

SOUTH AFRICA / JUDGMENT

Gianni obo A.C v Road Accident Fund (14783/2019) [2022] ZAGPPHC 1003 (29 November 2022)

[2022] ZAGPPHC 1003**COURT**

North Gauteng High Court, Pretoria

BEFORE

Khashane Manamela

CASE / FILE NUMBER

14783/2019

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Source record**HEADNOTE:****JUDGE**

–PAST CAREGIVING

Motor

collision – University student – Cognitive and physical impairments – Mother assisting her with bathing

for one year – For two years doing driving to therapy sessions and assisting with homework and exercise – Part of

assistance was natural as mother – Measured against remuneration of basic level caregivers and assessed at R65 an

hour.

SAFLII

Note: Certain

personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII

Policy

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 14783/2019

REPORTABLE: NO
OF
INTEREST TO OTHER JUDGES: NO
REVISED.
29
November 2022
In

the matter between: ADVOCATE
DS GIANNI obo A [...] C [...]
Plaintiff
and
ROAD
ACCIDENT FUND
Defendant
DATE
OF JUDGMENT: This judgment was
handed down electronically by circulation to the parties and/or
parties' representatives by email. The date
and time of
hand-down is deemed to be 10h00 on 29
November 2022.

JUDGMENT

KHASHANE MANAMELA, AJ

Introduction

- [1] Ms A [...]e C [...], a 24 year old student at the University of Pretoria, was injured in a motor vehicle accident during the night of 16 July 2018. She was 20 years old at the time as she was born on 9 January 1998. She was a pedestrian in the streets of Hatfield, Pretoria when she was hit by a motor vehicle ('the insured vehicle'). She sustained injuries including to her head and right knee, and lacerations, abrasions to her abdomen. She blamed the negligent driving of the driver of the insured vehicle to have caused the accident.
- [2] On 19 March 2019, she caused summons to be issued against the defendant, the Road Accident Fund, in terms of the provisions of the Road Accident Fund Act 56 of 1996 ('the Act'). She claimed compensation for her damages suffered due to her injuries or their sequelae arising from the accident under the following heads of claim: past and future medical expenses (including past care-giving expenses); future loss of income and general damages, both initially in the amount of nearly R10.5 million. The defendant denied liability and also specially pleaded that the injuries sustained by the plaintiff do not constitute serious injuries as contemplated by the Act to warrant an award of general damages.

- [3] In the course of time the parties agreed that the defendant will be 70% liable for the proven or agreed damages suffered by the plaintiff. The settlement agreement was made an order of this Court on 4 November 2021 per Meersingh AJ. By that time the defendant's defence had been struck out by an order of this Court granted on 31 May 2021 per Baqwa J. The defendant was subsequently on 2 December 2021 also ordered to make interim payment in the amount of R92 887.26 by the order of this Division per Holland-Muter AJ. On 10 March 2022 this Court per Sardiwalla J granted an order in terms of which Advocate Delene Sally Gianni was appointed curator ad litem to prosecute the claim for compensation in this matter on behalf of Ms C [...]. Despite this change in citation I would still - for convenience only - continue referring to Ms C [...] as the plaintiff, unless a different reference is warranted.
- [4] On 6 October 2022, the matter came before me for hearing by video-link for purposes of default judgment. By that time the only outstanding head of the plaintiff's claim was in respect of past care-giving expenses, future medical expenses and future loss of income. Advocate M van Rooyen appeared on behalf of the plaintiff. Naturally, due to the striking out order, there was no appearance on behalf of the defendant. Ms Van Rooyen confirmed that the issues relating to general damages suffered by the plaintiff had been settled in the amount of R2.2 million and, thus, entitling the plaintiff to 70% thereof in the amount of R1 540 000 as compensation. I reserved this judgment after listening to oral submissions by counsel. The judgment also gratefully benefited from the detailed written submission filed prior to the hearing by counsel.

Evidence and submissions on behalf of the plaintiff

General

- [5] Due to the nature of the hearing in this matter - as being in the form of determination of the matter on a default judgment basis - there is no need to traverse all issues as contained in the papers before the Court. I would, therefore, refer only to issues deemed more pertinent to the order to be granted. This ought not be construed to be that the Court only had regard to the issues mentioned below. To avoid doubt, the Court has considered all issues material to the orders ultimately granted in this matter.
- [6] Ms C [...], currently 24 years old, resides in Pretoria and is a student at the University of Pretoria. She is pursuing a Bachelor of Commerce degree. She was 20 years old when she met the accident while in her second year of her studies. She returned to the university approximately two years after the accident. She is now between the second and third year of studies for the degree. The university, reportedly, accommodated her despite her shortcomings from the accident. She had, few years before, passed grade 12 with 6 distinctions. According to the plaintiff, she completed her pre-school, primary school and high school education as a good student and never repeated a grade. She also passed some of her subjects in her first and second years of university with distinction. Her extra-mural activities included captaining the first netball and cricket teams, as well as being a head girl whilst in grade 12.

