

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#). Please note also that the order in this judgment has been corrected by the judge. The corrected order is available [here](#).

**REPUBLIC OF SOUTH AFRICA**



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

- (1) REPORTABLE: YES / NO  
(2) OF INTEREST TO OTHER JUDGES: YES/NO  
(3) REVISED.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

CASE NO: 13/30599

In the matter between:

**N G**

Plaintiff

and

**ROAD ACCIDENT FUND**

Defendant

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**JUDGMENT**

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**INGRID OPPERMAN J**

**INTRODUCTION**

**[1]** The plaintiff instituted action against the defendant for damages for personal injuries arising out of a motor vehicle accident that occurred on 26 May 2011. The merits have been settled, the agreement being that the plaintiff will be entitled to 100% of her proven and/or agreed damages. This hearing concerns only the quantum of the damages suffered. In addition, the defendant was, previously, ordered (by agreement between the parties) to make an interim payment of R500 000 and to furnish to the plaintiff, the statutory undertaking. The defendant has complied with such Court order.

**[2]** The plaintiff is G N born on [...] 1994. At the time of the collision she was 17 years of age and will turn 25, in [...] 2019.

**[3]** The defendant, by way of a special plea, disputed the plaintiff's entitlement to general damages. The issue was referred to the HPCSA who ruled that the injury was serious and that the plaintiff is entitled to an award for general damages.

**[4]** The plaintiff sustained injuries comprising:-

- 4.1. a mild concussive head injury with a fracture of the frontal bone of the skull with loss of consciousness and subdural haematoma;
- 4.2. a pubic ramus fracture; and
- 4.3. soft tissue injuries to the scalp.

**[5]** In consequence of such injuries the plaintiff claimed :-

- 5.1. Past Loss of Earnings R228 084
- 5.2. Future Loss of Earnings R5 997 811
- 5.3. General Damages R1 200 000

**[6]** The plaintiff was assessed by a host of experts at the instance of both parties. Although much, in relation to the future loss of earnings was, at the commencement

of the proceedings, in dispute, at the end of the trial, it was only the contingencies to be applied to the claims for past and future loss of earnings in the uninjured and injured state, which remained to be determined by this court as well as the award for general damages.

### **SYNOPSIS OF UNDISPUTED FACTS**

**[7]** The orthopaedic injuries have resulted in the plaintiff's physical capacity being reduced to where she is now only able to meet the demands of sedentary, to some aspects of light, work.

**[8]** The head injury has resulted in epilepsy, a post-traumatic organic brain syndrome, weaknesses in executive functioning and mental tracking memory. In addition, she suffers from the following deficits: attention and concentration, immediate and delayed auditory recall, memory and learning, response speed, psychomotor speed and information processing efficiency.

**[9]** The plaintiff's complaints are manifold and include, amongst other things, headaches, being less sociable, difficulties to concentrate, lack of focus, being distractible, finds working on a computer tiresome, suffers from fatigue and insomnia, a lack of appetite and mood swings. Her epilepsy seems to be under control.

**[10]** The chronic medication used by the plaintiff comprises Epilim 300mg (for the epilepsy), Brufen and Paracetamol 500mg (for pain and headaches) and Trepiline 10mg (a sleeping agent). The epilepsy is under control because of the medication.

**[11]** At the time of the collision (in 2011) the plaintiff was in grade 11. Despite the injury sustained and an extended period away from school, the plaintiff passed the end of the year exam as well as grade 12 in the subsequent year (2012).

**[12]** But for the collision, the plaintiff would have successfully completed tertiary studies in the form of a higher diploma qualification over a period of three years. Thereafter she would have entered the open labour market on par with the median of Patterson level B1/B2, progressing to the median of level C2/C3 by age 45 whereafter only annual inflationary increases would have applied. The plaintiff would have retired at age 65.

