Editorial note: Certain information has been redacted from this judgment in compliance with the law.

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 1678/19

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

_____ _____
DATE SIGNATURE

In the matter between:

ADV W BURGER N.O Plaintiff
(As *curator ad litem*
Obo N: L)
and

ROAD ACCIDENT FUND Defendant

Neutral Citation: *Adv W Burger N.O (As curator ad litem obo N L) v Road Accident Fund* (Case No: 1678/19) [2023] ZAGPJHC 665 (8 June 2023)

Summary: Default trial against the Road Accident Fund. The determination of an appropriate award of loss of earnings in circumstances where actuarial report rejected on account of cognitive fallout not being established.

JUDGMENT

AYAYEE AJ:

[1] On 9 March 2018 at about 15h30 the plaintiff, then a 10-year-old boy and a pedestrian, was a victim of a motor vehicle accident. So effective has the regime introduced by the Road Accident Fund Act No. 56 of 1996 (*"the Act"*) become in compensating victims who suffer such needless injury that at no point was the negligent insured driver so much as identified during the Court proceedings.

[2] On 20 April 2023 the plaintiff assisted by a curator, approached this Court flagged by various experts, as has become the norm, to advance a claim for compensation for:

(i) General damages;

(ii) Past hospital, medical and related expenses;

(iii) Future hospital and medical expenses; and

(iv) Future loss of income.

Postponement Application

[3] At the commencement of the proceedings, the Court was advised of the presence of a legal representative acting on the instructions of the Road

Accident Fund (*"the Fund"*) a Mr Daniel Coetzee from the State Attorney, Johannesburg, who advised that the he held concrete instructions to seek a postponement of the plaintiff's claim for past hospital, medical and related expenses.

[4] It must be observed that this action proceeded by default, the Court having struck out the Fund's defence on 24 February 2022. On 8 June 2022 a notice of set down for default judgment was served upon the Fund. In those circumstances it would in this Court's view be inimical to the interests of justice for a Court to entertain an informal postponement application brought at the dearth. As held by the Constitutional Court in the matter of ***Shilubana and Others v Nwamitwa (National Movement of Rural Women and Commission for Gender Equality as amici curiae)***[1] there are a non-exhaustive list of considerations which must influence a Court in determining whether or not a postponement should be granted. Paraphrasing aspects of the judgment, these factors are *inter alia*:

4.1 Keeping in mind the significance of the underlying issues and context;

4.2 Bearing in mind that a postponement cannot be claimed as of right and in determining if good cause has been shown for granting that indulgence, the Court may have regard to whether:

4.2.1 the application was timeously made;

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[1] 2007 (5) SA 620 CC.

4.2.2 the explanation given by the applicant is full and satisfactory;

4.2.3 the prejudice to the other parties;

4.2.4 whether the application is opposed.[2]

[5] In ***eThekwini Municipality v Ingonyama Trust***[3] the Constitutional Court also stated:

> *"The conduct of litigants in failing to observe the Rules of this Court is unfortunate and must be brought to a halt. … It is unacceptable that this is the position in spite of the warnings issued by this Court in the past. …"*[4]

[6] The judgment goes on to record:

> *"The Court cannot continue issuing warnings that are disregarded by litigants. It must find a way of bringing this unacceptable behaviour to a stop. One way that readily presents itself is for the Court to require proper compliance with the Rules and refuse condonation where these requirements are not met. Compliance must be demanded even in relation to Rules regulating applications for condonation. …"*[5]

[7] This Court sees no reason why the plaintiff as a victim of a road accident

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2 *Ibid* p 622-624.

3 (CCT 80/12) [2013] ZACC 7.

4 Ibid, para 26.

5 Ibid, para 27.

must be made to suffer further inconvenience and prejudice as a result of the Fund's administrative bungling. It would in any event be irregular for orders by the interlocutory Court on application by undoubtedly frustrated litigants that a trial may proceed on default, to be frustrated by informal applications for postponement at the dearth.

[8] For that reason, this Court determined to refuse the postponement application.

[9] The Court however in the exercise of its discretion, permitted Mr Coetzee to ask clarifying questions of certain of the plaintiff's witnesses insofar as it determined that this would prove useful to the Court.

The trial

[10] During the course of the trial, the plaintiff pursued damages under the heads of:

(i) Past hospital and medical expenses in the sum of R597 038,74;

(ii) Future hospital and medical expenses in the sum of R896 683,00;

(iii) Future loss of earnings in the sum of R5 540 731,00;

(iv) General damages in the sum of R1 500 000,00.

