Reportable:	YES / **NO**
Circulate to Judges:	YES / **NO**
Circulate to Magistrates:	YES / **NO**
Circulate to Regional Magistrates:	YES / **NO**

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

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

Case Number: 109/2017

In the matter between:

KTP obo OP **Plaintiff**

And

MINISTER OF HEALTH OF THE NATIONAL DEPARTMENT OF HEALTH **1st Defendant**

DIRECTOR-GENERAL OF HEALTH OF NATIONAL DEPARTMENT OF HEALTH **2nd Defendant**

MEMBER OF THE EXECUTIVE COUNCIL OF PROVINCIAL DEPARTMENT OF HEALTH AND DEVELOPMENT SOCIAL WELFARE NORTH WEST PROVINCE **3rd Defendant**

HEAD OF HEALTH AND SOCIAL WELFARE OF

THE PROVINCIAL DEPARTMENT OF HEALTH

AND DEVELOPMENT SOCIAL WELFARE,

NORTH WEST **4th Defendant**

Heard: 5 MARCH 2024

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **6 MAY 2024**

ORDER

I make the following order:

1. It is recorded that liability had been settled in favor of plaintiff 100%;

2. The Defendant is liable to pay the Plaintiff an amount of **R1 423 536.00 (one million four hundred and twenty three thousand five hundred and thirty six rand)**in respect of the Plaintiff's loss of earning capacity, and **R 2 500 000.00 (two million five hundred thousand rand)** in relation to general damages by way of once-off payment payable within 14 days of order hereof. The aforesaid amount is calculated as follows:

2.1) Loss of earning capacity	R1 423 536.00
2.2) General damages	R2 500 000.00
TOTAL:	**R 3 923 536.00**

3. The aforesaid capital amount will not bear interest unless the Defendant fails to effect payment thereof on the specific date, in which event the capital amount will bear interest at legally prescribed rate per annum, calculated from and including the 30 days after the date of this order, up to and including the date of payment thereof;

4. Plaintiff’s attorneys are given leave to invest the said amount on behalf and for the benefit of the plaintiff, following having received the capital amount in an interest bearing account as envisaged in Section 78(2)(A) of the Attorney's Act, until a trust as set out hereinunder is established and registered.

5. The Plaintiff’s attorneys are ordered to pay the capital amount, less provision for attorney and own client fees, expenses incurred and accounts rendered by experts and counsel employed, to the trustees of a trust to be established of which ‘O P’ (hereinafter "the plaintiff") is to be the sole capital and income beneficiary following the registration of the said trust with the Master of the High Court and following the furnishing of security by the trustee to the satisfaction of the Master of the High Court as stipulated hereinunder.

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

7. The Defendant is to pay the reasonable costs limited to no more than 7.5 % of the trustee appointed, including the costs of establishing the trust and any other reasonable costs that the trustee may incur in the administration thereof including his fees, which fees will include and be subject to the following:-

9. The nett proceeds of the payment referred to above together with the Plaintiff's taxed or agreed party and party costs payable by the Defendant, after deduction of the Plaintiff's attorney and own client legal costs (the capital amount), shall be payable to a trust, which trust will:

    9.1 have as its main objective to control and administer the capital amount on behalf of the plaintiff;

    9.3 have Hendrik Stephanus FF Van Der Walt, a practising attorney and director of F&F Van Der Walt Attorneys, as its first trustee, with powers and abilities as are the statutory duties of trustees. The trustee 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 towards the trust.

10. The trustee of the trust is authorised to pay the Plaintiff's attorney and correspondent attorney and own client costs out of the trust funds insofar as any payments in that regard are still outstanding at that stage.

11. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs of the action on the High Court scale up to date hereof, up and including the trial on 5 and 6 March 2024.

11.1 in the event that the costs are not agreed:

11.1.1. the Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;

11.1.2 the Plaintiff shall allow the Defendant 14 Court days from date of the allocation to make payment of the taxed costs;

11.1.3. should payment not be affected timeously, the Plaintiff will be entitled to recover interest at a rate of 14.75% on the taxed or agreed costs from date of allocation to date of final payment.

