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

**CASE NO: 11807/2017**

In the matter between:

**T P N[...]**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

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**ORDER**

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The following order is issued:

1. The defendant is directed to pay the plaintiff the sum of R850 000 as general damages.
2. The defendant is directed to pay the costs occasioned by counsel's appearance on 30 April 2024 to argue the aspect of general damages on scale "B".

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**JUDGMENT**

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**Henriques J**

**Introduction**

[1] The only two issues which this court was required to determine at the trial were:

(a) the amount of general damages to award to the plaintiff in respect of her minor son, M[...], arising out of injuries he sustained in a motor vehicle collision which occurred on 14 October 2015; and (b) the scale to be applied in respect of counsel's fee on brief, since the commencement of the new tariff was effective from 12 April 2024. At the trial, no evidence was presented and the parties argued the matter having regard only to the reports of the orthopaedic surgeon, Dr Reddy, the occupational therapists, and the case authorities.

### **Background**

[2] It is common cause that M[...] suffered serious orthopaedic injuries as a consequence of the accident. Although reference is made to a minor head injury in the reports, the parties agreed at the outset that there was no head injury, despite the fact that both the occupational therapists and the industrial psychologists took this into account in postulating the post-morbid loss of earnings.

[3] M[...] sustained a degloving injury to the left lower limb, with Salter-Harris type II distal and fibula fractures, which required various skin graft procedures and a K- wire fixation. Having regard to the initial report of the orthopaedic surgeon, Dr Reddy, M[...] was a pedestrian and approximately three and a half years old at the time of the motor vehicle collision. He was treated at Amouti Clinic and thereafter transferred to Mahatma Gandhi Memorial Hospital (MGMH). At MGMH, he was noted to have severe degloving injuries to the left lower limb and the major injury was to his left lower limb, with the entire leg and foot degloved and the tibia bone being exposed. He had abrasions to the right lower limb over the toes as well as abrasions to his left elbow.

[4] He was thereafter transferred to Addington Hospital and, on 15 October 2015, taken to theatre for major wound debridement and fracture stabilisation. He required repeated dressings. He was thereafter transferred to Inkosi Albert Luthuli Central Hospital (IALCH) with a referral to the plastic surgeon who performed a localised soleus flap to cover the exposed bone and a split skin graft was taken from his thigh. The donor site for all his skin grafts was his right thigh.

[5] After his treatment at IALCH, he was then referred back to MGMH on 27 October 2015 for further treatment. On 5 December 2015, the suture clips and K-wires in the left leg were removed and, on 9 December 2015, he was discharged. Every two to three days, he attended regular follow-up visits at the wound clinic at MGMH. On 12 December 2016, he experienced swelling in his leg and was given compression stockings. He maintained his regular follow-up visits and during September 2017, it was noted that he had eversion deformities and a specialised orthosis for his left lower limb was required.

[6] In the initial report which Dr Reddy completed on 24 October 2017, he noted that M[...]’s leg had healed with severe disfigurement, leg length discrepancy, atrophy of the lower limb, and foot and scar contractures. He opined that M[...] would require specialised orthosis on a lifelong basis and corrective surgery for scar contractures. He noted that the donor site on his right thigh presented with large hypertrophic scar complications, with recurrent symptoms over the donor site.

[7] On 9 March 2023, Dr Reddy updated his initial report and noted that in June 2019, M[...] underwent further surgical procedures at IALCH, which included a left distal fibula epiphysiodesis and the distal tibia supra-malleolar valgising osteotomy was fixed with K-wires and placed in a plaster cast. On 2 August 2019, the K-wires were removed and a new plaster cast was applied. He attended regular follow-up visits at a clinic. He complained of difficulty in removing his pants due to stiffness to the left ankle and foot, used specialised boots, and preferred wearing soft shoes to accommodate the pain and discomfort. He complained of pain during cold weather and indicated that he was being teased by his peers with regard to the multiple scars on his left lower limb, and preferred wearing long pants to cover the disfiguring scars.

[8] Dr Reddy noted significant scarring over the left lower limb, affecting his left leg and foot, as well as scars below his left knee, across his left leg, and on the dorsal medial aspect of his left foot. The donor site scars were present on his right thigh, covering an area of 24cm by 27cm. He noted that M[...] was independent for all personal functions and enjoyed playing soccer on the school grounds. He continued to have leg length discrepancy in the left ankle and foot stiffness, and commented that a final leg length discrepancy can be reviewed when M[...] reaches 16 to 18 years, as he

considered that he would have reached the end of his growth spurt, although M[...] is likely to have leg length discrepancy on a lifelong basis. He indicated that he was susceptible to significant back pain symptoms due to the leg length discrepancy.

