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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION – PORT ELIZABETH**

Case No: 269/2014

In the matter between:

N[...] H[...]

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

REVELAS J

[1] The plaintiff instituted an action for damages against the defendant in her capacity as mother and natural guardian of B[...] H[...] ('the minor'). At the age of five, the minor was hit by a motor vehicle insured by the defendant when he crossed the road. He sustained a severe closed brain injury (left hemiparesis) leaving him intellectually impaired to the extent that he is rendered unemployable in the future. This was common cause.

[2] When the matter was set down for trial, the parties came to a settlement agreement, but were unable to agree on the question of which contingency reduction should apply to the question of loss of earnings.

The plaintiff proposed twenty percent reduction and the defendant proposed a thirty percent reduction.

[3] In *Bonesse v Road Accident Fund* 2014(7A3QOD 1 (ECP)), Pickering J referred to Koch's 2014 Quantum Year Book, and observed that it has become customary for the court to apply a sliding scale to contingencies, twenty five percent for a child, twenty percent for a youth and ten percent in middle age.

[4] Counsel for the plaintiff relied strongly on the career paths of the minor's family which suggest that after school they generally obtained further qualifications and entered into trade. The minor's father is presently a taxi driver and his older brother is in the process of qualifying as a plumber. The family members of the minor are of average and above average intelligence. That was also common cause.

[5] Having carefully considered the arguments presented by the parties, and all the evidence which became common cause, I have concluded that it is not necessary to sum up all the reports written herein. I have read them and I am of the view that the minor's short history at school, provides no indicators that the minor would necessarily have obtained the higher college education a proposed by the plaintiff.

[6] Accordingly I will be lead by the sliding scale relied upon in *Bonesse* and determine that a twenty five percent reduction in contingencies is appropriate in this matter.

[7] Accordingly, I make the following order in accordance with the aforesaid determination and the draft order agreed up by the parties:

- 1.1 The defendant shall pay to the plaintiff the sum of R1000 000.00 in respect of general damages.
- 1.2 The defendant shall pay to the plaintiff the sum of R4 213 950.00 in respect of loss of earnings and earnings capacity.
- 1.3 Interest shall accrue on the aforesaid amounts at the rate of 9% per annum from fourteen days after the date of this order to date of payment.
- 1.4 The defendant shall furnish the plaintiff with an undertaking in terms of section 17(4)(a) of the Road Accident Fund Act, No. 56 of 1996, to pay the costs of the future accommodation of B[...] H[...] in a hospital or nursing home, and the costs of the treatment of, or the rendering of a service to, or the supplying of goods to B[...] H[...], as a result of the injuries sustained by him in the motor vehicle collision which occurred on 22 July 2011 in the district of Port Elizabeth, and the sequelae thereof, after the costs have been incurred and upon proof thereof.

1.5 The defendant shall pay the plaintiff's taxed party and party costs, such costs to include the reasonable and necessary qualifying expenses of the following expert witnesses:

- 1.1 Dr F Rank;
- 1.2 Dr RJ Keeley;
- 1.3 Dr Vic Oelofse;
- 1.4 Nicole Boreham;
- 1.5 Willem Annandale;
- 1.6 Dr Peter Whitehead; and
- 1.7 Alex Munro.

[2] The defendant shall be liable for interest on the taxed costs at the legal rate of 9% per annum from fourteen days after allocator to date of payment.

E REVELAS
Judge of the High Court

Counsel for the plaintiff, Adv Niekerk instructed by Swarts Attorneys.

For the defendant, Ms Phillips instructed by Friedman Scheckter Attorneys.

Date Heard: 20 March 2015

Date Delivered: 31 March 2015