above, and having considered the authorities, I can find no reason why this court should depart from what the legal representatives had agreed to.

The plaintiff's claim in her representative capacity for future loss of earnings and earning capacity

[29] The actuarial calculation of Algorithm Actuaries is admitted. The actuary quantified the claim on the following basis. Future earnings progression in accordance with Mr. Linde/Jooste's report on the basis that the minor would have progressed as follows:

(a) completed a Grade 11 or 12 level of education at assume the end of 2026;
(b) commenced working on 1 January 2027;
(c) point of entry into employment would have been at the median wage for a semi-skilled worker in the non-corporate sector earning R 88,000 per annum (July 2021 money terms);
(d) At age 42½ he would have attained his ceiling at the upper quartile wage for a semi-skilled worker in the non-corporate sector earning R 193,000 per annum (July 2021 money terms);
(e) Straight line increases have been assumed between the levels and until retirement age.

[19] Case Number: 4314/15 Gauteng Local Division Johannesburg

[30] The value of income in future but for the brain injury and adjusted to life expectancy is calculated at R 868 768-00.

[31] The legal representatives agree that a contingency deduction of 20% has to be applied to the pre-morbid scenario[20] and that R695 014 (Nett of the 20%contingency deduction) in respect of loss of earnings and earning capacity constitutes fair and legally justifiable compensation.

<u>The plaintiff's claim in her representative capacity for future medical costs, modalities and expenses</u>

[32] The parties took cognizance of *Dhlamini v Government of the Republic of South Africa*[21], where it was held at 582 that:

> *"The test, as I understand it and which I intend applying in this case, is whether it has been established on a balance of probabilities that the particular item of expenditure is reasonably required to remedy a condition or to ameliorate it"*

[33] The parties also considered *Singh v Ebrahim*[22], where the Supreme Court of Appeal indicated that it was for the parties to deal with the "rats and mice" and not the Court.

[34] The new practice directives directs that it is the duty of the parties to identify precisely the issues remaining and the issues which are not in dispute. Where the issues remain in dispute, the parties are required to state what their attitude is in respect of such issues and to identify the reasons why these issues are still in dispute. The parties are not entitled to revert or simply deny a claim.

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[20] See: SCA-judgment of *Khoza v MEC for Health, Gauteng* (Case no.: 216 /2017); Full bench judgment Gauteng Local Division, Johannesburg *PM obo TM v MEC for Health, Gauteng Provincial Government* [2017] ZAGPJHC 346. *Kriel NO obo S v Member of the Executive Council for Health, Gauteng Provincial Government* (9407/2017) [2020] ZAGPJHC 273 (4 November 2020) where the court applied a 20% contingency.

[21] 1985 (3A3) QOD 554 (W)

[22] 2010 JDR 1431 (SCA)

[35] The actuary's schedule of future hospital, medical and related expenses contains a detailed reference to the various items, the costs thereof and the frequency with which the items, where applicable, require to be replaced. It also quantifies the amounts in respect of frequency and life expectancy.

[36] The defendant was requested to indicate in respect of each item contained in the schedule, which items can be agreed upon and which items remain in dispute, which item is placed in dispute, which element exactly is placed in dispute (i.e. whether it is the item itself or the cost and/or frequency in respect thereof and what the ground(s) for the objection is(are). The defendant's version in respect of the required item was solicited (i.e. if the defendant disputes the costs of a particular item the defendant was requested to indicate what it contends the costs are).

[37] Where defendant contended that an item can be delivered in terms of the public healthcare defence the defendant was required to identify the healthcare centre/s able to attend to the minor and provide whatever medical services and items that are required by the minor at the same standard as those sourced from private health care providers and facilities and at no cost to the plaintiff and/or to the minor, as well as which services can be procured elsewhere at a lower cost than the cost in the private sector.

[38] The parties agreed that joint minute agreements on the nature, extent, frequency and costs of treatment and modalities required in future to reasonably treat/ameliorate the condition of the minor are reasonable and admitted. The legal representatives discussed the items individually and identified and agreed upon the items, cost and frequency of modalities and treatment reasonably necessary to treat/ameliorate the condition of the minor in future.

[39] The legal representatives prepared two distinct quantum schedules (Annexures A and B), being:. "Annexure A: Items not subject to the public healthcare defence"; and. "Annexure B: Items subject to the public healthcare defence". In respect of Annexure "A": an order for payment as set out therein is sought and in terms of Annexure "B": an order for postponement and separation is sought as set out in paragraph 2 of the draft order as proposed by the parties.

