

SOUTH AFRICA / JUDGMENT

K.M v Road Accident Fund (RAF 276/2022) [2025] ZANWHC 133 (25 July 2025) [2025] ZANWHC 133

COURT

North West High Court, Mafikeng

BEFORE

Oosthuizen-Senekal

CASE / FILE NUMBER

RAF 276/2022

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

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

NORTH WEST DIVISION -

MAHIKENG

CASE

NUMBER: RAF 276/2022

Reportable: NO

Circulate to Judges: NO

Circulate to Magistrates:

NO

Circulate to Regional

Magistrates: NO

In

the matter between:

K[...]

M[...]

PLAINTIFF

and

ROAD

ACCIDENT FUND

DEFENDANT

CORAM:

OOSTHUIZEN-SENEKAL AJ

Date

judgment reserved: 20

May 2025

The judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be 25 July 2025 at 10H00am.

ORDER

1.

The draft order marked "X" is made an order of Court.

JUDGMENT

OOSTHUIZEN-SENEKAL AJ:

Introduction

- [1] The plaintiff, Miss K[...] M[...], instituted action against the Road Accident Fund ("the RAF") for damages arising from a motor vehicle collision that allegedly occurred on 21 October 2022 at approximately 18h10 on the Gelukspan road.
- [2] At the time of the incident, the plaintiff was a minor child, aged one year and eleven months. She and her mother were conveyed as passengers on the back of a Form Model 89 bakkie, driven by Mr Phambone. Tragically, the plaintiff's mother died at the scene of the accident.
- [3] Pursuant to the alleged negligent driving of the insured driver, the plaintiff now seeks the following relief against the RAF:
 - 1) An undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996 ("the Act") for future medical and related expenses;
 - 2) Compensation for past and future loss of earnings in the amount of R10,768,725.00, and
 - 3) General damages for pain, suffering, and loss of amenities of life in the sum of R2,500,000.00.
- [4] The matter was declared trial-ready by Maodi AJ on 17 February 2025. Despite having being served with a Notice of Set Down on 14 May 2025, the Road Accident Fund ("the Fund") did not attend the trial.

Application in terms of Rule 38(2) of the Uniform Rules of Court

- [5] The application to present evidence of the plaintiff, her expert witnesses, and any other relevant witnesses by way of affidavit in terms of Rule 38(2) of the Uniform Rules of Court (“the Rules”) was sought and granted.

Merits

- [6] Although the merits remain formally in dispute, the plaintiff, who was aged one year and eleven months at the time of the accident, was legally incapable of negligence (*doli incapax*). There is no evidence to the contrary. I am satisfied that the defendant is liable for 100% of the plaintiff’s damages.

Prescription

- [7] Section 23 of the Act governs the prescription of claims, prescribing the time limits within which a claimant must lodge a claim against the RAF. The general principle is set out in section 23(1) of the Act, which provides that, notwithstanding anything to the contrary in any law, a claim for compensation under the Act prescribes upon the expiry of three years from the date on which the cause of action arose.
- [8] However, this general three-year time bar is subject to important exceptions, particularly in the case of minors and other vulnerable persons. Section 23(2) of the Act suspends the running of prescription against a minor, or any person who is detained as a patient in terms of mental health legislation or is under curatorship, until such time as the minor attains majority or the disability ceases.
- [9] This provision reflects the legislature’s clear intention to protect those who may not be able to assert their legal rights timeously. Courts have consistently interpreted section 23(2) as a suspensive provision, ensuring that minors at the time of the delict are afforded a fair opportunity to bring their claims once they acquire legal capacity.
- [10] In addition, section 23(3) of the Act provides that, where a claim has been lodged in terms of section 17(4)(a) or section 24, it shall not prescribe before the expiry of five years from the date on which the cause of action arose. This provision ensures that once a claim is validly lodged, the claimant has additional time within which to issue summons.
- [11] The principles underlying these provisions were examined in *Combrink and Another v Road Accident Fund and Another*[1]. In the case, the court held that, in the context of unidentified claims involving minors, the prescription period only begins to run once the minor reaches the age of majority, aligning it with section 23(2) of the Act. This decision extended the protection to unidentified claims to prevent unfair discrimination against minors, thereby confirming that the prescription period for both identified and unidentified claims involving minors, commences upon attainment of majority.
- [12] In the present matter, the motor vehicle collision occurred on 21 October 2002. Ordinarily, in terms of section 23(1) of the Act, the claim would prescribe three years thereafter. However, since the plaintiff was a minor at the time of the incident, she was born on 9