[11] The plaintiff thus cumulatively seeks compensation in the amount of R8 534 552,74 said to flow naturally in consequence of the motor vehicle

accident.

[12] The Court was advised that the Fund has given a general undertaking to qualifying persons in terms of section 17(4)(a) of the Act, with the result that the claim for future hospital and medical expenses was obviated. The trial proceeded on the balance of the heads of damages sought.

[13] Insofar as the plaintiff's claim for general damages is concerned, the evidence led at trial established that post the motor vehicle collision, the plaintiff was airlifted to the Sunshine Hospital where he spent two weeks in the Intensive Care Unit in an induced coma as a result of his injuries. He thereafter spent close to two months in High Care.

[14] The evidence reveals that the plaintiff suffered serious injuries, including the degloving of his right leg, abrasions to his right arm and back, a head injury, and underwent an above knee amputation of his right leg. As a result, he continues to experience physical pain in the form of headaches, constant fatigue, phantom pains in his right leg as well as pain in his knee, shoulders and back which impacts his daily activities and mood. He has limited capacity to participate in sporting activities that he used to enjoy, has become withdrawn from friends due to bullying, embarrassment and depression arising out of his circumstances which significantly impact his quality of life.

[15] The evidence of Dr Van den Bout, an orthopaedic surgeon, reflects that the plaintiff was in severe pain for about a period of two weeks post the accident

and in moderate pain for a period of six weeks thereafter consequent the amputation.

[16] The evidence of Dr Kritzinger, a neurologist, was that the nerve endings in the plaintiff's amputated leg would continue to grow causing a clumping of the nerves which would be extremely painful and would have to be excised with future surgery.

[17] This Court is of no doubt that the plaintiff has proven bodily impairment, has suffered greatly and has established his cause of action on the merits for general damages.

[18] The more controversial aspect of the plaintiff's claim, is that for future loss of earnings. It was advanced at trial based on various expert reports that beyond the physical and psychological impact of the accident, which were convincingly established, that the plaintiff further presented with certain cognitive deficits in the area of attention, working memory, memory, visual memory, concentration, mental tracking, rote teaming, inferential reasoning and information processing speed. Consequently, so it was argued this would impede the plaintiff's further academic development and affect his future earning capacity. It was advanced that the plaintiff's educational potential has been restricted to that of a national diploma or a similar NQF5 qualification in circumstances where based on his family history he was likely to have achieved pre-accident an NQF8 qualification.

[19] It became increasingly evident during the course of the trial, that while the

plaintiff's experts were in all instances well qualified, their opinions as to the existence of cognitive deficits were premised on the unproven assumption that the plaintiff had suffered a *"moderate closed head injury"*.

[20] The evidence led at trial, by the neurologist, Dr Kritzinger, was that he was unable to classify the nature of the head injury suffered by the plaintiff but leaned more towards to it being a *"mild closed head injury"*. He gave evidence that 90% of children with such injuries achieve a full recovery and that in the case of the plaintiff, he was of the opinion that his intellectual capacity presented as normal although the plaintiff showed signs of hyperactivity with an attention deficit disorder. Dr Kritzinger stated that he did not believe that the plaintiff suffered severe cognitive deficits and that his hyperactivity could be treated by the employment of medication such as Concerta.

[21] Questioned as to why his addendum report stated that the plaintiff had suffered a *"moderate head injury"*, Dr Kritzinger indicated that this was because he assumed the presence of cerebral edema but immediately also conceded that there was no direct evidence of this, save for a report of a radiologist who was not called to give evidence.

[22] Ms Marina Genis, a clinical psychologist, also gave evidence on the plaintiff's neuro-cognitive functioning and psychological functioning post the accident. Her evidence was that the plaintiff had suffered cognitive decline and certain psychiatric disorders consequent on the motor vehicle collision, that he had lower concentration than the norm, as well as memory problems

which would affect his future education. She further opined that the plaintiff exhibited symptoms of depression and post traumatic stress disorder and had become very self-aware of his disability, thus affecting his amenities of life. She concluded that his test results could be accounted by either a mild or moderate brain injury and was irreversible due to its organic etymology. When clarification questions were put to her by the Fund's representative, she conceded that at the time her tests were carried out the plaintiff was not on medication which could bring about some improvement.

