

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

REPUBLIC OF SOUTH AFRICA



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

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

DATE: 09 JUNE 2023
SIGNATURE:

DATE SIGNATURE

CASE NO: 81106/2017

In the matter between

JT MTHEMBU OBO S.S Z

PLAINTIFF

AND

RAF

DEFENDANT

JUDGMENT

KHWINANA AJ

INTRODUCTION

[1] This matter is before me for quantum on loss of earnings, and general damages. The defendant's defence was struck and the court then referred this matter for default judgment. The applicant has filed an application in terms of Rule 38(2) requesting evidence by affidavit.

[2] I am ceased with the determination of loss of earnings and general damages.

INJURIES

[3] The injuries have been listed on RAF 1 form and treatment plan:

“Emergency treatment, amputation of the left middle finger. The abridgment ring finger and mouth, both lips, side left hand, traumatic amputation, LT middle finger, full thickness with extensive destruction, necrosis of damage to muscle, bone, or supporting structure. Devitalised tissue LT ring finger, full thickness, and volume damage too, or necrosis of subcutaneous tissue may extend to both through facia. Deep septic lacerations to the lip, partial thickness skin loss, involving epidermis and dermis puss discharging.”

[4] The claimant's face, the mouth is lacerated, it was deep and also a bit swollen. Mr Vorster referred to the Neurosurgeon's report. The plaintiff is forgetful, and the mother has to repeat things. There is an amputated left middle finger, the claimant sustained a mild concussion with soft tissues on the lips, no loss of consciousness, and no recorded admission of Glasco coma scale. No further treatment was suggested.

Clinical psychologist Dr. Maputsi

[5] He states that neuropsychological impairments and clinical psychological disturbances are due to the long-term effects of the accident, which include the effects of residual neurocognitive. He says the plaintiff retained invalid responses from items for higher cognitive domains of executive function. Vision and cognitive flexibility and complex attention, all scoring below average. This suggests the presence of long-term cognitive deficits. Based on the history obtained and documentation reviewed, we conclude that his poor overall performance can be attributed to a combination of cognitive deficits, arising from traumatic brain injury sustained at a vulnerable age.

[6] Summary of the injuries: Mild concussion. The impairment evaluation given is at 12% whole bodily impairment. The orthopaedic surgeon went through the hospital records and stated that the injuries were the left-hand injury, his middle finger was moving and hanging by the skin, and his upper and lower lips were injured. And from the hospital records, it is stated that: Left-hand injury of traumatic, of a left middle finger, at the pit joint, laceration to the ring finger and side dorsally. Both upper and lower lips laceration to the left side. The doctor confirms that the claimant is left-hand dominant.

[7] The healed scar on the left ring finger, and left middle finger amputation, yield a 2.5 inches stump from the MCP joint. The doctor referred to the x-rays which confirm that in terms of the narrative test, it is serious long-term, and he gives a 9%. He also confirms the pain and the suffering.

[8] It is recorded that there is not much of a consequence, because the minor was at such a young age, but the behaviour is consistent with the diagnosis of PTSD in childhood. The clinical formulation or the impact of the head injury says:

Based on the foregoing, we conclude that the head

or brain injury that Sibonelo sustained at the time of the accident, may have contributed to a mild concussion. The minor experiences poor performance on tests of higher domains of executive function, reasoning cognitive flexibility, and complex attention.

[9] Educational Psychologist: He records poor concentration, forgetfulness, declined school performances, aggressive behaviour towards other children at school. Ms Mthembu reported that the accident occurred in 2014, when Sibonelo was 7 years and 8 months old, and in the first term of grade 3, the mother reported that Sibonelo failed a grade before the accident. He reportedly failed grade 5 in 2016, after the accident. He was in grade 6 at the time of the report.

[10] He opines that it can be assumed that Sibonelo would have coped adequately with the academic requirements of a mainstream school, up until and including grade 12, NQF 4 level. He would have probably been able to pass grade 12 NFQ 4, with a diploma or a degree endorsement, which would have offered him the opportunity to obtain an NQF 6 or 7 qualification in the area of his interest.