Medico-legal experts and their opinions/evidence

- [7] The plaintiff was assessed by a number of medical experts. The medical experts filed medico-legal reports containing their assessment of the plaintiff's injuries and sequelae, as well as opinions by the experts thereon for purposes of establishing the plaintiff's claim for compensation. These experts also filed affidavits confirming the contents of their reports. Consequently, the affidavits were allowed to serve as evidence as envisaged by Rule 38(2)[1] of the Uniform Rules of this Court, read with the prevailing practice directives of this Division.

Future loss of income or loss of earning capacity

- [8] The plaintiff's injuries are explained by counsel, ostensibly relying on medical reports, as follows: severe diffuse axonal brain injury (with Glasgow Coma Scale or GCS of 5/15 recording upon her admission at the hospital); focal injury to the right frontal lobe of her brain – left sided tremor and right hemiparesis; severe damage to the right knee, and lacerations, abrasions and disfigurement (abdominal scar). The plaintiff also, reportedly, suffered significant neurocognitive and neuropsychological deficits, shock and trauma. She was transported by ambulance from the scene of the accident to the hospital whilst in semi-conscious state. At the hospital, she was admitted in the intensive care unit or ICU where she was sedated and intubated for a period of three months. She received other types of care or treatment relating to her brain injury and her other injuries. She later underwent neuro-rehabilitation for a right hemiplegia and speech deficit. Although, she was discharged from the rehabilitation unit of the hospital on 2 November 2018, she still needed assistance with all activities of daily living after her discharge.
- [9] The following are stated as some of the sequelae to her injuries. The plaintiff is said to be doing everything slower, including thinking; understanding (what people say and what she reads); bathing; dressing and grooming herself. Further, the plaintiff's communication skills have been severely affected and she now struggles to pronounce words or even to find the right word to use. She has a blurry vision. Although, she makes use of spectacles this has not really made a difference. She also suffers from a weak, spastic and stiff right leg. Also, she has poor balance and struggles when she climbs a flight of stairs. She is able to walk unaided, but her balance is affected and she is conscious of falling. She has a tremor of her left hand, although she uses her left hand to write and work on the computer. She received training by occupational therapists in this regard. Her right side, being the right arm and right hand, has been weakened by the injuries sustained in the accident. She has a permanent severe right-sided hemiparesis.
- [10] The neurosurgeon concluded that the plaintiff had suffered a severe diffuse axonal brain injury which has resulted in significant permanent neurocognitive and neuro-physical sequelae. According to this expert, the plaintiff is independent in all activities of daily living at home, although this takes a lot of

effort and time. In his opinion, it is unlikely that the plaintiff would be able to function independently in the future. Apart from the recommendation that a curator ad litem be appointed, the neurosurgeon also opined that a case manager or caregiver is necessary, due to the fact that the plaintiff will not be able to function independently.

[11] The plaintiff's further complaints and/or limitations include

the following. She experiences lower and mid back pain which has developed as a result of asymmetrical body postures. Her eyes are sensitive to bright light. All aspects of cognitive functioning and executive functioning have been affected by the severity of the traumatic brain injury the plaintiff sustained.

[12] The plaintiff will be able to perform sedentary and light work according to the occupational therapist. However, the occupational therapist's further opinion is that as a result of the accident the plaintiff's competitiveness has been reduced, which is obviously a disadvantage. She remains a very vulnerable and unequal competitor in the open labour market for any work situation. His further opinion is that it is expected that the plaintiff will not be able to secure work in the open labour market in a chosen field of study. She might be able to work in a capacity where tasks are repetitive and does not require high cognitive input but this type of work will not stimulate her on her intellectual level and will cause frustration and again impact negatively on her self-image. This expert, further, opines that the process of finding the correct, preferably protected work environment for plaintiff will be a challenging process where therapist or plaintiff, as a patient, will need to trust each other and work together with acceptance that it will take time and patience to determine and find the correct possible career path. The occupational therapist concludes that, for the sake of this claim, it is her opinion that the plaintiff will not be employable in the open labour market in any capacity that will assist her in gaining financial security.