November 2000 and thus only 1 year and 11 months old when the accident occurred, the running of prescription was suspended by virtue of section 23(2) of the Act. Accordingly, the three-year prescription period only commenced upon her attaining the age of majority, which, under the Children's Act 38 of 2005, is 18 years. The plaintiff attained majority on 9 November 2018.

- [13] Consequently, the plaintiff had until three years after her eighteenth birthday, that is, until 9 November 2021, to lodge her claim. In the present case, the RAF 1 claim form was lodged with the RAF on 19 September 2019, which fell well within the three-year period from her eighteenth birthday. Once the claim was validly lodged within this period, section 23(3) of the Act extended the prescription period to five years from the date of majority, giving her until 9 November 2023 to issue summons.
- [14] In this matter, summons was issued on 12 July 2022, which was within the five-year period expiring on 9 November 2023. Therefore, the summons was issued timeously, and the plaintiff's claim has not prescribed.
- [15] The purposive interpretation of these provisions further supports this conclusion. The Act is social legislation designed to compensate victims of motor vehicle accidents. A rigid interpretation of the prescription periods that would deprive a minor of their right to claim would be contrary to the Act's purpose and to the constitutional right of access to courts under section 34 of the Constitution. The decision in *Combrink*, *supra*, reinforced this view by holding that an interpretation that allows prescription to run against a minor in respect of unidentified claims would be unconstitutional. This reasoning applies equally to identified claims, as in the present matter.
- [16] In summary, the claim was lodged and the summons issued within the applicable prescription periods, as extended by the plaintiff's minority. The plaintiff's minority suspended the running of prescription until 9 November 2018, and the subsequent lodging of the claim and issuing of summons complied with the time limits prescribed by sections 23(1) and 23(3) of the Act. Had the RAF 1 not been lodged by 19 September 2019, and summons not issued by 12 July 2022, the plaintiff's claim would have prescribed on 9 November 2021 for lodgement and 9 November 2023 for issuing of summons respectively. Both steps were, however, taken within these time limits.
- [17] It follows, therefore, that the plaintiff's claim has not prescribed.

Quantum

- [18] The plaintiff claims damages under the following heads: (a) Future medical expenses; (b) General damages; and (c) Loss of future income.
- [19] The following expert reports were filed by the plaintiff:
- 1) Dr M.E. Thobejane (Neurosurgeon);

- 2) Ms M. Tsambos (Clinical Psychologist);
- 3) Mr M.S. Mthimkhulu (Educational Psychologist);
- 4) Mr S.W. Mokgosi (Occupational Therapist);
- 5) Mr A. Singo (Industrial Psychologist); and
- 6) Mr R. Immermann (Actuary).

Expert Reports

Dr M.E. Thobejane – Neurosurgeon

- [20] Dr Thobejane evaluated the neurological consequences of the plaintiff's injuries. He diagnosed a diffuse brain injury with post-traumatic epilepsy. He reported long-term cognitive impairment, motor dysfunction (locking of lower limbs), and noted that her capacity to live independently and work competitively has been materially diminished. He confirmed that the injuries have compromised her quality of life, life expectancy, and employability.