[11] It is found to be functioning in a low average range of

intelligence, his global IQ score is average and his performance IQ is average. On scholastic assessment, he performed below average on the arithmetic tests. He opines that a motor vehicle accident had traumatic consequences on perceptual-cognitive as well as emotional level and may later manifest as serious learning disabilities. An individual with mild brain injury would not easily be noticed as his learning language and other abstract concepts on an oral level. Such learner will benefit from various element support structures.

[12] But with support, he will be able to pass matric, properly with a certificate endorsement, NFQ 5 and will obviously need support at school and tertiary when the work is complicated. It has been recorded that he is fearful at night and he has nightmares, he has pain of the stump during cold weather, not able to carry heavy items. He has back pain when he is standing for too long, and he has memory problems. He struggles to remember things that happened 2 days ago.

[13] According to the Industrial Psychologist having regard to the residual capacity, the writer is of the opinion that once he has reached full maturity, he will probably retain the

residual capacity for sedentary light to medium occupations. However, he is expected to struggle with occupations that require fine motor skills and finger dexterity, such as writing, typing, filing, etc. As the injuries are to the left dominant hand, the minor has suffered more prejudice. While he is not expected to show proficiency for labour intensive work, he is also not expected to show proficiency for clerical and administrative work, due to the left dominant hand being affected.

[14] His employment prospects will be directly linked to the level of education he is able to achieve, in line with the injuries profile. The writer is of the opinion that the accident under discussion, has resulted in an ongoing disruption to his life. He has suffered noteworthy injuries in the accident under discussion, and has limited career options, due to the injury to the left dominant hand. His injuries are predominant, permanent and spontaneous recovery is not expected.

[15] The industrial psychologist opines that

Scenario 1:

With a grade 12 and a degree, level 7, the minor would have entered the open labour market at a Patterson scale of B4/5, C1. Based on his career ceiling, he would

probably have reached his career ceiling at the Patterson D1 and 2 upper level at 45 years, before retirement of 65.

Scenario 2:

is the same, but with a diploma NFQ level 6, as stated.

[16] Post-morbid: After the accident, the minor possessed the capacity to acquire a grade 12 diploma and degree, level of education prior to the accident. He no longer possesses this potential, he is most likely to reach his education and career at grade 11, and probably achieve a vocational training of a level 5, should he receive the recommended support. It is recorded that Sibonelo not only presents with educational impediments, but rather that he has also been compromised on a psychological and physical level.

[17] He further opines it is also saddening to note that it will be forever difficult for him, to negotiate employment. The economic environment is epitomised by the interplay of high unemployment, closure of industries, high inflation rates, influx of foreign nationals with expertise in the form of cheap labour. Recognition of the disabled at the workplace, is still an uncommon message, it is tantamount

task to wrestle these factors in an injured incapacitation. He has been left exposed to the gruesome consequences of this accident. It should not be surprising that Sibonelo is suffering long periods of unemployment, or rather intermitted periods of employment.

[18] He has thus suffered a justifiable loss of work capacity as indicated by the other experts, as a direct result of the accident, which will most probably translate into loss of earnings and will most likely remain as such in the future.

DR A MUNRO (ACTUARY)

19] He opines that the information provided, indicates that the claimant is not expected to reach the suggested pre-accident career potential. He might suffer losses that are not directly quantifiable and should be addressed with contingencies. The one scenario, the total amount is 9.1 million and the second scenario is 7.6 million

which is the loss of earning capacity. He was in grade 3 at the time of the accident, and should he pass each grade, he would have completed grade 12 in 2023, which is this year.

[20] The claimant is still in grade 9, we have assumed he will leave school in grade 12 in 2024. We have assumed that a diploma takes 2 years to complete and 3 years for a degree. There is RAF cap applicable. The information provided indicates the claimant's career and earnings would have progressed as follows: December 2023 completes grade 12. 2026 a 3-year degree. January 2027, he starts with the Pattersons' incomes and up until July 2051 when he hits the ceiling. He further opines that in December 2024, he leaves school without a grade 12. January 2025, no earnings for 3 to 5 years. He will be intermitted or unemployed for some period. In 2029, unskilled at 21 400 per year, straight line. And age 25 he reaches his ceiling, and retirement until 2065.

