

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No: 31509/2014

Date: 20/10/2017

In the matter between:

T PELE

First Plaintiff

M PELE

Second Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

D S FOURIE, J:

[1] The first plaintiff instituted an action for damages against the defendant in terms of the provisions of the Road Accident Fund Act, No 56 of 1996 ("the Act") as a result of bodily injuries she sustained in a motor vehicle accident which occurred on 30 May 2010.

[2] The merits have been conceded 100% in favour of the plaintiffs. The first plaintiff's claim for loss of earnings together with the second plaintiff's claim for past hospital and medical expenses had already been postponed *sine die*. I was informed that the defendant has offered an undertaking in terms of section 17(4)(a) of the Act to the first plaintiff in respect of future hospital and medical expenses. The only issue to be determined by this Court is the amount of general damages to be awarded to the first plaintiff.

[3] Both parties filed numerous medico-legal reports prepared by various experts. Joint minutes have also been received from all the experts, save for the psychiatrists. The

parties are in agreement that the contents of these reports, read with the joint minutes, may be accepted as evidence by this Court.

[4] It is common cause that the injuries sustained by the first plaintiff are "*serious injuries*" as contemplated in section 17(1) of the Act, read with Regulation 3, and that the first plaintiff is entitled to claim for non-pecuniary loss (general damages).

INJURIES:

[5] The neurosurgeons as well as the orthopaedic surgeons agreed in their joint minutes that the first plaintiff had sustained the following injuries:

- (a) a severe head injury with a subdural hematoma on the left side which had to be drained;
- (b) a central fractured dislocation of the left acetabulum;
- (c) left superior inferior pubic rami fracture of her pelvis;
- (d) a commuted fracture of the left femur;
- (e) fractures of the second, third and fourth metatarsals of the left foot and a fracture of the cuboid bone;
- (f) a ruptured aorta which was treated by the placement of a stent;
- (g) multiple rib fractures;
- (h) an injury to the left wrist.

[6] The neurosurgeons further agreed that the first plaintiff had experienced early convulsions while being in hospital and although she has not experienced any post-traumatic epileptic attacks since then, her chances to develop epilepsy was 10% due to the focal components of the brain injury. It is also common cause that the first plaintiff's five year old daughter passed away as a result of injuries sustained in the same accident.

TREATMENT RECEIVED:

[7] According to the first plaintiff's orthopaedic surgeon she was unconscious for three to four hours after the accident. She was taken by ambulance to the Tygerberg Hospital.

She was then transferred to the Kuils River Hospital and admitted to the ICU for three weeks for treatment of her head and rib fractures. The subdural haematoma was drained. An open reduction and internal fixation of her left femur and foot were performed. A stent was inserted for treatment of the aortic rupture. She was then transferred to the Netcare Blouberg Hospital for four months. She was discharged in a wheelchair. She attended rehabilitation in Durbanville for one month and was mobilised in a wheelchair until January 2011, i.e. for another eight months after the accident. Thereafter she had to mobilise with two crutches for another period of approximately three years until 2014.

SEQUELAE:

[8] It is common cause that the first plaintiff is suffering from the following sequelae:

- (a) headaches, memory and concentration problems;
- (b) there is still a serious decline in her general mobility;
- (c) there are personality changes which cause her to become irritable, intolerant, aggressive and short tempered;
- (d) pain in the left hip, pain in the left foot and depression;
- (e) severe osteo-arthritis in the left hip, avascular necrosis in the left hip joint and poor balance;
- (f) a neurocognitive disorder and cognitive deficits commensurate with a significant brain injury;
- (g) significant psychological distress, unresolved grieve in response to the death of her child and symptoms of post traumatic anxiety.

FUTURE MEDICAL TREATMENT:

[9] Taking into account the various medico-legal reports, it is also common cause that the first plaintiff will in future probably require the following treatment for the injuries sustained:

- (a) removal of internal fixation of the left femur;
- (b) a total left hip replacement and revisions thereafter;

- (c) lengthening of the left Achilles tendon and lengthening of the left ankle joint;
- (d) arthrodesis of the left foot;
- (e) psychiatric treatment;
- (f) occupational therapy;
- (g) plastic surgery.

GENERAL DAMAGES:

[10] It appears from the medico-legal reports that the first plaintiff is now 40 years old. At the time of the accident she had established her own bottle store and also had people assisting her selling clothes in the rural areas. When she was in hospital there was a serious decline in her business activities and she had to close down the business.