[13] The educational psychologist is of the opinion that pre-accident the plaintiff had the ability to complete an NQF 7 qualification, and, in fact, had the learning ability and perseverance, motivation and leadership abilities to complete an Honours and Master's degree (NQF9). Overall, the plaintiff had the ability to become an industrial psychologist, the educational psychologist opines. Post-accident, given her limitations or physical deficits such as tremor in her left hand, speech difficulties, slow working speed and concentration difficulties and fatigue, the plaintiff will be prevented from entering the labour market as she would have done, but for the accident. This expert is also of the opinion that if the plaintiff is not accommodated by being given time concession by the university's powers-that-be she will not be able to complete the current degree before the end of 2022 and will only have the grade 12 qualification. The plaintiff could complete a degree if she is given time concession or accommodated but will not be able to obtain further studies or to adjust within the labour market. Given all of these, the educational psychologist is of the opinion that the plaintiff would remain unemployable in the open labour market.

[14] The industrial psychologist's opinion includes the following.

In her uninjured state the plaintiff had the potential to complete a Master's degree after completing an undergraduate degree by the end of 2019 and an honours degree in 2020. She would have completed her first two years of the Master's degree by the academic years of 2021-2022. And whilst doing her final year for her Master's degree in the form of research, she would have simultaneously pursued an internship in 2023. It is also postulated that the plaintiff would have written the board exams and satisfied all requirements to become an industrial psychologist by February 2024. Further, the plaintiff would have secured a job after registering as an industrial psychologist in the non-corporate sector. She would have gone through the promotional or advancement levels of this job until peaking at the position of organisational department manager or HR manager between 45 – 50 years and would have worked until retirement at the age of 65 years. The relevant earnings for the different job levels of her postulated career are set out in the industrial psychologist's report.

[15] Now that she has been injured, the plaintiff is limited by her physical and neuropsychological deficits. As a result of the accident the plaintiff's career prospects have been significantly

affected, the industrial psychologist opines. Further, the industrial psychologist is of the opinion that the plaintiff - for all practical purposes - ought to be considered unemployable in the open labour market. And that, consequently, the plaintiff would no longer be expected to reach the career and earnings potential as expected in her uninjured state.

Actuarial calculation

[16] The actuarial calculation for the plaintiff's future loss of income or earning capacity based on opinions and postulations of the expert witnesses, some of which are mentioned above, is as follows:

[16.1] pre-morbid, the plaintiff would have entered the non-corporate labour market in the 2023-2024 period and commenced with a basic salary of R131 550 per annum up to R446 746 per annum in June 2029, and have reached an income of R1 452 871 per annum by the time she is 47 and half years of age. Obviously, the uniform expert opinion is that now that she has been injured the plaintiff will have no income as she will be practically unemployable.

[16.2] the RAF Amendment cap appears to be applicable. In as far as contingency deductions are concerned, the actuarial calculation

reflects a 20% contingency deduction to the plaintiff's future uninjured earnings. This, counsel submits, is to cater for the plaintiff's remarkable pre-morbid academic performance and potential, as well as the industrial psychologist's

conservative approach.

[16.3] the original actuarial calculation is as follows:

Uninjured

Injured

Net

Future Loss

R15 068 978 R0 R15 068 978

Contingencies

(R3 013 796) R0 (R3 013 796)

Net Future Loss

R12 055 182 R0 R12 055 182

After apportionment

R8 438 627

After applying RAF cap R8 357 671

Claim for past caregiving

[17] Ms Jaonita C [...], the plaintiff's mother, had to bath the

plaintiff and assist her when showering and bathing for approximately 12 months after the plaintiff's discharge from hospital on 2 November 2018. The plaintiff's parents moved from Polokwane to Pretoria while she was in hospital.

[18] The plaintiff currently can take a shower on her own while sitting on a shower bench.

But she needs assistance in this regard, due to ligament injury of the right knee and the right-sided hemiparesis, which prevent her from assuming a sitting position in the bathtub. Also, although she holds a valid driver's licence, the plaintiff has not been able to drive since the accident. Her mother, reportedly, was trained by therapists and caregivers to take care of the plaintiff. She did this on a full-time basis by taking her to all therapy sessions; ensuring that she does her homework and exercises for the first two years after her injuries.

[19] The mother is now claiming compensation or remuneration for her caregiving activities.