Ms M. Tsambos – Clinical Psychologist

- [21] Ms Tsambos diagnosed the plaintiff with moderate depressive features and mild intellectual disability. She elaborated on the plaintiff's ongoing psychological difficulties, noting persistent emotional trauma manifesting as sadness, hopelessness, and feelings of loss. She further observed poor concentration and cognitive difficulties, which negatively impact the plaintiff's ability to engage effectively in educational and social contexts. Ms. Tsambos confirmed the presence of symptoms consistent with post-traumatic stress disorder (PTSD). In her expert opinion, these psychological and emotional sequelae are unlikely to resolve spontaneously and are expected to persist into the future, with ongoing implications for the plaintiff's mental health, social functioning, and overall quality of life.

Mr M.S. Mthimkhulu – Educational Psychologist

- [22] Mr Mthimkhulu opined that, but for the accident, the plaintiff would likely have completed her schooling up to Grade 12 and attained a qualification at National Qualifications Framework (NQF) level 7, equivalent to a bachelor's degree or similar tertiary qualification. He based this conclusion on her developmental milestones and the assumption of normal cognitive potential, given that no evidence of pre-existing difficulties was available at the time of the accident, as she was only one year and eleven months old when the incident occurred.

- [23] School reports, which were only available for her post-accident schooling years, indicate persistent academic struggles consistent with her cognitive impairments. The reports reflect repeated grade failures and ongoing difficulties with memory, attention, and learning, which severely hampered her progress. These challenges eventually led her to drop out of school before completing Grade 12.
- [24] According to Mr. Mthimkhulu, her prognosis for academic rehabilitation is poor, given the severity and enduring nature of her cognitive deficits, her repeated academic failures, and her inability to cope with the demands of formal education. Consequently, her limited educational attainment is expected to have a significant negative impact on her future employability and socio-economic prospects.

Mr S.W. Mokgosi – Occupational Therapist

- [25] Mr Mokgosi conducted an assessment of the plaintiff's capacity to perform activities of daily living as well as her potential to engage in gainful employment. He observed that the plaintiff exhibits severe limitations in both her physical and cognitive functioning, which significantly impair her independence and ability to meet the demands of everyday life without assistance. Nonetheless, Mr. Mokgosi concluded that the plaintiff is not entirely unemployable. He opined that, with appropriate accommodations, she may be able to perform certain tasks in a highly structured, supportive, and supervised work environment.

Mr A. Singo – Industrial Psychologist

- [26] Mr Singo assessed the pre- and post-morbid earning potential of the plaintiff. He concluded that the accident and its resulting cognitive and psychological impairments have drastically diminished her employment prospects. As a result, Mr. Singo recommended a significantly reduced future earning trajectory, taking into account her limited capacity to engage in meaningful employment. He indicated that she may only be able to secure sheltered or highly supportive work, if at all, and at earnings well below the median for her age and education cohort.

Mr R. Immermann – Actuary

- [27] Relying on inputs from the other experts, Mr Immermann calculated the plaintiff's future earnings, but for the accident, at R13 372 698. He applied standard actuarial principles to determine net loss after contingencies.

Injuries and Sequelae

- [28] The expert reports collectively reflect the following injuries and long-term sequelae:
- 1) Diffuse brain injury;
 - 2) Epilepsy;
 - 3) Multiple lacerations;

- 4) Developmental delays in speech and language;
- 5) Locking of the lower limbs;
- 6) Amnesia and poor memory;
- 7) Psychological distress including depression and anxiety;
- 8) Academic failure and dropout; and
- 9) Social withdrawal and reduced quality of life.

General Damages

- [29] In determining non-patrimonial damages, the court is guided by established principles. In *Sandler v Wholesale Coal Suppliers Ltd*[2], it was held that such damages must be based on broad and equitable considerations. The same principle was reaffirmed in *Southern Insurance Association v Bailey NO*[3].
- [30] Taking into account the plaintiff's ongoing physical and emotional suffering, permanent disability, and reduced quality of life, I award general damages in the sum of R 900 000.00.

Future Medical Expenses

- [31] Given the permanent and debilitating nature of the plaintiff's injuries, and the likelihood of ongoing therapy and care, the Fund is ordered to furnish an undertaking in terms of section 17(4)(a) of the Act for the full cost of future medical and related expenses.