[9] X-rays performed on 9 March 2023 revealed deformity of the distal tibial metaphysis, with sclerosis and areas of lucency consistent with the history of a previous fracture. There was a bony fusion between the talus and distal tibial metaphysis, with loss of the intervening joint space and ankle mortise. The mid to proximal tibial and fibula shafts were normal in appearance. There was a shortening of the first metatarsal and hallux. The metatarsals, phalanges, and remaining tarsal bones had a normal appearance. There was significant soft tissue swelling in relation to the distal leg and ankle, more marked medially and a surgical clip within the soft tissues.

[10] The occupational therapists noted, on examination, that M[...] had an absence of left ankle joint motion, reduced left lower limb muscle strength, impaired dynamic balance, a leg length discrepancy of approximately 4cm, and difficulty carrying moderate to heavy objects. M[...] could not take on a squatting position. He had reduced standing and walking tolerance, and complained of difficulty in taking off his pants due to stiffness of the left ankle and foot. He used specialised boots and preferred wearing soft shoes to accommodate the pain and discomfort. He also complained of pain during cold weather.

[11] M[...] reported that he was being teased by his peers with regard to the multiple scars on the lower limb and had a 4cm leg length discrepancy, which had not been accommodated by any prosthesis. It is common cause that M[...] had sustained some scarring to his head, although this is not as significant and noticeable as the scarring and degloving injury to his right leg. It is accepted that he also complained of pain in his hip, as due to the leg length discrepancy and the fact that he has not been fitted with a boot, he over-compensates for this and is experiencing pain in the hip area.

[12] In a joint minute dated 4 January 2024, the occupational therapists noted that there was significant scarring to his head, chest, as well as the right and left upper limbs, and extensive scarring to the right and left lower limbs, which is the source of significant disfigurement. There was a full range of movement of his left hip and left

knee, with no active movement of the left ankle on dorsiflexion. The foot is smaller than the right one, when measured from the heel to the base of the middle of the second toe, and there is a fixed extension deformity of the left big toe. Muscle strength was reduced in the left hip and left knee musculature and there was no observable muscle strength action in the left ankle and left foot musculature.

[13] There was an indication of muscle wasting of his left thigh and distal leg, oedema of the left ankle, and shortening on the left lower limb. Dynamic balance was impaired on the left side and he experienced difficulty lifting and carrying medium to heavy weighted objects. He was able to assume a kneeling standing position, although he was unable to assume a squatting position and experienced difficulty with stair negotiation. His standing and walking tolerances were impaired and sitting tolerance was functional. His endurance was impaired when engaging in physically demanding and strenuous tasks.

[14] He presented with residual pain and physical deficits attributable to his orthopaedic and degloving injuries. Although both the occupational therapists and industrial psychologists opined on a head injury, Ms Naidu who appeared for the plaintiff, acknowledged that there was no head injury diagnosed at the time of the collision but despite this, it had been taken into consideration in the calculation of loss of earning capacity.

[15] I was provided with ten photographs of the graft site on his right thigh, depicting the donor site and the scarring, as well as photographs depicting the serious degloving injuries to his left leg and ankle.

## **Damages**

[16] With reference to a number of decisions, Ms Naidu submitted that an amount of R1.2 million for general damages was appropriate, whereas Ms Govender, who appeared for the defendant, submitted that an amount of R500 000 was an appropriate award.

[17] The purpose of an award of general damages is to compensate a victim for all the pain, suffering, shock, and discomfort suffered as a result of a wrongful act. In

*Southern Insurance Association Ltd v Bailey NO*,<sup>1</sup> Nicholas JA held that the courts have not adopted a 'functional' determination as to how general damages should be awarded and have consistently preferred a flexible approach, determined by the broadest general considerations, depending on what is fair in all the circumstances of the case.

[18] I propose to consider the authorities I was referred to during argument. The first was that of *Mashigo v Road Accident Fund*,<sup>2</sup> in which the plaintiff had sustained serious burn wounds as a result of the hot exhaust pipe of a motor vehicle pressing down on her. As a consequence of these extensive burn wounds, the plaintiff sustained significant scarring. The plastic and reconstructive surgeon indicated that she would require remedial medical intervention and reconstructive surgery in respect of the disfiguring scars to her left and right breasts as well as hyper pigmentation.

