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

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

CASE NO: 8854/2022

1.	REPORTABLE: YES / NO
2.	OF INTEREST TO OTHER JUDGES: YES/NO
3.	REVISED.
.....	.....
DATE	SIGNATURE

In the matter between:

FAKAZILE PEARL MAZIBUKO on behalf of Z N. M Plaintiff

and

ROAD ACCIDENT FUND Defendant

Summary:

JUDGMENT

KATZEW, AJ:

[1] This is the trial of an action that was instituted on 2nd March 2022 by the Plaintiff on behalf of her minor daughter, Z N M ("Z"), against the Road Accident Fund ("the Fund") for compensation for loss of support arising out of the death of Z's father, Robert Makondo Dube ("Mr. Dube"), in a motor collision that occurred on 1st July 2019 with a driver insured by the Fund.

[2] The Plaintiff and Mr. Dube were married at the time of Z's birth in 2015 but got divorced in the same year. There is no claim in this matter by the Plaintiff against the Fund in her personal capacity.

[3] On 30th April 2022 the Fund pleaded a bare denial to all elements of the cause of action in the summons, which included negligence of its

insured driver, paternity and *quantum*. No attempt was made to narrow down these issues by way of a request for further particulars for trial or by any other formal means to make for accurate identification of issues.

[4] At the first pre-trial conference that was held on 22nd May 2022, the Fund admitted Mr. Dube's paternity of Z, but did not amend its plea to eliminate paternity as an issue on the pleadings. Moreover, in the **Minutes Of Pre-Trial Conference** dated 8th June 2022, the Fund contended that the duty of support of Mr. Dube to Z "*was not unconditional*" but "*was limited to R1 000.00 per month as well as medical aid contribution only*". Once again, this contention of a conditional duty of support owed by Mr. Dube to Z was never made an issue in the Fund's plea by way of an amendment to bring it into line with the admission of the conditional duty of support that was raised in the pre-trial minute. The result hereof is that paternity and duty of support have remained issues on the pleadings throughout the proceedings.

[5] This notwithstanding, on 10th February 2023, 18 days before the trial that was due to commence on 28th February 2023, the Fund abandoned reliance on its plea in the **JOINT PRACTICE NOTE FOR**

TRIAL ON THE 28 FEBRUARY 2023, which *inter alia* records the following agreement between the parties regarding the conduct of the trial *("the agreement")*:

"UNDISPUTED ISSUES

There is no dispute about the liability of the [Fund] to pay the Plaintiff's proven damages. There is no dispute regarding the fact that [Mr. Dube] had other children which … have been considered in two actuarial reports commissioned by the Plaintiff.

DISPUTED ISSUES

Based on the aforesaid, the Plaintiff to specifically admit that the following are disputed issues upon which a decision from the trial court will be sought:

*(a) The extent to which the maintenance order **[explained by the Court in paragraphs 8, 9 and 10 below]** has a bearing on the compensability and claim.*

(b) Age of dependency.

(c) Contingencies."

[6] On the eve of trial, the parties orally varied *the agreement* to include the setting of contingencies at 5% for past loss of support and 15%

for future loss of support.

[7] From a procedural point of view, therefore, despite the retention of the bare denial of all elements of the claim in the plea*,* the dispute in the trial as determined by *the agreement* distilled to the admission of all issues, save for the extent to which the maintenance order has a bearing on the compensability and claim, and age of dependency, coupled with a request to the Court to decide these issues in a final Judgment.

[8] The maintenance order referred to in *the agreement* is an Order of the Maintenance Court made against Mr. Dube in December 2015 when Z was 10 months old. Mr. Sixhiba, who appeared for the Plaintiff, advised the Court that the Plaintiff had included the maintenance order in her discovery affidavit for the sole purpose of advancing her case on Mr. Dube's paternity of Z, which he said was necessitated by the Fund's denial of Mr. Dube's paternity of Z in its plea.

[9] The maintenance order directed Mr. Dube in 2015 to pay the Plaintiff R1 000.00 per month as a contribution towards maintenance for Z, and to retain Z on a medical aid.