[21] The contingencies they have used before the Road Accident Fund cap, is 15% on future earnings, and 25% on, or the uninjured earnings is 15 and the injuries 25. The future uninjured earnings amount to 13.7 million, putting the 13% contingencies. It gives you 11.7 million. Injured earnings of 644 000 with a 25% contingency. If you deduct it you get to 11.2 million, but then there is the cap, and after it has been capped by the Road Accident Fund, you get to 4.7, the 9.165 million, that is the first scenario, with a loss of earnings if there was a degree.

[22] The other scenario is a diploma and the contingency applied is 15 and 25% if one had, it is 9.5 million, 13% contingency, gets you to 8.1. Again, assuming only a grade 11, we get to 644 of the 25, at 6.7 million. There is also a cap. They have added the 9.5 million and the 7.6 million together, divided by two, to get a medium between the two. That then is 8.4 million. He opines that the loss of earning capacity uses the medium, which is 8.4 million. If one uses only the diploma at 7.6 or then a degree, that would be 9.1million.

[23] Past Less Contingencies

R 9 588 000 – 00 15% R 644 900 – 00 25% R 8 149 800 –
00 R 483 675 - 00 R 7 666 125 - 00 TOTAL LOSS OF
EARNINGS R 7 666 125 – 00

COUNSEL VORSTER ADDRESS

[24] Counsel submits that the industrial psychologist did state that a higher contingency should be used, and if the court is also reluctant to go into that way rather than a higher contingency, he submits not to use the medium, but just the lower one, the one of 7.6 million. He says that will be in the court's hands. The case law, is something for the court to consider, considering the young age, the employment mobility of the claimant, then the situation in South Africa with unemployment and all those factors. The difference between S'bonelo's pre-morbid and post-

morbid earning potential represents the loss in terms of future income.

[25] The general damages claim in the particulars of claim is 1.5 million.

In the matter of *Ramatsebe vs RAF*¹ where a 3-year-old, 9-month-old boy, with mild to moderate brain injury, a tibia fracture and post-traumatic stress, was awarded an amount of R800 000 in general damages in 2011. The current value is, 1.4 million. In *Pietersen vs Road Accident Fund*², a minor child presented with multiple degloving injuries involving both feet, buttocks, right scapula, right shoulder, right forearm, right face, and right side of the scalp. He underwent a debridement procedure and doing skin graft and sculp. His glaucoma was 13 out of 15 and the neurosurgeon notes that the minor suffers from headaches and his mother reported seizures. Here an amount of 750 was granted, in today's terms it is 1.3 million.

[26] In *Mqutwa*³, an 11-year-old and in grade 3 at school when she was involved in a motor collision. She sustained an injury that was serious orthopaedic and degloving injury, involving loss of bone, soft tissue and skin. There was a traumatic amputation of the 4th and 5th fingers, following the amputation of the 4th and 5th bones as well, through a level of joints, so in other words she lost 2 fingers

¹ 2011

² *Pietersen v Road Accident Fund* (08/19299) [2011] ZAGPJHC 73 (11 August 2011)

³ *Mqutwa v Road Accident Fund* (3178/2006) [2010] ZAECGHC 32 (2 May 2010) at 3 & 4.

and part of the palm. In 2010 she awarded in R 250 000 it was 579 000, only the fingers' amputation. In *Spinola v Road Accident Fund*⁴ chest injuries, facial injuries, abdominal injury, a left-hand injury, a neck injury as well as post-traumatic stress disorder, where the court granted at that stage, R 200 000, in today's value it is R 387 000.

[27] In *Nkosi*⁵, there were chest injuries, involving fractures to 5 ribs, fractures of the 3rd and 4th, right hand, a concussion and laceration of the head. In this matter, there has been an amputation. In the matter of *Nkosi*⁶, it was only broken fingers, not an amputation and there the court granted an award of 400 000. I have also mentioned another matter, at paragraph 13, the matter of *Nsele vs Road Accident Fund*⁷ for a head injury. A 34-year-old male was involved as a pedestrian in a motor vehicle accident who suffered moderate to severe traumatic brain injury, a femur fracture, several lacerations on the right leg and facial area. The court there granted 1.1 million the current value +R 1.2 million.

