

SOUTH AFRICA / JUDGMENT

Pompo obo M v Road Accident Fund (5928/2015) [2017] ZAFSHC 229 (30 November 2017)

[2017] ZAFSHC 229**COURT**

Free State High Court, Bloemfontein

BEFORE

Chesiwe

CASE / FILE NUMBER

5928/2015

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA,****FREE****STATE DIVISION, BLOEMFONTEIN****Case****number:**

5928/2015

In

the matter between:

ADVOCATE

MANTLAMA POMPO obo K.E

M.

Plaintiff

and

ROAD

ACCIDENT

FUND

Defendant

HEARD

ON:

8 SEPTEMBER 2017

JUDGMENT

BY: CHESIWE, AJ

DELIVERED ON: 30 NOVEMBER 2017

- [1] This is an action for damages in terms of the Road Accident Fund Act 56 of 1996 as amended (the Act). The plaintiff sues the defendant for damages for a motor vehicle accident that occurred on 23 July 2010.
- [2] On the 19 May 2016, the Honourable Court granted an order that Advocate Mantlama Pompa be appointed as the curator on behalf of K. E. M..
- [3] The matter was set down for 5, 6 and 8 September 2017. The parties attempted to settle the matter but were unsuccessful. The matter proceeded on merits and quantum.
- [4] On the 8 September 2017, the matter proceeded upon a written statement of facts in the form of a stated case in terms of Rule

33(1) of the Uniform Rules of Court.

- [5] The parties agreed on the following facts:

5.1 That on 23 July 2010 along Jacobsdal Street, Koffiefontein in the Free State, the plaintiff was a pedestrian when she was hit by the uninsured motor vehicle.

5.2 As a result of the accident the plaintiff sustained a head injury, back injury, right knee and left ankle injury, cervical injury, fractured T2- T3 vertebrae and a compound fractured left tibia and fibula.

5.3 The plaintiff is the only witness in respect of liability and that her version cannot be challenged by a counter version as the defendant does not have witnesses to counter the version of the plaintiff.

5.4 That the issue of the claimant's loss of income and earning capacity, as well as general damages will be adjudicated on the experts reports of:

5.4.1 Dr Okoli - Neurosurgeon for the plaintiff.

5.4.2 Dr Cheyip - Neurosurgeon for plaintiff report is undisputed.

5.4.3 Dr Matshidiso Maseko - Educational Psychologist, report undisputed.

5.4.4 Dr Malepi - Plaintiffs psychiatrist, report undisputed.

5.4.5 Dr Nyoka - EMT specialist, report undisputed.

5.4.6 Professor Katijah Khoza-Shangase (Speech Pathology & audiology).

5.4.7 The following expert witness with their joint minutes will be taken into consideration: Dr Schnaid and Dr Moloto

- orthopaedic surgeon, Dr Mojapelo - Batka and Ms Lindelwa Grootboom - Clinical Psychologist, Ms Rene Walker and Ms Success Moagi - Occupational therapist, Ms Sandra Moses and Ms Moipone Kheswa
- industrial Psychologist.

Issues

for Determination

[6] The court is called upon to determine the issue of liability and to determine the sequelae of the injuries sustained, future

employability and the court to award an appropriate compensation as well as general damages, loss of income and earning capacity.

[7] In oral submissions the counsel for the plaintiff submitted that the plaintiff is unemployable post the accident and had the accident not happened the plaintiff would have obtained a grade 12. The plaintiff would have entered the labour market on 81-C2 level. He submitted that the plaintiff suffered severe pain and that a fair amount for general damages to be awarded would be R 1 500 000. After the accident the plaintiff became rebellious and abused alcohol and became HIV positive.

[8] Counsel for the defendant submitted that the plaintiff was an average student and the court should apply a contingency of 35%. Further that the plaintiff was a scholar when she was involved in an accident. Therefore the plaintiff suffered no past loss of income. He submitted that scenario 1 would be more appropriate and the court should consider scenario 1 in the case of the plaintiff.