[11] Counsel for the plaintiffs submitted that an amount of R1,5 million should be awarded for general damages. Counsel for the defendant contended that an amount between R450 000.00 and R650 000.00 will be fair compensation in the circumstances. Both counsel relied on various case law, but it is not necessary to repeat all of them.

[12] It goes without saying that reported cases regarding quantum is only a guideline. A Court should always exercise a judicial discretion taking into account, *inter alia*, the age of the plaintiff, the injuries sustained, the treatment received, the sequelae caused by those injuries and future medical treatment if applicable. In the final instance, when determining the award for general damages, a trial Court has a wide discretion and must consider all the facts and circumstances of the case in order to determine an award it considers to be fair and adequate compensation to both parties (*cf Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (AD) at 535-536).

[13] In *Nobel v Road Accident Fund* 2011 (6) QOD J2-54 (GSJ) the plaintiff was a 36 year old male contracted to a firm of attorneys. He had multiple injuries consisting of, *inter alia*, the following: head and brain injury resulting in the plaintiff suffering from a reduced

cognitive ability, altered personality and resultant mood disorders; fracture of the right femur complicated by shortening of the right leg and rotational deformity; fractured right foot with scarring including a mal-union of some of the metatarsal bones; scarring of the right thigh as a result of skin grafts taken from that area to the right lower leg; and chronic neck pain, headaches and shortening of the right leg. An award for general damages in the amount of R600 000.00 was made during 2011, which now translates to R839 000.00 (The Quantum Yearbook by Robert Koch, 2017, p 56).

[14] In *Seme v Road Accident Fund* 2008 (5) QOD A4-33 (D) the plaintiff, a 36 year old male, sustained a severe head and brain injury together with multiple fractures, multiple loss of teeth, facial lacerations and a dislocated right elbow. He was awarded general damages of R1 million during 2008, which is currently worth R1 642 000.00 (The Quantum Yearbook, *supra*, p 55).

[15] In *Zarrabi v Road Accident Fund* 2006 (5) QOD B4-231 (T) a 30-year old trainee medical specialist sustained a severe diffuse axonal brain injury with severe physical neurocognitive and neuropsychiatric consequences. She was left totally unemployable as a medical doctor and was awarded R800,000 for general damages in 2006, which is currently worth R1,569,000 (The Quantum Yearbook, *supra*, p44).

[16] In the matter before me the first plaintiff suffered a severe head injury with a subdural haematoma on the left side which had to be drained. One of the psychologists is of the view that the plaintiff has suffered cognitive deficits commensurate with a significant brain injury with a possible left-sided focal component. She also suffered fractures of the metatarsals of the left foot, a fracture of the cuboid bone, multiple rib fractures and a central fractured dislocation of the left acetabulum. She was mobilised in a wheelchair for a period of approximately eight months and thereafter she had to mobilise with two crutches for another period of approximately three years. She will probably have to undergo a total left hip replacement as well as revisions thereafter. Taking into account all

the above facts and circumstances, I am of the view that the first plaintiff should be compensated in the amount of R1,400,000.00 for general damages, which will be reflected in the draft order.

ORDER:

In the result I grant the following order: The draft order attached hereto and marked "X" is made an order of Court.

D S FOURIE

JUDGE OF THE HIGH COURT

PRETORIA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

16 October 2017

Before his Honourable Judge Fourie

Case No: 31509/2014

In the matter between:

THOZAMA PELE

First Plaintiff

MUNDELI PELE

Second Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DRAFT ORDER

After having heard counsel, the court orders as follows :

1.

CAPITAL:

1.1 The Defendant is ordered to pay to the First Plaintiff the amount of R 1, 400, 000. [ONE MILLION FOUR HUNDRED THOUSAND RAND._____]

in delictual damages following injuries First Plaintiff sustained in a motor vehicle accident which occurred on 30 May 2010, which amount is payable by Defendant to First Plaintiff on/or before 27 October 2017;

1.2 Payment of the above amount can be made by depositing same into Plaintiffs' attorneys of record's trust account, the details of which are as follows:

ACCOUNT HOLDER	MACROBERT INC
BANK	STANDARD BANK
TYPE OF ACCOUNT	TRUST
ACCOUNT NUMBER	[...]
BRANCH	PRETORIA
BRANCH CODE	01-00-45
REFERENCE	1019262

2.