[19] It was undisputed that the plaintiff could not carry her baby for long periods of time due to arm pain and lower back discomfort, her sleep was interrupted by pain around her ribs, and she was unable to breastfeed her first child due to the pain of the scar tissue on both her breasts. Her style of clothing changed to cover all the scars on her arms and breasts.

[20] In arriving at an appropriate award, Davis J considered the pain and suffering which the plaintiff sustained at the time of the injuries, the pain and suffering she would experience during subsequent reconstructive surgery, and the unsightly scars that the plaintiff had to live with since the accident until reconstructive surgery. He took into consideration that the plaintiff may remain with permanent scarring but what weighed heavily with him was the minor orthopaedic injuries which she had suffered. He thus arrived at an amount of R450 000 as an award for general damages which in the main related to the scarring. Ms Naidu advised that the current value of the award is R607 500.

[21] In *Methule obo Minor v Road Accident Fund*<sup>3</sup> the minor child, who was 7 years old at the time of the injury, sustained a minor concussive head injury, a soft tissue injury to his right knee, multiple disfiguring lacerations and scarring to the right leg, left

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<sup>1</sup> *Southern Insurance Association Ltd v Bailey NO* 1984 (1) SA 98 (A) at 119D-H.

<sup>2</sup> *Mashigo v Road Accident Fund* [2018] ZAGPPHC 539 ('*Mashigo*').

<sup>3</sup> *Methule obo Minor v Road Accident Fund* [2022] ZAGPPHC 192; 2022 (8G4) QOD 1 (GNP).

hand, right wrist, left and right eyebrows, and neuropsychological sequela. The major significant injury was that of severe scarring. The court used *Phasha*<sup>4</sup> and *Mashigo* as guides in determining an award of R500 000 (with the current value being R564 000) for general damages as a consequence of the injuries as well as the severe scarring.

[22] In *Nyawose v Road Accident Fund*<sup>5</sup> the plaintiff sustained a serious ankle fracture when he was 20 years old and was hospitalised for a period of 16 days. He was diagnosed with fractures of the right distal tibia and fibula. He sustained no scarring but had difficulty walking and his standing tolerance was limited. He was awarded R500 000 for his orthopaedic injuries.

[23] In *Masemola v Road Accident Fund*,<sup>6</sup> the plaintiff sustained orthopaedic injuries in the form of a left tibial plateau fracture and was treated with an open reduction and internal fixation. She suffered an incisional scar on the lateral side of her knee which was painful and had restricted flexion. She also sustained a mild head injury. She did not sustain any scarring. The plaintiff would require a total knee replacement, given the degeneration of her knee and as a consequence, would suffer permanent pain. An award of R1.2 million was made given the neurocognitive and neuropsychological disturbances and post concussive symptoms. The head injury was deemed to be the main basis for the award.

[24] Ms Govender referred to certain cases to justify her submissions and to support her instructions that an award of R500 000 as general damages was more appropriate. The first case she relied on was that of *Ncubu v National Employers' General Insurance Co Ltd*.<sup>7</sup> The plaintiff was a pedestrian who was four years old at the time of the injury and whose left lower leg was completely crushed and traumatically amputated. There was an open wound, exposing the bone, the soft tissue was deeply ingrained with dirt and the tissue and nerves of his right ankle were exposed. He underwent an amputation of the left lower leg a couple of centimetres below his knee, his wounds were cleaned and debrided, and he had to undergo four operations for the building of his stump and

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<sup>4</sup> *Phasha v Road Accident Fund* [2012] ZAGPPHC 246.

<sup>5</sup> *Nyawose v Road Accident Fund* [2021] ZAGPPHC 506.

<sup>6</sup> *Masemola v Road Accident Fund* [2023] ZAGPPHC 553.

<sup>7</sup> *Ncubu v National Employers' General Insurance Co Ltd* 1988 (2) SA 190 (N); 1987 (3E2) QOD 689 (N); [1987] LNQD 6 (N).

repeated hospitalisations for the changing of dressings.

[25] The donor site for skin grafts was his right thigh. He was fitted for a prosthesis and, on a number of occasions, suffered from ulcers on his left knee and had to have an adjustment of the prosthesis. It was anticipated that he would undergo a number of revision operations for his stump because of his age. There was serious disfigurement, the loss of a limb, and extensive scarring on both lower limbs, both at the donor and recipient sites. The current value of the award is R694 000.