[23] The evidence of Dr Joseph Seabi, educational psychologist, was that the plaintiff's IQ was borderline and presented in the low average range at the first assessment. His stated that the plaintiff struggled with memory and number problems although he fared better on language tests. He was of the opinion that some medication could be employed to assist the plaintiff and that this would have short-term benefits.

[24] It became apparent during his evidence, that Dr Seabi had based much of his conclusions on the fact that the plaintiff had suffered a *"moderate head injury"*, a conclusion he had obtained from Dr Kritzinger's report. This of course presents a difficulty, as Dr Kritzinger had recanted such position, being of the view that the plaintiff presented with a mild head injury. A further difficulty with Dr Seabi's evidence was that he gave evidence that no educational interventions, such as remedial classes had been employed to improve the plaintiff's performance, which contradicted later evidence by both the plaintiff and the plaintiff's father. The plaintiff's father testified that after the accident the plaintiff has been attending extra classes at *"McGraff"*.

The plaintiff himself testified that he was attending remedial classes provided by *"Black Child Tutoring Services"*. Lastly, Dr Seabi could not convincingly explain why this Court could not take into account the improvement in the plaintiff's Grade 9 results, post these interventions, as evidence that the poor performance observed were an anomaly, attributable to the plaintiff having missed out on several classes. Dr Seabi ultimately conceded that the plaintiff's Grade 9 results were in the normal margin.

[25] Dr Seabi's lack of knowledge of the fact that the plaintiff was undergoing remedial interventions to improve his grades, is a cause for concern. As an educational psychologist it would ordinarily be expected that these would be matters that he should have specifically canvassed in his two assessments of the plaintiff. It lends a generalised taint to his opinion, and accordingly the Court is of the view that his conclusions that the plaintiff has suffered a cognitive fallout caused by the accident, cannot be accepted.

[26] Barring the difficulties of the expert witnesses to establish a cognitive deficiency arising from the accident, the evidence concerning the physical impairment and the psychological impact of the motor vehicle collision, were all well-established.

Assessing quantum

[27] The first aspect this Court turns to, is the plaintiff's claim for past hospital and medical expenses in the sum of R597 138,74. These damages are of course a natural consequence, incurred to treat the various injuries

sustained by the plaintiff during the accident. The evidence of Mr Nonyongo, the plaintiff's father, was that interventions such as the continuous need to adjust the plaintiff's prosthesis uses up virtually all of the family's medical savings. Some issue was raised by the representative of the Fund, Mr Coetzee, that the plaintiff had failed to adduce any evidence concerning the past hospital and medical expenses incurred and further that since the evidence of Mr Nonyongo establishes that the plaintiff had received the benefit of being on medical aid, that none of these expenses claimed under this head of damages, was in fact incurred and could not constitute a loss.

[28] This Court disagrees with the Fund's contention that no evidence of past hospital and medical expenses was adduced. In the context of a trial being proceeded with by default it is typical that certain issues which are not in themselves contentious will not attract focused attention. A reference however to the plaintiff's indexed medical schedule and supporting vouchers bundle, at CaseLines section 23 reflects that a full schedule of medical costs incurred with supporting vouchers had been provided. It is further observed that the plaintiff had given notice in terms of Uniform Rule 35(9) that the schedule and the attached documents be admitted as what they purport to be. The Fund was forewarned that if it did not provide such admission the plaintiff would be entitled to produce the said documents at trial without proof. Attached to the notice, was a further confirmatory affidavit provided by a person in the employ of the Third Party Recovery Department of Discovery Health attesting to having perused the vouchers and schedules and confirming that these past medical expenses are related to the claims paid

for by the medical scheme for the treatment of the injuries sustained by the plaintiff in the motor vehicle accident.

[29] It is further important to observe that at the commencement of argument, the Fund had sought a postponement so as to afford it a further opportunity to investigate these costs said to have been incurred. That postponement application was refused. In those circumstances it must be accepted that the Fund was at all times aware of the evidence relied upon by the plaintiff to establish the quantum of past medical expenses incurred. The cumulative expenses incurred are in any event referred to in the written submissions of the plaintiff's counsel. It would be inappropriate in this Court's view to permit a party who is debarred from participating in the proceedings to simply snipe from the side lines and upon such basis seek to exclude an entire head of damages. That said the observations of Mr Coetzee that the plaintiff has inappropriately sought to claim the costs of male circumcision in the sum of R1 808,60 is correct. This amount must be excluded. Despite the Fund having been provided an opportunity to participate to a limited extend in the proceedings, it advanced no basis for the exclusion of other medical costs claimed. These expenses must accordingly be accepted as having been incurred.