Her claim is supported by the industrial psychologist, including in terms of an addendum to her report. The claim is calculated by actuaries and is in the amount of R668 884.00.

Revised actuarial calculation, caregiving rates and further submissions

[20] I caused, through an email dated 4 November 2022 of my erstwhile

registrar, the plaintiff's legal representatives to attend to some further aspects, including that a revised actuarial calculation

reflecting application of 30% contingency deduction to future uninjured earnings of R15 068 978. I made it clear that this was

whilst I am mindful of the 70/30% apportionment on liability.

[21] On 17 November 2022, the plaintiff's legal representatives

responded and, among others, made further submissions and also furnished an addendum report dated 8 November 2022 prepared by the

occupational therapist confirmed under oath and a revised actuarial calculation reflecting application of the contingency deduction to future uninjured earnings suggested by the Court.

Caregiving rates

[22] Part of my post-hearing request was that the Court be provided with

verification of charge-out rates for caregivers and classification of caregivers in South Africa. I specifically requested that the occupational therapist provide the Court with a complete set of rates obtained from JOBNET South Africa, the source of the material in her addendum report. This, I explained, ought to include descriptions of qualifications necessary to classify caregivers as either a basic caregiver, a high-level caregiver or an executive level caregiver.

[23] The response from the occupational therapist included the following,

as gratefully obtained from the further submissions by plaintiff's counsel:

[23.1] that, JOBNET South Africa currently functions as a recruitment company and no longer supplies the required information. Instead, she consulted similar websites and companies for purposes of her further report, such as that of Care Company, rendering caregiving services on a need basis.

[23.2] that, she used the websites of entities called Economic Research Institute and Talent for purposes of the verification of rates. It is submitted that the rates from both entities correlate with those previously obtained from JOBNET South Africa.

[23.3] that, currently the recommended rate for a high-level caregiver in Pretoria is R121 per hour and R252 153 per annum, including an average annual bonus of R3 202. An average salary range for a caregiver is between R192 141 and R292 750 per annum and, therefore,

ranges between R90 and R140 per hour. These rates constitute lower rates for basic caregivers not applicable to the plaintiff in this case as her past caregiving services by her mother were not basic caregiving, but somewhere between high-level and executive level caregiving, it is submitted.

[23.4] that, there are three categories of caregivers, namely, (a) basic level caregivers, required to have a grade 12 academic qualification, and whose services are to render basic assistance, either at work or home, such as feeding, bathing, dressing, grooming and toileting of the affected person, as well as attending to shopping and preparation of meals on such persons; (b) high level

caregivers, required to have a grade 12 academic qualification or a higher qualification with training as caregivers, and the type of services rendered by this category of caregivers requires that they have technology skills, driver's licence, ability to perform personal care, personal hygiene assistance, and to ensure that appointments are attended to, assistance with home programmes and recordkeeping, and (c) executive level caregivers, described as companions or guardian, required to have a grade 12 academic qualification with specialised caregiving training recommendably tertiary-level education and with skills higher than those of basic caregivers and high level caregivers, referred to above.

[23.5] that, it is suggested that under the circumstances the following salary considerations be applied: basic caregiver - R32 to R85 per hour (depending on the educational level, training, years of experience and the services needed); high-level caregiver

- R85 to R120 per hour (depending on the educational level, training received, previous experience and the services needed), and executive level caregiver - R121 to R140 per hour (depending on the educational level of the caregiver, alternative training received, previous experience and the specific services needed).

[23.6] that, the occupational therapist is of the view that the rate of R85 used by the plaintiff's mother for her caregiving services rendered is conservative and justified. And that, if caregivers were appointed for the plaintiff as opposed to her mother acting as one, it would have come at the higher cost as more relief caregivers will be necessary.

[24] Also the issue of 6% interest included in the calculation for past

caregiving was explained. The actuary explained in a letter that the correct wording should be 'rate of inflation' and not 'rate of interest', indicating annual increases at 6% a year over the 47 months to R85 per hour (i.e. current value) as at 6 October 2022 calculated from 2 November 2018. It is submitted that the calculation of the 6% inflation is justified under the circumstances.

[25] It is further submitted that the Court might consider applying a 5% contingency deduction on the past caregiving due to the fact that some of the assistance would in any event have been required as the plaintiff is the claimant's caregiver's daughter. This would reduce the plaintiff's claim from the amount of R668 884.00 to the amount of R635 440.00 considered fair and reasonable by the plaintiff and/or plaintiff's counsel.