[26] In *Rieder v Road Accident Fund*<sup>8</sup> in which the plaintiff was 43 years old at the time of the injury and suffered a fracture to the right tibia, a right tibial plateau fracture and an adult ankle fracture. He had to have a fixation of the tibial plateau and ankle fractures with plate and screws, suffered from infection and had to go for repeated procedures to the wound area which required plastic surgery with the application of skin grafts. The knee movement was somewhat restricted and he would require knee replacement surgery in the future. There was damage to his peroneal nerve resulting in him being unable to flex his right foot and he suffered from drop foot syndrome of the right foot. He was awarded an amount of R400 000 in 2011, with the current day value of R583 000.

[27] In *Sotyelelwa v Union and South West Africa Insurance Co Ltd*<sup>9</sup> the plaintiff who was a martial arts instructor, was injured at 41 and suffered a right comminuted fracture of the tibia, displacement of the fibula and lacerations. He was hospitalised for 224 days and went through a number of operations to set the compound fracture, had a Steinmann pin inserted, a stirrup for traction and another Steinmann pin to the femur. He had two plaster casts placed on his foot and subsequently suffered a serious infection which resulted in a gangrenous foot and had to undergo surgery for the amputation thereof. He was awarded an amount with a current day value of R627 000.

[28] In *Alexander v Road Accident Fund*<sup>10</sup> the plaintiff, a pedestrian was 61 years old at the time of the injury suffered a fracture of the tibial plateau, a fracture of the toes and sustained spinal injuries which resulted in a compression fracture. She suffered pain

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<sup>8</sup> *Rieder v Road Accident Fund* 2011 (6E6) QOD 1 (ECG); [2011] LNQD 33 (ECG).

<sup>9</sup> *Sotyelelwa v Union and South West Africa Insurance Co Ltd* 1979 (3E2) QOD 21 (E); [1979] LNQD 11 (E).

<sup>10</sup> *Alexander v Road Accident Fund* [2022] ZAECMKHC 62; [2022] LNQD 70 (ECM).



and was mobilised on crutches for an excess period of time. The plaintiff was awarded R400 000.

[29] In *Ndlovu v Road Accident Fund*,<sup>11</sup> the plaintiff, who was 38 at the time of the injury, sustained a left tibia compound fracture with lateral degloving and soft tissue injuries. She was discovered to have a fibula fracture and a left ankle medial malleolus fracture. She was hospitalised for 21 days, underwent a blood transfusion, and had internal fixation of both the tibial fractures and nails inserted. She had to undergo debridement of the wound and a skin graft to the left shin with the left thigh being the donor site. She was wheelchair-bound for six weeks and bedridden for a number of months, using crutches. She experienced knee pain, and sustained large, and extensive unsightly hyper pigmented scars which were sensitive to touch. She was awarded R470 000 for general damages, with the current day value at R735 000.

[30] In *Jamieson v Road Accident Fund*<sup>12</sup> the plaintiff, a 13-year-old learner at the time of the injury, sustained a moderate diffuse axonal brain injury with internal haemorrhaging, a spinal injury to her neck and cervical spine with instability of the C2-C3 and C4-C5 cervical vertebrae, a compound comminuted open proximal fracture, and a severe degloving injury to her left arm. She was awarded the sum of R900 000 for general damages in 2021.

[31] The parties relied on a number of decisions dealing with similar circumstances in support of their contentions as to the appropriate amount to be awarded for general damages in respect of M[...]. I have considered them but I am mindful of the words of Rogers J, as he then was, in *AD and another v MEC for Health and Social Development, Western Cape Provincial Government*<sup>13</sup> where he held the following:

‘Money cannot compensate [the minor on behalf of whom the claim has been made] for everything he has lost. It does, however, have the power to enable those caring for him to try things which may alleviate his pain and suffering and to provide him with some pleasures in substitution for those which are now closed to him.

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<sup>11</sup> *Ndlovu v Road Accident Fund* 2015 (7E4) QOD 18 (GSJ); [2015] LNQD 21 (GSJ).

<sup>12</sup> *Jamieson v Road Accident Fund* [2021] ZAECGHC 72; 2021 (8J2) QOD 1 (ECG); [2021] LNQD 23 (ECG).

<sup>13</sup> *AD and Another v MEC for Health and Social Development, Western Cape Provincial Government* [2016] ZAWCHC 181 para 618

These might include certain of the treatments which I have not felt able to allow as quantifiable future medical costs.’