Liability

[9] The plaintiff, a 20 year old female was in grade 8 at the time of the accident, when she was hit by a motor vehicle on the 23 July 2010 along Jacobsdal Street in Koffiefontein. The Plaintiff sustained the following injuries:

- Head injury; Fractures on T2 - T3;
- Fractured Tibia and Fibia; Pneumothorax;
- Neck injury;
- Rib fracture;

[10] The plaintiff was admitted in Pelonomi Hospital, Bloemfontein from 23 July 2010 to 24 August 2010 where she went through various

operations. While in hospital the plaintiff became delusional and hallucinated. The plaintiff continued to receive medication and on discharge she had a Plaster of Paris on the left leg.

[11] It is trite law that the onus is on the plaintiff to prove on the balance of probabilities that the injuries were caused as a result of the negligent driving of the insured driver. See *Laas v Road Accident Fund 2012 (1) SA 610 (GNP)*. The plaintiff has to show and prove that there was contact between the insured driver's vehicle and herself. Indeed Section 17(1)(b) of the Road Accident Fund Act 56 of 1996 the Act provides that

"17

(1) The Fund or an agent shall:

- (a) Subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established;
- (b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established; be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum."

[12] In *Manuel v SA Eagle Insurance Company Limited 1982 (4) SA 352 (C)* at 357 at paragraph A the court said:

"The principle to be extracted is that a motorist, who sees a pedestrian on the roadway or about to venture thereon, should regulate his driving so as to avoid an accident. The pedestrian may by his conduct convey to the motorist the impression that he recognises and intends to respect, the motorist right of way. When such an impression is conveyed by the pedestrian, the motorist may proceed on his way accordingly. Whether the motorist is reasonably entitled to assume or infer, from the conduct of the pedestrian, that his right of way is being recognised and respected, is a question of fact to be decided in each case. When the assumption is not justified, the motorist must regulate his driving to allow for the possibility, or probability, that his vehicle may not enjoy an unobstructed passage. Where a pedestrian reacts appropriately to the presence of an approaching vehicle or to a warning by the vehicle, the critical enquiry is whether a reasonable motorist would foresee the reasonable possibility that the pedestrian might nonetheless act irrationally by moving, perhaps suddenly into

the vehicle or its path. The possibility exists for young children, for adults who are plainly drunk and may arise in other cases."

- [13] In my view the decision in Manuel *supra* clearly set out the duties of a motorist when a pedestrian is crossing the road as well as the duties of a pedestrian when crossing the road.
- [14] Under reasonable circumstance, a reasonable pedestrian on the side of the road would not foresee that a vehicle would without warning leave the road and drive onto to the pavement to collide with the pedestrian. Therefore the driver of a vehicle has a duty to take precaution to avoid a collision with a pedestrian who is on the side of the road.
- [15] The plaintiff is the only witness in this matter and the defendant has agreed in the stated case that the plaintiff is the only witness. Therefore the defendant could not challenge the version of the plaintiff as the defendant did not have any witnesses.
- [16] It is common cause that the plaintiff was a pedestrian when she was hit by a motor vehicle that was driven by the insured driver. It is further common cause that the plaintiff sustained serious injuries due to the collision.
- [17] In the stated case the plaintiff is of the view that the defendant should be held 100% liable for the damages the plaintiff suffered. and the defendant is of the view that the plaintiffs claim should be reduced to the extent of the plaintiff contributory negligence, in accordance with the plea in terms of Section (1) of the Apportionment of Damages Act 34 of 1956.
- [18] Though the plaintiff did not give oral evidence, the evidence from the submitted exhibit as well as the stated case, it is abundantly clear that the defendant is liable to the plaintiff.
- [19] I therefore conclude that the plaintiff ought to succeed to recover her full proven damages against the defendant.
- [20] Therefore the defendant shall be 100% liable for the plaintiff's proven or agreed damages consequent upon the injuries sustained

during the accident that occurred on 23 July 2010.

General Damages

- [21] The plaintiff has claimed an amount of R1 500 000 for general damages. The reports of the various experts are admitted and the parties agreed in the stated case that these reports will be adjudicated upon in respect of the general damages, loss of income

and earning capacity.

- [22] The parties agreed that no oral evidence was to be led and that issues in dispute were to be determined by the court solely on the evidence contained in the various expert reports filed by the plaintiff.