11.2 The costs referred to in paragraph 10 shall inter alia include but not be limited to:

11.2.1. the costs incurred to obtain payment of the amounts in paragraphs 2 and 3 above and the amounts in this paragraph.

11.2.2. the costs of two counsel for the action, including costs for the trial dates on 5 & 6 March 2024, further including but not limited to costs attorney and of both counsel's attendance to all scheduled pre-trial conferences and pre-hearing pre-trial conference, as well as preparation for same and drafting of pre-trial agenda, questions and minutes for all pre-trial conferences;

11.2.3. the costs of the Plaintiff s expert reports and addendum reports (if any), joints minutes (if any),

taxable qualifying, reservation and preparation fees (if any) to be determined by agreement or by the Taxing Master of the Plaintiff s following experts, further including all reasonable costs in obtaining the said reports:

11.2.3.1 Orthopaedic Surgeon – Dr P. Engelbrecht;

11.2.3.2 Educational Psychologist – S. Haycock;

11.2.3.3 Pediatrician Neurologist – M.M Lippert;

11.2.3.4 Industrial Psychologist – N. Kotze;

11.2.3.5 Actuary – GW Jacobson

11.2.3.6 Orthopedics Services – Meintjes & Neethling;

11.2.3.7 Occupational Therapist – Dr F. Fouche;

11.2.3.8 Urologist – Dr I.J Van Heerden;

11.2.3.9 Specialist Physician – A.P.J Botha;

11.2.3.10 Obstetrician and Gynaecologist – C.R Nelson

11.2.4 the costs of all joint meetings between the parties' experts and the preparation of joint minutes in respect thereof (if any);

11.2.5 the reasonable costs incurred by and on behalf of the plaintiff in attending the medical legal examination of all experts from both parties, including both fees for travelling time, accommodation and disbursements incurred in such amount as allowed by the taxing master;

11.2.6 Attorney's traveling costs to court on day of trial for **5 March 2024** and attorney's correspondent's fees on a High Court Scale, as allowed by the taxing master;

12. In the event that costs are agreed, the party and party costs are payable within 14 days from the date of taxation, alternatively date of settlement of costs, whereafter interest will be payable at 14.75% per annum from date of taxation alternatively date of settlement of costs to date of payment.

13. Plaintiff s attorneys shall take all necessary steps to assist the trustee in the formation and registration of the trust for the benefit of the plaintiff to ensure, inter alia, the proper protection, administration and management of the financial and/or related affairs of the said plaintiff according to law.

14. Valid contingency fee agreement had been entered into by the parties.

15. Should the Defendant fail to pay the Plaintiff’s costs as taxed or agreed within 5 (FIVE) days from the date of taxation, alternatively date of settlement of such costs, the Defendant shall be liable to pay interest at a rate of 14.75% per annum, such costs as from and including the date of taxation, alternatively the date of settlement of such costs up to and including the date of final payment thereof;

16. The amounts referred to above shall be paid into the account of the Plaintiff’s attorneys of record by direct transfer into their trust account, details of which are the following:

NAME:	**[…]**
BANK:	**[…]**
BRANCH:	**[…]**
ACCOUNT NUMBER:	**[…]**
BRANCH CODE:	**[…]**
ACCOUNT:	**[…]**
REF:	**[…]**

17. When making payment of the aforementioned amounts, the Defendant will use the reference of the Plaintiff's attorneys as above.

18. The issue of past and future medical expenses are postponed *sine die.*

JUDGMENT

DJAJE DJP

[1] This is an action for damages by the plaintiff in her personal capacity and on behalf of the minor child as her natural guardian. The minor child suffered intrapartum hypoxia and as a result was diagnosed with neonatal encephalopathy post hypoxia. The minor child who is twelve (12) years old suffers from cerebral palsy and requires full support as he cannot sit by himself. The trial on merits was finalised with the order that the third defendant was liable for 100% of all the proven damages suffered by the plaintiff. The outstanding issue is quantum in relation to past and future medical expenses, loss of income and general damages. The

issue of future medical expenses was by agreement between the parties postponed for determination at a later stage. The trial proceeded only on loss of income and general damages.

