

SOUTH AFRICA / JUDGMENT

C.D.S obo K.O.S v Road Accident Fund (RAF583/2023) [2025] ZANWHC 81 (25 April 2025) [2025] ZANWHC 81

COURT

North West High Court, Mafikeng

BEFORE

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CASE / FILE NUMBER

RAF583/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION,

MAHIKENG

CASE

NO: RAF 583/2023

Reportable:

YES

/ NO

Circulate

to Judges:

YES

/ NO

Circulate

to Magistrates:

YES / NO

Circulate

to Regional Magistrates:

YES / NO

In

the matter between: S[...]:
C[...] D[...] obo
K.O.S
Plaintiff
AND
ROAD
ACCIDENT FUND
Defendant

Heard: 7 March 2025

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.
The date for the hand-down is deemed to be on 25 April 2025.

JUDGMENT

DJAJE DJP

- [1] The plaintiff instituted this action on behalf of her minor child K.O.S (“the minor”) who was involved in a motor vehicle accident on 7 November 2018. The minor was a passenger in a vehicle with registration numbers S[...] when it drove into a wall because of the sole negligence of the insured driver. At the time of the accident the minor was three (3) years old. The merits were conceded 100% in favour of the plaintiff. The only issue for determination is quantum.
- [2] An order in terms of Rule 38(2) of the Uniform Rules of Court was granted for admitting the facts, opinions, findings and conclusions in the medico-legal reports by the plaintiff's experts. No expert reports filed on behalf of the defendant.
- [3] Several expert reports were obtained on behalf of the patient as follows:
- Specialist Neurosurgeon – Dr Nakedi Duncan Chula
 - Neuropsychologist – Ann Hofmeyr
 - Specialist Orthopaedic Surgeon – Dr Khetani S Bila
 - Ophthalmologist - Nhlapo Julia
 - Psychiatrist - Dr L Mashayamombe
 - Educational Psychologist - Dr Joseph Seabi
 - Occupational Therapist – Motsepe Thandiwe
 - Speech Therapist and Audiologist – Maybuye Azania Ntimane-Halama
 - Industrial Psychologist – Christelle Botha

· Consultant and Actuary – Namir Waisberg

- [7] The minor sustained head injury and according to the hospital records her Glasgow Coma Scale (GCS) was 11/15 and she had multiple abrasions over her face. She now experiences headaches, memory impairment with poor school performance. She has anxiety and post-traumatic stress, chronic neck, thoracic spine and lower back pain, scarring and short temperedness. According to the Specialist Neurosurgeon, the minor child has a 5% future risk of seizures as a result of the head injury. The ophthalmologist recorded that she has a large diversioned squint of the right eye and poor eye movements. Her impairment will make reading and writing difficult.
- [8] According to the neuropsychologist, the minor's school performance fall below those of her peers and noted that her injuries have brought about neurocognitive, neurobehavioral and neuropsychiatric difficulties that will impact on her learning abilities. It was recommended that she be placed in a small class in a special needs environment to cater for her learning difficulties. The psychiatrist reported that due to the sequelae of the injuries, the minor has attention deficit disorder (ADD), post-concussional syndrome and a depressive mood disorder. This will result in her suffering socially in the future with mood disorders.
- [9] Dr Seabi, the educational psychologist opined that as the minor progressed to higher grades there will be greater demands on her abilities and independence. It is anticipated that she might drop out in the senior phase as her course of life has been altered. Pre accident she would have been able to complete a diploma. Post accident, she is likely to complete up to Grade 9 and be confined to work of an unskilled nature.

General Damages

- [10] The submission on behalf of the plaintiff is that an award in the amount R2 700 000 for general damages would be fair in this matter. In contention the defendant argued for an award in the amount of R1 200 000. Both parties referred to several cases where similar injuries were suffered by the claimants.
- [11] The court in awarding general damages does not intend to punish the defendant but to compensate the patient as a form of solace for the suffering. In *Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 it was held that:

“---it must be recognised that though the law attempts to repair the wrong done to a sufferer who has received personal injuries in an accident by compensating him in money, yet there are no scales by which pain and suffering can be measured, and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty. The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must certainly be uncertain, depending upon the judge's view of what is fair in all the circumstances of the case.”

[12] In determining an appropriate amount for compensation it is important to look at comparable cases and the awards made in those matters.