Loss of Future Income and Contingencies

- [32] In road accident claims involving serious bodily injury and financial loss, actuarial evidence serves as a cornerstone in the quantification of damages. Actuarial reports assist the court in calculating both past and future loss of earnings and earning capacity by employing structured projections based on the claimant's age, life expectancy, career prospects, and anticipated retirement

age. These projections provide a framework for assessing financial loss in a logically coherent and objective manner.

- [33] However, South African courts have repeatedly emphasised that actuarial evidence, while valuable, is not binding. It must be weighed against the broader factual and contextual matrix of each case. In *Southern Insurance Association Ltd v Bailey NO*[4], the Appellate Division noted the following:

"While it has been stated that an actuarial computation is not a substitute for the exercise of a sound judicial discretion, it is nevertheless a useful basis for exercising that discretion... What the Court is bound to determine is the actual loss suffered by the plaintiff... It would be unrealistic to expect from the plaintiff more than he is able, in the circumstances, to prove."

[34] This underscores the dual role of actuarial evidence: it offers technical precision, but must be evaluated through the lens of judicial discretion. Courts must still make a value judgment that incorporates both expert opinion and the realities of the claimant's circumstances.

[35] In *De Jongh v Du Pisanie* NO[5], the Supreme Court of Appeal reaffirmed the wide discretion vested in trial courts to determine fair compensation. At paragraph [60], the court noted:

"[60] The trial court has a wide discretion to award what it in the particular circumstances considers right. It is bound by no rule except that it must act judicially."

[36] Likewise, in *Road Accident Fund v Guedes*[6], the court endorsed a "robust" approach to the assessment of future loss, particularly in cases of evidentiary uncertainty. At paragraph [10], the court stated:

"[10] The calculation of future loss of earnings or earning capacity is not a matter of precise mathematical calculation... A court must make an estimate, which is often a very rough one, based upon all the evidence."

[37] These authorities make it clear that actuarial reports provide a foundation for quantifying loss, but courts retain the duty to interrogate the assumptions and adjust the outcomes to reflect fairness and reality.

[38] This judicial discretion also extends to the application of contingency deductions, an essential component in the assessment of damages. Contingencies are adjustments made to account for the uncertainties

of life, including the risk of unemployment, illness, economic downturns, changes in career path, or early death. They recognise that a person's working life rarely proceeds without interruption.

[39] The widely accepted benchmark in South African case law stems from the "sliding scale" approach popularised by Robert Koch. This model applies a general deduction of 0.5% per year to retirement age, typically resulting in:

- 1) 25% for a child,
- 2) 20% for a young adult, and
- 3) 10% for a middle-aged person.

[40] This guideline was endorsed in *Goodall v President Insurance Co Ltd*[7], and followed in later cases such as *L.T.N. obo S.N. v Road Accident Fund*[8], where the court accepted a 25% deduction for a minor claimant.

[41] However, Koch's model is only a guide. Courts retain the discretion to vary the contingency percentage upward or downward

based on the claimant's personal circumstances and the broader socio-economic context. As confirmed in *Legal Aid South Africa v Magidiwana and Others*[9]:

"[53] Expert evidence, including actuarial evidence, is designed to assist the court in areas outside its ordinary expertise. However, it is for the court to determine what weight to attach to such evidence."

[42] In the present case, the plaintiff is a young adult with incomplete secondary education, no formal qualifications, and prior employment in the semi-skilled or physically intensive labour sector. South Africa's prevailing economic conditions, characterised by high unemployment, especially among the youth, limited access to stable jobs in the informal sector, and widespread inequality, further compound the risk that the plaintiff's pre-accident earning trajectory would not have followed a stable upward curve.

