IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 13538/2019

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: YES
DATE: 24 June 2022

In the matter between:

ADV. O.C. LEGAE o.b.o. E[....] C[....] **Plaintiff**

and

ROAD ACCIDENT FUND **Defendant**

JUDGMENT

ALLY AJ

INTRODUCTION

[1] This matter serves before this Court by default, the Plaintiff having obtained an order[1] to proceed by way of default. Whilst the matter proceeded by way of default, it is still incumbent on the Plaintiff to prove its case.

[1] Caselines: 008-1 – 008-3 para 6

[2] The Plaintiff is the *Curator-ad-Litem* for the minor child, E[....] C[....] who was involved in a motor vehicle collision when she was a pedestrian which collision occurred on 4 September 2017.

[3] At the time of the collision, the minor child was 4 years old having been born on 4 June 2013. A motor vehicle with registration letters and number **[....]** knocked down the minor child as she was crossing the road.

[4] The issue of merits was dispensed with immediately by the Court as the minor child, was *doli incapax* at the time of the collision. The Defendant is thus 100% liable for the damages proved by the Plaintiff.

[5] The affidavits in accordance with the Directives were filed and uploaded on Caselines[2].

[6] The minor child sustained serious injuries as a result of the collision which injuries are detailed in the hospital records[3] as well as expert reports[4] uploaded by the Plaintiff. Whilst the seriousness of the minor child's injuries was not conceded by the Defendant before striking out of the defence, the Court is satisfied on the evidence of the Orthopaedic Surgeon contained in an RAF 4[5] form that the injuries were serious.

[7] From the abovementioned records it can discerned that the minor child sustained the following injuries as a result of the abovementioned collision:

7.1. A head injury;
7.2. Brain oedema and haemorrhage;
7.3. Left skull fracture;
7.4. Facial lacerations;
7.5. Blunt abdominal trauma;
7.6. Right hand injury.

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[2] Caselines: Section 12
[3] Caselines: 002-4 – 002-47
[4] Caselines: Section 011
[5] Caselines: 011-26 – 011-41

[8] Counsel for the Plaintiff filed extensive heads of argument for which the Court is grateful.

[9] In respect of general damages Counsel for the Plaintiff referred the Court to various comparative cases and proposed an amount of **R1 400 000-00 (One million four hundred thousand rand)** as an amount which is fair and reasonable.

[10] It is now trite that comparative cases[6] serve as a guide for the Court and a Court is not bound by the amounts awarded in similar or comparative cases. I have had regard to the said cases and am of the view that the amount of **R1 400 000-00 (One million four hundred thousand rand)** as and for general damages is fair and reasonable in the circumstances of this case.

[11] In respect of future loss of earnings Counsel for the Plaintiff argued strenuously for scenario 2 of the Actuarial report to be applied this scenario having been recommended by the Industrial Psychologist. In evaluating and analysing the evidence in relation to the future loss of earnings, I am mindful of the principles laid out by our Courts[7], namely:

> *"we cannot allow our sympathy for the claimants in this very distressing case to influence our judgment"*

[12] The postulation by the Educational Psychologist [8] and the Industrial Psychologist [9] that based on current trends, children advance further than their parents, without tendering any research for such postulation, is not helpful to the Court and cannot be accepted, in my view, without more evidence. I accept in favour of the minor child that the Industrial Psychologist does postulate two scenarios but then concludes that scenario 2 is the most probable scenario depending on certain circumstances such as finances and matric results pre-morbid.

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[6] Khokho v Raf 2019 FSHCB; Minnie NO v Raf 2012 (6A4) QOD 82 GSO; Cordeina v Raf 2011 (6A4) QOD 45; Kgomo v Raf 2011 (6A4) QOD 62; Pietersen NO v Raf 2012 (6A4) QOD 88
[7] Hulley v Cox 1923 AD 234 @ 246
[8] Caselines: 011-94
[9] Caselines: 011-166

[13] Both the reports of the Educational Psychologist and the Industrial Psychologist indicate that the minor child attended crèche. However, there seems to be no effort made in determining the level of acumen of the minor child whilst she was at the crèche given that in the Industrial Psychologist's report the mother indicated that the minor child attended crèche since 2014 which would make the minor child at least one years old at that time. The minor child stopped attending the crèche after the abovementioned collision.

[14] Accordingly, taking the above evaluation and analysis into consideration, I am of the view that scenario 1 of the Industrial Psychologist's report is more in keeping with the probabilities in this case.

[15] The contingencies suggested by Counsel for Plaintiff are not unreasonable and therefore should be applied to the computation of the Actuary based on scenario 1A[10]. Taking this into account the amount of **R4 274 891 (Four million two hundred and seventy-four thousand eight hundred and ninety-one rand)**, in my view, is fair and reasonable in the present circumstances.