[32] His approach was followed in, amongst others, *PM obo TM v MEC for Health, Gauteng Provincial Government*,<sup>14</sup> and endorsed in *NK v MEC for Health, Gauteng*.<sup>15</sup> However, our courts have warned that when considering past awards, each case must be scrutinised carefully and a court must make its own independent assessment, as past awards are merely a guide and are not to be slavishly followed.<sup>16</sup>

[33] Having regard to the assessment of damages involving children, Snyders JA held the following in *Singh v Ebrahim*:<sup>17</sup>

‘The conservative approach to the assessment of damages is an approach based on policy considerations. Those policy considerations take account of the fact that when a court assesses damages, particularly for loss of future earning capacity and medical expenses, it has been said to be “pondering the imponderable”. It in essence makes an assessment of what the future holds. Fairness to a defendant when an uncertain future is assessed at a time when the injuries caused by the defendant is known and could give rise to an overly sympathetic assessment of the plaintiff's damages, has also to be borne in mind. The general equities in the case need to be given due weight to achieve fairness, not only to the defendant, but the plaintiff and the public at large. The latter, because awards made affect the course of awards in the future, overly optimistic awards may promote inequality and foster litigation.’ (Footnotes omitted.)

[34] In arriving at an award, I have borne in mind that no two cases are exactly the same and awards based on past decisions only serve as a rough guide. Each matter must be decided on its own set of facts. I have taken into account the sequela agreed on by the parties. I accept that M[...] has suffered permanent orthopaedic injuries. I have also noted that the defendant has not placed in dispute the extent of the injuries suffered by M[...] and the future medical treatment that he would require.

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<sup>14</sup> *PM obo TM v MEC for Health, Gauteng Provincial Government* [2017] ZAGPJHC 346 para 56.

<sup>15</sup> *NK v MEC for Health, Gauteng* [2018] ZASCA 13; 2018 (4) SA 454 (SCA) para 11.

<sup>16</sup> *Minister of Safety and Security v Seymour* [2006] ZASCA 71; 2006 (6) SA 320 (SCA) paras 17–19; and *Minister of Safety and Security v Tyulu* [2009] ZASCA 55; 2009 (5) SA 85 (SCA) para 26.

<sup>17</sup> *Singh and another v Ebrahim* [2010] ZASCA 145 para 128.

[35] I am also mindful of the fact that given the serious degloving injuries and the significant scarring, the absence of a report by a plastic surgeon also influences the extent to which any of his scarring can be remediated. It would certainly have assisted the court had such a report been obtained in relation to whether any of the scarring could be ameliorated by a plastic surgeon. Having said this, however, I am mindful that any future surgeries will inflict future pain and suffering on him.

[36] I do not accept the submission of Ms Naidu that when awarding general damages, I must award two separate amounts: one for the scarring and one for the injuries he suffered. The award of general damages is a globular amount, taking into account the extent of the injuries, the scarring and disfigurement, and the pain and suffering he will endure. Having considered all the above, the submissions of the parties' legal representatives, and having regard to the expert reports and the nature of the injuries he suffered, I am of the view that an award of R850 000 in respect of general damages is a fair and appropriate award in the circumstances. I am mindful that the assessment of an appropriate award of general damages is a discretionary matter and has as its objective to fairly and adequately compensate an injured party.<sup>18</sup>

### **Costs**

[37] It is trite that the award of costs falls within the discretion of this court. It is also common cause that up until 12 April 2024, when the provisions of Uniform rules 69 and 70 were amended, the award of costs and the reasonableness thereof were considered by the taxing master or agreed upon by the parties. The rules were amended to make provision for a tariff for counsel's fees on a party and party basis in certain civil matters and to provide for a tariff of fees for legal practitioners who appear in superior courts.

[38] The amendments to the Uniform Rules of Court, which culminated in the current rules 67A, 69, and 70, emanated from an investigation undertaken by the South African Law Reform Commission into legal fees, including access to justice and other interventions.<sup>19</sup> The high costs associated with legal fees and costs are seen as a barrier to the constitutionally recognised right of access to justice in s 34 as the majority

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<sup>18</sup> *Minister of Police v Dlwathi* [2016] ZASCA 6 para 8; *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at 534H-535A; and *Road Accident Fund v Marunga* 2003 (5) SA 164 (SCA) para 23.

<sup>19</sup> South African Law Commission, Project 142 'Investigation into legal fees - including access to justice and other interventions' March 2022.

of South Africans are unable to access legal representation.