[2] At the commencement of the proceedings the plaintiff made an application for the expert reports to be admitted as hearsay in terms of section 3(1)(a) of the Law of Evidence Amendment Act 45 of 1988 and section 34(1) of the Civil Proceedings Evidence Act 25 of 1965. The application was granted. The plaintiff had given notice to call the following experts and provided the reports:

- Dr Lippert – Paediatric Neurologist
- Sari Haycock - Educational Psychologist
- Nicolene Kotze – Industrial Psychologist
- Franciska Fouche – Occupational Therapist
- Dr Piet Engelbrecht – Orthopaedic Surgeon
- Meintjies & Neethling – Orthopaedic Suppliers
- Gerard- Jacobson – Actuary
- Dr CR Nelson – Obstetrician and Gynaecologist
- Dr Izak J van Heerden – Urologist
- Dr APJ Botha – Specialist Physician

The defendant gave notice for the following experts

- Dr Mogashoa – Paediatric Neurologist

- Dr Mathivha – Paediatrician
- Dr Mbokota – Gynaecologist
- Dr Kamolane – Radiologist
- Dr Kganane – Paediatrician
- Prof Du Plessis – Midwifery
- Dr Botha – Life expectancy expert
- Dr G Prag – Educational Psychologist
- Dr Lukhele – Orthopaedic Surgeon
- Dr P Z Mteshana – Paediatric Neurologist
- Z L Phatudi – Industrial Psychologist
- N Mavimbela – Actuary

[3] The Paediatric Neurologist for the plaintiff after examining the minor child in **2013** made the findings that the child has active gastro-oesophageal reflux system that needs treatment. He is severely microcephalic at a skull circumference of 38.2 cm. The skull is misshapen with a towering of the occipital posterior portion and scars from surgical drainage procedure seen on top bilaterally. The child had severe spastic cerebral palsy; all four limbs involved but with different grading. The upper limbs having grade 4 spasticity and grade 2 in the legs. There were no contractures but a very high risk of them developing should there be no skilful physiotherapy. The child cannot sit by himself unsupported and can partially roll over from prone to a side by mass movements. In vertical suspension his feet go into equinus postures but doesn't

scissor the legs. The child is mentally quite disabled and has no ability to communicate verbally (besides with joy sounds) or communicate non-verbally by gestures. Further that the child needs very high-level care and comforting and full-time attendance.

[4] Dr Mogashoa for the defendant found that the child has neurological impairments which are severe as he has poor control of his antigravity muscles and cannot sit without support. Dr Mteshana found that the child has cerebral palsy and his ability to be independent has been hampered for life.

[5] The Occupational Therapists reports indicated that the child could not communicate except through joyful sounds when touched or picked. He has spastic quadriplegia with low tone in the trunk and spasticity in the limbs.

[6] The experts agreed that the child is suffering from spastic quad paretic cerebral palsy with severe intellectual impairment. The Orthopaedic Surgeon noted deformities of spastic quadriplegic noted with internal rotation and adduction of shoulder, flexion of elbows, pronation of forearm with flexion of wrist and adduction of thumb on the upper limbs. On the lower limbs, the hips are located although flexion of hips noted as well as flexion of knees and equinis deformity both ankles. The Orthopaedic Surgeon opined

that the child is prone to respiratory infections as well as tonsilitis/ sinusitis.

General Damages

[7] Both parties referred to various case law in the determination of general damages. The plaintiff in support of an award of two million seven hundred thousand rand (R2 700 000-00) quoted the following case law:

"13. In MSM obo KBM for Health, Gauteng 2020 (2) SA 567 (GJ), the court awarded a child of 7years with severe cerebral palsy child classified on GMFCS Level 5 and a life expectancy of 24.6 years an amount of R2, 000, 000.00 in general damages.

14. In NK v MEC for Health, Gauteng 2018(4) SA 454 (SCA) a child with a similar condition was awarded an amount of R1, 800,000.00 in general damages. It appears from the judgment that the child would lose his entire mobility when he would reach the age of about 37 years.

