



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case no: **AR23/2024**

In the matter between:

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR
HEALTH - KWAZULU-NATAL**

APPELLANT

and

Z[...] N[...]

RESPONDENT

Coram: Mossop, Mlaba and Jikela JJ

Actuarial calculations received: 18 March 2025

Final order delivered: 28 March 2025

SUPPLEMENTARY ORDER

The following order is granted:

1. This order is to be read in conjunction with the order handed down on 7 March 2025.
2. Paragraph 1 of the order of ZP Nkosi J, delivered on 3 November 2022, is replaced with the following paragraph:

‘1. Judgment is entered in favour of the plaintiff, in her representative capacity as the mother and natural guardian of the minor child, M[...] N[...] N[...], a girl born on 6 August 2009, against the defendant for payment of the sum of R13 272 341.79, calculated as follows:

1.1	General damages:	R2 200 000.00
1.2	Future loss of earnings:	R3 304 200.00
1.3	Future medical and related expenses:	R12 826 753.20
	<u>Subtotal:</u>	R18 330 953.20
	<u>Plus:</u>	
1.4	The costs of a trust at 7,5% of the amount of the award:	R1 374 821.49
1.5	Past medical expenses:	R127 805.00
	<u>Subtotal</u>	R19 833 579.69
	<u>Less:</u>	
1.6	Interim payments made:	
1.6.1	June 2017:	R5 000 000.00
1.6.2	February 2024:	R1 561 237.90
	<u>Total:</u>	R13 272 341.79'

3. The costs of the further actuarial calculations performed by Munro Forensic Actuaries subsequent to the order of this court dated 7 March 2025 shall be borne equally by the parties.

SUPPLEMENTARY JUDGMENT

MOSSOP J (MLABA and JIKELA JJ concurring):

[1] On 7 March 2025, judgment was delivered by this court in this matter.¹ The matter was an appeal against the judgment of Z P Nkosi J (the trial judge) and the appeal was dismissed, save for the setting aside of paragraph 1 of the order granted by the trial judge. The award made by the trial judge flowed from the fact that the respondent's child had been born profoundly affected by cerebral palsy due to the negligent conduct of the appellant's servants, which negligence was not in dispute.

¹ *Member of the Executive Council for Health - KwaZulu-Natal v Z.N* [2025] ZAKZPHC 24.

[2] Paragraph 1 of the order granted by the trial judge related to the quantum of damages to be paid by the appellant to the respondent. It set out in summary form the amounts granted by the trial judge in respect of various heads of damages. Thus, contained within paragraph 1 of the trial judge's order were, *inter alia*, amounts awarded in respect of general damages, future loss of earnings, and future medical and related expenses.

[3] It is important to recognise that the appeal that served before us related, ultimately, only to the amount awarded in respect of future medical and related expenses. The amounts awarded by the trial judge in respect of general damages and future loss of earnings were not assailed by the appellant and those awards consequently remain undisturbed by the judgment of this court.

[4] As far as the amounts awarded by the trial judge in respect of future medical and related expenses are concerned, this court:

- (a) Left unchanged certain amounts challenged on appeal;
- (b) Disallowed certain amounts awarded by the trial judge, *in toto*; and
- (c) Reduced certain amounts awarded by the trial judge to a lesser amount.

[5] As regards the reductions referred to in sub paragraph (c) above, the reduction ordered was calculated by this court where it felt it was competent and mathematically capable of doing so. But there were instances where this court could not calculate the reduced amounts because such calculations required actuarial skill. In such instances, the order granted by this court requested a firm of actuaries, Munro Forensic Actuaries (the actuaries), who appear to have assisted both parties over the course of this matter, to calculate the amounts that this court did not feel itself competent to calculate. These categories were identified in this court's judgment.

[6] The calculations requested have now been performed by the actuaries, who are sincerely thanked for their invaluable assistance. I have considered the calculations and believe that the correct criteria have been applied by the actuaries in those areas where their assistance was requested.