[43] The plaintiff remains employable to some extent, particularly in a supportive work environment, and is not entirely excluded from the labour market. However, no evidence of the historical employment paths or earning patterns of her family members has been placed before the court. Such information could have assisted in contextualising her likely career trajectory, socio-economic starting point, and realistic prospects of advancement in the labour market. In the absence of this data, it is necessary to adopt a cautious and realistic approach when projecting her pre-morbid earning potential.

[44] Against this backdrop, the plaintiff's actuary applied a contingency deduction of 20% to the pre-accident income scenario. In my view, this deduction is unduly optimistic given the plaintiff's circumstances. A higher contingency deduction of 35% is more appropriate and better aligned with the evidence before court and prevailing socio-economic realities.

[45] Several considerations justify this adjustment, namely:

1) The plaintiff's educational profile and absence of specialised or scarce skills would have limited her ability to secure and maintain stable, well-paying employment. Her highest likely qualification, a Grade 12 certificate or possibly a general tertiary

qualification, would have placed her in a highly competitive segment of the labour market with limited opportunities for upward mobility.

2) The broader socio-economic risks facing young and unqualified or semi-qualified workers in South Africa are substantial. High unemployment rates, job insecurity, and low starting salaries in the formal sector disproportionately affect individuals with her anticipated profile.

3) Structural barriers such as her likely geographic location, constrained mobility, and limited access to employment support networks and services would have further diminished her ability to secure consistent and adequately remunerated employment.

- 4) Even in the absence of the accident, the plaintiff would likely have relied, at least intermittently, on informal, temporary, or piecemeal work, all of which introduce significant variability and unpredictability in earnings over a lifetime.
- [46] In light of these factors, a 35% contingency deduction more accurately reflects the risks and uncertainties she would have faced in her pre-accident earning capacity. This higher deduction guards against overcompensating the plaintiff and ensures that the damages award is both fair and grounded in the socio-economic realities of her position.
- [47] Accordingly, applying a 35% contingency deduction to the pre-morbid earnings figure of R13,372,698 yields a net pre-accident loss of R8,692,253.70. This adjustment represents a realistic appraisal of the plaintiff's likely prospects in the open labour market and avoids the risk of unjust enrichment.
- [48] In claims involving personal injury sustained during early childhood, courts are often called upon to determine how the monetary award should be managed to ensure that it serves the best interests of the injured party. In the present case, the plaintiff suffered an injury at the age of one year and eleven months and is now twenty-three years old. The court is required to consider an appropriate mechanism for the management and protection of the compensation awarded to her as a result of the injuries sustained.
- [49] Although the plaintiff has reached the age of majority and is not mentally or physically incapacitated, the court is satisfied that the establishment of a trust is warranted, primarily due to her young age and the size of the award. The sum awarded is intended to cover not only past medical expenses and general damages, but also future care, support, and other contingencies that may arise throughout her life. Given the magnitude of the award and the financial decisions that must accompany its administration, the court is of the view that it would be prudent to establish a trust to preserve and manage the funds in a structured and professionally supervised manner.
- [50] The establishment of a trust in such circumstances is a well-accepted legal and practical solution. While a person of twenty-three is legally competent to manage his or her affairs, youth and lack of financial experience can pose a real risk to the sustainability of a substantial award. A trust ensures that the funds are invested and applied in a manner that serves the long-term welfare of the beneficiary, protecting the capital from potential mismanagement, exploitation, or short-term decision-making that could jeopardise her future financial security.
- [51] In this matter, First National Bank ("FNB") agreed to accept appointment as the trustee. The appointment of FNB Trust Services offers several advantages namely: it provides professional and impartial administration of the trust, ensures compliance with fiduciary duties, and brings financial expertise to bear in the investment and disbursement of funds. The court views this appointment favourably, as it offers a high degree of accountability and reassurance that the plaintiff's interests will remain paramount.