REQUISITION OF PAYMENT:

The Defendant's claims handler is ordered to request payment of the capital amounts set out in paragraph 1 above within a period of **7 (SEVEN)** days from the date upon which the court order has been served on Defendant and/or Defendant's claims handler and to provide Plaintiffs' attorney with written confirmation that payments have been requested.

3.

INTEREST:

3.1 The Defendant will not be liable for interest on the outstanding amounts;

3.2 Should the Defendant fail to make payment of the capital amounts on/or before 27 October 2017, Defendant will be liable for interest on the amounts due to Plaintiffs at a rate of 10.25% per annum as from the date of this order to date of final payment.

4.

REMAINDER OF QUANTUM :

The remainder of Plaintiffs quantum are separated and postponed *sine die*.

5.

UNDERTAKING:

The Defendant is ordered to deliver to first Plaintiff, within reasonable time, an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, Act 56 of 1996, wherein the Defendant undertakes to pay to first Plaintiff 100% of the cost of future accommodation in a hospital or a nursing home or treatment of, or rendering of a service or supplying of goods to first Plaintiff pursuant to the injuries she sustained in a motor vehicle accident which occurred on 30 May 2010, after the costs have been incurred and on proof thereof.

6.

COSTS:

The Defendant is ordered to pay the Plaintiffs' taxed or agreed party and party costs on High Court Scale for 13 October 2017 and 16 October 2017, which costs will include, but will not be limited to, the following:

6.1 The costs of all expert reports, medico-legal reports, addendum medico-legal reports, and combined joint reports, RAF4 Serious Injury Assessment Report(s) and radiology reports of all experts of whom notice has been given and/or whose reports have been furnished to the Defendant and/or its attorneys and/or whose reports have come to the knowledge of the Defendant and/or its attorneys as well as all reports in their possession and/or contained in the Plaintiffs' bundle of documents. This shall include, but

not be limited to, the following experts of whom notice has been given, namely:

- 6.1.1 Dr FA Badenhorst, Neurologist;
- 6.1.2 Dr FJD Steyn, Orthopaedic Surgeon;
- 6.1.3 Dr Hans B Enslin, Orthopaedic Surgeon;
- 6.1.4 Dr Daan de Klerk, Neurosurgeon;
- 6.1.5 Dr Franco Colin, Psychiatrist;
- 6.1.6 Dr JPM Pienaar, Plastic Surgeon;
- 6.1.7 Dr P Chetty, Cardio-Thoracic Surgeon;
- 6.1.8 Liza Prinsloo, Clinical Psychologist;
- 6.1.9 Bester Putter Occupational Therapists;
- 6.1.10 JJ Prinsloo, Industrial Psychologist;
- 6.1.11 Algorithm Consultants & Actuaries CC.

6.2 The full fees of Plaintiffs' senior counsel in respect of preparation, consultations, pre-trial conferences and a day fee for 13 October 2017 and 16 October 2017;

6.3 The reasonable travelling, subsistence and transportation costs including e-toll fees incurred by and on behalf of the Plaintiffs for attending all the medico-legal examinations arranged by Plaintiff and Defendant including costs of for heads of argument (as requested by the court);

6.4 The costs consequent to all of the Plaintiffs' trial bundles, expert reports, pleadings and notices, all indexes, document bundles and witness bundles, including the costs of 6 (six) full copies thereof;

6.5 The costs of holding all pre-trial conferences, as well as roundtable meetings between the legal representatives for both the Plaintiffs and the Defendant, including counsel's charges in respect thereof;

6.6 The costs of and consequent to compiling all minutes in respect of pre-trial conferences;

6.7 The costs of and consequent to the holding of all expert meetings between the medico-legal experts appointed by the Plaintiffs;

6.8 The costs of an interpreter at court on 13 October 2017;

6.9 The reasonable taxable costs of one consultation with the client in order to consider the offer of the Defendant, the costs to accept it, have it made an order of court and to procure performance by the Defendant of its obligations in terms hereof;

6.10 The cost incurred in obtaining payment and/or execution of the capital amounts mentioned in paragraph 1 above and/or delivery of the undertaking in terms of Section 17(4)(a) of Act 56 of 1996 mentioned in paragraph 5 above.

7.