Evidence of the expert witnesses

[23] Dr E Schnaid Orthopaedic Surgeon. He stated that the plaintiff sustained multiple injuries in the motor vehicle accident. The

plaintiff experiences pain in the cervical spine, chest, lumbar spine, right knee, left tibia/fibula, left knee and frequent headaches. Dr Schnaid indicated that the plaintiff will benefit from physiotherapy and anti-inflammatory agents. The right knee of the plaintiff has restricted movement and might need a knee replacement which will relieve the 40% knee function that is lost. Dr Schnaid concludes that the plaintiff is now unemployed and will not be able to enter the labour market, until she is fully rehabilitated.

[24] Dr Okoli, Neurosurgeon, he interviewed the plaintiff on 11 February

2016. He stated that the plaintiff sustained a craniofacial blow with degloving of the scalp. While the plaintiff was in hospital, she developed symptoms of acute psychosis and confusion. The plaintiff suffered post traumatic amnesia that covers the entire period of her hospitalisation, which was approximately for one month. After the plaintiff's discharge from hospital she continued having behavioural disorder, psychotic episodes, aggressiveness, violent outburst and hyper-sexuality. He highlighted that 6 years after the accident the plaintiff neuro-behavioural, neuropsychiatric and neurocognitive disorders have persisted as well as epileptic seizures. He concludes that the plaintiff will further benefit from psychiatric treatment and that the plaintiff's epilepsy is poorly controlled, which may lead to the curtailment of her life expectancy by up to 5 years.

[25] Dr TAS Melapi Psychiatrist interviewed the plaintiff on 10 February

2016. He indicated that the plaintiff seemed to have some significant cognitive impairment and showed no sign that she is able to care for herself and requires the mother to assist her. Dr Melapi confirmed that the plaintiff was diagnosed with epilepsy within a few months after the accident, for which she is not taking medication. He concludes that given the plaintiff neurological status, the possibility of being gainfully employed is severely reduced. In view of the epilepsy he confirmed that the plaintiff general decrease in life expectancy is by 3 to 5 years.

[26] Dr Cheyip Neurologist, he stated in his report that the plaintiff has since the accident experience headaches three to four times per week. These headaches usually present for a long time, however these headaches are not related to the epileptic seizures. He indicated that the plaintiff confirmed that she has epileptic attacks at least once a month. The plaintiff does not take medication for the epilepsy as the family has not taken her to the hospital for the epilepsy to be treated. He reported that the plaintiff informed him she was diagnosed with HIV infection in January 2012 and has been on ARV since then. The plaintiff's mother also informed Dr Cheyip that she does not know when the plaintiff was diagnosed with HIV as she only became aware of it in 2013/2014. Dr Cheyip concludes that the plaintiff be referred to a psychiatrist for treatment of the psychosis.

[27] Dr Nyoka ENT specialist, with regard to the plaintiff's ENT examination, there was mild nerve deafness in the left ear. Both

eardrums were intact with no evidence of infections. He stated that the audiogram showed normal hearing in the right ear and normal

hearing in the left ear with a mild nerve deafness in the high frequencies (at 4 - 8 KHZ).

[28] Professor Katijah Khoza-Shangase, Speech Pathology and Audiology. She confirmed that the plaintiff presented with a mild high frequency sensor neural hearing in the left ear. The plaintiff will require ENT assessment and continued management and monitoring.

[29] Mrs Rene Walker Occupational Therapist, is of the view that the plaintiff will only be able to work under supervision, that is in a sheltered environment due to the plaintiff reduced fundamental activity as well as the reported uncontrolled seizures. Further the plaintiff will not be able to travel on her own. She will need continued supervision and care.

The Joint Minute between the various experts

[30] Dr Schnaid and Dr Moloto with regard to future medication, Dr Moloto was of the view that no future orthopaedic treatment is needed. Dr Schnaid is of the opinion that the cervical spine, lumbar, left ankle and right knee should continue to be treated in the future. Dr Moloto is of the view that the accident has not affected the plaintiff's studies. Thus the plaintiff has the opportunity to register with an ABET centre to complete her studies. Dr Schnaid is of the opinion that the plaintiff's ability to do ambulatory and physical work will be negatively affected and that the plaintiff's academic aspects should be referred to the appropriate experts.