[39] It is against this background that the investigations were undertaken, submissions were made by various law bodies, and consultation processes held with members of the public in various areas across the nine provinces. This resulted in the report of the South African Law Reform Commission, dated 28 March 2022, containing recommendations which was submitted to the Minister for his consideration. This is presumably what resulted in the recommendations to the Rules Board and the subsequent amendment to the rules. The old Uniform rule 69 was considered to not make sufficient provision for the recovery of counsel's fees in respect of the statutory party and party tariffs.

[40] The major change to rule 70 pertains to the work undertaken by attorneys when they appear in the high court. Similarly, advocates are now subject to a tariff applicable under rule 70 where they have undertaken the work of attorneys permitted by s 34(2)(a)(ii) of the Legal Practice Act 28 of 2014.<sup>20</sup>

[41] The provisions of rule 67A(1) apply to costs orders made on a party and party scale and require a court to consider what scale of costs must apply to a party and party bill in respect of the work undertaken by counsel or attorneys appearing in the high court. The rule does not apply in the case of an order sought or made for attorney and client or attorney and own client costs.

[42] The court has a discretion but certain guidelines are provided when exercising its discretion to award costs. Rule 67A(2) allows the court to have regard to the provisions of rule 41A, which provides for mediation as a dispute resolution mechanism; and the failure by any party or such party's legal representative to comply with the provisions of rules 30A, 37 and 37A. In addition, other factors which a court considers in terms of rule 67A(2) are:

'(c) unnecessary or prolix drafting, unnecessary annexures and unnecessary procedures followed;

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<sup>20</sup> Rule 67A(1)(c).

- (d) unnecessary time spent in leading evidence, cross examining witnesses and argument;
- (e) the conduct of the litigation by any party's legal representative and whether such representative should be ordered to pay such costs in his or her personal capacity; and
- (f) whether the litigation could have been conducted out of the magistrate's court.'

[43] The maximum scale of costs to be applied is set out in rule 69(7). These scales are scale A, B and C. Scale "A" provides a tariff of R375 per quarter of an hour, scale "B" R750 per quarter of an hour, and scale "C" R1 125 per quarter of an hour. It would appear that the factors to be considered when determining the scale involve three considerations, being the complexity of the matter, the value of the claim, and the importance thereof. When an order does not indicate a scale, it will be on scale A.<sup>21</sup>

[44] The 12 April 2024 amendment, in my view, only applies prospectively and an order in terms of rule 67A(3) should be made in matters instituted before 12 April 2024 but finalised or heard thereafter. The scale applies to work done after 12 April 2024. Having considered the provisions of rule 67A, the rationale behind the amendments, and having regard to the recommendations of the South African Law Reform Commission and the submissions made to the Rules Board justifying the amendment of the rule, in my view, rule 67A is not aimed at the conduct of the defendant. Any misconduct or unwarranted conduct of the defendant can be dealt with by way of a punitive costs order or an attorney and client costs order and ought not to fall within the ambit of considerations when deciding what scale of costs to award.

[45] Ms Naidu submitted that the most appropriate scale which ought to be awarded is scale C, given the nature of the issues argued, namely that of general damages, the serious nature and extent of the orthopaedic and degloving injuries suffered by the minor child, as well as her level of experience at the bar being in excess of 20 years. Ms Naidu also submitted that the award of scale C was warranted given the conduct of the defendant who settled the matter at court on the day of the trial, as opposed to making

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<sup>21</sup> Rule 67A(3)(c).

an offer prior to the trial hearing.

[46] Ms Govender submitted that there was nothing complex regarding this particular matter and the injuries, although severe, were not out of the ordinary orthopaedic injuries and one could have regard to the decided cases in submitting what an appropriate award for general damages was. She submitted an order of costs on scale B was the most appropriate award.

[47] In my view, as the conduct of the defendant is not the focus of rule 67A and as a punitive costs order has not been sought, the focus ought to be on the nature of the matter, its complexity, and the manner in which it was presented. In my view, the arguments were not unduly complex and there was agreement on the reports. It was simply argued on the papers. Given these circumstances, I agree with Ms Govender that scale B is the most appropriate scale to be applied to counsel's fees.

### **Order**

[48] In the result the following order is issued:

1. The defendant is directed to pay the plaintiff the sum of R850 000 as general damages.
2. The defendant is directed to pay the costs occasioned by counsel's appearance on 30 April 2024 on scale B.

**Henriques ADJP**

### **Case Information**

Date of Trial : 29 & 30 April 2024

Date of Judgement : 11 June 2024

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This judgment was handed down electronically by circulation to the parties' representatives by email, and released to SAFLII. The date and time for hand down is deemed to be 14h00 on 11 June 2024.