

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 this is a corrected version of the order delivered on 4 Dec 2018, which 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

CORRECTED ORDER

On 5/12/2018 this court granted an order.

Prayer 1 of the order incorrectly states the sum the defendant is ordered to pay as R5 665 412.25 when it should be R5 655 412.25.

By agreement between the parties, and in terms of Rule 42, I correct this patent, calculation error and accordingly correct my order dated 5/12/2018 to read :-

1. The defendant is ordered to pay the sum of R 5 655 412.25 [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.

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