[40] It is agreed between the legal representatives that in accordance with what was held in *Kriel NO obo S v Member of the Executive Council for Health, Gauteng Provincial Government*[23] that a trust be created to administer the minor's funds and that the costs for the establishment and administration of the trust be determined on 7,5 % of the capital amount awarded in favour of the minor.

[41] I have considered the submissions of the legal representatives and I am inclined to grant the order as set out in the Draft Order marked X.

ORDER

1. The defendant shall pay the plaintiff in her personal and representative capacity the total amount of **R 6 643 913,00** (Six Million, Six Hundred and Forty-Three Thousand, Nine Hundred and Thirteen Rand) calculated as follows:

1.1. in her personal capacity the post-apportioned amount (minus 30% liability apportionment) of **R 210 000,00** (Two Hundred and Ten Thousand Rand) together with interest a tempore mora calculated in accordance with the Prescribed Rate of Interest Act 55 of 1975 (being 9,75%), in respect of the plaintiff's personal claim for General Damages;

1.2. in her representative capacity on behalf of B[....] M[....]2 M[....] (hereinafter referred to as "the minor") the post-apportioned amount (minus 30% liability apportionment) of **R6 433 913,00** (Six Million, Four Hundred and Thirty-Three Thousand, Nine Hundred and Thirteen Rand) together with interest a tempore morae calculated in accordance with the Prescribed Rate of Interest Act 55 of 1975 (being 9,75%), made up as follows: -

1.1.1	General damages:	R 2 200 000,00
1.1.2	Loss of earnings	R 695 014,00
1.1.3	Future Medical Costs and	R 5 655 036,00

[23] (9407/2017) [2020] ZAGPJHC 273 (4 November 2020)

Modalities, including identified.
Interim Payment (Occupational
Therapists R 3 500 000,00)
(As per annexure A to exhibit 1
less a 5% contingency deduction)

1.1.4	Sub-Total	R 8 550 050,00
1.1.5	Less 30% apportionment	R 2 565 015,00
1.1.6	Sub-Total	R 5 985 035,00
1.1.7	Plus trust costs of 7,5% on the quantum determined to date:	R 448 878,00
1.1.8	TOTAL	R 6 433 913,00

2 Determination of future medical cost and expenses in an amount of R10 109 012,00 (As per Annexure B hereto less interim payment of R3 500 000,00) is separated from the balance of the issues to be determined and postponed *sine die* on the basis that:

2.1 All modalities , treatment and expenses are agreed but for the occupational therapist's items;

2.2 During the forthcoming trial the court will be required to determine :

2.2.1 The need for and quantification of occupational therapist items which items and amounts should be proven;

2.2.2 The application of the public healthcare defence to all items in Annexure B.

3 The amount of **R 6 643 913,00** (Six Million, Six Hundred and Forty-Three Thousand, Nine Hundred and Thirteen Rand) referred to in paragraph 1 above shall be paid within 60 days from date of service of this order and shall be paid directly in the following trust account of the plaintiff's attorneys of record:

Account Name	:	Edeling Van Niekerk Inc
Bank	:	Nedbank
Branch	:	Business Banking
Account number	:	[....]
Branch code	:	128605

4 The aforesaid amount shall be retained in an interest-bearing account in terms of the provisions of Section 86(4) and (5) of the Legal Practice Act 28 of 2014 for the sole benefit of the minor.

5 To ensure that the monies awarded to the plaintiff in her representative capacity are suitably protected, as contemplated by the relevant experts, the attorneys for the plaintiff, **EDELING VAN NIEKERK INCORPORATED** of Block A, Clearview Office Park, Wilhelmina Avenue, Constantia Kloof, ROODEPOORT are ordered:

5.1 to cause a trust ("the TRUST") to be established in accordance with the Trust Property Control Act No 57 of 1988, such Trust to be a "special trust" as defined in Section 1 of the Income Tax Act, No 58 of 1962 (as amended);

5.2 to pay all monies held in trust by them for the benefit of the minor to the TRUST;

6 The trust instrument contemplated above shall make provision for the following:

6.1 That the minor shall always be the sole beneficiary of the TRUST;

6.2 That the trustee(s) and their successors are to provide security to the satisfaction of the Master;

6.3 That the powers of the trustee(s) shall specifically include the power to make payment from the capital and income for the reasonable maintenance of the beneficiary, or for any other purpose which the trustee(s) may decide to be in the beneficiary's interest, and if the income is not sufficient for the aforesaid purpose, that the trustee(s) may utilize capital;