**[13]** Having regard to the collision the plaintiff did not pursue tertiary education in consequence of the injuries sustained in the collision but secured employment as detailed below:-

COMPANY	POSITION	COMMENCED	TERMINATED
AIG	Call centre agent	29 April 2013	29 July 2013
Tiger Brands	Call centre agent	1 September 2013	6 March 2014
Metropolitan	Call centre agent	1 July 2014	December 2014
Accenture	IT service desk	November 2016	November 2017
Accenture	It service desk	Extended for three months	
Expert Stores	Junior clerk	20 June 2018	
Cotton On	Sales Assistant	19 October 2018	to date

**[14]** Having regard to the plaintiff's difficulties she is not likely in her injured state to be able to progress beyond the salaries associated with Patterson level A2/A3 as she would move into the semi-skilled band as per Robert Koch when she moves to salaries in the Patterson B – band.

## **CONTINGENCIES**

**[15]** Contingencies are the hazards that normally beset the lives and circumstances of ordinary people. Allowance for contingencies involves, by its very

nature, a process of subjective impressions or estimations rather than objective calculations<sup>1</sup>.

**[16]** Where a party contends for a higher than normal contingency, that party must, of course, adduce facts which render a higher than normal contingency factor applicable. The contrary is also true – where a party contends for a lower than normal contingency, no contingency or a positive contingency, the onus would rest on such party. This follows the trite principle that he who alleges must prove.

**[17]** Insofar as past loss of earnings is concerned, it is generally accepted, and the norm to apply, is a 5% contingency deduction. No argument was advanced to deviate from this norm.

**[18]** Support for what can be considered to be a normal contingency applicable to future loss of earnings, would be half a percent for every working year<sup>2</sup>. Thus in this instance, a 20% contingency deduction would constitute the norm over a 40 year period i.e. to a retirement age of 65.

**[19]** This formula should not be followed rigidly in each and every case. The assessment remains largely arbitrary and dependent on the Court's impression of the case. It is but a starting point.

**[20]** Contingencies are not to be viewed as always operating adversely to the plaintiff. There is often the lost prospect of a marked improvement in his or her lot<sup>3</sup>.

**[21]** The so-called normal contingencies referred to takes into account that a plaintiff might ordinarily sustain some loss in his future income by virtue of: falling sick from time to time; the prospect of unemployment and an inability to secure alternate employment immediately; the prospect of being injured in circumstances where the

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<sup>1</sup> 1979 (3) SA 953 (AD) at p965G

<sup>2</sup> Koch – quantum year book. See too *RAF v Guedes*, 2006 (5) SA 583 (SCA)

<sup>3</sup> *Southern Ins Co Ltd v Bailey* 1984(1) SA 98(A) at 117B

plaintiff would receive no compensation from any source; the saved costs of employment.

### **Uninjured earnings**

**[22]** It is evident that the plaintiff could have done better but for the collision than that postulated i.e. she could have secured a degree as opposed to a diploma. It is instructive to note that had the plaintiff secured a degree, the value of her uninjured income would have amounted to R10 122 047 whereas the value of her uninjured income on the basis of a diploma amounts to R7 963 955. i.e. a difference in excess of R2 million rand.

### **Injured earnings**

**[23]** The unchallenged opinion expressed by the industrial psychologist called on behalf of the Plaintiff, Ms Kotze was:-

“Provision should then also be made for the fact that any residual neuropsychological difficulties could adversely affect her ability to sustain employment over the remainder of her working life. This would best be addressed by means of a higher post-morbid contingency deduction. Of concern is Ms N's chequered career history at a fairly young age. It is furthermore evident that she has not been able to secure employment for the past two years despite her efforts to secure same. As such NK believes that her chances to secure employment is likely to diminish as time passes. Even though she may then retain some residual employability, her future employment prospects are deemed severely compromised as employers would be hesitant to employ her once they learn that her compromised employment record is connected to a brain injury. As such, chances are that Ms N may ultimately find herself unemployable.”

**[24]** An examination of the laboratory of life in relation to the plaintiff's work history reveals that over a period of six years (72 months) she has enjoyed 34 months of employment. Ignoring all other factors to be considered, the plaintiff's period of

unemployment on its own, amounts to approximately 50%. In my view, this factor alone, warrants a 50% contingency. I am mindful of the fact that there is no evidence that she was ever dismissed from any employment nor that there were any complaints about her performance at work.