- [52] The trust deed will be tailored to the plaintiff's circumstances and will restrict the use of the trust funds to expenses and needs related to her well-being, including education, healthcare, accommodation, and daily living requirements. The trustee will have the authority to make disbursements in accordance with these purposes, while also being obligated to preserve the capital as far as reasonably possible. The trust will remain in place for as long as necessary, and regular reporting to the Master of the High Court or a similar supervisory body will ensure ongoing oversight.
- [53] In conclusion, this Court finds that the establishment of a trust in this case is both reasonable and necessary, not because the plaintiff is incapable of managing her affairs, but because of her youth, inexperience, and the substantial nature of the award call for the protective structure that a trust provides. The appointment of FNB as trustee ensures that the funds will be managed prudently and in the best interests of the plaintiff, thereby fulfilling the court's duty to secure her financial future while recognising her right to benefit fully from the compensation awarded to her.

Order

- [54] Having regard to all the documents and reports filed and having heard counsel herein, I make the following order:

CSP OOSTHUIZEN-SENEKAL

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

For the Plaintiff: Advocate M Mphaga SC

Email: mphaga@gmail.com

Advocate N Gama

Email: nkosikhona@rsabar.co.za

Instructed by:

Mokhetle Attorneys Inc

Mr Mokhetle

Email: info@mokhetleinc.co.za

For the Respondent: No Appearance

"X"

25/7/2025

NORTH WEST DIVISION, MAFIKENG

Case no: RAF 276/22

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

Plaintiff

ROAD ACCIDENT FUND

Defendant

HAVING HEARD ADVOCATE MPHAGA SC FOR PLAINTIF AND THE FOLLOWING ORDER IS MADE:

1

1.1 The Defendant is ordered to pay 100% of the Plaintiff's proven damages for the above matter.

1.2 The Defendant shall pay the sum of R9 592 253.00 (Nine Million Five Hundred and Ninety Two Thousand Two Hundred and Fifty Two Rand) in settlement of the Plaintiff's Loss of Earnings and General Damages claim to the Plaintiff's attorneys, MOKHETLE ATTORNEYS INC., payable by direct transfer into their trust account with the following details:

1.3 The aforementioned total amount is broken down as follows –

1.3.1 Future loss of earnings - R 8 692 253.00

1.3.2 General Damages – R 900 000.00

1.4 The aforementioned total amount of R9 592 253.00 (Nine Million Five Hundred and Ninety Two Thousand Two Hundred and Fifty Two Rand), referred to above will not bear interest unless the Defendant fails to effect payment thereof within 180 (One Hundred and Eighty) calendar days of the date of this Order, in which event the capital amount will bear interest at the prescribed legal rate calculated from and including the 181 (One Hundred and Eighty One) calendar day after the date of this Order and including the date of payment thereof.

1.5 The Defendant is to request and load payment within 90 (ninety) calendar days and payment thereof is effected by the Defendant in 180 (One hundred and eighty) calendar days from date of this order.

1.6 The Defendant shall furnish Plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, to pay 100% costs of future accommodation of Plaintiff in a hospital or nursing home or medical treatment of or rendering of a service or supplying of goods to her, arising out of the injuries she sustained in the motor vehicle collision 21 OCTOBER 2002 and the sequelae thereof, after such have been incurred and upon proof thereof.

2.

The Defendant to pay the Plaintiff's taxed or agreed party and party costs, up to and including the date when this order is made an order of court, for the instructing attorney, which cost shall include, but not be limited to the following:

2.1. The fees of Senior Counsel including but not limited to the preparation for trial; consultation with plaintiff and instructing attorney; travelling costs and toll gates costs; accommodation fees; drafting of heads of arguments; and day fee in respect of the trial date of 19 May 2025 and 20 May 2025.