[31] Mrs Rene Walker and Dr Success Moagi, Occupational Therapists they both agree that the plaintiff's neurocognitive, neurobehavioral and neuropsychiatric difficulties render her unemployable in the open labour market. They further agree that the sequela of the head injury is complicated by the psychological actions and physical pain. That is the plaintiff suffered loss of amenities in the significant areas of her life.

[32] Mrs Sandra Moses and Ms Moipane Kheswa, industrial psychologists. Ms Moses is of the opinion that the plaintiff, with her epilepsy should be precluded from working with dangerous, unguarded or moving equipment or machinery. It would therefore be impossible for the plaintiff to secure and sustain any gainful employment in the future. Ms Kheswa agrees with the other experts that the plaintiff's poor level of education would not have worked to her advantage in the highly competitive open labour market contending that she has to compete with matriculates and graduates for limited jobs in the open labour market.

[33] In *Protea Insurance Company v Lomb* 1971 (1) SA 530 CA) at 534 and *Road Accident Fund v Marunga* 2003 (5) SA 164 (SCA) at 23 it was stated that: "In cases in which the question of a claim for general damages comprises of pain and suffering, disfigurement, permanent disability and loss of amenities of life arises...., the court should consider all the facts and circumstances of case and has a wide discretion to award what it considers to be fair and adequate compensation to the injured party."

[34] In *Southern Insurance Association Limited v Baily* NO. 1984

(1) at 99 H the court said

"The AD has never attempted to lay down rules as to the way in which the problem of an award of general damages should be approach.....".

[35] Taking further note from the judgement of Holmes J, (as he then was) in *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 D at 287 E - F, he cautioned not to pour largesse from the horn of plenty at the defendant's expense.

[36] An award for general damage should be reasonable and fair. The court should take cognisance of the fact that it has a wide discretion when awarding general damages. In *Marunga supra* the approach the court adopted that awards in the past have been insufficient in some respects and the new tendency, as followed in other countries is to increase awards, should be followed here. In *De Jongh v Du Pisante* NO 2005 (5) SA 547 SCA at para 60 case the tendency to increase awards was recognised. The court has to recognise that awards must be fair to both sides.

[37] The plaintiff has suffered severe brain injury. In fact the medical experts agree that the epilepsy seizures that the plaintiff is currently experiencing are as a consequence of the brain injury as caused by the accident. The plaintiff had a drain inserted in her lungs to drain the blood out. The plaintiff had an open reduction and internal fixation of the left tibia and fibula. The plaintiff was discharged with a plaster of Paris. She continues to experience headache, fatigue, memory lapses and suffer from psychosis. The plaintiff has become hyper-sexual post the accident and has been diagnosed with HIV, though the mother was unaware as to when she has acquired the infection. The court has to take into consideration all these factors in order to have a fair and balance award for general damages.

[38] The nature and extent of the plaintiff's pain and suffering, loss of amenities are well documented in the various medical reports. It is unequivocally stated the plaintiff's injuries exacerbated by the brain injury are irreversible referring specifically to the epileptic seizures. These epileptic seizures can be controlled by medication. But it appears the plaintiff is depended on her mother to take her for check-up as the plaintiff indicated to the medical experts that she does not take treatment for the epileptic seizures. This attest to the information of the experts that the plaintiff has become dependent on family members. Therefore the consequences of the accident will be with the plaintiff for the rest of her life.

- [39] The court concludes that the principle remained that the award should be fair to both sides; it must give just compensation to the plaintiff, but not pour out largesse from the horn of plenty at the defendant's expense as pointed out in Pitt supra.
- [40] The plaintiff's counsel submitted that taking into account the gravity and severity of the plaintiff's injuries, the plaintiff should be awarded an amount in the sum of R 1 500 000 for general damages.
- [41] There is no doubt that the plaintiff sustained serious injuries as a result of the accident. Furthermore the pain and loss of amenities suffered by the plaintiff are overwhelmingly stated in the medical reports of the various experts. Due to these injuries and the sequelae thereof, the plaintiff cannot even manage to take care of herself. She has to be reminded to wash. She is unable to take care of her medical condition by not attending clinic in order to have the epilepsy seizures controlled.
- [42] Having regard to the above in my opinion an award of R1 000 000 would be a fair compensation in relation to general damages.