[28] In *Mashigo v Road Accident Fund*⁸ she was involved in a motor vehicle accident wherein she suffered scarring to her breast, arms, soft tissue injury of the left wrist and knee. She was awarded R 562 000. Counsel submits that the sum of R

⁴ (29013/2009 2010 ZAGPPHC 167(13 October 2010)

⁵ 2009 ZAGP JHC 42 (24 April 2009)

⁶ Ibid supra 8

⁷ 2021 ZAGPPH 455 (13 July 2021)

⁸ 2120/2014 (2018 ZAGPPHC 539 (13 June 2018)

950 000.00 will be fair and reasonable *in casu*.

MS XEGWUANA ADDRESS

[29] She submits that the offer was rejected thus the matter has to be

heard in relation to both loss of earning capacity and general damages. She says the neurosurgeon is the only one that reflects that the plaintiff had a mild brain injury which has not been mentioned in the hospital records. She says the injuries depicted are the upper lip and an amputation of the left middle finger. In the matter of Mukutwa vs RAF⁹, where the minor child there sustained serious orthopaedic injuries and degloving injury involving loss of bone.

[30] There was an amputation of the 4th and 5th fingers, followed by surgical amputation. It is more severe than the injuries sustained by the plaintiff, because on the plaintiff's child, there was no loss of bones. She submitted that R 350 000 is fair and reasonable for general damages.

Dr. Maud Ntanjana (Educational Psychologist)

[31] He opines that –the trend now lately is that children often achieve more than their parents, academically and vocationally, and also the fact that the educational landscape has since changed to support the learners so that most are able to

⁹ Ibid 3 supra

complete his school education. It is therefore assumed that he would have probably been able to pass Grade 12 NQF4 with a Diploma or Degree endorsement which would have offered him the opportunity to attain an NQF6/7 qualification in an area of his interest depending on the available opportunities and resources.

[32] The report of the educational psychologist indicated that with the assistance the child might proceed with his studies and obtain grade 12 up to a diploma. She says she believes that he can obtain a diploma, because after the accident he failed grade 5, but after that he passed other grades, which means he still has the capacity to pass and proceed with his studies. He is a child who is still growing.

[33] Post the accident it is recorded that on the administration of ISNSP, the test results show that S'bonelo is found to be functioning in the Low Average range of intelligence. His Global IQ score is 104 (Average), his Verbal IQ is 108 (Average) and his performance IQ is 99 (Average). There was an 8-point difference between the Verbal and Performance IQ's scores in favour of the Verbal scale which is not significant. This suggests that S'bonelo performs better through the use of verbal expression and comprehension than concrete non-verbal tasks. It may also indicate learning difficulties, or emotional difficulties.

S'bonelo will need money to attain appropriate support. Therefore, she recommends that funds be awarded for such intervention to help with the costs impacted by the accident.

[34] He would benefit from psychotherapy to address emotional difficulties caused by the trauma of the accident and the trauma of having his finger amputated and having a scar on his lip causing low self-esteem; School support (Remedial intervention) and accommodation for academic challenges. Parent Guidance and Family Therapy: therapy for his parents and siblings and immediate family to help them understand S'bonelo's situation and assist him in developing to his full potential.

[35] She referred to the occupational therapist's report which indicated that he opines that once the minor has reached maturity, he will probably retain a residual capacity for sedentary light and medium occupations. However, he is expected to struggle with occupations that required fine motor skills and finger dexterous such as writing and typing, etc. As the injuries to the left dominate, the minor has suffered more prejudice. The occupational therapist opined that the minor has the capacity to do sedentary, light, and medium work. She suggest that the second scenario be used, because there is a possibility that the child might progress up to a diploma.

[36] The defendant, proposes a 40% pre-accident and a 50% post-accident, which gives the amount of R 5 430 350. Counsel did not have any caselaw to support her argument. She reiterates that the hospital records do not depict head injury thus the amount of the general damages offered.

[37] Counsel Vorster in reply says there is no justification for 40/50% contingencies. He says it is surprising that counsel for the defendant is willing to accept the other medico-legal reports for loss of earnings but not for general damages. He opines that R 950 000 is reasonable and fair for general damages. He submits that a trust may be created for the funds of the minor child which can be accessible after a further three period after the minor becomes of age. He says at 18 years the level of maturity is not such that the funds would be used properly.