[10] The terms of the maintenance order were not expressly included in *the agreement*, and neither was the order of the Maintenance Court formally placed before the Court. There was, however, *consensus* in the Court proceedings between Mr. Sixhiba and Mr. Khan, who appeared for the Fund, as to the terms thereof. *A fortiori,* no prejudice will be caused to either party by the Court having regard to the terms of the maintenance order as communicated by their legal representatives in Court. The terms of the maintenance order also appear in one of the two actuarial reports that form part of *the agreement*.

[11] No evidence under oath was presented by the parties, their mutual view as expressed in *the agreement* being that the Court's findings on the disputed issues in its Judgment would be dipositive of the matter, without the need for evidence.

[12] The two actuarial reports referred to in *the agreement* were formally placed before the Court. They were compiled by Ndumiso Mavimbela of Manala Actuaries at the request of the Plaintiff. Pursuant to *the agreement*, the contents of the two actuarial reports include different scenarios of calculation compatible with the two disputed issues in *the agreement*. There is no dispute between the parties relating to the

methodology of the reports, the sources and correctness of the assumptions made in the reports and the accuracy of the calculations of the different scenarios in the reports, the dispute between the parties being confined to which of the scenarios should be adopted by the Court in its Judgment.

[13] The following is a summary of the two reports:

[13.1] dated 5th August 2022 containing an actuarial calculation of Z's and her co-dependants' one child's share each of Mr. Dube's net lost income for past and future loss of support until age 18 years (in Z's case totalling R696 441.00 excluding contingencies) and until age 21 years (in Z's case totalling R641 837.00 excluding contingencies), on the assumption in both scenarios, recorded in clause 13 of the report, that the net of tax income of Mr. Dube will be shared two parts to Mr. Dube and one part to each of his children dependant on him (the anomaly of Z's share measured to 18 years exceeding her share measured to 21 years by R54 604.00 was not raised by either of the parties – the tables of measured losses for the two scenarios reveal fluctuating co-dependencies in calculations of past and future losses which

are the reason for the anomalous discrepancy – in view of the parties' admissions of all methodology, assumptions and calculations in the reports, nothing turns hereon, except of course for the anomaly that the Plaintiff and Z would be better off by R54 604.00 if the Court decides that age of dependency is to 18 instead of 21) ; and

[13.2] dated 31st August 2022 containing an actuarial calculation of Z's and her co-dependants' one child share each of Mr. Dube's net lost income for past and future loss of support calculated until age 18 years (in Z's case totalling R230 629.00 excluding contingencies), and until age 21 years (in Z's case totalling R253 381.00 excluding contingencies), on the assumption in both scenarios, recorded in clause 13 of the report, that the net of tax income of Mr. Dube would be shared two parts to Mr. Dube and one part to each of his children dependant on him, except for Z, who is assumed for the purpose of this report to be limited to a calculation based on the R1 000.00 per month in the maintenance order, plus an assumed medical aid contribution of R500.00 per month (the R500.00 to be adjusted with inflationary increases every January).

[14] The Court is called upon to incorporate *the agreement* into the Judgment and to craft its findings on the disputed issues into the Judgment in accordance with *the agreement*.

[15] Due to some uncertainty regarding the interpretation of *the agreement* that will be canvassed in more detail, the Court first needs to establish the exact terms of *the agreement*, and then render Judgment on the disputed issues with due regard to *the agreement*.

[16] Although *the agreement* does not constitute a settlement agreement that is sought to be made an order of court, the principles applicable to the settlement of entire litigation, or components thereof, are analogous to the principles applicable to the implementation of *the agreement* by the Court. These principles have been stated as follows by Van der Merwe, JA in **The Road Accident Fund v Taylor and other matters**[1]:

> *"[40] When requested to do so, a court has the power to make a compromise, or part thereof, an order of court. The power must, of course, be exercised judicially, that is, in terms of a fair procedure and with regard to relevant considerations. The considerations for the determination of whether it would be competent and proper to make a compromise an order of*