Past loss earnings

- [43] The plaintiff's loss of earning and loss of future earning of capacity have been calculated by Munro Actuaries. The plaintiffs

Industrial Psychologist is of the view that the plaintiff would have obtained a tertiary qualification and entered the open labour market at Paterson 81 skilled level and with further training the plaintiff would have progressed to Paterson C2 by approximately 45 years of age. The defendant's Industrial Psychologist indicates that the plaintiff was unemployed at the time of the accident and considering her low educational level, the plaintiff could have suffered long periods of unemployment since she would have to compete with unemployed matriculates and graduates who are competing for limited jobs. The defendant's counsel also submitted that the plaintiff cannot claim past loss income as she was a scholar at the time of the accident. Counsel further submitted that a 35% contingency be added to scenario 1 of the actuarial report. Counsel for the plaintiff submitted that the plaintiff would have been employed had she finished her grade 12 in December 2013. Thus the plaintiff should be awarded an amount for past loss of income.

- [44] I am inclined to agree with the defendant, that the plaintiff did not suffer any loss of income as she was a scholar at the time of the accident. It is common knowledge that the country has limited job opportunities even for graduates who are struggling to find employment. The plaintiff having been in grade 8 in 2010 at the age of 20 years. The plaintiff might have finished grade 12 and would be 24/25 years. The court takes cognisance of the fact that it was not due to the plaintiff doing, but of that of the parents by removing her every year to another school. Therefore post morbid, the plaintiff would still have been a scholar and circumstances would not have improved as she was in grade 8 at the time of the accident. It would therefore be difficult that the plaintiff would have been employed with a grade 8. I therefore conclude that past loss of income is R Nil.

Future loss of income

[45] The plaintiff must prove that she will probably suffer financial loss or a diminished loss of income. In *Sandler v Wholesale Coal Suppliers Ltd* 1941 (A) 794 the court stated that: "It is no doubt exceedingly difficult to value the damage in terms of money, but that does not relieve the court of the duty of doing so upon the evidence placed before it. This is a principle which has been acted on in several cases in South African courts."

[46] In *Rudman v Road Accident Fund* 2003 (2) SA 234 at para (11) the court said: "There must be proof that the reduction in earning capacity indeed gives rise to pecuniary loss."

[47] The evidence of the Industrial Psychologist Ms Sandra Moses and Ms Moipane Kheswa they both agreed that:

"Ms M. is unlikely to be employable in the open market."

"Regarding the reported epilepsy, this may have a significant implication on Ms M.'s occupational progress"

[48] Further aggravating the conditions of the plaintiff's epilepsy is that she is not taking medication and at this stage the epilepsy is uncontrolled as stated by both Dr Okoli and Dr Melapi.

[49] According to Mr Munro, the plaintiff's prospective value uninjured in scenario 2 is R745 900 with a contingency of 15% applicable total loss is R703 745. The plaintiff's injured income in scenario 1 is R4 938 585 applying 35% contingency the total loss is R3 210 080,25. This is based on the fact that the plaintiff would never be

employed again due to the irreversible head injury as well as the epileptic seizures.

[50] Contingencies have been described as the normal consequences and circumstances of life, which beset every human being and which

directly affects the amount that a plaintiff would have earned. See *AA Mutual Insurance v Van Jaarsveld* 1974 (4) SA 729 (A).

[51] In his book *The Quantum Year Book* Kock states that when assessing damages of loss of earnings, it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculations. The deduction is the prerogative of the court. General contingencies cover a wide range of considerations which may vary from case to case and may include: taxation, early death, loss of employment, promotion prospect, divorce etc.

[52] Kock refers to the following as some of the guidelines regarding contingencies: Normal contingencies as deduction of 50/o for past loss and 15% for future loss. Sliding scale %% per year to retirement age i.e. 25 % for a child, 20% for a youth and 10% in the middle ages. See *Goodall v President Insurance* 1978

(1) SA

389. Differential contingencies are commonly applied, that is to say one percentage applied to earnings but for the accident, and a different percentage to earnings having regard to the accident.

[53] In this matter, there are no opposing experts report regarding the calculations nor did counsel for the defendant had any instructions

from the defendant and therefore the matter proceeded on the stated case of the plaintiff. Furthermore due to the plaintiff's injuries,

as well as the uncontrolled epilepsy and that the industrial Psychologist agreed that the plaintiff is unemployable.