[16] In the result the Plaintiff is entitled to an amount of **R5 674 891** comprising of **R1 400 000** as and for general damages and **R4 274 891** as and for future loss of earnings.

[17] There is one matter not dealt with by Counsel for the Plaintiff in his Heads of Argument, namely, the establishment of a trust. However, this issue is dealt with by the *Curator ad Litem* in his report and a recommendation for the establishment of a trust has been recommended. I agree with this recommendation and the mother agreed with same as contained in the report of the *Curator ad Litem*[11]. The Court is grateful to the *Curator ad Litem* for his report.

[18] The following order shall therefore issue:

1. Defendant is liable for 100% of the minor child's damages;

[10] Caselines: 011-192
[11] Caselines: 019-10 – 019-15

2. Defendant is to pay the amount of **R5 674 891 – 00** as and for general damages and future loss of earnings into the Plaintiff's Attorneys trust account pending the establishment of a trust;

3. Defendant shall furnish the Plaintiff with an undertaking in terms of Section 17(4)(a) of the Road Accident Fund Act, No 56 of 1996, for 100 % of the costs of the minor child's future accommodation in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to the minor child arising out of the injuries sustained by the minor child in the motor vehicle collision, after such costs have been incurred and upon proof thereof. Such undertaking shall include: -

3.1. the reasonable costs incurred in the establishment of a trust as contemplated in paragraph below and the appointment of trustee(s);

3.2. the reasonable costs incurred in the administration of the award;

3.3. the reasonable costs incurred in providing security to the satisfaction of the Master of the High Court of South Africa for the administration of the award and the annual retention of such security to meet the requirements of the Master in terms of Section 77 of the Administration of Estates Act, provided that the costs contemplated in paragraphs 3.1 and 3.2 above shall be limited to the costs equivalent to those incidental to that which could be claimed by a *curator bonis*;

4. The attorneys for the Plaintiff are ordered to cause a trust (hereinafter referred to as *"the trust"*) to be established in accordance with the Trust Property Control Act, 57 of 1988, to pay all monies held in trust by them for the benefit of the Plaintiff to the Trust;

5. The trust instrument contemplated in paragraph 4 above shall make provision for the following: -

5.1 That the Plaintiff is to be the sole beneficiary of the trust;

5.2 That the trustee(s) are to provided security to the satisfaction of the Master;

5.3 That the ownership of the trust property vests in the trustee(s) of the trust in the capacity as trustee(s);

5.4 Procedures to resolve any potential disputes, subject to the review of any decision made in accordance therewith by this Honourable Court;

5.5 That the trustee(s) be authorised to recover the remuneration of and costs incurred by the trustee(s) in administering the undertaking in terms of Section 17(4)(a) of Act 56 of 1996 in accordance with the certificate of undertaking to be provided by the Defendant in accordance with paragraph 3 above;

5.6 That the amendment of this trust instrument be subject to the leave of the above Honourable Court;

5.7 The termination of the trust upon the death of the minor child, in which event the trust assets shall pass to the assets of the minor child;

5.8 That the trust property and the administration thereof be subject to an annual audit;

6. The Plaintiff's attorneys shall be entitled to make payment of expenses incurred in respect of accounts rendered by: -

6.1 the expert witnesses; and

6.2 counsel employed on behalf of the Plaintiff;

6.3 the *Curator ad Litem*

from the aforesaid funds held by them for the benefit of the minor child;

7. The Plaintiff's attorneys shall be entitled to payment from the aforesaid funds held by them for the benefit of the minor child, of their fees;

8. The trustee(s) will ensure that the payment of the Attorneys fees will be fair and reasonable and the Master of the High Court and/or the trustee(s) may insist on the taxation of an attorney and client bill of costs;

9. The order must be served by the Plaintiff's attorney on the Master of the High Court within 30 (THIRTY) days of the making hereof.

10. The amount in paragraph (b) above is to be paid within 180 days from date of judgment failing which the Defendant shall become liable to pay interest *a tempore morae* on the amount in paragraph (b) above at the prescribed rate from 14 days after date of this Order to date of payment;

11. The Defendant shall pay the Plaintiff's costs of suit as taxed or agreed on the scale as between party and party, such costs to include: -

11.1. the costs occasioned by the employment of the expert witnesses (medico-legal reports and addendums thereto and preparation fees, if any);

11.2. the costs of counsel;

11.3. the costs of the *Curator ad Litem*

G ALLY
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG
Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 24 June 2022.

Date of virtual hearing: 22 April 2022
Date of judgment: 24 June 2022

Appearances:

Plaintiff's Attorney	:	**NKULU INC** info@nkuluinc.co.za
Counsel for the Plaintiff	:	**ADV. M.P. SELOLO**
Defendant's Attorneys	:	no representation Ditshele@raf.co.za