[1] **The Road Accident Fund v Taylor and other matters (1136-1140/2021) [2023] ZASCA 64 (8 May 2023) at paragraphs [40] and [41**]

court, *are threefold*. …

[41] *The first consideration is whether the compromise relates directly or indirectly to the settled litigation*. *An agreement that is unrelated to litigation*, *should not be made an order of court*. *The second is whether the terms* of *the compromise are legally objectionable*, *that is*, *whether its terms are illegal or contrary to public policy or inconsistent with the Constitution*. *Such an agreement should obviously not be made an* order *of court*. *The third consideration is whether it would hold some practical or legitimate advantage to give the compromise the status of an order of court*. *If not*, *it would make no sense to do so*."

[17] *The agreement,* although vague in certain respects which will be addressed, satisfies these considerations for its incorporation into the Judgment.

[18] The vagueness of *the agreement* is that it is lacking in certainty as to the legal consequence of a possible finding by the Court that the maintenance order has no bearing on the compensability and claim. For reasons that will emerge hereunder, the uncertainty is resoluble by virtue of certain statements made by Mr. Khan in argument on behalf of the Fund (it is important to bear in mind that Mr. Khan concluded *the agreement* on behalf of the Fund).

[19] Mr. Khan correctly submitted that without proof of actual need for support of a lost breadwinner, a claim for loss of support is inchoate and unsustainable. It was for this reason that he submitted that the maintenance order, however inadequate for Z's present and future needs (which inadequacy he conceded on behalf of the Fund), is the only evidence of her actual need, and thus should be relied upon by the Court in the calculation of the value of her loss of Mr. Dube's support (this, by the way, is different to the approach adopted by the Fund in the pre-trial minute dated 8th June 2022 that '*the duty to support was not unconditional and that same was limited to R1 000 per month as well as medical aid contribution only*" – a defence of a limited conditional duty of support is different to a defence of lack of evidence of actual need for support – this contradiction is once again an issue that the Fund could have cleared up in an appropriate amendment to its plea).

[20] When the Court asked Mr. Khan if the Fund is seeking the dismissal of the Plaintiff's claim as an alternative to a finding that the maintenance order has no bearing on the compensability and the claim (which the Court pointed out to Mr. Khan would be a logical request in view of there being no other evidence showing actual need for support), Mr. Khan replied that the Fund is not seeking the

dismissal of the claim, but added that with hindsight he should have made provision for higher contingencies to be applied to the Plaintiff's claim with that risk in mind.

[21] This approach by Mr. Khan on behalf of the Fund assists the Court in interpreting a tacit component to *the agreement* that if it is found that the maintenance order has no bearing on the compensability and the claim, the Fund accepts that the calculation of loss of support must necessarily follow the actuarial report dated 5th August 2022, which does not rely on the maintenance order as a *criteria* for calculation of Z's loss of support.

[22] In interpreting and giving effect to *the agreement*, the Court focuses on the intention of the parties as at the time *the agreement* was concluded. *A fortiori*, the Court cannot have regard to the Fund's *ex post facto* expression, which was not contemplated at the time of *the agreement,* that it should have made provision for higher contingencies to compensate the risk of a finding by the Court that the maintenance order has no bearing on the compensability and the claim.

[23] The very essence of the concession made by Mr. Khan reveals that

this *ex post facto* expression could not have been on his mind on behalf of the Fund, let alone on the Plaintiff's mind, at the time of the conclusion of *the agreement*.

[24] The result is that if the Court finds that the maintenance order has no bearing on the compensability and the claim, the actuarial report dated 5th August 2022 will become the operative *criteria* for determination of Z's loss of support, complemented by the contingencies as determined by *the agreement* (see paragraph [6] above).

[25] Turning now to the extent to which (if any) the maintenance order has a bearing on the compensability and the claim, at the outset it needs to be emphasized that a distinction should be drawn in principle between the delictual basis of loss of support and the duty of support. The maintenance order belongs to the last mentioned and is not necessarily evidence of the first mentioned.

[26] This distinction needs to be kept in mind in considering the submissions of the parties.

