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**NOT REPORTABLE**

**IN THE HIGH COURT OF SOUTH AFRICA**

**(NORHT GAUTENG HIGH COURT, PRETORIA)**

**CASE NO: 21713/2008**

**DATE:10/12/2012**

**In the matter between:**

**ONICA V SKHOSANA obo SS**

**Plaintiff**

**and**

**THE MEMBERS OF THE EXECUTIVE**

**COUNCIL FOR THE DEPARTMENT OF EDUCATION,**

**MPUMALANGA**

**Defendant**

**JUDGMENT**

**MAKGOKA, J:**

[1] In this matter I am called upon to determine the quantum of general damages in respect of the plaintiff's minor son, S. The liability has been determined by this court (Matojane J), in

favour of the plaintiff. That determination was confirmed by the Supreme Court of Appeal in an appeal to it by the defendant. See MEC for Education: Mpumalanga v Skhosana [2012] ZASCA 63 (17 May 2012).

[2] S had sustained injuries on 15 August 2007 when a device that he was playing with, exploded, causing injuries to his forearms, stomach and legs. The injuries were mainly lacerations to his abdomen, both thighs and both forearms. He was then a twelve-year old, grade 5 pupil. He was taken to hospital, where the lacerations were sutured. The incident took place on the grounds of a primary school in Mpumalanga, hence the Department was held vicariously liable.

[3] Two medico-legal reports prepared on behalf of the plaintiff; were handed in by agreement. The reports were prepared by Dr. ZE Annandale (plastic and reconstructive surgeon); and Dr. V. Ferreira (psychiatrist). S also testified, during which he confirmed the key findings of the experts as regards the impact the incident had on his life.

[4] According to Dr. Annandale, the lacerations are completely healed, although S is left with permanent scars, which have widened and are also painful. The pain is serious enough to justify the use of analgesics. Dr. Annandale is of the opinion that radiotherapy can assist to prevent repeated pain symptoms. S reportedly also developed sinusitis problem after the incident.

[5] In his report, Dr. Ferreira sets out the following psychiatric complaints by S: anxiety, causing him to avoid the place where the incident happened; irritability; increased startle reaction; initial nightmares and flashbacks about the explosion, which have decreased

significantly since, currently occurring only occasionally; a periodic depressed mood, mainly as a reaction to his fellow pupils making fun of his scars. He is also called a 'bomb boy' and finds this embarrassing and demeaning; his behaviour had also changed and he became irritable and short tempered. His mother describes his behaviour as 'cheeky', following the incident.

[6] Dr. Ferreira also notes that S experiences pain associated with exercise. He previously used to enjoy physical activities like riding on his bicycle, but currently pain over the affected areas, as well as tiredness, inhibits him from doing this as often as before. However, he is still a member of the school choir.

[7] Before the incident S socialised well and had many friends, but since the incident he became socially withdrawn. He currently only has a few friends. He enjoys watching television, playing television games and reading activities that he can enjoy on his own.

[8] It is on the basis of all these factors that I must determine the amount of general damages.

## GENERAL DAMAGES

### Purpose, approach and general principles

[9] I turn now to general damages. Arriving at an appropriate award for general damages is never an easy task. The difficulty in placing monetary value on pain and suffering, loss of amenities of life and disability, is described by Gauntlett, the learned author in Corbett, *The Quantum of Damages* vol 1, 4ed, at pages 4-5 as follows:

"In determining the award of damages to be made under the heading general damages there are of course no scales upon which one can weigh things like pain and suffering and loss of

amenities of life, nor is there a relationship between either of them and money which makes it possible to express that in terms of money with any approach to certainty. The broadest general consideration and the figure arrived at must necessarily be uncertain, depending upon the judge's views of what is fair in all circumstances of the case. (*Sandler v Wholesale Coal Suppliers Ltd* 1941 AD 194 at 199.)”

[10] The purpose of awarding general damages is to compensate a claimant for the pain, suffering, discomfort and loss of amenities of life to which he or she has been subjected as a result of the particular injuries that were sustained. Although the determination of an appropriate amount in this regard is largely a matter of discretion, some guidance can be obtained by having regard to previous awards made in comparable cases. Past awards in comparable cases afford a useful guide in determination of general damages.

[11] Awards in previous cases can, however, only offer broad and general guidelines in view of the differences that inevitably arise in each case. The process of comparison is not a meticulous examination of awards, and should not interfere upon the court's general discretion (*Protea Assurance v Lamb* 1971 (1) SA 530 (A) at 535H-536A). The previous awards should obviously be updated to present day values in order to properly serve as a basis for comparison. In making such an adjustment, one should be mindful of the fact that, whereas it is permissible to have regard to the general depreciation in the value of our currency by utilising the consumer price index (CPI) a slavish adherence thereto may lead to undesirable results.

[12] Mr. Du Plessis, counsel for the plaintiff, submitted that an amount of R 125 000 would be

an appropriate compensation for general damages. Counsel made these submissions with reference to the following cases: *Mangwana v Du Toit and Another* 1982 (3) C & B 342 (A); *Lennox Residential Hotel v Buys and Another* 1978 (2) C & B 836 (C); *Majiet v Santam Ltd* 1997 (4) C & B K3-1 (C) and *Ciinton-Parker v Administrator Tvl* 1996 (2) SA 37 (T). Mr. Nonyane, counsel for the defendant, on the other hand, contended that the nature and sequelae of the injuries warrant no more than R 50 000 in respect of general damages.