TRUST:

7.1 The Court orders that the capital payable by the Defendant to first Plaintiff should be safeguarded and that a Trust should be established for this purpose;

7.2 That the Defendant pay the reasonable costs incurred in respect of establishing the Trust, as well as any other reasonable costs that the Trustees may incur in the administration of the Trust, including his fees, subject to the following:

7.2.1 the fees and administration costs shall be determined on the basis of the directives pertaining to *Curators* remuneration and the furnishing of security in accordance with the provisions of the Administration of Deceased Estates Act, Act 66 of 1965, as amended from time to time (as reflected in Government Gazette Notice R1602 of 151 July 1991, specifically paragraphs 3(a) and 3(b) of the Schedule thereto;

7.2.2 all the abovementioned costs shall be limited to payment of the reasonable costs which the Defendant would have had to pay regarding appointment, remuneration and

disbursements had a *Curator Banis* been appointed and not Trustees.

7.3 The Trust must be established subject to the following conditions:

7.3.1 The Trust Deed must contain the provisions as more fully set out in the draft Trust Deed attached hereto marked annexure "A";

7.3.2 The main objective of the Trust will be to control and administer the capital amount on behalf of Thozama Pele;

7.3.3 The Trustee(s) still to be appointed, will be the first Trustee(s) with powers and abilities as set out in the draft Trust Deed attached hereto marked annexure "A";

7.3.4 The Trustees will be obliged to furnish security to the satisfaction of the Master of the High Court of South Africa for the assets of the Trust and for the due compliance of all his obligations toward the Trust.

8.

TAXATION:

8.1 Plaintiffs are ordered to serve the Notice of Taxation of Plaintiffs' party and party bill of costs on Defendant's attorneys of record;

8.2 The Defendant is ordered to pay the Plaintiffs' taxed and/or agreed party and party costs within **14 (FOURTEEN)** days from the date upon which the accounts are taxed by the Taxing Master and/or agreed between the parties;

8.3 Should the Defendant fail to make payment of the party and party costs within **14 (FOURTEEN)** days after service of the taxed accounts on the Defendant's attorneys of record, Defendant will be liable for interest on the amount due to Plaintiffs at a rate of 10.25% per annum as from the date of taxation to date of final payment.

9.

CONTINGENCY FEE AGREEMENTS:

The Plaintiffs and the Plaintiffs' attorneys of record did not enter into any contingency fee agreement.

SIGNED AT PRETORIA ON THIS THE 16TH DAY OF OCTOBER 2017.

REGISTRAR

ATTORNEY FOR PLAINTIFF : MRG DREYER
MACROBERT INC
TEL : (012) 425 3557

COUNSEL FOR PLAINTIFF : ADV JPJ DU PLESSIS SC
TEL: (012) 111 0727

ATTORNEY FOR DEFENDANT : MS MORE
TAU PHALANE INC.
TEL : (012) 435 8024

COUNSEL FOR DEFENDANT : Adv M. R. Mkwala
Cell: 062 055 9112

DEED OF TRUST

WHEREAS

A. the High Court of South Africa, on the ordered that the nett proceeds of the settlement in the matter of **THOZAMA PELE** case number **31509/2014** form part of the trust to be administered, such trust is hereby created by the **Founder**, Constant Wilsnach;

AND WHEREAS

B. for the purpose of certainty and for the better administration of the Trust to be created the following terms shall govern the administration of the Trust:

REGISTRATION OF THE TRUST

The Trustee shall pay the amount of R100.00 to the Master of the High Court for the

registration of this Deed.

1. **NOW, THEREFORE, IT IS CONFIRMED THAT**

once the Deed has been registered with the Master of the High Court and Letters of Authority have been issued to the Trustee, the nett proceeds ("**the proceeds**") of the settlement of the matters referred to in A above being a common law action for compensation for injuries sustained by the **Beneficiary** shall, pursuant to the direction / order of the said Honourable Court be paid to the Trustee in trust on the terms and conditions hereinafter set out, which proceeds shall thereupon vest in the Trustee and which proceeds the Trustee by his signature to this Deed undertakes to accept for and on behalf of the Beneficiary upon the terms and conditions set out herein.

2. **NAME OF TRUST**

The trust shall be known as the THOZAMA PELE TRUST.

3. **INTERPRETATION**

In this Deed, unless the context otherwise requires, words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include the feminine gender, and *vice versa*. The following expressions used in the Deed shall have the meaning hereinafter assigned to them unless the context otherwise requires.