2.2 The fees including but not limited to the preparation, attendance, consideration and completion of the "submission document" accompanying this order of Mr E. MOKHETLE an attorney with Right of Appearance;

2.3 The cost of obtaining all expert medico legal- and any other reports of an expert nature in support of the Plaintiff's claim;

2.4 The cost of obtaining documentation / evidence, scans, considered by the expert(s) to finalize their reports;

2.5 The reasonable taxable qualifying- and preparation fees of all experts whose report(s) were provided to the Defendant and / or its experts,

2.6 The reasonable costs of consultation fees between the Plaintiff's experts and the Plaintiff's the legal teams regarding the matter;

2.7 The reasonable costs of one consultation between the Plaintiff and the Plaintiff's legal team to consider the offer to settle(if any);

2.8 The reasonable taxed fees for consultation with the experts mentioned below, preparation for trial, qualifying and the reservation fees (if any and on proof thereof), including the costs (fees and disbursements) of all consultations (this inclusive of telephone consultations) with senior counsel and/or the plaintiff's attorney and the costs (fees and disbursements) of all consultations between the plaintiff's and her own experts and full day fees for court attendance (if at court) of the following expert:

2.8.1 DR ME THOBEJANE - NEUROSURGEON

2.8.2 MOYRA TSAMBOS - CLINICAL PSYCHOLOGIST

2.8.3 MR MS MTHIMKHULU - EDUCATIONAL PSYCHOLOGIST

2.8.4 S. W. MOKGOSI - OCCUPATIONAL THERAPISTS

2.8.5 MR AZWI SINGO - INDUSTRIAL PSYCHOLOGIST

2.8.6 G W JACOBSON - CONSULTING ACTUARIES

2.9 The reasonable traveling and accommodation costs incurred in transporting the Plaintiff to all medico-legal appointments;

2.10 All reserved costs be unreserved

2.11 The above-mentioned payment with regard to costs shall be subject to the following conditions:

2.11.1 The Plaintiff shall, in the event that costs are not agreed, serve the notice of taxation on the Defendant; and

2.11.2 The Plaintiff shall allow Defendant 180 (One Hundred and Eighty) calendar days to make payment of the taxed costs;

2.11.3 The Defendant is to request and load payment within 30(Thirty) calendar days from date of settlement / taxation of the bill of cost.

2.12 In the event of default on the above payment, interest shall accrue on such outstanding amount at the prescribed legal rate from the date of settlement / taxation of the bill of cost, as per the Prescribed Rate of Interest Act, 55 of 1975, as amended, per annum, calculated from the 15th (Fifteen) calendar day after the date of settlement / taxation of the bill of cost, until the date of payment.

3.

There is a valid contingency fee agreement entered into by the Plaintiff's attorney and the Plaintiff on 06 May 2019.

4.

4.1. The attorneys for the plaintiff, MOKHETLE ATTORNEYS' INC , are ordered:

4.1.1. to cause a trust ("the TRUST") to be established in accordance with the Trust Property Control Act No. 57 of 1988;

4.1.2. to pay all monies held in trust by them for the benefit of the plaintiff, to the TRUST.

4.1.4. the TRUST shall exist for a period until the plaintiff reaches the age of 30, whereafter the residue of the money held in the Trust fund will be deposited to the plaintiff's bank account of her choice.

4.1.5. The trust instrument contemplated in paragraph above shall make provision for the following:

4.1.5.1. that the plaintiff is to be the sole beneficiary of the TRUST;

4.1.5.2. the nomination of an employee of a major banking institution as the first trustee; and

4.1.5.3. Monies in the Trust shall be invested in an interest-bearing account;

4.1.5.4 The investment referred to above and any interest accruing on such an investment shall be for the benefit of the plaintiff.

BY ORDER

THE REGISTRAR

- [1] [2015] ZAGPPHC 760.
- [2] 1941 AD 194 at 199.
- [3] 1984
- (1) SA 98 (A)
- [4] 1984
- (1) SA 98 (A) at 113H–114E.
- [5] 2005
- (5) SA 457 (SCA).
- [6] 2006
- (5) SA 583 (SCA).
- [7] 1978
- (1) SA 389 (W).
- [8] [2021] ZAGPPHC 246.
- [9] [2014] ZASCA 141 at paragraph [53].
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2025/133.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/km-v-road-unknown-topic-anwhc-2025--6a3ea51e3b1caa9129814fc8>

Prepared on 10 October 2026 · Esheria