Revised actuarial calculation

[26] I also requested that revised calculations reflecting the application

of 30% contingency to future uninjured earnings be furnished. The plaintiff or her legal representatives had instructed the actuary to provide a calculation of the plaintiff's loss of income on three scenarios, reflecting the application of 20%, 25% and 30% contingency deductions after applying the apportionment on the merits and before applying the RAF Amendment cap.

[27] The plaintiff's counsel during the hearing had urged the court

to accept as fair and reasonable a 20% deduction. It is now submitted that a 30% deduction may be too high under the prevailing

circumstances in the absence of evidence before the Court to gainsay the evidence submitted by the plaintiff. Such a rate of contingency

deduction might penalise the patient. The Court is urged to apply a sliding scale contingency deductions, an approach considered to have become traditional with the courts.

[28] The actuarial calculations furnished to the Court on the application

of 20%, 25% and 30% contingency deductions, referred to above, reflect the following amounts: R 8 357 671 (in respect of 20% contingency deduction); R7 904 240 (in respect of 25% contingency deduction), and R7 383 799 (in respect of 30% contingency deduction). It is submitted that in light of the considerations to be taken into account and the prospects of success of the plaintiff in the uninjured scenario, a 25% contingency is fair and reasonable.

Conclusion

[29] The plaintiff was injured in July 2018 while she was a second-year

university student pursuing a bachelor's degree. She suffered very serious injuries, but after receiving treatment, including of a rehabilitative nature, she returned to the university to proceed with the studies. Her current deficits are considered to be affecting her studies so much so that there is a doubt that she may be able to complete same. It is also said that to the extent that the plaintiff would be able to complete the degree this will be due to accommodative gestures by the university authorities. I think the latter issue, with respect, made may be a bit exaggerated and, in any case, not conforming to procedures for the award of degrees in our country or at the University of Pretoria. I should not be understood to downplay the challenges faced by the plaintiff due to the debilitating nature of the injuries she sustained in the accident and/or their sequelae on her current pursuits and future employment prospects. But, I think that the plaintiff would be able to obtain a qualification albeit with difficulties and, thereafter, earn some form of income. For this reason I will apply a higher contingency of 30% and, consequently, I will award the plaintiff the amount of R7 383 799 for her loss of earnings.

[30] With regard to the claim for past caregiving services, I am of the

respectful view that the plaintiff's mother, commendable as the work that she has done and other endurances may be under what could only be emotionally draining circumstances, I do not think that her services rendered were far removed from basic level of caregiving. This is the reason why it is said that she had to be trained by the therapists which is indicative of lack of the requisite skills. She did not have any form of experience and qualification in caregiving to rank her work to high level caregiving, let alone executive level caregiving. It is not far-fetched to think that the plaintiff's mother would have been confronted with an unfamiliar situation when she

had to tend to her daughter following the tragic accident. Her only caregiving experience would probably have been from her experience as a mother. Her possession of a valid driver's licence, no doubt, placed her in the upper levels of basic level caregivers. It is not insignificant that the current calculation emanates from averages used and that the plaintiff's mother, understandably, did not keep any logbooks for her hours in this regard. Also, it has been conceded that some of the services rendered by the plaintiff's mother would have been natural in her capacity as a mother to her daughter under the circumstances. In my view, her caregiving services are to be remunerated somewhere around R65 per hour, considering that basic level caregivers earn between R32 and R85 per hour. I will use the current calculation by the actuary but apply a contingency deduction of 15% to the current claimed amount of R668 884.00 resulting in the amount of R568 551.40, which I consider fair and reasonable under the circumstances. Obviously, this will be further reduced in terms of the 70%/30% apportionment of liability between the parties to the amount of R397 985.98.

[31] Costs will also follow the above mentioned outcome. I will also

reflect in the order made the issues agreed upon between the plaintiff and the defendant to the effect that the defendant would

pay the plaintiff the amount of R1 540 000 in respect of the claims for general damages and also furnish the plaintiff with an

undertaking in terms of section 17(4)(a) of the Act in respect of the plaintiff's future medical, hospital and related expenses. I couldn't trace the documents referred to in paragraphs 5, 6 and 11 of the order appearing below. Therefore, those terms of the order are subject to my approval of the material documents, wherever they are furnished. This was done to avoid delays in the handing down of this judgment.