**[25]** Though not raised by the defendant in the end, I have regard to Mr Patel's submissions made in respect of the unemployment rate in South Africa, as it applies to the plaintiff. He argued that it is correct and accepted that South Africa enjoys a high unemployment rate. He however, urged this court to remember, when considering the high unemployment rate, that "*apples must be compared with apples*". He argued, in my view correctly, that it is wrong to simply say that the unemployment rate is as high as 38.2% among young people because graduates do not suffer the same fate. The graduate unemployment rate is 33.5% for those aged between 15 - 24, 10.2% among those aged 25 - 34 and as low as 4.7% for those aged between 35 to 64. In the result, a 10.2% unemployment rate is applicable to the plaintiff at this stage of her life had she been uninjured and had she secured a diploma. Having regard to the collision, the plaintiff finds herself lumped together with the broad category of job seekers where the unemployment rate is as high as 38.2%.

**[26]** The defendant contended for a 30% injured contingency. No reasons supported by facts were advanced for this position. The uninjured contingency of 5% was common cause between the parties.

**[27]** The result of the foregoing findings, translates into the following:-

PAST LOSS OF EARNINGS

Value of income uninjured	R505 009.00
less 5% contingency deduction	<u>R 25 250.00</u>

	R479 759.00	
less value of income injured	<u>R264 922.00</u>	
		<b><u>R214 837.00</u></b>
FUTURE LOSS OF EARNINGS		
Value of income uninjured	R7 963 955.00	
less 15% contingency deduction	<u>R1 194 593.25</u>	
		R6 769 361.75
Value of income injured	R3 257 413.00	
Less 50% contingency deduction	<u>R1 628 706.50</u>	
		R1 628 786.50
		<b><u>R5 140 575.25</u></b>

## GENERAL DAMAGES

**[28]** The purpose of an award for general damages is to compensate the injured party for the pain and suffering, and loss of amenities of life, that the plaintiff has suffered:

“The damages awarded therefore bear a direct relationship to the personal suffering of the injured party and are intended for his personal benefit. The damages awarded to him are in a sense analogous to the solatium which is awarded under the action injuriarum to someone as a salve to his wounded feelings.”<sup>4</sup>

**[29]** Whilst it is correct that previous awards provide a useful guide in determining what a fair and adequate award is, previous awards should serve as no more than

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<sup>4</sup> *Hoffa v S.A.Mutual & General Insurance* 1965 SA 944 (A) at 954



that and should not fetter or exclude the discretion of the court. The facts of the cases being compared should be comparable.<sup>5</sup>

**[30]** The position with regard to general damages is that comparisons with previous awards are not decisive. The Appellate Division<sup>6</sup> (as it was referred to then) has summarised the position as follows:-

“ ... the trial Court or the Court of Appeal, as the case may be, may pay regard to comparable cases. It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Courts general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages.”

**[31]** The general principle was summarised as follows<sup>7</sup>:

“Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages.”

**[32]** Ms Mahomed, representing the defendant, submitted that an appropriate award having regard to the facts of this case, lies between R800 000 and R1400 000.<sup>8</sup> Mr Patel, relying on the matter of *Bismilla v RAF*<sup>9</sup>, contended that an award of

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<sup>5</sup> *DeJonge v DuPlessis*, 2004 (2) All SA 565 (SCA)

<sup>6</sup> *Protea Assurance Company Ltd v Lamb* 1971 (1) SA 530 AD at 535 H TO 536A

<sup>7</sup> *Protea* (footnote 6) at 536A-B

<sup>8</sup> She referred to *Bulelwa Nonkwali v RAF*, 771/2004 delivered 21 May 2009 and *Pele and 1 other v RAF*, 31509/2014 heard 13 to 17 October 2017

<sup>9</sup> *Corbett & Honey, The Quantum of Damages* – Vol VII at B4 - 64

R1 000 000 is appropriate. During argument he submitted that having regard to the authority relied upon by the defendant ie the Pele case, a more appropriate award would be R 1 200 000. The amount awarded in the *Bismilla* case was R700 000 (current value R 737 100). Mr Bismilla did not suffer from epilepsy as a result of the injuries sustained in the accident nor did he sustain any orthopaedic injuries. Ms N suffers from epilepsy, sustained orthopaedic injuries (which have healed) but in addition, has full insight into the consequences of her injuries.