[38] He says the mother will require a sum of R 300 000.00 before the funds are put in a trust. He says the trust documents were not prepared and same can be prepared. Ms Xengwana did not have submissions with regard to the trust. It was also submitted there is a contingency fee agreement and the court advised on the crafting of the paragraph in the draft order. The issue of costs were alluded to wherein counsel mentioned that he has inserted the clause that same are subject to the master's

discretion.

THE LAW

- [39] It is accepted that earning capacity may constitute an asset in a person's patrimonial estate. If loss of earnings is proven the loss may be compensated if it is quantifiable as a diminution in the value of the estate.¹⁰ It must be noted, a physical disability that impacts the capacity for an income does not, on its own, reduce the patrimony of an injured person. It is incumbent on the plaintiff to prove that the reduction of the income earning capacity will result in actual loss of income.¹¹
- [40] The actuarial calculations are based on proven facts and realistic assumptions regarding the future. The Actuary guides the court in making calculations. The court has a wide judicial discretion and therefore the final say regarding the calculations. The actuary relies on the report of the Industrial Psychologists, who would have obtained information from the plaintiff and any other relevant source. In *Bee v Road Accident Fund*¹² the court held that the younger the victim the longer the period over which the vicissitudes of life will operate and the greater the uncertainty in assessing the claimant's likely career path.
- [41] The court, in the case of *Road Accident Fund v Guedes*¹³ at paragraph 9 referred with approval to *The Quantum Yearbook*, by the learned author Dr R.J. Koch, under the heading '*General Contingencies*', where it states that:

¹⁰ *Prinsloo v Road Accident Fund* **2009 5 SA 406** (SECLD) at 409C-41A

¹¹ *Rudman v Road Accident Fund* **2003 (2) SA 234** (SCA) at para 11, *Union and National Insurance Co*

¹² **2018(4) SA 366** SCA para 116

¹³ 2006(5) SA 583

“...[when] assessing damages for loss of earnings or support, it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is the prerogative of the Court...” (My Emphasis)

[42] Nicholas JA¹⁴ stated the following at p.113 paragraph G-H

"Any enquiry into damages for loss of earning capacity is of its nature speculative. because it involves predictions as to the future. 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.

It has opened to it two possible approaches.

One is for the judge to make a round estimate of an amount that seems to him to be fair and reasonable. This is entirely a matter of guesswork, a blind plunge into the unknown.

The other is to try to make an assessment. by way of mathematical calculations. on the basis of assumptions resting on the evidence. The validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or lesser extent. There are cases where the assessment by the court is little more than an estimate; but even so. if it is certain that pecuniary damage has been suffered, the court is bound to award damages”.

[43] It is now well-settled that contingencies, whether negative or positive, are an important control mechanism to adjust the loss suffered to the circumstances of the individual case in order to achieve equity and fairness to the parties. There is no hard and fast rule regarding contingency allowances. Koch in *The Quantum Yearbook* (2011) at 104 said:

“General contingencies cover a wide range of considerations which may vary from case to case and may include: taxation, early death, saved travel costs, loss of employment, promotion prospects, divorce, etc. There are no fixed rules as regards general contingencies.”¹⁵

[44] In *Sandler v Wholesale Coal Suppliers Ltd*¹⁶ wherein Watermeyer JA held the view that

“I now come to the difficult task of estimating the compensation which should be paid for the pain and suffering and permanent disability suffered by the appellant in consequence of the accident..... The question now arises whether

¹⁴ Southern Insurance Association LTD V Bailey NO 1984(1) SA 98

¹⁵ Gwaxula v Road Accident Fund (09/41896) [2013] ZAGPJHC 240 (25 September 2013)

¹⁶ Sandler v Wholesale Coal Suppliers Ltd 1941 AD 194

this court should increase the amount awarded to the appellant for pain and suffering and permanent disability. In considering that question it must be recognized 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, 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 consideration and the figure arrived at must necessarily be uncertain, depending upon the judge's view of what is fair in all the circumstances of the case".