However, these only serve as a guide as each case should depend on the personal circumstances of the patient, the severity of the

condition and the effect thereof on the life of the plaintiff. Counsel for the plaintiff referred to the cases of Adv AJ Du Toit NO (obo Valentino Afrika) v RAF Pretoria case no. 66720/2018 19 April 2021 and Dyonase v RAF Pretoria Case No. 59219/2021 21 February 2024. These are relatable matters to the current facts. In Afrika the minor child of 6 years sustained a serious brain injury resulting in cognitive and behavioural difficulties and the court awarded

damages in the amount of R2 800 000. In the Dyonase the amount was R2 250 000 for a 4-year-old boy who sustained a moderate to severe brain injury. Looking at the above

cases, I am of the view that the appropriate amount that should be awarded for general damages herein is R1 800 000.00 considering the injuries of the minor child.

Loss of earning capacity

[13] Based on the report by the Industrial Psychologist and other expert reports, the actuarial calculation was that the gross accrued value of the loss is R6 136 897. It was argued that a contingency deduction of 25% is appropriate resulting in the total loss of R4 602 672. The defendant argued for a contingency deduction of 35% resulting in the total loss of R3 988 983.05 which is a just and equitable amount for the minor's loss of earnings.

Order

[14] Consequently, the following order is made:

1. The Defendant is ordered to pay to the Plaintiff the amount of R5 788 983.05
2. ("the capital"), by way of a lump sum payment within 180 (one hundred and eighty) calendar days of service of the order, by way of electronic transfer to the trust account, details of which are set out hereunder ("the capital payment").
3. The capital is made up as follows:
 - 3.1 Loss of earnings / earnings capacity R3 988 983.05
 - 3.2 General Damages R1 800 000.00
4. Payment of the aforesaid sum must be made directly to the Plaintiff's Attorneys of Record, RASEKGALA ALFRED INC by direct transfer into their trust account with the following details:

ACCOUNT HOLDER: RASEKGALA ALFRED INC

BANK: STANDARD BANK

BRANCH: SOUTHGATE

BRANCH CODE: 0[...]

BRANCH CODE (ELECTRONIC PAYMENTS): 0[...]

TYPE OF ACCOUNT: ATTORNEYS TRUST ACCOUNT

ACCOUNT NUMBER: 2[...]

5. The capital amount shall be invested in an interest-bearing trust account to the benefit of the minor pending the creation of the trust to be established.
6. The Defendant has furnished the Plaintiff with an unlimited undertaking, free from caveats and qualifications, in terms of section 17(4)(a) of the Road Accident Fund Act, for 100% (One hundred percent) of the costs of the future accommodation of the Plaintiff in a hospital or nursing home or treatment of or rendering of a service to the Plaintiff or supplying of goods to the Plaintiff arising out of the Plaintiff's injuries sustained in the motor vehicle collision which gave rise to the action, after such costs have been incurred and upon proof thereof.
7. The Defendant shall pay the reasonable costs of the Trustee appointed in terms of paragraph 9 hereof, in respect of establishing a Trust and any other reasonable costs that the Trustee may incur in the administration thereof including her fees in this regard, which shall be recoverable in full in terms of the Section 17(4)(a) Undertaking, and which may also include and be subject to the following:
 - a. The fees and administration costs shall be determined in accordance with the Trust Property Control Act, 57 of 1988 (the Trust Act), as amended from time to time, and shall include but not be limited to disbursements incurred.
 - b. The cost associated with the yearly audit of the Trust by a chartered accountant.
 - c. The reasonable costs of the furnishing of security in obtaining an annual bond, if required by the Mater of the High Court.
 - d. The costs incurred in administering the Undertaking in terms of Section 17(4)(a).
8. That the net proceeds of the amount referred to in paragraph 1 above, after the deduction of Plaintiff's attorney's attorney and client costs ("the capital amount"), shall be payable to a Trust in respect of the minor, to be established within 6 months from date of receipt of the "capital amount".
9. Upon the establishment of the Trust referred to in paragraph 6 above and opening of a bank account of the Trust, the Plaintiff's attorneys shall pay the capital amount as referred to in paragraph 7 above, including the accrued interest, into the Trust's said bank account.
10. The Terms of the Trust are as follows:

- a. The proposed Trustee is BRENDA ANN MAPHUTHA, Identity number 8[...], whose written consent to act as Trustee in the Trust is loaded on case lines.
- b. If BRENDA ANN MAPHUTHA, or a nominee of, is unable or unwilling to accept appointment or for any reason becomes unable to continue to act once having been appointed, then the Master of the High Court will in his/her sole discretion be entitled to appoint another trustee.
- c. The trustee is required to furnish security for the administration of the assets of the trust.
- d. The Trustee's fees for the administration of the trust are to be calculated at the prescribed rate of per annum of the trust assets under administration.
- e. The trustee shall administer the trust subject to the powers and terms, which follow as from paragraph
- (f) to (w) herein below.
- f. The trustee must in writing accept her appointment as such and the benefits and duties conveyed by the trust deed and acknowledge receipt of the donation in terms of which the trust will be established
- g. The trustee may at any time in writing appoint additional trustees limited to one additional trustee.
- h. A trustee shall cease to act as such if he/she resigns, or becomes mentally disturbed or ill, or alcoholic, or incompetent or unable to act as trustee, or being a corporate body, it is liquidated. If any trustee ceases to act, the remaining trustee/s shall continue to act and shall have full powers in terms hereof.
- i. In administering the trust, the trustee shall follow such procedure as they deem fit.
- j. Proper books of account shall be kept.
- k. The trustee may appoint an auditor for the trust but are not obliged to do so.
- l. The trustee has the power to perform in the name of the trust or in their own name on behalf of the trust, any acts and enter into any contract and undertake any obligations, whether commercial or otherwise, which may be done by a natural person of full legal capacity, which powers include but are not limited to the following:
 - i. To pay for remedial, alternatively skilled orientated schooling for the beneficiary.
 - ii. To purchase necessary movable and immovable property for the beneficiary once he/she requires same.
 - iii. To insure, build on and improve all or any part of its property and assets, if so required.

- iv. To borrow money, only for the necessary living expenses of the beneficiary, only until such time as the Road Accident Fund claim is finalised;
- v. To invest money in in any financial institution accredited by the South African Reserve Bank, in an investment, or investments that is risk aversive, such as a money market account.
- vi. To open and operate a banking account.
- vii. To make donations to the beneficiary.
- viii. To pay gratuities and pensions and establish pension schemes, profit-sharing and plans and other incentive schemes for the benefit of the beneficiary where applicable.
- ix. The trustee may determine her own procedure.
- n. The assets of the trust must be held in the name of the trust.
- o. The trustee has an absolute and unlimited discretion, in all matters relating to. the trust but may not act contrary to this order and the trust deed to be drafted in accordance herewith.
- p. The trustee and/or her successor or successors shall be required to provide security for the due administration of the trust.
- q. The trustee shall not be personally liable to the beneficiaries for any trust losses, except caused by gross negligence or deliberate wrong.
- r. The trustee shall under no circumstances be personally liable to creditors of the trust.
- s. The beneficiary, K[...] O[...] S[...] , who for income and capital, is K[...] O[...] S[...] and any of his biological or legally adopted children for whom he would be responsible for in law to maintain and support.
- t. No capital or income benefit to which any beneficiary is or may become entitled by virtue of this trust deed shall, prior to actual payment or transfer thereof by the trustees to the beneficiary, be capable of being ceded, assigned or pledged, or transferred in any way, or be capable of attachment by any creditor or trustee of a beneficiary upon insolvency, unless the trustees consent thereto in writing.
- u. Any asset or money which beneficiary receives pursuant to this trust deed shall not form part of any joint estate, and shall not be subject to any marital power.
- v. The trust deed can only be amended in writing with the consent of the Master of the High Court and, failing such consent, with the leave of this Court provided however that no amendment which is in conflict with the provisions of the Court Order may be effected without the prior leave of the Court having been granted thereto.

- w. The Trust will terminate upon the death of the beneficiary and or the depletion of trust funds or assets.
- x. The Master of the High Court is directed to register the trust and issue Letters of Authority.
- 11. The Defendant shall pay the Plaintiffs taxed or agreed High Court Scale party and party costs, subject to the discretion of the Taxing Master, on Scale C as per the Uniform Rules of Court 69(7), as well as the other costs set out hereunder;
 - a. The costs of all the experts employed, inclusive of reports and consultations.
 - b. The costs of Plaintiff's counsel on Scale C, as per the Uniform Rules of Court 69(7).

J T DJAJE

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

NORTH WEST HIGH COURT

APPEARANCES

DATE OF HEARING

: 7 MARCH 2025

DATE OF JUDGMENT

: 25 APRIL 2025

COUNSEL FOR THE PLAINTIFF

: ADV J J BOTHA SC

COUNSEL FOR THE DEFENDANT : MS MATHEBULA

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