[7] The trial judge, in delivering his judgment, awarded a globular amount in respect of future medical expenses. I shall do likewise in order to keep the order reasonably succinct. But I do believe that it is important to set out the individual items that combine to create that globular amount. The reasoning adopted by this court must be transparently set out to permit the parties to critically consider and evaluate it. I shall accordingly set out the individual amounts in the body of this supplementary judgment, but the order to be granted will take the form of the order granted by the trial judge.

[8] Consequent upon the calculations of the actuaries, the individual amounts now awarded by this court in respect of future medical and related expenses are as set out in the table below. The actuaries, in calculating the amounts referred to them by this court, set out the amounts calculated with reference to the therapist involved. I shall follow that approach:

Therapist	Amount awarded by the trial court (R)	Amount to be awarded by the appeal court (R)
Dr R Campbell	1 336 220	466 700
Mandy Read	457 390	457 390
Sue Anderson	1 003 340	781 520
Ugan Chetty	1 607 950	1 086 010
Speech joint minute	1 534 840	1 524 735
Maureen Casey	551 870	0
Shobana Singh	4 882 600	0
Physio joint minute	673 840	488 250
OT joint minute	8 784 970	8 826 260
Roger Kerr	896 680	564 976.50
Roslyn Rich	1 245 610	1 245 610
Dr Pillay paediatrician	302 470	302 470

Therapist	Amount awarded by the trial court (R)	Amount to be awarded by the appeal court (R)
Dr Myatt dentist	289 520	289 520
Total	23 567 300	16 033 441.50

[9] In its earlier judgment, this court ordered the appropriate contingency figure to be 20 percent, and not the 10 percent awarded by the trial judge. Twenty percent must therefore be deducted from the amount of R16 033 441.50. When that is done, the amount to be deducted is R3 206 688.30, leaving a balance of R12 826 753.20.

[10] The uncontested amount awarded by the trial judge for general damages, in the sum of R2 200 000, and the uncontested amount awarded for the loss of future earnings, in the sum of R3 304 200, must be added to R12 826 753.20, which results in an amount of R18 330 953.20.

[11] The costs of the trust set up to administer the award were agreed upon by the parties at 7,5 percent of the total award made to the respondent. When 7,5 percent of R18 330 953.20 is calculated, the value to be assigned to the administration of the trust is R1 374 821.49.

[12] That amount, together with the agreed costs for past medical expenses incurred by the respondent, in the amount of R127 805, must therefore be added to the amount of R18 330 953.20. Accordingly, the total amount to be awarded to the respondent is R19 833 579.69.

[13] However, as noted in the earlier judgment of this court, the appellant has already made interim payments to the respondent in the amounts of R5 000 000 and R1 561 237.90 respectively, which amounts must be deducted from the value of the total award. When this is done, the final amount payable by the appellant to the respondent is the amount of R13 272 341.79.

[14] I would accordingly propose the following order:

1. This order is to be read in conjunction with the order handed down on 7 March 2025.

2. Paragraph 1 of the order of ZP Nkosi J, delivered on 3 November 2022, is replaced with the following paragraph:

‘1. Judgment is entered in favour of the plaintiff, in her representative capacity as the mother and natural guardian of the minor child, M[...] N[...] N[...], a girl born on 6 August 2009, against the defendant for payment of the sum of R13 272 341.79, calculated as follows:

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1.3	Future medical and related expenses:	R12 826 753.20
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<u>Subtotal:</u>		R18 330 953.20
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Plus:

1.4	The costs of a trust at 7,5% of the amount of the award:	R1 374 821.49
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1.5	Past medical expenses:	R127 805.00
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<u>Subtotal</u>		R19 833 579.69
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Less:

1.6	Interim payments made:	
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1.6.1	June 2017:	R5 000 000.00
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1.6.2	February 2024:	R1 561 237.90
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<u>Total:</u>		R13 272 341.79’
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3. The costs of the further actuarial calculations performed by Munro Forensic Actuaries subsequent to the order of this court dated 7 March 2025 shall be borne equally by the parties.

MOSSOP J

I agree:

MLABA J

I agree:

JIKELA J

APPEARANCES

There were no further appearances by counsel.