[30] The next point of contention under this head of damage, was the Fund's contention that it would be inappropriate to award the plaintiff damages in respect of past medical expenses incurred, in circumstances where such expenses were borne by the medical scheme. Advocate Barreiro appearing for the plaintiff made short work of this argument by referring to the yet

unreported decision of ***Discovery Health (Pty) Ltd v Road Accident Fund and Another***[6] which confirms the legal principle that *"a plaintiff's insurance, her indemnification in terms of it, and the subsequent subrogation of her insurer are all matters of no concern to the third party defendant"*.[7] With reference to the aforementioned decision, the authorities therein cited of longstanding nature and the fact this Court was advised from the bar, that a petition to the Supreme Court of Appeal against this judgment has been dismissed, this Court must accept that the present legal position to which it is bound is that the Fund cannot seek to free itself of the obligation to pay full compensation to victims of motor vehicle accidents by adducing evidence that these costs were borne by a private medical scheme.

[31] Concerning the plaintiff's claim for future hospital and medical expenses in the sum of R896 683,00, counsel for the plaintiff in argument and in her written submissions conceded that should an undertaking be provided in terms of section 17(4)(a) of the Act the need to pursue this head of damage would be obviated.

[32] The matter of ***Knoetze obo M B Malinga v Road Accident Fund*** [8] records a blanket election by the Fund to furnish an undertaking to every claimant who is entitled to a claim for payment for future medical and ancillary expenses in terms of section 17(4)(a) of the Act. This Court is accordingly satisfied that this is a case where an order compelling the provisioning of

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6 (2022/016179) [2022] ZAGPPHC 768 (26 October 2022).

7 *Ibid* para 22.

8 *Knoetze obo Malinga and Another v Road Accident Fund* [2023] 1 All SA 708 (GP) (2 November 2022).

such an undertaking may appropriately be granted. The uncontested evidence is that the plaintiff suffered a serious injury and a whole bodily impairment of 41%.

[33] The Court also holds that the plaintiff has proved an entitlement to be awarded general damages. General damages by their nature are designed to compensate a victim for damages which cannot be quantified with reference to actual patrimonial loss. In ***Smit v Road Accident Fund***[9] Makgoka J held:

> *"In determining the award of damages to be made under the heading general damages there are of course no scales upon which one can weigh things like pain and suffering and loss of amenities of life, nor is there a relationship between either of them and money which makes it possible to express that in terms of money with any approach to certainty. The broadest general consideration and the figure arrived at must necessarily be uncertain, depending upon the judge's view of what is fair in all circumstances of the case."*

[34] Ultimately a Court confronted with a claim for general damages, must do the best it can on the evidence available by assessing damages with regard to all the relevant facts and by applying a general discretion.

[35] On the facts of the present matter, the plaintiff has been through an extremely traumatic experience which has resulted in significant bodily impairment as well as psychological damage. The plaintiff will continue to

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[9] 2013 (6A4) QOD 188 (GNP).

experience pain as a result of neuroma and due to his permanent disability, his ability to freely enjoy the amenities of life have been permanently compromised. Taking note of these factors and the acute pain suffered by the plaintiff during hospitalisation it is this Court's view that a significant amount in general damages may appropriately be awarded.

[36] In the case of ***Mthethwa v Road Accident Fund***[10] an award of general damages in the present sum of R1 549 000,00 was made in circumstances where the victim of the motor vehicle collision had similarly had an above knee amputation. Yet in that case the victim's extensive injuries also led to the amputation of her arm shortly after the collision. That victim like the plaintiff *in casu* pre-accident, partook in sports. Accordingly in an application of its general discretion to determine the quantum to be awarded for general damages, this Court is of the view that an award in the sum of R1 200 000,00 would be appropriate compensation for the general damages suffered by the plaintiff. This Court's assessment is informed by the observations it made of the plaintiff during his evidence, and its impression that the injuries sustained by the plaintiff do not entirely exclude the possibility of the plaintiff leading an active lifestyle. Indeed, the evidence of the plaintiff's father was that under certain conditions, the plaintiff is still able to participate in sporting activities.