ANALYSIS

[45] The minor child will be able to do light duty as per the experts opinion. He is likely to obtain a diploma. He will not be able to compete with abled bodies as he has been compromised. I am therefore mindful that the minor child will be an unequal competitor in the open labour market compared with his healthier peers and that he will not be able to perform functions efficiently and effectively as compared to his counterparts. The injuries sustained from the accident will hinder his career and future employability. The minor has suffered a medically justifiable loss of earnings or work capacity as a direct result of the accident.

[46] In considering the claim for the minor his background and family history plays a pivotal role. However, may I hasten to say that I do not believe that the history of the family limits anyone that is determined to achieve. In fact, I am ad idem with counsel for the defendant that children grow and the minor is still growing. The factors that I have also taken into account are:

[46.1] Prior to the accident, the minor was an average learner.

[46.2] The possibility exists that he would be able to obtain a grade 11

and that with assistance will obtain grade 12 and then a diploma.

- [46.3] That the Actuary postulated loss of earnings these were considered from Paterson's figures relating to corporate survey earnings which may not be applicable to the minor child.
- [46.4] His pre-accident and post-accident life expectancy remains unchanged.
- [46.6] That he will be able to work until 65 must be considered.
- [46.7] That he suffered a mild brain injury, amputation of his middle Finger and lacerations on the face.
- [46.8] That the minor child has developed behavioural changes and that he has failed a grade before and after the accident.
- [46.10] That children are likely to be healed of their injuries.

[41] I have cumulatively considered all the facts and I have applied the contingencies that are fair and reasonable under the circumstances in terms of the second scenario. I could not find any justification to deviate from the medico-legal as alluded to by the actuary. I have also considered the caselaw alluded to in relation to general damages and I agree with counsel for the plaintiff that medico-legal reports cannot be accepted selectively by the defendant. The defendant has failed to challenge the medico-legal report with an expert of similar qualifications. I do not think it is acceptable that counsel who is a layman in the field will be able to express an opinion in a field that he has no knowledge thereof. I, therefore, agree that the plaintiff must be compensated for general damages at R 800 000.

[42] It will be in the best interest of the minor child that a trust be created for his benefit. The said trust should be created within a month of this order and the funds should be kept for the benefit of the minor child until after the age of twenty-one.

[42] In the result, I make the following order:

Order

Draft order marked 'X' as amended is made an order of court.

ENB KHWINANA
ACTING JUDGE OF NORTH
GAUTENG HIGH COURT, PRETORIA

COUNSEL FOR PLAINTIFF: ADVOCATE J. VORSTER
INSTRUCTED BY: MARISANA MASHEDI INC.
COUNSEL FOR DEFENDANT: MS N. XENGWANA
INSTRUCTED BY STATE ATTORNEY
DATE OF HEARING: 10 MARCH 2023
DATE OF JUDGMENT: 09 JUNE 2023

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

Before KHWINANA AJ

On the 09th of June 2023

Case No.: 81106/2017

In the matter between:

JABU TWICE MTHEMBU OBO

PLAINTIFF

S S Z –

AND –

ROAD ACCIDENT FUND

DEFENDANT

DRAFT COURT ORDER

HAVING read the documents filed of record, having heard Counsel and having considered the matter:

THE COURT ORDERS THAT:

1. The Defendant pay the Plaintiff, JABU TWICE MTHEMBU in her representative capacity as a biological mother and natural guardian of her

child, namely, S S Z (hereinafter referred to as the “minor”) with RAF Link Number: 4173186, the sum of R 800 000.00 (Eight Hundred Thousand Rands), in respect of General Damages.

2. Defendant pay Plaintiff the sum of R 7 666 125 – 00

(Seven Million Six Hundred and Sixty-Six Thousand One Hundred and Twenty-Five Rand Only), in respect of Loss of Earnings.

3. The total amount of Eight Million Four Hundred and Sixty-Six Thousand One Hundred and Twenty-Five Rans Only, will not bear interest unless Defendant fails to effect payment thereof within 14 (Fourteen) days from date of this order, in which event, the capital amount will bear interest at a rate of 7.75% per annum, calculated from and including the 1st day, up to and including the date of payment thereof.

4. The Plaintiff’s attorneys shall within 3 (three) months from the date on which the capital amount referred to in paragraph 3 above is paid by the Defendant, establish a TRUST of the minor child (S’bonelo Siyamthanda Zulu).