15. In Kriel NO obo S v Member of the Executive Council for Health, Gauteng Provincial Government (9407/2017) [2020] ZAGPJHC 273 (4 November 2020) 18, the courts stated the following:

'Counsel referred me to: Singh v Ebrahi (1) [2010] 3 All SA 187 (D), where general damages awarded were R1 200 000.00; Matlakala v MEC for Health, Gauteng Provincial Government 2015 (7A4) QOD 22 (GJ), where general damages awarded were R1 500 000.00; S (obo S) v MEC Health Gauteng [2015] ZAGPPHC 605, where general damages awarded were R1 800 000.00; AD and IB v MEC for Health and Social Development, Western Cape Provincial Government 2016 (7A4) QOD 32 (WCC), where general damages awarded were R1 800 000.00 in respect of cerebral palsy child with a classification of

either GMFCS Level II or Level III; ZK v MEC for Health, Gauteng Provincial Government 2018 (7A4) QOD 80 (SCA) where general damages awarded were R1 800 000.00; Khoza v MEC for Health, Gauteng (216/17) [2018] ZASCA 13 (15 March 2018), where general damages awarded were R1.8 million; MP obo SP v MEC for Health, Eastern Cape Province 2018 (7A4) QOD 87 (ECM), where general damages awarded were R2 000 000.00; CS (obo TGS) v MEC for Health, Gauteng 2018 (7A4) QOD 104 (GNP), where general damages awarded were R1 800 000.00; PM obo TM v MEC for Health, Gauteng Provincial Government (A5093/2014) [2017] ZAGPJHC 346 (7 March 2017), where general damages awarded were R1 800 000. 00; MSM obo KBM v MEC for Health Gauteng (delivered on 18 December 2019 in this division (case no 431/2015), where general damages awarded were R2 000 000 for a cerebral palsy child classified on GMFCS Level 5, and to Janse van Rensburg v MEC for Health and Social Development Gauteng Province (handed down on 1 July 2020 in this division (case no. 12933/2015), where general damages of R2 200 000 were awarded where the child suffering from cerebral palsy was classified on GMFCS Level II with life expectancy 51.5 years. I need not refer to the similarities and inevitable differences that arose in each case. The general tendency in present day money value appears to be awards of general damages to children suffering from cerebral palsy of between R1 800 000 and R2 200 000.'

(The present values of R1,8 million and R2,2 million are R2,25 and R2,75 million respectively)."

[18] In contention the defendant argued that the appropriate amount to be awarded for general damages is two million two hundred thousand rand (R2 200 000-00). The case law relied on by the defendant was as follows:

"38. In MSM obo KBM v MEC for Health, Gauteng, the minor was seven years old at the time of judgment and had a reduced life expectancy of 24,6 years. The plaintiff was awarded an amount of R2 million for general damages.

KEIGHTLEY, J at paragraph stated that:

"It is common cause between the parties that K suffers from a severe type of cerebral palsy, which is predominantly dystonic, with a GMFCS 5. According to the joint minutes of the paediatric neurologist, this means that she is capable of very limited independent mobility. Her co-morbidities include profound intellectual disability, lower limb contractures, strabismus, microcephaly and global development delay. There is evidence of cortical visual impairment."

39. In Matlakala v MEC for Health, Gauteng Provincial Government, the child, as a result of incorrect resuscitation procedure at a provincial hospital, suffered from spastic dynastic cerebral which was irreversible. The minor was totally incommunicative and had never learned to sit, stand or work and was regarded as uneducable, had the lowest level of gross motor function classification and only produced sounds, no words and was incapable of social activity. The minor child needed constant care for his most basic functions. An ward of R1.5 MILLION IN 2015)

40. In ZK v MEC for Health, Gauteng Provincial Government, a boy suffered a hypoxic-ischaemic incident during birth and suffered severe brain damage which manifested itself in spatic cerebral palsy, quadriplegia, mental retardation, epilepsy, marked delays in development, speech decifits, general spasticity, compromised respiratory function, subluxation of the hip, scoliosis of the spine and behavioural problems. The little boy would be incontinent for his entire life, would have to use nappies and would have to be changed constantly by caregivers. He experienced pain and discomfort and would have to undergo physiotherapy requiring the regular use of a hoist in later years. He had difficulty eating and had to be forced fed

and was not in a state of 'unconscious suffering'. An award of R1.8 million was granted in favour of the plaintiff.