[27] Mr. Sixhiba on behalf of the Plaintiff was dismissive of the requirement for evidence of Z's actual needs for Mr. Dube's support.

He contended that there is no need for reliance on the maintenance order in the determination of the calculation of Z's loss of Mr. Dube's support. He submitted in his **PLAINTIFF'S HEADS OF ARGUMENT** dated 1st March 2023, and in oral submissions before the Court, that by virtue of the actuarial report dated 5th August 2022 (which makes no reference to the maintenance order and which is *inter alia* based on the assumption that the full extent of Mr. Dube's net of tax income would be devoted to the upkeep of his dependants), the Plaintiff is entitled to an order directing the Fund to be liable to the Plaintiff in the sum of R565 135.15, made up as to R195 737.00 for past loss of support, less the agreed contingency of 5%, which comes to R185 950.15, plus R446 100.00 for future loss of support, less the agreed contingency of 15%, which comes to R379 185.00, which are the product of calculations in the actuarial report dated 5th August 2022 until age 21.

[28] Mr. Khan, on the other hand, in his undated **DEFENDANT'S HEADS OF ARGUMENT** and in oral submissions to the Court, contended for the Court's adoption of the actuarial report dated 31st August 2022 (which incomprehensibly distinguishes between the losses of support suffered by Z and her co-dependants due to the invoking of the maintenance order as the sole *criteria* for the calculation of Z's loss)

in view of the absence of any evidence by the Plaintiff of the actual needs of Z for Mr. Dube's support (it needs to be emphasized in this regard that the incomprehensible actuarial distinction between the otherwise identical one part loss of all Mr. Dube's dependants was included by the actuary at the instance of the Fund, and cannot in any way be attributed to the actuary). The result, according to Mr. Khan on behalf of the Fund, is that the Court must restrict itself in its measurement of Z's loss of Mr. Dube's support to the value of the maintenance order of R1 000.00 per month plus the R500.00 per month provision for medical aid (to be adjusted with inflationary increases annually every January), which evolves into a past loss of support of R65 666.00 less the agreed contingency of 5%, equalling R62 382.70, and into a future loss of support calculated to age 18 of R164 963.00, less the agreed contingency of 15%, which comes to R140 218.55, together totalling R202 601.25.

[29] One of the anomalies of this submission by Mr. Khan for selective bias in the calculation of the value of Z's claim for loss of support is that if any of Z's co-dependants have pending claims against the Fund, the Fund's promotion of the selective bias between Z and her co-dependants in the actuarial report dated 31st August 2022 would unaccountably (and unfairly to Z) result in Z's co-dependants being

treated more favourably by the Fund in the settlement of their claims, which, save for the maintenance order, are otherwise identical in the assumptions upon which they are based.

[30] As already alluded to, the Court accepts as trite generally requiring no citation of authority the submission made by Mr. Khan that a dependant in an action for loss of support must establish actual patrimonial loss, accrued and prospective, consequent upon the death of the breadwinner.[2] In response to this submission, Mr. Sixhiba mistook as a general assumption for all cases the case-specific assumption made by the Court in **RAF v Monani**[3] that the net income of the breadwinner in that case would have been devoted in its entirety to the upkeep of his family.

[31] But the enquiry does not end there. Mr. Sixhiba has also submitted that the manner of the Fund's raising of the issue of absence of evidence of Z's actual need for support (save for the maintenance order) is irregular and flawed.

[32] It needs to be emphasized that the Court is bound by the Fund's acknowledgement of liability in *the agreement* specifically for the

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[2] See **Evins v Shield Insurance Co Ltd 1980 (2) SA 814 (AD) at 838A-B**

[3] **RAF v Monani 2009 (4) SA 327 (SCA) at 329G-H**

Plaintiff's "*proven damages*", and by the Fund's regard for all aspects of the matter to be regarded as undisputed, save for the extent to which the maintenance order has a bearing on the compensability and claim and on the age of dependency.[4]

[33] The Court regards itself as so bound because its normal powers of adjudication of disputes are limited to adjudication within the parameters of *the agreement*, which specifically identifies the undisputed issues and the disputed issues on which alone decision from the Court is required as a precursor to a final award by the Court for payment of the Plaintiff's "*proven damages*" for loss of support.