4.1 To cause a trust (“the Trust”) to be established in accordance with the Trust Property Control Act No 57 of 1988, the prescribed tariffs for curators in terms of **Section 84(1)(b)** of the **Administration of Estates Act 66 of 1965**, read with **Regulation 8(3)**, as amended from time to time shall be applicable;

4.2 The defendant shall be liable for:

4.2.1 the reasonable costs incurred in the establishment of a TRUST as contemplated below and the appointment of trustee(s);

4.2.2 the reasonable costs incurred in the administration of the trust, which administration costs recoverable from the defendant shall be limited to the prescribed tariffs for curators in terms of **Section 84(1)(b)** of the **Administration of Estates Act 66 of 1965**, read with **Regulation**

8(3), as amended from time to time;

4.2.3 the reasonable costs incurred in providing security to the satisfaction of the Mater of the High Court of South Africa for the administration of the award in favour of the patient and the annual retention of such security to meet the requirements of the Master in terms of Section 6 of the Trust Property Control Act 57 of 1988.

5. Before payment of the capital into the Trust so to be created, Marisana Mashedi Incorporated, shall pay an amount of R 300 000 – 00 (Three hundred thousand rands) in advance into the mother of the minor child's personal account, after all disbursements and the relevant attorneys' legal fees have been deducted, to cater for the immediate needs of the minor child.

6. The Defendant shall pay the Plaintiff's taxed or agreed party-and-party costs on the High Court scale up to date hereof, subject thereto that:

6.1 In the event that the costs are not agreed:

6.1.1 the Plaintiff shall serve a Notice of Taxation on the Defendant;

6.1.2 the Plaintiff shall allow the Defendant 14 (fourteen) court days from date of the signed allocatur of the Taxing Master on the Plaintiff's taxed Bill of Costs, to make payment of the taxed costs;

6.1.3 should payment not be effected timeously, the Plaintiff will be entitled to recover interest at the rate of 7.75% on the taxed or agreed costs from the date of agreement, alternatively, the date of the Taxing Master's allocatur, to-date of final payment.

6.2 Such costs shall include:

6.2.1 the reasonable costs in obtaining payment of the amount referred to in paragraphs 2 and 3 above; traveling to and spending time traveling to pre-trial conferences; video and telephonic consultations with Counsel,

Plaintiff, and Respondent;

6.2.2 Counsels' fees including preparations; previous Court attendances; and Court attendances on 25 October 2021; 10 March 2023;

6.2.3 the taxable costs of obtaining the medico-legal reports of all the experts in respect of the quantum of the Plaintiff's claim, including consultation and costs of interpreter, of which the Plaintiff gave notice in terms of the provisions of the Court Rules 36(9)(a) and (b); 6.2.4 the taxable qualifying reservation and preparation costs of the experts hereunder, as allowed by the Taxing Master:

- a) Dr. J. A. Ntimbani - Neurosurgeon;
- b) Dr. M. A. Morule - Orthopaedic Surgeon;
- c) Mr. Samuel Mphuthi - Clinical Psychologist;
- d) Dr. Maud Ntanjana - Educational Psychologist;
- e) Sagwati Sebapu - Occupational Therapist;
- f) Industrial Psychologist – Mr. Evans M. Ganyane; and
- g) Actuary – Dr. A. Munro.

7. The costs referred to in paragraph 6 above, shall be subject to the discretion of the Taxing Master.

8. The amounts referred to in paragraphs 1, 2 and 3 above, shall be paid to the Plaintiff's attorneys, Marisana Mashedi Incorporated, by direct transfer into their trust account details of which are the following: -

ACCOUNT HOLDER : MARISANA MASHEDI ATTORNEYS

NAME OF BANK : ABSA

ACCOUNT NUMBER : [...]

BRANCH NAME: MONTANA

TYPE OF ACCOUNT : TRUST ACCOUNT

9. The contingency fee agreement entered into between the plaintiff and the attorney complies with the Contingency Fee Agreement Act. It is recorded that the total fees are inclusive of VAT recoverable in terms of the Contingency Fee Agreement Act and shall not exceed 25% of the total capital amount set out in para 3 supra.

BY ORDER THE REGISTRAR