**[33]** In *Chatterpaul v The Road Accident Fund* (unreported judgment) NGHC ('*Chatterpaul*') which judgment was handed down on the 22<sup>nd</sup> of September 2016 by Justice Tolmay, the plaintiff, a 30 (thirty) year old attorney, suffered a brief period of post-traumatic amnesia; bruising on the lateral side of the chest and anterior abdominal wall together with multiple abrasions; an undisplaced fracture to the lateral wall of the left orbit followed by swelling of the upper and lower eyelids; a lateral herniation of the C6 to C7 disk to the left; a minor concussive head injury; emotional shock and trauma and multiple lacerations. She was admitted to ICU overnight for observation, given pain medication and discharged the following day where she was booked off for 2 (two) to 3 (three) weeks. The Plaintiff suffered from anxiety, mild global weakness of the left arm, pain in her jaw, pain in her right knee when she runs at the gym, severe headaches approximately twice a month, left shoulder and scapula cramping and moderate depression. The court awarded R600 000 to the plaintiff in 2016 (2018 value is R658 006).

**[34]** In *Mngomezulu v The Road Accident Fund* 2012 (6A4) QOD 95 (GSJ) the plaintiff sustained compound right tibia – fibula fractures; a closed chest injury with lung contusion; a 30cm laceration on the right thigh and a moderate head injury. The

plaintiff had reported the following sequelae: pain and weakness in the right leg when walking; mild memory difficulty; difficulty sustaining concentration, distractibility; had become impatient and irritable; suffered from mood swings and depressive phases; had a poor self-image and feelings of uselessness; experienced disturbed sleep patterns with mid-cycle insomnia; daytime fatigue; increase in weight; situational anxiety; diminished enjoyment of life and concerns about the future. The court awarded R600 000 in respect of the plaintiff's General Damages in 2011 (the 2018 value is an amount of R885 000).

**[35]** In *Chetty v The Road Accident Fund* 2012 (6J2) QOD 115 (KZD) the plaintiff was 19 (nineteen) years of age studying for a Diploma in Quantity Surveying at the time of the accident. The plaintiff sustained an injury to the left side of the chest with intrusion of air into the pleural cavity between the lungs and rib cage (a haemothorax). This had to be drained and healed causing permanent scarring; the abdominal injuries which required surgery by a general surgeon involved the removal of a ruptured spleen; a fracture of the right femur which required surgery by an orthopaedic surgeon involving an open reduction and internal fixation; a diffuse brain injury resulting in an outpouring of adrenalin and other chemical agents causing ossification of the left elbow; the Plaintiff was left with stiffness in the left elbow; the plaintiff was left with a complex combination of neuropsychological deficits, some of which were quite subtle but all of which in combination had a devastating impact on his interpersonal relationships and his ability to follow a career or earn a living and had an impact on his quality of life. The court awarded an amount of R600 000 in 2012 (this amount translates to an amount of R838 000 in 2018).

**[36]** It is now recognised that awards pre- 2003 are not representative or accurate benchmarks as there is now a tendency for awards to be higher than they were in the past. See *Road Accident Fund v Marunga* 2003 (5) SA 164 (SCA) at 170F-G; *Schoombee v Road Accident Fund* (unreported case no. 18426/2007), South Gauteng judgment delivered by Gautschi AJ on 24 February 2012 at para 14.

**[37]** In the *Schoombee* matter, the Plaintiff had suffered a mild to moderate concussive brain injury combined with signs of more focal (right-sided) frontal dysfunction. His left knee was immobilised in a knee brace for a period of three months during which he had to use crutches and after the knee brace was removed, he used crutches for a further month. An award of R700 000 was made (present day value R982 345).