Order

[32] In the premises, I make the order, that:

- 1) the defendant is liable to pay to the plaintiff the amount of R9 321 784.98 (nine million three hundred and twenty-one thousand seven hundred and eighty four rand and ninety- eight cents) which amount shall be paid within 180 (one hundred eighty) days to the credit of the trust account of the plaintiff's attorneys of record, Savage Jooste & Adams Inc, Pretoria, whose trust account details are as follows:

Nedbank name: NEDCOR – ARCADIA

Account type: TRUST ACCOUNT

Branch code: 16-33-45-07

Account no: [...]

Reference no : Mr. Hayes / B van Wyk / RP3517

2) the amount referred to in

1) hereof is computed as follows:

general damages (agreed between the parties): R1 540 000;

past and future loss:

R7 383 799,

past caregiving:

R397 985.98.

3) as agreed between the parties, the defendant is ordered to furnish the plaintiff's attorneys with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, to compensate A [...] C [...] (hereinafter referred to as 'the patient') for 70% of the cost of future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods, including caregiving, to the patient resulting from injuries sustained by her as a result of an accident which occurred on 16 July 2018;

4) the defendant is liable to pay the plaintiff's costs of suit, subject to the discretion of the taxing master, to date on the party-to-party High Court Scale, which costs include (but not be limited to):

4.1. the costs of attending to the examinations and preparing the medico-legal reports, addendum reports, RAF4 reports (where applicable), as well as the qualifying and preparation fees of the following experts:

4.1.1.

Dr JJ du Plessis (Neurosurgeon);

4.1.2

Dr J Prins (Orthopaedic Surgeon);

4.1.3

Ms E Krone (Occupational Therapist);

4.1.4

Mr S Ferreira-Teixeira (Clinical Psychologist);

4.1.5

Ms S van den Heever (Educational Psychologist);

4.1.6

Dr K Levin (Speech Therapist and Audiologist);

4.1.7

Dr W Pretorius (Industrial Psychologist);

4.1.8 De Jongh Optometry (Optometrist), and

4.1.9

Human & Morris (Actuaries).

4.2. the cost of senior-junior counsel, wherever employed, including her preparation, drafting of practice note, heads of argument and day fee for 6 October 2022, as well as costs relating to the further

submissions

and other activities at the instance of the Court between 4 and 17 November 2022;

4.3. the reasonable costs of appointing the Curatrix ad Litem and the costs for consultation, preparation of her report and fee for court appearance to address the Court and to obtain leave to have the award protected by way of a trust;

4.4. The reasonable costs of transportation and accommodation of the patient to attend to the medico-legal examinations;

4.5. as agreed between the parties, the undertaking in terms of section 17(4) of the Road Accident Fund Act 56 of 1996 shall include the costs of establishing the trust, administration (which includes the furnishing of security) and remuneration costs of the trustee and shall be paid by the defendant.

- 5) the award of the patient is to be protected by way of a trust of which trust is in terms of the provisions of the Trust Property Control Act, created with this order. A copy of the draft Trust Deed is attached hereto marked "A" and will reflect the initials of the presiding judge.
- 6) Ms. Celeste du Plooy and/or her nominee is appointed as trustee for the trust formed for the sole benefit of the patient. The consent of the proposed trustee is attached hereto and marked "B" and will reflect the initials of the presiding judge.
- 7) the trustee is ordered to furnish security to the satisfaction of the Master. The security so furnished will be adjusted from time to time, at least once per year to reflect the decrease or increase of the capital and income from time to time.
- 8) the Deed of Trust attached hereto will not be varied without leave of the Court.
- 9) no interest will be payable on the capital sum, provided payment is made within 180 days after the Court Order. Should payment not be made timeously, the defendant will pay interest at the applicable mora interest rate per annum from due date to date of payment.

- 10) the party and party costs are payable within 180 days after receipt by the defendant's attorneys of the stamped allocator, whereafter interest will be charged at the applicable mora interest rate per annum from date of the stamped allocator to date of payment;
- 11) Ms. Anneke Else Greeff (Occupational Therapist) is hereby appointed as Case Manager for the Patient. Her consent is attached hereto marked "C" and will reflect the initials of the presiding judge.
- 12) there is no Contingency Fees agreement entered into between the plaintiff's attorney and the plaintiff.

Khashane La M. Manamela

Acting Judge of the High Court

Date of Hearing:

6 October 2022

Date of Further Submissions: 17 November 2022

Date of Judgment:

29 November 2022

Appearances:

For the Plaintiff:

Adv M van Rooyen

Instructed by:

Savage Jooste & Adams Attorneys, Pretoria

For the Defendant:

No appearance

- [1] Uniform Rule 38(2) reads as follows: 'The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit'.

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