3.1 "**Beneficiary**" shall mean **THOZAMA PELE** or any other person as set out in paragraph 6 below. The **Beneficiary** shall be entitled to receive the income and capital of the Trust upon the terms and conditions set out in the Deed and shall be entitled to the capital of the Trust upon its termination.

3.2 "**Trust Fund**" shall mean the sums to be settled on the Trustee in terms of the said order of Court, in particular the award referred to in paragraph 3.1 hereof together with any additions or accruals thereto; all assets which shall from time to time be acquired by the Trustee for the purposes of this Deed including, without

being limited thereto, capital assets and all income thereon whether capitalised or not.

3.3 The phrase "maintenance, education and advancement of life" shall be interpreted in the widest sense wherever it appears in this Deed of Trust so as to include, for example, attendance at schools, colleges, finishing schools and universities anywhere in the world; remedial teaching of any nature whatsoever, specialised tutoring, occupational therapy of any nature whatsoever, training in craft, hobby or trade, music, art, dancing, sports, as well as sciences, travel, both national and international, accommodation lodgings, food, clothing and medical expenses and general well-being of the **Beneficiary** including the setting up in business or profession.

4. **APPOINTMENT OF TRUSTEE**

CONSTANT WILSNACH, an attorney and director in the firm of Pretorius & Wilsnach Incorporated, is hereby nominated first administrative and sole Trustee and in the event that it is not possible for him to take the appointment or to continue with his duties for whatever reason, his successor in practice or, failing him, a director or employee nominated by the managing partner of Pretorius & Wilsnach Incorporated or, failing this, a person nominated by the Master of the High Court, for the purpose of this Deed.

CONSTANT WILSNACH or any other Trustee shall be authorised to sign all documents relating to the administration and investment of the Trust capital and shall be entitled to charge such fees and to recover from the Trust such remuneration as he would have received if they had been administrators administering a testamentary trust. The said.

CONSTANT WILSNACH by his signature to this Deed accepts office as such and undertakes to carry out all the duties and obligations encumbered upon them hereunder.

5. **INCOME**

The Trustee shall collect the income accruing from the investment of the Trust Capital and

after making provision for payment of all necessary expenses, interest due, taxation, premium of the bond of security and Trustee's fees, the nett income shall be accrued to and invested as part of the Trust Capital, for the benefit of the **Beneficiary**: Provided that the Trustee may in his entire discretion pay the whole of such nett income or any portion of the Trust Capital as may be necessary to the **Beneficiary** and/or apply the same for maintenance, education and advancement in life of the **Beneficiary** and may at their discretion (whilst any **Beneficiary** is still a minor) make payment to such **Beneficiary's** parent or guardian on his/her behalf, in such manner and upon such conditions and in such proportions and at such times as the Trustee may in his absolute discretion decide. The Trustee may, in his entire discretion, allow the **Beneficiary** hereunder free use and enjoyment of all assets owned by the Trust and may decide whether the Trust or the **Beneficiary** concerned should be responsible for the maintenance of such assets and also for the payment of any rates, insurance premium and other similar charges.

6. **TERMINATION OF TRUST**

In the event of the **Beneficiary** dying intestate, the Trust Capital shall devolve according to the terms of Intestate Succession.

In the event of **Beneficiary** dying, leaving a valid Will, then the Trust Capital shall be distributed to his estate and shall be dealt with in terms thereof.

7. **POWER OF TRUSTEE**

The Trustee shall be vested with the following powers:

7.1 To invest and re-invest the Trust Capital in such manner and in such assets whatsoever as they in their absolute discretion may deem fit, with power to realise or vary any investment from time to time. The Trustee will not be entitled to invest the Trust Capital in shares of public companies and private companies and any other companies.

7.2 To form companies for the purpose of the Trust and to act as initial

subscriber thereto.

7.3 To purchase or otherwise acquire any assets whatsoever, movable or immovable, on such terms as to payment and with or without security or pledge of all or any of the assets of the Trust as they in their absolute discretion may deem fit.

7.4 In his absolute discretion to exchange, sell, lease or otherwise deal with any of the assets from time to time forming part of the Trust Capital.

7.5 To borrow upon security or otherwise and at interest or otherwise in such manner as the Trustee may deem fit.

7.6 For and on behalf of the Trust, to commence and prosecute or defend action, suit, compulsory sequestration, liquidation or other proceedings before any Court or any other competent body or person.