[37] A more contentious issue is whether the plaintiff has proved his case to be awarded the sum of R5 540 731,00 in compensation for future loss of earnings. The industrial psychologist, Jeannie van Zyl, gave evidence that

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[10] ***Mthethwa v Road Accident Fund*** (08/15751) [2010] ZAGPJHC 538 (23 September 2010).

as a result of the motor vehicle collision, and reliant on the opinions of the educational psychologist Dr Seabi, she was of the opinion that the plaintiff post-accident would likely only achieve an NQF5 standard of education and thus would be employable at the Paterson B3 job grade. Her opinion was heavily influenced by the assumption that the plaintiff had suffered a moderate head injury and further that there had been a cognitive fallout as proposed by Dr Seabi. As indicated above, the evidence of Dr Kritzinger was of a mild closed head injury as opposed to a moderate head injury. Further the evidence of Dr Seabi of a cognitive fallout and the extent of such fallout must be treated with circumspection for the reasons addressed above. This Court's assessment of the plaintiff as well as the evidence of the improvement of his grades is that a cognitive fallout as a result of the motor vehicle collision has not been sufficiently demonstrated. This necessarily impacts upon an assessment of an appropriate award for loss of future earnings.

[38] A further area of concern in the assessment of loss of future income, is the contingency deduction applied by Mr Ryan Immermann, the actuary for the plaintiff. His calculation was premised on information provided by the industrial psychologist. Notably no specific contingency was made arising out of the plaintiff's pre-existing diagnosis for Type 1 Diabetes. This was a curious aspect, as the evidence of Mr Nonyongo was that the plaintiff had been diagnosed with Type 1 Diabetes in 2013 which was being treated through the use of insulin. Type 1 Diabetes is a chronic condition which can have a profound impact on the plaintiff's life expectancy. It is concerning that

such matter which was to the knowledge of Mr Nonyongo as well as the industrial psychologist, was not brought to the attention of the actuary.

[39] Ultimately as this action proceeded by default, no evidence was led by the Fund concerning the impact of the plaintiff's Type 1 Diabetes diagnosis on the actuarial assessment provided. This Court is thus constrained to exclude the impact of diabetes in its assessment of this head of damages.

[40] The plaintiff's failure however to establish a cognitive fallout resulting from the motor vehicle collision is on a different footing. A reference to the plaintiff's actuarial bundle, reflects that the first actuarial report prepared by the firm Gerard Jacobson Consulting Actuaries calculated the plaintiff's net future loss at R3 486 458,00 with a 25% post-accident contingency deduction. This report was premised on the industrial psychologist's opinion that post-accident the plaintiff's career progression would plateau in line with the Paterson C4 Median Package. That assumes that the plaintiff could still achieve a job grading in upper junior management. In a revised actuarial report prepared on 6 March 2023 the plaintiff's net future loss is calculated in the amount of R5 540 731,00. Similarly, a contingency deduction of 25% was applied. This further report is based on the revised views of the industrial psychologist which postulate that the plaintiff's job progression would plateau at an earning range in line with the Paterson C2 Median Package i.e., a lower junior management position.

[41] This revised view of the plaintiff's loss of earnings is in turn based on an addendum report provided by the industrial psychologist. A consideration of

the industrial psychologist's addendum report dated 1 March 2023 reflects that it is based on the assumption that there was a moderate closed head injury with the *sequelae* of cognitive fallouts as opined by Dr Seabi. As aforestated, it is this Court's assessment that it has not been sufficiently demonstrated that the plaintiff's highest level of education will in all likelihood be an NQF5 as proposed by Dr Seabi. The Court's impression of the plaintiff, who testified during the hearing, is that he is not only confident but is further evidently intelligent, a conclusion supported by his Grade 9 results, which Dr Seabi appears to have overlooked. For that reason, the findings of the initial actuarial report of 13 September 2021 better accords in this Court's view to the plaintiff's potential future loss of earnings.

