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**IN THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA DIVISION, (MBOMBELA MAIN SEAT)**

Case No. 1295/2019

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED YES/NO

DATE: 06 June 2025

SIGNATURE

In the application between:

N[...], Z[...] obo N[...]

PLAINTIFF

and

MEC FOR HEALTH, MPUMALANGA PROVINCE

DEFENDANT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 10:00 on 06 June 2025.

JUDGMENT

Moleleki AJ

- [1] The plaintiff instituted a claim for delictual damages in her representative capacity as the mother and natural guardian of her minor child (N), against the Member of Executive Council for Health, Mpumalanga Province (the defendant), as the employer of the medical personnel at Embhuleni hospital. The plaintiff's claim against the defendant was brought on the basis that the defendant was vicariously liable for the negligent conduct of the medical personnel that attended to the plaintiff at the hospital during her admission. The negligence culminated in the minor child developing cerebral palsy because of perinatal asphyxia event at birth.
- [2] The issue of liability was settled on 30 May 2022. The parties agreed to a Draft Order in terms of which the Defendant was held vicariously liable for 90% of the plaintiff's proven or agreed damages, as a result of the negligent conduct of the medical personnel who attended to the Plaintiff when she was pregnant and before giving birth to N. The issue of quantum was postponed *sine die*.
- [3] The minor child passed away on 20 August 2023. Therefore, the only dispute between the parties that still requires determination is the quantum of general damages to be awarded to the plaintiff, as *litis contestatio* had been completed.

Background

- [4] The salient facts giving rise to this claim are that, on 10 February 2017, the plaintiff, who was pregnant at the time, was admitted to the Embhuleni hospital for the management of her pregnancy, delivery of the minor child and for post-parturition care. Following her admission to the hospital, the plaintiff endured prolonged hours of labour, as a result of which the then

unborn baby suffered foetal distress and a hypoxic ischemic brain injury as a result of which he suffered permanent brain damage disability and cerebral palsy.

- [5] The plaintiff claims R4 000 000 (Four Million Rands) for general damages in respect of N.
- [6] The parties rely on the plaintiff's medico-legal reports from a Neurosurgeon, Dr Jaques J Du Plessis, a Specialist Physician, Dr A.P.J Botha, a Physiotherapist, Dr P.C Makatleng and an Occupational Therapist, Ms L Mashishi.
- [7] The expert reports were admitted into evidence by way of affidavit in terms of Uniform Rule 38(2).
- [8] The Neurosurgeon indicated that the minor child had a spastic quadriplegia and was unable to communicate.
- [9] When the Specialist Physician consulted with the minor child, the latter was 5 years and 5 months. The minor was multi-disabled with microcephaly and severe intellectual impairment. He was unable to move independently, had to be fed by others and was incontinent. The child was unable to lift his head when placed in a prone position. He could not sit, stand, crawl or roll. His life expectancy was up to age 22.
- [10] The Physiotherapist indicated that the minor child presented as a spastic quadriplegic with fluctuating tone. The musculoskeletal testing revealed that the upper limbs were fluctuating, and the muscular tone of the lower limbs was increased. Predominant posture of the head and neck rotated to the right with low tone. Shoulders were slightly elevated and in a neutral position, the kneecap was in an elevated position, toes pointed downwards and inwards with the heel off the ground. He was wheelchair bound. The extent of his impairments classified him as a level 5 on the Gross Motor

Function Classification System (GMFCS). He was unable to sit without support and could not control his head against gravity.

[11] In establishing the impact of the injuries on the minor child's occupational performance, the occupational therapist indicated that, the minor child was unable to engage in all his occupational performance area.

[12] The parties referred to several authorities in their submissions of what a reasonable amount in respect of general damages would be.

General Damages

[13] In *Sandler v Wholesale Coal Supplies Limited*¹ it was stated that:

"... it must be recognised that though the law attempts to repair the wrong done to a sufferer who has received personal injuries in an accident by compensating him in money, yet there are no scales by which pain and suffering can be measured, and there is no relationship between pain and money, which makes it possible to express the one in terms of the other with any approach to certainty. The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending upon the judge's view of what is fair, in all the circumstances of the case."

[14] It is an established principle of our law that awards in previous cases can 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 discretion². It is no doubt that, even in instances where facts were similar, the awards in those cases are not to be slavishly followed as they are guidelines only. Neither can the court rigidly apply the consumer price indices when comparing earlier awards.

¹ *Sandler v Wholesale Coal Supplies Limited* 1941 AD 194 at 199.

² *Protea Assurance v Lamb* 1971(1) SA 530 (A) at 535H-536

[15] In *Du Bois v Motor Vehicle Accident Fund*³, Stratford J (as he then was), took into consideration the principle set out in *Sandler v Wholesale Coal Suppliers Ltd*⁴, and stated as follows:

“I... take into consideration that I am logically and legally compensating the claimant but in effect the claimant’s two sons, her heirs, for the claimant’s five and a half years of pain and suffering, disability and her loss of amenities of life. In the normal course of events this award would have benefitted the claimant ... during her lifetime. ... any award I make for claimant’s suffering ultimately devolves on her heirs. This factor influences me on the conservative side of what I should award... for the claimant’s pain and suffering.”

[16] The Supreme Court of Appeal has noted the tendency towards increased awards in respect of general damages in recent times. It therefore reaffirmed conservatism as one of the multiple factors to be considered in awarding general damages.

[17] I have sadly come to the realisation that money cannot compensate the plaintiff for that which the minor child experienced.

[18] In *De Bois*⁵ the court awarded R60 000 for general damages, pain and suffering, disability, loss of amenities, including the fact that the complainant died 5 years and six months after the collision which caused her paraplegia. The award is currently valued at R413 000.

[19] I was also referred to *Geldenhuys NO v Road Accident Fund*⁶ where an amount of R250 000 in general damages was awarded to a quadriplegic man, aged 22 years old at the time of the collision. He passed away six years after the collision. The court stated that the purpose of making such

³ *Du Bois v MVA Fund* [1992] 4 QOD A3-113 [T].

⁴ *Sandler* fn 1 above.

⁵ Note 3

⁶ *Geldenhuys NO v RAF* [2002] 5 QOD A2-11 (C)

awards is to compensate persons who have suffered damages and not to benefit their heirs. The ... effect of taking that factor into consideration is that a conservative approach needs to be taken. The amount is today's equivalent of R415 500 after apportionment.

[20] I am of the view that an amount of R600 000 before the agreed apportionment, represents a fair and reasonable amount to be awarded as compensation for the general damages in all the circumstances of this case.

Order

[21] In the result the following order is made:

1. The defendant shall pay to the plaintiff the total amount of R540 000 in respect of the general damages, together with any interest due in accordance with the Prescribed Rate of Interest Act, 55 of 1975 from the date of the Taxing Master's Allocatur to date of final payment.
2. The defendant shall pay the plaintiff's party and party costs, which costs shall include the costs of:
 - a. Senior Counsel up to the death of the minor child (20 August 2023).
 - b. Costs which were reserved on 29 August 2023

M.R MOLELEKI AJ
ACTING JUDGE OF HIGH COURT, MBOMBELA

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Matter heard on 22 April 2025

Judgment delivered on 06 June 2025