7.7 To accept further amounts in terms of any new or further judgement and/or any further gifts and bequests from any other person in favour of the Trust without the necessity of entering into a formal Deed of Donation.

7.8 To acquire and/or purchase and/or effect life assurance policies on the life of any party with an interest of whatsoever nature in the Trust and pay all premiums accruing thereto.

7.9 To sign as surety for and on behalf of a **Beneficiary** of the Trust, or any company in which the Trust or **Beneficiary** may have an interest, as the Trustee in his absolute discretion may think fit.

7.10 To open bank accounts in the name of the Trust and to maintain and run such accounts in such manner as the Trustee may deem fit.

7.11 To pass bonds over any immovable property held in Trust by him.

7.12 To execute any act of deed required to be lodged, or registered in any deed Registry or Mining Title Office and generally to do or cause to be done any act whatsoever in any such office.

7.13 To exercise all voting or other rights attaching to shares and other securities from time to time forming part of the Trust Capital in such manner as he shall consider fit and to cause or consent to any re organisation, consolidation or merger of any company or its capital in which the Trust holds shares and securities from time to time.

7.14 To determine, as he shall consider fit, whether receipt shall be treated as capital in respect of any liquidation dividend or return of capital paid by companies in respect of shares forming part of the Trust Capital, and generally to decide, by apportioning in such manner as he may deem fit, should any difficulty arise, as to what constitutes capital and what constitutes income.

7.15 To change the name of the Trust.

7.16 In the event of a national calamity in the Republic of South Africa or elsewhere or of a **Beneficiary** emigrating from the Republic or for any reason which in the discretion of the Trustee renders it expedient or desirable so to do, provided the necessary exchange control approval is obtained, to create or cause to be created a Trust or Trusts anywhere in the world upon the same terms as this Trust *mutatis mutandis* for the benefit of any **Beneficiary** of this Trust who shall be natural persons only and to transfer to any such Trust or Trusts such portion of the Trust Capital as shall in the sole and absolute discretion of the Trustee, represent the share of the **Beneficiary** concerned in this Trust.

7.17 To enter into contracts on behalf of the Trust.

7.18 Resolutions in writing by the Trustee shall have the same force and effect and be as binding as a resolution taken at a meeting of Trustees.

7.19 All documents of transfer in respect of the purchase or sale of stock, shares and securities and immovable property shall be signed by the Trustee provided that the Trustee has by resolution agreed the purchase or sale of the asset in question

and the terms of purchase or sale thereof.

7.20 To adopt, ratify and confirm with or without modification any contract entered into for and on behalf of the Trust prior to its creation.

7.21 The powers -and authorities herein granted to the Trustee may be exercised in any part of the world and not only within the Republic of South Africa.

7.22 The Trustee or any members or partner of his firm may be employed to act in any matter relating to the administration of the Trust and shall in addition to any remuneration payable to such Trustee in his capacity as such, be entitled to charge and be paid for any services rendered by him or his firm in a professional capacity.

7.23 Generally, the Trustee is, in fact, to have the same absolute control over and unfettered powers of investment and re-investment of the Trust assets as if he had been absolutely and beneficially entitled to the Trust Capital and he is specially indemnified against any claim arising from the loss of income or capital as a result of the *bona fide* exercise of the discretion hereby granted to them.

8. **LIABILITY**

The Trustee shall -

8.1 perform his duties and exercise his powers with the care, diligence and skill, which can reasonably be expected of a person who manages the affairs of another and shall be liable for breach of trust where he fails to show the degree of care, diligence and skill required;

8.2 be liable for losses as may arise from or be occasioned by his own dishonesty, wilful misconduct or this negligence/or that of his employees;

8.3 subject to the provisions of section 9 of the Trust Property Control Act number 57 ("the Act") of 1988, not be liable for any act of dishonesty or any other misconduct committed by any of his agents unless he knowingly allowed it or was an accessory thereto ;

8.4 subject to the provisions of section 9 of the Act, be indemnified out of the Trust assets against all claims and demands of whatsoever nature that may be made upon him arising out of the exercise or purported exercise of any of the powers hereby conferred upon him;

8.5 the Trustee holding office shall be required to furnish either individually or collectively to the Master of the High Court, security for the administration of the Trust hereby created, as the Master may deem fit.

9. **NOMINEE REGISTRATIONS**

All investments or other assets acquired by the Trust may be registered in the name of the Trust without specifically naming the Trust, or in the name of the nominee company, or in such manner as the Trustee may deem expedient from time to time.