[42] Accordingly having regard to the facts of the matter, the evidence submitted and the submissions of the representatives of the parties, I make the order set out hereinbelow:

IT IS ORDERED THAT:

[1] The defendant shall pay the plaintiff:

1.1 The amount of R5 281 788,74 (five million two hundred and eighty-one thousand seven hundred and eighty-eight rand and seventy-four cents) (*"the compensation sum"*):

1.1.1 comprising of the amount of:

1.1.1.1 R1 200 000,00 in respect of general damages;

1.1.1.2 R595 330,74 in respect of past medical and hospital expenses;

1.1.1.3 R3 486 458,00 in respect of loss of earnings and earning capacity;

within 180 (one hundred and eighty) days from the date of this order (*"the payment date"*);

1.2 Interest on the compensation sum at the rate of 9.75% per annum, calculated:

1.2.1 from the date of judgment;

1.2.2 to the date of final payment;

In the event of the defendant failing to pay the compensation sum by the payment date by electronic fund transfer into Sonya Meistre Attorneys Incorporated Trust Cheque Account (020651864) maintained at Standard Bank South Africa, Alberton Branch (Branch Code 01234245);

[2] The compensation payment shall be made:

2.1 into the attorney's trust account, which trust account shall be one envisaged in terms of section 86(4) of the Legal Practice Act, 28 of 2014;

2.2 for the sole benefit of the plaintiff, pending the establishment of a trust in accordance with the provisions of the Trust Property Control Act, Act 57 of 1998 (as amended); and

2.3 the plaintiff shall be the sole beneficiary of the Trust.

[3] The attorneys for the plaintiff (Sonya Meistre Attorneys) are ordered:

3.1 to cause a trust (*"the Trust"*), as envisaged in paragraph 2 above, to be established in accordance with the provisions of the Trust Property Control Act, Act 7 of 1998; and

3.2 to pay all monies held in trust by them for the benefit of the plaintiff to the Trust.

[4] A trust instrument of the Trust, shall make provision that:

4.1 The plaintiff is the sole capital and interest beneficiary of the Trust;

4.2 The appointed trustees are to provide security to the satisfaction of the Master, however, should Mr Sidney Nonyongo (the biological father of the plaintiff) or Mrs Lena Nonyongo (the biological mother

of the plaintiff) be nominated to act as trustees, they be absolved from providing security;

4.3 The trustees are to query and satisfy themselves within 6 (six) months of appointment that necessary steps have been engaged to recover the legal costs associated with this action, subject to taxation, which are due to the Trust;

4.4 The ownership of the Trust property vests in the trustees for the Trust in their capacity as trustees;

4.5 At least 2 (two) but no more than 3 (three) trustees must be appointed of which at least 1 (one) must be an independent professional trustee. Trustees are to be nominated jointly by Mr Sidney Nonyongo and Mrs Lena Nonyongo, the parents of the plaintiff;

4.6 The primary purpose of the Trust is to administer the funds in a manner which best takes into account the ongoing interests of the plaintiff;

4.7 The powers of the trustees shall specifically include the power to make payment from the capital and income of the Trust for the reasonable maintenance of the plaintiff, or for any other purpose which the trustees may decide to be in the plaintiff's interests, and if the income is not sufficient for the aforesaid purpose, the trustees

shall have the power, for the purpose of this Trust, in their sole and absolute discretion, to:

4.7.1 acquire any shares, unit trusts, debentures, stocks, negotiable instruments, mortgage bonds, notarial bonds, securities, certificates and any movable or immovable property or any incorporeal rights and to invest in such assets and to lend funds to any party or make a deposit or investment with any institution, such investment to be of such nature and on such terms and conditions as the trustees may deem fit;

4.7.2 exchange, replace, re-invest, sell, let, insure, manage, modify, develop, improve, convert to cash or deal in any other manner with any asset which from time-to-time form part of the Trust fund;

4.7.3 borrow money;

4.7.4 pledge any trust assets, incumber such assets with mortgage bonds or notarial bonds to utilise same as security in any manner whatsoever;

4.7.5 institute or defend any legal proceedings or otherwise or take any other steps in any Court of law or other tribunal and to subject controversies and disagreements to

arbitration;

4.7.6 call up and/or collect any amounts that may from time to time become due to the Trust fund;

4.7.7 settle or waive any claim in favour of the Trust;

4.7.8 exercise any rights or to incur any obligation and with any shares, stocks, debentures, mortgage bonds or other securities or investments held by this Trust;

4.7.9 open accounts at any bank or other financial institution and to manage such accounts and if necessary to overdraw such accounts;

4.7.10 draw any cheques or promissory notes, to execute or endorse same;

4.7.11 take advice from any attorney or advocate or any other expert for the account of the relevant Trust account;

4.7.12 lodge and prove claims against companies in liquidation or under judicial management and against insolvent or deceased estates;