41. *The condition of the minor child in the case of ZK were severe compared to the minor child in casu.*

42. *In CS (obo TGS) v MEC for Health, Gauteng, the minor child was born with cerebral palsy and suffered permanent severe brain damage resulting in severe motor and cognitive impairment in the form of quadriplegia, complicated by contractures leaving him permanently disabled and disfigured. A muscular scoliosis deformity had to be surgically addressed. He had a disfigured claw-like right hand, could not walk or talk and his hearing and vision were severely reduced. He had a pulmonological disability, resulting in frequent ear infection and faced a number of orthopaedic, gastro-enterological, neurosurgical and dental surgical procedures in the future. His life expectancy was reduced to 30 years. An award of general damages in the sum of R1,8 million was made. (2024 value is R2. 4300)"*

[19] The court in awarding general damages does not intend to punish the defendant but to compensate the plaintiff as a form of solace for the suffering. In **Sandler v Wholesale Coal Suppliers Ltd 1941 AD 194** it was held that:

"---it must be recognised that though the law attempts to repair the wrong done to a sufferer who has received personal injuries in an accident by compensating him in money, yet there are no scales by which pain and suffering can be measured, and there is no relationship between pain and money which makes it possible to express the one in terms of the other with any approach to certainty. The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must certainly be uncertain, depending upon the judge's view of what is fair in all the circumstances of the case."

[20] In determining an appropriate amount for compensation it is important to look at comparable cases and the awards made in those matters. However, these only serve as a guide as each case should depend on the personal circumstances of the plaintiff, the severity of the condition and the effect thereof on the life of the plaintiff. The argument on behalf of the plaintiff was that an amount of R2,700 000.00 is justified as the child herein is a cerebral palsy child classified on Gross Motor Function Classification System ("GMFCS") Level 5. Looking at the comparable cases referred to above by both the plaintiff and defendant where the children had cerebral palsy with GMFCS level 2 to 5, the awards are ranging from R1,800 000.00 to R2,200 000.00 in general damages.

[21] It is indeed common cause that the child in this matter suffers from severe spastic quadriplegic cerebral palsy and considering the value of damages and inflation, the appropriate amount to be awarded is R2,500 000.00 for general damages.

Loss of earning capacity

[22] The other issue for determination is that of loss of earning capacity. The two Industrial Psychologists prepared a joint minute with points of agreement and disagreement. They both agree that the child but for the incident, would have been able to complete at least Grade 12 with a certificate or diploma pass and would have

been able to continue his studies at the FET College to complete NQF 5 or a NQF 6 at a Tertiary Institute. They both agreed that the child would have been able to continue working until age 65 or alternatively until the indicated retirement age of his employer at the time.

[23] The plaintiff's Industrial Psychologist, Nicolene Kotze opined that if the child opted for NQF 5 studies, he would have studied for 1 or 2 years and after completion enter the labour market on par with the median of Paterson level A3/B1 (basic salaries) progressing in a straight line to the median of C1/C2 (annual guaranteed package) by age 45. If the child had opted for NQF 6, he could have entered the labour market on par with the median Paterson level B3/B4 (annual guaranteed package) progressing in a straight line to the median of Paterson level C3/C4 (annual guaranteed package) before reaching career ceiling of age 45.

[24] On the other hand, Zahira Phatudi for the defendant opined that the child would enter the labour market as an unskilled labourer around the age of 21 with a Grade 12 qualification, after looking for employment for 2 to 3 years considering the high unemployment rate and competition from experienced candidates. He would start with a pay scale of R26 000.00 and with on-the-job training move to semiskilled pay scale of R78 000.00. His earning would plateau until age 65. With the NQF 5/6 he would enter the open labour market around the age 23 or 24 at Paterson B2 and reach the median of Paterson B3 in his 30s and B4 in his late 30s and early

40s. By age 45 and 49 his earnings would be on Paterson B5/C1 until retirement.