6.4 That the ownership of the trust property vest in the trustee(s) of the TRUST in their capacity as trustees;

6.5 Procedure to resolve any potential disputes, subject to the review of any decision made in accordance therewith by this Honourable Court;

6.6 The exclusion of all benefits (income and/or capital) accruing to the minor as beneficiary of the TRUST from any community of property and/or accrual system in any marital regime;

6.7 The suspension of the minor's contingent rights in the event of cession, attachment or insolvency, prior to the distribution or payment thereof by the trustee(s) to the plaintiff;

6.8 That the amendment of the trust instrument be subject to the leave of this Honourable Court;

6.9 The termination of the TRUST upon the death of the minor, in which event the trust assets shall pass to the estate of the minor;

6.10 That the trust property and the administration thereof be subject to an

annual audit;

7 Until such time as the trustees are able to take control of the capital amount and to deal therewith in terms of the provisions of the trust, the Plaintiff's attorney are authorized and ordered to pay from the capital amount:

7.1 Any reasonable payments that may arise to satisfy any reasonable need for treatment, therapy, care, aids, equipment or otherwise that may arise;

7.2 Such other amounts as reasonably indicated and/or required for the wellbeing of the minor and/or which are in his best interest which a diligent *curator bonis* would have authorized and paid had a *curator bonis* be appointed.

8 The plaintiff's attorney shall be entitled to make payment of expenses incurred in respect of accounts rendered by:

8.1 expert witnesses as identified in paragraph 10 hereunder as well as counsel's fee(s) from the aforesaid funds held by them for benefit of the minor.

9 The plaintiff's attorney shall be entitled to payment, from the aforesaid funds held by them for the benefit of the minor, of their fees in accordance with their written fee agreement.

10 The defendant shall pay the plaintiff's taxed or agreed party and party costs of suit on the High Court scale in respect of the determination of the issue of quantum, which costs shall not be limited to the following:

10.1 The reasonable costs of obtaining all expert medico-legal reports and any addendum thereto (where applicable), from the plaintiff's expert witnesses, which were furnished to the Defendant, including but not limited to:

10.1.1 Mr D Ceronio – Architect;

10.1.2 Algorithm Consultants – Actuary;

10.1.3 Dr P Lofstedt – Dentist;

10.1.4 Ms L van Zyl – Dietician;

10.1.5 Ms B Purchase - Educational Psychologist;

10.1.6 Mr Schussler – Economist;

10.1.7 Prof D Bizos – Gastroenterologist;

10.1.8 Mr L Linde - Industrial Psychologist;

10.1.9 Mrs R Rich - Mobility Expert;

10.1.10 AC Inc - Occupational Therapist;

10.1.11 Mr H Grimsehl - Orthotist/Prosthetist;

10.1.12 Dr AH van den Bout - Orthopaedic Surgeon;

10.1.13 Dr B Longano – Psychiatrist;

10.1.14 Ms P Jackson – Physiotherapist;

10.1.15 Dr D Pearce - Paediatric Neurologist;

10.1.16 Dr K Levin - Speech & Language Therapist/Audiologist;

10.1.17 Dr APJ Botha - Specialist Physician;

10.1.18 Dr F van Wijk – Urologist;

10.2 The qualifying, consultation, preparation, and participation in joint expert meetings in respect of the quantification of the plaintiff's claim in her representative capacity on behalf of the minor;

10.3 The costs of two counsel;

10.4 The costs of the preparation and perusal of the bundles used for trial purposes and the uploading thereof on Caselines;

10.5 The reasonable costs of all consultations between the plaintiff and her attorneys, and/or her counsel, and/or witnesses and/or experts in preparation for trial.

11 Should the defendant fail to make payment of any of the amounts referred to in this order, interest will commence to accrue on the amounts payable from the due date (being 60 days from the date of service of this order) at the applicable mora interest rate (9,75%) until date of final payment.

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

13 The costs shall be paid in accordance with the provisions of Section 3(3)(a)(i) of the State Liability Act 20 of 1957 as amended.

14 There is a valid contingency fees agreement in existence between the plaintiff and her attorneys of record.

B. FORD

Acting Judge of the High Court

Gauteng Division of the High Court, Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 26 January 2023 and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 26 January 2023.

Date of hearing: 17 January 2023

Date of judgment: 26 January 2023

Appearances:

For the plaintiff: Mr. P. Uys (with S. Oberholzer)

Instructed by: Edeling Van Niekerk Inc

For the defendants: Ms. N. Makopo (with V. Mushai)

Instructed by: State Attorney