[13] I must make an award that is just, equitable and fair to both sides. S has sustained multiple wounds as fully described above. It is clear from the medical reports, and from his own evidence, that he suffered some considerable pain and suffering. The incident has left him with permanent scars, which are unsightly and embarrassing. He has become subject of ridicule and taunts by his peers. The scars have left him with significant psychological inhibitions such as low self-esteem. For example, he no longer confident of participating in swimming since he is conscious of the scars, were he to take off his shirt. He is also no longer confident of wearing short trousers, for fear of exposing the scars. He has had to endure being teased as a 'bomb boy'. The incident took place when S was just 12 years old. It must caused him an enormous emotional shock. The incident was also widely publicised, with news articles appearing in the *Sowetan* newspaper, a national publication with wide circulation.

[14] Taking into account all the relevant factors, including the nature and extent of the injuries and their sequelae, the awards in comparable cases and the declining value of the currency, I am of the view that an amount of R85 000 would be appropriate.

[15] The amounts in respect of past medical and hospital expenses; future medical and hospital treatment, have been agreed upon. In the result the total amount payable is R218 764.15 made up as follows:

Past medical and hospital expenses: R 2 309.48

Future medical (as per Dr. Ferreira): R 46 054.67

Future medical (as per Dr. Annandale): R 85 400.00

General damages: R 85 000.00

TOTAL R 218 764.15

[16] In the result I make the following order:

1. The defendant is ordered to pay to the plaintiff an amount of R218 764.15
2. The defendant is ordered to pay the costs related to the preparation and finalization of the medico-legal reports of Dr V Ferreira and Dr ZF Annandale;
3. The defendant is ordered to pay the qualifying and reservation fees of Dr V Ferreira and Dr ZF Annandale;
4. The defendant is ordered to pay the Plaintiff's High Court costs, on a party and party scale;
5. The defendant will deposit all of the aforementioned amounts into the trust account of the plaintiff's attorney, the account details of which are as follows:

Olof Joubert Trust,

Account Number .....2609,

Rand Merchant Bank,

Brooklyn Branch,

Branch code: 22-20-26,

Reference: JS0170

6. It is recorded that the minor child's claim for general damages has been argued in open court and that the judgment related to this particular damages component has been reserved until the 10<sup>th</sup> of December 2012.

6.1 The plaintiffs attorney, Mr. Olof Joubert, shall cause a trust to be established in favour of the minor child, in accordance with the provisions of the Trust Property Control Act, No 57 of 1988, as amended ("the Trust Property Control Act"), within a reasonable period after granting of this order. The balance of the claim amount, after deduction of the legal costs, shall be deposited into the said trust's account;

6.2 The trust instrument, contemplated in paragraph 9.1 above, shall make provision for, among others, the following:

6.2.1 The minor child to be the sole beneficiary;

6.2.2 Mr Gert Kruger of Absa Trust, situated at 28<sup>th</sup> Floor, Volkskas Centre, 230 Van der Walt Street, Pretoria, to be appointed as trustee to the minor child and he is to provide security to the satisfaction of the Master of the High Court for due fulfilment of his obligations in terms of the Trust Property Control Act;

.2.3 That the trustee be granted the following powers:

6.2.3.1 to receive, take care of and administer all of the assets of the minor child, including the amount paid by the defendant in this matter to the minor child;

6.2.3.2 to carry on or discontinue, subject to any law which may be applicable, any trade, business or undertaking of the minor child;

6.2.3.3 to acquire, whether by purchase or otherwise, any property, movable or immovable, for the benefit of the minor child;

6.2.3.4 to incur expenditure in respect of the improvement of any property of the minor child,

by means of building or otherwise;

6.2.3.5 to invest or re-invest any monies of the minor child which become available from time to time for investment and which are not immediately required for the purposes, defined in Section 82(c) of the Administration of Estates Act, No 66 of 1965 (as amended) (“the Administration of Estates Act”);

6.2.3.6 to institute or defend proceedings which may be necessary for the due and proper administration of the minor child’s estate;

6.2.3.7 the duty of the trustee to disclose any personal interest in any transaction involving the trust property;

6.2.3.8 the exclusion of contingent rights of the beneficiary in the event of cession, attachment or insolvency of the beneficiary, prior to the distribution or payment thereof by the trustee to the beneficiary;

6.2.3.9 the termination of the trust at the date on which the minor child turns 18 years of age;

6.2.3.10 in the event of the death of the minor child, that the trust property accruing to him shall pass to his estate;

6.2.3.11 the amendment of the trust instrument be subjected to the leave of a court;

6.2.4 The provisions referred to in paragraph 2.2 supra shall, in accordance with the provisions of the Trust Property Control Act, be subject to the approval of the Master of the High Court;

6.2.5 The remuneration of the trustee shall be at a rate equivalent to (and not exceeding) that of a curator bonis as contemplated in the Administration of Estates Act;

**TM MAKGOKA**

**JUDGE OF THE HIGH COURT**

**DATE OF HEARING : 23 NOVEMBER 2012**

**JUDGMENT DELIVERED : 10 DECEMBER 2012**

**FOR THE PLAINTIFF : ADV JA DU PLESSIS**

**INSTRUCTED BY : O JOUBERT ATTORNEY, PRETORIA**

**FOR THE DEFENDANT : ADV P NONYANE**

**INSTRUCTED BY : STATE ATTORNEY, PRETORIA**