**[38]** In *Torres v Road Accident Fund* (unreported case no. 29294/04), South Gauteng High Court, a 24-year old male, 20 years old at the time of injury had sustained significant neurocognitive and neuro behavioural deficits. He suffered from depression and adjustment disorder. His successful career in jewellery design had been limited to sympathetic employment. The amount for general damages awarded to him was R600 000.

**[39]** In *Herbst v Road Accident Fund* (Witwatersrand Local Division: Case No: 3035/2004) the plaintiff was a 34-year old male cyclist and specialist anaesthetist. The Plaintiff suffered severe brain damage and he was functionally permanently unemployable with no residual earning capacity. An amount of R600 000 was awarded.

**[40]** In this highly inexact science and having regard to the particular facts of this case, the nature and extent of the injuries sustained, the permanence and severity of

the injuries, the impact the injury has had on her life, awards in comparable cases and the inflationary effects of the monetary values awarded in such cases, I conclude that an appropriate award is R 800 000.

#### **COSTS - 21 AND 21 NOVEMBER 2018**

**[41]** The plaintiff closed her case, very early during the morning of 21 November 2018. The court was informed that the defendant's expert witnesses were otherwise engaged, leaving a distinct impression that they were involved in other courts in this division. A request was made to stand the matter until the following day. After some debate, the matter stood down until 14h00 on 21 November 2018 to see whether 1 of the 3 intended witnesses' attendance at court could not be secured. The hearing resumed at 14h30 on 21 November 2018 with the defendant leading its Industrial Psychologist, Mr van Blerck.

**[42]** During Mr Patel's opening address on 19 November 2018, he expressly drew attention to the inadequacy of the evidence of Mr van Blerck. He pointed out that Mr Van Blerck's report had become stale (the colloquial term used for expert reports prepared more than 2 years prior to the date of the hearing). During the evidence of Mr Van Blerck it soon became apparent that he too was uncomfortable testifying without having had a further consultation with the plaintiff. This was so, he explained, in particular as the plaintiff was a minor at the time of the collision and at school and was now working. On 22 November 2018 and at the commencement of the days proceedings, reliance on his evidence was abandoned. Thereafter, the defendant closed its case.

**[43]** This debacle, in my view, could have been avoided had a consultation with Mr Van Blerck been arranged. This is particularly so as the parties had recorded at a

pre-trial held on 5 April 2018 that a few expert reports had become dated and that addendum reports would be obtained. This was again recorded at a further pre-trial on 25 September 2018. This was never done. Two court days were wasted by virtue of this and I accordingly intend disallowing costs for both the defendant's attorney and its counsel for such days.

## ORDER

**[44]** I accordingly make the following order:

1. The defendant is ordered to pay the sum of R 5 665 412.25 [R5 140 575.25 (future loss of earnings) + R800 000 (general damages) + R214 837 (past loss of earnings) – R500 000 (interim payment)) to the plaintiff, arising from the delictual damages sustained by her in a motor vehicle collision which occurred on 26 May 2011.
2. The amount referred to in paragraph (1) *supra* shall be payable within 14 days from date hereof and is to be paid into the plaintiff's attorneys, Ivan Maitin Attorneys Trust account, the details of which are as follows:  
  
Ivan Maitin Attorneys Trust Account  
Bank : First National Bank  
Branch code : 254 005  
Account no. : [...]
3. Interest *a tempora mora* shall be payable from fourteen (14) days from date hereof to date of payment.
4. The amount referred to in paragraph 1 hereof together with interest thereon, shall be kept in the trust account of Ivan Maitin Attorneys, in an interest-bearing account in terms of Section 78(2)(A) of the Attorneys Act, No.53 of 1979, for the sole benefit of the plaintiff, pending the

formation of a Trust for her benefit as referred to below and the opening of a bank account for the Trust.