4.7.13 appoint professional or other persons in a temporary or

permanent basis to conduct the whole or any portion of the business of the Trust under the supervision of the trustees or to manage the investment of part of or the entirety of the funds of the Trust and to remunerate such persons for their services out of the funds of the Trust;

4.7.14 form any company and to hold any interest in any company and to form any other trusts, to hold an interest in any other trust or partnership or undertaking for the purpose of this Trust or in the interests of the patient;

4.7.15 commence any business or continue such business or to acquire an interest therein and for such purpose to acquire assets or to incur expenses and to partake in the management, supervision and control of any business and to conclude any partnership or joint venture;

4.7.16 to accept any disposal in favour of the Trust and to comply with any conditions regarding such disposal;

4.7.17 in general to do all things and to sign all documents required to give effect to the aims of the Trust.

4.8 The trustees shall determine procedures to resolve any potential

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

4.9 That in the event of the minor's marriage, his estate be excluded from any community of property;

4.10 The suspension of the patient's contingent rights in the event of cession, attachment or insolvency, prior to the distribution of payment thereof by the trustees to the plaintiff;

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

4.12 In the event of the death of the plaintiff before reaching the age of majority, the trust funds devolve upon his estate;

4.13 That the trust property and the administration thereof is subject to an annual audit;

4.14 The Trust shall terminate when the plaintiff reaches the age of 18 (eighteen), whereupon the trust property shall in its entirety pass to the plaintiff.

[5] The first trustee is required to furnish security to the satisfaction of the Master of the High Court. Mr Sidney Nonyongo and Mrs Lena Nonyongo (should they be nominated as trustees) are not required to provide security

to the Master of the High Court.

[6] The Master of the High Court may exercise a discretion to appoint an alternative person as a trustee, should an appointed trustee refuse or be unable to fulfil his or her obligations as trustee.

[7] The defendant is ordered to pay the costs of the appointment of the trustees as well as the costs of the administration of the estate of the patient by the trustees at the end of each financial year and subject to the provisions of section 22 of the Trust Property Control Act 7 of 1998 (as amended), until such time as the Trust is terminated.

[8] The defendant is further ordered to furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act 56 of 1996, wherein the defendant undertakes to pay the costs of future accommodation of the patient in a hospital or a nursing home or treatment of or rendering of a service or supplying of goods including the costs of remedial school to the patient to compensate the patient in respect of 100% of the said costs after the costs have been incurred and on proof thereof, pursuant to the injuries sustained by the patient in the motor vehicle accident of 9 March 2018.

[9] The defendant shall pay the plaintiff’s taxed or agreed party and party costs on the High Court scale, such costs to include the costs reserved on 20 April 2023.

[10] The aforementioned costs are to be paid directly by the defendant to the

plaintiff's attorneys, which shall include:

10.1 Attendant upon obtaining the order of compensation;

10.2 Occasioned by the employment of counsel inclusive of the costs of preparing heads of argument;

10.3 Arising from:

10.3.1 the creation of the Trust;

10.3.2 provision of security by the trustees of the Trust;

10.3.3 the management of the Trust;

10.4 Occasioned by the preparation of the expert reports of:

10.4.1 Dr Van den Bout (orthopaedic surgeon);

10.4.2 Dr Kritzinger (neurologist);

10.4.3 Dr Joseph Seabi (educational psychologist);

10.4.4 Marina Genis (clinical psychologist);

10.4.5 Rosalind McNab (educational therapist);

10.4.6 Maria Georgiou (occupational therapist);

10.4.7 Jeannie van Zyl (industrial psychologist);

10.4.8 Gerard Jacobson (actuary).

10.5 The reasonable taxed or agreed fees and reservation fee for the *curator ad litem*.

[11] This order must be served by the plaintiff's attorneys on the Master of the High Court, Gauteng Division (Johannesburg) within a period of 30 (thirty) days of the making thereof.

A E AYAYEE
Acting Judge of the High Court of South Africa
Gauteng Division, Johannesburg

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand- down is deemed to be 10h00 on 8 June 2023

Appearances:

On behalf of the plaintiff:	Adv. S. Barreiro
Instructed by:	Sonya Meistre Attorneys Inc.
On behalf of the respondent:	Mr Daniel Coetzee
Instructed by:	State Attorney, Johannesburg

Date Heard:	20, 21 April 2023
Handed down Judgment :	8 June 2023