10. **EXCLUSION OF MARITAL POWERS**

The rights of any amounts paid to any **Beneficiary** under this Trust shall in no way form part of any community of property or joint estate or accrual system of such **Beneficiary**, and the husband of a female **Beneficiary** shall, whether his marriage to her be in or out of community of property, not have or acquire any marital powers, control or power of administration over any such rights or amounts.

11. **INDEMNITY - INCOME TAX**

In the event of the **Beneficiary** hereunder becoming legally liable in any statutory year to tax upon the whole or any portion of the income arising from the Trust Fund to which he has not received the benefit by reason of any provision in any law hereafter in force, in terms of which the aforesaid person is rendered liable for tax on such income, then, in such circumstances, it shall be competent for the Trustee to pay out of the income or capital of the Trust, the amount of the additional tax which the Beneficiary is obliged to pay as aforesaid. For the purposes of this clause the expression "tax" shall be deemed to include all Income Tax, Imports and other duties levied by the State or other

competent authority.

12. **ACCOUNTING**

The Trustee shall cause proper records, which may be wholly or partially computerised, to be kept of all affairs and dealings of the Trust. The records of the Trust shall be submitted to accountants to be audited and vouched for at the end of each financial year, which shall be regarded as being the last day of February, of any other day which may be selected by the Trustee and shall be submitted within six months of each financial year-end.

13. **PAYMENT AND DELIVERY**

In the paying out of any amount of capital or income of the Trust to or for the benefit of a **Beneficiary**, the Trustee shall be empowered to make the said payments in whole or in part by delivery of an asset or assets or share in an asset or assets having a value equivalent, in the opinion of the Trustee, to the payment effected by such delivery.

14. **UNDERTAKING**

The undertaking contemplated by section 17(4) (a) of Act 56 of 1996 as set out above, shall be administered by the Trustee, and the Trustee shall be entitled to payment of 100% of the prescribed remuneration for the administration of the undertaking.

15. **AMENDMENTS**

This Deed of Trust may not be amended or added to, save by way of an order of court.

16. **GENERAL**

16.1 The interest of the **Beneficiary** in terms of this Trust shall not be capable of being ceded, assigned, transferred, pledged and hypothecated or in any way alienated without the prior written consent of the Trustee and the Master of the High Court or by order of Court.

16.2 The rights, benefits or interests conferred on the **Beneficiary** under this Deed shall not be capable of being exercised or claimed in any way by anyone other than such **Beneficiary** or being attached at the instance of any creditor or

vesting in any other person whomsoever in any capacity.

16.3 Until any benefit or reward is actually paid over to the **Beneficiary** nothing herein contained nor any resolution, deed or act of the Trustee shall create or confer upon any person any claim or right enforceable at law to any benefit or award hereunder.

16.4 Howsoever or wherever the assets may be held or registered they shall be held on and for the account of the Trust and at no time shall the Trustee be deemed to acquire for himself or his personal account any vested right or interest in the Trust Fund.

The aforesaid **CONSTANT WILSNACH** has declared to accept office as Trustee and promised to undertake diligently to perform the duties hereinbefore imposed upon him.

THUS DONE AND SIGNED at Pretoria this 13th day of October 2017.

AS WITNESSES:

1. _____

CONSTANT WILSNACH

2. _____

IN THE NORTH GAUTENG HIGH COURT, PRETORIA ,

[REPUBLIC OF SOUTH AFRICA]

CASE NUMBER: 31509/ 2014

IN THE MATTER BETWEEN:

THOZAMA PELE

PLAINTIFF

AND

ROAD ACCIDENT FUND

DEFENDANT

CONSENT OF THE NOMINATED *TRUSTEE*

I, the undersigned,

CONSTANT WILSNACH

hereby state the following:

1.

I am practising as an attorney and partner in a firm called Pretorius & Wilsnach Attorneys at 386 Orient Street, Arcadia, Pretoria.

2.

I specialise in trusts and work as a trustee or *curator bonis*. I have often been instructed to act as a trustee or *curator bonis* in various other Road Accident Fund matters.

3.

I declare that I am willing to act as a *Trustee* for **THOZAMA PELE** if it pleases the Honourable Court to appoint me as such.

DATED AT PRETORIA ON THIS THE 13 TH DAY OF OCTOBER 2017.

CONSTANT WILSNACH