5. The Plaintiff's attorneys, Ivan Maitin Attorneys shall:
  - a. cause a Trust ("trust instrument") to be established in accordance with the provisions of the Trust Property Control Act, No. 57 of 1988 in favour of the plaintiff within three months of receipt of the payment of the amount in paragraph (1) *supra*;
  - b. be entitled to deduct its fees and disbursements for professional services from the aforesaid capital amount, only after the taxation of the party and party bill of costs;
  - c. pending the formation of the Trust, make provision for the plaintiff to receive a stipend of R5 000 (five thousand rand) per month for the exclusive use of the plaintiff, from the amount referred to in paragraph (1) *supra*;
  - d. The Trust instrument, contemplated in paragraph a. hereof, shall make provision for, inter alia, the following:
    - i. The plaintiff to be the sole capital and income beneficiary of the Trust;
    - ii. The Trust Property is to be excluded from any community of property or accrual arising from any valid marriage concluded by the plaintiff;
    - iii. The sole purpose of the Trust is to administer the funds in a manner which best takes account of the plaintiff's interests;

- iv. The number of Trustees for the purpose of transacting the business of the Trust (save the appointment of the Trustees) shall be three (3) and such number shall not be exceeded or reduced;
- v. The appointment of, at least, one (1) independent professional Trustee who should be properly qualified to administer the Trust assets;
- vi. The composition of the Board of Trustees and the structure of the voting rights of the Trustees to be such that:
  - 1. The calling and holding of meetings is specified;
  - 2. The taking of all resolutions is properly regulated and recorded in writing;
  - 3. An adequate procedure is specified to resolve disputes between the Trustees;
  - 4. The independent Trustee/s cannot be overruled or outvoted in relation to the management of the Trust assets by any Trustee who has a personal interest in the manner in which the Trust is managed;
  - 5. A deadlock between the Trustees is avoided;
  - 6. The remaining Trustees are prevented and/or precluded from acting otherwise than to achieve the appointment of a replacement Trustee, in the event of their number being reduced below that prescribed;



7. To act in a tax efficient and cost-effective way at all times including but not limited to making investments and/or recovering their remuneration and/or costs;
  8. No charge should be made by any Trustee in relation to the receipt of the initial payment to the Trust of the proceeds of the litigation.
- vii. The powers of the Trustees to be exercised with specific reference to the circumstances of the plaintiff and such to include but not be limited to:
1. The right to purchase, sell and mortgage immovable property, invest and reinvest the Trust capital and/ or income;
  2. applying the nett income of the Trust Fund, and if that is not adequate at any time for the purpose, the capital thereof, for the maintenance including, without derogating from the meaning of the term, the maintenance of the plaintiff, her reasonable pleasures, entertainment, general upkeep, welfare benefits and rehabilitation and the acquisition or provision of residential facilities or a residence for the plaintiff. The income not used as aforesaid shall accumulate to the capital;

- viii. The duty of the Trustees to disclose any personal interest in any transaction involving the Trust property to the Master of the High Court;
- ix. The amendment of the Trust instrument subject to the leave of the High Court only;
- x. The termination of the Trust on the death of the plaintiff or with the leave of the High Court;
- xi. The right of the Trustees to pay the plaintiff's attorney's costs in terms of the contingency fee agreement entered into between the plaintiff and the plaintiff's attorney;
- xii. The Trustees shall be entitled to call for a taxation of the plaintiff's attorneys, attorney and client fee, if deemed necessary;
- xiii. Subject to the approval of the Master of the High Court, the nomination of the below – mentioned Trustees:
  - 1. G N (the plaintiff) whose identity number is [...] (no consent required);
  - 2. Surishini Prem on behalf of Standard Trust Limited as an Independent Trustee;
  - 3. Fallon Malissa Letsoalo, an adult female attorney as an Independent Trustee with identity no: [...];
- xiv. The Trustees should immediately take all the requisite steps to secure an appropriate bond/s of security, to the satisfaction of the Master of the High Court, for the due

fulfilment of their obligations and to ensure that the bond/s of security be submitted to the Master of the High Court at the appropriate time as well as to all other interested parties.