[54] Dr Okoli stated that the past traumatic epilepsy which is poorly controlled may lead to curtailment of the plaintiff's life expectancy up to 5 years. Dr Melapi is of the view that with epilepsy as a diagnosis there is a general decrease in life expectancy of 3 to 5 years. The emphasis's that the treatment for this condition is for the rest of the plaintiff's life.

[55] Under the circumstances therefore I am of the view that the actuarial calculation in scenario 1 with

regard to future loss of income with a 35% applicable contingency are fair and reasonable, and will serve to balance the interests of both parties.

[56] The plaintiff's claim is calculated as follows: General damage R 1 000 000

Past loss of earning R Nil

Future loss of earning R 3 210 080, 25

[57] Accordingly the following order is made:

1. The defendant to pay the plaintiff the total sum of R4 210 080,25 (Four hundred and twenty one million eight

thousand and twenty five cents)

2. The draft order with its amendments as initialled by me, marked X and dated 30 November 2017 is made an order of court.

S. CHESIWE, JA

On behalf of Plaintiff: Adv. Nkabane Zwane

Instructed by:

SB Seshibe Attorneys

Bloemfontein

On behalf of Defendant: Adv. K Naidoo

Instructed by:

Maduba Attorneys

IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case No: 5928/2015

Heard on 08 September 2017,

Before the Honourable Judge: CHESIWE

ADVOCATE MANTLAMA POMPO obo K.E M. Plaintiff

ROAD ACCIDENT FUND

Defendant

DRAFT ORDER

Having heard counsel for the Plaintiff and the Defendant the following order is made:

1. The Defendant is liable for 100% of the Plaintiff's agreed or proven damages;
2. It is recorded that defendant undertakes in terms of Section 17(4) of the Road Accident Fund. 56 of 1996 to furnish K. E. M. with 100% of the costs of any future accommodation of the plaintiff in a hospital or nursing home as well as the treatment of and or rendering of a service to her or supplying of goods due to the injury sustained by her in the accident and the sequelae thereof after such costs have been incurred and upon proof thereof;
3. The defendant shall pay to the plaintiff the amount of R 3 210 080, 25 in respect of the plaintiff's past and future loss of earnings;
4. The defendant shall pay to the plaintiff the sum of R 1 000 000, 00 in respect of general damages for pain and suffering as well as general amenities of life
5. The amounts referred to in paragraphs 3 and 4 above. shall be paid on or before 30 September 2017 into trust account of the plaintiff's

attorney of record with the following bank details:

SB SESHIBE ATTORNEYS

Bank: Nedbank

Account Number: [1...]

Branch: Carlton Center

Type of Account: Trust Account

Ref:Mr/RAF40/2015.

6. Failure to make payment by aforementioned date will result in interest calculated at 10.25% per annum being charged from date

hereof to date of payment in full.

7. The plaintiffs attorney of record shall retain the aforesaid amount. net of the attorney's costs . in an interest-hearing account in terms of Section 78(2) (A) of the Attorneys Act, for the benefit of K. E. M. . pending the creation of the trust referred to in 8 below and the issuing of letter, of

Authority.

8. The plaintiffs' attorney of record shall pay the amount set out in 7 above. together with any accrued interest. over to the trustee of a trust, which is to be created within four months from date of this order, and in respect of which trust, the following shall apply:

8.1 The trust shall be created in accordance with the trust instrument established in accordance with the provisions of the Trust Property Control Act, number 57 of 1988. in favour of K. E. M.:

8.2 The trustee, if appointed. is to furnish security to the satisfaction of the Master in terms of Section 77 of the Administration of Estates Act, No 66 of 1965. the annual costs of such security to be paid by the defendant:

8.3 Should the trustee fail to furnish security within a reasonable time or vacate his office, the Master is authorised to appoint an alternate nominee of his/her choice: And

8.4 The trust instrument shall make provision for inter alia the following:-

8.4. 1 K. E. M. to be the sole income and capital beneficiary;

8.4.2 the Trustee of the Trust to be formed shall take all the requisite steps to secure an appropriate bond of security to the satisfaction of the Master of the High Court for the due fulfilment of his/her obligations and to ensure that the bond of security is submitted to the Master of the High Court at the appropriate time as well as to all other interested parties if so required by the Master of the High Court:

8.4.3 the trustee shall be entitled, in the execution of its duties and fiduciary responsibilities towards the beneficiary of the trust, to have the attorney and own client costs and disbursements of the plaintiff's attorneys of record taxed, unless agreed;

8.4.4 the trustee shall be entitled to administer on behalf of the patient. the undertaking referred to in 2 above and to recover the costs covered by such undertaking on behalf of the trust for the benefit of

the trust;

8.4.5 the duty of the Trustee to disclose any personal interest in any transaction involving the Trust property to the Master:

8.4.6 the termination and or amendment of the Trust with the leave of the High Court alternatively termination of the Trust upon the death of K. E. M. whereafter the trust estate shall devolve on her estate;

8.4.7 the Trustee shall be entitled, if he deems it necessary, to utilise the income and the capital of the Trust for the reasonable maintenance of K. E. M. or for any other purpose which the trustee may decide to be in the interest of K. E. M.;

8.4.8 the trust property is excluded from any community of property and/or accrual in the event of the marriage of K. E. M.:

8.4.9 the procedure to resolve any potential disputes are subject to the review of any decision made in accordance therewith by this Court:

8.4.10 the suspension of K. E. M.'s contingent rights in the event of cession, attachment or insolvency prior to the distribution or payment thereof by the trustee to K. E. M.; and

8.4.11 the trust property and administration of the trust be subject to an annual audit.

8.4.12 The reasonable remuneration of and the reasonable costs incurred by the trustee of the trust to be informed in administering and managing the capital amount referred to in paragraphs 3 and 4 above, which remuneration and costs shall not exceed the equivalent amount which a curator bonis would have been entitled in terms of and as determined by the Administration of Estates Act, Nr 66 of 1965, as amended, and the prescribed tariff applicable to curators as contained in the Government Gazette Notice R1602 of 1st of July 1991, and, more specifically,

paragraphs 3(a) and 3(h) of the schedule thereto;

9. The provisions referred to in paragraphs 8.4.1 to 8.4.12 above shall, in accordance with the provisions of the Trust Property

Control Act No 57 of 1988, be subject to the approval of the Master of the High Court:

10. The Plaintiffs attorneys are authorised to make any reasonable and necessary payments, until such time as the trustee is able to take control of the capital amount and to deal with same in terms of the trust deed, to satisfy the needs of the patient that may arise and that is required in order to satisfy any reasonable need for treatment and/or equipment as may be necessary in the interim period

11. In the event of the trust not being created within four months from date of this order, plaintiff and her attorney are directed to approach this court within four months after the expiry of the first period of four months. to obtain further directions with regard to the manner in which the capital amount should be further administered on behalf of K. E. M.;
12. Defendant is to pay Plaintiff's taxed or agreed Party and Party costs on a High Court scale including the costs of Plaintiff's

counsel from 05 September 2017 to 08 September 2017:

13. The costs aforementioned will include, inter alia:

13.1 All the expert reports which are in the possession of the Defendant and of which Notice in terms of the Rules have been given, the preparation of all reports (including the costs of all x-rays and scans) and qualifying and reservation fees of the experts. addendum repo11s. joint minutes and preparation of RAF4 reports (if any), as the Taxing Master ma). upon taxation. detemline;

13.2 The travelling and accommodation costs of the Plaintiff for attending the medico-legal appointments:

14. The payment of the costs referred to above is subject to the following:

14.1 The Plaintiff shall. in the event that costs are not agreed between the

Defendant and the Plaintiff's attorney, serve the notice of taxation on the Defendant's attorney of record: and

14.2 Following agreement on or taxation of the party and party costs. the Plaintiff shall allow the Defendant 14 (FOURTEEN) court days after the allocator has been made available to the Defendant. to make payment of the taxed or agreed party and party costs.

15. This order must be served by the plaintiff's attorney on the Muster of the High Court within 30 days from the date of receipt of this order from the registrar in typed form.

BY ORDER

REGISTRAR

Plaintiffs Counsel: AdvNkabane Zwane

Cell: 072 492 7372

Defendant's Counsel: Adv Karlin Naidoo

Cell: 076 441 9170

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Prepared on 23 October 2026 · Esheria