[34] *The agreement* therefore precludes the Court from making an order at the behest of one of the parties for payment of an amount less than "*proven damages*" for loss of support, especially when the Court has before it actuarial calculations of Z's loss of Mr. Dube's support which are undisputed and which include an assumption of full utility of Mr. Dube's net income for the upkeep of his family that has not been specifically refuted by the party which bears the evidentiary burden of doing so, namely the Fund, in the pleadings and in evidence.

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[4] See **JOINT PRACTICE NOTE FOR TRIAL ON THE 28 FEBRUARY 2023** second page last paragraph and undated **DEFENDANT'S' HEADS OF ARGUMENT** paragraph 1.2

[35] By agreeing to the contents of the actuarial report dated 5th August 2022 in *the agreement*, the Fund could only venture beyond such contents upon a discharge of the evidentiary burden to refute the validity of the assumption in clause 13 of the report "*that the net of tax income of [Mr. Dube] will be shared two parts to [Mr. Dube] and one part to each child*".

[36] The Fund could only refute that assumption by specifically pleading facts that would negate the assumption, coupled with the leading of evidence thereon, neither of which the Fund has done.

[37] The Uniform Rules of Court provide the machinery for the proper ventilation of issues between parties, which are ultimately determined by the pleadings. Whereas a bare denial may be sufficient to create an issue on the pleadings,[5] an *ex post facto* admission of a fact which is at odds with a denial in a plea without an appropriate adjustment to the plea to properly contextualize the admission, coupled with a consequential failure to lead evidence to discharge an evidentiary burden attracted by the admission, may leave the party originally relying on the bare denial procedurally embarrassed in an inappropriately formulated agreement that involves the dispensing of

[5] See **Sterling Consumer Products** (**Pty) Ltd v Cohen and other related cases [2000] 4 All SA 221 (W) at paragraph [11**]

evidence and a request to the Court to decide only certain specified issues to dispose of the matter.

[38] The Fund in this matter has ignored the role of the pleadings, including the machinery of the Rules with regard to requests for particulars for trial, as a lever for the proper contextualizing of the issues between the parties (which I observed to be a feature of all the matters involving the Fund that came before me during the same week), which resulted in the Fund locking itself into *the agreement* that includes (perhaps unintentionally) the unconditional admission of the contents of the actuarial report dated 5th August 2022, without the cover of other terms in *the agreement,* or specific allegations in its plea, coupled with any necessary evidence, to qualify the admission.

[39] Mr. Khan's contention in paragraph 5 of his undated **DEFENDANT'S HEADS OF ARGUMENT** that the Court must utilize the actuarial calculation dated 31st August 2022 (referring to the actuarial report of the same date) in making an award for loss of support, must fail at least by virtue of his concessions in argument that the maintenance order cannot be regarded as a suitable guide to the Court for the assessment of the true i.e. proven monetary value of Z's loss of Mr. Dube's support due to the relief therein of R1 000.00 per month and

retention of Z on a medical aid at age 10 months being a totally inadequate measurement of maintenance currently required by Z at 8 years of age.

[40] The Court is fortified in its view of the unsuitability of the maintenance order as a guide to the determination of a valuation for loss of support by the following extract from the judgment of Nienaber, JA in **Santam Bpk v Henery**[6]**,** wherein the Court was *inter alia* similarly required to consider an order for the payment of maintenance as a guide to the valuation of a claim for the loss of support of a dependant ex-wife whose ex-husband had died in a motor collision. Nienaber, JA is reported as follows at **431B-C**:

"… Wat in die besonder beklemtoon is, is dat haar eis, anders as dié van ander afhanklikes, gegrond is op 'n Hofbevel wat 'n spesifieke bedrag vermeld, sodat die omvang van haar eis aan die hand van daardie bedrag bepaal word en nie aan die hand van haar daadwerklike behoeftes nie. Die argument oortuig nie. Solank as wat daar 'n onderhoudsplig uit hoofde van 'n Hofbevel bestaan, soos hier die geval is, sal die bedrag in die Hofbevel stellig die eerste faktor wees by die bepaling van die bedrag wat uiteindelik aan 'n eiseres in so 'n geval toegeken word, maar dit is nie die enigste of selfs 'n deurslaggewende faktor nie. Die feitelike vraag bly telkens watter bedrag die eiseres by wyse van onderhoud van haar gewese man

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6 **Santam Bpk v Henery 1999 (3) SA 421 (SCA)**

sou ontvang het. Daardie bedrag verg, soos elke geval waar dié tipe eis gekwantifiseer moet word, 'n veelvoud van oorwegings en vooruitskouings …"

[41] Although this exposition of the law reinforces Mr. Khan's point about the need for proof of actual need for support, it simultaneously confirms the inadequacy of the maintenance order as a guide to the Court for the determination of Z's proven loss of Mr. Dube's support.

[42] It follows that by virtue of the admitted total disconnect of the maintenance order with the current reality of Z's age and obviously vastly different needs to those that would be associated with a baby of 10 months 7 years Z's junior, the maintenance order cannot be regarded as having any bearing on the compensability and claim.

[43] Significantly the validity and correctness of the contents of the actuarial report dated 5th August 2022 are not included in *the agreement* as issues for decision by the Court. The Court is accordingly entitled to infer from *the agreement* that once it has decided that the Order of the Maintenance Court has no bearing on the compensability and claim, the actuarial report dated 5th August 2022 should be utilized in making an award for loss of support to the Plaintiff that accurately measures the value of Z's actual loss of

support from Mr. Dube.

[44] This would necessarily include the assumption in paragraph 13 of the actuarial report dated 5th August 2022 that the net of tax income of Mr. Dube will be shared two parts to Mr. Dube and one part to each of his children, including Z.

[45] There is nothing before the Court that militates against the equity of such a finding. There is no indication that Z is better off financially as a result of the death of Mr. Dube, like the husband and dependant son of the deceased in **Lambrakis v Santam**[7]. To the extent that there are vagaries of proof of actual loss in this matter, besides constituting an error of judgment on behalf of the Plaintiff, the vagaries are also attributable to the approach adopted by the Fund, which on its own admission could at the very least have been addressed by suitable additional contingency adjustments. The suitability of additional contingencies to redress these vagaries and to thereby avoid any inference of a relaxation of the requirement for proof of actual need for support is not without precedent, having been countenanced by the Court in **Reay and another v Netcare (Pty) Ltd t/a Umhlanga Hospital and others**[8].

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[7] **Lambrakis v Santam Ltd 2002 (3) SA 710 (SCA)**

[46] Finally on this issue, by virtue of the binding effect of *the agreement* on the Court, it is not open to the Court to independently increase the contingencies to redress the vagaries of proof of Z's actual need for Mr. Dube's support.

[47] In conclusion, the Court finds that the maintenance order against Mr. Dube in December 2015 has no bearing on the compensability and claim in this matter.

AGE OF DEPENDENCY FOR PURPOSE OF CLAIM – 18 OR 21?

[48] The admission by the Fund of the actuarial report dated 5th August 2022 can be relied upon as proof of dependency to 18, but not 21. This is because the report assumes two scenarios in the alternative without making a commitment to either, namely one based on dependency until 18, and the other based on dependency until 21.

[49] The report therefore cannot serve as proof that Z would have been supported by Mr. Dube until age 21 without evidence by the Plaintiff that Z would have needed Mr. Dube's support until age 21, including the extent of such need.