- xv. That the plaintiff is exempted from filing security as a Trustee to the Master of the High Court;
  - xvi. The provisions referred to above shall, in accordance with the provisions of the Trust Property Control Act, No. 57 of 1988, be subject to the approval of the Master.
- e. The defendant has previously furnished the plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act 56 of 1996, for the costs of the future accommodation of the plaintiff in a hospital or nursing home or the treatment of or rendering of a service to her or the supplying of goods to her as recommended by the experts for the injuries she sustained in the motor vehicle collision which occurred on 26 May 2011 and the sequelae thereof, after such costs have been incurred and upon proof thereof.
- f. The undertaking referred to above shall include payment of:
- i. The costs of the creation and administration of the Trust and the appointment of the Trustees as referred to in paragraphs (5) and (6) above;
  - ii. The costs of the Trustees in administering the estate of the plaintiff and the costs of administering the statutory

undertaking furnished in terms of Section 17(4) (a) of the Road Accident Fund Act; and

iii. The costs of obtaining annual security bond/s to meet the requirements of the Master of the High Court in terms of Section 77 of the Administration of Estates Act, No. 66 of 1965, as amended.

6. The defendant is directed to pay the plaintiff's party/party costs of the action which costs shall include but not be limited to:

- a. The costs attendant upon obtaining payment of the capital amount set out in paragraph (1) *supra*;
- b. The costs consequent upon the employment of counsel, which costs shall include but not be limited to, preparation, consultations, appearances on trial for seven (7) days, commencing on 15 November 2018 up to and including 23 November 2018;
- c. The reasonable costs of the reports, addendum reports, (if any), RAF4 forms, joint minutes, (if any), and the qualifying, preparation, reservation fees, if any, to be determined by the Taxing Master of the following expert witnesses:

- |                     |                                       |
|---------------------|---------------------------------------|
| i. Dr.Lewer-Allen   | Neurosurgeon                          |
| ii. Dr. Marus       | Neurosurgeon                          |
| iii. Dr. Pearl      | Specialist Neurologist                |
| iv. Dr. Matisonn    | Radiologist                           |
| v. Prof. Andronikou | Neuroradiologist                      |
| vi. Ms. Hattingh    | Speech Pathologist                    |
| vii. Ms. Macnab     | Clinical and Educational Psychologist |
| viii. Dr. Smith     | Psychiatrist                          |

- |       |               |                         |
|-------|---------------|-------------------------|
| ix.   | Dr. Shevel    | Psychiatrist            |
| x.    | Dr. Botha     | Specialist Physician    |
| xi.   | Dr. Read      | Orthopaedic Surgeon     |
| xii.  | Ms. Salamon   | Occupational Therapist  |
| xiii. | Dr. Choonara  | Urologist               |
| xiv.  | Ms. Kotze     | Industrial Psychologist |
| xv.   | Mr. Whittaker | Consulting Actuary      |

d. The attendance costs of the following expert witnesses:

- |      |            |                                       |
|------|------------|---------------------------------------|
| i.   | Ms. Macnab | Clinical and Educational Psychologist |
| ii.  | Dr. Shevel | Psychiatrist                          |
| iii. | Ms. Kotze  | Industrial Psychologist.              |

e. The reasonable costs consequent upon the plaintiff attending medico-legal assessments at the instance of both parties.

f. The costs for the production of an additional bundle of papers for the defendant's counsel for the trial.

g. Payment of costs is subject to the following conditions:

- i. The plaintiff shall, in the event that costs are not agreed, cause the notice of taxation to be served on the defendant's attorney of record;
- ii. The plaintiff shall allow the defendant 14 (fourteen) court days after taxation to make payment of the taxed costs;
- iii. The aforesaid costs are to be paid by the defendant directly to the plaintiff's attorney to be held in trust as detailed in paragraph (2) hereof, alternatively to the Trustees.

7. The Order is to be served by the plaintiff's attorneys on the Master of the High Court within 30(thirty) days from the date of this Order.

8. The defendant's counsel and the defendant's attorney of record, are precluded from raising any fees for work done on 21 and 22 November 2018.

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I OPPERMAN  
Judge of the High Court  
Gauteng Division, Johannesburg

Heard: 19 - 23 November 2018  
Judgment delivered: 5 December 2018  
Appearances:  
For Applicant: Adv M Patel  
Instructed by: Ivan Maitin Attorneys  
For Respondent: Adv S Mahomed  
Instructed by: Mayat Nurick & Associates