[25] The plaintiff calculated the loss of earnings with higher certificate and having applied 20% contingency at R1 423 536.00. The one with Diploma level which is NQF 6 at R1 912 322.00. The defendant's calculations are R220 716.00 with only Grade 12 no contingencies applied. With NQF 5/6 calculation at R 793 201.00 no contingencies applied.

[26] The determination of loss of earning is speculative and this much is clear as stated in **Southern Insurance Association Ltd v Bailey NO 1984 (1) SA 98 (A)** that:

"Any enquiry into damages for loss of earning capacity is of its nature speculative because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the Court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss."

[27] The court must consider what the child would have earned but for the injury and guided by the experts' opinions. The application of contingencies should also be considered. It seems both parties agree that the child would have completed Grade 12 and post matric qualifications. The contingency deduction of 20% is reasonable in the circumstances and the calculated amount by the plaintiff of R R1 423 536.00 is justified in this case.

[28] There is no dispute that a trust be established to protect the funds awarded to the child and that no more than 7.5% of the monies be allowed for the administration of the trust.

Costs

[29] It is trite that costs follow the result, and the defendant should pay the costs of suit.

Order

[30] Consequently, the following order is made:

1. It is recorded that liability had been settled in favor of plaintiff 100%;

2. The Defendant is liable to pay the Plaintiff an amount of **R1 423 536.00 (one million four hundred and twenty three thousand five hundred and thirty six rand)**in respect of the Plaintiff's loss of earning capacity, and **R 2 500 000.00 (two million five hundred thousand rand)** in relation to general damages by way of once-off payment payable within 14 days of order hereof. The aforesaid amount is calculated as follows:

2.1) Loss of earning capacity	R1 423 536.00
2.2) General damages	R2 500 000.00

TOTAL: **R 3 923 536.00**

3. The aforesaid capital amount will not bear interest unless the Defendant fails to effect payment thereof on the specific date, in which event the capital amount will bear interest at legally prescribed rate per annum, calculated from and including the 30 days after the date of this order, up to and including the date of payment thereof;

4. Plaintiff's attorneys are given leave to invest the said amount on behalf and for the benefit of the plaintiff, following having received the capital amount in an interest bearing account as envisaged in Section 78(2)(A) of the Attorney's Act, until a trust as set out hereinunder is established and registered.

5. The Plaintiff's attorneys are ordered to pay the capital amount, less provision for attorney and own client fees, expenses incurred and accounts rendered by experts and counsel employed, to the trustees of a trust to be established of which 'O P' (hereinafter "the plaintiff") is to be the sole capital and income beneficiary following the registration of the said trust with the Master of the High Court and following the furnishing of security by the trustee to the satisfaction of the Master of the High Court as stipulated hereinunder.

6. The Plaintiff's attorneys are authorised to make any reasonable and necessary payments, until such time as the trustee is able to take control of the capital amount and to deal with same in terms of the trust deed, to satisfy the needs of the plaintiff that may arise and that is required in

order to satisfy any reasonable need for treatment and/or equipment as may be necessary in the interim period.

7. The Defendant is to pay the reasonable costs limited to no more than 7.5 % of the trustee appointed, including the costs of establishing the trust and any other reasonable costs that the trustee may incur in the administration thereof including his fees, which fees will include and be subject to the following:-

9. The nett proceeds of the payment referred to above together with the Plaintiff's taxed or agreed party and party costs payable by the Defendant, after deduction of the Plaintiff's attorney and own client legal costs (the capital amount), shall be payable to a trust, which trust will:

9.1 have as its main objective to control and administer the capital amount on behalf of the plaintiff;

9.3 have Hendrik Stephanus FF Van Der Walt, a practising attorney and director of F&F Van Der Walt Attorneys, as its first trustee, with powers and abilities as are the statutory duties of trustees. The trustee 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 towards the trust.

10. The trustee of the trust is authorised to pay the Plaintiff's attorney and correspondent attorney and own client costs out of the trust funds insofar as any payments in that regard are still outstanding at that stage.

11. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs of the action on the High Court scale up to date hereof, up and including the trial on **5** and **6 March 2024.**

11.1 in the event that the costs are not agreed:

11.1.1. the Plaintiff shall serve a notice of taxation on the Defendant's attorney of record;

11.1.2 the Plaintiff shall allow the Defendant 14 Court days from date of the allocation to make payment of the taxed costs;

11.1.3. should payment not be affected timeously, the Plaintiff will be entitled to recover interest at a rate of 14.75% on the taxed or agreed costs from date of allocation to date of final payment.

11.2 The costs referred to in paragraph 10 shall inter alia include but not be limited to:

11.2.1. the costs incurred to obtain payment of the amounts in paragraphs 2 and 3 above and the amounts in this paragraph.

11.2.2. the costs of two counsel for the action, including costs for the trial dates on **5 & 6 March 2024**, further including but not limited to costs attorney and of both counsel's attendance to all scheduled pre-

trial conferences and pre-hearing pre-trial conference, as well as preparation for same and drafting of pre-trial agenda, questions and minutes for all pre-trial conferences;

11.2.3. the costs of the Plaintiff s expert reports and addendum reports (if any), joints minutes (if any), taxable qualifying, reservation and preparation fees (if any) to be determined by agreement or by the Taxing Master of the Plaintiff s following experts, further including all reasonable costs in obtaining the said reports:

11.2.3.1 Orthopaedic Surgeon – Dr P. Engelbrecht;
11.2.3.2 Educational Psychologist – S. Haycock;
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11.2.3.9 Specialist Physician – A.P.J Botha;
11.2.3.10 Obstetrician and Gynaecologist – C.R Nelson

11.2.4 the costs of all joint meetings between the parties' experts and the preparation of joint minutes in respect thereof (if any);

11.2.5 the reasonable costs incurred by and on behalf of the plaintiff in attending the medical legal examination of all experts from both parties, including both fees for travelling time, accommodation and disbursements incurred in such amount as allowed by the taxing master;

11.2.6 Attorney's traveling costs to court on day of trial for **5 March 2024** and attorney's correspondent's fees on a High Court Scale, as allowed by the taxing master;

12. In the event that costs are agreed, the party and party costs are payable within 14 days from the date of taxation, alternatively date of settlement of costs, whereafter interest will be payable at 14.75% per annum from date of taxation alternatively date of settlement of costs to date of payment.

13. Plaintiff s attorneys shall take all necessary steps to assist the trustee in the formation and registration of the trust for the benefit of the plaintiff to ensure, inter alia, the proper protection, administration and management of the financial and/or related affairs of the said plaintiff according to law.

14. Valid contingency fee agreement had been entered into by the parties.

15. Should the Defendant fail to pay the Plaintiff’s costs as taxed or agreed within 5 (FIVE) days from the date of taxation, alternatively date of settlement of such costs, the Defendant shall be liable to pay interest at a rate of 14.75% per annum, such costs as from and including the date of taxation,

alternatively the date of settlement of such costs up to and including the date of final payment thereof;

16. The amounts referred to above shall be paid into the account of the Plaintiff's attorneys of record by direct transfer into their trust account, details of which are the following:

NAME:	**[…]**
BANK:	**[…]**
BRANCH:	**[…]**
ACCOUNT NUMBER:	**[…]**
BRANCH CODE:	**[…]**
ACCOUNT:	**[…]**
REF:	**[…]**

17. When making payment of the aforementioned amounts, the Defendant will use the reference of the Plaintiff's attorneys as above.

18. The issue of past and future medical expenses are postponed *sine die.*

_____

J T DJAJE

DEPUTY JUDGE PRESIDENT

NORTH WEST HIGH COURT

APPEARANCES

DATE OF HEARING	: 5 March 2024
DATE OF JUDGMENT	: 6 May 2024
COUNSEL FOR THE PLAINTIFF	: Adv AB Rossouw SC with Adv Van der Westhuizen
COUNSEL FOR THE DEFENDANT :	Adv Moagi