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[8] **Reay and another v Netcare (Pty) Ltd t/a Umhlanga Hospital and others [2016] 4 All SA 195 (KZP) at 203d-e**

[50] Due to the anomaly already alluded to of the actuarial calculation in the report dated 5th August 2022 of Z's pre-contingency loss of Mr. Dube's support to age 18 exceeding the actuarial calculation of her pre-contingency loss of Mr. Dube's support to age 21 by R54 604.00 (see paragraph 13.1 above), the Fund's contention for Z's age of dependency to end at 18 portended the result of the Fund unwittingly arguing for a higher liability than had it agreed to being liable for Z's loss of support until age 21:

[51] Fortuitously for the Fund, however, the following extract from the Judgment by Trengove, AJA in **Marine And Trade Insurance Co Ltd v Mariamah And Another**[9] underscores the argument on behalf of the Plaintiff for an assumption that support by a breadwinner for a school-going dependant would probably continue until the dependant reaches the age of 21 years:

" … *At the time of* the *deceased's death Puniasagran was 18 years old, and Granasagran 17 years. They were still at school, the deceased was supporting them and the Court a quo was, in my view, justified in acting on the assumption that the deceased would probably have continued to support his sons until they reached the age of 21 years."*

[9] **Marine And Trade Insurance Co Ltd v Mariamah And Another 1978 (3) SA 480 (AD) at 489B**

[52] Applying this principle to the common cause fact that Mr. Dube was at the time of his death supporting Z while she was still at school, the Court finds that the Fund is obligated to the Plaintiff for damages in the sum of R565 109.00 to compensate for Z's loss of Mr. Dube's support measured until age 21.

[53] It remains to consider the best interests of Z regarding the management and protection of the award for her benefit. To this end, the Court proposes that the execution of the order for the payment of damages be suspended pending the appointment of a curator *ad litem* to investigate and report to the Court on the most suitable options for protection of the award in Z's best interests.[10]

ACORDINGLY, THE FOLLOWING IS ORDERED:

(a) The Defendant is directed to pay the Plaintiff on behalf of Z N M R565 109.00 plus interest thereon a *tempore mora* at the rate *of* 15.5% per annum calculated from 13th June 2023 to date of payment.

(b) The Defendant is directed to pay the costs of the action (day costs limited to 2nd March and 3rd March 2023), which costs are to include the costs of Ndumiso Mavimbela of Manala Actuaries pertaining to the

[10] See **Master Of The High Court v The Pretoria Society Of Advocates (1st amicus curiae) and Others Case 35182/2016 – delivered 20th May 2022 at paragraph 147**

Actuarial Report dated 5th August 2022 and to the Actuarial Report dated 31st August 2022.

(c) Execution of the order in paragraph (a) above is suspended pending the implementation of recommendations of the curator *ad litem* referred to in paragraph (d) below in a report concerning the best interests of Z N M in respect of the need for and most suitable form of protection of the award in paragraph (a) above.

(d) The Defendant is directed to request the Johannesburg Society of Advocates affiliated to the General Council of the Bar to nominate a member of the Johannesburg society of not less than 5 years standing for appointment as curator *ad litem* as per paragraph (c) above and to deliver the society's nomination in writing and the nominee's consent to act as curator *ad litem* to the Court (the Acting Judge's Registrar Mr. Thapelo Senoko) within 2 Days of the Defendant's receipt of the nominee's consent to act.

(e) The case is postponed to 20th June 2023 at 10h00 for appointment of the curator *ad litem* in open Court in the presence of Mr. Sixhiba for the Plaintiff, Mr. Khan for the Defendant and of the nominee for appointment as curator *ad litem*.

(f) The costs of the appointment of the curator *ad litem* and of his/her report are to be paid by the Defendant.

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S M KATZEW
Acting Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg
13th June 2023

This judgment was handed down electronically to the parties" *legal representatives by E-mail and by being uploaded to CaseLines*. *The date of this judgment is deemed to* be *13th June 2023*.

APPEARANCES:

For Plaintiff:	S. Sixhiba
Instructed by:	Tengwa Attorneys, Cnr Commissioner & Von Weilligh Streets, Klamson Towers, 2nd floor, Suite 209, Marshalltown,

	Johannesburg
For Defendant:	Mr. M. Khan
Instructed by:	State Attorney
Date of hearing:	28th February 2023
Date of Judgment:	13th June 2023